SUDARSHAN KUMAR
v.
STATE OF HARYANA
(Criminal Appeal No. 1201 of 2007)

JULY 28, 2011

[MARKANDEY KATJU AND CHANDAMAULI KR. PRASAD, JJ.]

Penal Code, 1860: s.302 – Abetment to suicide – Allegation that wife of the appellant committed suicide on the ground that she was harassed, maltreated and beaten by the appellant as she could not conceive and bear a child – On an earlier occasion she was sent to father's house where she stayed for one and half years but due to intervention of the panchayat members and the promise of the appellant that he would not harass her again and his request for pardon, she came back but was again harassed and tormented and she committed suicide – Courts below convicted and ordered sentence of seven years rigorous imprisonment – On appeal, held: The facts disclosed that the deceased was harassed and beaten because she could not bear a child – Interference with the conviction not called for – Appellant has already undergone five years rigorous imprisonment – Sentence is reduced to the period already undergone.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1201 of 2007.

From the Judgment & Order dated 12.05.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 71-SB of 1992.

Rajesh Tyagi (for Atishi Dipankar) for the Appellant.

Manjit Singh, AAG (for Naresh Bakshi) for the Respondent.

The following order of the Court was delivered

O R D E R

Heard learned counsel for the appellant.

This Appeal has been filed against the impugned judgment and order dated 12th May, 2006 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 71-SB of 1992.

The facts have been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

The appellant was married to one Sudesh who is said to have committed suicide on 23rd February, 1989. According to the prosecution Sudesh was married to the appellant in April/ May, 1980 but she could not conceive. The appellant had been maltreating and beating Sudesh and saying that if she dies, he will be re-married. She was physically assaulted and sent to her father's house where she stayed for one and half years but due to the intervention of the panchayat members and the promise of the appellant that he would not harass her again and his request for pardon, she came back. However, it appears that she was again harassed and tormented and ultimately driven to suicide.

The appellant was convicted by the trial Court for abetting the suicide under Section 306 IPC, and his conviction was upheld by the High Court and he was given sentence of seven years rigorous imprisonment.

Having heard learned counsel for the appellant and having carefully perused the record of the case, we are not inclined to interfere with the conviction of the appellant and the same is hereby confirmed. From the facts disclosed, it is evident that Sudesh was harassed and beaten because she could not have a child.

It is natural that everyone wants children, but if a woman does not have a child, that does not mean that she should be insulted or harassed. In such a situation, the best course would be to take medical help, and if that fails, to adopt a child. Experience has shown that an adopted child gives as much happiness to the adoptive parents as any natural child does. Hence, we see no justification to condone such an act of harassing or tormenting a woman just because she did not give birth to a child. It may not be the fault of the wife that she did not have a child. At any event, that is no justification for tormenting or beating her, and this reveals a feudal, backward mentality.

Accordingly, we uphold the conviction of the appellant recorded by the courts below but keeping in view the fact that the appellant has already undergone about five years rigorous imprisonment out of seven years, as submitted by the learned counsel for the appellant, we deem it appropriate to reduce the sentence to the period already undergone by him.

The Appeal is disposed of accordingly.

By an interim order of this Court dated 15th May, 2008, the appellant was enlarged on bail. His bail bonds shall stand discharged since we have reduce the period of sentence to the sentence already undergone by him.

D.G. Appeal disposed of.

SHEELKUMAR JAIN

v.

THE NEW INDIA ASSURANCE CO. LTD. AND ORS.

(Civil Appeal No. 6013 of 2011)

JULY 28, 2011

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

General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 – Clause 5 – General Insurance (Employees') Pension Scheme, 1995 – Clause 22 and 30 – Resignation tendered by appellant in 1991 – Competent authority accepted the same and relieved him from service – In 1995, Pension Scheme introduced which was made applicable to employees who were in the service of respondent no.1-Company on or after first January, 1986 but had retired before the first day of November, 1993 and had exercised an option for same – Appellant opting for the Pension Scheme, 1995 on 20.10.1995 – Entitlement of appellant to opt for the said Scheme – Held: Sub-clause (1) of Clause 5 does not state that the termination of service pursuant to the notice given by an employee to leave or discontinue his service amounts to "resignation" nor does it state that such termination of service amounts to "voluntary retirement" – The said sub-clause does not also make a distinction between "resignation" and "voluntary retirement" – Clauses 22 and 30 of the Pension Scheme, 1995 were not in existence when the appellant served his notice – Both the appellant and respondent no.1 acted in accordance with the provisions of sub-clause (1) of Clause 5 of the Scheme, 1976 at the time of determination of service of the appellant in the year 1991 – Clause 22 of the Pension Scheme, 1995 states that resignation of an employee from the service of the Company shall entail forfeiture of his entire past service and consequently shall not

qualify for pensionary benefits, but does not define the term "resignation" – Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service – Since 'voluntary retirement' unlike 'resignation' does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Clause 30 of the Pension Scheme, 1995 applies cannot be said to have 'resigned' from service – In the facts of the instant case, the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service – Therefore, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his notice he had used the word 'resign' – Respondents directed to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months..

General Insurance (Employees') Pension Scheme, 1995: Clauses 22 and 30 – Object of – Held: The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies – Clauses 22 and 30 of the Scheme cannot be so construed as to deprive of an employee of an Insurance Company who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

The appellant was the employee of respondent no.1-company. On 16.9.1991, he sent a letter to respondent

no.1-company saying that he would like to resign from his post and requesting to treat the letter as three months notice and to relieve him from service. His resignation was accepted with effect from 16.12.1991 i.e. after completion of three months. Accordingly appellant was relieved from his services on 16.12.1991. Thereafter, the General Insurance (Employees') Pension Scheme, 1995 was made by the Central Government in exercise of its powers under Section 17-A of the Act. The Pension Scheme, 1995 applied also to employees who were in the service of respondent no.1-Company on or after first January, 1986 but had retired before the first day of November, 1993 and exercised an option in writing within 120 days from the notified date provided he refunded within the specified period the entire amount of the company's contribution to the provident fund including interest thereon as well as the entire amount of non-refundable withdrawal, if any, made from the company's contribution to the provident fund amount and interest thereon. On 20.10.1995, the appellant submitted an application to the respondent no.1-Company opting for the Pension Scheme, 1995 and gave an undertaking to refund the entire amount of company's contribution to his provident fund account together with interest. Respondent no.1-Company, however, intimated the appellant that the Pension Scheme, 1995 was not applicable to those who have resigned from respondent no.1-Company and since the appellant had resigned, he would not be entitled for the Pensions Scheme, 1995.

The appellant filed a writ petition before the High Court. The Single Judge of the High Court dismissed the writ petition holding that under Clause 22 of the Pension Scheme, 1995, resignation entails forfeiture of the past services and as the appellant resigned from service, even if he had worked for 20 years in respondent no.1-Company, he could not be equated with an employee

who had taken voluntary retirement from service under Clause 30 of the Pension Scheme, 1995 and, therefore, the Pension Scheme, 1995 did not apply to the appellant. The Division Bench of the High Court upheld the order of the Single Judge. The instant appeal was filed challenging the order of the Division Bench of the High Court.

Allowing the appeal, the Court

HELD: 1. The Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 was made under Section 10 of the General Insurance Business (Nationalized) Act, 1972. It is clear from the language of sub-clause (1) of Clause 5 of the Scheme, 1976 that an officer or a person of the Development Staff could leave or discontinue his services after giving in writing to the appointing authority of his intention to leave or discontinue the services and the period of such notice required to be given was three months. It was in accordance with this statutory provision that the appellant submitted his letter dated 16.09.1991 to the General Manager of respondent no.1-Company saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services and the competent authority accepted his resignation with effect from 16.12.1991, i.e. after completion of three months' notice. Sub-clause (1) of Clause 5 does not state that the termination of service pursuant to the notice given by an officer or a person of the Development Staff to leave or discontinue his service amounts to "resignation" nor does it state that such termination of service of an officer or a person of the Development Staff on his serving notice in writing to leave or discontinue in service amounts to "voluntary retirement". Sub-clause (1) of Clause 5 does not also

make a distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service has to serve a notice of three months to the appointing authority. Sub-clause (1) of Clause 5 also does not require that the appointing authority must accept the request of an officer or a person of the Development Staff to leave or discontinue his service but in the facts of the present case, the request of the appellant to relieve him from his service after three months' notice was accepted by the competent authority and such acceptance was conveyed. [Para 8] [586-F; 587-F-H; 588-A-C]

2. The Pension Scheme, 1995 was framed and notified only in 1995 and yet the Pension Scheme, 1995 was made applicable also to employees who had left the services of respondent no.1-Company before 1995. Clauses 22 and 30 of the Pension Scheme, 1995 were not in existence when the appellant submitted his letter dated 16.09.1991 to respondent no.1-Company. Hence, when the appellant served his letter dated 16.09.1991 to the General Manager of respondent no.1- Company, he had no knowledge of the difference between 'resignation' under Clause 22 and 'voluntary retirement' under Clause 30 of the Pension Scheme, 1995. Similarly, respondent no.1-Company employer had no knowledge of the difference between 'resignation' and 'voluntary retirement' under Clauses 22 and 30 of the Pension Scheme, 1995 respectively. Both the appellant and respondent no.1 acted in accordance with the provisions of sub-clause (1) of Clause 5 of the Scheme, 1976 at the time of determination of service of the appellant in the year 1991. Clause 22 of the Pension Scheme, 1995 states that resignation of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits, but does not define the term

"resignation". Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-clause (2) of Clause 30 of the Pension Scheme, 1995, the notice of voluntary retirement shall require acceptance by the appointing authority. Since 'voluntary retirement' unlike 'resignation' does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Clause 30 of the Pension Scheme, 1995 applies cannot be said to have 'resigned' from service. In the facts of the instant case, the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service. Therefore, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his letter dated 16.09.1991 to respondent no.1-Company he had used the word 'resign'. [Para 10] [590-F-H; 591-A-H]

Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors. **AIR 1984 SC 1064: 1984 (3) SCR 325;** *Union of India & Ors*. *v. Lt. Col. P.S. Bhargava* **(1997) 2 SCC 28: 1997 (1) SCR 130;** *Reserve Bank of India & Anr*. *v. Cecil Dennis Solomon & Anr*. **(2004) 9 SCC 461: 2003 (6) Suppl. SCR 465– relied on.**

J.K. Cotton Spinning and Weaving Mills Company Ltd. *v. State of U. P. & Ors*. **(1990) 4 SCC 27: 1990 (3) SCR 523;** *Sansar Chand Atri v. State of Punjab & Anr*. **(2002) 4 SCC 154: 2002 (2) SCR 881;** *D.S. Nakara & Ors*. *v. Union of India* **(1983) 1 SCC 305: 1983 (2) SCR 165;** *Chairman, Railway Board & Ors*. *v. C. R. Rangadhamaiah & Ors.* **AIR 1997 SC 3828: 1997 (3) Suppl. SCR 63;** *S. Appukuttan v. Thundiyil Janaki Amma & Anr*. **(1988) 2 SCC 372: 1988 (2) SCR 661;**

Vatan Mal v. Kailash Nath **(1989) 3 SCC 79: 1989 (2) SCR 192;** *Employees' State Insurance Corporation v. R.K. Swamy & Ors*. **(1994) 1 SCC 445: 1993 (3) Suppl. SCR 461;** *Union of India & Anr*. *v. Pradeep Kumari & Ors*. **(1995) 2 SCC 736: 1995 (2) SCR 703;** *UCO Bank & Ors., etc*. *v. Sanwar Mal, etc*. **(2004) 4 SCC 412: 2004 (2) SCR 1125 – referred to.**

3. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority. The respondents are directed to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months. [Para 13, 14] [593-B-F]

Case Law Reference:

1984 (3) SCR 325	**relied on**	**Para 5, 11**
1990 (3) SCR 523	**referred to**	**Para 5**
1997 (1) SCR 130	**relied on**	**Para 5, 12**
2002 (2) SCR 881	**referred to**	**Para 5**
1983 (2) SCR 165	**relied on**	**Para 5**
1997 (3) Suppl. SCR 63	**relied on**	**Para 5**
1988 (2) SCR 661	**relied on**	**Para 5**

1989 (2) SCR 192	**relied on**	**Para 5**
1993 (3) Suppl. SCR 461	**relied on**	**Para 5**
1995 (2) SCR 703	**relied on**	**Para 5**
2004 (2) SCR 1125	**referred to**	**Para 6, 7**
2003 (6) Suppl. SCR 465	**relied on**	**Para 6, 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6013 of 2011.

From the Judgment & Order dated 10.11.2006 of the High Court of Madhya Pradesh, Bench at Indore, in Writ Appeal No. 224 of 2006.

Sushil Kr. Jain, B. Jain, Ajay Jain, Pratibha Jain for the Appellant.

Balaji Subramanian (for Law Associates & Co.) 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 10.11.2006 of the Division Bench of the Madhya Pradesh High Court, Indore Bench, in W.A. No.224 of 2006.

3. The brief facts of this case are that on 01.07.1969 the appellant was appointed as an Inspector in Liberty Insurance Company Limited. Under the General Insurance Business (Nationalised) Act, 1972 (for short 'the Act'), Liberty Insurance Company was nationalized and merged in the respondent no.1-Company. The services of the appellant were absorbed in respondent No.1-Company and in September, 1984, he was promoted as Assistant Administrative Officer and posted at the Guna Branch as Assistant Branch Manager. In the year 1989, he was transferred to Indore and posted as Assistant

Administrative Officer and thereafter as Divisional Accountant and in 1991 he was promoted to the post of Administrative Officer. The appellant then served a letter dated 16.09.1991 to the General Manager of respondent No.1- Company at the Head Office of the company at Bombay saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services. The Assistant Administrative Officer, Indore, by his letter dated 28.10.1991 informed the appellant that his resignation has been accepted by the competent authority with effect from 16.12.1991, i.e. after completion of three months notice. Accordingly, the appellant was relieved from his services on 16.12.1991. Thereafter, the General Insurance (Employees') Pension Scheme, 1995 (for short 'the Pension Scheme, 1995') was made by the Central Government in exercise of its powers under Section 17-A of the Act. The Pension Scheme, 1995 applied also to employees who were in the service of respondent No.1-Company on or after first January, 1986 but had retired before the first day of November, 1993 and exercised an option in writing within 120 days from the notified date provided he refunded within the specified period the entire amount of the company's contribution to the provident fund including interest thereon as well as the entire amount of non-refundable withdrawal, if any, made from the company's contribution to the provident fund amount and interest thereon. On 20.10.1995, the appellant submitted an application to the respondent No.1-Company opting for the Pension Scheme, 1995 and gave an undertaking to refund to respondent No.1-Company the entire amount of company's contribution to his provident fund account together with interest as well as the entire amount of non-refundable withdrawal, if any, made by him from company's contribution to his provident fund account and interest thereon. The respondent No.1-Company, however, intimated the appellant by letter dated 25.10.1995 that the Pension Scheme, 1995 was not applicable to those who have resigned from the respondent No.1-Company and since the

appellant has resigned, he will not be entitled for the Pensions Scheme, 1995.

4. The appellant then filed Writ Petition No.692 of 1996 before the Madhya Pradesh High Court, Indore Bench, which was dismissed by the learned Single Judge by order dated 15.02.2000. Aggrieved, the appellant initially filed Special Leave Petition before this Court, but thereafter withdrew the same and challenged the order of the learned Single Judge before the Division Bench of the Madhya Pradesh High Court in Writ Appeal No.224 of 2006. The Division Bench of the Madhya Pradesh High Court held in the impugned order that under Clause 22 of the Pension Scheme, 1995, resignation entails forfeiture of the past services and as the appellant has resigned from service, even if he had worked for 20 years in respondent No.1-Company, he cannot be equated with an employee who had taken voluntary retirement from service under Clause 30 of the Pension Scheme, 1995 and the Pension Scheme, 1995 did not apply to the appellant and dismissed the Writ Appeal.

5. Mr. Sushil Kumar Jain, learned counsel for the appellant, submitted that the High Court was not right in coming to the conclusion that the appellant had resigned from service. He submitted that though in the letter dated 16.09.1991 to the General Manager of the respondent no.1-Company the appellant used the word 'resigned', the letter was actually a three months' notice for voluntary retirement. He submitted that the appellant had rendered 20 years service and 20 years service was the qualifying service for voluntary retirement under Clause 30 of the Pension Scheme, 1995. He submitted that since the appellant had rendered more than 20 years of service under the respondent no.1-Company, he was entitled to the pension and such pension should not be denied to him by saying that he had resigned from service and had not taken voluntary retirement. He further submitted that Clause 22 of the Pension Scheme, 1995 providing that resignation from the service of

the respondent no.1-Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits, was not in existence when the appellant submitted his letter dated 16.09.1991 and the only provision that was in force was Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, (for short 'the Scheme 1976') which provided that an officer or a person of the Development Staff shall not leave or discontinue his service without first giving a three months notice in writing to the appointing authority of his intention to leave or discontinue the service. He submitted that had there been a provision similar to Clause 22 of the Pension Scheme, 1995 in the Scheme, 1976, he would not have used the word 'resigned' in his letter dated 19.06.1991. He cited the decisions of this Court in *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.* [AIR 1984 SC 1064], *J.K. Cotton Spinning and Weaving Mills Company Ltd. v. State of U. P. & Ors.* [(1990) 4 SCC 27], *Union of India & Ors. v. Lt. Col. P.S. Bhargava* [(1997) 2 SCC 28] and *Sansar Chand Atri v. State of Punjab & Anr.* [(2002) 4 SCC 154] to contend that the resignation of the appellant actually amounted to voluntary retirement in the facts and circumstances of the case. He vehemently argued that it has been held in *D.S. Nakara & Ors. v. Union of India* [(1983) 1 SCC 305] and *Chairman, Railway Board & Ors. v. C. R. Rangadhamaiah & Ors.* [AIR 1997 SC 3828] that pension is neither a bounty nor a matter of grace but is a payment for the past services rendered by an employee. He relied on the decisions of this Court in *S. Appukuttan v. Thundiyil Janaki Amma & Anr.* [(1988) 2 SCC 372], *Vatan Mal v. Kailash Nath* [(1989) 3 SCC 79], *Employees' State Insurance Corporation v. R.K. Swamy & Ors.* [(1994) 1 SCC 445] and *Union of India & Anr. v. Pradeep Kumari & Ors.* [(1995) 2 SCC 736] for the proposition that while interpreting a statute the Court must have regard to the legislative intent and should not take a narrow or restricted view which will defeat the beneficial purpose of the statute.

6. Mr. Balaji Subramanian, learned counsel for the respondents, on the other hand, submitted that the letter dated 16.09.1991 of the appellant to the General Manager of the respondent no.1-Company used the word 'resigned' and, therefore, the appellant actually resigned from service and did not take voluntary retirement. He cited a decision of this Court in *UCO Bank & Ors., etc. v. Sanwar Mal, etc.* [(2004) 4 SCC 412] in which this Court, while construing the UCO Bank (Employees') Pension Regulations, 1995 which had similar provisions, held that the words 'resignation' and 'voluntary retirement' carry different meanings and an employee, who has resigned from the service, was not entitled to pension. He also relied on the decision of this Court in Reserve *Bank of India & Anr. v. Cecil Dennis Solomon & Anr.* [(2004) 9 SCC 461] in which this Court, while construing the provisions of the Reserve Bank of India Pension Regulations, 1990, has held that in service jurisprudence, the expressions "resignation" and "voluntary retirement" convey different connotations and a person who has resigned is not entitled to pension.

7. We have perused the decisions of this Court cited by learned counsel for the respondents. In Reserve *Bank of India & Anr. v. Cecil Dennis Solomon & Anr.* (supra) employees of the Reserve Bank of India had tendered their resignations in 1988 and were getting superannuation benefits under the provident fund contributory provisions and gratuity schemes. Subsequently, the Reserve Bank of India Pension Regulations, 1990 were framed. The employees who had tendered resignations in 1988 claimed that they were entitled to pension under these new Pension Regulations and moved the Bombay High Court for relief and the High Court held that the Reserve Bank of India was legally bound to grant pension to such employees. The Reserve Bank of India challenged the decision of the Bombay High Court before this Court and this Court held that as the employees had tendered resignation which was different from voluntary retirement, they were not entitled to pension under the Pension Regulations. Similarly,

in UCO Bank & Ors., etc. v. Sanwar Mal, etc. (supra) Sanwar Mal, who was initially appointed in the UCO Bank on 29.12.1959 and was thereafter promoted to Class III post in 1980, resigned from the service of the UCO Bank after giving one month's notice on 25.02.1988. Thereafter, the UCO Bank (Employees') Pension Regulations, 1995 were framed and Sanwar Mal opted for the pension scheme under these regulations. The UCO Bank declined to accept his option to admit him into the pension scheme. Sanwar Mal filed a suit for a declaration that he was entitled to pension under the Pension Regulations and for a mandatory injunction directing the UCO Bank to make payment of arrears of pensions along with interest. The suit was decreed and the decree was affirmed in first appeal and thereafter by the High Court in second appeal. The UCO Bank carried an appeal to this Court and this Court differentiated "resignation" from "voluntary retirement" and allowed the appeal and set aside the judgment of the High Court. In these two decisions, the Courts were not called upon to decide whether the termination of services of the employee was by way of resignation or voluntary retirement. In this case, on the other hand, we are called upon to decide the issue whether the termination of the services of the appellant in 1991 amounted to resignation or voluntary retirement.

8. For deciding this issue, we have to look at the Clause 5 of the Scheme, 1976 made under Section 10 of the Act under which the services of the appellant were terminated after he submitted his letter dated 16.09.1991 to the General Manager of respondent No.1- Company saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services. Clause 5 of the Scheme, 1976 is quoted hereinbelow:

"5. Determination of Service:

(1) An officer or a person of the Development Staff, other than one on probation shall not leave or discontinue his

service without first giving in writing to the appointing authority of his intention to leave or discontinue the service and the period of notice required to be given shall be three months;

Provided that such notice may be waived in part or in full by appointing authority at its discretion.

Explanation I - In this Scheme, month shall be reckoned according to the English Calendar and shall commence from the day following that on which the notice is received by the Corporation or the Company, as the case may be.

Explanation II - A notice given by an officer or a person of the Development Staff under this paragraph shall be deemed to be proper only if he remains on duty during the period of notice and such officer or person shall not be entitled to set off any leave earned against the period of such notice.

(2) In case of breach by an officer or a person of the Development Staff of the provisions of sub-paragraph (1), he shall be liable to pay to the Corporation or the Company concerned, as the case may be, as compensation a sum equal to his salary for the period of notice required of him which sum may be deducted from any monies due to him."

It will be clear from the language of sub-clause (1) of Clause 5 of the Scheme, 1976 that an officer or a person of the Development Staff could leave or discontinue his services after giving in writing to the appointing authority of his intention to leave or discontinue of the services and the period of such notice required to be given was three months. It is in accordance with this statutory provision that the appellant submitted his letter dated 16.09.1991 to the General Manager of respondent No.1-Company saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services and

it is in accordance with this statutory provision that the competent authority accepted his resignation with effect from 16.12.1991, i.e. after completion of three months' notice. Sub-clause (1) of Clause 5 does not state that the termination of service pursuant to the notice given by an officer or a person of the Development Staff to leave or discontinue his service amounts to "resignation" nor does it state that such termination of service of an officer or a person of the Development Staff on his serving notice in writing to leave or discontinue in service amounts to "voluntary retirement". Sub-clause (1) of Clause 5 does not also make a distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service has to serve a notice of three months to the appointing authority. We also notice that sub-clause (1) of Clause 5 does not require that the appointing authority must accept the request of an officer or a person of the Development Staff to leave or discontinue his service but in the facts of the present case, the request of the appellant to relieve him from his service after three months' notice was accepted by the competent authority and such acceptance was conveyed by the letter dated 28.10.1991 of the Assistant Administrative Officer, Indore.

9. We may now look at Clauses 22 and 30 of the Pension Scheme, 1995 which are quoted hereinbelow:

"22. Forfeiture of Service: Resignation or dismissal or removal or termination or compulsory retirement or an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

30. Pension on Voluntary Retirement: (1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:

Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)(a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

(b) on receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee who has elected to retire under this paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement.

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitled him to any notional fixation of pay for the purpose of calculating his pension;

Explanation: For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-I to this scheme."

10. The Pension Scheme, 1995 was framed and notified only in 1995 and yet the Pension Scheme, 1995 was made applicable also to employees who had left the services of the respondent No.1-Company before 1995. Clauses 22 and 30 of the Pension Scheme, 1995 quoted above were not in existence when the appellant submitted his letter dated 16.09.1991 to the General Manager of respondent No.1-Company. Hence, when the appellant served his letter dated 16.09.1991 to the General Manager of respondent No.1-Company, he had no knowledge of the difference between 'resignation' under Clause 22 and 'voluntary retirement' under

Clause 30 of the Pension Scheme, 1995. Similarly, the respondent No.1-Company employer had no knowledge of the difference between 'resignation' and 'voluntary retirement' under Clauses 22 and 30 of the Pension Scheme, 1995 respectively. Both the appellant and the respondent No.1 have acted in accordance with the provisions of sub-clause (1) of Clause 5 of the Scheme, 1976 at the time of determination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the determination of service of the appellant under sub-clause (1) of Clause 5 of the Scheme, 1976 amounts to resignation in terms of Clause 22 of the Pension Scheme, 1995 or amounts to voluntary retirement in terms of Clause 30 of the Pension Scheme, 1995. Clause 22 of the Pension Scheme, 1995 states that resignation of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits, but does not define the term "resignation". Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-clause (2) of Clause 30 of the Pension Scheme, 1995, the notice of voluntary retirement shall require acceptance by the appointing authority. Since 'voluntary retirement' unlike 'resignation' does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Clause 30 of the Pension Scheme, 1995 applies cannot be said to have 'resigned' from service. In the facts of the present case, we find that the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his letter dated 16.09.1991 to the General Manager of respondent no.1-Company he had used the word 'resign'.

11. We may now cite the authorities in support of our aforesaid conclusion. In *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.* (supra), the plaintiff had rendered continuous service under the respondent from 31.12.1929 till 31.08.1959, i.e. for 20 years and 8 months. He submitted a letter of resignation dated 27.07.1959 and his resignation was accepted by the respondent by letter dated 26.08.1959 and he was released from his service with effect from 01.09.1959. On these facts, a three-Judge Bench of this Court held:

> "The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

12. In *Union of India & Ors. v. Lt. Col. P.S. Bhargava* (supra), respondent joined the Army Dental Corps in 1960 and thereafter he served in various capacities as a specialist and on 02.01.1984 he wrote a letter requesting for permission to resign from service with effect from 30.04.1984 or from an early date. His resignation was accepted by a communication dated 24.07.1984 and he was released from service and he was also informed that he shall not be entitled to gratuity, pension, leave pending resignation and travel concession. On receipt of this letter, he wrote another letter dated 18.08.1984 stating that he was not interested in leaving the service. This was followed by another letter dated 22.08.1984 praying to the authority to cancel the permission to resign. These letters were written by the respondent because he realized that he would be deprived of his pension, gratuity, etc. as a consequence of his resignation. These subsequent letters dated 18.08.1984 and 22.08.1984 were not accepted and the respondent was struck off from the rolls of the Army on 24.08.1984. On these facts, the Court held:

> "Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as

the Regulations stand that right to get pension can be taken only if an order is passed under Regulations 3 or 16."

13. The aforesaid authorities would show that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

14. In the result, we set aside the orders of the Division Bench of the High Court in the Writ Appeal as well as the learned Single Judge and allow this appeal as well as the Writ Petition filed by the appellant and direct the respondents to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months from today. There shall be no order as to costs.

D.G. Appeal allowed.

THE GREATER HYDERABAD MUNICIPAL CORPORATION

v.

M. PRABHAKAR RAO

Civil Appeal No. 6014 of 2011

JULY 28, 2011

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

Service Law:

Wages for the period of suspension – Held: Under sub-r. (3) of F. R. 54-B, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts of the case and on the materials before it, such view would not be interfered by the tribunal or the court – In the instant case, the employee was arrested on the report of the Deputy Director, Anti-Corruption Bureau for taking bribe – The chemical test was found positive – The employee was arrested and released on bail – He was placed under suspension immediately –During trial, the complainant turned hostile – The employee was acquitted by the trial court holding that there was a doubt whether the amount paid was towards illegal gratification – High Court held that recovery of the amount had been proved, but purpose for which the amount was paid could not be proved – On these materials, the view of the competent authority that the suspension could not be regarded as wholly unjustified was a possible view which it could form under sub-r. (3) of F.R. 54-B – Fundamental Rules – F.R. 54-B (3), proviso.

The respondent, who was working as a Bill Collector

in the Municipal Corporation of Hyderabad, was placed under suspension on 19.05, 1997 for demanding and accepting illegal gratification from the complainant for assessment of his house. On 28.06.2001, the competent authority revoked the suspension of the respondent and reinstated him in service without prejudice to the prosecution pending against him. The respondent was acquitted in the criminal case. The respondent's representation seeking back-wages for the suspension period and other consequential benefits was rejected by the competent authority holding that his suspension could not be regarded as wholly unjustified. However, the O.A. filed by respondent was allowed by the Andhra Pradesh Administrative Tribunal. The writ petition filed by the employer was dismissed by the High Court.

Allowing the appeal filed by the employer, the Court

HELD: 1.1 Sub-rule (3) of F.R. 54-B vests power on the authority competent to order reinstatement to form an opinion whether suspension of a Government servant was wholly unjustified and if, in his opinion, the suspension of such Government servant is wholly unjustified, such Government servant will be paid full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of F.R. 54-B, however, states that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant then the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine. Thus, even where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant may still not be entitled to be paid the whole pay and allowances, but

may be paid such pay and allowances as may be determined by the competent authority. [Para 8] [600-G-H; 601-A-C]

1.2. Therefore, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the tribunal or the court. [Para 11] [605-B-D]

1.3.The rationale, on which sub-rule (3) of F.R. 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. [Para 9] [601-D-E]

Union of India & Ors. v. *K.V. Jankiraman & Ors*. **1991 (3) SCR 790 = (1991) 4 SCC 109 – relied on.**

1.4. In the instant case, the Deputy Director, Anti-Corruption Bureau had reported that the respondent had taken Rs.2,000/- from the complainant for assessment of his house; that the bribe amount was recovered from the possession of the respondent; and that the test of right hand fingers and shirt pocket of the respondent was positive. He was arrested and released on bail. He was placed under suspension with immediate effect. The trial court acquitted the respondent and the High Court sustained the acquittal. However, the High Court found that the complaint (PW-1) had turned hostile and held that the recovery of the amount had been proved by the

prosecution, but the purpose for which the amount was paid could not be proved and, therefore, the trial court rightly came to the conclusion that there was a doubt whether the amount that was paid to the respondent was towards illegal gratification. On these materials, the competent authority has formed the opinion in his order dated 17.11.2008 that the suspension of the respondent cannot be regarded as wholly unjustified and has declined to grant any salary and allowance to the respondent during the period of suspension. This opinion of the competent authority was a possible view on the materials which the competent authority could form in the facts and circumstances of the case while passing an order in exercise of his powers under sub-rule (3) of F.R. 54-B, declining to allow the salary and allowances of the respondent for the period of suspension. [Para 10] [602-G-H; 603-A-B; 604-A-E]

1.5. In the result, the order of the Tribunal and the impugned order of the High Court are set-aside. [Para 12] [605-D]

Case Law Reference:

1991 (3) SCR 790 relied on Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6014 of 2011.

From the Judgment & Order dated 18.02.2010 of the High Court of Andra Pradesh at Hyderabad in W.P. No. 1564 of 2010.

D. Bharathi Reddy for the Appellant.

Naveen R. Nath, for the Respondent.

The Judgment of the Court was delivered by

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

2. Leave granted.

3. This is an appeal against the order dated 18.02.2010 of the Division Bench of the Andhra Pradesh High Court dismissing Writ Petition No.1564 of 2010 of the appellant against the order dated 18.08.2009 of the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No.7377 of 2008.

4. The facts briefly are that the respondent was working as a Bill Collector in the Municipal Corporation of Hyderabad. On 19.05.1997, he was placed under suspension by the Commissioner & Special Officer, Municipal Corporation of Hyderabad (for short 'the competent authority), as it was reported by the Deputy Director, Anti-Corruption Bureau, C.I.U. and City Range Hyderabad, that he had demanded Rs.2,000/- from the complainant, M.R. Srinivas, for assessment of his house and had accepted the bribe. On 28.06.2001, the competent authority revoked the suspension of the respondent and reinstated him in service without prejudice to the prosecution pending against him and posted him in a non-focal post. The respondent was thereafter prosecuted, but acquitted by the trial court. The acquittal of the respondent was challenged by the State in the Andhra Pradesh High Court in Criminal Appeal No. 2548 of 2004, but by judgment dated 06.12.2004, the High Court dismissed the appeal.

5. The respondent then made a representation seeking back-wages for the suspension period and other consequential benefits, but the same was rejected by Memo dated 01.07.2005. The respondent filed O.A. No.3627 of 2005 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') against such rejection of back-wages for the suspension period and by order dated 13.11.2006, the Tribunal set aside the Memo dated 01.07.2005 and remitted the matter to the authorities with a direction to re-examine the entire issue with reference to the rules and pass appropriate orders duly giving an opportunity to the respondent. The competent authority in his order dated 17.11.2008 re-examined the issue and took the view that the suspension of the respondent cannot be regarded as wholly unjustified and hence the back-wages and

consequential benefits for the suspension period cannot be paid to the respondent. Aggrieved, the respondent filed O.A. No.7377 of 2008 before the Tribunal and by order dated 18.08.2009, the Tribunal allowed the O.A. and set aside the order dated 17.11.2008 of the competent authority and declared that the respondent was entitled for treating the period of suspension as on duty and for release of all consequential benefits. The appellant challenged the order of the Tribunal before the High Court in Writ Petition No. 1564 of 2010 but by the impugned order, the High Court dismissed the Writ Petition.

6. Mrs. D. Bharathi Reddy, learned counsel for the appellant, submitted that under the F.R. 54-B of the Andhra Pradesh Fundamental Rules (for short 'F.R. 54-B'), which is applicable to employees of the Municipal Corporation of Hyderabad, the competent authority has been vested with the power to pass an order as to how the period of suspension would be treated. She submitted that sub-rule (3) of F.R. 54-B provides that where the competent authority is of the opinion that the suspension was wholly unjustified, an employee would be paid full pay and allowances to which he would have been entitled, had he not been suspended. She submitted that in the facts of the present case, the respondent had been placed under suspension for accepting a bribe from the complainant and a charge sheet was filed in the court against him, but he was acquitted by the trial court and the High Court has sustained the acquittal of the respondent only because the prosecution witnesses had turned hostile and did not support the prosecution version that the respondent was paid Rs.2,000/- towards illegal gratification and on these facts, the competent authority had rightly taken the view that the suspension cannot be regarded as wholly unjustified. She submitted that the orders passed by the Tribunal and the High Court, therefore, should be set aside.

7. Mr. Naveen R. Nath, learned counsel for the respondent, on the other hand, submitted that the High Court, after going

through the evidence adduced by the prosecution and the finding of the Tribunal, did not find any compelling reason to interfere with the judgment of the trial court acquitting the respondent. He submitted that it will be clear from the judgments of the trial court and the High Court that the suspension of the respondent was wholly unjustified and yet the competent authority took the erroneous view in the order dated 17.11.2008 that the suspension of the respondent cannot be regarded as unjustified. He submitted that the Tribunal has rightly held that the suspension of the appellant was unjustified and the High Court has held in the impugned order that the order of the Tribunal needs no interference.

8. Sub-rule (3) of F.R. 54-B is extracted hereinbelow:

"(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to this regard is served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay [only such amount (not being the whole) of such pay and allowances as it may determine]."

Sub-rule (3) of F.R. 54-B extracted above, thus, vests power on the authority competent to order reinstatement to form an opinion whether suspension of a Government servant was wholly unjustified and if, in his opinion, the suspension of such

Government servant is wholly unjustified, such Government servant will be paid full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of F.R. 54-B, however, states that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant then the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine. In other words, even where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant may still not be entitled to be paid the whole pay and allowances, but may be paid such pay and allowances as may be determined by the competent authority.

9. The rationale, on which sub-rule (3) of F.R. 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in *Union of India & Ors. v. K.V. Jankiraman & Ors.* [(1991) 4 SCC 109]. At page 121 in Para 26 P.B. Sawant, J, writing the judgment for the Court in the aforesaid case further observed:

> "26. ……. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the

> intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. …."

It will be clear from what this Court has held in *Union of India & Ors. v. K.V. Jankiraman & Ors.* (supra) that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardized and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case.

10. In the facts of the present case, the Deputy Director, Anti-Corruption Bureau, C.I.U. and City Range Hyderabad, had reported that the respondent had taken Rs.2,000/- from the complainant, M.R. Srinivas, for assessment of his house and had accepted Rs.2000/- from him on 14.05.1997 at his house and that the bribe amount was recovered from the possession of the respondent and that the test of right hand fingers and shirt pocket of respondent was positive and that he was arrested

and released on bail and on such report, the respondent was placed under suspension with immediate effect by order dated 19.05.1997. The trial court, however, acquitted the respondent of the charges and in the criminal appeal of the State, the High Court sustained the acquittal of the respondent and dismissed the criminal appeal. The reasons for sustaining the acquittal of the respondent given by the High Court in its judgment dated 06.12.2004 in the criminal appeal are quoted hereinbelow:

> "The story of the prosecution is that the amount that was recovered from the pocket of A.1 was paid by PW.1 on demand made by A.1 and A.2 as illegal gratification and was accepted by A.1. The prosecution in order to prove the guilt of the respondents examined PWs 1 to 8 and marked Exs. P.1 to P.13 and M.Os. 1 to 11. The lower court after considering the evidence acquitted the respondents by holding that the prosecution failed to prove that the amount recovered from A.1 was taken by him as illegal gratification. PWs1 and 2 made a complaint to ACB officials complaining that A.1 and A.2 demanded illegal gratification for reducing the property tax and it was accepted by them when tainted notes were given. But unfortunately, PWs 1 and 2 turned hostile and did not support the prosecution version that they paid amount of Rs.2,000/- to A.1 towards illegal gratification. Though the recovery of the amount was proved by the prosecution, the purpose for which the amount was paid could not be proved, therefore, the lower court rightly came to a conclusion that there is a doubt whether the amount that was paid to A.1 was towards illegal gratification. After carefully going through the evidence adduced by the prosecution and the findings of the lower court, I do not find any compelling reasons to interfere with the judgment of the lower court regarding the acquittal of both the respondents. There are no grounds to interfere with the judgment of the lower court."

Thus, the High Court found that PW-1, who made the complaint that the respondent had demanded illegal gratification for reducing the property tax, turned hostile and did not support the prosecution version that he had paid Rs.2,000/- to the respondent towards illegal gratification. The High Court also held that the recovery of the amount was proved by the prosecution, but the purpose for which the amount was paid could not be proved and therefore the trial court rightly came to the conclusion that there is a doubt whether the amount that was paid to the respondent was towards illegal gratification. On these materials, the competent authority has formed the opinion in his order dated 17.11.2008 that the suspension of the respondent cannot be regarded as wholly unjustified and has declined to grant any salary and allowance to the respondent during the period of suspension. This opinion of the competent authority was a possible view on the materials which the competent authority could form in the facts and circumstances of the case while passing an order in exercise of his powers under sub-rule (3) of F.R. 54-B, declining to allow the salary and allowances of the respondent for the period of suspension.

11. Yet, the Tribunal has found fault with the order dated 17.11.2008 of the competent authority and has held that the suspension of the respondent was unjustified. The reasons given by the Tribunal in its order are that the prosecution has failed to prove the case beyond reasonable doubt about the demand and acceptance of the bribe and the criminal court has acquitted the respondent and it was open for the authorities to proceed against the respondent departmentally, but no such departmental proceedings were initiated to prove the misconduct of the respondent. The approach of the Tribunal, in our considered opinion, was not correct. Sub-rule (3) of F.R. 54-B does not state that in case of acquittal in a criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of F.R.

54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of F.R. 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if he is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.

12. In the result, we allow this appeal and set-aside the order of the Tribunal and the impugned order of the High Court and dismiss the original application filed by the respondent before the Tribunal. There shall be no order as to costs.

R.P. Appeal allowed.

GLAXO SMITHKLINE PHARMACEUTICALS LTD. & ANR
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 1489 of 2011)

JULY 28, 2011

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

The Drugs and Cosmetics Act, 1940:

s. 25(3) and 35 – Drug manufactured by company found not of 'standard quality' – Intention to controvert report of analyst not expressed within the period of limitation – Delay in filing the complaint – Effect of – HELD: The report of analyst is conclusive – In the instant case, the manufacturers did not express their intention to adduce evidence to controvert the report of the analyst within the period of limitation – In the circumstances, the delay in filing the complaint becomes immaterial – On earlier occasions also the company was informed that the medicine in question was not of standard quality, but it did not make its intention clear to adduce any evidence to controvert Government Analyst's report – There is no ground to interfere with the well reasoned judgment of High Court declining to quash the criminal proceedings – Delay/Laches.

The Drug Inspector, on 9.12.1996, took from a shop, a sample of Betnesol tablets manufactured by the appellant-company. The sample was sent for chemical analysis to the laboratory i.e. Government Analyst, Madhya Pradesh (Bhopal) on 10.12.1996. The Government Analyst by certificate dated 27.8.1997 declared that the sample was not of "standard quality" as defined under the Drugs and Cosmetics Act, 1940 (the Act). A show cause notice was issued to the appellant-company on 29.9.1997. The reply was submitted on

3.11.1997, stating that the sample of the medicine in question ought to have been examined/analysed under Indian Pharmacopoeia ('I.P.') 1996 and it had wrongly been analysed under I.P. 1985. On 3.7.2001, the department filed a complaint against the appellant-company as well as its Managing Director and other Officers for commission of offence punishable u/s 35 of the Act. The Chief Judicial Magistrate issued summons to all the accused. The appellants filed an application u/s 25(3) of the Act before the trial court with a prayer that sample of Betnesol tablets be sent for chemical analysis to the Director, Central Drugs Laboratory for being tested as per I.P.1996. The application stood rejected. The appellants approached the High Court for quashing the proceedings. The prayer was declined by the High Court.

Dismissing the appeal filed by the manufacturers, the Court

HELD: 1.1 It is a settled legal proposition that the report of the analyst is conclusive. It means that no reasons are needed in support of conclusion given in the report, nor is it required that the report should contain the mode or particulars of the analysis. [para 7] [612-C-D]

Dhian Singh v. Municipal Board, Saharanpur & Anr., **1970 (1) SCR 736 = AIR 1970 SC 318 – relied on.**

1.2 However, law permits the drug manufacturer to controvert the report expressing his intention to adduce evidence to controvert the report within the prescribed limitation of 28 days as provided u/s 25(3) of the Act. In the instant case, as the appellants did not express an intention to adduce evidence to controvert the analyst report within the statutory limitation period of 28 days, further delay in filing the complaint becomes immaterial. Even otherwise, expiry date of the medicine was March

1998, i.e., only after 4 months of submission of the reply by the appellants, and they did not fulfill their burden of expressing intention to adduce evidence in contravention of the report. Therefore, they cannot raise the grievance that the complaint had been lodged at a much belated stage. So far as the application of I.P. 1985 or I.P. 1996 is concerned, such an issue can be agitated at the time of trial. [paras 7 and 8] [612-E-F; 613-B-D]

State of Haryana v. Brij Lal Mittal & Ors. **1998 (3) SCR 104 = (1998) 5 SCC 343 - relied on.**

Medicamen Biotech Limited & Anr. v. Rubina Bose, Drug Inspector **2008 (4) SCR 936 = (2008) 7 SCC 196 - distinguished**

1.3 It is pertinent to mention that the appellants had earlier also been informed by the Drug Inspector of various cities on many occasions that the medicine in question, i.e., Betnesol Tablet, was not of standard quality and the authorities had been making an attempt to initiate proceedings against them. As is evident from the pleadings taken by the appellants themselves and the letter dated 1.7.1996 (Annexure P-9) wherein the appellant-company wrote a letter to the Controller, Food and Drug Administration, Madhya Pradesh, it did not make its intention clear to adduce any evidence to controvert the Government Analyst's report. [para 11] [614-D-F; 615-B]

1.4 The appellants and other co-accused did not give any option to adduce evidence in contravention of the analyst's report within statutory limitation period. Even if there was inordinate delay in launching the criminal prosecution or filing the complaint, it is of no consequence. There is no ground to interfere with the well reasoned judgment of the High Court. [para 12] [615-D]

Case Law Reference:

1970 (1) SCR 736	**relied on**	**para 7**
2008 (4) SCR 936	**distinguished**	**para 9**
1998 (3) SCR 104	**relied on**	**para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1489 of 2011.

From the Judgment & Order dated 14.09.2010 of the High Court of Madhya Pradesh at Jabalpur in Criminal Misc. Case No. 6315 of 2008.

R. Ramachandran , U.A. Rana, M. Majumbar, Gagrat & Co. for the Appellants.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 14.9.2010 passed by the High Court of Madhya Pradesh at Jabalpur in Misc. Criminal Case No. 6315 of 2008 which rejected the application of the appellants for quashing the complaint under the provisions of The Drugs and Cosmetics Act, 1940 (hereinafter called `the Act 1940').

3. Facts and circumstances giving rise to this appeal are that:

A. The Drug Inspector under the Act 1940 had taken a sample of Betnesol tablets (Batch No. NC 160 Mfg. October 1996, expiry March 1998), manufactured by the appellant-company from the shop of one Mahesh Agarwal at Chattarpur on 9.12.1996. The statutory authority sent the medicine for chemical analysis to the laboratory i.e. Government Analyst, Madhya Pradesh (Bhopal) on 10.12.1996.

B. The said Government Analyst vide certificate dated 27.8.1997 declared that the sample was not of "standard quality" as defined under the Act 1940. The sample led to "analytical difficulties" for the purpose of determining compliance with the official standards as stated under uniformity of content.

C. In view thereof, a show cause notice was issued to the appellant-company by the statutory authority on 29.9.1997 as to why proceedings should not be initiated against the appellants and others. The appellant submitted its reply on 3.11.1997, submitting that sample of the aforesaid medicine ought to have been examined/analysed under Indian Pharmacopoeia (hereinafter called 'I.P.') 1996 and it had wrongly been analysed under I.P. 1985. Subsequent thereto, the department filed a complaint against the appellants on 3.7.2001 impleading the company as well as its Managing Director and Officers under the provisions of the Act 1940. A prayer was made that the appellants and other accused be punished under Section 35 of the Act 1940 and information of the said punishment be published in the newspapers at the cost of the accused.

D. The Chief Judicial Magistrate, Chattarpur, took cognizance and issued summons to all accused persons including the appellants. The appellants filed an application under Section 25(3) of the Act 1940 before the Chief Judicial Magistrate, Chattarpur, with a prayer that sample of Betnesol tablets be sent for chemical analysis to the Director, Central Drugs Laboratory for being tested as per I.P.1996 on 1.10.2007. The said application stood rejected vide order dated 5.5.2008. The appellants approached the High Court by filing Misc. Criminal Case No. 6315 of 2008 for quashing the proceedings in Criminal Case No. 982 of 2001 (State of Madhya Pradesh v. M/s Aggarwal Medical Stores and Ors.). The said application stood rejected by the impugned judgment and order dated 14.9.2010. Hence, this appeal.

4. Shri R. Ramachandran, learned senior counsel appearing for the appellants, submitted that the Drugs Inspector issued show cause notice dated 29.9.1997 which was duly replied by the appellants on 3.11.1997. Therefore, there was no occasion for the respondent- authorities to file a complaint, that is too after the expiry of more than 3 years and 9 months of the expiry date of the medicine itself. The appellants could not avail their remedy under Section 25(3) of the Act 1940 which can be exercised within 28 days from the date of service of show cause notice. The chemical analyst's report was not clear at all. The certificate declared that the medicine "was not of the standard quality". The analyst had analytical difficulties in determining the compliance with the official standards as stated "Under uniformity of Contents". The purpose of exercising his right under Section 25(3) of Act 1940 is to ask the statutory authority to send the medicine to some other laboratory for chemical analysis in case the report was not acceptable to the accused. In the instant case, it was the technical problem as the fault had been found in view of analytical defects, and thus, there was no violation of substantive character. There could be no justification for the State to file the complaint at such a belated stage. Thus, the High Court erred in rejecting the application for quashing the complaint.

5. On the other hand, Ms. Vibha Datta Makhija, learned counsel appearing for the respondent-State, has vehemently opposed the appeal contending that the applicants are the manufacturer of drugs and under Section 18(a)(i) of the Act 1940, they could not manufacture drugs of sub-standard quality. They could have expressed their option to adduce evidence in contravention of the analytical report within the period of limitation i.e. 28 days which they did not do. Unless the accused has given option that it would adduce evidence in contravention of the analytical report, it cannot ask the court to send the medicine for chemical analysis to the Central Government Laboratory. As no such option had been made by the appellants, they are not entitled to challenge the report. More

so, the onus of proof was on the appellants to tell as on what date the company had received the show cause notice dated 29.9.1997. The appellants have not disclosed the date of receipt of the show cause notice till date. The issue of launching criminal prosecution at a much belated stage has not been raised before the High Court in the gravity in which it is being agitated before this Court. Appeal lacks merit and thus, is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the records.

7. The issue involving herein is no more res integra matter. The issues have been examined time and again. It is a settled legal proposition that report of the analyst is conclusive. It means that no reasons are needed in support of conclusion given in the report, nor it is required that the report should contain the mode or particulars of the analysis. (See: *Dhian Singh v. Municipal Board, Saharanpur & Anr.,* AIR 1970 SC 318.)

However, law permits the drug manufacturer to controvert the report expressing his intention to adduce evidence to controvert the report within the prescribed limitation of 28 days as provided under Section 25(3) of the Act 1940. In the instant case, the report dated 27.8.1997 was received by the statutory authorities who sent the show cause notice to the appellants on 29.9.1997 and the appellants replied to that notice on 3.11.1997. The case of the statutory authorities is that option/ willingness to adduce evidence to controvert the analyst's report was not filed within the period of 28 days i.e. limitation prescribed for it. The appellants are the persons who knew the date on which the show cause notice was received. For the reasons best known to them, they have not disclosed the said date. It is a company which must be having Receipt and Issue department and should have an office which may inform on what date it has received the notice, and thus, should have made the willingness to controvert the report. In fact, such application

had only been made on the technique adopted for analysis. It has been the case that instead of testing the medicine under the I.P. 1985, it could have been done under I.P. 1996 because the I.P.1996 had come into force prior to the date of taking the sample on 9.12.1996.

8. In view of the fact that the appellants did not express an intention to adduce evidence to controvert the analyst report within the statutory limitation period of 28 days, further delay in filing the complaint becomes immaterial. Even otherwise, expiry date of the medicine was March 1998 i.e. only after 4 months of submission of the reply by the appellants, and they did not fulfill their burden of expressing intention to adduce evidence in contravention of the report. Therefore, they cannot raise the grievance that the complaint had been lodged at a much belated stage. So far as the application of I.P. 1985 or I.P. 1996 is concerned, such an issue can be agitated at the time of trial.

9. The judgment in *Medicamen Biotech Limited & Anr. v. Rubina Bose, Drug Inspector,* (2008) 7 SCC 196, was heavily relied on by Shri R. Ramachandran, learned senior counsel appearing for the appellants. Nevertheless, the facts of the said case are quite distinguishable. In that case, the complaint had been filed about a month short of expiry date, and the accused therein had expressed their option to lead evidence in contravention of the analyst's report within limitation time but were not able to do so as shortly thereafter the medicine expired.

10. We agree with Ms. Makhija that the case is squarely covered by the judgment of this Court in *State of Haryana v. Brij Lal Mittal & Ors.,* (1998) 5 SCC 343 wherein this Court has held as under:

> "….Sub-section (4) also makes it abundantly clear that the right to get the sample tested by the Central Government Laboratory (so as to make its report override the report of the Analyst) through the court accrues to a

> person accused in the case only if he had earlier notified in accordance with sub-section (3) his intention of adducing evidence in controversion of the report of the Government Analyst. To put it differently, unless requirement of sub-section (3) is complied with by the person concerned he cannot avail of his right under sub-section (4)."

In the said case, like the present case, the manufacturer did not notify the Inspector within the prescribed period that he intended to adduce evidence in contravention of the report. Also, akin to the case at hand, the manufacturer's right under section (3) of Section 25 expired few months before expiry of shelf life. Holding for the directors of the manufacturing company on different grounds, the court opined that the right to get drugs tested by Central Drugs Laboratory does not arise unless requirement of sub-section (3) is complied with.

11. It is pertinent to mention herein that present appellants had earlier also been informed by the Drug Inspector of various cities on many occasions that the aforesaid medicine was i.e. Betnesol Tablet, was not of standard quality and the authorities had been making an attempt to initiate proceedings against them. As is evident from the pleadings taken by the appellants themselves and the letter dated 1.7.1996 (Annexure P-9) wherein the appellant-company wrote a letter to The Controller, Food and Drug Administration, Madhya Pradesh. The relevant part thereof reads as under:

> "During the past one month we have received requests from Drug Inspectors of Dhar, Rewa, Seoni and Ambikapur all under your kind control, to provide Memorandum of Articles of Association, constitution etc. of our company to initiate action for manufacturing Betnesol Tablets B.No. NA 660, Mfd. Dec. 92, Exp. May 94, NB 290, Mfd. Nov. 94, Exp. Apr. 96, NB 538, Mfd. May 95, Exp. Dec. 96 and NB 656, Mfd. Sep. 95, Exp. Feb. 97, which were earlier declared as not of standard quality by Government Analyst, Bhopal for facing analytical difficulties during the

determination of uniformity of content by the IP 1985 method."

(Emphasis added)

In that letter also the appellant company does not make its intention clear to adduce any evidence to controvert the Government Analyst's report rather made the following request:

"Under these circumstances, we respectfully reiterate that our product Betnesol Tablets referred above are of standard quality and request you to kindly treat all the matter as closed."

12. As explained hereinabove, the appellants and other co-accused did not give any option to adduce evidence in contravention of the analyst's report within statutory limitation period. Even if there was inordinate delay in launching the criminal prosecution or filing the complaint, it is thereby of no consequence. We do not find any ground to interfere with the well reasoned judgment of the High Court. The appeal lacks merit and is, accordingly, dismissed.

R.P. Appeal dismissed.

RANJANA PRAKASH AND ORS.
v.
DIVISIONAL MANAGER AND ANR.
(Civil Appeal No. 6110 of 2011)

JULY 29, 2011

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

Motor Vehicles Act, 1988:

Compensation – Claim for – Deceased was a 46 year old Bank Manager and his monthly salary was Rs.23,134/- – Claims Tribunal awarded compensation of Rs.24,12,936/- – On appeal by the insurer, the High Court accepted its' contention that the Tribunal ought to have deducted 30% from the income towards income tax and accordingly reduced the compensation to Rs.16,89,055/- – The High Court ignored the contention of the claimants that 30% should have been added to the income towards future prospects, holding that the claimants had not challenged the award of the Tribunal on that ground, and therefore they cannot find fault with it – Held: The High Court committed an error in ignoring the contention of the claimants –Where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation – Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced – The fact that claimants did not independently challenge the award will not come in the way of their defending the compensation awarded, on other grounds – It would only

mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections – This principle also flows from Or.41 Rule 33 of CPC which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections – This power is entrusted to the appellate court to enable it to do complete justice between the parties – Or. 41 Rule 33 of CPC can be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief – In the instant case, the 30% increase on account of future prospects and the 30% deduction on account of income tax would cancel each other, resulting in the 'income' remaining unchanged – As a result, the compensation awarded by the Tribunal would remain unaltered – Code of Civil Procedure, 1908 – Order 41, Rule 33.

Compensation – Appeal challenging the quantum of compensation – Jurisdiction of the High Court – Held: Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation – If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer – Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction – The High Court cannot increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

Sarla Verma v. Delhi Transport Corporation **(2009) 6 SCC 121: 2009(5) SCR 1098 – relied on.**

Shyamwati Sharma v. Karam Singh **(2010) 12 SCC 378: 2010 (8)SCR 417 – referred to.**

Case Law Reference:

2009 (5) SCR 1098	**Para 3, 9**	**relied on**
2010 (8) SCR 417	**Para 3**	**referred to**

CIVIL APPELALTE JURISDICTION : Civil Appeal No. 6110 of 2011.

From the Judgment & Order dated 09.09.2010 of the High Court of Judicature at Patna in M.A. No. 466 of 2006.

Nagendra Rai, Manita Verma, Devashish Bharuka, Gopi Raman, Ekansh Agarwal for the Appellants.

Anand Vardhan Sharma, Rajesh Jain, Rameshwar Prasad Goyal, Sanjay, V.K. Goyal for the Respondents.

The Order of the Court was delivered by

R. V. RAVEENDRAN, J. 1. Leave granted. Heard.

2. The claimants are the widow, two sons and mother of one Arun Prakash, aged 46 years, who died in a motor accident on 3.11.2003. At the time of his death he was working as a Bank Manager, State Bank of India and his monthly salary was Rs.23,134/-. The Motor Accident Claims Tribunal, Muzaffarnagar by its award dated 28.8.2006 awarded a compensation of Rs.24,12,936/- with interest at 9% per annum. On appeal by the insurer, the High Court, by the impugned Judgment dated 9.9.2010, while upholding the findings in regard

to income and calculation of compensation, held that the Tribunal ought to have deducted 30% of the annual income towards income tax. Consequently, the High Court deducted 30% and reduced the compensation to Rs.16,89,055/- with interest at 9% per annum. The said order is challenged by the claimants in this appeal by special leave. The appellants contend that the High Court committed an error in reducing compensation from Rs.24,12,936 to Rs.16,89,055 and seek restoration of the compensation as awarded by the Tribunal.

3. Before the High Court, the insurer, relying upon the decisions of this Court in *Sarla Verma vs. Delhi Transport Corporation* – 2009 (6) SCC 121 and *Shyamwati Sharma vs. Karam Singh* – 2010 (12) SCC 378, contended that where the annual income of the deceased was in taxable range, the annual income for the purpose of computation of compensation should be the annual income less income tax; and that in the absence of any evidence as to the actual income tax paid, the Tribunal ought to have deducted 30% from the income towards income tax and calculated the loss of dependency with reference to the 'net' income.

4. The claimants, on the other hand, contended before the High Court that as the deceased was holding a permanent job under a statutory body, with assured increments and career progression and was aged between 40 to 50 years, as per the decision in *Sarla Verma* (supra), the income ought to have been increased by 30% keeping the future prospects in view. They further contended that if the income had been increased by 30% by taking note of the future prospects and if 30% had been deducted towards income tax, that would virtually leave the income assessed by the Tribunal undisturbed and therefore, computation of compensation by the Tribunal by taking the monthly income as Rs.23,134/- without any deductions, did not call for any interference.

5. The High Court noticed both the contentions. It held that 30% of the annual income should be deducted towards income

tax as the income of the deceased was in the taxable bracket, in the absence of any evidence about the actual amount paid as income tax. It however did not take cognizance of the contention of the claimants (respondents before the High Court) that 30% should have been added to the income towards future prospects, apparently on the ground that the claimants had not challenged the award of the Tribunal on that ground, and therefore they cannot find fault with it. As a consequence, the High Court ignored the error in the award of the tribunal pointed out by the claimants but only took note of the error pointed out by the insurer and reduced the compensation by 30%.

6. We are of the view that High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs.23,134/- being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.

7. This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seeks compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

9. In *Sarla Verma*, this Court held that where the deceased had a permanent job with a regular salary with provisions for periodic increases, 30% of the current income could be added towards future prospects if the deceased was aged between 40 to 50 years. In *Sarla Verma*, this Court also stated that income tax paid should be deducted from the annual income to arrive at the 'income' which will form the basis for calculating the compensation. The Tribunal did neither of these two things. If both are done, the result would be that there would be no change in the income arrived by the Tribunal for calculating the compensation. The 30% increase on account of future prospects and the 30% deduction on account of income tax would cancel each other, resulting in the 'income' remaining unchanged. As a result, the compensation awarded by the Tribunal also would remain unaltered.

10. In view of the above, we allow this appeal, set aside the order of the High Court and restore the award of the Tribunal, though for other reasons. Parties to bear their respective costs.

B.B.B. Appeal allowed.

PADAL VENKATA RAMA REDDY @ RAMU
v.
KOVVURI SATYANARAYANA REDDY AND ORS.
(Criminal Appeal No. 1499 of 2011)

JULY 29, 2011

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

Code of Criminal Procedure, 1973: s.482 – Scope of – Discussed – Chargesheet filed for commission of offences u/ss.120-B, 147, 148, 427, 307, 201 r.w. s.149, IPC – Criminal proceedings commenced against A-1 to A-12 – Petition by A-1 to A-3 for quashing of proceedings, allowed by High Court – On appeal, held: In a criminal proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive – There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal – The complaint has to be read as a whole – In the instant case, perusal of entire complaint, materials collected and stated in the form of chargesheet, statement of witnesses did not lead to presumption that there was no legal and acceptable evidence in support of prosecution – High Court exceeded its power in quashing the criminal proceedings on the erroneous assumption that the ingredients of the offence alleged by the prosecution were not made out – High Court also committed an error in assuming that with the materials available, the prosecution could not end in conviction – The impugned order quashing the criminal proceedings against A1 to A-3 is set aside – Trial Court directed to proceed with the case against A1 to A-3 in accordance with law – Penal Code, 1860 – ss.120-B, 147, 148, 427, 307, 201 r.w. s.149.

The prosecution case was that A-1 and A-2 had

political rivalry with the appellant. A-1 and A-2 hired A-4 for killing the appellant. A-4 hired A-5 to A-12 for the said purpose and they conspired together and hatched a plan to assault the appellant. A-3 was entrusted with the responsibility of giving information about the movements of the appellant.

On the day of incident, the appellant was travelling in his car with his wife and children. A-4, A-7 to A-12 who were in Scorpio car came across his car. In the meanwhile, A-5 and A-6 also came there on motorcycle belonging to A-2. A-4 and A-12 broke the windowpanes of the car of the appellant while A-5 sprinkled chilly powder into the eyes of the appellant and attacked him with rods and sticks and caused injuries on vital parts of his body which resulted in bleeding. Thereafter A-4 to A12 left the spot. The appellant somehow managed to escape from the place of the incident and went to the house of L.W.6 who admitted him in the hospital and informed the incident to the police. Chargesheet was filed against A-1 to A-12 under Sections 120-B, 147, 148, 427, 307, 201 r.w. Section 149, IPC. When the case was pending for trial, A-1-3 filed petition under Section 482, Cr.P.C. to quash the proceedings against them. The High Court allowed the petition and quashed the proceedings.

The question which arose for consideration in the instant appeal was whether the High Court was justified in quashing the criminal proceedings against the Respondent Nos. 1-3 (A1-A3) by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

Allowing the appeal, the Court

HELD: 1.1. Section 482 of the Code of Criminal Procedure deals with inherent power of High Court. This section was added by the Code of Criminal Procedure

(Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely to give effect to any order under Cr.P.C.; to prevent abuse of the process of any court; to secure the ends of justice. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore, the High Court may refuse to exercise the discretion if a party has not approached it with clean hands. [Para 6, 8] [632-F-H; 633-A-C; 634-F-H]

R.P. Kapur v. State of Punjab **AIR 1960 SC 866:(1960) 3 SCR 388;** *State of Karnataka v. L.Muniswamy & Ors.* **AIR 1977 SC 1489: 1977 (3) SCR 113 – relied on.**

1.2. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may

be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy. [Para 9, 10] [635-A-F]

Kavita v. State **(2000) Cr LJ 315;** *B.S. Joshi v. State of Haryana& Anr.* **(2003) 4 SCC 675: 2003 (2) SCR 1104 – relied on.**

1.3. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. [Para 11] [635-G-H]

Mrs. Dhanalakshmi v. R. Prasanna Kumar & Ors. **AIR 1990 SC 494: 1989 Suppl. SCR 165;** *Ganesh Narayan Hegde v. S. Bangarappa & Ors.* **(1995) 4 SCC 41: 1995(3) SCR 549;** *M/s Zandu Pharmaceutical Works Ltd. & Ors. v. Md. Sharaful Haque & Ors.* **AIR 2005 SC 9: 2004 (5) Suppl. SCR 790;** *State of Haryana v. Bhajan Lal* **1992 Supp (1) SCC**

335: 1991 (1) Suppl. SCR 387; *Janata Dal v. H.S. Chowdhary and Others* **(1992 (4) SCC 305: 1992 (1) Suppl. SCR 226;** *Rupan Deol Bajaj (Mrs.) and Another v. Kanwar Pal Singh Gill and Another* **1995 (6) SCC 194: 1995 (4) Suppl. SCR 237;** *Indian Oil Corp. v. NEPC India Ltd. and Others* **2006 (6) SCC 736: 2006 (3) Suppl. SCR 704;** *State of Orissa & Anr. v. Saroj Kumar Sahoo* **(2005) 13 SCC 540: 2005 (5) Suppl. SCR 548;** *Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors.* **AIR 1988 SC 709: 1988 (2) SCR 930;** *State of Bihar & Anr. v. Shri P.P. Sharma & Anr.* **AIR 1991 SC 1260: 1991 (2) SCR 1 – relied on.**

2.1. No doubt, in the FIR, the complainant had not named the respondent nos.1-3 as accused. In Column No. 5 of the FIR under heading "Alleged cause", it was stated "Alleged to have been sustained injuries on the head, face due to assault by unknown persons near J.K. Kalyana Mandapam, Rajahmundry today (07.11.2007) around 7:00 p.m." Though the complainant did not specify any name, he asserted that while taking a turn from J.N. Road to J.K. Gardens, some unknown persons kept their maroon color Scorpio car came across his way at around 7:30 p.m. and about 10 persons got down from it, while 5 others from auto armed with iron rods and sticks and they hit the glass on his side to stop him while he was driving the car. It was also asserted that when he put down the door glasses, those persons sprinkled chilly powder on them. After narrating further details, at the end, the complainant concluded that those persons conspired together and attacked with an intention to kill him in a planned manner. It was further stated that they all appeared to be goondas and if his wife, children and he himself would see them again, it would be possible to identify them. The single Judge of the High Court, after analyzing the FIR, chargesheet and the statement of witnesses concluded that the materials placed by the prosecution were inadequate and ingredients of offence alleged by the

prosecution were not made out and quashed the proceedings against respondents. [Paras 19, 20] [640-H; 641-A-G]

2.2. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in *Bhajan Lal***. The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath is to be verified in full and materials put forth in the chargesheet ought to be taken note of as a whole before arriving any conclusion. It is the material concluded during the investigation and**

evidence led in court which decides the fate of the accused persons. On going through the entire complaint, materials collected and stated in the form of chargesheet, statement of witnesses and by conjoint reading of all the materials, it cannot be presumed that there was no legal and acceptable evidence in support of prosecution. The High Court exceeded its power in quashing the criminal proceedings on the erroneous assumption that the ingredients of the offence alleged by the prosecution were not made out. The High Court also committed an error in assuming that with the materials available, the prosecution could not end in conviction. The impugned order quashing the criminal proceedings against the Respondent Nos. 1-3, i.e. A1-A3 is set aside. The trial Court is directed to proceed with the case against the respondents in accordance with law. [Para 24-26] [645-A-H; 646-A-E]

State of Haryana v. Bhajan Lal **(1992) Supp. (1) SCC 335: 1991 (1) Suppl. SCR 387 – relied on.**

Case Law Reference:

(1960) 3 SCR 388	**relied on**	**Para 7**
1977 (3) SCR 113	**relied on**	**Para 8**
(2000) Cr LJ 315)	**relied on**	**Para 10**
2003 (2) SCR 1104	**relied on**	**Para 10**
1989 Suppl. SCR 165	**relied on**	**Para 11**
1995 (3) SCR 549	**relied on**	**Para 11**
2004 (5) Suppl. SCR 790	**relied on**	**Para 11,24**
1991 (1) Suppl. SCR 387	**relied on**	**Para 12**
1992 (1) Suppl. SCR 226	**relied on**	**Para 12, 24**
1995 (4) Suppl. SCR 237	**relied on**	**Para 12**
2006 (3) Suppl. SCR 704	**relied on**	**Para 12,14**
1991 (1) Suppl. SCR 387	**relied on**	**Para 13**
2005 (5) Suppl. SCR 548	**relied on**	**Para 15**
1988 (2) SCR 930	**relied on**	**Para 16,17,18,**
1991 (2) SCR 1	**relied on**	**Para 18**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1499 of 2011.

From the Judgment & Order dated 28.10.2010 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Petition No. 5928 of 2010.

Guntur Prabhakar, G. Pramod Kumar for the Appellant.

Altaf Ahmed, S.J. Aristotle, Prabhu Rama Subramanian, Aljo K. Joseph, V.G. Pragasam, D. Mahesh Babu, Ramesh Allanki, Savita for the Respondents.

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 28.10.2010 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Petition No. 5928 of 2010 wherein the High Court allowed the criminal petition filed by Respondent Nos. 1-3 herein and quashed the criminal proceedings pending against them.

3. Brief facts:

(a) The appellant, who was a defacto complainant and Respondent Nos. 1-3 (accused persons) are the residents of Komaripalem village of East Godavari District. Though all of them belong to Congress Party, Respondent No. 1, Kovvuri Satyanarayana Reddy (A-1) and Respondent No. 2, Karri Venkata Mukunda Reddy (A-2) developed ill will against the appellant and were jealous of his gaining popularity within the

party as well as in their area and neighbourhood. Respondent No. 3, Mallidi Chinna Veera Venkata Satyanarayana (A-3), was initially an associate of the appellant herein but later joined hands with A-1 and A-2.

(b) In the year 2006, the appellant contested Zila Parishad Territorial Constituency Elections as an independent candidate and won it. A-1 and A-2 developed grudge against the appellant and they contracted Valmiki Gujjula Ramayya Kondayya (A-4) who belongs to Emmiganur Mandal of Kurnool District for killing the appellant and gave him Rs. 7,00,000/- to purchase a vehicle and also gave separate amount for hiring goondas. A-4 hired A-5 to A-12 for the said purpose and they conspired together and hatched a plan to assault the appellant. Further, A-3 was entrusted with the responsibility of giving information about the movements of the appellant.

(c) In pursuance of their conspiracy, on 07.11.2007 between 7:00 p.m. to 7:30 p.m. when the appellant was proceeding in his Honda City car along with his wife and children to attend a function near J.K. Gardens, A-4, A-7 to A-12 who were in a Scorpio Car came across his car. In the meanwhile, A-5 and A-6 also came there on Bajaj Boxer Motorcycle belonging to A-2 where A-4 and A-12 broke the windowpanes of the car while A-5 sprinkled chilly powder into the eyes of the appellant and attacked him with rods and sticks and caused injuries on his vital parts of the body which resulted in bleeding. Thereafter, A-4 to A-12 left the spot. Somehow the appellant managed to escape from the place of incident and went to the house of Jakkampudi Raja Indra Vandir (L.W.-6), who admitted him in the hospital and informed the incident to the SHO, I Town (L&O), Police Station, Rajahmundry.

(d) After completion of investigation, the S.I. filed charge sheet against A-1 to A-12 on 30.08.2008 for the offences punishable under Sections 120-B, 147, 148, 427, 307, 201 read with Section 149 of the Indian Penal Code (in short "the IPC") before the Court of IInd Additional Judicial Magistrate

First Class, Rajahmundry and the same was taken on file in PRC No. 14 of 2008. The Magistrate committed the case to the Ist Additional Assistant Sessions Judge, Rajahmundry for trial and the same was taken on file in Sessions Case No. 175 of 2010.

(e) When the case was pending for trial, Respondent Nos. 1-3 herein preferred Criminal Petition No. 5928 of 2010 before the High Court of Andhra Pradesh under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code") to quash the criminal proceedings against them. The learned single Judge of the High Court, by impugned judgment dated 28.10.2010, allowed the petition and quashed the criminal proceedings against Respondent Nos. 1-3 herein (A-1 to A-3). Aggrieved by the said order, the appellant-complainant has filed this appeal by way of special leave petition before this Court.

4. Heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. Altaf Ahmed, learned senior counsel for Respondent Nos. 1-3 and Mr. D. Mahesh Babu, learned counsel for Respondent No.4-State.

5. The only point for consideration in this appeal is whether the High Court was justified in quashing the criminal proceedings against the Respondent Nos. 1-3 (A1-A3) by invoking jurisdiction under Section 482 of the Code?

Discussion about Section 482 of Cr.P.C.

6. Section 482 of the Code deals with inherent power of High Court. It is under Chapter XXXVII of the Code titled "Miscellaneous" which reads as under:

> **"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."

This section was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under Cr.P.C.,

2. to prevent abuse of the process of any court,

3. to secure the ends of justice.

7. In *R.P. Kapur Vs. State of Punjab* AIR 1960 SC 866=(1960) 3 SCR 388, this Court laid down the following principles:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

8. In *State of Karnataka vs. L.Muniswamy & Ors.* AIR 1977 SC 1489, this Court has held as under:-

"In the exercise of this wholesome power, the High Court

is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

9. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution.

10. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code.- (vide *Kavita v. State* (2000 Cr LJ 315) and *B.S. Joshi v. State of Haryana & Anr.* ((2003) 4 SCC 675). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

11. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Ors.* AIR 1990 SC 494; *Ganesh Narayan Hegde vs. S.*

Bangarappa & Ors. (1995) 4 SCC 41; and *M/s Zandu Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque & Ors.* AIR 2005 SC 9).

12. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana vs. Bhajan Lal* (1992 Supp (1) SCC 335), *Janata Dal vs. H.S. Chowdhary and Others* (1992 (4) SCC 305), *Rupan Deol Bajaj (Mrs.) and Another vs. Kanwar Pal Singh Gill and Another* (1995 (6) SCC 194), and *Indian Oil Corp. vs. NEPC India Ltd. and Others* (2006 (6) SCC 736).

13. In the landmark case of *State of Haryana vs. Bhajan Lal* (1992 Supp.(1) SCC 335) this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not

disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. In *Indian Oil Corporation vs. NEPC India Ltd. and Others* (2006) 6 SCC 736 a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles:

"1. The High courts should not exercise their inherent powers to repress a legitimate prosecution. The power to

quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out (a) purely a civil wrong, or (b) purely a criminal offence or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence."

15. In *State of Orissa & Anr. vs. Saroj Kumar Sahoo* (2005) 13 SCC 540, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

16. In *Madhavrao Jiwaji Rao Scindia & Anr. vs. Sambhajirao Chandrojirao Angre & Ors.* AIR 1988 SC 709, this Court held as under:-

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

17. This Court, while reconsidering the Judgment in *Madhavrao Jiwaji Rao Scindia* (supra), consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

18. The said Judgment was reconsidered and explained by this Court in *State of Bihar & Anr. vs. Shri P.P. Sharma & Anr.* AIR 1991 SC 1260 which reads as under:

"*Madhaorao J. Scindhia v. Sambhaji Rao* AIR 1988 SC 709, also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of Trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120B I.P.C. which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offences were made out. On

those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

Thus, the judgment in *Madhavrao Jiwaji Rao Scindia* (supra) does not lay down a law of universal application. Even as per the law laid down therein, the Court can not examine the facts/evidence etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwaji Rao Scindia* (supra) is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes etc. etc. The superior Courts have been given inherent powers to prevent the abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the court to hold a fullfledged inquiry or to appreciate the evidence, collected by the Investigating Agency to find out whether the case would end in conviction or acquittal.

Discussion in the case on hand

19. In the light of the above principles, let us consider whether there are sufficient materials available in the prosecution case, particularly, in the FIR, chargesheet and statement of witnesses insofar as respondents herein are concerned. No doubt, in the FIR, the complainant has not

named these respondents as accused. In Column No. 5 of the FIR under heading "Alleged cause", it is stated that "Alleged to have been sustained injuries on the head, face due to assault by unknown persons near J.K. Kalyana Mandapam, Rajahmundry today (07.11.2007) around 7:00 p.m." Though the complainant has not specified any name, he had asserted that while taking a turn from J.N. Road to J.K. Gardens, some unknown persons kept their maroon color Scorpio car came across his way at around 7:30 p.m. and about 10 persons got down from it, while 5 others from auto armed with iron rods and sticks and they hit the glass on his side to stop him while he was driving the car. It was also asserted that when he put down the door glasses, those persons sprinkled chilly powder on them. After narrating further details, at the end, the complainant has concluded that those persons conspired together and attacked with an intention to kill him in a planned manner. It was further stated that they all appeared to be goondas and if his wife, children and he himself will see them again, it would be possible to identify them. If we read all the averments in the FIR, it cannot be claimed that the complainant has not highlighted the incident said to have been taken place on 07.11.2007 at around 7:00 p.m.

20. The learned single Judge of the High Court, after analyzing the FIR, chargesheet and the statement of witnesses has concluded that the materials placed by the prosecution are inadequate and ingredients of offence alleged by the prosecution have not been made out and quashed the proceedings against respondents. We have already pointed out the necessary assertion in the complaint and it is true that the respondents were not named in the complaint.

21. Now, let us consider whether the chargesheet and the statement of witnesses make out a prima facie case in the light of principles which we have adverted to in the earlier paragraphs. After furnishing all the details about the motive and

circumstances, the investigating officer from the materials collected has concluded:

> "Under the above circumstances, A1 to A3 thought that LW-1 has become insurmountable hurdle in securing seat in ensuring MLA elections. These and other causes of political rivalry made them to determine to liquidate LW-1 and to achieve that object A1 and A2 invited A3 into their fold who is a staunch supporter of LW-1 formerly and used to help in all angles. In order to accomplish their desire of getting rid of LW-1, five years ago LW-25 introduced A4 to A1 and A2 as A1 and A2 are suffering a lot in collecting debts regarding to fertilizers dealers. On that relation A1 and A2 contacted A4 of Emmiganur, Kurnool District to implement the plan wit him kill LW-1. A4 having secured A5 to A12 and having received huge amount of Rs. 7,00,000/- for the purchase of car and for separate amount for hiring the goondas from A1 and A2 agreed to implement the plan. On 15.10.2007, A4 purchased a Maroon colour Scorpio Car AP 02 M 4959 from LW-26 and 27. The said car and the silver colour Bajaj Boxer Motorcycle No. AP 5 AG 9418 of A2 has been used in the commission of offence.
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> A5 having secured A5 to A12 boarded in Raja Rajeswari Lodge, Emmiganur, Kurnool District of for which LW-28 Yeluganti Perayya provided accommodation on night of 31.10.2007 and from their, they came to Rajahmundry on 01.11.2007. On 05.11.2007, A4 got effected some minor repairs to the Scorpio Car at the mechanic shed of LW-24 Anga Janaki Ram. LW-24 gave receipt in the name of A4 for the collection of repairing charges. Later, A1 and A2 kept A4 to A12 in their godown at their Poultry Farm at Komaripalem. LWs-22 and 23 Manda Subba Reddy and Challa Sreenu on the instructions of A1 and A2 used to provide food drinks etc., to A4 to A12. It is at that godown, the accused conspired

and designed the plan to assault on LW-1. A1, A2 provided Bajaj boxer motorcycle No. AP 5 AG 9418, Iron Rods and Chili Powder to A4 to A12. A3 was entrusted with the responsibility giving information about the movement of LW-1 to A1 and A2 though the cell phone."

With regard to the conversation over cell phones, the following materials are available in the chargesheet:

"LW-40 secured the cell phones call register of A1 to A3 from LW-36 who is Airtel Manager, on 07.11.2007 there are 22 calls between A3 and A1 the calls made just before, during and after the offence LW-40 also secfured the information from the Idea Manager and it show that A4 and A5 using cell phones for the relevant period. Thus it is establishes that the conversation and communication among A1 to A5 through cell phones to commit the offence of murder of LW-1.

On 14.12.2007 at 6:15 a.m. LW-40 arrested A3 at Komaripalem at his house in the presence of mediators LWs 32 and 33. A3 made a confession regarding the commission of offence along with the other accused. In pursuance of the confession of A3, the Nokia Cell Phone No. 9949131888 was seized in the presence of mediators."

22. About the conspiracy, after adverting to various instances the Investigating Officer has observed thus:-

"The fact of the case establishes that A1 and A2 conspired with the other accused A3 to A12 to commit the offence of murder of LW-1. LW-40 added Section of Law 120(b). Thus A1 to A12 hatched a plan to end the life of LW-1 but attempted the life of LW-1 and caused grievous injuries."

23. The statement of the appellant (L.W.-1) is also pertinent to note here. After narrating the entire incident, previous election dispute, enmity etc. the appellant has stated:

"…..Keeping all these facts in view, I suspect that Mr. Sathibabu and Mr. Mukunda Reddy, or the MRO Mr. Dummula Baburao (because of the grudge that I got the ACP Trap laid) might have planned and got the attack made on me with their men having hatched a Plan to kill me. I know the cell phones of Mr. Sathibabu, Mr. Mukunda Reddy and Mr. Babi. Cell number of Babi is 9941931888, Cell No. of Sathibabu is 9866617777, Cell No. of Mukunda Reddy is 9849355777….."

In the same way, Padala Sunita, (L.W.-2) wife of Venkata Rama Reddy, after narrating all the details like (L.W.-1) has stated:

"…..As my husband has been an obstruction to Kovvuru Satyanarayan Reddy and Mukunda Reddy they might have or else, because of the ACB Trap the suspended MRO Mr. Dummula Baburao might have planned this attack on my husband in order to kill him or else anybody else for any reason might have planned this attack on my husband to kill him. I can identify if I again see some of those persons who attacked my husband and caused injuries to him….."

24. At this moment, Mr. Altaf Ahmed, learned senior counsel, by pointing out that even if the above mentioned materials are acceptable, however, the same does not constitute "legal evidence" to proceed with the trial and hence the High Court was justified in quashing the same for which he relied on a decision of this Court in *M/s Zandu Pharmaceutical Works Ltd.* (supra). In that decision, the factual position highlighted therein goes to show that the complainant had not come to the court with clean hands. There was no explanation whatsoever for the inaction between 1995 to 2001. Considering the factual position that the complaint was nothing but sheer abuse of process of law and the High Court has to exercise its power under Section 482, this Court after finding that the High Court has failed to exercise such power quashed the proceedings initiated by the complainant. On going through the

factual position, we have no quarrel about the proposition laid down and ultimate order of this Court. That is not the position in the case on hand. We have already pointed out various principles and circumstances under which the High Court can exercise inherent jurisdiction under Section 482. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in *Bhajan Lal* (supra). The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the chargesheet ought to be taken note of as a whole before arriving any conclusion. It is the material concluded during the investigation and evidence led in court which decides the fate of the accused persons.

25. On going through the entire complaint, materials collected and stated in the form of chargesheet, statement of witnesses LW-1 and LW-2 and by conjoint reading of all the above materials, it cannot be presumed that there is no legal and acceptable evidence in support of prosecution. In the light of the principles enunciated in various decisions which we have noted in the earlier paras, we are satisfied that the High Court has exceeded its power in quashing the criminal proceedings on the erroneous assumption that the ingredients of the offence alleged by the prosecution has not been made out. The High Court has also committed an error in assuming that with the materials available, the prosecution cannot end in conviction.

26. For the above reasons and in the light of the materials which we have discussed, we are unable to sustain the conclusion arrived at by the High Court. The impugned order quashing the criminal proceedings against the Respondent Nos. 1-3, i.e. A1-A3 in S.C. No. 175 of 2010 on the file of the Ist Additional Assistant Sessions Judge, Rajahmundry, arising out of P.R.C. No. 14 of 2008 on the file of the IInd Additional Judicial Magistrate First Class, Rajahmundry is set aside. The trial Court is directed to proceed with the case against the respondents in accordance with law. The criminal appeal is allowed.

D.G. Appeal allowed.

T. C. THANGARAJ
v.
V. ENGAMMAL & ORS.
(Criminal Appeal No.1504 of 2011)

JULY 29, 2011.

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

CODE OF CRIMINAL PROCEDURE, 1973:

Section 482 r/w ss. 154(3) and 156 (3) – Petition u/s 482 by complainant seeking direction to entrust the investigation to CBI stating that one of the accused was a Police Inspector in the local police – Allowed by High Court – Propriety of Held: It was not one of the exceptional situations calling for exercise of extra-ordinary power of the High Court to direct investigation by CBI – Order of High Court quashed and District Superintendent of Police directed to entrust the investigation to an officer senior in rank to accused-Inspector of Police .

The respondent in both the appeals, filed a complaint against an Inspector of Police and his wife (appellants no. 2 and 1 in Crl. Appeal no. 1505 of 2011) and their associate, namely, 'CT' (appellant in Crl. Appeal 1504 of 2011) alleging that appellant no. 2 (accused-1) asked the complainant and her husband for a loan of Rs. 3 lac and they handed over the said amount to appellant no. 1, and when the complainants' husband approached appellant no. 2 for refund of the said amount, the latter referred him to 'CT,' who issued two cheques of Rs. 50,000/- each, which were dishonoured. The complaint was registered as Crime No. 14 of 2006 for offences punishable u/s 409, 420, 471 read with s. 34 IPC. In the petition u/s 482 Cr.P.C. filed by the complainant reiterating her prayer to entrust the case to CBI for proper investigation, the High Court noticed that though some witnesses had been examined,

but the investigation was stopped suddenly on the ground that the complainant had received back the sum of Rs. 3 lac. The High Court held that the investigating agency ought to have conducted proper investigation and filed a final report in accordance with law, but as accused no. 1 was an Inspector of Police, the investigating agency did not do its duty properly. It, therefore, ordered that Crime No. 14 of 2006 be entrusted to the CBI for investigation. Aggrieved, the accused filed the appeals.

Allowing the appeals, the Court

HELD: 1.1 In *State of West Bengal and Ors*.* **the Constitution Bench of this Court has held that the power of the High Court under Article 226 of the Constitution to direct investigation by the CBI is to be exercised only sparingly, cautiously and in exceptional situations and such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. In the impugned order, the High Court has not exercised its constitutional powers under Article 226 to direct the CBI to investigate into the complaint with a view to protect the complainant's personal liberty under Article 21 or to enforce her fundamental right guaranteed by Part-III of the Constitution. The High Court has exercised its power u/s 482 Cr.P.C. on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs.3 lakh by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. This was not one of those exceptional situations calling for exercise of extra-ordinary power of the High Court to direct investigation into the complaint by the CBI. If the High Court found that the investigation was not being completed as an Inspector of Police was one of the**

accused persons, it should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the accused-Inspector of Police u/s 154(3) Cr.P.C. and not to the CBI. It should also be noted that s.156(3) Cr.P.C. provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same. [para 10] [654-F-H; 655-A-C]

State of West Bengal & Ors*. vs. *Committee for Protection of Democratic Rights, West Bengal & Ors*. **2010 (2) SCR 979 = (2010) 3 SCC 571 – followed.

Sakiri Vasu vs. *State of U.P. & Ors.* **- 2007 (12) SCR 1100 = (2008) 2 SCC 409 – relied on**

Ramesh Kumari vs. *State (N.C.T. of Delhi) & Ors.* **2006 (2) SCR 403 = (2006) 2 SCC 677, referred to.**

1.2 In the result, the impugned order of the High Court is quashed and the Superintendent of Police of the District is directed to entrust the investigation of Crime No. 14 of 2006 to a police officer senior in rank to accused no. 1. [para 11] [655-D]

Case Law Reference:

2010 (2) SCR 979	**followed**	**para 7**
2006 (2) SCR 403	**referred to**	**para 8**
2007 (12) SCR 1100	**relied on**	**para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1504 of 2011.

WITH

Crl. A. No. 1505 of 2011.

R. Anand Padmanabhan, Prithvi Raj B.N. Naveen, Pramod Dayal for the Appellant.

P.P. Malhotra, ASG, Guru Krishna Kumar, AAG, A.T.M. Ranga Ramanujam, Rajiv Nanda, S. Siddiqui, A.K. Sharma, Subramanium Prasad, Anesh Paul, Prasannav, B. Krishna Prasad, S. Ashok Kumar, Gouri Karuna Das Mohanti, Sanjeev Kumar Sharma, Prakhar Sharma, Rani Jethmalani, S. Thananjayan for the Respondents.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. Delay condoned in S.L.P. (Crl.) No.1589 of 2008.

2. Leave granted.

3. These are two appeals against the order dated 26.10.2007 of the Madras High Court, Madurai Bench, in Criminal Original Petition No.10987 of 2007 directing that investigation into the case registered as Crime No.14 of 2006 with the District Crime Branch (DCB), Virudunagar, be entrusted to the Central Bureau of Investigation, Chennai (for short 'the CBI').

4. The facts briefly are that on 04.08.2006 a complaint was submitted by V. Engammal, who has been impleaded as a respondent in both the appeals (hereinafter referred to as 'the complainant'), to the Superintendent of Police, Virudunagar District, Tamil Nadu. The complainant made following allegations in the complaint: P. Kalaikathiravan, appellant no.2 in criminal appeal arising out of SLP (Crl.) No. 1589 of 2008, who was the then S.I. of Town Police Station, told her and her husband that he was going to do the business of real estate and that they should become partners in the business but they told him that the business will not work and thereafter he asked them to give a loan of Rs.3 lakh and they handed over Rs.3 lakh to his wife P. Suganthi, appellant no.1 in criminal appeal

arising out of SLP (Crl.) No. 1589 of 2008. P. Kalaikathiravan then introduced T.C. Thangaraj, the appellant in criminal appeal arising out of SLP (Crl.) No. 1585 of 2008, and one Nagendran who were doing real estate business. When P. Kalaikathiravan was transferred to Sethur Krishnapuram, the complainant and her husband demanded repayment of Rs.3 lakh, but P. Kalaikathiravan asked them to collect the money from T.C. Thangaraj. T.C. Thangaraj accepted the liability and gave two cheques dated 30.01.2004 and 04.02.2004 each of Rs.50,000/-, but the cheques were returned with remarks from the bank that there were no sufficient funds in the accounts. After P. Kalaikathiravan came back to Virudunagar on promotion as Inspector, her husband went to him many times and demanded money but he refused to pay the same and sent him away. In the complaint, the complainant requested the Superintendent of Police to initiate action against the Inspector, P. Kalaikathiravan, his wife P. Suganthi and T.C. Thangaraj, who had cheated the complainant and her husband. The Superintendent of Police sent the complaint to the Office In-charge of DCB, Police Station Virudunagar, on 04.08.2006 and the complaint was registered as Crime No.14 of 2006 under Sections 409, 420, 471 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC').

5. When there was no progress in the investigation on the complaint, the complainant filed Crl. O.P. No.8782 of 2006 under Section 482 of the Criminal Procedure Code, 1973 (for short 'the Cr.P.C.') before the Madras High Court, Madurai Bench, with a prayer to entrust the case to the CBI for proper investigation. The High Court in its order dated 13.04.2007 noticed that the case is against a police officer and the grievance of the complainant was that the police department was not taking interest in pursuing the matter. The High Court, however, found that the matter was before the Judicial Magistrate and disposed of the petition giving liberty to the complainant to appear before the Judicial Magistrate concerned and file, if necessary, a protest petition if the case

has been treated as a mistake of fact. The High Court further directed that the Judicial Magistrate shall consider the protest petition of the respondent keeping in mind the seriousness of the allegations made in the complaint as well as in the affidavit filed before the High Court.

6. Thereafter, the complainant filed Crl. O.P. No.10987 of 2007 under Section 482 of Cr.P.C. before the Madras High Court, Madurai Bench, reiterating her prayer to entrust Crime No.14 of 2006 to the CBI for proper investigation. The High Court in the impugned order dated 16.10.2007 took note of the fact that the complainant had received back the sum of Rs.3 lakh in question and given a receipt dated 05.08.2006 but she had a grievance that her complaint had not been properly investigated and the investigating agency should file a final report in accordance with law. However, the High Court after perusing the entire case diary found that some witnesses have been examined but the investigation had been stopped suddenly on the ground that the complainant had received back the sum of Rs.3 lakh on 05.08.2006. The High Court held in the impugned order that even though the amount in question had been received back by the complainant, the investigating agency ought to have conducted proper investigation and filed a final report in accordance with law, but the investigating agency had failed to do it. The High Court further held that as the accused No.1 was an Inspector of Police, the investigating agency has not done its duty properly and under the circumstances, relief claimed by the complainant should be granted and accordingly ordered that Crime No.14 of 2006 be entrusted to the CBI for investigation.

7. Learned counsel for the appellants submitted that the reasons given by the High Court in the impugned order that the accused No.1 was an Inspector of Police and therefore the investigating agency has not done its duty properly, have not been held to be good reasons for entrusting the investigation to the CBI by the Constitution Bench of this Court in *State of*

West Bengal & Ors. v. *Committee for Protection of Democratic Rights, West Bengal & Ors*. [(2010) 3 SCC 571].

8. Learned counsel for the complainant, on the other hand, cited a decision of two-Judge Bench of this Court in *Ramesh Kumari* v. *State (N.C.T. of Delhi) & Ors.* reported in (2006) 2 SCC 677, in which this Court directed the CBI to register a case and investigate into the complaint of the appellant because the complaint was against the police officer and the Court was of the view that the interest of justice would be better served if the case is registered and investigated by an independent agency like the CBI.

9. The decision of the two-Judge Bench of this Court in *Ramesh Kumari* v. *State (N.C.T. of Delhi) & Ors.* (supra) will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in *State of West Bengal & Ors*. v. *Committee for Protection of Democratic Rights, West Bengal & Ors*. (supra). The Constitution Bench has considered at length the power of the High Court to direct investigation by the CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the Courts must bear in mind certain self-imposed limitations. Para 70 of the opinion of the Constitution Bench in *State of West Bengal & Ors*. v. *Committee for Protection of Democratic Rights, West Bengal & Ors*. (supra) is extracted hereinbelow :

> "Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised *but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.* This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."
>
> [Emphasis supplied]

10. It will be clear from the opinion of the Constitution Bench quoted above that the power of the High Court under Article 226 of the Constitution to direct investigation by the CBI is to be exercised only sparingly, cautiously and in exceptional situations and an order directing to CBI is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. In the impugned order, the High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed the CBI to investigate into the complaint with a view to protect her personal liberty under Article 21 of the Constitution or to enforce her fundamental right guaranteed by Part-III of the Constitution. The High Court has exercised its power under Section 482 Cr.P.C. on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs.3 lakh by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional situations calling for exercise of extra-ordinary power of the

High Court to direct investigation into the complaint by the CBI. If the High Court found that the investigation was not being completed because P. Kalaikathiravan, an Inspector of Police, was one of the accused persons, the High Court should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the Inspector of Police under Section 154(3) Cr.P.C. and not to the CBI. It should also be noted that Section 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same. (see *Sakiri Vasu* v. *State of U.P. & Ors.* - (2008) 2 SCC 409).

11. For these reasons, we quash the impugned order of the High Court and direct that the Superintend of Police, Virudunagar District, Tamil Nadu, will entrust the investigation of Crime No. 14 of 2006 to a police officer senior in rank to P. Kalaikathiravan. The appeals are accordingly allowed.

R.P. Appeals allowed.

P. PARASURAMI REDDY
v.
STATE OF A.P.
(Criminal Appeal No. 462 of 2003)

AUGUST 2, 2011

[V.S.SIRPURKAR AND T.S.THAKUR, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

ss. 7 and 13 (1) (d) r/w s. 13 (2) – Conviction by trial court for demanding and taking illegal gratification – Upheld by High Court – HELD: Prosecution has not been able to prove that the accused had fixed the time and place to receive the money – As per the complainant, when he approached the accused on 12.1.1994, he was driven away by the accused – There is no evidence as to what happened thereafter – Besides, the treated currency notes could not be found out nor is there any explanation for the same – The only circumstance that the test of fingers of accused was positive would not be sufficient to convict him – Accused given benefit of doubt and acquitted accordingly.

The appellant-accused was prosecuted for committing offences punishable u/ss 7 and 13 (1) (d) read with s. 13 (2) of the Prevention of Corruption Act, 1988. The prosecution case was that the appellant, who was working as the Mandal Development Officer, demanded a bribe of Rs. 500/- from the complainant on 31.12.1993 for releasing the loan amount granted to him for digging a community irrigation well. The demand was reiterated on 6.1.1994. On 11.1.1994, the complainant approached the Superintendent of Police, Anti Corruption; a trap was laid and the accused was apprehended on 12.1.1994. The trial court convicted the accused of the offences charged

and the High Court upheld the conviction. Aggrieved, the accused filed the appeal.

Allowing the appeal, the Court

HELD: 1.1 Considering the overall circumstances, the prosecution has not been able to prove that the accused had fixed the time and place to receive the money. The dates 31.12.1993, 6.1.1994 and 11.1.1994 mentioned in the complaint are rather speaking. It is further admitted in the evidence of the complainant (PW1) that on 11.1.1994, when the accused was tried to be approached, he was not found present in his office. It was, therefore, that the accused was approached on the second day i.e. on 12.1.1994. [Para 8] [661-E-G]

1.2 As per the complainant, when he approached the accused on 12.1.1994, he was driven away by the accused. The complainant then remained silent as to what happened when he was turned away by the accused on his first meeting with the accused in his office. This circumstance creates doubt. There is no evidence to suggest as to what transpired between the accused and the complainant when the accused was first approached by the complainant. [para 8-9] [661-H; 662-A-C-F]

1.3 The second circumstance, which is really suspicious, is not finding of the treated currency notes which were thrown away by the accused. It cannot be accepted that a raiding party which consisted of nine persons would not be able to recover the currency notes which were thrown away by the accused in the open space and which were allegedly taken away by the members of public. There is absolutely no evidence given by the investigating officer (PW-9) as to what efforts he made to find out the currency notes. [para 9] [662-E-G]

1.4 Both the courts below seem to have been

impressed by the chemical test of the fingers of the accused, which would not be sufficient to convict the accused. It could have been the possibility that the complainant had touched the currency notes and had shaken hand with the accused or it could be that any one of the investigating officer or the member of the raiding party had touched the fingers of the accused. That circumstance itself cannot be ruled out. The accused is, therefore, given the benefit of doubt and accordingly acquitted. [para 10-11] [663-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 462 of 2003.

From the Judgment & Order dated 12.08.2002 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1071 of 1996.

R. Sundervardhan, T. Anamika for the Appellant.

I. Venkatanarayana, D. Mahesh Babu, Ramesh Allanki, V. Pattabhi Ram, Savita Dhanda for the Respondent.

The Judgment of the Court was delivered by

SIRPURKAR, J. 1. The present appeal is filed by the appellantaccused who was found guilty by the trial court for the offences punishable under Sections 7 and 13(1)((d) read with Section 13(2) of Prevention of Corruption Act (hereinafter referred to as "The Act").

2. The story of the prosecution in short is as under:-

The complainant had applied for loan for digging a community irrigation well in his land and for that purpose, he was sanctioned a loan of Rs. 23,400/-. The complainant was paid Rs. 19,240/- on furnishing evaluation certificates and the remaining balance was due. The accused-appellant, who was working as Mandal Development Officer, was dealing with the

implementation of the scheme by allotting necessary amounts from time to time. It is the case of the complainant that when he approached the accused for the payment of the remaining amount and also for sanction for installing a electric motor near the well, the accused demanded Rs. 500/- as bribe. According to the complainant, this happened on 31.12.1993 at the office of accused. The complainant again approached the accused on 6.1.1994. However, the demand was again reiterated by accused. Therefore, on 11.1.1994 the complainant approached Superintendent of Police, Anti Corruption Bureau, Tirupati-PW9 and gave a report to this effect. Thereupon, PW-9 asked the complainant –PW1 to bring Rs. 500/- which were treated with phenolphthalein powder. Thereafter, the raiding party reached the office of accused at 4.50 p.m. However, up to 7.00 p.m. the accused was not found present in the office. Therefore, not finding the accused in his office, the raiding party returned to the office of PW9. The shirt in which the currency notes were kept was kept in the office of the Investigating Officer.

3. It is further the case of the complainant that next day on 12.1.1994, the raiding party started from the office of PW-9 at about 9 a.m. and reached the office of accused by 10.00 a.m.. On seeing the complainant, who alone went to the office of the accused, the accused asked him as to whether he has brought the bribe amount. On this, the complainant gave the money to accused who took the same with his right hand and kept the same in his right hip pocket. The complainant came out of the office and gave the agreed signal. On getting signal from complainant, raiding party immediately rushed towards the accused. They noticed accused also coming out of office room. PW9 then apprehended the accused. On disclosing the identity by PW9, the accused threw the currency notes in the open ground towards the public and shouted “take away, take away”. When the right hand fingers and back side pocket were subjected to sodium carbonate test, the solution turned pink. Interestingly, the currency notes of Rs. 200/- found from the open space, which were claimed by the accused as his own,

were returned to him by PW9.

4. Be that as it may, on this basis, the investigation started and a charge-sheet was filed against the accused. The accused claimed that he never demanded and had never accepted the bribe money.

5. The trial court did not accept the defence of the accused. He was convicted and sentenced for the offences punishable under Sections 7 and 13(1)((d) read with Section 13(2) of Prevention of Corruption Act The appeal against the conviction was also dismissed by the High Court. Hence, the appellant is before us.

6. Mr. S. Sunderavardhan, learned senior counsel appearing for the appellant very strenuously urged before us that this case is full of doubts. He points out that very strangely, there is nothing on record to corroborate as to what transpired between the accused and the complainant when the complainant allegedly approached the accused to give him the bribe. Learned counsel further points out that there is no evidence except that of the complainant to suggest that when the complainant approached the accused, he actually demanded the money and in pursuance to that demand, the complainant paid him the money. The counsel urged that there was no corroboration to the evidence of complainant. The second contention is that there is enough gap between the time of bribe demanded and paid. Though the money was demanded as back as on 31.12.1993, there is nothing on record to suggest that any time or place to accept the money was fixed in any manner. Learned counsel further points out that though the accused was approached by the complainant on 6.1.1994, he never made any disclosure about the bribe. Learned counsel further points out that on 11.1.1994 when the complainant along with the raiding party reached the office of accused, he was admittedly not present in the office. There was no prior commitment between the accused and the complainant fixing the time and place for receiving the bribe. This, according

to the learned counsel, is a suspicious circumstance. He further points out that it is very strange that no one was present to hear as to what transpired between the accused and the complainant when bribe was paid and to add further chaos to the prosecution story, there was no seizure of the treated currency notes either. Learned counsel wonders as to how it could have happened that the currency notes, which were given by the complainant to accused, could not be recovered.

7. Mr. I. Venkatanarayana, learned senior counsel appearing for the respondent-State supported the concurrent judgments of the courts below and contended that the findings of facts were concluded by the courts below. Mr. Venkatanarayana points out that there was no reason for the complainant PW-1 to falsely implicate the accused. In fact, that was also no reason why the investigating agency, particularly PWs 4, 6 & 9 should be disbelieved. According to Mr. Venkatanarayana, the fact that money was accepted by the accused stands proved on the basis of sodium carbonate test which was done on the right hand fingers and the back side pocket of the accused.

8. Considering the overall circumstances, we do feel that the prosecution has not been able to prove that the accused had fixed the time and place to receive the money. The dates 31.12.1993, 6.1.1994 and 11.1.1994 mentioned in the complaint of the complainant are rather speaking. It is further admitted in the evidence of PW1- complainant that on 11.1.1994, when the accused was tried to be approached, he was not found present in his office. Itwas, therefore, that the accused was approached on the second day i.e. on 12.1.1994. what surprises us is that when two panchas were present in the raiding party and if one of them had accompanied the complainant and noted the conversation between the complainant and the accused, that would have given a definite corroboration to the version of the complainant. But that did not happen. Further even as per the complainant, when he

approached the accused on 12.1.1994, he was driven away by the accused. In his cross examination, the complainant states as under:

> "When I went there the accused on seeing me became irritated and asked me to go away and that I need not approach him"

9. Though thereafter the complainant asserted that the accused demanded bribe from him. It is rather strange that the complainant was driven out of the room when he first approached the accused. The complainant then remained silent as to what happened when he was turned away by the accused on his first meeting with the accused in his office. This circumstance, according to us, creates doubt. If the accused had to accept the bribe, he would never have driven away the complainant when he was approached by the complainant in his office. When both of them were alone in the office of accused, that would have been the best opportunity for the accused to accept the bribe if there was any such demand on his behalf and if there was any such transaction. In short, there is no evidence to suggest as to what transpired between the accused and the complainant when the accused was first approached by the complainant. The second circumstance, which is really suspicious, is not finding of the treated currency notes which were thrown away by the accused. We cannot imagine that a raiding party which consisted of nine persons would not be able to recover the currency notes which were thrown away by the accused in the open space and which were allegedly taken away by the members of public. There is absolutely no evidence given by the investigating officer PW9 as to what efforts he did to find out the currency notes. The only explanation which has come out from the evidence of investigating officer is that it was not possible. In his cross-examination, PW 9 stated as under:

> "We did not surround the people at that place as there was no possibility. I did not subject the amount 200 to any

chemical test. It is not true to say that I did not seize Rs. 200 from any vacant space and that the said amount is in the pocket of accused. I returned Rs. 200 as it is his personal money."

10. This was rather strange. Learned counsel appearing for the State very heavily relied on that circumstance. That circumstance by itself may not be able to establish that money was demanded and it was accepted as bribe. It could have been the possibility that the complainant had touched the currency notes and had shaken hand with the accused or it could be that any one of the investigating officer or the member of the raiding party had touched the fingers of the accused. That circumstance itself cannot be ruled out.

11. We have seen the judgments of the courts below wherein the sole evidence of the fingers being soiled in sodium carbonate turned pink has been relied upon. Both the courts below seem to have impressed by this situation alone. We do not feel it sufficient to convict the accused on this evidence alone and we would choose to give him the benefit of doubt.

12. The appeal is allowed. The appellant is on bail. His bail bonds are discharged.

R.P. Appeal allowed.

STATE OF MADHYA PRADESH & ANR
v.
MEDHA PATKAR & ORS.
(Civil Appeal No. 6229 of 2011)

AUGUST 2, 2011

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

LAND ACQUISITION:

Acquisition of land to set up canals – Compensation – 'Canal affected persons' – After construction of Indira Sagar Project and Omkareshwar Dam, land acquired for setting up canals – Writ petition claiming full benefits of Rehabilitation and Resettlement Policy framed for Narmada Valley Projects, for canal affected persons also – Held: This Court in Narmada Bachao Andolan-I has held that 'canal affected persons' cannot be put at par with 'submergence affected persons' – It was not permissible for the High Court to take a contrary view – The definition of 'oustee' under the Narmada Water Dispute Tribunal Award does not take within its ambit the 'canal affected person' nor does the said award apply to the projects in the instant case – However, in the interim order, Supreme Court has taken care of 'hardship cases' – Further, as suggested by the State Government, the date of s. 4 notification shifted to the date of the instant judgment in relation to the canal affected persons and the Land Acquisition Collector directed to reconsider the market value of the land in question accordingly and make supplementary awards in accordance with the provisions of the Land Acquisition Act – It is clarified that the further canal work would be subject to clearance which may be given by MoEF – Land Acquisition Act, 1894 – Public Interest litigation – Precedent.

On completion of Indira Sagar Project and

Omkareshwar dam, in order to set up canals, land acquisition proceedings under the provisions of the Land Acquisition Act, 18994 were initiated. The respondents filed a writ petition before the High Court challenging the acquisition of land for construction of canals on the grounds, *inter-alia,* that Command Area Development plans (CAD Plans) had not been submitted by the State nor had it been approved by the Ministry of Environment and Forest (MoEF); that there had been no compliance of Panchayats (Extension of Scheduled Areas) Act, 1996 (PESA Act) which required consultation with office bearers of Panchayats before initiation of land acquisition proceedings; that the canal affected persons were also entitled for the full benefit of Rehabilitation and Resettlement Policy (R&R Policy) framed for the Narmada Valley Projects, including the allotment of land in lieu of the land acquired as per R & R policy.

The High Court held, *inter alia*, that though there was an intelligible differentia in making the classification between the oustees of submerged areas of dam and canals, but the same has no rational nexus with the object to achieve so far as the rehabilitation was concerned and, therefore, the persons affected by canal work were entitled to the same benefit as that of submergence affected persons. Aggrieved, the State Government filed the appeal.

Disposing of the appeal, the Court

HELD: 1.1 It is evident from the Narmada Water Disputes Tribunal Award, 1997 that the definition of 'oustee' does not take within its ambit the "canal affected person". However, the said award does not apply to the projects in the instant case, as it was meant only for Inter-State projects like Sardar Sarovar Project. [para 13] [676-E-F; 677-C]

1.2 So far as the Indira Sagar Project is concerned, it was given clearance on 24.6.1987 and did not have any specific direction for rehabilitation. Similarly, for Omkareshwar Project, clearance was granted on 13.10.1993 and part (vii) thereof provided that the rehabilitation programme would be extended to landless labourers and people affected due to canal **by identifying and allocating suitable land "as permissible". The words "as permissible" have been interpreted by this Court* and there is no reason to reconsider the issue afresh. [para 14] [677-D-F]**

Narmada Bachao Andolan v. State of M.P.*, **AIR 2011 SC 1989 – relied on.

1.3 This Court in *Narmada Bachao Andolan-I* has taken a view that the canal affected persons cannot be put at par with the submergence affected persons. In view of the fact-situation, it was not permissible for the High Court to take a view contrary to the view taken by this Court, particularly, when the High Court came to the conclusion that there was a reasonable differentia between the two. However, this Court by an interim order dated 5.5.2010 has also taken care of "hardship cases" in canal affected areas. [paras 18-19] [678-G-H; 679-A-B]**

*** Narmada Bachao Andolan v. Union of India & Ors.* **2000 (4) Suppl. SCR 94 = (2000) 10 SCC 664 – relied on.**

1.4 The State has graciously agreed that in order to give more benefit to canal affected persons, the Court may award some more benefits. The State has suggested that in order to achieve the purpose, the date of s. 4 Notification, irrespective of its actual date, in relation to all canal affected persons be shifted (postponed) to the date of this judgment and the market value of the land be re-determined according to the provisions of the Act 1894 making the supplementary awards and giving the

opportunity to such oustees further for filing reference u/s 18 of the Act 1894. In this view of the matter, the Land Acquisition Collector is directed to reconsider the market value of the land of the canal affected persons as if s.4 Notification in respect of the same has been issued on date, i.e. 2.8.2011, and make the supplementary awards in accordance with the provisions of the Act 1894. Such concession extended by the State would be over and above the relief granted by this Court by order dated 5.5.2010 as clarified/modified subsequently and it is further clarified that further canal work would be subject to clearance/direction which may be given by MoEF. [para 20] [679-B-F]

Case Law Reference:

2000 (4) Suppl. SCR 94	**relied on**	**para 5**
AIR 2011 SC 1989	**relied on**	**para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6229 of 2011.

From the Judgment & Order dated 11.11.2009 of the High Court of Madhya Pradesh at Jabalpur in W.P. (C) No. 6056 of 2009.

T.R. Andhyarujina, C.D. Singh, Sunny Chaudhary, Shomick Ghosh, Abhimanyu Singh for the Appellants.

Mohan Jain, ASG, D.K. Thakur, Prabhat Kumar, Rekha Pandey, Shreekant N. Terdal, Sanjay Parikh, Mamta Saxena, Anitha Shenoy, Syed Naqvi, N.K. Sharma, Tina, Rajesh Kumar, Medha Patkar (Respondent In Person) for the Respondents.

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. Leave granted.

2. This appeal has been preferred by the State of Madhya

Pradesh and instrumentality of the State against the judgment and order dated 11.11.2009 in Writ Petition (C) No.6056 of 2009 of the High Court of Madhya Pradesh at Jabalpur, whereby the High Court has restrained the State of Madhya Pradesh or any other statutory authority of further acquisition of land or for any excavation or any construction of the canal network for the command areas of the Indira Sagar and Omkareshwar projects till the Command Area Development plans (hereinafter called CAD Plans) submitted to the Government of India, Ministry of Environment and Forest (hereinafter called MoEF) are scrutinized by the committee of experts and clearance is granted by the said Ministry. The appellant-State Government has further been directed to provide rehabilitation and resettlement benefits under the Rehabilitation and Resettlement Policy (hereinafter called R&R Policy) for Narmada Valley Projects to the canal affected persons/families of Indira Sagar and Omkareshwar projects and the Narmada Control Authority (hereinafter called NCA) has been directed to ensure implementation of the aforesaid directions.

3. The facts and circumstances giving rise to this appeal are:

A. That after completing the procedure prescribed for establishment of dams and irrigation projects, the project reports for Indira Sagar and Omkareshwar projects were prepared and submitted for clearance. The environmental clearance for Indira Sagar project was granted by MoEF on 24.6.1987 by an administrative order. The Planning Commission also approved investment to be made in Indira Sagar project on 6.9.1989.

B. The R & R Policy of 1989 was introduced by the State of Madhya Pradesh for the oustees of submerged area in Narmada Valley projects. Land acquisition proceedings were initiated in year 1991 for canal construction under Indira Sagar project. A comprehensive CAD plans for Omkareshwar project

were sent to MoEF for clearance. Environment Impact Assessment and Environment Management Plan reports were also submitted for Omkareshwar project to MoEF which also contained the R & R plan for the affected persons of the Omkareshwar project. It provided that the persons whose land was to be acquired for establishment of canals were not to be included in R & R plans.

C. The Ministry of Welfare, Government of India accorded clearance to the R & R plan of Omkareshwar project on 8.10.1993. Similarly, by an administrative order environmental clearance for Omkareshwar project was granted by MoEF on 13.10.1993.

D. The MoEF issued statutory notification under Section 3(2) of Environment (Protection) Act, 1986 (hereinafter called the Act 1986) read with Rule 5(3) of the Environment (Protection) Rules 1986 requiring environmental clearance for development of project on 27.1.1994. The canal construction in Indira Sagar project started on 30.5.1999. The NVDD vide order dated 14.8.2000 amended the definition of "Displaced person" adding in clause 1(a) the following words:

> "…..or is required for the project-related canal construction and construction of the Government Project Colony."

The Planning Commission granted approval in respect of Omkareshwar project on 15.5.2001. The R & R policy stood materially changed vide amendment dated 1.9.2003 as from the definition of "displaced person" the words "which is required for project related construction of canals or the Government project colony" stood deleted.

The Amendment to the Rehabilitation Policy was made by the Narmada Control Board (NCB) on the recommendation of the NVDA on 2.7.2003 as per Business Rules of Narmada Control Board Part II Special Procedure for Emergency

Sanction and not under the Government of Madhya Pradeh Business Rules.

E. The dam construction of Indira Sagar project stood completed in year 2005 and the High Court, in a pending litigation, permitted the State of Madhya Pradesh to raise water level of Indira Sagar Dam upto 260 meter against the full reservoir level of 262.13 meters vide order dated 8.9.2006. The High Court further clarified that NCA had no role to play regarding the Indira Sagar project i.e. intra-State project as its role was confined to inter-State Project, i.e. Sardar Sarovar Project.

F. The Omkareshwar dam stood completed in year 2007. In order to set up canals, land acquisition proceedings were initiated in year 2009 and in some cases after conclusion of the proceedings, compensation under the provisions of Land Acquisition Act, 1894 (hereinafter called the Act 1894) has been paid. However, in some cases acquisition proceedings are still in progress.

G. The respondents preferred Writ Petition (C) No.6056 of 2009 before the High Court of Madhya Pradesh at Jabalpur on 18.6.2009 challenging the acquisition of land for excavation of canals; execution, excavation and construction of canal on various grounds, *inter-alia;* the CAD Plans had not been submitted by the State and not approved by the MoEF; there had been no compliance of Panchayats (Extension of Scheduled Areas) Act, 1996 (hereinafter called PESA Act) which required consultation with office bearers of Panchayats before initiation of land acquisition proceedings; the canal affected persons were also entitled for the full benefit of R & R Policy including the allotment of land in lieu of the land acquired as per R & R policy, which had not been provided for.

H. The State of M.P., appellant herein contested the case contending that land acquisition proceedings could not be challenged at a belated stage i.e. after dispossession of the

tenure holders; authorities had submitted the CAD Plans and acted on the same after being approved by the MoEF. Canal affected person could not be treated at par with an oustee of the submerged area of the dam, rather he would be given benefit as per the policy prescribed for such a class of persons.

4. The High Court after considering the rival submissions held as under:

(I) The CAD Plans of Indira Sagar and Omkareshwar projects were required to be prepared and submitted to the authority entrusted with the responsibility of monitoring, planning and implementation of environmental safeguards and this was to be done before the commencement of the canals so that such authority could ensure that the environmental safeguards and mitigative measures had been properly planned and could be implemented *pari passu* with the construction of the canal project.

(II) If land is acquired and excavated before preparation and submission of CAD Plans to such monitoring authority, environmental safeguards could not be implemented *pari passu* with the construction of canal project. Rather, if the main canals and branch canals are constructed without keeping in mind the environmental requirements then there may be immense problem of water logging and salinity disturbing the environmental plans and the authority entrusted to ensure the environmental safeguards may not be able to reverse the acquisition of land.

(III) There was an intelligible differentia in making the classification between the oustees of submerged areas of dam and canals but have no rationale nexus with the object to achieve so far as the rehabilitation was concerned. Thus, the persons affected by canal work were entitled to the same benefit as that of submergence affected persons.

(IV) In view of the provisions of Sections 3 and 4(i) of

PESA Act, the State Legislature was not competent to make any law under Part IX of the Constitution of India inconsistent with the basic features of the Gram Sabha or Panchayats at the appropriate level requiring consultation for land acquisition in the scheduled area for the development projects. Therefore, it was not permissible for the court to issue direction to the authorities to consult Gram Sabha before acquisition of land.

(V) Challenge to the acquisition of land could not be entertained at a belated stage as the possession of the land had been taken long back.

(VI) The clearance from MoEF requires the agents to monitor the environmental protection measures.

In view of the above, the High Court issued directions as explained in para 2 hereinabove. Hence, this appeal.

5. Shri T.R. Andhyarujina, learned senior counsel appearing for the appellants has submitted that CAD Plans have been submitted by the authorities from time to time to the ministries of the Central Government and have got the clearances and the work had been executed giving strict adherence to those clearances. Even at present, the revised CAD Plans have been submitted and are being considered by the Expert Committee of the MoEF, wherein the respondent-Ms. Medha Patkar has also been heard. As voluminous documents have been submitted by her and this Court had been issuing directions from time to time, the MoEF has yet to take the final decision. The State authorities are bound to proceed in accordance with the final decision taken by the MoEF and in case the CAD Plans are not found to be appropriate or complete and the MoEF issues certain directions or asks for some variations etc. the State Government would proceed accordingly. Therefore, according to Mr. Andhyarujina, the issue of submission and clearance of CAD Plans should not be decided at this stage by the court. It is further submitted by Mr. Andhyarujina that in case a party is

aggrieved by the order to be passed by MoEF, it would be open to it to challenge the said order before the appropriate forum.

So far as the issue of rehabilitation is concerned, it has been canvassed on behalf of the State that question of putting the canal affected persons at par with submergence affected persons does not arise. This Court in *Narmada Bachao Andolan v. Union of India & Ors.,* (2000) 10 SCC 664, (hereinafter called "*Narmada Bachao Andolan I*") has categorically held that both classes are different and cannot be put on equal footings. The canal affected people may rather be benefited because of the canals while the submergence affected persons may suffer permanently or temporarily. Therefore, to that effect, the High Court was not justified in issuing direction to treat both the classes at par.

6. On the other hand, Ms. Medha Patkar, respondent-in-person and Mr. Sanjay Parikh, learned counsel for the respondents have submitted that there is no difference in the sufferings of the persons, whether they are submergence affected persons or canal affected persons. No rationale nexus can be found to treat them differently. Therefore, the High Court's finding to that extent does not require any interference. The CAD Plans submitted by the State authorities are not complete and are being examined by the Expert Committee of the MoEF. Therefore, the High Court has rightly directed the authority not to proceed with excavation or establishment of canals etc. The facts of the case do not warrant any interference by this Court. Appeal lacks merit and is liable to be dismissed.

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

8. Though, a large number of issues have been agitated before the High Court and dealt with, some of them have not been agitated before us. The issue of consultation with the Gram Sabha or Panchayats before acquisition of land and

validity of the acquisition proceedings had been dealt with by the High Court against the writ petitioners and the same has not been challenged before us. Thus, only two issues survive, i.e. submission of CAD Plans before the MoEF and requirements of its clearance; and entitlement of the canal affected persons.

9. So far as the first issue is concerned, this Court vide order dated 25.2.2010 after taking note of the directions issued by the High Court and in view of the fact that the CAD Plans etc. were being considered by the Expert Committee of the MoEF and for many years excavation and construction of canal work and acquisition of land for that purpose had been done to a great extent and the High Court order brought the same to a standstill, passed the following order:

> "In the above circumstances, excavation or construction of the canal work and acquisition of land may go on for the time being, however, it would be subject to approval of the MoEF of the revised plans submitted on 16th October, 2009. The State would be at liberty to file further details regarding the Command Area Development Plans to the MoEF and if such details regarding the Command Area Development Plans are filed, the same may be referred to the Expert Committee for consideration. The Expert Committee to take a decision within a period of six weeks and as soon as the Report is available to MoEF, the MoEF to take decision within a further period of four weeks thereafter."

10. Mr. Mohan Jain, learned Additional Solicitor General appearing for the MoEF has supported the case of the State contending that the State authorities had always been submitting the CAD Plans from time to time and the same had also been cleared by the statutory authorities. References have been made to the decision dated 10.2.2011 taken by Dr. Pandey's Committee on CAD Plans and all other subsequent decisions taken on 29th/30th April, 2011 on the CAD Plans submitted by

the State Government. Mr. Jain assured the Court that the decisions would be taken by the MoEF strictly in accordance with law considering the report of the Expert Committee. Time is being taken in view of the order dated 11.5.2011 passed by this Court directing MoEF to proceed with the draft minutes prepared by the Environment Appraisal Committee after providing the opportunity of personal hearing to the writ petitioner- Ms. Medha Patkar. Though the hearing stood concluded, a large number of documents submitted by Ms. Patkar yet require to be considered. The final decision shall be taken within 4 weeks.

11. While considering the reliefs, which could be given to the canal affected persons, this court on 5.5.2010 passed the following order :

> "The State of Madhya Pradesh shall consider the "hardship cases"; those cases wherein land of a Khatedar is in excess of 60% or above is acquired for canal, those affected parties may be given land as far as possible in the near vicinity or in the canal command area of the project and if it is not possible, the land may be given from the Land Bank. The Khatedars who have already received compensation, should return the Government 50% of the compensation amount already taken by them as land value and the remaining amount may be refunded to the Government in 20 interest free annual installments. If the Khatedars are not willing to take land from the land bank, they may be given the compensation as per the present market value plus 30% solatium thereof. Those who are not coming in the category of hardship cases, compensation is to be paid under the Land Acquisition Act with 30% solatium.
>
> Any grievance in respect of these affected parties may be placed before the Grievance Redressal Authority for Narmada Water Basin Project which has been set up by the State Government. Land Bank should, as far as possible, give cultivable land and also basic infrastructure such as school, primary health centre, communication facilities etc. shall be provided."

12. While entertaining I.A. No.9 of 2011, on 21.7.2011 the aforesaid order was modified as under:

> "50% of the cash compensation already received by the Khatedars have to be refunded to the Government as land value of land allotted and the remaining cost of the land will be paid in 20 interest free annual installments."

While hearing the matter, this court further clarified the order dated 5.5.2010 to the extent that 30% solatium as mentioned in the order dated 5.5.2010 meant as provided under the Act 1894 and not over and above the same to make it 60%.

Therefore, the question remains as what are the other reliefs that can be granted to the canal affected persons and as to whether they can be put at par with the oustees of submergence area.

13. The Narmada Water Dispute Tribunal Award 1979 defined 'oustee' as well as provided for rehabilitation:

> "**Oustee**- An "Oustee shall mean any person who since at least one year prior to the date of publication of the notification under section 4 of the Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation or calling or working for gain in the area likely to be *submerged* permanently or temporarily."
>
> **Provision for Rehabilitation**: According to the present estimates the number of oustee families would be 7,366 spread over 173 villages in Madhya Pradesh, 467 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."

Thus, it is evident from the above that the definition of 'oustee' does not take within its ambit the "canal affected person". However, the said award does not apply to the present projects as it was meant only for Inter-State projects like Sardar Sarovar Project.

14. So far as the Indira Sagar Project is concerned, it was given clearance on 24.6.1987 and did not have any specific direction for rehabilitation. Similarly, for Omkareshwar Project, clearance was granted on 13.10.1993 and part (vii) thereof, provided that the rehabilitation programme would be extended to landless labourers and *people affected due to canal* by identifying and allocating suitable land "as permissible".

The words "as permissible" have been interpreted by this Court in *Narmada Bachao Andolan v. State of M.P.,* AIR 2011 SC 1989, that addition of such terms while granting clearance did not create a right in favour of such persons as the rehabilitation is to be made in accordance with the terms of R & R Policy. Thus, we do not see any reason to reconsider the issue afresh.

15. The general R & R Policy of the State of Madhya Pradesh defines 'displaced person' in para 1.1 as a person in an area likely to come under submergence because of project or *which is required by the project.* The R & R Policy was amended by the State of Madhya Pradesh on 14.8.2000 which included the persons whose land was likely to come under submergence or was required *for the project related canal construction***.**

16. This Court in *Narmada Bachao Andolan I* (supra) considered a similar issue, but made the distinction between canal affected persons and persons affected by submergence in para 169 which reads as under:

> "Dealing with the contention of the petitioners that there will be 23,500 canal-affected families and they should be treated on a par with the oustees in the submergence area, the respondents have broadly submitted that there is a basic difference in the impacts of the projects in the upstream submergence area and its impacts in the beneficiary zone of the command area. *While people, who were oustees from the submergence zone, required resettlement and rehabilitation, on the other hand, most of the people falling under the command area were in fact beneficiaries of the projects and their remaining land would now get relocated with the construction of the canal leading to greater agricultural output. We agree with this view* and that is why, in the award of the Tribunal, the State of Gujarat was not required to give to the canal-affected people the same relief which was required to be given to the oustees of the submergence area." (Emphasis added)

17. In view of the above, the State of Madhya Pradesh amended R & R Policy on 1.9.2003 deleting the words "which is required for project related constructions of canal or government project colony." Thus, in view of the above, the State of M.P. does not give the same R & R package to the canal affected persons as those affected by submergence.

18. This Court has taken a view that the canal affected persons cannot be put at par with the submergence affected persons, thus, it is not possible for the court to put the canal affected persons at par with the submergence affected persons.

In view of the fact-situation, it was not permissible for the High Court to take a view contrary to the view taken by this Court, particularly, when the High Court came to the conclusion

that there was a reasonable differentia between the two.

19. Be that as it may, this Court vide an interim order dated 5.5.2010 has also taken care of "hardship cases" in canal affected areas.

Mr. Andhyarujina, learned senior counsel appearing for the State has graciously agreed that in order to give more benefit to canal affected persons, the court may award some more benefits. The State has suggested that in order to achieve the purpose, date of Section 4 Notification in all the cases, irrespective of the actual date of Section 4 Notification in relation to all canal affected persons be shifted (postponed) to the date of this judgment and direct to re-determine the market value according to the provisions of the Act 1894 as early as possible making the supplementary awards and giving the opportunity to such oustees further for filing reference under Section 18 of the Act 1894.

20. The State has come forward with most appropriate and valuable suggestion, thus, we accept the same. In view of the above, Land Acquisition Collector is directed to reconsider the market value of canal affected persons as if Section 4 Notification in respect of the same has been issued on date, i.e. 2.8.2011 and make the supplementary Awards in accordance with the provisions of the Act 1894. Such concession extended by the State would be over and above the relief granted by this Court vide order dated 5.5.2010 as clarified/modified subsequently, as explained hereinabove and it is further clarified that further canal work would be subject to clearance/direction which may be given by MoEF.

21. In view of the above, appeal stands disposed of. No order as to costs.

R.P. Appeal disposed of.

BUDHADEV KARMASKAR

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 135 of 2010)

AUGUST 02, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Public Interest Litigation – Issue as regards the problems of sex workers in the country – Held: Sex workers are also human beings and thus, are entitled to a life of dignity – Sex workers can lead a life of dignity if they earn their livelihood through their technical skills instead of selling their bodies – Thus, panel consisting of senior advocates and NGO constituted by Supreme Court, to monitor rehabilitation of sex workers – The Secretaries, Social Welfare Departments of the State Governments and the Central Government to meet the panel constituted to discuss how proper schemes in the spirit of the order by this Court can be prepared – Thereafter, the State and the Centre to come out with the schemes/ suggestions indicating rehabilitation of sex workers, effective feedback as regards rehabilitation with a list of sex workers willing for rehabilitation – Panel constituted to submit another report of the progress made by the next date of hearing – Social welfare – Constitution of India, 1950 – Article 21.

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

From the Judgment & Order dated 25.07.2007 of the High Court of Calcutta in Criminal Appeal No. 487 of 2004.

P.P. Malhotra, ASG Pradip Ghosh, Jayant Bhushan, T.S. Doabia, Ashok Bhan, Ratnakar Dash, I. Venkatanarayana, R. Sundravaradan, A. Mariarputham, AG, Dr. Manish Singhvi, Shail Kr. Dwivedi, Manjit Singh, AAG, Pijush K. Roy, Reena

George, Gautam Talukdar, Lajja Ram, Gaurav Sharma, D.S. Mahra, Sushma Suri, Sadhana Sandhu, Mohd. Khairati, Irshad Ahmad, Vijay Verma, Anitha Shenoy, Ashutosh Sharma, Alka Sinha, Anuvrat Sharma, D. Mahesh Babu, Ramesk Allanki, V. Pattabhi Ram, Savita Dhanda, Ranjan Mozumbar (for Corporate Law Group) Anil Srivastava, Rituraj Biswas, Gopal Singh, Manish Kumar, Anjani Aiyagari, S. wasim A. Quadiri, Anil Katiyar, Hemantika Wahi, Suveni Banerjee, Ashwini Kumar, Tarjit Singh, Kamal Mohan Gupta, Abhishek Sood, Rohit Kr. Singh, Sunil Fernandes, Astha Sharma, P.V. Dinesh, Jogy Scaria, Sanjay Kharde (for Asha G. Nair), Kh. Nobin Singh, Balaji Srinivasan, Radha Shyam Jena, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey, Mohit Mudgil, Aruna Mathur, Avneesh Arputham, Yusuf Khan, Megha Gaur, Arputham Aruna & Co., Aniruddha P. Mayee, Abhijit Sengupta, B.P. Yadav, Anima Kujur, Anil K. Jha, Dharmendra Kr. Sinha, Chhaya Kumari, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, Savita Singh, Anand Grover, Tripti Tandon, Shivangi Rai, Amritananda Chakraborty, Shefali Malhotra, Prakash Kumar Singh, Ravi Kant, A. Subhashini, Aishwarya Bhati, C.D. Singh, K.N. Madhusoodhanan, M.T. George, Subramonium Prasad, Sunil Kumar, Singh, Mukti Singh, Jatinder Kr. Bhatia, Manpreet Sing Doabia, Kiran Bhardwaj, Edward Belho, A. Athuimei R. Naga, K. Inatoli Sema, Nimshim Voshum, Ranjan Mukherjee for the appearing parties.

The following order of the Court was delivered

O R D E R

"Pinha tha daam-e-sakht qareeb aashiyaan ke
Udhne hi na paaye the ki giraftaar hum hue"

Mirza Ghalib

1. This exercise was initiated by us by our order dated 14th February 2011. By that order we dismissed the appeal of the appellant, who was convicted for murdering a sex worker in a

red light area in Kolkata by battering her head repeatedly against the wall and the floor of a room. Having dismissed the appeal we *suo motu* converted the case into a PIL by the same order in order to address the problems of sex workers in the country.

2. In our order dated 14th February, 2011 we observed:

"This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.

In the novels and stories of the great Bengali writer Sharat Chandra Chattopadhyaya, many prostitutes have been shown to be women of very high character, e.g., Rajyalakshmi in 'Shrikant', Chandramukhi in 'Devdas', etc.

The plight of prostitutes has been depicted by the great Urdu poet Sahil Ludhianvi in his poem 'Chakle' which has been sung in the Hindi film Pyasa "Jineh Naaz Hai Hind Par wo kahan hain" (simplified version of the verse 'Sana Khwan-e-taqdees-e-Mashrik Kahan Hain').

We may also refer to the character Sonya Marmelodova in Dostoyevsky's famous novel 'Crime and Punishment'. Sonya is depicted as a girl who sacrifices her body to earn some bread for her impoverished family.

Reference may also be made to Amrapali, who was a contemporary of Lord Buddha".

3. We further observed :

"Although we have dismissed this Appeal, we strongly feel that the Central and the State Governments

through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

Hence, we direct the Central and the State Governments to prepare schemes for giving technical/ vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself".

4. Subsequently by another order we constituted a panel headed by Mr. Pradip Ghosh, Senior Advocate as the Chairman and including Mr. Jayant Bhushan, Senior Advocate, Durbar Mahila Samanwaya Committee (DMSC), Usha Multipurpose Cooperative Society (UMCS) and Roshni through its founder Ms. Saima Hasan. We also directed the Central Government to provide some accommodation as well as infrastructure, staff etc. to the panel, and grant it adequate funds.

5. Today, an interim report has been submitted to us by

the panel stating that the panel held its first meeting on 25th July, 2011 at 04.30 P.M. and discussed various aspects of the problems relating to sex workers. The report shall be taken on record.

6. We have perused the report. It shows that the panel has set about the task assigned to it in right earnest.

7. The report has prayed for directions to the Central Government to make necessary funds available for holding workshops/meetings to be attended by experts, resource persons, organizations etc. who may be invited by the panel for this purpose and to arrange their travel by air/rail to and fro Delhi, and also to make suitable arrangements for their accommodation etc. Funds may also be made available to the panel so that the members can educate the concerned people and also to visit other three metropolitan cities i.e. Kolkata, Mumbai and Chennai and also other cities/towns. Funds are also required for advertisements in newspapers and T.V. inviting responses from social organizations and interested individuals who may send their suggestions/comments and also for the purpose of printing and publications, as may be necessary.

8. We direct the Central and the State Governments to provide funds as prayed for by the panel in its report after discussions with the Chairman of the panel Mr. Pradip Ghosh, Senior Advocate and other members.

9. In paragraph 10 of the report it has been stated that the Central Government has assured that they will arrange a place for the meetings of the Panel with necessary infrastructure, computer, staff etc. The Central Government should also look around for a permanent office accommodation for the panel as that will be necessary sooner or later for the proper functioning of the Panel.

10. We have noted that some of the members of the panel

are from Kolkata and Delhi, but there is no representation from Mumbai and Chennai. Since we had directed that we shall first take up the problems of sex workers in the four metropolitan cities, i.e. Delhi, Kolkata, Mumbai and Chennai, we suggest to the Chairman of the panel to co-opt some suitable NGOs/social activists from Mumbai and Chennai also in this connection.

11. We again reiterate that this exercise is because we are of the opinion that sex workers are also human beings and hence they are entitled to a life of dignity. It has been well-settled by a series of decisions of this Court that the word 'life' in Article 21 of the Constitution means a life of dignity and not just an animal life. We are of the opinion that sex workers obviously cannot lead a life of dignity as long as they remain sex workers.

12. Sex among human beings is different from sex among animals. Sex in humans has a cultural aspect to it also, and is not just a physical act. A sex worker who has to surrender her body to a man for money obviously is not leading a life of dignity. Ordinarily, no woman will willingly surrender her body to a man unless she loves and respects him. A sex worker is obviously not surrendering her body to a man because she loves and respect him, but just for sheer survival. As Nancy says in Charles Dicken's novel 'Oliver Twist', "you adapt or you die".

13. Apart from that, sex workers are always in danger of getting sexually transmitted diseases (STD), and they are often abused and beaten by the proprietors of the brothel and others who give them a pittance out of her earnings. A woman becomes a sex worker not because she enjoys it but due to abject poverty. One estimate suggests that there are 3 million sex workers in India, many even from Nepal, Bangaldesh, and even the former Soviet Union. This is due to massive poverty in the country, and abroad.

14. Our effort in this exercise is to educate the public and inform them that sex workers are not bad persons, but they are unfortunate girls who have been forced to go into this flesh trade

due to terrible poverty. Hence society should not look down upon the sex workers but should have sympathy with them. In fact, in the novels of the great Bengali writer Sharat Chandra Chattopadhayay it has been shown that many of the sex workers were women of very high character, e.g. Rajyalakshmi, Chandramukhi, etc. and the same has been shown in the novels of many European writers. The Russian writer Dostoyevsky's novel 'Crime & Punishment' has shown Sonia Marmeladova as a woman of high character who became a sex worker to feed her starving family. Similarly, in Charles Dicken's novel 'Oliver Twist', the sex worker Nancy is shown to be a girl of high character who sacrifices her life to save Oliver. In Victor Hugo's famous novel 'Les Miserables', Fantine sacrifices her hair and teeth to provide for her daughter Cosette. Martha in 'David Copperfield' is also depicted as a woman of noble heart.

15. We are of the opinion that if sex workers are given proper technical training they will be able to come out of sex work and instead earn their livelihood through their technical skills instead of by selling their bodies. That will enable them to live a life of dignity.

16. An impleadment application praying for impleadment in this case has been filed. We are of the opinion that instead of applying for impleadment in this case, the applicant should approach the Panel constituted by us and give whatever assistance the applicant wishes to give to the Panel. With these observations, the impleadment application is disposed of.

17. Learned counsel appearing for the State of Uttarakhand has stated that he will file a comprehensive affidavit on behalf of the State within two weeks. He may do so.

18. We may mention here that we are not satisfied with the affidavits already filed by the State Governments before us. Their contents are vague and too general. We had expected the State Governments to come forward with specific schemes

for giving technical training to sex workers but that has not been done. Hence, we direct that the Secretaries, Social Welfare Departments of the State Governments and the Central Government to meet the Panel constituted by us whenever the Chairman of the Panel so desires so as to discuss how proper schemes in the spirit of our orders can be prepared.

19. We are of the opinion that the States should not only come out with schemes indicating therein rehabilitation of the sex workers but they should also demonstrate their commitment to the cause by coming out with some concrete results, at least in phases. So by the next date we expect the State counsels to come out with some effective feedback whether at least a few sex workers have been offered any alternative employment, in case they were willing for rehabilitation. We also leave it to the Chairman of the Panel constituted by us to come out with some suggestions in what way the sex workers through the State Governments and the metro cities can come out with effective results in this regard and by way of illustration at least they must come out with report of rehabilitation of at least some of the sex workers in each of the States. We make it clear that any rehabilitation of the sex workers will not be coercive in any manner and it shall be voluntary on the part of the sex workers.

20. The Chairman of the Panel with the assistance of the NGOs can provide a list by the next date at least of those sex workers who are living under dire circumstances and are willing for rehabilitation. We are informed that some of the NGOs have a list of figures and localities of such sex workers who are immediately willing for rehabilitation and want to get out of the flesh trade.

21. We are fully conscious of the fact that simply by our orders the sex workers in our country will not be rehabilitated immediately. It will take a long time, but we have to work patiently in this direction. What we have done in this case is to present the situation of sex workers in the country in the

correct light, so as to educate the public. It is ultimately the people of the country, particularly the young people, who by their idealism and patriotism can solve the massive problems of sex workers. We, therefore, particularly appeal to the youth of the country to contact the members of the panel and to offer their services in a manner which the panel may require so that the sex workers can be uplifted from their present degraded condition. They may contact the panel at the email address: *panelonsexworkers@gmail.com*.

22. List the case again before this Bench on 24.08.2011 at 10.30 a.m. by which date the Panel appointed by us should submit another report of the progress made.

N.J. Matter adjourned.

SUCHETAN EXPORTS P. LTD.
v.
GUPTA COAL INDIA LIMITED AND ORS.
(Special Leave Petition (C) No. 20100 of 2011)

AUGUST 02, 2011

[ALTAMAS KABIR, CYRIAC JOSEPH AND SURINDER SINGH NIJJAR, JJ.]

Contract – High Seas Sale Agreement – Respondent no.1/seller and Petitioner/purchaser entered into an Agreement for sale and purchase of 16,943 metric tonnes of South African Coal – Respondent no.1 delivered the entire consignment of 16,943 metric tones through Respondent no.3 to Respondent no.2 (the stevedore agent) for transmission to Petitioner – Respondent No.2 handed over 9,542.920 metric tonnes to the Petitioner – Balance quantity of coal amounting to 7400.082 metric tones remained with Respondent No.2 – Respondent no.1 raised High Seas Sales Invoice – Dispute between Respondent No.1 and Petitioner – Respondent No.1 filed Civil Suit, inter alia, for a declaration that the Petitioner had committed breach of contract and also claimed return of the balance quantity of coal, amounting to 7400.082 metric tonnes, lying with Respondent No.2 and for a decree against the Petitioner towards the balance payment of the 9,542.920 metric tonnes of coal delivered to it by Respondent No.2 – Respondent No.1 also claimed permanent injunction to restrain Respondent Nos.2 and 3 from handing over the balance amount of coal measuring 7400.082 metric tonnes lying with Respondent No.2, either to the Petitioner or to any other person – Respondent No.1 also prayed for an interim order in the same terms and also sought a direction in the form of a mandatory injunction to Respondent No.2 to hand over the balance coal to Respondent No.1 – On 9-2-2011, trial court passed an ex-parte order of injunction restraining

Respondent Nos.2 and 3 from handing over the custody of the balance coal weighing 7400.082 metric tonnes to any person and particularly to the Petitioner – Subsequently, by its order dated 16-4-2011, the trial court also allowed the application of Respondent No.1 for temporary injunction and confirmed the ad-interim injunction granted earlier on 9-2-2011 – The trial court also passed an order of injunction in mandatory form directing Respondent No.2 to hand over the balance coal of 7400.082 metric tonnes in its possession to Respondent No.1 on payment of rent, if any, due from the said Respondent – High Court modified the order of the trial court passed on 16-4-2011 by directing the Petitioner to deposit an amount of Rs.6,19,58,123/- in the Trial Court, within a period of six weeks and further directing that if such amount was deposited within a stipulated period by the Petitioner, the application for grant of temporary injunction filed by Respondent no.1 shall stand dismissed – Held: Having entered into an agreement to purchase the coal in question it was upto the Petitioner to fulfill its obligation towards the payment of the price of the coal and to lift the same from the Stevedore/Respondent No.2, having particular regard to the fact that the Agreement was a High Seas Sales Agreement which entails clearance of the goods from the vessel and its entrustment with the Stevedore which involved heavy costs per diem – Prima facie, the terms of the High Seas Sales Agreement appear to indicate that till the entire sale price was paid by the Petitioner to Respondent No.1, Respondent No.1 would retain its lien over the coal in question and title would pass to the Petitioner only on payment of the full price of the goods – However, having regard to the fact that an opportunity had been given to the Petitioner to lift the said balance quantity of coal on deposit of Rs. 6,19,58,123/- within the stipulated period of six weeks, the instant SLP is disposed of, by modifying the order of the High Court to the extent that in the event the Petitioner deposits the amount directed to be deposited by the High Court, after deduction of the price of the coal already lifted by Respondent No.1 within a period of

four weeks, the Petitioner will be entitled to lift the remaining quantity of coal lying in the custody of Respondent No.2 – In default of such deposit, the order of the High Court, subject to the above modification, will continue in full force – Sale of Goods Act, 1930 – s.45(1)(a), s.46(1)(a) r/w s.47(1) and s.49(1)(a),(b) and (c) .

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 20100 of 2011.

From the Judgment & Order dated 06.06.2011 of the High Court of Judicature at Bombay, Nagpur Bench in Appeal from Order No. 53 of 2011.

Meenakshi Arora for the Petitioner.

Devashish Bharuka for the Respondents.

The Order of the Court was delivered by

O R D E R

ALTAMAS KABIR, J. 1. This order is being passed at the stage of notice on the Special Leave Petition filed by Suchetan Exports P. Ltd.,which was the Defendant No.1 in Special Civil Suit No.187 of 2011 filed by Gupta Coal India Limited, the Respondent No.1 herein.

2. Some of the facts disclosed in the Plaint and the Written Statement are not disputed. It is not disputed that on 12.4.2010, the Plaintiff and the Defendant No.1 entered into an Agreement for sale and purchase of South African Coal measuring 16,943 metric tonnes. The Plaintiff agreed to sell the said quantity of coal to the Defendant No.1 at US $111.75 per metric tonne. On 22.4.2010, the Plaintiff, i.e., the Respondent No.1 herein, entered into another High Seas Sale Agreement with the Defendant No.1/Petitioner herein. Clause 2 of the said Agreement provides that the Plaintiff/Respondent No.1 herein had imported 16,943 metric tonnes of Steaming Non Coking

Coal in bulk of South African origin and had shipped the same on MV Novios Meridian arriving at Dharamtar Port, under Bill of Lading Numbers 2, 3 and 4, all dated 8.4.2010. Clause 3 of the Agreement provides that the Plaintiff had agreed to sell and the Defendant No.1 had agreed to purchase the consignment of the coal on High Seas Sale basis, subject to the terms and conditions specified thereunder. Clause 3(b) of the Agreement provides that the quality determined and certified by an independent inspecting agency at Disport would be final and binding on both the parties.

3. On 22.4.2010, the aforesaid vessel containing coal imported through the Respondent No.3, Venkatesh Karriers Limited, reached the Dharamtar Port at Mumbai and according to the case made out in the plaint, the coal was delivered to the Respondent No.2, M/s United Shippers Limited, as the stevedore agent. On the same day, the Respondent No.1/ Plaintiff raised and delivered a High Seas Sales Invoice for an amount of Rs. 8,25,46,296/- upon the Petitioner herein for sale of the said coal. Consequent thereupon, the Respondent No.2 handed over the total quantity of 9,542.920 metric tonnes to the Petitioner till the date of filing of the suit. The balance quantity of coal amounting to 7400.082 metric tonnes was lying with the Respondent no.2 out of the total quantity of 16,943 metric tonnes received by it from the Petitioner.

4. Since the Petitioner failed to pay the balance sum of Rs. 5,82,58,560/-, the Respondent No.1 filed Special Civil Suit No.187 of 2011, *inter alia*, for a declaration that the Petitioner had committed breach of contract and that the Agreements dated 12.4.2010 and 22.4.2010 stood cancelled and terminated. The Respondent No.1 also claimed return of the balance quantity of coal, amounting to 7400.082 metric tonnes, lying with the Respondent No.2 and for a decree for an amount of Rs. 1,22,04,349/- against the Petitioner towards the balance payment of the 9,542.920 metric tonnes of coal delivered to it by the Respondent No.2. Certain other claims were also made

regarding interest and payment of demurrage charges incurred after the date of filing of the suit, as also the L/C discounting charges of Rs. 7,19,483/-. The Respondent No.1 also claimed permanent injunction to restrain the Respondent Nos.2 and 3 from handing over the balance amount of coal measuring 7400.082 metric tonnes lying with the Respondent No.2 at Dharamtar Port, Mumbai, either to the Petitioner or to any other person. By an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, the Plaintiff/Respondent No.1 also prayed for an interim order in the same terms and also sought a direction in the form of a mandatory injunction to the Respondent No.2 to hand over the balance coal to the Respondent No.1.

5. The claim of the Respondent No.1 was opposed by the Petitioner by filing a Written Statement. On 9.2.2011, the trial court passed an ex-parte order of injunction restraining the Respondent Nos.2 and 3 from handing over the custody of the balance coal weighing 7400.082 metric tonnes to any person and particularly to the Petitioner. Subsequently, by its order dated 16.4.2011, the trial court allowed the application of the Respondent No.1 for temporary injunction and confirmed the ad-interim injunction granted earlier on 9.2.2011. The trial court also passed an order of injunction in mandatory form directing the Respondent No.2 to hand over the balance coal of 7400.082 metric tonnes in its possession to the Respondent No.1 on payment of rent, if any, due from the said Respondent.

6. Aggrieved thereby, the Petitioner preferred an appeal before the Nagpur Bench of the Bombay High Court, being Appeal from Order No.53 of 2011.

7. From the submissions made on behalf of the respective parties, the High Court noted that after taking into consideration all the claims of the Respondent No.1, the total amount due from the Petitioner in respect of the transaction was Rs. 6,19,58,123/-. On the other hand, it was the Petitioner's claim that the suit as filed by the Respondent No.1 was not for recovery of money

for the goods supplied, but for cancellation/ termination of the Agreements dated 12.4.2010 and 22.4.2010, which were governed by the provisions of Section 46(1)(a) read with Section 47(1) of the Sale of Goods Act, 1930. On behalf of the Petitioners, it was also contended before the High Court that the title and ownership of the goods had already passed to the Petitioner. It was also urged that when the entire quantity of coal was delivered to the Respondent No.2 for the purpose of transmission of the same to the Petitioner without reserving the right of disposal of the goods, the lien on the goods stood terminated in view of the provisions of Section 49(1)(a), (b) and (c) of the aforesaid Act. It had also been urged that at best the Respondent No.1 herein would be an "Unpaid Seller" as defined in Section 45(1)(a) of the aforesaid Act, and would be entitled only to recovery of cost of the goods supplied. It was also submitted that since the Respondent No.1 had lost its possession over the coal, even the question of exercise of the rights of an unpaid seller and the seller's lien, did not arise.

8. Taking into consideration the submissions made on behalf of the respective parties and the materials placed on record, the High Court by the impugned order allowed the appeal in part and modified the order of the trial court passed on 16.4.2011 in Special Civil Suit No.187 of 2011, in the following manner :-

"(a) The defendant no.1 is directed to deposit an amount of Rs.6,19,58,123/- (Rupees Six Crores Nineteen Lacs Fifty Eight Thousand One Hundred Twenty Three Only) in the Trial Court, within a period of six weeks from today.

(b) If such amount is deposited, within a stipulated period by the defendant no.1, the application Exh.5 for grant of temporary injunction filed by the plaintiff, shall stand dismissed.

(c) If the defendant no.1 fails to deposit an amount of Rs.6,19,58,123/- (Rupees Six Crores Nineteen Lacs Fifty

Eight Thousand One Hundred Twenty Three Only), within a stipulated period, the order of injunction passed by the Trial Court below Exh.5 on 16.4.2011, shall continue to operate pending the decision of the suit.

(d) The plaintiff shall be at liberty to file an application for withdrawal of the said amount if deposited by the defendant no.1 and the same shall be decided by the Trial Court, within a period of four weeks from the date of serving copy of the application, upon the defendant no.1 or his Counsels."

9. Appearing for the Petitioner/Defendant No.1, Mr. Ranjit KumaMr. Biji Mathew, Adv.r, learned Senior Advocate, reiterated the submissions which had been made before the High Court. In addition, learned senior counsel indicated that since the Petitioner had already paid a total sum of Rs. 3,42,88,767/-, including payments made to the customs and port authorities, to the Respondent No.1, the trial court as also the High Court, erred in directing the Petitioner to deposit a further sum of Rs.6,19,58,123/- as against the balance quantity of the coal, in order to lift the same. Mr. Ranjit Kumar also urged that the High Court had also erred in passing a conditional order that if the amount as indicated hereinabove was deposited within the stipulated period by the Petitioner, then the application for temporary injunction filed by the Respondent No.1 would stand dismissed. However, in default of deposit of the said amount within the stipulated period, the order of injunction passed by the trial court would continue to operate pending the decision of the suit. Mr. Ranjit Kumar submitted that having regard to the provisions of the Sale of Goods Act referred to hereinabove and in particular Section 49(1)(a) thereof, once the Respondent No.1 had lost possession over the goods, it also lost its lien thereupon and is no longer entitled to pray for recovery of the goods from the Respondent No.2.

10. Mr. Ranjit Kumar submitted that the Petitioner was ready and willing to deposit the balance price of the remaining

quantity of the coal measuring 7400.082 metric tonnes for lifting the same and the other claims of the Respondent No.1 towards demurrage and port charges etc. could be decided by the trial court in the pending suit.

11. Mr. Ranjit Kumar also urged that by allowing the Respondent No.1's prayer for interim relief and passing a mandatory order of injunction thereupon, both the trial court as well as the High Court, had provided the Respondent No.1 with the ultimate relief prayed for in the suit at the interim stage and if the remaining quantity of coal was allowed to be removed by the Respondent No.1, the suit of the Respondent No.1 would stand decreed at the interim stage.

12. Mr. Ranjit Kumar's submissions were opposed by Mr. P.S. Patwalia, learned Senior Advocate appearing for the Respondent No.1 Company. It was urged that on the failure of the Petitioner to deposit the amounts in terms of the orders passed by the trial court, as also the High Court, the interim order staying the handing over of the balance quantity of goods by the Respondent No.2 to the Respondent No.1, stood vacated and thereafter different quantities of coal had been lifted by the Respondent No.1 from the Respondent No.2 in order to recover the amounts already paid by it to the foreign seller. It was submitted that not only was the Respondent No.1 out of pocket in respect of the sale price already paid by it to the foreign seller, but even the Petitioner had not paid the price of the coal which was lying with the Respondent No.2, which had compelled the Respondent No.1 to lift the balance coal lying with the Respondent No.2 and to dispose of the same after the period stipulated by the High Court for deposit of the outstanding dues had expired.

13. We have carefully considered the submissions made on behalf of the respective parties and we see no reason to interfere with the orders passed by the trial court and the High Court. Having entered into an Agreement to purchase the coal in question it was upto the Petitioner to fulfil its obligation

towards the payment of the price of the coal and to lift the same from the Stevedore/Respondent No.2, having particular regard to the fact that the Agreement was a High Seas Sales Agreement which entails clearance of the goods from the vessel and its entrustment with the Stevedore which involved heavy costs per diem. In this regard, paragraph 3 of the aforesaid Agreement, inter alia, provides that the Respondent No.1/seller would have a lien over the cargo unless payment was made in full and the Petitioner/purchaser subrogated its right of insurance claim in favour of the Respondent No.1. It was also stipulated that the quality was to be determined and certified by an independent inspection agency of Disport and the same would be final and binding on both the parties. It was further stipulated that the seller would thereupon transfer the rights in respect of the goods to the buyer by endorsing in favour of the buyer a set of negotiable documents and hand over the same to the latter.

14. Prima facie, the terms of the High Seas Sales Agreement appear to indicate that till the entire sale price was paid by the Petitioner to the Respondent No.1, the Respondent No.1 would retain its lien over the coal in question and title would also pass to the Petitioner on payment of the full price of the goods.

15. It would not be proper for us at the interlocutory stage to make any further observations regarding the rights of the parties in respect of the balance quantity of coal which was lying with the Respondent No.2 after delivery of 9,542.920 metric tonnes to the Petitioner out of the total consignment of 16,943 metric tonnes. However, in view of Mr. Ranjit Kumar's submissions and having regard to the fact that an opportunity had been given to the Petitioner to lift the said balance quantity of coal on deposit of Rs.6,19,58,123/- within the stipulated period of six weeks, we dispose of the Special Leave Petition by modifying the order of the High Court to the extent that in the event the Petitioner deposits the amount directed to be

deposited by the High Court, after deduction of the price of the coal already lifted by the Respondent No.1 within a period of four weeks, the Petitioner will be entitled to lift the remaining quantity of coal lying in the custody of the Respondent No.2. In default of such deposit, the order of the High Court, subject to the above modification, will continue in full force.

16. In the facts of the case, the parties will bear their own costs.

B.B.B. Special Leave Petition disposed of.

M/S. SHARMA TRANSPORTS
v.
THE STATE OF MAHARASHTRA & ORS.
(Civil Appeal No. 1507 of 2007)

AUGUST 02, 2011

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

Central Motor Vehicles Rules, 1989: rr.128(9), 93 – Restriction of carrying luggage on the roof of a tourist vehicle as provided u/s.128(9) – Validity of – Held: r.128(9) specifically provides that in a tourist vehicle, the permit holder should only provide luggage holds at the rear or at the sides or both, of the tourist vehicle with sufficient space and size – When the Rules specifically make a provision in regard to the place where luggage holds shall be provided by necessary implication, it goes to exclude all the other places of the tourist vehicle for being used as luggage holds – r.128 is a special provision for tourist vehicles which excludes general r.93 to the extent of conflict between the former and the latter – As regards the question of incorporation of r.93 into r.128, it is not the whole r. 93 that is incorporated into r. 128 – Plain reading of r.93(3) and (3A) shows that these sub-rules are not applicable to tourist vehicles, as sub-Rule (3) is applicable only to "an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of individual load of exceptional length" and sub-Rule (3A) is applicable to "construction equipment vehicle" – Only sub-Rule (1) of r.93, which is in reference to "a motor vehicle", will be incorporated and read into r.128 by virtue of sub-Rule (1) of r.128 – Therefore, r. 93 must not be fully incorporated into r.128 so as to imply that the transporters may load goods on the roof of a tourist vehicle due to the reference to a ladder to upload luggage found in sub-Rules (3) and (3A) – Both these sub rules specifically refer to vehicles for carrying heavy loads

and not for carrying tourists – Therefore, the luggage of the passengers may only be stored in the compartments provided at the sides and/or at the rear of the bus, as the buses are mandated to provide sufficient space for the storage of luggage – Motor Vehicles Act, 1988.

Constitution of India, 1950: Article 19(1)(g) – Restriction of carrying the luggage on the roof of a tourist vehicle imposed by r.128(9) of the Central Motor Vehicles Rules, 1989 – Reasonableness of – Held: The restriction imposed by r.128(9) is a reasonable restriction keeping in view the safety of the passengers in a tourist vehicle – Therefore, the Rule cannot be said either arbitrary or unreasonable or violative of Article 19(1)(g).

Interpretation of statutes: Held: The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication of such meaning and is likely to lead to absurd result, in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words – When the language used in the statute is clear and unambiguous, it is the duty of the court to give effect to it – Central Motor Vehicles Rules, 1989 – r.128(9).

Motor Vehicles Act, 1988: s.2(43) – Expression 'tourist vehicle' – Meaning of.

The appellants-transporters were the permit holders of the vehicles registered as tourist vehicles. The Registration Certificate stated that the vehicles complied with all the requirements of Rule 128 of the Central Motor Vehicles Rules, 1989. Aggrieved with the imposition of fine for each entry and exit from the transporters for carrying goods on the roof of the vehicles with tourist permits, the appellants filed writ petition before the High Court. The High Court dismissed the writ petition holding

that by virtue of Rule 128(9) of the Rules, luggage of the passengers could be stored only in the rear and side of the vehicle and not on the roof of the vehicle.

In the instant appeals, it was contended for the appellants that in Rule 128(9), there was no express bar on carriage of luggage on the roof of the vehicles; that the Rule provided that the transporters should provide space for the luggage of the passengers at the rear and sides of the vehicle, but does not prohibit carrying the luggage on the roof of the vehicle; that Rule 93 regulates the overall dimensions of motor vehicles, by virtue of Rules 128(1) gets incorporated into Rule 128; and that restriction of carrying the luggage on the roof of a vehicle unreasonably restricts the rights of the transporters to carry on trade or business which is violative of Article 19(1)(g) of the Constitution.

Dismissing the appeals, the Court

HELD: 1.1. Section 2(43) of the Motor Vehicles Act defines the meaning of the expression 'tourist vehicle' to mean a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Section 110 of the Act authorizes the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to matters enumerated in Clause (a) to (p) of the Section. In exercise of the power so conferred, the Central Government has framed special provisions with respect to tourist vehicles other than motor cabs, etc. Apart from others, it provides for specification for dimension and luggage holds for a tourist vehicle. Rule 128(1), by way of incorporation, provides that the dimension of a tourist vehicle shall conform to the dimensions specified in Rule 93 of the Rules. Rule 128(9) is a special provision meant for laying down specifications for a tourist vehicle. The

sub-Rule specifically provides that in a tourist vehicle, the permit holder should only provide luggage holds at the rear or at the sides or both, of the tourist vehicle with sufficient space and size. When the Rules specifically make a provision in regard to the place where luggage holds shall be provided by necessary implication, it goes to exclude all the other places of the tourist vehicle for being used as luggage holds. Since the language of the Rule is clear and unambiguous, no other construction need be resorted to, to understand the plain language of the sub-Rule (a) of Rule 128 of the Rules. Rule 128 is a special provision for tourist vehicles which excludes General Rule 93 to the extent of conflict between the former and the latter. As regards the question as to incorporation of Rule 93 into Rule 128, it is not the whole Rule 93 that is incorporated into Rule 128. On a plain reading of Rule 93(3) and (3A), it is clear that these Sub-Rules are not applicable to tourist vehicles, as sub-Rule (3) is applicable only to "an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of individual load of exceptional length" and sub-Rule (3A) is applicable to "construction equipment vehicle". Only sub-Rule (1) of Rule 93, which is in reference to *"a motor vehicle",* will be incorporated and read into Rule 128 by virtue of sub-Rule (1) of Rule 128. In other words, the effect of Rule 128(1) with regard to the conformation to the dimensions specified in Rule 93 are applicable to tourist vehicles and no other sub-Rule. Therefore, Rule 93 must not be fully incorporated into Rule 128, thereby implying that the transporters may load goods on the roof of a tourist vehicle due to the reference to a ladder to upload luggage found in sub-Rules (3) and (3A). Both these sub rules specifically refer to vehicles that are for the purpose of carrying heavy loads and not for carrying tourists. [Paras 11, 13, 14] [709-F-H; 710-A-B; 713-B-H; 714-A-B]

1.2. The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication of such meaning and is likely to lead to absurd result, in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words. When the language used in the statute is clear and unambiguous, it is the duty of the court to give effect to it. Rule 128 (9) places a prohibition on carrying of luggage on the roof of a tourist vehicle. Since there is no ambiguity in the language of Rule 128 (9), there is no reason to read the same into the Rules. The luggage of the passengers may only be stored in the compartments provided at the sides and/or at the rear of the bus, as the buses are mandated to provide sufficient space for the storage of luggage. [Paras 15, 21, 22] [714-C-D; 716-C-F]

Grasim Industries Ltd. v. Collector of Customs, Bombay **(2002) 4 SCC 297: 2002 (2) SCR 945;** *Bhavnagar University v. Palitana Sugar Mill (PV) Ltd.* **(2003) 2 SCC 111: 2002 (4) Suppl. SCR 517;** *Harshad S. Mehta v. State of Maharashtra* **(2001) 8 SCC 257: 2001 (2) Suppl. SCR 577;** *Union of India v. Hansoli Devi* **(2002) 7 SCC 273: 2002 (2) Suppl. SCR 324;** *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh* **(2001) 3 SCC 594: 2001 (2) SCR 118;** *Nazir Ahmed v. King Emperor* **AIR 1936 PC 253 – relied on.**

Taylor v. Taylor **(1875-76) L.R. 1 Ch.D.426 – referred to.**

2. The restriction imposed by Rule 128(9) is a reasonable restriction keeping in view the safety of the passengers in a tourist vehicle. Therefore, the Rule cannot be said either arbitrary or unreasonable or violative of Article 19(1)(g) of the Constitution. [Para 23] [716-H; 717-A-B]

Case Law Reference:

2002 (2) SCR 945	**relied on**	**Para 16**
2002 (4) Suppl. SCR 517	**relied on**	**Para 17**
2001 (2) Suppl. SCR 577	**relied on**	**Para 18**
2002 (2) Suppl. SCR 324	**relied on**	**Para 19**
2001 (2) SCR 118	**relied on**	**Para 20**
(1875-76) L.R. 1 Ch.D.426	**referred to**	**Para 22**
AIR 1936 PC 253	**relied on**	**Para 22**

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 1507 of 2007.

WITH

C.A. Nos. 1508, 1492, 1509, 1493 & 1494 of 2007.

W.P. (C) Nos. 100, 668 of 2007 & 566 of 2009.

Kiran Suri, M.A. Chinnasamy, Rani Chhabra, Sanjay R. Hegde, Shiv Sagar Tiwari for the Appellant.

Madhavi Divan, Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. These appeals and writ petitions are directed against the order of the High Court of Judicature at Bombay in Writ Petition No.3 of 1996 dated 21.07.2006, whereby the High Court has held that transporters (writ petitioners before the High Court) could only provide luggage space at the rear or the sides of a tourist vehicle as mandated by Rule 128(9) of the Central Motor Vehicles Rules, 1989 [hereinafter referred to as "the Rules"], and no luggage could be carried on the roof of the vehicle. The prayer in the writ petitions is to direct the respondents therein not to check, levy and collect the compounding fee from the vehicles of the petitioners.

2. The transport operators [hereinafter referred to as the "transporters"] are in appeal by special leave before us, claiming that they have the right to carry luggage of the passengers on the roof of their vehicles. In all, there are six appeals and three writ petitions before us, but for the sake of convenience, we will refer to the factual scenario in C.A. No. 1507 of 2007, as the same dicta will also be applicable to the rest of the matters.

3. The transporters operate tourist vehicles between the States of Karnataka and Maharashtra and have been granted tourist permits by the State Transport Authority of Karnataka under Section 88 of the Motor Vehicles Act, 1988 [hereinafter referred to as "the Act"]. The respondents, by their communication/circular dated 15.12.1995 had issued instructions to all the subordinate authorities under the Act to ensure that there was no luggage carried on the roof of the vehicles, as the same was not permissible under law. Due to this instruction, the checking authorities had started imposing and collecting fines to the tune of `1500/- for each entry and exit from the transporters for carrying goods on the roof of vehicles with tourist permits.

4. Aggrieved by this imposition and collection of fine, the transporters preferred a writ petition before the Bombay High Court inter-alia seeking the following relief/(s):

> "(i) Writ of Mandamus or any other appropriate Writ, Order or Direction and prohibit the 3rd and 4th Respondents and their sub-ordinate checking officers from checking, levying and collecting the compounding fee from the vehicles of the Petitioners on the alleged offence of carriage of goods on the top of the vehicle.
>
> (ii) A Writ in the nature of Certiorari or any other appropriate Writ, Order, Direction and quash memo receipts issued to several vehicles of the Petitioners vide Annexure 'C' produced in the Writ Petition.

> (iii) A Writ in the nature of Declaration or any other appropriate Writ, Order or Direction and direct the Respondent not to levy and collect illegal compounding fee for carriage of goods on the top of the Petitioners vehicles as per the limits prescribed.
>
> (iv) Direct the 3rd and 4th Respondents to refund the compound fee already collected from the Petitioners."

5. The Division Bench of the Bombay High Court dismissed the writ petition holding that by virtue of Rule 128 (9) of the Rules, luggage of the passengers could be stored only in the rear and side of the vehicle and not on the roof of the vehicle. The High Court held:

> "15… The specifications are aimed at securing safety and security of the passengers so also the luggage and thus the same needs to be meticulously adhered to. It has been stated in the affidavit in reply that on account of the loading of the luggage on the roof of the vehicle in huge quantities or weights, unevenly kept, is likely to result in exposing the vehicle to accidents and as such the respondents insistence in not permitting keeping of the luggage on the roof of the vehicles is justified.
>
> 16. Having regard to the language used in sub rule 9(i) which mandates that the luggage holds shall be provided at the rear or at the sides or both, what is intended is exclusion of the making of a provision for luggage holds at any other place. Sub rule 9(i) is indicative of the mandatory nature of the provisions as the phraseology used is "that the luggage holds shall be provided at the rear or at the sides or both of the tourist vehicle…". 'Shall' is ordinarily used to indicate the provisions to be mandatory. It is also settled position of law that if a provisions (sic.) requires a thing to be done in a particular manner, it has to be so done, or not at

all. When the provision indicate place or places where luggage holds are to be provided, by necessary implication, other places for luggage holds stand excluded. In this view of the matter we proceed to accept the interpretation of Rule 128(9) as contended by the learned counsel for respondents. We are not accepting the submission of the petitioner that in the absence of a specific restriction in regard to having luggage holds/carrier on the roof of the vehicle the petitioners cannot be prevented from carrying the goods/luggage on the roof of the vehicle. On the contrary we are of the clear view that luggage has to be stored at the places specifically permitted by sub rule 9(i) viz., at the rear or at sides or both, but not the roof of the vehicle."

6. The transporters are represented by Shri. Rakesh Dwivedi, learned senior counsel, and Ms. Madhavi Divan, learned counsel appears for the respondent–State.

7. The learned senior counsel, Shri. Rakesh Dwivedi, submits that in Rule 128 (9), there is no express bar on carriage of luggage on the roof of the vehicles. He states that the Rule requires that the transporters should provide space for the luggage of the passengers at the rear and the sides of the vehicle, but does not prohibit carrying the luggage on the roof of the vehicle. On the contrary, the learned senior counsel states that Rule 93, which regulates the overall dimensions of motor vehicles, by virtue of Rule 128 (1), gets incorporated into Rule 128. Shri. Dwivedi pointed out to the Explanations to sub-Rule (3) and sub-Rule (3A), where it is expressly stated that any ladder provided for uploading luggage on the roof of a vehicle shall be excluded while calculating the "overall length" of the vehicle. He also refers to sub rule (4), (6A) and (8) of Rule 93. In view of this, the learned senior counsel would contend that in the absence of an express bar of carrying luggage on the

roof of the vehicle, a vehicle could carry luggage on the roof of a vehicle. Shri. Dwivedi further draws our attention to Rule 125C and the Automotive Industry Standards Code of Practice for Bus Body Design and Approval ("AIS specification" for short) to contend that there is no express prohibition from carrying luggage on the roof of the vehicle.

8. Summing up the arguments, Shri Dwivedi would urge before us that on a conjoint reading of the Rules, it is clear that there was no prohibition for the transporters to carry luggage of the passengers on the roof of tourist vehicles. It is also argued that such restriction of carrying the luggage on the roof of a vehicle unreasonably restricts the right of the transporters to carry on trade or business which would be violative of Article 19(1)(g) of the Constitution. In aid of his submissions, Shri Dwivedi, learned senior counsel, draws our attention to a view taken by the Karnataka High Court.

9. Per contra, Ms. Madhavi Divan, learned counsel for the respondent, states that Rule 128 (9) requires that sufficient space be provided at the rear and/or the sides of the vehicle. Ms. Divan lays emphasis on the phrase "sufficient space and size" and contends that the transporter is required compulsorily to provide adequate space for the luggage of the passengers of a tourist vehicle. She states that there is a limit on how much luggage a passenger can carry and such luggage must be stored only in the luggage compartment provided for in accordance with Rule 128 (9). The learned counsel further submits that the incorporation of Rule 93 into Rule 128 is only for the purpose of complying with the dimensions of the vehicle laid down in that Rule and the reference to the ladder for loading luggage on the roof is only for the purpose of excluding the length of the ladder, while calculating the overall dimensions of the vehicle, and does not, in any way, imply that a tourist vehicle may carry luggage on the roof of the vehicle. She further states that Rule 128(9) is a special provision for tourist vehicles only and they would override any general provision like Rule 93, and that loading any luggage on the roof of a vehicle is

detrimental to the balance of the vehicle and thereby the safety of the passengers inside the vehicle. Ms. Divan also states that the transporters are duty bound by Rule 128(9) to ensure that there is sufficient space to house the luggage of the passengers and any plea of placing the extra luggage on the roof of the vehicle due to insufficiency of space in the compartment at the rear and/or sides of the vehicle, would itself be a violation of the Rule. By placing reliance on case laws, the learned counsel states that if something is provided for in a particular manner, then it must be done in that manner, or not at all. She further states that there is a clear distinction between luggage and goods as defined by Section 2(13) of the Act, and that the real intention of the transporters by this appeal is to carry goods on the roof of the tourist vehicles, as is clear from their prayer in the writ petition before the High Court.

Both the learned counsel have cited some case laws before us, which we will deal with, as and when required.

10. The issue involved is whether a transporter can provide luggage carriers on the roof of his vehicle.

11. The transporters are the permit holders of the tourist vehicles. The vehicles are registered as tourist vehicles and endorsement is recorded on the Registration Certificate that tourist vehicle complies with all the requirements of Rule 128 of the Rules. Section 2 of the Act defines the meaning of the expression 'contract carriage'. Section 2(43) defines the meaning of the expression 'tourist vehicle' to mean a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf. Section 110 of the Act authorizes the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to matters enumerated in Clause (a) to (p) of the Section. In exercise of the power so conferred, the Central Government has framed special provisions with respect to tourist vehicles other than motor cabs, etc. Apart from others,

it provides for specification for dimension and luggage holds for a tourist vehicle. Rule 128(1), by way of incorporation, provides that the dimension of a tourist vehicle shall conform to the dimensions specified in Rule 93 of the Rules. Rule 128(9) provides that the luggage holds shall be provided at the rear or at the sides or both, of the tourist vehicle. The relevant portion of Rule 93 of the Rules is as under:

"Overall dimension

93. Overall dimension of motor vehicles.—(1) The overall width of a motor vehicle, measured at right angles to the axis of the motor vehicle between perpendicular planes enclosing the extreme points, 134 shall not exceed 2.6 metres.

Explanation.—For purposes of this rule, a rear-view mirror, or guard rail or a direction indicator rub-rail (rubber beading) having maximum thickness of 20 mm on each side of the body shall not be taken into consideration in measuring the overall width of a motor vehicle.

……

(3) In the case of an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of individual load of exceptional length,—

(i) if all the wheels of the vehicle are fitted with pneumatic tyres, or

(ii) if all the wheels of the vehicle are not fitted with pneumatic tyres, so long as the vehicle is not driven at a speed exceeding twenty-five kilometers per hour, the overall length shall not exceed 18 metres.

Explanation.—For the purposes of this rule "overall length" means the length of the vehicle measured between parallel planes passing through the extreme projection points of

the vehicle exclusive of—

(i) a starting handle;

(ii) any hood when down;

(iii) any fire-escape fixed to a vehicle;

(iv) any post office letter-box, the length of which measured parallel to the axis of the vehicle, does not exceed 30 centimeters;

(v) any ladder used for loading or unloading from the roof of the vehicle or any tail or indicator lamp or number plate fixed to a vehicle;

(vi) any spare wheel or spare wheel bracket or bumper fitted to a vehicle;

(vii) any towing hook or other fitment which does not project beyond any fitment covered by clauses (iii) to (vi).

(3-A)The overall length of the construction equipment vehicle, in travel shall not exceed 12.75 metres:

Provided that in the case of construction equipment vehicle with more than two axles, the length shall not exceed 18 metres.

Explanation.—For the purposes of this sub-rule "overall length" means the length of the vehicle measured between parallel planes through the extreme projection points of the vehicle, exclusive of—

(i) any fire-escape fixed to a vehicle;

(ii) any ladder used by the operator to board or alight the vehicle;

(iii) any tail or indicator lamp or number plate fixed to a vehicle;

(iv) any sphere wheel or sphere wheel bracket or bumper fitted to a vehicle;

(v) any towing hook or other fitments;

(vi) any operational attachment on front, rear or carrier chassis of construction equipment vehicle in travel mode.

……"

Rule 128(9) of the Rules is as under:

"…

(9) Luggage.—(i) Luggage holds shall be provided at the rear or at the sides, or both, of the tourist vehicle with sufficient space and size, and shall be rattleproof, dustproof and waterproof with safety arrangements;

(ii) The light luggage racks, on strong brackets shall be provided inside the passenger compartment running along the sides of the tourist vehicle. Except where nylon netting is used, the under side of the rack shall have padded upholstery to protect the passengers from an accidental hit. The general design and fitment of the rack shall be so designed as to avoid sharp corners and edges."

12. Chapter V of the Act relates to control of transport vehicles. Section 66 prescribes the necessity of a permit, without which, the vehicle cannot be used in any public place. Section 84 deals with general conditions attaching to all permits. These conditions are deemed to be incorporated in every permit. One of the general conditions is that the vehicle is, at all times, to be so maintained as to comply with the requirements of the Act and the Rules made thereunder. The authorities are empowered to cancel or suspend the permit on the breach of any of the general conditions specified in Section

84 or any other condition which is contained in the permit. Section 86 of the Act lays down the power of cancellation and suspension of permit and Section 200 of the Act confers power on the State Government that it may, by notification in the official gazette, specify the various compounding fees for the breach of the permit conditions.

13. Rule 128 (9) is a special provision meant for laying down specifications for a tourist vehicle. The sub-Rule specifically provides that in a tourist vehicle, the permit holder should only provide luggage holds at the rear or at the sides or both, of the tourist vehicle with sufficient space and size. When the Rules specifically make a provision in regard to the place where luggage holds shall be provided by necessary implication, it goes to exclude all the other places of the tourist vehicle for being used as luggage holds. In our view, since the language of the Rule is clear and unambiguous, no other construction need be resorted to understand the plain language of the sub-Rule (a) of Rule 128 of the Rules. Rule 128 is a special provision for tourist vehicles which excludes General Rule 93 to the extent of conflict between the former and the later.

14. On a close examination of the argument on the incorporation of Rule 93 into Rule 128, we find that it is not the whole Rule 93 that is incorporated into Rule 128. On a plain reading of Rule 93 (3) and (3A), on which the transporters have heavily relied upon, it is clear that these Sub-Rules are not applicable to tourist vehicles, as sub-Rule (3) is applicable only to *"an articulated vehicle or a tractor-trailer combination specially constructed and used for the conveyance of individual load of exceptional length"* and sub-Rule (3A) is applicable to *"construction equipment vehicle"*. Only sub-Rule (1) of Rule 93, which is in reference to *"a motor vehicle",* will be incorporated and read into Rule 128 by virtue of sub-Rule (1) of Rule 128. In other words, the effect of Rule 128(1) with regard to the conformation to the dimensions specified in Rule

93 are applicable to tourist vehicles and no other sub-Rule. Therefore, we are not inclined to agree with Shri Dwivedi that Rule 93 must be fully incorporated into Rule 128, thereby implying that the transporters may load goods on the roof of a tourist vehicle due to the reference to a ladder to upload luggage found in sub-Rules (3) and (3A). Both these sub rules specifically refer to vehicles that are for the purpose of carrying heavy loads and not for carrying tourists.

15. The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the Statute gives a different indication of such meaning and is likely to lead to absurd result, in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words. When the language used in the statute is clear and unambiguous, it is the duty of the court to give effect to it.

16. In *Grasim Industries Ltd. v. Collector of Customs, Bombay,* (2002) 4 SCC 297, this Court took the view:

> "10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. Wherever the

language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided…"

17. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111, this Court held:

"24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

18. In the case of *Harshad S. Mehta v. State of Maharashtra,*(2001) 8 SCC 257, this Court opined:

"34. There is no doubt that if the words are plain and simple and call for only one construction, that construction is to be adopted whatever be its effect…"

19. In the case of *Union of India v. Hansoli Devi*, (2002) 7 SCC 273, this Court observed:

"9…It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such

construction is more consistent with the alleged object and policy of the Act…"

20. In the case of *Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh,*(2001) 3 SCC 594, this Court took the view:

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

21. In light of the above, we are not inclined to agree with the submissions of the learned senior counsel for the appellants that Rule 128 (9) does not place a prohibition on carrying of luggage on the roof of a tourist vehicle. If that was so, it would have to be incorporated thus in the bare language of the provision. Since there is no ambiguity in the language of Rule 128 (9), there is no reason for us to read the same into the Rules.

22. In the case of *Taylor v. Taylor*, (1875-76) L.R. 1 Ch. D. 426, the Court took a view that if a particular method is prescribed for doing a certain thing by the Statute, it rules out any other method. This view has been adopted by the Privy Council in the case of *Nazir Ahmed v. King Emperor*, AIR 1936 PC 253. By this logic, we are inclined to accept the argument of Ms. Divan that the luggage of the passengers may only be stored in the compartments provided at the sides and/or at the rear of the bus, as the buses are mandated to provide sufficient space for the storage of luggage.

23. There is another argument advanced on behalf of the transporters before us, who claim that the prohibition to carry luggage of the passengers on the roof of the vehicle is an unreasonable restriction and, therefore, violative of Article 19(1)(g) of the Constitution. In our view, the restriction imposed by the Rule is a reasonable restriction keeping in view the

safety of the passengers in a tourist vehicle. Therefore, the Rule cannot be said either arbitrary or unreasonable or violative of Article 19(1)(g) of the Constitution. At the time of hearing of the appeals, reference was made to AIS specifications to contend that specification so provided support the interpretation given by the Karnataka High Court to Rule 128(a) of the Rules. In our view, this submission of the learned counsel for the appellants has no merit and is, therefore, rejected.

24. In the result, the appeals and writ petitions fail. They are dismissed. Costs are made easy.

D.G. Appeals dismissed.

SHEHAMMAL

v.

HASAN KHANI RAWTHER AND ORS.

(Special Leave Petition (C) No. 7421-7422 of 2008)

AUGUST 2, 2011

[ALTAMAS KABIR, CYRIAC JOSEPH AND SURINDER SINGH NIJJAR, JJ.]

Mohammedan Law: Right of spes successionis – Relinquishment of – Held: Chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release – Ordinarily there cannot be a transfer of spes successionis, but the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share – It could then operate as estoppel against the expectant heir to claim any share in the estate of the deceased on account of the doctrine of spes successionis – A testamentary disposition by a Mohammedan is binding upon the heirs if the heirs consent to the disposition of the entire property and such consent could either be express or implied – In the instant case, 'MR' got all sons and daughters except respondent no.1 to execute relinquishment deeds whereby they all relinquished their respective claim to properties belonging to 'MR' on receipt of some consideration – The methodology resorted to by 'MR' can be termed as a family arrangement – The five deeds of relinquishment executed by the five sons and daughters of 'MR' constituted individual agreements entered into between 'MR' and the expectant heirs – The heir expectants were estopped under the general law from claiming a share in the property of the deceased – Doctrine of spes successionis – Doctrine of estoppel – Transfer of Property Act, 1882.

One 'MR' was owner of the suit property comprising of 1.70 acres of land. The petitioner was his daughter.

Respondent nos.1 to 5 were sons and other daughters of 'MR'. The case of respondent no.1 was that he continued to stay with his father throughout his lifetime while other sons moved out of the family house on their marriage or after marriage and each time his children left the family house, 'MR' used to get them to execute relinquishment deeds whereby on the receipt of some consideration, each of them relinquished their respective claim to the properties belonging to 'MR'. Respondent no.1 was not required to execute any such deed as he continued to stay with 'MR'. 'MR' died intestate in 1986 leaving the suit property as his estate. Respondent no.1 filed a suit for declaration of title, possession and injunction in respect of the suit property basing his claim on an oral gift alleged to have been made in his favour by 'MR' in 1982. Thereafter respondent no.2 filed suit praying for injunction against respondent no.1 in respect of the suit property. The petitioner filed a suit for partition of the suit property on the basis of her claim to 1/9th share in the estate of 'MR'. The trial court by common order dismissed the suit filed by respondent no.1 and 2 respectively while it decreed the suit filed by the petitioner. The High Court allowed the appeal of respondent no.1 holding that even if respondent no.1 failed to prove the oral gift in his favour, he could not be non-suited since he alone was having the rights over the assets of 'MR' in view of the various deeds of relinquishment executed by the other sons and daughters of 'MR'.

The question which arose for consideration in these special leave petitions were whether in view of the doctrine of *spes successionis*, as embodied in Section 6 of the Transfer of Property Act, 1882, and in paragraph 54 of Mulla's "Principles of Mahomedan Law", a Deed of Relinquishment executed by an expectant heir could operate as estoppel to a claim that may be set up by the

Executor of such Deed after inheritance opens on the death of the owner of the property; whether on execution of a Deed of Relinquishment after having received remuneration for such future share, the expectant heir could be estopped from claiming a share in the inheritance; and can a Mohammedan by means of a Family Settlement relinquish his right of *spes successionis* when he had still not acquired a right in the property.

Dismissing the special leave petitions, the Court

HELD: 1.1. Chapter VI of Mulla's "Principles of Mahomedan Law" deals with the general rules of inheritance under Mohammedan law. Paragraph 54 which falls within the said Chapter relates to the concept of transfer of *spes successionis* which has also been termed as "renunciation of a chance of succession". The said paragraph provides that the chance of a Mohammedan heir–apparent succeeding to an estate cannot be said to be the subject of a valid transfer or release. The same is included in Section 6 of the Transfer of Property Act. Clause (a) of Section 6 lays down that the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. The provisions of Section 6(a) have to be read along with Section 2 of the Act, which provides for repeal of Acts and saving of certain enactments, incidents, rights, liabilities etc. It specifically provides that nothing in Chapter II, in which Section 6 finds place, shall be deemed to affect any rule of Mohammedan Law. [Para 17] [730-G-H; 731-A-D]

1.2. The Mohammedan Law enjoins in clear and unequivocal terms that a chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release. Section 6(a) of the Transfer

of Property Act was enacted in deference to the customary law and law of inheritance prevailing among Mohammedans. As opposed to that are the general principles of estoppel as contained in Section 115 of the Evidence Act and the doctrine of relinquishment in respect of a future share in property. Both the said principles contemplated a situation where an expectant heir conducts himself and/or performs certain acts which makes the two said principles applicable inspite of the clear concept of relinquishment as far as Mohammedan Law is concerned, as incorporated in Section 54 of Mulla's "Principles of Mahomedan Law". [Paras 19-20] [732-B-E]

2.1. There is little doubt that ordinarily there cannot be a transfer of *spes successionis,* but in the exceptions pointed out by this Court in *Gulam Abbas's* **case, the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share. It could then operate as estoppel against the expectant heir to claim any share in the estate of the deceased on account of the doctrine of *spes successionis.* [Para 23] [733-F-G]**

Gulam Abbas Vs. Haji Kayyum Ali & Ors. **AIR 1973 SC 554 – relied on.**

2.2. A testamentary disposition by a Mohammedan is binding upon the heirs if the heirs consent to the disposition of the entire property and such consent could either be express or implied. Thus, a Mohammedan may also make a disposition of his entire property if all the heirs signified their consent to the same. In other words, the general principle that a Mohammedan cannot by Will dispose of more than a third of his estate after payment of funeral expenses and debts is capable of being avoided by the consent of all the heirs. In effect, the same also amounts to a right of relinquishment of future

inheritance which is on the one hand forbidden and on the other accepted in the case of testamentary disposition. Having accepted the consideration for having relinquished a future claim or share in the estate of the deceased, it would be against public policy if such a claimant be allowed the benefit of the doctrine of *spes successionis.* In such cases, the principle of estoppel would be attracted. [Para 24] [734-F-H; 735-A-B]

3. The methodology resorted to by 'MR' can strictly be said to be a family arrangement. A family arrangement would necessarily mean a decision arrived at jointly by the members of a family and not between two individuals belonging to the family. The five deeds of relinquishment executed by the five sons and daughters of 'MR' constitute individual agreements entered into between 'MR' and the expectant heirs. However, in this case, the doctrine of estoppel is attracted so as to prevent a person from receiving an advantage for giving up of his/her rights and yet claiming the same right subsequently. Being opposed to public policy, the heir expectant would be estopped under the general law from claiming a share in the property of the deceased, as was held in Gulam Abbas's case. [Para 25] [735-C-F]

Latafat Hussain Vs. Bidayat Hussain **AIR 1936 All. 573;** *KochunniKochu Vs. Kunju Pillai* **(1956 Trav – Co 217;** *Thayyullathil Kunhikannan Vs Thayyullathil Kalliani And Ors.* **AIR 1990 Kerala 226** *Hameed Vs Jameela* **(2004 (1) KLT 586** *Mt. Khannum Jan vs. Mt. Jan Bibi* **(1827) 4 SDA 210 – referred to.**

Case Law Reference:

AIR 1973 SC 554	**relied on**	**Para 10,14, 15, 20, 23**
AIR 1936 All. 573	**referred to**	**Para 11**
(1956) Trav – Co 217	**referred to**	**Para 11**

AIR 1990 Kerala 226	**referred to**	**Para 11**
(2004 (1) KLT 586	**referred to**	**Para 11**
(1827) 4 SDA 210	**referred to**	**Paras 20, 23**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 7421-7422 of 2008.

From the Judgment and Order dated 18.10.2007 of the High Court of Kerala at Ernakulam in RFA No. 75 of 2004 and 491 of 2006.

WITH

SLP (C) Nos. 14303-14304 of 2008.

V. Giri M.T. George, Binoj C. Augustine, Harshad V. Hameed, K. Rajeev, K.N. Madhusoodhan and T.G. Narayanan Nair for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Special Leave Petition (Civil) Nos.7421-7422 of 2008 filed by one Shehammal and Special Leave Petition (Civil) Nos.14303-14304 of 2008 filed by one Amina and others, both directed against the final judgment and order dated 18.10.2007 passed by the Kerala High Court in R.F.A.No.75 of 2004 (B) and R.F.A.No.491 of 2006, have been taken up together for final disposal. The parties to the aforesaid SLPs, except for the Respondent No.6, Hassankhan, are siblings. While the petitioner in SLP(C)Nos.7421-7422 of 2008 is the daughter of Late Meeralava Rawther, the Respondent No.1, Hassan Khani Rawther, and the Respondent Nos.2 and 5 are the sons and the Respondent Nos.3 and 4 are the daughters of the said Meeralava Rawther. The Respondent No.6, Hassankhan, is a purchaser of the shares of the Respondent Nos.2 and 5, both heirs of Late Meeralava Rawther. The remaining respondents are the legal heirs of Muhammed Rawther, the second respondent before the High

Court. The petitioner in SLP(C)Nos.7421-7422 of 2008 is the plaintiff in O.S.No.169 of 1994 and the third defendant in O.S.No.171 of 1992, filed by Hassan Khani Rawther, is the Respondent No.1 in all the four SLPs.

2. Meeralava Rawther died in 1986, leaving behind him surviving three sons and three daughters, as his legal heirs. At the time of his death he possessed 1.70 acres of land in Survey No.133/1B of Thodupuzha village, which he had acquired on the basis of a partition effected in the family of deceased Meeralava Rawther in 1953 by virtue of Deed No.4124 of Thodupuzha, Sub-Registrars Office. Meeralava Rawther and his family members, being Mohammedans, they are entitled to succeed to the estate of the deceased in specific shares as tenants in common. Since Meeralava Rawther had three sons and three daughters, the sons were entitled to a 2/9th share in the estate of the deceased, while the daughters were each entitled to a 1/9th share thereof.

3. It is the specific case of the parties that Meeralava Rawther helped all his children to settle down in life. The youngest son, Hassan Khani Rawther, the Respondent No.1, was a Government employee and was staying with him even after his marriage, while all the other children moved out from the family house, either at the time of marriage, or soon, thereafter. The case made out by the Respondent No.1 is that when each of his children left the family house Meeralava Rawther used to get them to execute Deeds of Relinquishment, whereby, on the receipt of some consideration, each of them relinquished their respective claim to the properties belonging to Meeralava Rawther. The Respondent No.1, Hassan Khani Rawther, was the only one of Meeralava Rawther's legal heirs who was not required by his father to execute such a deed.

4. Meeralava Rawther died intestate in 1986 leaving 1.70 acres of land as his estate. On 31st March, 1992, the Respondent No.1, Hassan Khani Rawther filed O.S.No.171 of 1992 before the Court of Subordinate Judge, Thodupuzha,

seeking declaration of title, possession and injunction in respect of the said 1.70 acres of land, basing his claim on an oral gift alleged to have been made in his favour by Meeralava Rawther in 1982.

5. On 6th April, 1992, the Respondent No.2, Muhammed Rawther, one of the brothers, filed O.S.No.90 of 1992 before the Court of Munsif, Thodupuzha, praying for injunction against his brother, Hassan Khani Rawther, in respect of the suit property. The said suit was subsequently transferred to the Court of Subordinate Judge, Thodupuzha, and was renumbered as O.S.No.168 of 1994.

6. On the basis of her claim to a 1/9th share in the estate of Late Meeralava Rawther the petitioner, Shehammal filed O.S.No.126 of 1992 on 25th May, 1992, seeking partition of the plaint properties comprising the same 1.70 acres of land in respect of which the other two suits had been filed. The said suit was also subsequently transferred to the Court of Subordinate Judge, Thodupuzha, and was renumbered as O.S.No.169 of 1994 and was jointly taken up for trial along with O.S.No.171 of 1992. By a common judgment dated 15.11.1996, the learned Trial Judge dismissed O.S.No.171 of 1992 filed by the Respondent No.1, for want of evidence. O.S.No.169 of 1994 filed by Shehammal was decreed and in view of the findings recorded in O.S.No.169 of 1994, the trial court dismissed O.S.No.168 of 1994 filed by Muhammed Rawther, the Respondent No.2 herein. A subsequent application filed by the plaintiff in O.S.No.171 of 1992 for restoration of the said suit and another application for setting aside the decree in O.S.No.169 of 1994, were dismissed by the trial court.

7. The Respondent No.1 herein, Hassan Khani Rawther, moved the High Court by way of C.M.A.Nos.191 of 2000 and 247 of 2000 and the High Court by its judgment dated 17.1.2003 set aside the decree in O.S.Nos.171 of 1992 and 169 of 1994 and directed the trial court to take back O.S.Nos.171 of 1992 and 169 of 1994 to file and to dispose

of the same on merits. On remand, the learned Subordinate Judge dismissed O.S.No.171 of 1992, disbelieving the story of oral gift propounded by the Respondent No.1. The matter was again taken to the High Court against the order of the learned Subordinate Judge. The Respondent No.1 filed R.F.A.Nos.75 of 2004 and 491 of 2006 in the Kerala High Court and the same were allowed by the learned Single Judge holding that even if the plaintiff failed to prove the oral gift in his favour, he could not be non-suited, since he alone was having the rights over the assets of Meeralava Rawther in view of the various Deeds of Relinquishment executed by the other sons and daughters of Meeralava Rawther.

8. Being aggrieved by the judgment of reversal passed by the learned Single Judge of the High Court, the petitioners herein in the four Special Leave Petitions have questioned the validity of the said judgment.

9. Appearing for the Petitioners in both the SLPs, Mr. M.T. George, learned Advocate, submitted that the impugned judgment of the High Court was based on an erroneous understanding of the law relating to relinquishment of right in a property by a Mohammedan. It was submitted that the High Court had failed to truly understand the concept of spes successionis which has been referred to in paragraph 54 of Mulla's "Principles of Mahomedan Law", which categorically indicates that a Muslim is not entitled in law to relinquish an expected share in a property. Mr. George submitted that the said doctrine was based on the concept that the Mohammedan Law did not contemplate inheritance by way of expectancy during the life time of the owner and that inheritance opened to the legal heirs only after the death of an individual when right to the property of the legal heirs descended in specific shares. Accordingly, all the Deeds of Relinquishment executed by the siblings, except for the Respondent No.1, were void and were not capable of being acted upon. Accordingly, when succession opened to the legal heirs of Meeralava Rawther on his death,

each one of them succeeded to a specified share in his estate.

10. It was also submitted that as a result, the finding of the High Court in R.F.A.No.491 of 2006 that even if the story of oral gift set up by the plaintiff was disbelieved, he would still be entitled to succeed to the entire estate of the deceased, on account of the Deeds of Relinquishment executed by the other legal heirs of Meeralava Rawther, was erroneous and was liable to be set aside. Mr. George contended that the High Court wrongly interpreted the decision of this Court in the case of *Gulam Abbas Vs. Haji Kayyum Ali & Ors.* [AIR 1973 SC 554]. In the said decision, this Court held that the applicability of the Doctrine of Renunciation of an expectant right depended upon the surrounding circumstances and the conduct of the parties when such a renunciation/relinquishment was made. It was further held that if the expectant heir received consideration for renouncing his expectant share in the property and conducted himself in a manner so as to mislead the owner of the property from disposing of the same during his life time, the expectant heir could be debarred from setting up his right to what he was entitled. Mr. George submitted that the High Court overlooked the fact that this Court had held that mere execution of a document was not sufficient to prevent the legal heirs from claiming their respective shares in the parental property.

11. Mr. George submitted that apart form the above, the High Court allowed itself to be misled into accepting a "family arrangement" when such a contingency did not arise. The transactions involving the separate Deeds of Relinquishment executed by each of the heirs of Meeralava Rawther, constituted an individual act and could not be construed to be a family arrangement. Mr. George submitted that even if the story made out on behalf of the Respondent No.1, that Meeralava Rawther made each of his children execute Deeds of Relinquishment on their leaving the family house, is accepted, the same cannot by any stretch of imagination be said to be a family arrangement which had been accepted by

all the legal heirs of Meeralava Rawther. Thus, misled into accepting a concept of "family arrangement", the High Court erroneously relied on the decision of the Allahabad High Court in *Latafat Hussain Vs. Bidayat Hussain* [AIR 1936 All. 573], *Kochunni Kochu Vs. Kunju Pillai* (1956 Trav – Co 217, *Thayyullathil Kunhikannan Vs Thayyullathil Kalliani And Ors.* [AIR 1990 Kerala 226] and *Hameed Vs Jameela* (2004 (1) KLT 586), where it had been uniformly held that when there is a family arrangement binding on the parties, it would operate as estoppel by preventing the parties from resiling from the same or trying to revoke it after having taken advantage of such arrangement. Mr. George submitted that having regard to the doctrine of spes successionis, the concept of estoppel could not be applied to Muslims on account of the fact that the law of inheritance applicable to Muslims is derived from the Quran, which specifies specific shares to those entitled to inheritance and the execution of a document is not sufficient to bar such inheritance. Accordingly, renunciation by an expectant heir in the life time of his ancestor is not valid or enforceable against him after the vesting of the inheritance. Mr. George reiterated that the Deeds of Relinquishment between A2 to A6 could not be treated as a "family arrangement" since all the members of the family were not parties to the said Deeds and his position not having altered in any way, the Respondent No.1 is not entitled to claim exclusion of the other heirs of Late Meeralava Rawther from his estate.

12. In this regard, Mr. George also drew our attention to Section 6 of the Transfer of Property Act, 1882, where the concept of spes successionis has been incorporated. It was pointed out that Clause (a) of Section 6 is in pari materia with the doctrine of spes successionis, as incorporated in paragraph 54 of Mulla's "Principles of Mahomedan Law" and provides that the chance of a person succeeding to an estate cannot be transferred.

13. In view of his aforesaid submissions, Mr. George

submitted that the impugned judgment and decree of the High Court was liable to be set aside and that of the learned Subordinate Judge was liable to be restored.

14. Mr. V. Giri, learned Advocate, who appeared for the Respondent No.1, urged that in view of the three-Judge Bench decision in *Gulam Abbas's* case (supra), it was not open to the Petitioner to claim that the Doctrine of Estoppel would not be applicable in the facts of this case. Mr. Giri submitted that the view expressed in *Gulam Abbas's* case (supra) had earlier been expressed by other High Courts to which reference has been made hereinbefore. He urged that all the Courts had taken a consistent view that having relinquished his right to further inheritance, a legal heir could not claim a share in the property once inheritance opened on the death of the owner of the property.

15. Mr. Giri contended that any decision to the contrary would offend the provisions of Section 23 of the Indian Contract Act, 1872, as being opposed to public policy. Mr. Giri urged that the principles of Mahomedan law in relation to the law as incorporated in the Transfer of Property Act and the Indian Contract Act, had been considered in great detail by the three-Judge Bench in *Gulam Abbas's* case (supra). Learned counsel pointed out that on a conjoint reading of Section 6 of the Transfer of Property Act and paragraph 54 of Mulla's "Principles of Mahomedan Law" it would be quite evident that what was sought to be protected was the right of a Mohammedan to the chance of future succession to an estate. Learned counsel submitted that neither of the two provisions takes into consideration a situation where a right of spes successionis is transferred for a consideration. Mr. Giri submitted that in *Gulam Abbas's* case (supra) the said question was one of the important questions which fell for consideration, since it had a direct bearing on the question in the light of Section 23 of the Indian Contract Act, 1872. Mr. Giri submitted that the bar to a transfer of a right of spes successionis is not an absolute bar

and would be dependent on circumstances such as receipt of consideration or compensation for relinquishment of such expectant right in future. Mr. Giri urged that the Special Leave Petitions were wholly misconceived and were liable to be dismissed.

16. From the submissions made on behalf of the respective parties and the facts of the case, three questions of importance emerge for decision, namely:-

(i) Whether in view of the doctrine of spes successionis, as embodied in Section 6 of the Transfer of Property Act, 1882, and in paragraph 54 of Mulla's "Principles of Mahomedan Law", a Deed of Relinquishment executed by an expectant heir could operate as estoppel to a claim that may be set up by the Executor of such Deed after inheritance opens on the death of the owner of the property?

(ii) Whether on execution of a Deed of Relinquishment after having received remuneration for such future share, the expectant heir could be estopped from claiming a share in the inheritance?

(iii) Can a Mohammedan by means of a Family Settlement relinquish his right of spes successionis when he had still not acquired a right in the property?

17. Chapter VI of Mulla's "Principles of Mahomedan Law" deals with the general rules of inheritance under Mohammedan law. Paragraph 54 which falls within the said Chapter relates to the concept of transfer of spes successionis which has also been termed as "renunciation of a chance of succession". The said paragraph provides that the chance of a Mohammedan heir–apparent succeeding to an estate cannot be said to be the subject of a valid transfer or release. The same is included

in Section 6 of the Transfer of Property Act and the relevant portion thereof, namely, clause (a) is extracted below :-

> **"6. What may be transferred.-** Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.
>
> (a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred."

The provisions of Section 6(a) have to be read along with Section 2 of the Act, which provides for repeal of Acts and saving of certain enactments, incidents, rights, liabilities etc. It specifically provides that nothing in Chapter II, in which Section 6 finds place, shall be deemed to affect any rule of Mohammedan Law.

18. Inspite of the aforesaid provisions, both of the general law and the personal law, the Courts have held that the fetters imposed under the aforesaid provisions are capable of being removed in certain situations. Two examples in this regard are –

(i) When an expectant heir willfully does something which has the effect of attracting the provisions of Section 115 of the Evidence Act, is he estopped from claiming the benefit of the doctrine of *spes successionis,* as provided for under Section 6(a) of the Transfer of Property Act, 1882, and also under the Mohammedan Law as embodied in paragraph 54 of Mulla's "Principles of Mahomedan Law"?

(ii) When a Mohammedan becomes a party to a family arrangement, does it also entail that he gives up his right of spes successionis.

The answer to the said two propositions is also the answer to the questions formulated hereinbefore in paragraph 16.

19. The Mohammedan Law enjoins in clear and unequivocal terms that a chance of a Mohammedan heir-apparent succeeding to an estate cannot be the subject of a valid transfer or release. Section 6(a) of the Transfer of Property Act was enacted in deference to the customary law and law of inheritance prevailing among Mohammedans.

20. As opposed to the above, are the general principles of estoppel as contained in Section 115 of the Evidence Act and the doctrine of relinquishment in respect of a future share in property. Both the said principles contemplated a situation where an expectant heir conducts himself and/or performs certain acts which makes the two aforesaid principles applicable inspite of the clear concept of relinquishment as far as Mohammedan Law is concerned, as incorporated in Section 54 of Mulla's "Principles of Mahomedan Law". Great reliance has been placed by both the parties on the decision in *Gulam Abbas's* case (supra). While dealing with a similar situation, this Court watered down the concept that the chance of a Mohammedan heir apparent succeeding to an estate cannot be the subject of a valid transfer on lease and held that renunciation of an expectancy in respect of a future share in a property in a case where the concerned party himself chose to depart from the earlier views, was not only possible, but legally valid. Referring to various authorities, including Ameer Ali's "Mohammedan Law", this Court observed that "renunciation implies the yielding up of a right already vested". It was observed in the facts of that case that during the lifetime of the mother, the daughters had no right of inheritance. Citing the decision in the case of *Mt. Khannum Jan vs. Mt. Jan Bibi* [(1827) 4 SDA 210] it was held that renunciation implies the yielding up of a right already vested. Accordingly, renunciation during the mother's lifetime of the daughters' shares would be null and void on the ground that an inchoate right is not capable

of being transferred as such right was yet to crystallise. This Court also held that "under the Muslim Law an expectant heir may, nevertheless, be part of a course of conduct which may create an estoppel against claiming the right at a time when the right of inheritance has accrued". It was observed by the learned Judges that the Contract Act and the Evidence Act would not strictly apply since they did not involve questions arising out of Mohammedan Law. This Court accordingly held that the renunciation of a supposed right, based upon an expectancy, could not, by any test be considered "prohibited".

21. This Court ultimately held that the binding force of the renunciation of a supposed right, would depend upon the attendant circumstances and the whole course of conduct of which it formed a part. In other words, the principle of an equitable estoppel far from being opposed to any principle of Mohammedan Law, is really in complete harmony with it.

22. On the question of family arrangement, this Court observed that though arrangements arrived at in order to avoid future disputes in the family may not technically be a settlement, a broad concept of a family settlement could not be the answer to the doctrine of spes successionis.

23. There is little doubt that ordinarily there cannot be a transfer of spes successionis, but in the exceptions pointed out by this Court in *Gulam Abbas's* case (supra), the same can be avoided either by the execution of a family settlement or by accepting consideration for a future share. It could then operate as estoppel against the expectant heir to claim any share in the estate of the deceased on account of the doctrine of spes successionis. While dealing with the various decisions on the subject, which all seem to support the view taken by the learned Judges, reference was made to the decision of Chief Justice Suleman of the Allahabad High Court in the case of *Latafat Hussain Vs. Hidayat Hussain* [AIR 1936 All 573], where the question of arrangement between the husband and wife in the nature of a family settlement, which was binding on the parties,

was held to be correct in view of the fact that a presumption would have to be drawn that if such family arrangement had not been made, the husband could not have executed a deed of Wakf if the wife had not relinquished her claim to inheritance. It is true that in the case of *Mt. Khannum Jan* (supra), it had been held by this Court that renunciation implied the yielding up of a right already vested or desisting from prosecuting a claim maintainable against another, and such renunciation during the lifetime of the mother of the shares of the daughters was null and void since it entailed the giving up of something which had not yet come into existence.

24. The High Court after considering the aforesaid views of the different jurists and the decision in connection with the doctrine of relinquishment came to a finding that even if the provisions of the doctrine of spes successionis were to apply, by their very conduct the Petitioners were estopped from claiming the benefit of the said doctrine. In this context, we may refer to yet another principle of Mohammedan Law which is contained in the concept of Wills under the Mohammedan Law. Paragraph 118 of Mulla's "Principles of Mahomedan Law" embodies the concept of the limit of testamentary power by a Mohammedan. It records that a Mohammedan cannot by Will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of one-third cannot take effect unless the heirs consent thereto after the death of the testator. The said principle of testamentary disposition of property has been the subject matter of various decisions rendered by this Court from time to time and it has been consistently stated and reaffirmed that a testamentary disposition by a Mohammedan is binding upon the heirs if the heirs consent to the disposition of the entire property and such consent could either be express or implied. Thus, a Mohammedan may also make a disposition of his entire property if all the heirs signified their consent to the same. In other words, the general principle that a Mohammedan cannot by Will dispose of more than a third of his estate after payment

of funeral expenses and debts is capable of being avoided by the consent of all the heirs. In effect, the same also amounts to a right of relinquishment of future inheritance which is on the one hand forbidden and on the other accepted in the case of testamentary disposition. Having accepted the consideration for having relinquished a future claim or share in the estate of the deceased, it would be against public policy if such a claimant be allowed the benefit of the doctrine of spes successionis. In such cases, we have no doubt in our mind that the principle of estoppel would be attracted.

25. We are, however, not inclined to accept that the methodology resorted to by Meeralava Rawther can strictly be said to be a family arrangement. A family arrangement would necessarily mean a decision arrived at jointly by the members of a family and not between two individuals belonging to the family. The five deeds of relinquishment executed by the five sons and daughters of Meeralava Rawther constitute individual agreements entered into between Meeralava Rawther and the expectant heirs. However, notwithstanding the above, as we have held hereinbefore, the doctrine of estoppel is attracted so as to prevent a person from receiving an advantage for giving up of his/her rights and yet claiming the same right subsequently. In our view, being opposed to public policy, the heir expectant would be estopped under the general law from claiming a share in the property of the deceased, as was held in *Gulam Abbas's* case (supra).

26. We are not, therefore, inclined to entertain the Special Leave Petitions and the same are accordingly dismissed, but without any order as to costs.

D.G. Special Leave Petitions dismissed.

BHANU PRATAP

v.

STATE OF HARYANA AND ORS.

(Civil Appeal No. 6205 of 2011)

AUGUST 02, 2011

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

***Haryana Civil Services (Judicial Branch) Rules** : rr.7(1), 7(2), 8(1), 9 – Haryana Civil Services (Judicial Branch) Examination advertised in 2003 for the post of judicial officer – Qualifying marks in written examination and viva voce for selection – Rounding off or relaxation in marks or giving grace marks – Permissibility of – Held: In order to qualify in the written examination, a candidate has to obtain atleast 33% marks in each of the papers and atleast 50% qualifying marks in the aggregate in all the written papers – Candidate cannot be considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including viva voce – There is no power provided in the statute nor any such stipulation is made in the advertisement and also in statutory rules permitting any rounding off or giving grace marks so as to bring up a candidate to the minimum requirement – The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving benefit of rounding off or relaxation – In the instant case, respondent obtained total aggregate marks of 508 out of 1020 total marks, i.e., 49.8% and since marks obtained by him was short of the qualifying marks of 50%, he failed to qualify in terms of r.8 of the Rules and was rightly not appointed to the post of judicial officer.*

An advertisement was issued in 2003 for filling up 73 posts of Subordinate Judges under the Haryana Civil

Services (Judicial Branch) Examination. The appellant appeared in the written tests and was declared successful and thereafter he was called for interview. He failed to qualify in terms of Rule 8 of the Haryana Civil Services [Judicial Branch] Rules and was not appointed to the said post. The appellant filed a writ of mandamus before the High Court seeking direction for his appointment to the post of Judicial Officer. In the writ petition, his contention was that he received total aggregate marks of 508 out of 1020 total marks, i.e., 49.8% and since the marks obtained by him was short of the qualifying marks of 50% by just two marks, the same should be rounded off to 50% in aggregate. The High Court dismissed the writ petition. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

HELD: 1.1. Appointment to the post of Subordinate Judge (Haryana Civil Services Judicial Branch) is guided by the Haryana Civil Services [Judicial Branch] Rules, which are statutory in nature. Rule 7(1), 7 (2) and 8(1) specifically deal with the minimum marks that a candidate has to obtain to qualify in the written test and also for selection. In the advertisement issued by the respondents for filling up the said post along with instructions and information for candidates, it was specifically mentioned that the syllabus of the examination would be as contained in Schedule under Rule 9 of para 'C' of the Rules relating to the appointment of Subordinate Judges in Haryana. The said syllabus was set out in detail showing the compulsory papers, description of subjects, maximum marks for each subject. It was also communicated that for viva-voce test there will be 120 marks. The Rules with regard to the conduct of the written examination were also set out therein. In clause (g)(i) thereof it was indicated that no

candidate shall be considered to have qualified in the examination unless he obtains at least 50% marks in the aggregate of all papers including viva-voce test. It was also stated thereafter in the advertisement that the merit of the qualified candidates shall be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce. For the viva-voce test, it was provided in the advertisement that it will be a test relating to the matters of general interest and is intended to test the candidate's alertness, intelligence and general outlook. It was reiterated thereunder also that the merit of the qualified candidates would be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce. [Paras 8, 9] [742-F-H; 743-A-G]

1.2. A sitting Judge of the Punjab and Haryana High Court was associated as an Expert Advisor at the time of viva-voce test which consisted of 120 marks. The total 120 marks of viva-voce test were divided under four heads evaluating the personal quality of the candidates. The Judge present in the interview graded the canddiate 'AS' as 'G', i.e., 'Good' placing him within the mark range of 16-20, whereas the appellant was graded as "P", i.e., 'Poor' placing him within the mark range of 01-05 and the candidate 'VS' was graded as "A+", i.e., 'Above Average' placing him within the mark range of 11-15. The said grading criteria to be awarded by the Judge for evaluating the personal quality of the candidates were circulated to the members of the Selection Committee for viva-voce examination as a guideline before the viva-voce examination. Therefore, the minimum marks which could be given to the appellant in each of the heads, was only one and in this case, the Chairman, and the members of the Commission had given him the maximum marks, i.e., 5 marks, under each of the four heads and consequently

he got 20 marks out of 120 ascribed to the viva-voce examination. A bare reading of the Rules would make it crystal clear that in order to qualify in the written examination, a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers. The further mandate of the rules was that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. No such rounding off or relaxation was permissible. The Rules were statutory in nature and no dilution or amendment to such Rules was permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation. If rounding off is given to the appellant as sought for by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to be strictly observed which is like a *Lakshman Rekha* and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority were bound

to act within the parameters of the Rules which were statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal. [Paras 10, 11, 14, 15, 18] [743-H; 744-A-C-F-H; 745-A; G-H; 746-A-D; 747-C-E]

District Collector & Chairman, Vizianagaram Social WelfareResidential School Society, Vizianagaram and Another. v. M. TripuraSundari Devi **(1990) 3 SCC 655: 1990 (2) SCR 559; *Umrao Singh v.Punjabi University, Patiala and Ors.* (2005) 13 SCC 365: 2005 (5) Suppl. SCR 530 – referred to.**

Case Law Reference:

1990 (2) SCR 559	**referred to**	**Para 16**
2005 (5) Suppl. SCR 530	**referred to**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6205 of 2011.

From the Judgment & Order dated 15.11.2007 of the High Court of Punjab & Haryana at Chandigarh in Letters Patent Appeal No. 207 of 2007.

Naresh Kaushik, Sanjeev K. Bhardwaj, Lalita Kaushik for the Appellant.

Manjit Singh, AAG, D.S. Chauhan, Ruchi Singh, Rajinder Juneja, Asha Jain Madan, Mukesh Jain, Shivika Jain, Parvinder Jain, Vivekta Singh, Tarjit Singh, Kamal Mohan Gupta for the Respondents.

The Judgment of the Court was delivere by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. In this appeal we are called upon to decide an issue pertaining to an appointment to the Post of Subordinate Judge under the Haryana Civil Services [Judicial Branch] Examination

which was advertised in 2003 and for which the selection process was completed in 2004. Thereafter two candidates who alone were selected have been appointed and joined their services on 18.03.2005 and 07.07.2005, respectively.

3. Even subsequent thereto advertisements have been issued for filling up similar vacancies in 2008 and 2010 which process was also long completed and persons selected have also been appointed pursuant to the said selection process. We are also informed that in 2011, further 111 posts have been advertised for which selection process has been initiated.

4. The appellant herein submitted his application as against the aforesaid advertisement issued by the respondents in 2003 for filling up 73 posts of Subordinate Judges under Haryana Civil Services [Judicial Branch] Examination. The appellant appeared in the written tests and was declared successful and thereafter he was called for interview. Incidentally out of 3,471 candidates who appeared for the written examination, only 3 persons obtained more than 50% marks in the written examination and were eligible under the extant Rules for being called for interview/viva-voce. All the 3 candidates called for interview duly appeared before the interview board constituted by the Haryana Public Service Commission [for short "the Commission"] in which one of the then Judges of the Punjab and Haryana High Court was called as an Expert Advisor who was present during the process of the interview.

5. It transpires from the records that in the interview conducted by the Commission total marks allocated for the interview/viva-voce test were 120 and one Shri Vivek Nasir obtained 72 marks out of 120, whereas, Shri Anubhav Sharma was awarded 60 marks out of 120. However, the present appellant could get only 20 marks out of the total marks of 120 for the interview. Since he failed to qualify in terms of Rule 8 of the Haryana Civil Services (Judicial Branch) Rules [for short "the Rules"] he was not appointed to the said post.

6. Feeling aggrieved the appellant filed a Writ Petition before the Punjab and Haryana High Court at Chandigarh which was registered as CWP No. 12205 of 2005 in which he sought for a writ of mandamus directing his appointment to the post of Judicial Officer. In the Writ Petition his contention was that since he received total aggregate marks of 508 out of 1020 total marks, i.e., 49.8% and since the marks obtained by him was short of 50% by just two marks the same should be rounded off to the qualifying marks of 50% in aggregate in terms of Rule 8 of the Rules. It was contended that shortage of the percentage of half or less was to be rounded off and when the petitioner had obtained 49.8% in the whole aggregate after viva voce test, he should have been treated to have obtained 50% and should have been deemed to have qualified.

7. The aforesaid contention of the appellant, however, was rejected by the Single Judge of the High Court and the Writ Petition filed by the appellant was dismissed, which order was further upheld by the Division Bench on appeal. Being aggrieved by the dismissal of his Writ Petition and Letters Patent Appeal, the appellant filed the present appeal in this Court, on which we heard the learned counsel appearing for the parties who had also taken us through the entire records.

8. Appointment to the post of Subordinate Judge (HCS Judicial Branch) is guided by Haryana Civil Services [Judicial Branch] Rules, which are statutory in nature. Rule 7(1), 7 (2) and 8(1) specifically deal with the minimum marks that a candidate has to obtain to qualify in the written test and also for selection. The said provisions are extracted hereinbelow for ready reference: -

"7(1) No candidate shall be credited with any marks in any paper unless he obtains at least thirty three per cent marks in it.

(2) No candidate shall be called for the viva-voce test unless he obtains at least fifty per cent qualifying marks in the aggregate of all the written papers and thirty three per

cent marks in the language paper, Hindi in (Devnagri Script).

.....

.....

8(1) No candidates shall be considered to have qualified in the examination unless he obtains at least 50% marks in the aggregate papers including viva-voce test."

9. In the advertisement issued by the respondents for filling up the said post along with instructions and information for candidates it was specifically mentioned that the syllabus of the examination would be as contained in Schedule under Rule 9 of para 'C' of the Rules relating to the appointment of Subordinate Judges in Haryana. The said syllabus was set out in detail showing the compulsory papers, description of subjects, maximum marks for each subject. It was also communicated that for viva-voce test there will be 120 marks. The rules with regard to the conduct of the written examination were also set out therein. In clause (g)(i) thereof it was indicated that no candidate shall be considered to have qualified in the examination unless he obtains at least 50% marks in the aggregate of all papers including viva-voce test. It was also stated thereafter in the advertisement that the merit of the qualified candidates shall be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce. For the viva-voce test it was provided in the advertisement that it will be a test relating to the matters of general interest and is intended to test the candidate's alertness, intelligence and general outlook. It was reiterated thereunder also that the merit of the qualified candidates would be determined by the Haryana Public Service Commission strictly according to the aggregate marks obtained in the written papers and viva-voce.

10. As stated hereinbefore, a sitting Judge of the Punjab and Haryana High Court was associated as an Expert Advisor

at the time of viva-voce test which consisted of 120 marks. The total 120 marks of viva-voce test were divided under four heads evaluating the personal quality of the candidates as follows: -

"a) Awareness, outlook, Subject knowledge and general interest 30 marks

b) Articulation and expression 30 marks

c) Intelligence and alertness 30 marks

d) Poise, bearing and other qualities 30 marks"

The Judge of the High Court was to classify a candidate as Expert Advisor under the following categories: -

"Class		Marks Range
Excellent	(E)	26-30
V. Good	(G+)	21-25
Good	(G)	16-20
Above average	(A+)	11-15
Average	(A)	06-10
Poor	(P)	01-05"

11. It is brought out on records that the Judge present in the interview graded Anubhav sharma as 'G', i.e., 'Good' placing him within the mark range of 16-20, whereas Bhanu Partap was graded as "P", i.e., 'Poor' placing him within the mark range of 01-05 and Vivek Nasir was graded as "A+", i.e., 'Above Average' placing him within the mark range of 11-15. The aforesaid grading criteria to be awarded by the Judge for evaluating the personal quality of the candidates were circulated to the members of the Selection Committee for viva-voce examination as a guideline before the viva-voce examination. Therefore, the minimum marks which could be given to the appellant in each of the heads, was only one and in this case, the Chairman, and the members of the Commission had given

him the maximum marks, i.e., 5 marks, under each of above-mentioned four heads and consequently he got 20 marks out of 120 ascribed to the viva-voce examination.

12. Counsel appearing for the appellant submitted before us that since the appellant had received 49.8% in aggregate in all the tests including viva-voce, the same could and should have been rounded off to 50% in aggregate which would have entitled the appellant to be selected for appointment to the aforesaid post. Counsel also submitted that during the earlier selection immediately preceding the selection in question there was the requirement of grading under three factors/categories only and the same came to be varied/increased in the selection in question from three to six. He contended that this increasing of grading factors/categories from three to six envisages much wider criteria in the selection process in question which amounted to arbitrariness.

13. The aforesaid submissions of the counsel appearing for the appellant were however refuted by counsel appearing for the respondents by submitting that the respondents have strictly and minutely followed and complied with the Rules which are statutory in nature and, therefore, the present appeal has no merit at all. He also submitted that there cannot be addition of any marks unless the same is specifically permitted and provided either under the Rules or in the advertisement and, therefore, there was no illegality or arbitrariness in the selection in question.

14. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant Rules have already been extracted above. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers. The further mandate of the rules is that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the

aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off as sought to be submitted by the counsel appearing for the appellant.

15. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.

16. We may also draw support in this connection from a decision of this Court in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi* reported in (1990) 3 SCC 655. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

17. In the case of *Umrao Singh Vs. Punjabi University, Patiala and Ors.* reported in (2005) 13 SCC 365 this Court while dealing with the power of Selection Committee for relaxation of norms held thus: -

> "Another aspect which this Court has highlighted is scope for relaxation of norms. Although Court must look with respect upon the performance of duties by experts in the

respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramchandra Iyer and Ors. v. Union of India and Ors.* (1984)ILLJ314SC this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

18. Let us also examine the issue from another angle. If rounding off is given to the appellant as sought for by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. To him and to such a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered then they would also get qualified. In that event, there would be no meaning of having a rule wherein it is provided that a person must at least have the minimum marks as provided for thereunder. Somewhere a line has to be drawn and that line has to be strictly observed which is like a *Lakshman Rekha* and no variation of the same is possible unless it is so provided under the Rules itself. Both the Selection Committee as also the appointing authority are bound to act within the parameters of the Rules which are statutory in nature and any violation or any relaxation thereof whether by way of giving grace marks or rounding off would be acting beyond the parameters prescribed which would be illegal.

19. In that view of the matter, we find no merit in this appeal, which is dismissed but leaving the parties to bear their own costs.

D.G. Appeal dismissed.

ORISSA PUBLIC SERVICE COMMISSION & ANR.
v.
RUPASHREE CHOWDHARY & ANR.
(Civil Appeal No. 6201 of 2011)

AUGUST 2, 2011.

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

Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007:

Rule 24 – Minimum qualifying marks – Rounding off of – Orissa Judicial Service Examination 2009 – Main written examination – One of the criteria being 45% of marks in aggregate to be called for viva-voce – Candidate securing 44.93% of marks filing writ petition – High Court directing the marks of the writ petitioner and two others to be rounded off as 45% and to call them for viva-voce – HELD: No rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of r. 24 – High Court has also committed an error apparent on the face of the record by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it – Judgment and order of the High Court set aside – Interpretation of statutes.

Respondent no.1, who secured 337 out of 750 i.e. 44.93% of marks and more than 33 % of marks in each subject in the Main Written Examination of the Orissa Judicial Service Examination, 2009, but was not called for viva-voce test, filed a writ petition before the High Court with a prayer that the fraction of marks, i.e., 44.93 % secured by her, should have been rounded off to 45 % and, thus, she fulfilled the criteria as per Rule 24 of the

Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and, as such, she should have been called for the viva-voce test. The High Court allowed the writ petition. Aggrieved, the Orissa Public Service Commission filed the appeal.

Allowing the appeal, the Court

HELD: 1.1 A bare reading of Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the Main examination. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned, there cannot be a question of relaxation or rounding off. There is no power provided in the statute/ Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. No such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation. [para 9-10] [754-A-D]

District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi **1990 (2) SCR 559 = *(1990) 3 SCC 655* - relied on.**

State of Orissa and Another v. Damodar Nayak **1997 (3) SCR 456 = *(1997) 4 SCC 560,*** *State of U.P. and Another v. Pawan Kumar Tiwari and Others* **2005 (1) SCR 21 = *(2005) 2 SCC 10,*** *Union of India v. S. Vinodh Kumar* **2007 (10) SCR 41 = *(2007) 8 SCC 100*** **and** *Bhudev Sharma v. District Judge, Bulandshahr and Another* **2007 (11) SCR 730 = (2008) 1 SCC 233 – held inapplicable.**

1.2 When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules. [para 13] [755-B-D]

1.3 The High Court has also committed an error apparent on the face of the record by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest subsequent to the declaration of the results of the examination. The judgment and order of the High Court is set aside. [para 14-15] [755-E-G]

Case Law Reference:

1997 (3) SCR 456	**held inapplicable**	**para 7**
2005 (1) SCR 21	**held inapplicable**	**para 7**
2007 (10) SCR 41	**held inapplicable**	**para 7**
2007 (11) SCR 730	**held inapplicable**	**para 7**
1990 (2) SCR 559	**relied on**	**para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6201 of 2011.

From the Judgment & Order dated 08.12.2009 of the High Court of Orissa at Cuttack in Writ Petition (Civil) No. 16782 of 2009.

Kirti Renu Mishra, Rishi Jain for the Appellants.

S.K. Das, Ajay Chaudhary for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. The present appeal is filed against the judgment and order dated 08.12.2009 passed by the Orissa High Court at Cuttack whereby the High Court allowed the appeal filed by the Respondent No. 1 herein and ordered for rounding off of the aggregate marks of the respondent from 44.93% to 45% along with two other candidates but not parties before the Court and held her eligible to appear in the interview as per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 [for short "the Rules"].

3. The facts leading to the filing of the present case are that the Orissa Public Service Commission [in short "the OPSC"] published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fill up 77 posts of Civil Judges (J.D), pursuant to which, the respondent No. 1 applied for the said post. She appeared in the Preliminary Written Examination held on 15.05.2009. Being successful in the Preliminary Written Examination, she appeared in the Main Written Examination which was held from 15-18.07.2009. The list of successful candidates, who were eligible for interview, was published on 25.8.2009 in which respondent's name was not there. Immediately after publication of the result of the Main Written Examination, the respondent applied for her marks in the Main Written Examination and the mark sheet of the respondent was issued to her on her request on 27.10.2009, which she received on 03.11.2009.

4. After receiving the same, she came to know that she had secured 337 out of 750, i.e., 44.93% of marks in aggregate & more than 33% of marks on each subject. As per Rule 24 of the Rules the candidates who have secured not less than 45% of the marks in aggregate & not less than minimum of 33% of marks in each paper in the written examination should be called for viva-voce test. Since the respondent secured 44.93% marks in aggregate she was not called for interview/viva-voce. Aggrieved thereby she approached the High Court of Orissa by filing a Writ Petition W.P. (C) No. 16782 of 2009 with a prayer that she should have been called for the interview as the fraction of marks, i.e., 44.93%, secured by her should have been rounded off to 45% & in that way she would have fulfilled the criteria as per the Rules. The High Court vide its order dated 08.12.2009 allowed the writ petition filed by the respondent herein against which this appeal has been filed, upon which, we heard the learned counsel appearing for the parties.

5. Learned counsel appearing on behalf of the appellant submitted that as per Rule 24 of the Rules a candidate who has secured not less than 45% of marks in aggregate could only be called for the interview and since the respondent secured only 337 out of 750 marks [i.e., 44.93%] in the Main Written Examination she was not called for the interview. Counsel submitted that the High Court erred in permitting the rounding off of the marks of the respondent as there is no provision of rounding off or relaxation of marks under the Rules which permit the Commission to give such a kind of grace to the respondent. He further submitted that High Court also erred in permitting 2 more candidates to sit in the interview by rounding off their marks to 45% even when they were not party to the Writ Petition before it.

6. Learned counsel appearing on behalf of the respondent however refuted the contentions made by the counsel appearing for the appellant and submitted that the High Court rightly and correctly permitted the respondent to be called for

the interview by rounding off the marks obtained by her to 45%. He further submitted that the High Court rightly held that in the absence of any Rule dealing with the fraction of ½ marks or even less secured by the candidates, while determining the percentage of marks the same could be rounded off to the next whole number.

7. Learned counsel appearing for the respondents during the course of his arguments relied upon the decisions of this Court in *State of Orissa and Another v. Damodar Nayak* reported in (1997) 4 SCC 560, *State of U.P. and Another v. Pawan Kumar Tiwari and Others* reported in (2005) 2 SCC 10, *Union of India v. S. Vinodh Kumar* reported in (2007) 8 SCC 100 and *Bhudev Sharma v. District Judge, Bulandshahr and Another* reported in (2008) 1 SCC 233. On scrutiny, we find that the findings recorded in the above referred cases are not applicable to the facts of the present case. Facts and findings recorded by this Court in the above referred cases are distinguishable to facts of the case in hand. Almost all the aforesaid cases dealt with post or vacancies where it was allowed to be rounded off to make one whole post. Understandably there cannot be a fraction of a post.

8. In the light of the detailed records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The appointment to the post of Civil Judge (J.D.) under the Orissa Judicial Services is guided by Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 and Rule 24 thereof specifically deal with the criteria for determining of candidates for interview. Rule 24 reads thus: -

> "24. Determination of number of candidates for interview – The Commission shall call the candidates for interview who have secured not less than forty-five per centum of marks in aggregate and a minimum of thirty three per centum of marks in each paper in the Main written examination."

9. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the Main examination. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off.

10. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.

11. We may also draw support in this connection from a decision of this Court in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi* reported in (1990) 3 SCC 655. In the said judgment this Court has laid down that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.

12. The entire record of the main written examination was also produced before us which indicates that there are also candidates who have got more than the respondent in the aggregate but has not been able to get 33% marks in each paper and have missed it only by a whisker. In case, the

contention of the counsel appearing for the respondent is accepted then those candidates who could not get 33% marks in each paper in the Main written examination could and should have also been called for viva-voce examination, which would amount to a very strange and complicated situation and also would lead to the violation of the sanctity of statutory provision.

13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.

14. The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written examination in aggregate.

15. In that view of the matter, the appeal is allowed and the judgment and order of the High Court is set aside leaving the parties to bear their own costs.

R.P. Appeal allowed.

DELHI DEVELOPMENT AUTHORITY
v.
S.S. AGGARWAL & ORS.
(Civil Appeal No. 7301-7302 of 2003)

AUGUST 02, 2011

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

Land Acquisition Act, 1894 – ss. 18 and 54 – Acquisition of land – Petitions by the landowners claiming compensation at the prevailing market price – During pendency, execution of the assignment deeds by the landowners – Thereafter, award passed by the Land Acquisition Collector – Application u/s. 18 for re-fixation of market value of the acquired land by assignees – No inquiry on the issue of locus of assignees to claim compensation by the Collector and matter referred to the Reference Court – Reference Court also did not inquire about the entitlement – Market value re-fixed – Appeal u/s. 54 by the assignees that they were entitled to enhanced compensation but limiting their claim due to paucity of funds – After four and a half years of filing the appeals, petition for amendment of the memo of appeal by the assignees – Division Bench of the High Court enhanced the market value of the acquired land and also allowed the amendment application – On appeal, held: Even though in terms of the assignment deeds, assignees became entitled to seek substitution before the Land Acquisition Collector, they neither sought impleadment in the award proceedings nor produced the assignment deeds to show that the landowners had transferred the right to receive compensation – There was no explanation for the same – High Court committed an error by entertaining and allowing the amendment application filed by the assignees and that too without even adverting to the issue of unexplained delay of four and a half years – High Court first decided the appeals filed by the assignees and then

disposed of the amendment application without going through the records – As such, Union of India and DDA were deprived of an opportunity to make a request to the High Court to remit the case to the Reference Court – Matter remitted to the Reference Court for fresh determination of the compensation payable to the landowners and/or assignees.

Landowners were issued notices with regard to acquisition of their lands. They filed petitions claiming compensation at the rate of Rs. 4,000/- per square yard. During pendency of the matter, the landowners executed Assignment Deed in favour of assignees. The Land Acquisition Collector fixed the market value of the acquired land at the rate of Rs. 98/- per square yard. Thereafter, the assignees filed an application u/s. 18 of the Act for re-fixation of market value of the acquired land. The Collector did not make any inquiry and referred the matter to the court. The Reference Court also did not inquire about the entitlement and fixed the market value of the acquired land at the rate of Rs. 1,02,000/-. Aggrieved, the assignees filed an application u/s. 54 claiming that even though they were entitled to enhanced compensation but due to paucity of funds they were limiting their claim to Rs. 3,000/- per square yard. After four and a half years of filing the appeals, the assignees filed a petition for amendment of the memo of appeal so as to enable them to claim compensation at the rate of Rs.7,000/- per square yard. The Division Bench enhanced the market value of the acquired land to Rs. 7,390/- per square yard as also allowed the application. Therefore, the instant cross appeals were filed.

Disposing of the appeals, the Court

HELD: 1.1 Even though in terms of the assignment deeds, respondent and others-assignees became entitled to seek substitution before the Land Acquisition Collector, they neither sought impleadment in the award

proceedings nor produced the assignment deeds to show that the landowners had transferred the right to receive compensation. [Para 14] [768-C-D]

1.2 The counsel appearing for the assignees could not offer any tangible explanation as to why his clients chose to keep the Land Acquisition Collector, the Reference Court and the High Court in dark about the execution of the assignment deeds by the landowners. Therefore, it is reasonable to presume that they had done so deliberately and the only possible reason for this could be to avoid a proper scrutiny by the Land Acquisition Collector and two judicial forums about their entitlement to receive compensation at a rate higher than Rs.58/- per square yard paid to the landowners. If the assignment deeds had been produced before the Land Acquisition Collector or the Reference Court, either of them could have held an inquiry and given an opportunity to the landowners and/or assignees to explain the position. By withholding the assignment deeds, the assignees succeeded in avoiding proper scrutiny of their claim for compensation at the hands of the Land Acquisition Collector, the Reference Court and the High Court. [Para 15] [768-E-H; 769-A]

1.3 There is merit in the submission that the High Court committed serious error by entertaining and allowing the amendment application filed by the respondent and others. It is surprising that the High Court first decided the appeals filed by the assignees and then disposed of the amendment application and that too without going through the records. If this was not so, there was no occasion for the High Court to incorporate the condition of making good the deficiency in court fee. By this process, the Union of India and the DDA were deprived of an important opportunity to make a request to the High Court to remit the case to the Reference Court

or at least allow them to adduce evidence on the issue of correct market value of the acquired land. Also the High Court erred in allowing the amendment application without even adverting to the issue of unexplained delay of four and a half years. [Para 17] [769-C-E]

1.4 The impugned judgment as also the one passed by the Reference Court are set aside. The matter is remitted to the Reference Court for fresh determination of the compensation payable to the landowners and/or assignees after giving them reasonable opportunity of adducing evidence in support of their respective cases. While doing so the Reference Court would first decide the issue of locus of the assignees to claim compensation. The DDA shall be entitled to participate in the proceedings of the Reference Court and raise objections against the claim made by the assignees for payment of compensation as also be entitled to raise all other legally permissible objections to contest the claim of the assignees. [Para 19] [771-B-F]

Delhi Development Authority v. Bhola Nath Sharma **(2011) 2 SCC 54 – relied on.**

Buta Singh v. Union of India **(1995) 5 SCC 284: 1995 (3) SCR 359;** *Union of India v. Pramod Gupta* **(2005) 12 SCC 1: 2005 (3) Suppl. SCR 48;** *Rattan Chand Hira Chand v. Askar Nawaz Jung* **(1991) 3 SCC 67: 1991 (1) SCR 327;** *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde* **(1995) Supp. 2 SCC 549:;** *Central Inland Water Transport Corporation v. Brojo Nath Ganguly* **(1986) 3 SCC 156: 1986 (2) SCR 278;** *Jayamma v. Maria Bai* **(2004) 7 SCC 459: 2004 (3) Suppl. SCR 175;** *Sunrise Associates v. Government of NCT of Delhi* **(2006) 5 SCC 603: 2006 (1) Suppl. SCR 421 – referred to.**

Dawson v. Great Northern and City Railway Company **(1905) 1 KB 260 – referred to.**

Case Law Reference:

1995 (3) SCR 359	**Referred to**	**Para 11**
2005 (3) Suppl. SCR 48	**Referred to**	**Para 11, 18**
1991 (1) SCR 327	**Referred to**	**Para 12**
(1995) Supp. 2 SCC 549	**Referred to**	**Para 12**
1986 (2) SCR 278	**Referred to**	**Para 12**
2004 (3) Suppl. SCR 175	**Referred to**	**Para 12**
(1905) 1 KB 260	**Referred to**	**Para 13**
2006 (1) Suppl. SCR 421	**Referred to**	**Para 13**
(2011) 2 SCC 54	**Relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7301-7302 of 2003.

From the Judgment and Order dated 21.02.2003 of the High Court of Delhi at New Delhi in R.F.A. No. 1147 and 155 of 1998.

WITH

C.A. No. 836 of 2004.

C.A. No. 6264-6265 of 2011.

A. Sharan, Geeta Luthra, Vishnu B. Saharya (Saharya & Co.) AOR (for DDA) and D.N. Goburdhan for the Appellant.

Dhruv Mehta, Yashraj Singh Deora, Sriram Krishna and Rachna Srivastava for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted in SLP(C) Nos. 18056-18057 of 2003.

2. These appeals are directed against judgment dated 21.2.2003 of the Division Bench of the Delhi High Court whereby the appeals preferred by two groups of persons i.e., S.S. Aggarwal and others and Om Prakash and others under Section 54 of the Land Acquisition Act, 1894 (for short, "the Act") were allowed and market value of the acquired land fixed by Additional District Judge, Delhi (hereinafter described as, "the Reference Court") was enhanced from Rs.102/- to Rs.7,390/- per square yard.

3. By notification dated 6.1.1995 issued under Section 4(1) read with Section 17(1) of the Act, the Government of National Capital Territory of Delhi proposed the acquisition of 27 bighas 5 biswas land situated at village Jasola. After 4 days, the declaration was issued under Section 6 of the Act.

4. In response to the notice issued under Section 9 of the Act, the landowners filed three claim petitions through the same Advocate, namely, Ch. Sawrup Singh. One of the petitions was filed by Kishan Lal and 13 others. The other was filed by S.K. Sarogi and another and the third was filed by Mangla Ram and 3 others. They pleaded that keeping in view the prevailing market rates, they be paid compensation at least at the rate of Rs.4,000/- per square yard. In support of their claim, the landowners relied upon the allotments made by the Delhi Development Authority (for short, 'the DDA') at a concessional rate of Rs.2,200/- per square yard.

5. During the pendency of the matter before the Land Acquisition Collector, Delhi, Mangla Ram and 3 others executed Assignment Deed dated 21.9.1995 in favour of Om Prakash, Phire Ram and Vinod Kumar (all sons of Ch. Swarup Singh, Advocate, who was representing the landowners before the Land Acquisition Collector). The relevant portions of the assignment deed are extracted below:

"WHEREAS, the Vendors are the actual owners of the Acquired Land Total Measuring 8 Bighas and 5 Biswas,

in Khasra No. 133 situated in Revenue Estate of Village Jasola, Tehsil Mehrauli, New Delhi.

That the above said land has been notified under Section 4 of the Land Acquisition Act, 1894, on 6.1.1995, and declaration under Section 6 and notification under 17(1) of the Land Acquisition Act, 1894, has also been issued on 10th Jan. 1993 but the compensation in respect of said land has not been passed by Govt. to the Vendors so far.

AND WHEREAS, the possession of the said land has also been taken by the Govt. on 22nd February, 1995.

AND WHEREAS, the Vendors have willingly agreed to sell transfer the said compensation right of the said land measuring 8 bighas 5 biswas, in Khasra No. 133, of village Jasola, Tehsil Mehrauli, New Delhi, whatsoever to be settled by the Land Acquisition Collector in award or by the court in reference or in revisions or appeals of the same in High Courts with all rights to recover and receive the same from the concerned authorities/deptts. for a sum of Rs.4,80,000/- [Rs. Four lacs and eighty thousand only] and the Vendees have agreed to purchase the same for said amount.

The entire consideration amount of Rs. 4,80,000/- [Rs Four lacs and eighty thousand only], has already been received in advance by the Vendors from the Vendees [the receipt whereof, the Vendors admit and acknowledge] in full and final settlement.

NOW THIS ASSIGMENT DEED WITNESSETH AS UNDER:

1. That the Vendors do hereby sell, transfer, convey and assign the compensation rights, whatsoever to be settled by the Land Acquisition Collector inAward or by the courts in reference perceptions, revisions as sale etc. of the same

to be filed in Delhi High Court and other higher courts with rights to receive and recover the same from the concerned authorities/Deptts. with each and every rights which vest in their names as towards the above said award of the Land Acquisition Collector and in reference, revisions, appeals etc. upto the Vendees.

2. That the Vendors admit that they have no right left with the compensation right to be settled in above said award or in reference, revisions or appeals etc. and the same has become property of the Vendees, with the rights to receive and recover the same.

3. That the Vendors admit that the Vendees are fully entitled to substitute themselves before Land Acquisition Collector in Award/reference as mentioned above and to conduct the same. The vendors have handed over and delivered the notices and other acquisition documents and all other relevant papers/documents to the Vendees.

4. That the Vendors have assured the Vendees that they have not entered into any agreement with anyone else for the said transfer of the said compensation right to be settled in award by the Land Acquisition Collector and references, revisions, appeals, etc. and they further admit and declare that if found and proved otherwise, then the Vendors shall be liable and responsible to make good the losses suffered by the Vendees and to repay the said received amount with costs and damages to the Vendees. The Vendees then shall be entitled to recover the said amount from the Vendors, their properties both moveable and immovable.

5. That the Vendors declare that the Deed which is executed by the Vendors in favour of the Vendees for that they are fully entitled to execute the same without consent of any other person/s are entitled owners of the same, they transferred their rights, titles and interests and claims in

the same for ever in favour of the said Vendees. The heirs and successors of the Vendors will have no right to challenge it."

6. The other landowners appear to have executed a similar assignment deed in favour of S.S. Aggarwal and 5 others, who are appellants in the appeal arising out of SLP(C) No.18056/2003.

7. Although, the assignees were very much aware that claims filed by the landowners were pending before the Land Acquisition Collector and in terms of paragraph 3 of the assignment deeds, they could apply for substitution, all of them deliberately kept quiet and did not produce assignment deeds before the Land Acquisition Collector, who ultimately passed award dated 11.10.1995 and fixed market value of the acquired land at the rate of Rs.98/- per square yard.

8. After announcement of the award, S.S. Aggarwal and 5 others filed an application under Section 18 of the Act for re-fixation of market value of the acquired land at the rate of Rs.10,000/- per square yard by asserting that they fall in the category of interested persons. Similar application was filed by Om Prakash and two others. The Collector did not make any inquiry on the issue of locus of S.S. Aggarwal and others to claim compensation and referred the matter to the Court. The Reference Court too did not inquire about the entitlement of S.S. Aggarwal and others to claim compensation and disposed of the reference by fixing market value of the acquired land at the rate of Rs.1,02,000/- per bigha.

9. Feeling dissatisfied with the determination made by the Reference Court, S.S. Aggarwal and 5 others filed an appeal under Section 54 of the Act and claimed that even though they were entitled to enhanced compensation at the rate of Rs.2,00,000/- per bigha, but due to paucity of funds, they were limiting their claim to Rs.3,000/- per square yard. Similar appeal was filed by Om Prakash and 2 others.

10. After four and a half years of filing the appeals, S.S. Aggarwal and 5 others filed C.M. No.1340 of 2002 under Order VI Rule 17 read with Section 151 CPC for amendment of the memo of appeal so as to enable them to claim compensation at the rate of Rs.7,000/- per square yard. Simultaneously, they deposited court fee of Rs.4,98,000/- by assuming that the High Court will necessarily accept their prayer for amendment. Notice of the application was given to the counsel representing the Union of India on 5.9.2002, but no order was passed granting or refusing the prayer for amendment. The appeals were finally disposed of by the Division Bench of the High Court vide judgment dated 21.2.2003 and market value of the acquired land was fixed at Rs.7,390/- per square yard. By an order of the same date, the Division Bench of the High Court allowed C.M. No.1340 of 2002 in the following terms:

> "By this application amendment has been sought to the memorandum of appeal. Such like applications have been decided in a number of cases by this Court.
>
> Amendment to the memorandum of appeal to claim higher amount of compensation has been sought on the ground that while filing appeal, due to paucity of funds, the appellants could not claim proper amount of compensation though in the reference higher amount of compensation had been claimed by them.
>
> Considering the facts and circumstances of the case and the principle that a claimant must be paid fair amount of compensation in case his property is acquired for public purpose by the State and relying upon the ratio of the decisions of the Supreme Court in *Harcharan Vs. State of Haryana* AIR 1983 SC 43; *Bhag Singh & Ors. Vs. Union Territory of Chandigarh* (1985) 3 SCC 737; *Scheduled Caste Co-operative Land Owing Society Ltd. Bhatinda vs. Union of India and Others* (1991) 1 SCC 174; *Chand Kaur & Others Vs. Union of India* (1994) 4 SCC 663; *Gokal vs. State of Haryana* AIR 1992 S.C. 150 and *Buta Singh (Dead) by L.Rs. Vs. Union of India* (1995) 5 SCC 284 the prayer made in the application is allowed subject to the condition of the appellant making good the deficiency in court fee within a period of four weeks, if not already made good."

11. Ms. Gita Luthra, learned senior counsel appearing for the Union of India assailed the impugned judgment mainly on the ground that the High Court committed serious error by entertaining the amendment application filed after a long time gap of four and a half years. She relied upon the judgments of this Court in *Buta Singh v. Union of India* (1995) 5 SCC 284 and *Union of India v. Pramod Gupta* (2005) 12 SCC 1 and argued that the High Court should not have granted the prayer for amendment because the applicants had not given any tangible explanation for the long delay of four and a half years. Ms. Luthra further argued that the High Court was not justified in disposing of the appeals without first deciding the amendment application and giving an opportunity to the acquiring authority and the ultimate beneficiary i.e. the DDA to contest the prayer made by S.S. Aggarwal and others for fixation of market value at the rate of Rs.7,000/- per square yard. Learned senior counsel then argued that the assignment deeds executed by the landowners constituted the best piece of evidence for determination of market value but the assignees deliberately withheld the same from the Land Acquisition Officer, the Reference Court and the High Court and this, by itself, should be treated as a ground for remitting the matter to the Reference Court. Ms. Luthra further argued that the High Court committed serious error by awarding compensation over and above what was claimed in the amendment application and that too without taking into consideration the fact that Om Prakash and others had not even filed an application for amendment of the memo of appeal.

12. Shri Amarendra Sharan, learned senior counsel appearing for the DDA argued that the impugned judgment is liable to be set aside because the assignees had deliberately

kept the Land Acquisition Collector, the Reference Court and the High Court in dark about the assignment deeds under which they claim to have purchased the right to get compensation by paying a meager sum of Rs.58/- per square yard to the landowners. Shri Sharan referred to Sections 23 and 28 of the Contract Act and argued that the assignment deeds are liable to be treated as void because the same are not only opposed to public policy, but have the effect of defeating the objects of the Delhi Lands (Restrictions on Transfer) Act, 1972, which prohibit transfer of land after issue of notification under Section 4(1). In support of this argument, Shri Amarendra Sharan relied upon the judgments of this Court in *Rattan Chand Hira Chand v. Askar Nawaz Jung* (1991) 3 SCC 67, *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde* (1995) Supp. 2 SCC 549, *Central Inland Water Transport Corporation v. Brojo Nath Ganguly* (1986) 3 SCC 156 and *Jayamma v. Maria Bai* (2004) 7 SCC 459. Shri Sharan lastly submitted that the landowners are entitled to just and reasonable compensation as of right and the assignees cannot take advantage of their better financial position to unduly enrich themselves by getting huge compensation.

13. Shri Dhruv Mehta, learned senior counsel appearing for S.S. Aggarwal and other assignees argued that the DDA does not have the locus to question the assignment deeds by invoking Article 14 of the Constitution and Sections 23 and 28 of the Contract Act because it was not a party before the Reference Court. Shri Mehta emphasised that the assignment deeds are registered documents which were executed by the landowners with full knowledge of the consequence of assignment and it is not open to the Union of India and the DDA to indirectly question the transaction involving transfer of the right to receive compensation. Shri Mehta relied upon the judgments in *Dawson v. Great Northern and City Railway Company* (1905) 1 KB 260, *Sunrise Associates v. Government of NCT of Delhi* (2006) 5 SCC 603 and unreported judgment of the Delhi High Court in Appeal No.140

of 1972-*Laxmi Narayan v. Union of India and another* decided on 24.11.1977 and argued that the right to receive compensation is in the nature of property right and the same can be assigned by the owner of the property. Shri Mehta strongly supported the order passed by the High Court granting leave for amendment of the claim by pointing out that the landowners had claimed compensation at the rate of Rs.4,000/- and in the applications filed under Section 18, the assignees had clearly indicated that market value of the acquired land is at least Rs.10,000/- but due to paucity of funds, they had restricted the claim to Rs.3,000/- per square yard.

14. We have considered the respective submissions in the back drop of the fact that even though in terms of the assignment deeds, S.S. Aggarwal and others became entitled to seek substitution before the Land Acquisition Collector, they neither sought impleadment in the award proceedings nor produced the assignment deeds to show that the landowners had transferred the right to receive compensation.

15. Learned senior counsel appearing for the assignees could not offer any tangible explanation as to why his clients chose to keep the Land Acquisition Collector, the Reference Court and the High Court in dark about the execution of the assignment deeds by the landowners. Therefore, it is reasonable to presume that they had done so deliberately and the only possible reason for this could be to avoid a proper scrutiny by the Land Acquisition Collector and two judicial forums about their entitlement to receive compensation at a rate higher than Rs.58/- per square yard paid to the landowners. If the assignment deeds had been produced before the Land Acquisition Collector or the Reference Court, either of them could have held an inquiry and given an opportunity to the landowners and/or assignees to explain the position. By withholding the assignment deeds, the assignees succeeded in avoiding proper scrutiny of their claim for compensation at the hands of the Land Acquisition Collector, the Reference Court

and the High Court.

16. In the aforesaid scenario, it will be just and proper to set aside the impugned judgment and remit the case to the Reference Court for fresh determination of the amount of compensation payable to the landowner and/or assignee after giving them reasonable opportunity of adducing evidence in support of their respective cases.

17. We also find merit in the submission of Ms. Gita Luthra that the High Court committed serious error by entertaining and allowing the amendment application filed by S.S. Aggarwal and others. What has surprised us is that the High Court first decided the appeals filed by the assignees and then disposed of the amendment application and that too without going through the records. If this was not so, there was no occasion for the High Court to incorporate the condition of making good the deficiency in court fee. By this process, the Union of India and the DDA were deprived of an important opportunity to make a request to the High Court to remit the case to the Reference Court or at least allow them to adduce evidence on the issue of correct market value of the acquired land. Another grave error committed by the High Court in this regard was that it allowed the amendment application without even adverting to the issue of unexplained delay of 4 and half years.

18. In *Union of India v. Pramod Gupta* (supra), this Court considered the legality and propriety of granting prayer for amendment in a case somewhat similar to the present one and observed:

> "Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings. The High Court neither assigned sufficient or cogent reasons nor applied its mind as regards the relevant factors while allowing the said application for amendment. It has also not been taken into consideration that the application for amendment of pleadings might not

have been maintainable in view of statutory interdict contained in sub-section (2) of Section 25 of the Act, if the same was applicable.

In Anoop Singh whereupon reliance has been placed by Mr Salve, the Division Bench of this Court did not have any occasion to consider that decisions of this Court in Krishi Utpadan Mandi Samiti v. Kanhaiya Lal and B.V. Reddy which, it will bear repetition to state, are authorities for the proposition that once it is held that Section 25(2) of the Act would be attracted in a given case, the parties are estopped and precluded from claiming any amount higher than that claimed in their claim petition before the Collector. An observation made to the effect that an application under Order 6 Rule 17 would be maintainable having regard to Section 53 of the Act, with utmost respect, does not constitute a binding precedent. No ratio has been laid down therein and the observations made therein are without any discussion. Furthermore no reason has been assigned in support of the said proposition of law.

In Harcharan also this Court did not address the question as to whether Order 6 Rule 17 would be applicable in relation to the original claim petition or memo of appeal.

It may be true that not only the memorandum of appeal but also the reference was amended. Mr Rao pointed out that the necessary amendments have been carried out in the application for reference or memorandum of appeal. In terms of Order 6 Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party which has obtained leave to amend his pleadings within the time granted therefor and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order 6 Rule 18 of the Code is that the party shall not be permitted to amend its pleadings thereafter unless

the time is extended by the court. It is not in dispute that such an order extending the time specified in Order 6 Rule 18 has not been passed."

19. In the result, the appeals are disposed of in the following terms:

(i) The impugned judgment as also the one passed by the Reference Court are set aside.

(ii) The matter is remitted to the Reference Court for fresh determination of the compensation payable to the landowners and/or assignees. While doing so, the Reference Court should first decide the issue of locus of the assignees to claim compensation. If it is held that the assignees are entitled to step into the shoes of the landowners, then the Reference Court shall consider the value of the land mentioned in the assignment deeds and decide what compensation should be paid for the acquired land.

(iii) The Reference Court shall give opportunity to the parties to lead additional evidence in support of their respective cases.

(iv) In view of the law laid down in *Delhi Development Authority v. Bhola Nath Sharma* (2011) 2 SCC 54, the DDA shall be entitled to participate in the proceedings of the Reference Court and raise objections against the claim made by the assignees for payment of compensation. The DDA shall also be entitled to raise all other legally permissible objections to contest the claim of the assignees.

20. Since the case is sufficiently old, we direct the Reference Court to decide the matter within a maximum period of one year from the date of receipt/production of copy of this judgment.

N.J. Appeals disposed of.

DEVENDRA SINGH & ORS.
v.
STATE OF U.P. & ORS.
(Civil Appeal No. 6293 of 2011)

AUGUST 3, 2011

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

Land Acquisition Act, 1894:

s. 4 r/w s.17(4), s.6 r/w s.17(1), and s.5-A – Acquisition of land for constructing the District Jail – Invoking of urgency provisions u/s 17 and dispensing with the compliance of s. 5-A – HELD: Acquisition of land for construction of District Jail, which is a public purpose, shall not, by itself justify the exercise of power of eliminating enquiry u/s 5-A in terms of s. 17 (1) and s.17 (4) – The Court should take judicial notice of the fact that certain public purposes such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplate planning, execution and implementation of the schemes which generally take time of few years – Therefore, the land acquisition for said public purposes does not justify invoking of urgency provisions under the Act – In the instant case, the series of events shows lethargy and lackadaisical attitude of State Government – The authorities are not justified in invoking the urgency provisions u/s 17 of the Act, thereby depriving the land-owners of their valuable right u/s 5-A to raise objections and to be given opportunity of hearing before the authorities in order to persuade them that their property may not be acquired – Impugned judgment of High Court set aside – Judicial notice.

The appellants filed a writ petition before the High Court challenging the notification u/s 4 read with s. 17 (4) and the declaration u/s 6 read with s. 17 (1) of the Land

Acquisition Act, 1894 issued in respect of acquisition of their lands, and thereby dispensing with the opportunity of hearing and inquiry u/s 5-A of the Act. The High Court accepted the stand of the State authorities that the land was acquired for construction of the District Jail which was an urgent matter, and dismissed the writ petition.

Allowing the appeal filed by the landowners, the Court

HELD: 1.1 It is well settled that acquisition of land for public purpose by itself shall not justify the exercise of power of eliminating inquiry u/s 5-A in terms of s. 17 (1) and s.17 (4) of the Land Acquisition Act, 1894. The Court should take judicial notice of the fact that certain public purposes such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplate planning, execution and implementation of the schemes which generally take time of few years. Therefore, the land acquisition for said public purposes does not justify the invoking of urgency provisions under the Act. [para 9] [784-A-C]

1.2 In the facts and circumstances of the case, it is clear that the District of Jyotiba Phule Nagar was created in the year 1997 which was, however, dissolved and recreated in 2004. The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons, Government of U.P. for acquisition of land for the construction of District Jail on 24.01.2003 which is undoubtedly a public purpose. After the lapse of 5 years in the year 2008, the State Government asked the District Magistrate to trace availability of lands for acquisition for construction of the District Jail in the proximity to District Headquarters and further requested the Selection Committee to recommend the land suitable for the said purpose. Thereafter, the Selection Committee

recommended the acquisition of the land in question as suitable for the construction of the Jail but it took two years for the State Government to issue the Notifications u/ss. 4 and 6 respectively, thereby invoking the urgency provisions u/s 17 of the Act. The series of events shows lethargy and lackadaisical attitude of the State Government. In the circumstances, the respondents are not justified in invoking the urgency provisions u/s 17 of the Act, thereby depriving the appellants of their valuable right u/s 5-A to raise objections and to be afforded opportunity of hearing before the authorities in order to persuade them that their property may not be acquired. The impugned Judgment of the High Court is set aside. [paras 11 and 14-15] [786-E-H; 787-A-B; 788-C-D]

Dev Sharan & Others v. State of U.P. **2011 (3) SCR 728 = (2011) 4 SCC 769; and** *Radhy Shyam v. State of U.P.* **(2011) 5 SCC 553 – relied on**

Deepak Pahwa v. Lt. Governor of Delhi, **1985 (1) SCR 588 = (1984) 4 SCC 308; and** *Chameli Singh v. State of U.P.*, **1995 (6) Suppl. SCR 827 = (1996) 2 SCC 549 – distinguished.**

Case Law Reference:

2011 (3) SCR 728	**relied on**	**para 6**
(2011) 5 SCC 553	**relied on**	**para 6**
1985 (1) SCR 588	**distinguished**	**para 7**
1995 (6) Suppl. SCR 827	**distinguished**	**para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6293 of 2011.

From the Judgment and Order dated 08.10.2010 of the High Court of Judicature at Allahabad in CMWP No. 61903 of 2010.

Prashant Kumar (for AP & J Chambers) for the Appellants.

K.K. Venugopal, Shail Kumar Dwivedi, AAG (State of U.P.), G.V. Rao and Ankur Talwar for the Respondents.

The Judgment of the Court was delivered by

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

2. This appeal, by special leave, is directed against the Judgment and Order dated 08.10.2010 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 61903 of 2010 whereby, the writ petition filed by the appellants challenging the acquisition of their land for construction of District Jail by invoking Sections 17(1) and 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was dismissed.

3. The facts of the present appeal are as follows:-

The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons Section 4, Government of U.P. for acquisition of land situated at Amroha-Naugawan Sadat Road for the construction of District Jail vide letter dated 24.01.2003. After the gap of 5 years, the Special Secretary, Prisons Administration and Reforms, Government of U.P., had requested the District Magistrate to find the available lands for acquisition, for the said purpose, in the proximity of theDistrict Head Quarters vide letter dated 16.01.2008. Subsequently, the District Magistrate traced and informed the availability of such lands in village Dasipur and other nearby villages for possible acquisition to the Special Secretary vide letter dated 25.2.2008. Thereafter, the Special Secretary directed the Selection Committee to inspect the available lands regarding the feasibility of their acquisition for the construction of Jail vide letter dated 22.04.2008. Accordingly, the Selection Committee, after conducting detailed spot inspection of the available lands, found and recommended

that the lands at village Dulhar Sant Prasad were suitable for construction of Jail on 05.05.2008. In this backdrop, the respondent had issued a notification dated 05.03.2010 under Section 4 read with Section 17(4) of the Act for acquisition of 20.870 hectares of land at village Dulhapur Sant Prasad, Tehsil Amroha, Jyotiba Phule Nagar for public purpose of construction of District Jail. The same was published in the local newspapers on 26.03.2010. The relevant part of the notification is extracted below:

"UTTAR PRADEHS SHASAN KARAGAR
PRASHASAN EVEM SUDHAR ANUBHAG – 4

The Governor is pleased to order the publication of the following English translation of Notification No. 443/22-4-2010-101 (b) 2000 dated 05 March, 2010 for general information:

NOTIFICATION
No. 443/22-4-2010-101 (b) 2000
Lucknow: Dated 05 March 2010

Under subsection (1) of section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1984 (sic.)), the Governor is pleased to notify for general information that the land mentioned in the schedule below is needed for the public purpose namely, for construction of the District Jail in District Jyotiba Phule Nagar.

Being of opinion that provisions of subsection (1) of section 17 of the said Act are applicable to the said land in as much as the said land is urgently required for construction of the District Jail in District Jyotiba Phule Nagar and that in view of the pressing urgency it is as well necessary to eliminate to delay likely to be caused by an enquiry under section 5-A of the said Act the Governor is further pleased to direct, under subsection (4) of section 17 of said Act, that the provisions of section 5-A shall not apply."

4. Since the appellants' land was also included in the

notification, they made representations dated 07.04.2010 and 20.08.2010 to the Land Acquisition Officer, the District Magistrate, Jyotiba Phule Nagar, the Chief Minister and the Home Secretary, Government of U.P. with the request that their land may not be acquired as they had raised construction of houses, tube wells and lands are under cultivation. They also suggested the availability of large tracts of alternative lands with no construction and irrigation facility situated within one Kilometer towards North. However, the concerned authorities did not reply to these representations of the appellants. Subsequently, the appellants, aggrieved by the said notification, filed Writ Petition No. 22252 of 2010 before the High Court of Judicature at Allahabad, which was dismissed vide its Order dated 22.04.2010 without deciding any issue on merits on the ground that the writ petition is premature as the declaration under Section 6 has not been issued. The High Court further granted liberty to the appellants to raise all the available grounds, including the applicability of Sections 17(1) and 17(4) of the Act, in order to challenge the acquisition of their land once the State Government proceeds to issue Notification under Section 6(1) of the Act. Thereafter, the State Government issued a Notification dated 06.08.2010 under Section 6 read with Section 17(1) of the Act whereby, it directed the Collector of Jyotiba Phule Nagar to take possession of the said land on the expiry of 15 days from the date of publication of the Notice under Section 9(1) even in the absence of any award being made under Section 11. Eventually, the Public Notice dated 03.09.2010 was issued, which expressed the intention of the Government to take possession of the said land, in which it was directed to the appellants to appear before the Special Land Acquisition Officer, Jyotiba Phule Nagar. The appellants, being aggrieved, filed a Writ Petition before the High Court of Judicature at Allahabad interalia questioning the correctness of the Notification dated 5.3.2010 issued under Section 4 read with Section 17(4) and Notification dated 6.8.2010 issued under Section 6 read with Section 17(1) thereby dispensing with the opportunity of hearing and enquiry under Section 5-A of the

Act. The High Court, vide its impugned Judgment and Order dated 8.10.2010, dismissed the Wirt Petition and allowed the respondents to proceed further with acquisition of the said land in terms of the Act on the ground that the construction of the District Jail is an urgent matter which has been mentioned in the Notification under Section 4 as the very purpose of acquisition of the land. Aggrieved by this Judgment and Order of the High Court, the appellants are before us in this appeal.

5. The issue involved in the present appeal for our consideration is: Whether the respondent is justified in invoking the urgency provision under Section 17(1) and excluding the application of Section 5-A in terms of Section 17(4) of the Act for acquisition of the land for construction of District Jail.

6. The learned counsel Shri. Prashant Kumar submits that the district of Jyotiba Phule Nagar came into existence on 24.04.1997. Since then, the State Government had not shown any kind of urgency and was only considering the proposal of acquiring the land for the public purpose of construction of the District Jail. It was only in the year 2010 that the State Government had issued Notifications under Sections 4 and 6, invoking urgency provision as contemplated by the Sections 17(1) and 17 (4). In other words, the lackadaisical attitude of the State Government since the creation of the new district nearly 13 years ago does not exhibit or depict any kind of urgency but only lethargy on their part in acquiring the land. Therefore, the urgency contemplated in the Act cannot be equated with dereliction of responsibility on the part of the State Government. The learned counsel contends that the respondents had unnecessarily invoked the urgency provisions under Section 17 (1) read with Section 17 (4) for acquisition of the land for construction of the District Jail in view of the delay of 13 years in the issuance of the Notification under Section 4 of the Act and still, the said land is under the possession of the appellants. The learned counsel argues that invoking of the urgency provisions under Section 17(4), which excludes the application of Section 5-A, by the respondents in the absence

of any real urgency as contemplated by Section 17, amounts to illegal deprivation of the right to file objection and hearing of the appellants under Section 5-A of the Act. He submits, relying on various decisions of this Court, that the expropriatory legislation like Land Acquisition Act must be given strict construction. He further submits that Section 5-A is a substantial right and akin to Fundamental Right which embodies a principle of giving of proper and reasonable opportunity to the land owner to persuade the authorities against the acquisition of his land which can be dispensed with only in exceptional cases of real urgency. The learned counsel relies on the decision of this Court in *Dev Sharan & Others v. State of U.P.* (2011) 4 SCC 769 in support of his contention that dispensing with the opportunity of hearing and enquiry under Section 5-A of the Act in view of prolonged lethargy of almost 13 years on the part of respondents by invoking emergency provisions under Section 17 is illegal and unjustified. The learned counsel has further cited catena of Judgments of this Court in support of his arguments which has already been dealt with by this Court in *Radhy Shyam v. State of U.P.* (2011) 5 SCC 553.

7. *Per Contra*, the learned senior counsel Shri. K.K. Venugopal submits that the newly created district of Jyotiba Phule Nagar does not have a District Jail to lodge the prisoners of the district who are presently accommodated in the Moradabad District Jail, wherein the total population of inmates exceeds by more than three times the capacity of the Jail, causing great hardships to inmates. Further, producing of the prisoners from Moradabad Jail to various Courts in Jyotiba Phule Nagar raises financial and security concerns. He submits that since the creation of the new district, the State Government has been making continuous efforts for acquisition of land to construct the District Jail. However, the process of construction of Jail could not be carried forward due to subsequent dissolution of the district vide Notification dated 13.04.2004, which was challenged before the High Court and later, the High

Court quashed the said Notification of Dissolution. Pursuant to this Order of the High Court, the district was recreated in 2004. He further submits that the State Government had issued a Notification dated 5.3.2010 under Section 4 read with Section 17 (4) of the Act for acquisition of the said land for public purpose of urgent construction of Jail in the newly created district by invoking Section 17(4) of the Act in order to eliminate delay likely to be caused by enquiry under Section 5-A of the Act. Subsequently, in view of the said urgency, the State Government had issued Notification dated 6.8.2010 under Section 6 read with Section 17(1) of the Act and published it in the Newspaper along with a Public Notice under Section 9 of the Act dated 20.08.2010, all within a period of 5 months. Further, the respondents, after hearing the objections and claims of the appellants dated 03.09.2010 regarding the compensation and measurement of the land under Section 9 of the Act, handed over the possession of the said land to the Senior Superintendent of Jails, Mordabad, on 07.01.2011. The learned senior counsel submits that there is no lethargy or negligence on the part of the State Government to acquire the said land. He further supports the observation of the High Court in the impugned Judgment that construction of Jail is an urgent matter requiring acquisition of the land by invoking urgency provisions under Section 17 (1) and Section 17(4) thereby dispensing with the enquiry under Section 5-A of the Act. He further contends that the right of the citizens of filing of objections and opportunity of hearing under Section 5-A are subject to the provisions of Section 17 of the Act and the same can be legally curtailed in the event of any pressing need and urgency for acquisition of land in order to eliminate delay likely to be caused by an enquiry under Section 5-A of the Act. The learned senior counsel further submits that Dev Sharan's Case (Supra) upon which, the appellant had placed strong reliance is not relevant and applicable to the present case because in that case, this Court invalidated the acquisition of land by invoking urgency provisions for construction of a new Jail when

old Jail was already existed in District Shahjahanpur but was located in a densely populated area which needs to be shifted. Learned Senior Counsel has placed reliance on the decisions of this Court in *Deepak Pahwa v. Lt. Governor of Delhi,* (1984) 4 SCC 308 and *Chameli Singh v. State of U.P.,* (1996) 2 SCC 549 in support of his arguments that even the delay and lethargy on the part of the respondents will not disentitle them to invoke urgency provisions under Sections 17 of the Act.

8. The issue before us is no more res integra as it has already been decided by this Court in *Radhy Shyam's* Case (Supra) in which one of us was the party (G.S. Singhvi, J.) wherein this Court has considered the development of the jurisprudence and law, with respect to invoking of the urgency provisions under Section 17 visà- vis right of the landowner to file objections and opportunity of hearing and enquiry under Section 5-A of the Act, by referring to plethora of earlier decisions of this Court. This Court had culled out various principles governing the acquisition of the land for public purpose by invoking urgency thus:

> "From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:
>
> (i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good — *Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd.*[46], *Charanjit Lal Chowdhury v. Union of India*[47] and *Jilubhai Nanbhai Khachar v. State of Gujarat*[48].
>
> (ii)The legislations which provide for compulsory acquisition of private property by the State fall in the

> category of expropriatory legislation and such legislation must be construed strictly — *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana*[49]; *State of Maharashtra v. B.E. Billimoria*[50] and *Dev Sharan v. State of U.P.*[242]
>
> (iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.
>
> *(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.*
>
> *(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will,*

in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in subsection (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters."

9. In view of the above it is well settled that acquisition of the land for public purpose by itself shall not justify the exercise of power of eliminating enquiry under Section 5-A in terms of Section 17 (1) and Section 17 (4) of the Act. The Court should take judicial notice of the fact that certain public purpose such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplates planning, execution and implementation of the schemes which generally takes time of few years. Therefore, the land acquisition for said public purpose does not justify the invoking of urgency provisions under the Act. In *Radhy Shyam* (Supra), this Court, whilst considering the conduct or attitude of the State Government vis-àvis urgency for acquisition of the land for the public purpose of planned industrial development in District Gautam Budh Nagar, has observed:

> "In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). *If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition."*

10. Moreover, in *Dev Sharan* Case (Supra) the acquisition of land for construction of new District Jail, since the old Jail was overcrowded and causing hardships including health and hygiene concerns to the inmates, by invoking urgency provision under Section 17 was quashed on the ground that the government machinery had functioned at very slow pace in

processing the acquisition which clearly evinces that there was no urgency to exclude the application of Section 5-A of the Act. The Court further observed:

> "35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's Letter dated 4-6-2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of a suitable site for construction was held on 27-6-2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2-7- 2008. This was in turn forwarded to the State Government by the Director on 22-7-2008. After due consideration of the forwarded proposal and documents, the State Government issued Section 4 notification, along with Section 17 notification on 21-8-2008. These notifications were published in local newspapers on 24-9-2008.
>
> 36. Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19-6-2009. The Director in turn forwarded all these to the State Government on 17-7-2009, and the State Government finally issued the Section 6 declaration on 10-8-2009. This declaration was published in the local dailies on 17-8-2009.
>
> 37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 11 months and 23 days i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17(4) of the Act.

> 38. In Para 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5-A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.
>
> 39. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section 17. If so advised, the Government can initiate acquisition proceeding by following the provision of Section 5-A of the Act and in accordance with law."

11. In the facts and circumstances of the present case, it is clear that the District of Jyotiba Phule Nagar was created in the year 1997 which was, however, dissolved and recreated in 2004. The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons, Government of U.P. for acquisition of land for the construction of District Jail on 24.01.2003 which is undoubtedly a public purpose. After the lapse of 5 years in the year 2008, the State Government asked District Magistrate to trace availability of lands for acquisition for construction of the District Jail in the proximity to District Headquarters and further requested the Selection Committee to recommend the land suitable for the said purpose. Thereafter, the Selection Committee recommended the acquisition of the said land as suitable for the construction of the Jail but it took two years for the State Government to issue the said Notifications under Section 4 and Section 6 respectively, thereby invoking the urgency provisions

under Section 17 of the Act. The series of events shows lethargy and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions under Section 17 of the Act, thereby depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

12. The decision of this Court in *Chameli Singh* (Supra), upon which Shri. K.K. Venugopal, learned senior counsel for the respondents has placed reliance, has already been considered and distinguished by this Court in *Radhy Shyam* Case (Supra) in the following terms:

> "74. In *State of U.P. v. Pista Devi, Rajasthan Housing Board v. Shri Kishan and Chameli Singh v. State of U.P.* the invoking of urgency provision contained in Section 17(1) and exclusion of Section 5-A was approved by the Court keeping in view the acute problem of housing, which was perceived as a national problem and for the solution of which national housing policy was framed and the imperative of providing cheaper shelter to Dalits, tribals and other disadvantaged sections of the society."

13. Learned senior counsel for the respondents also relied on the decision of this Court in *Deepak Pahwa* Case (Supra). In that case, the land was acquired by invoking urgency provisions under Section 17 for the purpose of construction of a New Transmitting Station for the Delhi Airport after the correspondence of nearly eight years among the various Departments of the Government before the Notification and the declaration was published in the Gazette. This Court has held that mere pre-notification delay would not render the invocation of the urgency provisions void as very often, the delay increases the urgency of the necessity for acquisition. We are afraid that the decision will not come to the rescue of the respondents because this Court has observed that delay only accelerates or increases the urgency of need of acquisition, which

contemplates that delay does not create a ground or cause for urgency but increases the already existing urgency for acquisition of land for any public purpose. Therefore, the delay, by itself, does not create urgency for acquisition but accelerates urgency only in case it already exists in the nature of the public purpose.

14. For the reasons aforesaid, we hold that the State Government was not justified, in the facts of this case, to invoke the emergency provision of Section 17(4) of the Act. Therefore, the appellants cannot be denied of their valuable right under Section 5-A of the Act.

15. In the result, the appeal is allowed. The impugned Judgment and Order of the High Court dated 08.10.2010 is set aside. No order as to costs.

R.P. Appeal allowed.

IDEA MOBILE COMMUNICATION LTD.

v.

C.C.E. & C., COCHIN

(Civil Appeal No. 6319 of 2011)

AUGUST 04, 2011

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

Finance Act, 1994 – s.65 (105) zzzx – SIM cards – Whether the value of SIM cards sold by the appellant to its mobile subscribers is to be included in taxable service under s.65 (105) zzzx of the Finance Act, 1994, which provides for levy of service tax on telecommunication service or whether it was taxable as sale of goods under the Sales Tax Act – Held: The amount received by the cellular telephone company from its subscribers towards SIM Card forms part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided – They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all – The value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers – No element of sale was involved in the transaction – Kerala General Sales Tax Act, 1963.

The question which arose for consideration in the present appeal was whether the value of SIM cards sold by the appellant to its mobile subscribers is to be included in taxable service under Section 65 (105) zzzx of the Finance Act, 1994, which provides for levy of

service tax on telecommunication service or whether it was taxable as sale of goods under the Sales Tax Act.

Dismissing the appeal, the Court

HELD:1.1. A SIM Card or Subscriber Identity Module is a portable memory chip used in cellular telephones. It is a tiny encoded circuit board which is fitted into cell phones at the time of signing on as a subscriber. The SIM Card holds the details of the subscriber, security data and memory to store personal numbers and it stores information which helps the network service provider to recognize the caller. [Para 12] [795-A-B]

1.2. The High Court gave cogent reasons for coming to the conclusion that service tax is payable inasmuch as SIM Card has no intrinsic sale value and it is supplied to the customers for providing mobile service to them. [Para 17] [799-C-D]

1.3. The sales tax authorities themselves conceded the position before the High Court that no assessment of sales tax would be made on the sale value of the SIM Card supplied by the appellant to their customers irrespective of the fact whether they have filed returns and remitted tax or not. Also even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same. If the article is not susceptible to tax under the Sales Tax Act, the amount of tax paid by the assessee could be refunded as the case may be or, the assessee has to follow the law as may be applicable. But one cannot accept a position in law that even if tax is wrongly remitted that would absolve the parties from paying the service tax if the same is otherwise found payable and a liability accrues on the assessee. The charges paid by the subscribers for procuring a SIM Card are generally processing charges

for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card. There cannot be any dispute to the aforesaid position as the appellant itself subsequently has been paying service tax for the entire collection as processing charges for activating cellular phone and paying the service tax on the activation. The appellant also accepts the position that activation is a taxable service. The position in law is therefore clear that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all. Thus, it is established from the records and facts of this case that the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers. The Sales Tax authority understood the aforesaid position that no element of sale is involved in the present transaction. There is no infirmity with the findings and reasoning in the Judgment passed by the High Court. [Paras 18, 19, 20] [799-F-H; 800-A-G]

BSNL vs. Union of India **(2006) 3 SCC 1 and** *Escotel Mobile Communications Ltd. vs. Union of India and Others* **(2002) Vol. 126 STC 475 (Kerala) – referred to.**

Case Law Reference:

(2006) 3 SCC 1	**referred to**	**Para 7, 9, 13**
(2002) Vol.126 STC 475(Kerala)	**referred to**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6319 of 2011.

From the Judgment & Order dated 04.09.2008 of the High Court of Kerala at Ernakulam in C.E. Appeal No. 20 of 2006.

Punit Dutt Tyagi for the Appellant.

V. Shekhar, Shalini Kumar, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. The present appeal is filed against the judgment and order dated 04.09.2008 passed by the Kerala High Court whereby and whereunder, the High Court allowed the appeal filed by the Commissioner of Central Excise & Customs, Cochin.

3. The issue which arises for our consideration in this appeal is whether the value of SIM cards sold by the appellant herein to their mobile subscribers is to be included in taxable service under Section 65 (105) zzzx of the Finance Act, 1994, which provides for levy of service tax on telecommunication service OR whether it is taxable as sale of goods under the Sales Tax Act.

4. The facts leading to the filing of the present case are that during the relevant assessment years, i.e., 1997-1999, the appellant was selling the SIM cards to its franchisees and was paying the sales tax to the State and activating the SIM card in the hands of its subscribers on a valuable consideration and paying service tax only on the activation charges. The Department of Sales Tax, State of Kerala, included the activation charges as part of the sale consideration of SIM cards on the ground that activation is nothing but a value addition of the “goods” and thus comes under the definition of

"goods" under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as *"KGST Act"*) and accordingly levied sales tax on activation charges. The Department of Central Excise, Eranakulum (Service Tax Department) observed that a mere SIM card without activation is of no use and held that the appellant is liable to pay service tax on the value of SIM card also. In both the cases interest and penalty were levied.

5. Being aggrieved, the appellant filed appeal before the respective appellate authorities under the KGST Act and Central Excise Act, 1944. There were consequential recovery proceedings against the appellant and the appellant filed Writ Petition O.P. No. 4973 of 2001(P) in the High Court of Kerala challenging the levy of service tax on the sale price of SIM cards and also challenging the levy of sales tax on the amounts recovered by the appellant by way of activation charges from its customers which was dismissed vide order dated 15.02.2002.

6. Aggrieved thereby, the appellant filed Civil Appeal No. 2408 of 2002 before this Court. Based on the judgment of the High Court dated 15.02.2002, the appellant also filed appeal before the Commissioner (Appeals), Customs and Central Excise which was dismissed vide order dated 08.04.2003. The appellant preferred appeal u/s 35B of Central Excise Act, 1944 before the Central Excise and Service Tax Tribunal (hereinafter referred to as "*TRIBUNAL*") viz. Appeal No. ST/18/03 against the order dated 08.04.2003, in which the appellant did not challenge the levy of sales tax as the same was already paid.

7. The aforesaid Civil Appeal No. 2408 of 2002 before this Court was heard and decided with appeals and Writ Petitions of several other telecom operators, including BSNL, BPL etc. and vide judgment reported as *BSNL vs. Union of India* reported in (2006) 3 SCC 1, the matter was remanded to the Sales Tax Authorities concerned for determination of issue relating to SIM cards. The Tribunal in the pending Appeal No. ST/18/03, vide order dated 25.05.2006, held that the levy of

service tax in the case is not sustainable.

8. Aggrieved thereby, the respondent challenged the order of the Tribunal dated 25.05.2006 before the High Court of Kerala by way of Appeal being CE Appeal No. 20 of 2006. The High Court vide order dated 04.09.2008 allowed the appeal of the respondent – department against which this appeal has been filed, upon which, we heard the learned counsel appearing for the parties.

9. The counsel appearing for the appellant submitted that the appellant was charging from its subscribers Rs. 1,000/- towards sales tax and Rs. 1,200/- as service tax upon activation of the SIM Card and that since they were selling the SIM Cards, therefore, at that point of time, they were charging Rs. 1000/- towards sales tax and for activating the SIM Card they were charging Rs. 1200/- as service tax. Counsel also drew our attention to the earlier judgment rendered by the Kerala High Court as against which the Supreme Court pronounced the Judgment being *BSNL vs. Union of India* reported in (2006) 3 SCC 1.

10. The counsel appearing for the respondent on the other hand submitted that SIM Card has no intrinsic sale value and it is supplied to customers to provide telephone service. It is also submitted by the counsel that selling of the SIM Card and the process of activation are "services" provided by the mobile cellular telephone companies to the subscriber. He further submitted that the decision of the Supreme Court has clearly stated that if the sale of a SIM Card is merely incidental to the service being provided and it only facilitates the identification of the subscribers, their credit and other details, it would be assessable to service tax.

11. We have examined the materials on record in the light of the facts placed before us and also the decisions referred to and relied upon by the counsel appearing for the parties.

12. A SIM Card or Subscriber Identity Module is a portable memory chip used in cellular telephones. It is a tiny encoded circuit board which is fitted into cell phones at the time of signing on as a subscriber. The SIM Card holds the details of the subscriber, security data and memory to store personal numbers and it stores information which helps the network service provider to recognize the caller. As stated hereinbefore the Kerala High Court had occasion to deal with the aforesaid issue and in that context in its Judgment pronounced on 15th February, 2002 in *Escotel Mobile Communications Ltd. vs. Union of India and Others,* reported in (2002) Vol. 126 STC 475 (Kerala), it was stated in paragraph 36 that a transaction of selling of SIM Card to the subscriber is also a part of the "service" rendered by the service provider to the subscriber. The Kerala High Court in the facts and circumstances of the case observed at paras 36 and 47 as under: -

> "36. With this perspective in mind, if we analyse the transaction that takes place, it appears to us that there is no difficulty in correctly understanding its facts. The transaction of selling the SIM. card to the subscriber is also a part of the "service" rendered by the service provider to the subscriber, Hence, while the State Legislature is competent to impose tax on "sale" by a legislation relatable to entry 54 of List II of Seventh Schedule, the tax on the aspect of "services" rendered not being relatable to any entry in the State List, would be within the legislative competence of Parliament under Article 248 read with entry 97 of List I of the Seventh Schedule to the Constitution. We are, therefore, unable to accept the contention of Mr. Ravindranatha Menon that there is any possibility of constitutional invalidity arising due to legislative incompetence by taking the view that "sale" of SIM card is simultaneously exigible to sales tax as well as service tax. Once the "aspect theory" is kept in focus, it would be clear that the same transaction could be exigible to different taxes in its different aspects. Thus, we see no

> reason to read down the legislation as suggested by Mr. Menon.
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> Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> 47. Conclusions:
>
> (a) The transaction of sale of SIM Card is without doubt exigible to sales tax under the KGST Act. The activation charges paid are in the nature of deferred payment of consideration for the original sale, or in the nature of value addition, and, therefore, also amount to parts of the sale and become exigible to sales tax under the KGST Act.
>
> (b) Both the selling of the SIM Card and the process of activation are "services" provided by the mobile cellular telephone companies to the subscriber, and squarely fall within the definition of "taxable service" as defined in section 65(72)(b) of the Finance Act. They are also exigible to service tax on the value of "taxable service" as defined in Section 67 of the Finance Act."

13. It would be appropriate to mention that later on the said Escotel Mobile Communications Ltd. merged with the appellant company i.e. M/s. Idea Mobile Communication Ltd. The aforesaid decision of the Kerala High Court was under challenge in this Court in the case of *BSNL vs. Union of India* reported in (2006) 3 SCC 1. The Supreme Court has framed the principal question to be decided in those appeals as to the nature of transaction by which mobile phone connections are enjoyed. The question framed was, is it a sale or is it a service or is it both. In paragraphs 86 and 87 of the Judgment the Supreme Court has held thus: -

> 86. In that case Escotel was admittedly engaged in selling cellular telephone instruments, SIM cards and other accessories and was also paying Central sales tax and

sales tax under the Kerala General Sales Tax Act, 1963 as applicable. The question was one of the valuation of these goods. The State Sales Tax Authorities had sought to include the activation charges in the cost of the SIM card. It was contended by Escotel that the activation was part of the service on which service tax was being paid and could not be included within the purview of the sale. The Kerala High Court also dealt with the case of BPL, a service provider. According to BPL, it did not sell cellular telephones. As far as SIM cards were concerned, it was submitted that they had no sale value. A SIM card merely represented a means of the access and identified the subscribers. This was part of the service of a telephone connection. The Court rejected this submission finding that the SIM card was "goods" within the definition of the word in the State Sales Tax Act.

87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in mind the following principles: if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the

SIM card by relying on the "aspects" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in Federation of Hotel & Restaurant Assn. of India v. Union of India: (SCC pp. 652-53, paras 30-31)

" '… subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power'.

* * *

There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects."

14. In paragraph 88 this Court observed that no one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction but that would not in any manner allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. It was also held that for the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. Consequently, the Supreme Court after allowing the appeals filed by Bharat Sanchar Nigam Ltd and Escotel remanded the matter to the Sales Tax Authorities concerned for determination of the issue relating to SIM Cards in the light of the observations contained in that judgment.

15. As against the order passed by the adjudicating authority, the appellant assessee took up the matter in appeal before the Commissioner of Central Excise & Customs, Cochin. The appellate authority upheld the findings of the

adjudicating authority. The assessee took up the matter before the CESTAT, Bangalore. The CESTAT vide its order dated 25.05.2006 held that the levy of service tax as demanded is not sustainable for the reason that the assessee had already paid the sales tax and therefore it follows that service tax is not leviable on the item on which sales tax has been collected.

16. Being aggrieved by the aforesaid order dated 25.05.2006, an appeal was filed before the Kerala High Court by the department, which was disposed of by the impugned order dated 04.09.2009.

17. The High Court has given cogent reasons for coming to the conclusion that service tax is payable inasmuch as SIM Card has no intrinsic sale value and it is supplied to the customers for providing mobile service to them. It should also be noted at this stage that after the remand of the matter by the Supreme Court to the Sales Tax authorities the assessing authority under the Sales Tax Act dropped the proceedings after conceding the position that SIM Card has no intrinsic sale value and it is supplied to the customers for providing telephone service to the customers. This aforesaid stand of the Sales Tax authority is practically the end of the matter and signifies the conclusion.

18. The sales tax authorities have themselves conceded the position before the High Court that no assessment of sales tax would be made on the sale value of the SIM Card supplied by the appellant to their customers irrespective of the fact whether they have filed returns and remitted tax or not. It also cannot be disputed that even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same. If the article is not susceptible to tax under the Sales Tax Act, the amount of tax paid by the assessee could be refunded as the case may be or, the assessee has to follow the law as may be applicable. But we cannot accept a position in law that even if tax is wrongly remitted that would absolve

the parties from paying the service tax if the same is otherwise found payable and a liability accrues on the assessee. The charges paid by the subscribers for procuring a SIM Card are generally processing charges for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card.

19. There cannot be any dispute to the aforesaid position as the appellant itself subsequently has been paying service tax for the entire collection as processing charges for activating cellular phone and paying the service tax on the activation. The appellant also accepts the position that activation is a taxable service. The position in law is therefore clear that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all. Thus, it is established from the records and facts of this case that the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers. The Sales Tax authority understood the aforesaid position that no element of sale is involved in the present transaction.

20. That being the position, we find no infirmity with the findings and reasoning in the Judgment and Order passed by the High Court and therefore the appeal has no merit and the same is dismissed. There will be no order as to costs.

B.B.B. Appeal dismissed.

M/S. MILKFOOD PVT. LTD.
v.
M/S. GMC ICE CREAM (P) LTD.
(Civil Appeal No.6316 of 2011)

AUGUST 4, 2011

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

ARBITRATION ACT, 1940:

s.31(4) – Territorial jurisdiction – Arbitration clause stipulating that venue of arbitration would be Delhi and the contract subject to Delhi jurisdiction – Suit filed in Gaya – In revision before Patna High Court against order on appellants' application u/s 34 for stay of suit, arbitral tribunal appointed which gave its award – Application u/s 14(2) filed in Gaya court to make the award the rule of the court – Patna High Court upholding the order of the Gaya court that it had jurisdiction – HELD: Application u/s 33 filed by appellant in Delhi High Court praying for a clarification as to whether arbitration proceedings would be governed by the 1940 Act or the 1996 Act will have to be treated as the first application in terms under the 1940 Act in the reference and all subsequent applications will have to be made in Delhi High Court, which alone will have jurisdiction in the matter and not the Gaya court – Order appointing arbitrators by Patna High Court was not in an application under the Act, but in a revision u/s 115 CPC arising out of an order in an application u/s 34 to stay the proceedings in a civil suit – Therefore, it cannot be said that the first application in a reference was made before Patna High Court – Orders of Patna High Court and of Sub-Judge, Gaya, set aside – Respondent shall obtain return of application u/s 14(2) from Gaya court and file it before Delhi High Court.

Under an agreement, the respondent was to

manufacture and pack appellant's product (ice cream). The agreement contained an arbitration clause stipulating that the venue of arbitration would be Delhi and the contract was subject to Delhi jurisdiction. The respondent filed a suit in the Court of Munsif, Gaya (Bihar) for injunction to restrain the appellant from interfering with the manufacture and supply of ice cream by it. The appellant's application u/s 34 of the Arbitration Act, 1940 (the Act) filed on 19.6.1995 for stay of the proceedings in the suit stating that the contract between the parties provided for arbitration was allowed. The revision filed by the respondent was disposed of by the High Court by its order dated 6.5.1997, as the parties had appointed their arbitrators and the matter stood referred to the arbitral tribunal, which gave the award on 17.8.2004. The respondent filed a suit u/s 14 (2) of the Act in the Court of Sub-Judge, Gaya on 28.8.2004 praying that the award be made a rule of the Court. The appellant contended that only the Delhi High Court had the jurisdiction to entertain the application and not the court at Gaya. The appellant also challenged the award by filing a petition u/ss 30 and 33 of the Act on 16.10.2004 before the Delhi High Court, which held that it was for the Gaya court to decide the issue of jurisdiction. The Court of Sub-Judge, Gaya held that it had jurisdiction to decide the application u/s 14 (2) of the Act. The said order was upheld by the Patna High Court.

In the instant appeal, the question for consideration before the Court was: whether the proceedings u/s 14 (2) of the Act could have been initiated only in the Delhi High Court and not before the Court of Sub-Judge, Gaya, having regard to s. 31 (4) of the Act.

Allowing the appeal, the Court

HELD: 1.1Sub-s. (4) of s. 31 of the Arbitration Act, 1940 provides that where any application under the Act,

in any reference, had been made in a court competent to entertain it, then notwithstanding anything contained in the Act (or in any other law for the time being in force), that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and therefore all arbitration proceedings shall be made in that court alone and not in any other court. [para 9] [809-B-C]

1.2 The application u/s 34 of the Act filed by the appellant on 19.6.1995 cannot be considered to be the first application to a court in the reference to arbitration. [para 11] [810-E-F]

Kumbha Mawji vs. Union of India **1953 SCR 878 ;** *UOI vs Surjeet Singh Atwal* **1970 (1) SCR 351=1969(2) SCC 211 – relied on.**

1.3 The order dated 6.4.1997 appointing the arbitrators made by Patna High Court, was not in an application under the Act, but in a revision petition u/s 115 of the Code. Further the said revision did not arise out of arbitration proceedings, but against the order in an application u/s 34 of the Act to stay the proceedings in a civil suit. Therefore, it cannot be held that the first application under the Act in a reference was made before the Patna High Court. The order dated 6.5.1997 of the Patna High Court can also not be considered to be an order u/s 8 of the Act, as neither an application was filed u/s 8 of the Act nor the conditions for making an application thereunder existed in the instant case. Consequently, the question of making all subsequent applications arising out of the reference under the Act, to that court does not arise. [para 11-13] [810-G-H; 811-A-B-H; 812-A-B-F]

1.4 The appellant filed an application (OMP No.94/1998) in the Delhi High Court u/s 33 of the Act in April 1998

praying for a clarification as to whether the arbitration proceedings between the parties would be governed by the provisions of Arbitration Act, 1940 or by the provisions of Arbitration and Conciliation Act, 1996. Thereafter the respondent made an application (OMP No.217/2000) to Delhi High Court for summoning and examining one 'OP' as a witness in respect of the pending arbitration, to produce certain documents. Therefore, the application (OMP No.94/1998) made by the appellant u/s 33 of the Act will have to be treated as the first application under the Act in the reference and all subsequent applications will have to be made in the High Court of Delhi. Consequently, Delhi High Court alone will have jurisdiction to entertain any subsequent applications and, therefore, the court at Gaya will not have jurisdiction. It is also relevant to note that the arbitration clause provides that the venue of arbitration shall be Delhi and Delhi courts will have jurisdiction. The impugned order of the Patna High Court as also the order of Sub-Judge, Gaya are set aide and it is held that all applications should be filed in Delhi High Court. [para 14-16] [812-G-H; 813-G-H; 814-A-B]

Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd. **2004 (3) SCR 854 = 2004 (7) SCC 288 – referred to.**

1.5 The respondent shall, therefore, obtain return of the application u/s 14(2) of the Act from the Gaya court and file it before Delhi High Court. [para 17] [814-C]

Case Law Reference:

1953 SCR 878	**relied on**	**para 11**
1970 (1) SCR 351	**relied on**	**para 11**
2004 (3) SCR 854	**referred to**	**para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6316 of 2011.

From the Judgment & Order dated 25.04.2008 of the High Court of Patna in C.R. No. 690 of 2006.

Jayant Bhushan, Ramji Srinivasan, Kamal Budhiraja, Sidharth Bawa, Simar Narula, Aman Gupta (for Dua Associates) for the Appellant.

Soli J. Sorabjee, Neeraj Shekhar, Ashutosh Thakur, Priyaranjan Roi for the Respondent.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN,J. 1. Leave granted.

2. Under an agreement dated 7.4.1992, respondent agreed to manufacture and pack appellant's product (ice cream) as per the specifications and standards of the appellant. Clause 20 of the said agreement provided for settlement of disputes by arbitration. The said clause provided that the venue of arbitration should be Delhi and contract was subject to Delhi jurisdiction.

3. Respondent filed a suit (T.S.No.40/1995) in the court of learned Munsif, Gaya (Bihar) for an injunction to restrain the appellant from interfering with the manufacture and supply of ice cream by the respondent. On being served with the notice of the said suit, the appellant filed an application under section 34 of Arbitration Act, 1940 ('Act' for short) for stay of proceedings in the suit on the ground that the contract between the parties provided for arbitration. The learned Munsif by order dated 3.8.1995 allowed the appellant's application under section 34 of the Act and stayed further proceedings in the suit.

4. The respondent filed a revision under section 115 of the Code of Civil Procedure ('Code' for short) before the Patna High Court against the order dated 3.8.1995. The High Court disposed of the said revision petition by the following order dated 6.5.1997 :

"Before this court parties have agreed that the dispute

between them may be referred, as per the agreement to Arbitrators chosen by the parties. The plaintiff has chosen Shri Uday Sinha a retired judge of this court and Senior Advocate of the Supreme Court, while the defendants have chosen Shri Hari Lal Agrawal, Senior Advocate of the Supreme Court, a former judge of this court and Chief Justice of Orissa High Court as Arbitrators. The dispute between the parties is referred to arbitrator.

I hope that the learned Arbitrators will dispose of the arbitration proceedings within three months of the entering the reference.

Let a copy of this order be sent to both Shri Hari Lal Agarwal at his address Nageshwar Colony, Boring Road, Patna-1 and Shri Uday Sinha at his Patna address 308 Patliputra Colony, Patna.

Parties are directed to appear before the Arbitrators within a month from today.

Let all necessary documents be filed before the Arbitrators within four weeks thereafter.

This application is disposed of."

It may be mentioned that long before the disposal of the revision petition, by notice dated 14.9.1995 the appellant had appointed its arbitrator and called upon the respondent to concur in that appointment or alternatively nominate its arbitrator. When respondent also appointed its arbitrator, the two arbitrators appointed an umpire. The arbitral tribunal made an award dated 17.8.2004 in favour of the respondent.

5. The respondent filed a suit under section 14 (2) of the Act in the court of Sub-Judge, Gaya on 28.8.2004 praying that the award be made a rule of the court. The appellant entered appearance on 28.10.2004 and made an application under Order 7 Rule 10 of the Code read with section 31(4) of the Act

contending that only the Delhi High Court had jurisdiction to entertain the application and Gaya court did not have jurisdiction.

6. The appellant also challenged the award by filing a petition under sections 30 and 33 of the Act before Delhi High Court on 16.10.2004. On 25.10.2005 the appellant's petition under sections 30 and 33 of the Act was disposed of by Delhi High Court on the ground that the award had been filed before the learned Sub-Judge, Gaya, prior to filing of the petition by the appellant under sections 30 & 33 of the Act and since the matter was pending in the Gaya court and the appellant had challenged the jurisdiction of that court, the Gaya court would decide whether it had jurisdiction; and if it came to the conclusion that it had no jurisdiction, that court could forward the record to Delhi High Court, in which event the appellant could seek revival of the petition under sections 30 and 33 of the Act.

7. The Sub-Court Gaya heard and dismissed the application filed by the appellant (for return of the plaint to the respondent) by order dated 23.3.2006 holding that it had jurisdiction to entertain and decide the application under section 14(2) of the Act. The said order was challenged by the appellant by filing a revision petition before the Patna High Court. A learned single Judge of the Patna High Court dismissed the revision petition, by the impugned order dated 25.5.2008. He noted that the parties had earlier consented before the Patna High Court for referring the disputes to arbitration and that Patna High Court had recorded the said agreement and referred the disputes to arbitration by order dated 6.5.1997. He held that the said order dated 6.5.1997 should be considered to be an order under section 8 of the Act; and if so, the order dated 6.5.1997 would be the order in the first application under the Act in the reference; and as Patna High Court did not have original jurisdiction, the Sub-Judge, Gaya which was the corresponding civil court having original jurisdiction would have jurisdiction to entertain the application

under section 14(2) of the Act, having regard to section 31(4) of the Act. The said order is challenged in this appeal by special leave.

8. On the contentions urged, the only question that arises for consideration is whether the proceedings under section 14(2) of the Act could have been initiated only in the Delhi High Court and not before the Sub-court, Gaya, having regard to section 31(4) of the Act.

9. Section 31 of the Act deals with jurisdiction and the same is extracted below :

"31. Jurisdiction.—(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) *Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings-, and all subsequent applications arising, out of that reference, and the arbitration proceedings*

shall be made in that Court and in no other Court."

(emphasis supplied)

Sub-section (4) of section 31 provides where any application under the Act, in any reference, had been made in a court competent to entertain it, then notwithstanding anything contained in the Act (or in any other law for the time being in force), that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and therefore all arbitration proceedings shall be made in that court alone and not in any other court. Sub-section (4) of section 31 of the old Act corresponds to section 42 of the new Act.

10. As the court where the first application was made is the court competent to entertain all subsequent applications under the Act, it is necessary to decide where the first application in the reference was made under the Act. In chronological order, the four applications in the reckoning for being considered as the first application in the reference under the Act, in a competent court are :

(i) The application dated 19.6.1995 filed by the appellant under section 34 of the Act, in the court of Munsif, Gaya (resulting in the order dated 3.8.1995).

(ii) The revision petition dated 2.7.1996 filed by the respondent against the order dated 3.8.1995, under section 115 of the Code, in the Patna High Court (resulting in the order dated 6.5.1997).

(iii) The application made in April 1998 by the appellant under Section 33 of the Act, in the Delhi High Court (resulting in the order dated 13.10.1998).

(iv) The application dated 16.8.2000 by the respondent under section 27 of Arbitration & Conciliation Act, 1996 in the Delhi High Court (resulting in the order dated 1.10.2000).

The appellant contends that the first application in the reference was filed under the Act in Delhi High Court in April, 1998 and therefore all subsequent proceedings including the application under section 14(2) should be filed in Delhi High Court. The respondent contends that the application made either in the Gaya Court on 19.6.1995 or in the Patna High Court on 2.7.1996 should be considered to be the first application in the reference in a competent court; and as that Patna High Court did not have original civil jurisdiction, the corresponding civil court namely the Sub-Judge, Gaya was the court where all applications, including an application under section 14(2) of the Act should be filed.

11. In *Kumbha Mawji vs. Union of India* - 1953 SCR 878, this Court explained that the words 'in any reference' would mean 'in the matter of a reference to arbitration'. In *Union of India vs. Surjeet Singh Atwal* - 1969 (2) SCC 211, this Court held that an application under section 34 of the Act is *not to be considered as an application under the Act in a reference*. Therefore, the application under section 34 of the Act filed by the appellant on 19.6.1995 cannot be considered to be the first application to a court in the reference to arbitration. Let us next examine whether the first application under the Act in the reference was first made to the Patna High Court. A Revision Petition (C.R.No.1020/1996) was filed in the Patna High Court under section 115 of the Code, aggrieved by the order dated 3.8.1995 passed in an original suit filed by the respondent. The order dated 3.8.1995 was made allowing an application filed by respondent for stay of proceedings under section 34 of the Act. Therefore, the order dated 6.4.1997 appointing the arbitrators was made by Patna High Court, not in an application under the Act, but in a revision petition under section 115 of the Code. Further the said revision did not arise out of arbitration proceedings, but against the rejection of an

application under section 34 of the Act to stay the proceedings in a civil suit. If the proceedings in which the order dated 6.5.1997 was made by the Patna High Court did not relate to an application under the Act in a reference, nor is it a revision arising from an application under the Act in a reference, it is not possible to hold that the first application under the Act in a reference was made before the Patna High Court.

12. At this juncture, it is necessary to notice the argument put forth by the respondent. The respondent contends that even though the revision petition did not arise from an application under the Act, the order dated 6.5.1997 made therein by the Patna High Court, recorded the consent of the parties that the disputes may be referred to arbitrators chosen by the parties, recorded the names of the arbitrators appointed by them, and referred the disputes between the parties to arbitration. According to the respondent, a court can appoint an arbitrator either under section 20 or section 8 of the Act; as there was no application for filing the agreement under section 20 of the Act, the order dated 6.5.1997 should be deemed to have been made in an application under section 8 of the Act to the High Court. The respondent therefore contends that the Patna High Court should be treated as a court where first application under the Act was filed and therefore all subsequent applications should be filed in that court. There is no merit in this contention. Section 8 relates to the power of civil court to appoint an Arbitrator or umpire. With reference to the facts of this case the power under section 8 of the Act can be exercised only if the following conditions mentioned in the section are fulfilled : (i) the parties did not concur in the appointments of arbitrators, when differences arose; (ii) one of the parties to the arbitration agreement served on the other party a written notice nominating its arbitrator and calling upon the other party to make its nomination; (iii) the other party did not appoint its arbitrator within 15 clear days after the service of such notice; and (iv) an application was made by the party who gave the notice under section 8 of the Act for appointment of the arbitrator. The

order dated 6.5.1997 of the Patna High Court cannot be considered to be an order under section 8 of the Act, as neither an application was filed under section 8 of the Act nor the conditions for making an application under section 8 of the Act existed in this case.

13. As noticed above the said order was made in a revision petition against the grant of an application under section 34 in a suit filed by the respondent. All that the High Court did was to record the submission that both parties had appointed their respective arbitrators and therefore the disputes stood referred to them. Such an order recording the nomination of arbitrators by consent and referring the disputes to arbitration, can be made in any suit or other proceedings, even if they do not arise under the arbitration agreement or under the Act. If for example a civil suit is filed by a party against the other and there is no arbitration agreement between them, but during the course of the said suit both parties agree that the matter should be referred to a named arbitrator for arbitration and the court accordingly refers it to arbitration, is not an appointment of an arbitrator under section 8 of the Act, but a consent order referring the disputes to the arbitrators already appointed by the parties. Therefore we can not accept the contention that the order dated 6.5.1997 of the Patna High Court should be treated as an order in a proceeding under section 8 of the Act. If the order dated 6.5.1997 is not an order made in an application under the Act in a reference, it follows that the question of making all subsequent applications arising out of the reference under the Act, to that court does not arise.

14. In this case the appellant filed an application (OMP No.94/1998) in the Delhi High Court under section 33 of the Act in April 1998 praying for a clarification as to whether the arbitration proceedings between the parties would be governed by the provisions of Arbitration Act, 1940 or by the provisions of Arbitration and Conciliation Act, 1996. Thereafter the

respondent made an application (OMP No.217/2000) to Delhi High Court for summoning and examining one O.P.Singh as a witness in respect of the pending arbitration, to produce certain documents. Therefore the application (OMP No.94/1998) made by the appellant under section 33 of the Act will have to be treated as the first application under the Act in the reference. If that is so all subsequent applications will have to be made in the High Court of Delhi.

15. Learned counsel for respondent submitted that the application filed by it in OMP No.217/2000 for issue of summons to a witness to produce documents, cannot be treated as an application under the Act as it was filed under section 27 of the Arbitration and Conciliation Act, 1996 and not under the provisions of section 43 of Arbitration Act, 1940. OMP No.217/2000 was made for issue of processes for appearance of witness and production of documents, in a pending arbitration proceedings. When the application was filed in the year 2000, there was some confusion as to whether the new Act applied or the old Act applied. In fact that question was pending before the Delhi High Court in OMP NO.94/1998 filed by the appellant. That issue was decided by Delhi High Court on 13.10.1998 holding that the matter was governed by 1996 Act, but that order was reversed by the order dated 5.4.2004 of this court in *Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd*. [2004 (7) SCC 288] holding that the old Act applied with the following observations : "For the reasons aforementioned, we are of the view that in this case, the 1940 Act shall apply and not the 1996 Act. …. The award shall be filed in the court having jurisdiction whereafter the parties may proceed in terms of the old Act." Therefore OMP No.217/2000 could be deemed to have been made under section 43 of the Act. At all events as OMP No.94/1998 has to be treated as the first application under the Act, Delhi High Court alone will have jurisdiction to entertain any subsequent applications and therefore the court at Gaya will not have jurisdiction. It is also relevant to note that the Arbitration clause provides that the venue of arbitration shall be Delhi and Delhi courts will have jurisdiction.

16. In view of the above we allow this appeal, set aside the impugned order of the Patna High Court as also the order of Sub-Court, Gaya and hold that all applications should be filed in Delhi High Court.

17. The respondent shall therefore obtain return of the application under section 14(2) of the Act from the Gaya court and file it before Delhi High Court within two months from today. If it is so filed, Delhi High Court shall entertain the same and dispose it of in accordance with law. We may note that when the matter had come up before this court in the first round, in the order dated 5.4.2004, this court had expressed the hope that the award will be made and all legal proceedings should come to an end within four months from the date of communication of that order. More than seven years have elapsed thereafter and the proceedings have not ended. We therefore request the High Court to dispose of the matter expeditiously.

R.P. Appeal allowed.

BAKSHI DEV RAJ & ANR.
v.
SUDHIR KUMAR
(Civil Appeal Nos. 4641-4642 of 2009)

AUGUST 04, 2011

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

Code of Civil Procedure, 1908:

Or. XXIII r. 3 – Compromise of suit – Requirement of – Held: During the course of hearing, namely, suit or appeal, when the parties enter into a compromise, the same should be reduced in writing in the form of an instrument and signed by the parties.

Or. XLVII r. 1(a) – Review Petition – Maintainability – SLP filed by the appellants against the Second Appeal – Dismissal of, as withdrawn, without leave of the Court – Review petition filed before the High Court against the judgment in Second Appeal – Maintainability of – Held: Even after dismissal of an SLP with or without reasons, the aggrieved party is entitled to file a review – In view of the language used in Or. XLVII r. 1(a), the Review Petition cannot be dismissed on the ground of maintainability – Thus, the review petition filed by the appellants was maintainable but in view of Or. III r. 1 and 4, and in view of the conduct of the appellants in not raising any objection as to the act of their counsel except filing review petition, the claim of the appellants cannot be accepted.

Advocate/Counsel – Role of – In reporting about the settlement arrived at – Extent and nature of authority to act on behalf of client – Held: Terms appended in Vakalatnama enable the counsel to perform several acts on behalf of his client including withdrawal or compromise/settlement of suit

or matter pending before the Court – These clauses give power to the counsel to act with utmost interest – Counsel has power to make a statement on instructions from the party to withdraw the appeal – In such circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere – On facts, there is no material to substantiate the plea that the statement of the counsel before the High Court during the course of hearing of Second Appeal was not based on any instructions – Even otherwise, till filing of the review petition, the appellants did not question the conduct of their counsel in making such statement in the course of hearing of second appeal by writing a letter or by sending notice disputing the stand taken by their counsel – In absence thereof, it cannot be construed that the counsel was debarred from making any statement on behalf of the parties – In order to safeguard the present reputation of the counsel and to uphold the prestige and dignity of legal profession, it is always desirable to get instructions in writing.

The plot of respondent is on one side of the land of appellant. The respondent filed a suit seeking declaration of title and possession of the land and also sought decree for permanent injunction restraining the appellants in the suit land. The trial court dismissed the suit. The first appellate court allowed the appeal in favour of the respondent. The appellants filed a Second Appeal. The High Court framed two questions of law. During the course of submissions, both the counsel agreed that without addressing the questions of law so formulated, the matter could be settled by modifying the decree impugned in appeal. Thereafter, the Second Appeal was disposed of by the High Court by modifying the decree with consent of both the parties. The appellant filed SLP and the same was dismissed as withdrawn. Thereafter,

the appellants filed a Review Petition before the High Court for review of the order passed in Second Appeal and the same was dismissed. Aggrieved, the appellants filed the instant appeal against the order passed by the High Court in Second Appeal and in the Review Petition.

The questions which arose for consideration in these appeals are whether Review Petition filed before the High Court against the judgment in Second Appeal is maintainable in view of dismissal of SLP filed against the said Second Appeal; that whether the statement of the counsel conveying that the parties have settled and modified the decree without a written document or consent from the appellants is acceptable; and that whether dismissal of SLP as withdrawn without leave of the Court to challenge the impugned order therein before an appropriate court/forum is a bar for availing such remedy.

Dismissing the appeals, the Court

HELD: 1.1 In terms of Order XXIII Rule 3 of the Code of Civil Procedure, 1908, agreement or compromise is to be in writing and signed by the parties. During the course of hearing, namely, suit or appeal, when the parties enter into a compromise, the same should be reduced in writing in the form of an instrument and signed by the parties. The Court must insist upon the parties to reduce the terms into writing. [Paras 9 and 12] [828-D-E; 830-A-B]

Gurpreet Singh vs. Chatur Bhuj Goel **(1988) 1 SCC 270: 1988 (2) SCR 401;** *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) vs. Rajinder Singh and Ors.* **(2006) 5 SCC 566: 2006 (3) Suppl. SCR 370 – referred to.**

1.2 In the instant case, during the course of hearing of second appeal, both counsel agreed that without

addressing the questions of law so formulated, the matter can be settled by modifying the decree impugned in appeal by incorporating the area of land under Survey No. 110/65 with the boundary between the lands thereunder and Survey No.109/65 belonging to the other side being the Sheesham and Shreen trees currently existing on the spot. [Para 11] [829-F-G]

2.1 The terms appended in Vakalatnama enable the counsel to perform several acts on behalf of his client including withdraw or compromise suit or matter pending before the Court. The various clauses in the Vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement. [Para 12] [830-C-D]

2.2 The counsel who was duly authorized by a party to appear by executing Vakalatnama and in terms of Order III Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. In such circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere. Though the counsel for the appellant vehemently submitted that the statement of the counsel before the High Court during the course of hearing of Second Appeal was not based on any instructions, there is no such material to substantiate the same. No doubt, the counsel for the appellant has placed reliance on the fact that the first appellant was bedridden and hospitalized, thus, he could not send any instruction. According to him, the statement made before the Court that too giving of certain rights cannot be sustained and beyond the power of the counsel. It is true

that at the relevant time, namely, when the counsel made a statement during the course of hearing of second appeal one of the parties was ill and hospitalized. However, it is not in dispute that his son who was also a party before the High Court was very much available. Even otherwise, it is not in dispute that till filing of the review petition, the appellants did not question the conduct of their counsel in making such statement in the course of hearing of second appeal by writing a letter or by sending notice disputing the stand taken by their counsel. In the absence of such recourse or material in the light of the provisions of the CPC, it cannot be construed that the counsel is debarred from making any statement on behalf of the parties. No doubt, in order to safeguard the present reputation of the counsel and to uphold the prestige and dignity of legal profession, it is always desirable to get instructions in writing. [Para 15] [833-F-H; 834-A-E]

Byram Pestonji Gariwala vs. Union Bank of India and Ors. **(1992) 1 SCC 31: 1991 (1) Suppl. SCR 187;** *Jineshwardas (D) by LRs and Ors. vs. Jagrani (Smt) and Anr.* **(2003) 11 SCC 372: 2003 (4) Suppl. SCR 179;** *Jagtar Singh vs.Pargat Singh and Ors.* **(1996) 11 SCC 586: 1996 (9) Suppl. SCR 252 – relied on.**

3. The High Court, based on the statement of both counsel disposed of Second Appeal by modifying the decree. Against the said order of the High Court, the appellants preferred the SLP before this Court. This Court accepted the prayer made by the counsel for the petitioner to withdraw the petition and dismissed the special leave petition as withdrawn. A reading of the said order makes it clear that based on the request of the counsel, the SLP came to be dismissed as withdrawn. It is also clear that there is no permission or reservation or liberty for taking further action. However, dismissal of SLP

is not a bar for filing review before the same Court. Even after dismissal of SLP, the aggrieved parties are entitled to move the court concerned by way of review. In the instant case though the appellants moved an SLP in this Court against the order of the High Court in Second Appeal, admittedly, the SLP was dismissed as withdrawn without the leave of the Court. [Paras 16 and 17] [834-G-H; 835-B-C; 839-C-D]

Kunhayammed and Ors. vs. State of Kerala and Anr. **(2000) 6 SCC 359: 2000 (1) Suppl. SCR 538;** *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior and Ors.* **(1987) 1 SCC 5: 1987 (1) SCR 200 – relied to.**

4.1. Even after dismissal of an SLP with or without reasons, the aggrieved party is entitled to file a review. In view of the language used in Order XLVII Rule 1(a) of CPC which relates to "Review", the present Review Petition cannot be dismissed on the ground of maintainability. Thus, the review petition filed by the appellants was maintainable but in view of Order III Rules 1 and 4, Chapter relating to the role of Pleaders, and in view of the conduct of the appellants in not raising any objection as to the act of their counsel except filing review petition, the claim of the appellants cannot be accepted. [Para 19] [841-C-E]

4.2. It was contended by the appellant that by the concession of their counsel, the appellants lost their property and they suffered huge loss in terms of money. On perusal of the modified decree as available in the order of the High Court in Second Appeal and the sketch produced about the existence of Sheesham and Shreen trees running as a demarcating line and whenever those trees fall on either side the parties having ownership of the land get right to use the same, the contention cannot be accepted. [Para 20] [841-F-G]

Case Law Reference:

1988 (2) SCR 401	**Referred to**	**Para 9**
2006 (3) Suppl. SCR 370	**Referred to**	**Para 10**
1991 (1) Suppl. SCR 187	**Relied on**	**Para 12, 15**
2003 (4) Suppl. SCR 179	**Relied on**	**Para 13**
1996 (9) Suppl. SCR 252	**Relied on**	**Para 14**
2000 (1) Suppl. SCR 538	**Relied on**	**Para 16**
1987 (1) SCR 200	**Referred to**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4641-4642 of 2009.

From the Judgment & Order dated 18.03.2008 & 08.09.2008 of the High Court of Jammu & Kashmir at Jammu in Civil Second Appeal No. 19 of 2005 & Review Petition No. (C) D-5 of 2008.

Dinesh Kumar Garg, B.J. Billowria, Dr. Bheem Pratap Singh, Abhishek Garg for the Appellants.

Ranjeet Kumar, Sameer Parekh, Carmichael Martin, Sumit Goel, Debojyoti Bhattacharya, Parekh & Co. for the Respondent

The Judgment of the Court was delivered by

P.SATHASIVAM,J. 1. These appeals are directed against the final judgment and orders dated 18.03.2008 and 08.09.2008 passed by the High Court of Jammu & Kashmir at Jammu in Civil Second Appeal No. 19 of 2005 and Review Petition (C) No. D-5 of 2008 respectively whereby the High Court dismissed the second appeal and the review petition filed by the appellants herein.

2. Brief facts:

(a) Shri Harbans Lal, father of the appellant No.1, purchased the land in dispute measuring 40 kanal 4 marlas bearing Khasra No. 65 in Village Chak Gainda, Tehsil Kathua from one Gurdas by way of a registered sale deed dated 18.03.1959. The said land falls in Khasra No. 109/65 and the same was recorded in the name of the father of the appellant No.1 and after his father's death the name of appellant No.1 was recorded from Kharif 1987.

(b) The plot of Sudhir Kumar-the respondent herein is on the southern side of the land of the appellants. On 29.04.1991, the respondent herein filed a civil suit being No. 17/Civil/1991 in the Court of sub-Judge, Kathua seeking a declaratory decree to the effect that he is the owner and in possession of the suit land measuring and bounded by East Kathua Kalibari Road 90' West Police Line measuring 96', North Land of Bakshi Dev Raj (appellant No. 1 herein) and South, Lane 460' situated at Ward No.1 Village Chak Gainda, Tehsil Kathua and further sought decree for permanent injunction restraining the appellants herein in the suit land. On 06.04.1993, the appellants herein filed a joint written statement in the above civil suit. The trial Court, vide judgment dated 25.04.2003, dismissed the suit filed by the respondent herein.

(c) Aggrieved by the said judgment, the respondent filed Civil First Appeal No.6 in the Court of District & Sessions Judge, Kathua. The first appellate Court, vide judgment and decree dated 09.06.2005, set aside the judgment and order dated 25.04.2003, passed by the trial Court and allowed the appeal in favour of the respondent.

(d) Challenging the same, the appellants filed Second Appeal No. 19 of 2005 before the High Court of Jammu & Kashmir at Jammu. Vide judgment dated 18.03.2008, the second appeal was disposed of by the High Court by modifying the decree with the consent of both the parties.

(e) Against the said order, a special leave petition bearing

S.L.P. (C) No. 10939 of 2008 was filed by the appellants herein before this Court and the same was dismissed as withdrawn on 14.05.2008. On 21.05.2008, the appellants filed a review petition being Review Petition (C) No. D-5/2008 before the High Court for review of the order dated 18.03.2008 passed in Second Appeal. The learned single Judge of the High Court, by order dated 08.09.2008, dismissed the review petition filed by the appellants.

(f) Aggrieved by the final orders dated 18.03.2008 passed by the High Court in Second Appeal and the order dated 08.09.2008 in the review petition, the appellants filed the present appeals before this Court by way of special leave petitions.

3. Heard Mr. Dinesh Kumar Garg, learned counsel for the appellants and Mr. Ranjit Kumar, learned senior counsel appearing for the respondent.

4. The questions which arise for consideration in these appeals are:

(i) Whether Review Petition (C) No. D-5/2008 filed before the High Court against the judgment in Second Appeal No. 19 of 2005 is maintainable in view of dismissal of SLP (C) No. 10939 of 2008 dated 14.05.2008 by this Court filed against the said Second Appeal?

(ii) Whether the statement of the counsel conveying that the parties have settled and modified the decree without a written document or consent from the appellants is acceptable? and

(iii) Whether dismissal of SLP as withdrawn without leave of the Court to challenge the impugned order therein before an appropriate court/forum is a bar for availing such remedy?

5. The present appellants filed Second Appeal No. 19 of 2005 before the High Court questioning the judgment and decree dated 09.06.2005 of the first appellate Court in First Appeal No.6. While admitting the above second appeal, the High Court framed two questions of law, one, as to whether the report of the Commissioner is admissible evidence without its formal proof and the other, whether the reliance can be placed on a site plan prepared by an Architect when the same record is available with the Revenue Authorities which has been withheld by the plaintiff. It is further seen from the order of the High Court that during the course of submissions, both the counsel agreed that without addressing the questions of law so formulated, the matter can be settled by modifying the decree impugned in appeal by incorporating the area of land under Survey No. 110/65 with the boundary between the lands thereunder and Survey No. 109/65 belonging to other side being the Sheesham and Shreen trees currently existing on the spot. They further conceded that whatever of their respective land falling on either side would not be claimed by them and the Sheesham and Shreen trees would be respondent's property to be cut by him within a reasonable period of time. Based on the above submissions by both the counsel, the High Court modified the impugned decree in the following manner:

"(a) The suit of respondent/plaintiff is decreed restraining other side from interfering or causing any interference or encroaching upon any portion of his land measuring 11 kanals 12 marlas under survey No 110/65 along with his other proprietary land whatever existing on spot.

(b) The sheesham and shreen trees existing on spot would be the boundary line between two parcels of land belonging to rival sides as aforementioned with the exact demarcating line running from centre of trees, which would be property of respondent/plaintiff to be cut by him at an appropriate time without undue delay.

(c) Whenever proprietary land of either parties falls on

other side of the trees to form part of Opposite Party land stands conceded to each other by respective parties over which their claims would be deemed to have been abandoned.

(d) No costs."

6. By pointing out that the concession given by the counsel for the appellants before the High Court was not lawful and in violation of Section 23 of the Indian Contract Act, 1872 and that the second appeal was disposed of without hearing on substantial questions of law framed by the Court, the appellants filed Review Petition (C) No. No.D-5/2008. Even before the High Court, an objection was raised as to the maintainability of the review petition by pointing out the following objections:

"(a) that once the petitioner had preferred an appeal before the Supreme Court, the review was barred under O. 47 Rule 1 Sub-Rule (1) of C.P.C.

(b) that application is time barred, period of limitation prescribed for filing review in terms of Rule 66 Sub Rule (3) of J&K High Court Rules is 30 days.

(c) that review application can be maintained only if some evidence or matter has been discovered and it was not within the knowledge of petitioner when the decree was passed or where there was a mistake or an error apparent on the fact of record."

7. In view of the above objections, the learned single Judge heard the review petition both on merits and its maintainability at length. A contention was raised with reference to Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") and Order XLVII sub-rule (1) of Rule 1, ultimately, after finding that the question raised is not a question of law and not an error apparent on the face of the record, dismissed the review petition. In the present appeal, the

appellants challenged not only the dismissal of the review petition but also final judgment in second appeal filed before the High Court. With these factual details, let us consider the questions posed in the earlier paragraphs. Inasmuch as Mr. Ranjit Kumar, learned senior counsel for the respondent raised an objection as to the maintainability of the present appeal, let us consider the same at the foremost and finally the merits of the impugned order of the High Court.

Compromise of Suit

8. Order XXIII of CPC deals with "Withdrawal and Adjustment of Suits". Rule 3 of Order XXIII speaks about "compromise of suit" which reads as under:

"3. **Compromise of suit.**- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

9. The very same rule was considered by this Court in *Gurpreet Singh vs. Chatur Bhuj Goel,* (1988) 1 SCC 270. In that case, the respondent therein Chatur Bhuj Goel, a practising advocate at Chandigarh first lodged a criminal complaint against Colonel Sukhdev Singh, father of the appellant, under Section 420 of the Indian Penal Code 1860 (hereinafter referred to as "the IPC"), after he had served the respondent with a notice dated 11.07.1979 forfeiting the amount of Rs.40,000/- paid by him by way of earnest money, alleging that he was in breach of the contract dated 04.06.1979 entered into between Colonel Sukhdev Singh, acting as guardian of the appellant, then a minor, and the respondent, for the sale of residential house No. 1577, Sector-18-D, Chandigarh for a consideration of Rs,2,85,000/-. In terms of the agreement, the respondent was to pay a further sum of Rs.1,35,000/- to the appellant's father - Colonel Sukhdev Singh by 10.07.1979 when the said agreement of sale was to be registered and vacant possession of the house delivered to him, and the balance amount of Rs.1,10,000/- on or before 31.01.1980 when the deed of conveyance was to be executed. The dispute between the parties was that according to Colonel Sukhdev Singh, there was failure on the part of the respondent to pay the amount of Rs.1,35,000/- and get the agreement registered, while the respondent alleged that he had already purchased a bank draft in the name of the appellant for Rs.1,35,000/- on 07.07.1979 but the appellant's father did not turn up to receive the same. Although the Additional Chief Judicial Magistrate by order dated 31.10.1979 dismissed the complaint holding that the dispute was of a civil nature and no process could issue on the complaint, the learned Single Judge, by his order dated 11.02.1980 set aside the order of the learned Additional Chief Judicial Magistrate holding that the facts brought out clearly warranted an inference of dishonest intention on the part of Colonel Sukhdev Singh and accordingly directed him to proceed with the trial according to law. Aggrieved Colonel Sukhdev Singh came up in appeal to this Court by way of

special leave. While construing Order XXIII Rule 3 of CPC, this Court concluded thus:

> "10. Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing."

It is clear from this decision that during the course of hearing, namely, suit or appeal, when the parties enter into a compromise, the same should be reduced in writing in the form of an instrument and signed by the parties. The substance of the said decision is that the Court must insist upon the parties to reduce the terms into writing.

10. In *Pushpa Devi Bhagat (dead) through LR. Sadhna Rai (Smt.) vs. Rajinder Singh and Others,* (2006) 5 SCC 566, the term 'instrument' used in above-referred *Gurpreet Singh's* case (supra) refers to a writing a formal nature, this Court explained that when the hearing of letters patent appeal commenced before the High Court, the parties took time to explore the possibility of settlement and when the hearing was resumed, the appellant's father made an offer for settlement which was endorsed by the counsel for the appellant also. The respondent was also present there and made a statement accepting the offer. The said offer and acceptance were not treated as final as the appeal was not disposed of by recording those terms. On the other hand, the said proposals were recorded and the matter was adjourned for payment in terms

of the offer. When the matter was taken up on the next date of hearing, the respondent stated that he is not agreeable. The High Court directed that the appeal would now be heard on merits as the respondent was not prepared to abide by the proposed compromise. The said order was challenged before this Court by the appellant by contending that the matter was settled by a lawful compromise by recording the statement by appellant's counsel and the respondent's counsel and the respondent could not resile from such compromise and, therefore, the High Court ought to have disposed of the appeal in terms of the compromise. It is in this factual background, the question was considered with reference to *Gurpreet Singh's* case (supra). This was explained in *Pushpadevi's* case (supra) that the distinguishing feature in that case was that though the submissions made were recorded but that were not signed by the parties or their counsel, nor did the Court treat the submissions as a compromise. In *Pushpadevi's* case (supra), the Court not only recorded the terms of settlement but thereafter directed that the statements of the counsel be recorded. The statement of the counsel were also recorded on oath read over and accepted by the counsel to be correct and then signed by both counsel. In view of the same, in *Pushpadevi's* case (supra), it was concluded that there was a valid compromise in writing signed by the parties (represented counsel).

11. In the earlier part of our order, we have already recorded that during the course of hearing of second appeal, both counsel agreed that without addressing the questions of law so formulated, the matter can be settled by modifying the decree impugned in appeal by incorporating the area of land under Survey No. 110/65 with the boundary between the lands thereunder and Survey No.109/65 belonging to the other side being the Sheesham and Shreen trees currently existing on the spot.

Role of the counsel

12. Now, we have to consider the role of the counsel reporting to the Court about the settlement arrived at. We have already noted that in terms of Order XXIII Rule 3 of CPC, agreement or compromise is to be in writing and signed by the parties. The impact of the above provision and the role of the counsel has been elaborately dealt with by this Court in *Byram Pestonji Gariwala vs. Union Bank of India and Others,* (1992) 1 SCC 31 and observed that courts in India have consistently recognized the traditional role of lawyers and the extent and nature of implied authority to act on behalf of their clients. Mr. Ranjit Kumar, has drawn our attention to the copy of Vakalatnama (Annexure-R3) and the contents therein. The terms appended in Vakalatnama enable the counsel to perform several acts on behalf of his client including withdraw or compromise suit or matter pending before the Court. The various clauses in the Vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement. The following observations and conclusions in paras 37, 38 and 39 are relevant:

> **"37.** We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.
>
> **38.** Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be

remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated."

13. In *Jineshwardas (D) by LRs and Others vs. Jagrani (Smt) and Another,* (2003) 11 SCC 372, this Court, by approving the decision taken in Byram Pestonji's case (supra), held that a judgment or decree passed as a result of consensus arrived at before Court, cannot always be said to be one passed on compromise or settlement and adjustment. It may,

at times, be also a judgment on admission.

14. In *Jagtar Singh vs. Pargat Singh and Others,* (1996) 11 SCC 586, it was held that counsel for the appellant has power to make a statement on instructions from the party to withdraw the appeal. In that case, respondent No.1 therein, elder brother of the petitioner filed a suit for declaration against the petitioner and three brothers that the decree dated 04.05.1990 was null and void which was decreed by subordinate Judge, Hoshiarpur on 29.09.1993. The petitioner therein filed an appeal in the Court of Additional Distruct Judge, Hoshiarpur. The counsel made a statement on 15.09.1995 that the petitioner did not intend to proceed with the appeal. On the basis thereof, the appeal was dismissed as withdrawn. The petitioner challenged the order of the appellate court in the revision. The High Court confirmed the same which necessitated filing of SLP before this Court. Learned counsel for the petitioner contended that the petitioner had not authorized the counsel to withdraw the appeal. It was further contended that the court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial Court and the conclusions either agreeing or disagreeing with it. Rejecting the said contention, the Court held as under:

> "3. The learned counsel for the petitioner has contended that the petitioner had not authorised the counsel to withdraw the appeal. The Court after admitting the appeal has no power to dismiss the same as withdrawn except to decide the matter on merits considering the legality of the reasoning of the trial court and the conclusions either agreeing or disagreeing with it. We find no force in the contention. Order III Rule 4 CPC empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. The question then is whether the court is required

to pass a reasoned order on merits against the decree appealed from the decision of the Court of the Subordinate Judge? Order 23 Rules 1(1) and (4) give power to the party to abandon the claim filed in the suit wholly or in part. By operation of Section 107(2) of the CPC, it equally applies to the appeal and the appellate court has co-extensive power to permit the appellant to give up his appeal against the respondent either as a whole or part of the relief. As a consequence, though the appeal was admitted under Order 41 Rule 9, necessarily the Court has the power to dismiss the appeal as withdrawn without going into the merits of the matter and deciding it under Rule 11 thereof.

4. Accordingly, we hold that the action taken by the counsel is consistent with the power he had under Order III Rule 4 CPC. If really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere and the procedure adopted by the court below is consistent with the provisions of CPC. We do not find any illegality in the order passed by the Additional District Judge as confirmed by the High Court in the revision."

15. The analysis of the above decisions make it clear that the counsel who was duly authorized by a party to appear by executing Vakalatnama and in terms of Order III Rule 4, empowers the counsel to continue on record until the proceedings in the suit are duly terminated. The counsel, therefore, has power to make a statement on instructions from the party to withdraw the appeal. In such circumstance, the counsel making a statement on instructions either for withdrawal of appeal or for modification of the decree is well within his competence and if really the counsel has not acted in the interest of the party or against the instructions of the party, the necessary remedy is elsewhere. Though learned counsel for the appellant vehemently submitted that the statement of the

counsel before the High Court during the course of hearing of Second Appeal No. 19 of 2005 was not based on any instructions, there is no such material to substantiate the same. No doubt, Mr. Garg has placed reliance on the fact that the first appellant was bedridden and hospitalized, hence, he could not send any instruction. According to him, the statement made before the Court that too giving of certain rights cannot be sustained and beyond the power of the counsel. It is true that at the relevant time, namely, when the counsel made a statement during the course of hearing of second appeal one of the parties was ill and hospitalized. However, it is not in dispute that his son who was also a party before the High Court was very much available. Even otherwise, it is not in dispute that till filing of the review petition, the appellants did not question the conduct of their counsel in making such statement in the course of hearing of second appeal by writing a letter or by sending notice disputing the stand taken by their counsel. In the absence of such recourse or material in the light of the provisions of the CPC as discussed and interpreted by this Court, it cannot be construed that the counsel is debarred from making any statement on behalf of the parties. No doubt, as pointed out in *Byram Pestonji* (supra), in order to safeguard the present reputation of the counsel and to uphold the prestige and dignity of legal profession, it is always desirable to get instructions in writing.

Maintainability of Review Petition

16. Now, let us consider the maintainability of the review petition filed before the High Court after dismissal of SLP (C) No. 10939 of 2008 before this Court. It is not in dispute that the High Court, by order dated 18.03.2008, based on the statement of both counsel disposed of Second Appeal No. 19 of 2005 by modifying the decree as stated therein. Against the said order of the High Court, the appellants preferred the above said SLP before this Court. By order dated 14.05.2008, this Court after hearing the counsel for the appellants passed the following order:

"Learned counsel for the petitioner prays to withdraw the petition. Prayer made is accepted. The special leave petition is dismissed as withdrawn"

A reading of the above order makes it clear that based on the request of the counsel, the SLP came to be dismissed as withdrawn. It is also clear that there is no permission or reservation or liberty for taking further action. However, dismissal of SLP is not a bar for filing review before the same Court. This aspect was considered by a three-Judge Bench of this Court in *Kunhayammed and Others vs. State of Kerala and Another,* (2000) 6 SCC 359. The above aspect was dealt with elaborately in paras 38, 40 and 44.

"38. The review can be filed even after SLP is dismissed is clear from the language of Order 47 Rule 1(a). Thus the words "no appeal" has been preferred in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Court's order vests in the Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions

are — "heard and dismissed", "dismissed", "dismissed as barred by time" and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say "dismissed on merits". Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine

of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution.

The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing,

modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order

passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

17. In view of the principle laid down above by this Court, even after dismissal of SLP, the aggrieved parties are entitled to move the court concerned by way of review. In the case on hand, though the appellants moved an SLP in this Court against the order of the High Court in Second Appeal, admittedly, the SLP was dismissed as withdrawn without the leave of the Court.

18. Similar question was considered by this Court in *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior, and Others,* (1987) 1 SCC 5. In this decision it was held that where a petitioner withdraws a petition filed by him in the High Court under Article 226/227 without permission to institute a fresh petition, remedy under Article 226/227 should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition and it would not be open to him to file a fresh petition in the High Court under the same article though other remedies like suit or writ petition before the this Court under Article 32 would remain open to him. It was further held that the principle underlying Rule 1 of Order XXIII of CPC should be extended in the interests of administration of justice to cases of withdrawal of writ petition also. The main contention urged by the learned counsel for the petitioner in that case was that the High Court was in error in rejecting the writ petition on the ground that the petitioner had withdrawn the earlier writ petition in which he had questioned the order passed by the Tribunal on 04.10.1985 without the permission of the High Court to file a fresh petition.

It was urged by the learned counsel that since the High Court had not decided the earlier petition on merits but only had permitted the petitioner to withdraw the petition, the withdrawal of the said earlier petition could not have been treated as a bar to the subsequent writ petition. While considering the said question, this Court considered sub-rule 3 of Rule 1 of Order 23 CPC and its applicability to writ petitions filed under Article 226/227 and held as under:

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a

fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental rignt guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open."

19. In the light of the discussion in the earlier paragraphs even after dismissal of an SLP with or without reasons, the aggrieved party is entitled to file a review. In view of the language used in Order XLVII Rule 1(a) of CPC which relates to "Review", the present Review Petition (C) No. D-5/2008) cannot be dismissed on the ground of maintainability. Based on the above discussion and reasons, we hold that the review petition filed by the appellants was maintainable but in view of Order III Rules 1 and 4, Chapter relating to the role of Pleaders, and in view of the conduct of the appellants in not raising any objection as to the act of their counsel except filing review petition, we are not inclined to accept the claim of the appellants.

20. Finally, Mr. Garg vehemently contended that by the concession of their counsel, appellants lost their property and they suffered huge loss in terms of money. On perusal of the modified decree as available in the order of the High Court in Second Appeal No. 19 of 2005 and the sketch produced about the existence of Sheesham and Shreen trees running as a demarcating line and whenever those trees fall on either side the parties having ownership of the land get right to use the same, we are unable to accept the said contention also.

21. In the light of the above discussion, we find no merit in both the appeals. Consequently, the same are dismissed. There shall be no order as to costs.

N.J. Appeal dismissed.

SEC., U.P.S.C. AND ANR.
v.
S. KRISHNA CHAITANYA
(Civil Appeal No. 6349 of 2011)

AUGUST 05, 2011

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

Education/Educational institutions: Civil Service Examination – Plea of respondent-candidate that he sent application/examination form through courier but did not receive admission letter – The candidate could not produce the acknowledgment card stamped by the institution to show the receipt of application form – High Court passed interim order directing institution to allow student to appear in examination – On appeal, held: The candidate could not show any evidence that he had sent the application form – The appellants cannot be directed to declare the final result of the respondent, especially when his application form had not been received by the appellants within the period prescribed – The candidate not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations – Grant of such interim orders should have been avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court – However, very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination – For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result – Interim order.

Interim order: Scope of – Held: Interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage – Normally, at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted

The case of the respondent was that he sent application for taking Civil Services Examination, 2010 to UPSC through DTDC Courier. He handed over the application form to the said Courier company on 28th January, 2010. The Courier company informed to him that the application form was delivered to UPSC on 29th January, 2010. On 20th April 2010, the respondent made a representation to the appellant with regard to non-issuance of admission certificate to him and the appellants informed him that his application was not received by them and asked him to furnish acknowledgement card duly stamped by UPSC to enable the appellants to take further action in the matter. The respondent had not received any acknowledgement card from the appellants. He filed original application (OA) before the Central Administrative Tribunal. By interim order, the Tribunal asked the respondent to submit a copy of his application form to the appellants and also directed the appellants to issue an admission certificate to the respondent so as to enable him to take the Preliminary examination. The issuance of admission certificate was subjected to the final result of the OA. Both appellants and respondent complied with the interim order. The OA was finally allowed and the appellants were directed to declare the result. The appellants challenged the order of the Tribunal before the High Court. The High Court disposed of the petition by observing that the respondent should be permitted to take the Civil Services Examination (Mains) and should

also be permitted to appear before the interview, if he qualified in the Mains. During the pendency of the proceedings, the respondent took the Examinations and also appeared for the oral interview. The final result was not declared and it was retained by the appellants in sealed cover.

The instant appeal was filed challenging the order of the High Court. The respondent filed interim application for directions to the appellants to declare the result of the respondent and keep a post vacant in a particular cadre so as to enable him to join the service.

Allowing the appeal, the Court

HELD: 1.1. The respondent, at no point of time, had adduced any evidence before the Tribunal or even before this Court to the effect that the appellants had received the application form of the respondent. Right from the beginning i.e. the stage at which an original application was filed before the Tribunal, the respondent had relied upon an affidavit filed by the Manager Administration, Regional Office of the DTDC Courier and Cargo Ltd., having its branch office at Hyderabad. According to his affidavit, the respondent's application form was delivered to the appellants on 29th January, 2010. The application form was not delivered by him personally but it was delivered by an employee of the courier agency and so as to substantiate his statement, he had relied upon the delivery Run Sheet dated 29th January, 2010. The said run sheet was a part of the record. Perusal of the run sheet showed that there was no acknowledgement given by any of the officers of the appellants to the effect that an application form of the respondent was received by the appellants. The said run sheet incorporated numbers of consignments which had been addressed to UPSC. Beyond numbers of five different consignments and name of UPSC, to whom the consignments were to be

sent, there was no indication on the said run sheet that the said consignments were received on behalf of UPSC. On the basis of the record, by no stretch of imagination one can say that the respondent's application form was received by the appellants. [Paras 19-21] [854-B-F]

1.2. The instant case involves a career of a young man, who might turn out to be a good civil servant. The system followed by the appellants was very comprehensive and flawless. If the application form of the respondent had been received by the appellants in the manner provided, it would have been recorded somewhere. Even the eight digit number of the application form of the respondent was not recorded anywhere. Receipt of an application form through a courier was treated as 'hand delivery' by the appellants. In case of receipt of an application by hand delivery, on the spot, an acknowledgement card stamped with a distinct numerical mark is handed over to the person who delivers the application form. If the application form had been delivered by a representative of the courier agency to the office of the appellants, there was no reason for the appellants not to give a duly stamped acknowledgement card bearing a distinct numerical mark. No such acknowledgment card, duly stamped, could be produced by the respondent or by the courier agency. Thus, no proof could be submitted by the respondent that the application form was received by the appellants. [Para 22] [854-H; 855-A-D]

1.3. While passing the final order, even the Tribunal was not sure whether the application form of the respondent was received by the appellants. Thus, even while giving final direction to the appellants with regard to permitting the respondent to take the Civil Services Examination, the Tribunal had not come to a definite finding and specific conclusion that the application form

of the respondent was in fact received by the appellants but the same had been misplaced by the appellants. In such a set of circumstances, it was not proper to direct the appellants to permit the respondent to take the examination especially when there was nothing on record to show that the respondent had submitted his application form to the appellants. [Para 23] [855-E-G-H; 856-A]

1.4. According to the respondent, he had forwarded his application form through the stated courier on 28th January, 2010. If the respondent did not receive any acknowledgment for a period of 30 days from the date on which he had forwarded his application form, he ought to have made necessary enquiry in the office of the appellants. Even according to the case of the respondent, for the first time on 20th April, 2010, he made an enquiry about his application form as he had not received the acknowledgment card from the appellants. As stated in the advertisement as a prudent candidate, the respondent ought to have made enquiry latest by the end of February, 2010, but for the reasons best known to the respondent, he waited upto 20th April, 2010 to make an enquiry whether his application form was received by the opponents. No vigilant student aspiring to become a responsible officer of the State would remain so indifferent so as not to make any enquiry for more than two months. It is also pertinent to note that the respondent was not taking the examination for the first time. According to him, he had taken the examination earlier also but unfortunately he was not successful. Thus, he was having experience about the way in which the application form is filled up, how that is to be submitted and the way in which acknowledgement card is sent by the appellants. This negligence on his part has resulted into his sufferance and he himself is only to be blamed for the events. The appellants cannot be directed

to declare the final result of the respondent, especially when his application form had not been received by the appellants within the period prescribed. The second application form which was submitted by the respondent in pursuance of the direction given by the Tribunal is, therefore, ignored. [Para 25, 26] [856-G-H; 857-A-F]

2. An interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. Normally, at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. However, very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. Grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court. [Para 27] [857-G-H; 858-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6349 of 2011.

From the Judgment & Order dated 07.02.2011 of the High Court of Judicature Andhra Pradesh at Hyderabad in Writ Petition No. 33367 of 2010.

WITH

Interlocutory Application No. 1.

Parag P. Tripathi, ASG, Anuj Bhandari, Binu Tamta for the Appellants.

L. Nageswara Rao, G. Ramakrishna Prasad, B. Suyodhan, Bharat J. Joshi for the Respondent.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the Judgment and Order dated 7.2.2001 passed in W.P. No.33367 of 2010 by the High Court of Andhra Pradesh at Hyderabad, confirming the Order dated 1st September, 2010, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, this appeal has been filed by the appellants – the Secretary and the Joint Secretary of Union Public Service Commission (UPSC).

3. According to the case of the respondent, being desirous of taking Civil Services Examination, 2010, he had filled up his application form and had sent the same to UPSC through DTDC Courier and Cargo Ltd. The respondent had handed over his application form to the above named courier on 28th January, 2010, and the courier had intimated to the respondent that the application form was delivered to UPSC on 29th January, 2010. Thus, according to the respondent, his application form had been duly received by UPSC and, therefore, he was expecting his admission certificate but as he had not received it even in the month of April, 2010, he had made a representation to the appellants on 20th April, 2010, making a grievance with regard to non-issuance of admission certificate to him. In pursuance of the aforestated representation made by the respondent, a letter dated 23rd April, 2010, was addressed to the respondent whereby he was informed that his application for Civil Services Examination (Preliminary), 2010 had not been received by the appellants and the respondent was also requested to furnish

acknowledgment card duly stamped by UPSC to enable the appellants to take further action in the matter.

4. As the respondent had not received any acknowledgement card from the appellants, the respondent rushed to the Central Administrative Tribunal, Hyderabad, by filing O.A. No.470 of 2010 praying inter alia for an interim relief to the effect that the appellants be directed to furnish an admission certificate to the respondent so that the respondent can take the examination. By an interim order dated 12th May, 2010, the Central Administrative Tribunal directed the respondent to submit a copy of his application form to the appellants and directed the appellants to issue an admission certificate to the respondent so that the respondent can take the examination. It was clarified that the admission certificate would be subject to the final result of the said original application.

5. In pursuance of the aforestated interim order passed by the Central Administrative Tribunal (CAT), the respondent had filed another application form which was received by the appellants around 17th May, 2010 and in pursuance of the said application form, an admission certificate was issued to the respondent and he took the Civil Services Examination (Preliminary).

6. The aforestated original application was finally heard by the CAT and by an Order dated 1st September, 2010, the application was allowed, whereby the appellants were directed to declare result of the respondent and if he was found qualified, he should be permitted to take the Civil Services Examination (Mains), 2010. While allowing the application, the Tribunal had considered reply filed on behalf of the appellants. It was stated in the reply filed on behalf of the appellants that no application form from the respondent was received by the appellants. The respondent had specifically stated that his application form bearing No.37573985 had been submitted through the courier named hereinabove to the appellants on

29th January, 2010 at 4 p.m. The respondent had mainly relied upon an acknowledgement given to him by the courier to the effect that his application form had been delivered to the appellants on 29th January, 2010 at 4 p.m. and an affidavit had also been filed in support of the said averment by Shri V.S. Kumar Raju, Manager, Administration, Regional Office of DTDC, Hyderabad. The aforestated averments of the respondent were specifically denied by the deponent of an affidavit filed on behalf of the appellants. While passing the final order, the Tribunal had considered the above facts and had also observed about two possibilities - either the application form of the respondent was misplaced in the office of the appellants or the courier agency had failed to deliver the application form of the respondent to the appellants. The Tribunal did not come to the final conclusion that the application form of the respondent was delivered to the appellants or the appellants in fact had received the application form of the respondent. Though the Tribunal observed in its order that it was difficult to come to a definite conclusion that the application form of the respondent was in fact received by the appellants, the Tribunal gave a final direction to the appellants to declare the result of the respondent and if he was found successful in the Civil Services Examination (Preliminary), he should also be permitted to take the Civil Services Examination (Mains) and should also be permitted to appear for interview. Thus, the application filed by the respondent was allowed by the Tribunal by the order dated 1st September, 2010.

7. The aforestated order of the Tribunal was challenged before the High Court by the appellants by filing Writ Petition No.33367 of 2010. After hearing the concerned advocates and after considering the above facts, the High Court disposed of the petition by observing that the respondent be permitted to take the Civil Services Examination (Mains) and should also be permitted to appear for the interview, if he is qualified in the Civil Services Examination (Mains). With the aforesaid observations, the petition was disposed of by the High Court.

8. It is pertinent to note that during the pendency of the aforesaid proceedings, the respondent took the Civil Services Examination (Mains) and also appeared for the oral interview. The final result has not been declared and it has been retained by the appellants in a sealed cover. Interlocutory Application No.1 has been filed by the respondent before this Court praying for directions to the appellants to declare the result of the respondent and keep a post vacant in a particular cadre so as to enable him to join the service. The said application is also pending for hearing.

9. Mr. Parag P. Tripathi, learned Additional Solicitor General appearing for the appellants submitted that the impugned order of the High Court confirming the order of the Tribunal is absolutely unjust and improper especially in view of the fact that neither the Tribunal nor the High Court had come to any final conclusion that the application form of the respondent was in fact submitted to the appellants.

10. The learned counsel apprised us of the procedure with regard to acceptance of application forms and he had also kept the entire relevant record pertaining to the application forms regarding the Civil Services Examination, 2010 in this Court. He explained to us as to how an application form was being received by the appellants. He submitted that as per normal practice of the appellants, whenever any application form pertaining to the Civil Services Examination is sent by post, the candidate sending it by post is supposed to enclose a self addressed acknowledgement card, with postal stamp affixed, along with the application form. The said acknowledgement card is returned by the appellants to the concerned candidate with a distinct numerical mark affixed thereon. The acknowledgement card is sent by post to the concerned candidate. If any application form is received by the appellants either through hand delivery or through a courier, the person who hands over the application form to a representative of the appellants at a particular counter, would be given an

acknowledgement card after affixing a stamp having a distinct numerical mark.

11. He further stated that a facsimile of each stamp having distinct numerical mark is also retained by affixing it in a register maintained by the appellants so that in an event of any effort to forge the acknowledgement mark, fraud can be detected easily. The register containing such marks and record pertaining to the applications received on each day was placed before this Court for its perusal.

12. According to the leaned Additional Solicitor General, in view of the aforestated procedure, if the application form of the respondent bearing No.37573985 had been received by the appellants, an acknowledgment card ought to have been received by the courier's representative, who had personally handed over the application form to a representative of the appellants. He further submitted that according to the respondent, his application form was submitted on 29th January, 2010 at 4 p.m. A list of all applications, which had been received on 29th January, 2010, was shown to this Court but in the said list, there was no reference to the application form bearing no.37573985, belonging to the respondent. He, therefore, submitted that in fact the application form of the respondent had not been received by the appellants.

13. The learned counsel for the appellants further submitted that 100 application forms and record pertaining thereto is retained in one separate packet and he also explained the system whereby all application forms are received and processed by the appellants. Even in the packets containing application forms received on 29th January, 2010, the respondent's form was not found.

14. The learned counsel further submitted that as the application form of the respondent had never been received by the appellants, it would not be proper to declare result of the respondent because as per the case of the appellants, the form

of the respondent was never submitted to the appellants. In such an event, declaration of the result of the respondent would be absolutely unjust and would set a wrong precedent. He, therefore, submitted that the appeal be allowed and the judgment of the High Court confirming the order of the Tribunal be quashed and set aside.

15. On the other hand, Mr. L. Nageshwara Rao, learned senior counsel appearing for the respondent mainly submitted that the respondent had forwarded his application form through DTDC Courier and Cargo Ltd. and the courier had delivered the form to the appellants on 29th January, 2010. He also relied upon an affidavit filed by a responsible officer of the above named courier agency stating that the respondent's application form was delivered to U.P.S.C. on 29th January, 2010.

16. He further submitted that there was no reason for the respondent to make any false averment with regard to submission of the application form because the respondent was quite serious about the examination and in fact he had passed the Civil Services Examination (Preliminary) and the respondent was quite hopeful of even succeeding in the Civil Services Examination (Mains) and oral interview. He further submitted that there was no reason for the courier agency not to deliver the application form of the respondent and there was no reason for a responsible officer of the courier agency to file a false affidavit supporting the respondent to the effect that his application form had been submitted to the appellants.

17. The learned counsel further submitted that by declaration of the result, there would be no harm to anyone because if the respondent is not declared successful, he would not get any benefit but if in fact he is found successful in the examination as well as in the oral interview and if he is not given benefit of doubt, career of a bright young person would be ruined. He, therefore, submitted that the judgment of the High Court confirming the order of the Tribunal is just and legal and, therefore, the appeal should be dismissed.

18. We have heard the learned counsel at length and have also meticulously gone through the relevant record produced before this Court by the learned Additional Solicitor General.

19. It is pertinent to note that the respondent, at no point of time, had adduced any evidence before the Tribunal or even before this Court to the effect that the appellants had received the application form of the respondent bearing no.37573985.

20. Right from the beginning i.e. the stage at which an original application was filed before the Tribunal, the respondent had relied upon an affidavit filed by the Manager Administration, Regional Office of the DTDC Courier and Cargo Ltd., having its branch office at Hyderabad. According to his affidavit, the respondent's application form had been delivered to the appellants on 29th January, 2010. The application form had not been delivered by him personally but it was delivered by an employee of the above named courier agency and so as to substantiate his say, he had relied upon the delivery Run Sheet No.12878919 dated 29th January, 2010. The said run sheet is a part of the record. Upon perusal of the run sheet, we do not find any acknowledgement given by any of the officers of the appellants to the effect that an application form of the respondent was received by the appellants. The said run sheet incorporates numbers of consignments which had been addressed to UPSC, Shahjahan Road, New Delhi. Beyond numbers of five different consignments and name of UPSC, to whom the consignments were to be sent, there is no indication on the said run sheet that the said consignments were received on behalf of UPSC.

21. In our opinion, on the basis of the aforestated record, by no stretch of imagination one can say that the respondent's application form had been received by the appellants.

22. As the case involves a career of a young man, who can turn out to be a good civil servant, we had very meticulously gone through the record maintained by the appellants. Looking

to the system which is being followed by the appellants, we find that the said system is very comprehensive and flawless. It is very clear that if the application form of the respondent had been received by the appellants in the manner provided, it would have been recorded somewhere. Even the eight digit number of the application form of the respondent has not been recorded anywhere. Receipt of an application form through a courier is treated as 'hand delivery' by the appellants. In case of receipt of an application by hand delivery, on the spot, an acknowledgement card stamped with a distinct numerical mark is handed over to the person who delivers the application form. If the application form had been delivered by a representative of the courier agency to the office of the appellants, there was no reason for the appellants not to give a duly stamped acknowledgement card bearing a distinct numerical mark. No such acknowledgment card, duly stamped, could be produced by the respondent or by the courier agency. Thus , on perusal of the record and looking the facts of the case, we come to a conclusion that no proof could be submitted by the respondent that the application form was received by the appellants.

23. It is pertinent to note here that while passing the final order, even the Tribunal was not sure whether the application form of the respondent was received by the appellants. The Tribunal, in para 8 of its final order dated 1st September, 2010, has observed as under:

> "8. …….It is quite possible that the applicant's application had been misplaced. It is also quite possible that the courier agency failed to deliver the application form of the applicant at the respondent's office……".

Thus, even while giving final direction to the appellants with regard to permitting the respondent to take the Civil Services Examination, the Tribunal had not come to a definite finding and specific conclusion that the application form of the respondent was in fact received by the appellants but the same had been misplaced by the appellants. In our opinion, in such a set of

circumstances, it would not be proper to direct the appellants to permit the respondent to take the examination especially when there was nothing on record to show that the respondent had submitted his application form to the appellants.

24. We also record that there was some negligence on the part of the respondent. The learned counsel appearing for the appellants had drawn our attention to the advertisement given by UPSC inviting applications from the candidates who were desirous of joining civil service and taking examination for that purpose. Clause 7 of the said advertisement relating to acknowledgement of application is reproduced hereinbelow:

> "7. Acknowledgment of applications:
>
> Immediately on receipt of an application from a candidate, the Acknowledgment Card submitted by him/her alongwith the Application Form will be dispatched to him/her by the Commission's Office duly stamped in token of receipt of his/her Application. If a candidate does not receive the Acknowledgement Card within 30 days, he/she should at once contact the Commission by quoting his/her Application Form No.(8 digit) and name and year of examination. Candidates delivering the Application form in person at the Commission's Counter will be issued Acknowledgment Card at the Counter itself. The mere fact that a candidate's application has been acknowledged by the Commission does not mean that his/her candidature for the examination has been accepted by the Commission. Candidates will be informed at the earliest possible about their admission to the examination or rejection of their application."

25. According to the respondent, he had forwarded his application form through the aforestated courier on 28th January, 2010. If the respondent did not receive any acknowledgment for a period of 30 days from the date on which he had forwarded his application form, he ought to have made

necessary enquiry in the office of the appellants. Even according to the case of the respondent, for the first time on 20th April, 2010, he made an enquiry about his application form as he had not received the acknowledgment card from the appellants. As stated in the aforestated clause no.7, as a prudent candidate, the respondent ought to have made enquiry latest by the end of February, 2010, but for the reasons best known to the respondent, he waited upto 20th April, 2010 to make an enquiry whether his application form was received by the opponents. In our opinion, no vigilant student aspiring to become a responsible officer of the State would remain so indifferent so as not to make any enquiry for more than two months. It is also pertinent to note that the respondent was not taking the examination for the first time. According to him, he had taken the examination earlier also but unfortunately he was not successful. Thus, he was having experience about the way in which the application form is filled up, how that is to be submitted and the way in which acknowledgement card is sent by the appellants. In our opinion, this negligence on his part has resulted into his sufferance and he himself is only to be blamed for the events.

26. For the aforestated reasons, we are of the view that the appellants cannot be directed to declare the final result of the respondent, especially when his application form had not been received by the appellants within the period prescribed. We ignore the second application form which was submitted by him in pursuance of the direction given by the Tribunal.

27. We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are

becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court.

28. For the reasons stated hereinabove, we allow the appeal by quashing and setting aside the judgment delivered by the High Court as well as the order of the Tribunal with no order as to costs. The Interlocutory Application filed by the respondent is also rejected.

D.G. Appeal allowed.

##NEXT

SHAH NAWAJ

v.

STATE OF U.P. & ANR.

(Criminal Appeal No. 1531 of 2011)

AUGUST 05, 2011

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

Juvenile Justice/Care and Protection of Children) Rules, 2007 – Claim of juvenility – FIR lodged against appellant for commission of offence u/ss. 302 and 307 IPC – Application filed by appellant's mother before the Juvenile Justice Board that he was a minor at the time of the alleged occurrence on basis of her son's school leaving certificate – Application allowed – Session Judge set aside the order passed by the Board – Said order upheld by the High Court on the ground of absence of any matriculation or equivalent certificate – On appeal held: Documents furnished-mark sheet of High School Examination issued by the School Authority and the School Leaving Certificate issued by the Preparatory School clearly show that the date of birth of the appellant was noted as 18.06.1989 – Entry relating to date of birth entered in the mark sheet as also school leaving certificate are valid proof of evidence for determination of age of an accused person – Date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk and the principal of the School – Mother of the appellant corroborated his academic records which clearly depose his date of birth as 18.06.1989 and the appellant was a juvenile on the date of occurrence as alleged in the FIR – Thus, the Additional Sessions Judge and the High Court erred in determining the age of the appellant ignoring the date of birth mentioned in

those documents which is illegal, erroneous and contrary to the Rules – Decision of the Board is upheld and that of the Additional Sessions Judge and the High Court are set aside – Juvenile Justice (Care and Protection of Children) Act, 2000.

An FIR was lodged against the appellant and others for commission of offence under Sections 302 and 307 IPC. The mother of the appellant filed an application before the Juvenile Justice Board that the minor was a juvenile on the alleged date of occurrence. The witnesses were cross-examined and the Board declared the appellant juvenile under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The complainant-wife of deceased filed an appeal and the order passed by the Board was set aside. The appellant filed criminal revision. The High Court dismissed the revision on the ground that in the absence of any matriculation or equivalent certificate and the language used in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 was with reference to only certificate and not the mark sheet. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1 Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report. Rule 12 of the Rules categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available. [Paras 19 and 21]

1.2 The documents furnished mark sheet of High School Examination issued by the School Authority and the School leaving certificate dated 11.07.2007 issued by the Preparatory School clearly show that the date of birth of the appellant was noted as 18.06.1989. The entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk of the School and recorded by the Board. The date of birth of the appellant has also been recorded as 18.06.1989 in School Leaving Certificate issued by the Principal of the School as well as the said date of birth mentioned in the school register of the said school which was proved by the statement of the Principal of that school recorded before the Board. Apart from the clerk and the Principal of the school, the mother of the appellant categorically stated on oath that the appellant was born on 18.06.1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18.06.1989, thus, her statement corroborated his academic records which clearly depose his date of birth as 18.06.1989. Thus, the appellant was a juvenile on the date of occurrence as alleged in the FIR. [Para 20]

1.3 From the acceptable records, it is held that the date of birth of the appellant is 18.06.1989. Though the Board correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents

which is illegal, erroneous and contrary to the Rules. While upholding the decision of the Board, the orders of the Additional Sessions Judge and the High Court are set aside. The appellant is declared to be a juvenile on the date of commission of offence and may be proceeded in accordance with law. [Paras 19 and 22]

Raju and Anr. vs. State of Haryana **2010 (3) SCC 235: 2010 (2) SCR 574;** *Hari Ram vs. State of Rajasthan and Anr.* **2009 (13) SCC 211: 2009 (7) SCR 623;** *Bhoop Ram vs. State of U.P.* **1989 (3) SCC 1:** *Rajinder Chandra vs. State of Chhatisgarh and Anr.* **2002 (2) SCC 287;** *Arnit Das vs.State of Bihar* **(2000) 5 SCC 488: 2000 (1) Suppl. SCR 69;** *Ravinder Singh Gorkhi vs. State of U.P.* **2006 (5) SCC 584: 2006 (2) Suppl. SCR 615;** *Pradeep Kumar vs. State of U.P.* **1995 Supp. (4) SCC 419 – referred to.**

CASE LAW REFERENCE

2010 (2) SCR 574	**Referred to**	**Para 7**
2009 (7) SCR 623	**Referred to**	**Para 7**
1989 (3) SCC 1	**Referred to**	**Para 8**
2002 (2) SCC 287	**Referred to**	**Para 9**
2000 (1) Suppl. SCR 69	**Referred to**	**Para 10**
2006 (2) Suppl. SCR 615	**Referred to**	**Para 11**
1995 Supp. (4) SCC 419	**Referred to**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1531 of 2011.

From the Judgment & Order dated 10.12.2010 of the High Court of Judicature at Allahabad in Criminal Revision No. 716 of 2009.

Dinesh Kumar Garg, B.S. Billowria, Abhishek Garg,