SARABJIT SINGH

v.

STATE OF PUNJAB & ORS.

(Criminal Appeal No. 815 of 2013)

JULY 1, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Code of Criminal Procedure, 1973 - s.482 - Quashing of FIR - FIR u/ss. 420, 379, 427, 506, 148 and 149 IPC - Alleging that one of the accused had taken Rs.3,00,000/- from him as consideration pursuant to an agreement to sell a piece of land - In addition, he also implicated the person to whom the accused (vendor) had sold the land - During pendency of the investigation in FIR, complaint by the vendees of the land alleging harassment by police in pursuance of the FIR - After enquiry in the matter Superintendent of Police as well as Deputy District Attorney in their separate reports concluded that FIR was only to pressurize the vendor and vendees and that the first informant had not been able to establish the execution of any agreement to sell in his favour - Despite the favourable reports, Police report u/s.173 Cr.P.C. in the FIR for initiation of criminal proceedings against the vendor and vendees - Application for quashing of FIR - Allowed by High Court - Held: It is a case of no evidence - First informant failed to establish his claim - Accusations were without any supporting material - High Court was, therefore, justified in quashing the FIR.

'S' filed a suit against the appellant for direction not to interfere with his land measuring 61 kanals 3 marlas. Status quo was granted by the court and the same attained finality. Subsequently, 'S' sold the above-said land to respondent No.4 and his brother. Thereafter, the appellant filed a suit against the vendor 'S', respondent No.4 and his brother, and others, praying for specific

performance of the deed and for possession. In the suit he was not successful in getting any interim order in his favour. The appellant lodged FIR u/ss.420, 379, 427, 506, 148 and 149 IPC, alleging that the vendor received Rs.3,00,000/- from him as consideration for agreement to sell. The vendor and the vendees (i.e. respondent No.4 and his brother) filed application seeking anticipatory bail. High Court granted bail. The vendees also filed a complaint alleging harassment by Police in furtherance of FIR lodged by the appellant. In the enquiry report in the case of complaint by the vendees, it was concluded by the Superintendent of Police that the FIR by appellant was only to pressurize the vendees and the vendor.

The vendees approached the High Court, because they were repeatedly summoned by the police authorities despite the favourable report. Pursuant to intervention of High Court, the matter was placed for consideration before Deputy District Attorney, who in his separate report reiterated the conclusions already drawn by Superintendent of Police.

Despite the above-mentioned position, Police gave its report (in the FIR lodged by the appellant) before the Court to initiate criminal proceedings against the vendor and the vendees. However, the said proceedings were restrained by High Court at the instance of the vendor and the vendees.

Vendor (Respondent No.4) also filed application, seeking quashing of the FIR lodged by the appellant and the same was quashed by the High Court. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1. The entire claim of the appellant is based

on an agreement to sell. The first information report lodged by the appellant did not even disclose the date of the aforesaid agreement to sell. According to the averments made by the appellant before the High Court, and before this Court, it was alleged that the aforesaid agreement to sell was executed on 13.3.1992. The High Court, while granting interim relief, had taken into consideration the fact, that the appellant had not enclosed a copy of the alleged agreement to sell. He had given no details of the agreement to sell. He did not disclose any date of the alleged agreement to sell. He did not even mention the area of land covered by the agreement, or the rate at which the land was agreed to be purchased. The High Court also noticed that the date on which the sale was to be concluded, besides other similar issues, had also not been disclosed by the appellant in his complaint. While recording that the aforesaid were important ingredients for any agreement to sell, and while noticing that the same had not been disclosed by the appellant, the High Court had stayed the proceedings before the trial Court. Despite such strong observations made by the High Court in its order dated 11.2.2002, and inspite of the fact that the same is the actual basis for all the allegations which the appellant has chosen to level against respondent No. 4 and his brother the vendor and others, the said agreement to sell has still not been placed on the record of the case, nor have the aforesaid details been furnished. [Para 14] [11-G-H; 12-A-F]

2. The High Court makes a specific mention of the report submitted by the Superintendent of Police (City-II), Jalandhar, wherein it was sought to be concluded, that the first information report had been registered by the appellant only to pressurize respondent No. 4 his brother, the vendor and others. The aforesaid report has not been

placed on the record of the case by the appellant. In the aforesaid view of the matter, an adverse inference is liable to be drawn against the appellant. The Deputy District Attorney, Jalandhar also arrived at a similar conclusion, namely, that the appellant had not been able to produce any material demonstrating the execution of the alleged agreement to sell in his favour. Even this report has not been placed on the record of the case. Herein again, an adverse inference is liable to be drawn against the appellant. [Para 15] [12-F-H; 13-A-B, C-E]

3. The appellant has not been able to produce any material, on the basis of which he can establish his claim. The land in question was admittedly sold by the vendor to respondent No.4 and his brother well before the registration of the first information report by the appellant. This is a case of no evidence. It is a case where accusations have been levelled without supporting material. Despite a clear indication in the order passed by the High Court, such supporting material has still not been made available for perusal of this Court. Therefore, in the facts and circumstances of this case i.e. in the absence of any material whatsoever to support the charges levelled by the appellant in the first information report, the High Court was justified in quashing the said first information report by invoking its jurisdiction under Section 482 Cr.P.C.. The conclusions drawn by the Superintendent of Police (City-II), Jalandhar, and the Deputy District Attorney, Jalandhar, that the police complaint made by the appellant was solely aimed at pressurizing the vendor and the vendees, were fully justified. [Para 16] [13-F-H; 14-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 815 of 2013.

From the Judgment and Order dated 20.11.2006 of the High Court of Punjab & Haryana at C[illegible]al

Misc. No. 32871-M of 2002.

R.K. Kapoor, Rekha Giri, Shweta Kapoor, Anis Ahmed Khan for the Appellant.

Shilpa Sood, AAG, Kuldip Singh, S.K. Verma for the Respondents.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Leave granted.

2. Sarabjit Singh, the appellant herein, purchased 30 kanals 11 marlas of land from Salamat Masih through two deeds dated 11.2.1992 and 13.3.1992. The pleadings in the instant appeal reveal, that the aforesaid purchase made by the appellant was out of a total holding of 99 kanals (with the vendor Salamat Masih). It is not a matter of dispute, that on purchasing 30 kanals 11 marlas of land, the appellant Sarabjit Singh set up a brick kiln on the land for manufacture of bricks. Itpal Singh (respondent no. 4 herein) and his brother Gurbinder Singh also purchased 61 kanals 3 marlas of land from Salamat Masih (the vendor of Sarabjit, the appellant herein). The instant purchase was made through two sale deeds dated 17.3.1997 and 4.4.1997. It is accepted by the parties, that the land purchased by Sarabjit Singh, the appellant herein, adjoins the land purchased by Itpal Singh (respondent no. 4 herein) and his brother Gurbinder Singh.

3. The first litigation between the parties was initiated by Salamat Masih. He filed a civil suit on 20.4.1995 against the appellant Sarabjit Singh. The principal prayer made by Salamat Masih in the aforesaid suit was, for a direction to the appellant Sarabjit Singh, not to interfere in his land measuring 61 kanals 3 marlas. It would be pertinent to mention at this juncture, that it was the instant land which was subsequently sold by Salamat Masih to Itpal Singh and his brother Gurbinder Singh (through the said two registered sale deeds, dated 17.3.1997 and

4.4.1997). In the written statement filed by Sarabjit Singh in response to the suit filed by Salamat Masih, Sarabjit Singh admitted, that he had only purchased 32 kanals of land, out of the total land holding of Salamat Masih. Interestingly, in his written statement, Sarabjit Singh (the appellant herein) did not aver, that he had entered into an agreement to purchase any further land from Salamat Masih.

4. In the above-mentioned suit preferred by Salamat Masih, the Civil Court passed an interim order of status quo on 3.2.1998. At the time of passing of the aforesaid interim order, the land in question was already in possession of Itpal Singh (respondent no. 4 herein) and his brother Gurbinder Singh. At this juncture, it is necessary to reiterate, that Itpal Singh and Gurbinder Singh had purchased the instant 61 kanals and 3 marlas of land from Salamat Masih (through the said two registered sale deeds, dated 17.3.1997 and 4.4.1997). In view of the interim order passed in the civil suit, Itpal Singh and Gurbinder Singh were not adversely affected by the dispute between Salamat Masih and the appellant Sarabjit Singh. Despite that, the appellant Sarabjit Singh assailed the order dated 3.2.1998 (passed by the Civil Court requiring the parties to the litigation to maintain status quo), before the District Judge. The District Judge vide order dated 5.5.2000, dismissed the challenge raised by the appellant Sarabjit Singh. It is not a matter of dispute, that the aforesaid order dated 5.5.2000 was not further challenged by the appellant Sarabjit Singh, and must therefore, for all intents and purposes, be deemed to have attained finality between the rival parties.

5. It is apparent from the factual position noticed hereinabove, that Salamat Masih had initiated the process of litigation between the parties by filing the said civil suit against the appellant Sarabjit Singh on 20.4.1995. About three years thereafter, the appellant Sarabjit Singh also filed a civil suit on 8.1.1998 against Salamat Masih (and

Singh and Gurbinder Singh), for specific performance and possession. The relief of specific performance was claimed by the appellant Sarabjit Singh on the basis of a deed dated 13.3.1992.

6. It seems, that the appellant Sarabjit Singh was on the back foot with reference to the litigation pertaining to 61 kanals 3 marlas of land purchased by Itpal Singh and Gurbinder Singh (through the said two registered sale deeds, dated 17.3.1997 and 4.4.1997). The instant inference is based on the fact, that Salamat Masih had filed his suit on 20.4.1995, wherein an order of status quo was passed on 3.2.1998. As against the aforesaid, the appellant Sarabjit Singh had also filed a civil suit on 8.1.1998. However, he was not successful in getting any interim order in his favour. It is, therefore, that on 10.1.1998, the appellant Sarabjit Singh lodged a first information report at Police Station Adampur in district Jalandhar. The aforesaid first information report was lodged under Sections 420, 379, 427, 506, 148 and 149 of the Indian Penal Code. The entire claim of the appellant Sarabjit Singh in the aforesaid first information report was founded on an agreement to sell in furtherance whereof it is alleged, that Salamat Masih had received from him a sum of Rs.3,00,000/- as consideration. However interestingly, neither the date of the agreement to sell had been depicted in the complaint made by Sarabjit Singh, nor the same was produced by him at the time of the registration of the above first information report.

7. Threatened with the registration of the first information report referred to above, Itpal Singh (respondent no. 4 herein), his brother Gurbinder Singh and the vendor Salamat Masih (besides others implicated in the first information report) preferred Criminal Miscellaneous no.4994-M of 1998, before the High Court of Punjab & Haryana at Chandigarh (hereinafter referred to as, the High Court). The prayer made in the aforesaid Criminal Miscellaneous no. 4994-M of 1998, was for grant of anticipatory bail, under Section 438 of the Code of Criminal

Procedure. By an order dated 24.7.1998, the High Court granted interim bail to all the petitioners. On 24.7.1998, the High Court confirmed the aforesaid order of bail.

8. Itpal Singh (respondent no. 4 herein) and his brother Gurbinder Singh, preferred a complaint before the Senior Superintendent of Police, Jalandhar, alleging that they were being unnecessarily harassed by the police, in furtherance of the first information report lodged by the appellant Sarabjit Singh. In continuation with the aforesaid complaint, the Senior Superintendent of Police, Jalandhar marked an enquiry into the matter to the Superintendent of Police (City-II), Jalandhar. Even though a copy of the aforesaid report was available (on the file of the High Court, as annexure P-8), the same has not been placed on the record of the instant case. Nevertheless, it is relevant to mention, that with reference to the aforesaid report, the High Court had remarked that the Superintendent of Police (City-II), Jalandhar had concluded, that the case registered by the appellant Sarabjit Singh was only to pressurize Itpal Singh (respondent no. 4 herein), his brother Gurbinder Singh and Salamat Masih.

9. Despite the aforesaid favourable report, Itpal Singh and his brother Gurbinder Singh were repeatedly summoned by the police authorities. In the aforesaid view of the matter, Itpal Singh and Gurbinder Singh again approached the High Court by filing Criminal Miscellaneous no. 22198-M of 2000. The aforesaid Criminal Miscellaneous Petition was disposed of by the High Court on 10.1.2002. The order passed by the High Court is self-explanatory, and is accordingly being extracted hereunder:-

> "Allegation of the petitioner is that he is being repeatedly summoned in the office of S.P. (D), Jalandhar, without any jurisdiction. This grievance will be looked into by the S.S.P., Jalandhar on a fresh representation being made by the petitioner and the same will be disposed of within six months of its filing.

Disposed of accordingly."

It seems, that the matter was then placed before the Deputy District Attorney, Jalandhar, for consideration. As per the report of the Deputy District Attorney, Jalandhar, the appellant Sarabjit Singh had not been able to establish the execution of any agreement to sell, in his favour. In the aforesaid view of the matter, the Deputy District Attorney, Jalandhar, in a separate report, reiterated the conclusions which had already been drawn by the Superintendent of Police (City-II), Jalandhar (in his report, referred to in the foregoing paragraph).

10. Despite the factual position noticed hereinabove, having concluded its investigation in the matter, the police presented a report under Section 173 of the Code of Criminal Procedure, before a court of competent jurisdiction, so as to initiate criminal proceedings against Itpal Singh (respondent no. 4 herein), Gurbinder Singh, Salamat Masih and others. The process of initiation of criminal proceedings against the appellant was assailed by Itpal Singh and others by preferring Criminal Misc. no. 3039-M of 2002. The following order was passed in the aforesaid Criminal Miscellaneous no. 3039-M of 2002 on 11.2.2002:-

"Learned counsel for the petitioner contends that report under Section 173 Cr.P.C. has been presented before the trial court in FIR 4 dated January 10, 1998 under Section 420/379, 427, 506, 148 and 149 IPC.

It is further contended that the alleged occurrence had taken place on a parcel of land measuring 61 kanals 3 marlas which had been sole by the owner Salamat Masih to the petitioner and his brother vide two sale deeds dated March 17, 1997. On the other hand the possession of this land was claimed by the complainant (respondent 4 herein) on the basis of an agreement to sell. In the recital of the FIR the complainant stated that "for the balance of 61 kanals 2 marls, I had entered into an agreement to sell with

Salamat Masih for digging earth and for purchasing the said land. That the whole of the land measuring 91 kanals 13 marlas is situated in village Dhogri and possession was given to me in 1990."

Significantly, no details of the agreement to sell have been mentioned. FIR does not disclose any date, area of land covered by agreement, the rate per kanal or purchase price, the date on which the sale was to be concluded etc., which are all important ingredients of any agreement to sell.

In the main petition the petitioner is seeking relief on the basis of report of SP, Annexure P-7 in which on investigation it was found that the petitioner had not committed any offence.

On January 23, 2002 notice of motion was ordered to be issued for February 28, 2002.

In the interim period, proceedings before the trial court on the basis or report under Section 173 Cr.P.C. shall remain stayed."

(emphasis is ours)

It is therefore apparent, that the trial Court was restrained by the High Court from proceeding against Itpal Singh and others.

11. Simultaneously with the proceedings mentioned hereinabove, Itpal Singh preferred Criminal Miscellaneous no. 32871-M of 2002 under Section 482 of the Code of Criminal Procedure, for quashing the first information report lodged by the appellant Sarabjit Singh. After obtaining the response of the appellant Sarabjit Singh (who was arrayed as respondent no. 4), the High Court, vide its order dated 20.11.2006, quashed the first information report dated 10.1.1998 (lodged by the appellant Sarabjit Singh with Police Station Adampur in district Jalandhar).

12. The order passed by the High Court dated 20.11.2006, quashing the first information report dated 10.1.1998 referred to above, has been assailed by the appellant Sarabjit Singh before this Court, through the instant criminal appeal.

13. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the appellant. Primarily, the contention of the learned counsel for the appellant was, that the High Court had prematurely, invoked its jurisdiction under Section 482 of the Code of Criminal Procedure and quashed the first information report lodged by the appellant Sarabjit Singh without considering the allegations made by the appellant. It was submitted, that a large number of questions of fact were involved in the allegations contained in the complaint filed by the appellant, specially in view of the factual position adopted by the respondents. The truth or falsity of the matter, according to the learned counsel representing the appellant, could only have emerged after the prosecution was permitted to lead its evidence. It was submitted, that persons against whom allegations have been levelled in the first information report, would then have had ample opportunity to rebut the prosecution evidence and substantiate their innocence. The contention in nutshell was, that in the above situation, justice would have been rendered to both parties. It is, therefore, the submission of the learned counsel for the appellant, that the High Court was not justified in invoking its jurisdiction under Section 482 of the Code of Criminal Procedure, to quash the aforesaid first information report, dated 10.1.1998.

14. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the appellant. The entire claim of the appellant Sarabjit Singh is based on an agreement to sell. The first information report lodged by the appellant Sarabjit Singh on 10.1.1998 at Police Station Adampur, district Jalandhar, did not even disclose the date of the aforesaid agreement to sell. According to the

averments made by the appellant Sarabjit Singh before the High Court, and now before this Court, it is alleged that the aforesaid agreement to sell was executed on 13.3.1992. With reference to the abovesaid agreement to sell, the observations made by the High Court in its order dated 11.2.2002 (in Criminal Miscellaneous no. 3039-M of 2002) are extremely significant. The aforesaid order has been extracted hereinabove. The High Court, while granting interim relief, had taken into consideration the fact, that the appellant Sarabjit Singh had not enclosed a copy of the alleged agreement to sell. He had given no details of the agreement to sell. He did not disclose any date of the alleged agreement to sell. He did not even mention the area of land covered by the agreement, or the rate at which the land was agreed to be purchased. The High Court also noticed, that the date on which the sale was to be concluded, besides other similar issues, had also not been disclosed by the appellant Sarabjit Singh, in his complaint. While recording that the aforesaid were important ingredients for any agreement to sell, and while noticing that the same had not been disclosed by the appellant Sarabjit Singh, the High Court had stayed the proceedings before the trial Court. Despite such strong observations made by the High Court in its order dated 11.2.2002, and inspite of the fact that the same is the actual basis for all the allegations which the appellant has chosen to level against Itpal Singh (respondent no. 4 herein), Gurbinder Singh, Salamat Masih and others, the said agreement to sell has still not been placed on the record of the case, nor have the aforesaid details been furnished.

15. The impugned order passed by the High Court makes a specific mention of the report submitted by the Superintendent of Police (City-II), Jalandhar, wherein it was sought to be concluded, that the first information report had been registered by the appellant Sarabjit Singh only to pressurize Itpal Singh (respondent no. 4 herein), Gurbinder Singh, Salamat Masih and others. The aforesaid report was available on the record of the High Cou n

effective determination of the present controversy, therefore, could have been made only upon a perusal of the aforesaid report. Unfortunately, the aforesaid report has not been placed on the record of the case by the appellant Sarabjit Singh. In the aforesaid view of the matter, an adverse inference is liable to be drawn against the appellant Sarabjit Singh, and the finding recorded by the High Court on the basis of the aforesaid report of the Superintendent of Police (City-II), Jalandhar, that the instant case had been registered by the appellant Sarabjit Singh only to pressurize Itpal Singh, Gurbinder Singh, Salamat Masih and others, has inevitably to be reiterated. Consequent upon the disposal of Criminal Miscellaeous no. 22198-M of 2000 vide order dated 10.1.2002 (extracted hereinabove), it seems, that the matter was placed before the Deputy District Attorney, Jalandhar. The Deputy District Attorney, Jalandhar also arrived at a similar conclusion, namely, that the appellant Sarabjit Singh had not been able to produce any material demonstrating the execution of the alleged agreement to sell in his favour. It has been expressly noticed by the High Court in the impugned order dated 20.11.2006, that even the Deputy District Attorney, Jalandhar, in his report, upheld the earlier report submitted by the Superintendent of Police (City-II), Jalandhar. Even this report has not been placed on the record of the case. Herein again, an adverse inference is liable to be drawn against the appellant Sarabjit Singh.

16. From the course of our narration of the factual position as it traversed before different levels of investigation and judicial scrutiny, it emerges that the appellant Sarabjit Singh has not been able to produce any material, on the basis of which he can establish his claim. The aforesaid land was admittedly been sold by Salamat Masih to Itpal Singh and Gurbinder Singh (through two registered sale deeds dated 17.3.1997 and 4.4.1997), i.e. well before the registration of the first information report dated 10.1.1998 by the appellant Sarabjit Singh. This is surely a case of no evidence. It is a case where accusations have been levelled without supporting material. Despite a clear

indication in the order passed by the High Court, such supporting material has still not been made available for perusal of this Court. Therefore, in the facts and circumstances of this case, we are satisfied, that in the absence of any material whatsoever to support the charges levelled by the appellant Sarabjit Singh in the first information report dated 10.1.1998, the High Court was justified in quashing the said first information report by invoking its jurisdiction under Section 482 of the Code of Criminal Procedure. We are also satisfied, that the conclusions drawn by the Superintendent of Police (City-II), Jalandhar, and the Deputy District Attorney, Jalandhar, that the police complaint made by the appellant Sarabjit Singh was solely aimed at pressurizing Salamat Masih, Itpal Singh and Gurbinder Singh (besides some others), were fully justified.

17. For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed.

K.K.T. Appeal dismissed.

NEERUPAM MOHAN MATHUR
v.
NEW INDIA ASSURANCE CO.
(Civil Appeal No. 4814 of 2013)

JULY 1, 2013

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Motor Vehicles Act, 1988 - s.110-A - Motor accident - Permanent disability - Claim for compensation - Tribunal awarded compensation of Rs.3,20,000/- - High Court enhanced the compensation to Rs.7,04,800/- after taking loss of earning capacity to 70% in view of permanent disability - On appeal, held: High Court has rightly assessed loss of earning capacity to 70% as per Workmen's Compensation Act - Since the courts below did not allow reasonable amount for different pecuniary and non-pecuniary damages, the amount of compensation re-determined to Rs.11,64,300/- - Workmen's Compensation Act, 1923.

The appellant, during motor accident, lost his right hand which was amputated near the shoulder. He filed claim petition, seeking compensation for the loss. Claims Tribunal awarded a compensation of Rs.3,20,000/-. High Court enhanced the amount of compensation to Rs.7,04,800/-, holding that loss of claimant's earning capacity was 70%.

The appellant filed the instant appeal and contended that his permanent disability should have been assessed as 100% and not 70%; and that lesser amounts had been paid towards the cost of prosthesis and towards pecuniary and non-pecuniary damages.

Allowing the appeal, the Court

HELD: 1. The claimant suffered permanent disability of amputation of arm above elbow and as a result of injuries, he was not in a position in doing the specialized job of designing, refrigeration and air conditioning. For the said reason, claimant's services were terminated by his employer but that does not mean that the claimant was not capable to do any other job including the desk job. Having qualification of B.SC degree and Post Diploma in Mechanical Engineering, he can perform any job where application of mind is required than any physical work. Therefore, no grounds are made out to interfere with the finding of the High Court which determined the percentage of loss of earning capacity to 70% adopting the percentage of loss of earning capacity as per the Workmen's Compensation Act. The total loss of income was thus rightly calculated by the High Court at Rs.6,04,800/-. [Paras 13 and 14] [24-F-H; 25-A-B]

Raj Kumar vs. Ajay Kumar and Anr. **(2011) 1 SCC 343: 2010 (13) SCR 179 - relied on.**

2. However from the award passed by the Tribunal and judgment rendered by the High Court, no grounds are shown by the Tribunal or the High Court in providing pecuniary and non-pecuniary damages at a lower rate. Against some of the heads even no amount has been allowed. The claimant placed evidence to suggest that the cost of prosthesis was Rs.75,000/- . It was accepted at Bar that the cost of prosthesis was Rs.1,60,000/-. Inspite of the same the Tribunal did not choose to allow any amount towards prosthesis and the High Court allowed a petty amount of Rs.50,000/- for the same. No separate amount was allowed towards travelling to the Hospitals though the claimant was required to go to attend the Hospital every 10 days for treatment. A meager sum of Rs.25,000/- has been allowed by the High Court towards

pain and suffering. Therefore, with a view to do complete justice to the claimant, the amount of compensation is re-determined to Rs.11,64,300/-. [Paras 15, 17 and 18] [25-B-C, E-G; 26-A; 27-B]

Case Law Reference:

2010 (13) SCR 179 relied on Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4814 of 2013.

From the Judgment and Order dated 06.09.2010 of the High Court of Punjab & Haryana at Chandigarh in FAO No. 693 of 1989.

Mahabir Singh, Nikhil Jain, Gagan Deep Sharma for the Appellant.

M.K. Dua, Kishore Rawat, Karan for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. The present appeal is filed by the claimant-appellant against the judgment of Punjab and Haryana High Court at Chandigarh in FAO No.693 of 1989, whereby the High Court granted a meager enhancement in the amount of compensation awarded to him by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal').

3. The facts involved in the present case are as follows:

The claimant was employed as a 'Product Design Engineer' in M/s. Utility Engineers (India) Ltd. Dharuhera, District Mohindergarh, Haryana. The employer had arranged for a Chartered Bus belonging to M/s. National Tours & Travels, F-4, East of Kailash, New Delhi, 2nd respondent before the

Tribunal for carrying the employees to the factory at Dharuhera and back; one Pritam Singh, 1st respondent before the Tribunal was the driver of the said bus. On 2nd September, 1987, the claimant along with his colleagues was coming back from Dharuhera in the said Chartered Bus bearing Registration No.DBP-805. At about 6 p.m. when the said Bus reached near the turning of village Shikohpur on Gurgaon-Jaipur Highway, it came across a truck coming from opposite direction which was crossing a camel cart in front of it. Pritam Singh, who was driving the bus at a very high speed, carelessly, rashly and negligently attempted to cross the above said truck without keeping the Bus to the extreme left hand side. This resulted in a collision of right hand side of the bus with the truck, which resulted in severance of right hand of the claimant who was sitting in the right side of the bus. The said accident and the mishappenings thereto were witnessed by the occupants of the bus. One Anil Kumar, PW-3, who was also travelling in the said Chartered Bus at the time of the said accident, took the claimant to the Civil Hospital, Gurgaon from where he was given medical first-aid and he was referred to Safdarjang Hospital, New Delhi. The claimant was later on transferred to 'Dr. Ram Manohar Lohia Hospital', New Delhi and thereafter he was also treated in different Hospitals at various stages. The matter was also reported to the Police by Anil Kumar, PW-3.

4. The cliamant filed a petition under Section 110-A of the Motor Vehicles Act, 1988 claiming Rs.12 lacs as the compensation for the loss of the right hand which was amputated near the shoulder, on various counts.

5. The respondents contested the claim of the claimant. The Tribunal after perusing oral and documentary evidence held that the accident took place due to rash and negligent driving by Driver, Pritam Singh of Bus No.DBP-805. The Issue No.1 was thus decided in favour of the claimant. While assessing the compensation under Issue No.2, the Tribunal awarded a

compensation of Rs.3,20,000/- with interest at the rate of 12% per annum.

6. In the appeal preferred by the claimant the High Court taken a loss of earning capacity to 70% in view of permanent disability of right hand. Based on salary of Rs.3,000/- per month as claimed by the claimant adding 50% on the same for future prospects of increase and applying multiplier of 16, compensation amount was raised to Rs.4,500/- with interest at 6% from the date of petition. The High Court made the following observation while granting compensation against different heads:

"4. In my view, the issue relating to death or injury would have no serious difference in the choice of multiplicand or the multiplier. If at all, case of injury that completely disables a person for life is more poignant than a case of death and that is why Courts do not always provide for deductions for personal expenses in case claims for injuries. Indeed, the deduction itself will be meaningless for unlike a case of death, we need to make provision for his own living as well as the living of persons, who are dependent on injured person. The loss in case of injury where there is an amputation and there is a high percentage of loss of earning capacity, in my view, the principle laid down in Sarla Verma providing for a prospect of future increase in salary cannot be ruled out. I would, therefore, take the multiplicand to be Rs.4,500/- which is the salary of Rs.3,000/- per month plus 50% of the same for future prospects of increase. For a person, who was aged 32 years, the appropriate multiplier ought to have been 16 and not 15 and I would, therefore, take the annual income to be Rs.54,000/- and adopting a multiplier of 16, I would take the income to be Rs.8,64,000/-. Having regard to the fact that I have taken the loss of earning capacity to be 70%, the amount that would bear to 70% of Rs.8,64,000/- is the amount that shall become payable for loss of earning capacity. The loss of income will be Rs.6,04,800/-. I shall retain the medical expenses of Rs.10,000/-, Rs.15,000/- for attendant's charges and Rs.25,000/- as provided for pain and suffering by the Tribunal. If the same are retained, the amounts will add to Rs.6,54,800/-. The learned counsel would contend that although there was evidence placed before the Tribunal that the cost of prosthesis was Rs.75,000/-, no amount had been granted towards the same. The learned counsel would also state across the bar that the present cost is Rs.1,60,000/-. There is no definite evidence on the same and I would take the cost to be Rs.50,000/- which although the Tribunal did not provide for. I would provide as necessary equipment that he may require for fending himself. The learned counsel states that if the prosthesis were to be fixed, the disability would even be less. In my view, it will make a minimal difference for a prosthesis is more for cosmetic value than a major functional adjunct. Sense of touch, ability to pinch, ability to push, ability to pick up, are all factors which go into the making of disability, all of which do not get improved by a prosthesis. All told, the amount that shall become payable in the manner worked out by me would add to Rs.7,04,800/-. The Tribunal has already awarded Rs.3,20,000/- and the amount in excess of what is awarded by the Tribunal shall be paid by the insurer with interest at 6% from the date of the petition till the date of realization."

7. The claimant has challenged the order passed by the High Court on three counts namely:

(i) The permanent disability has been wrongly assessed at 70% which should have been 100% in the case of the claimant.

(ii) The lower amount has been paid towards cost of prosthesis and

(iii) Lesser amounts have been allowed towards pecuniary and non-pecuniary damages.

8. Per contra according to the learned counsel for the Insurer, the High Court allowed higher amount than the amount of compensation to which claimant was entitled.

9. In the case of claimant, the High Court for determining the earning capacity adopted the percentage of loss of earning capacity as per the Workmen's Compensation Act and has taken a loss of earning capacity to 70% for amputation of arm above elbow.

10. Admittedly, claimant is a graduate in Science from Agra University and Post Graduate Diploma holder in Mechanical Engineering with specialization in Refrigeration and Air-conditioning. He was a young man of 32 years at the time of accident. Before the Tribunal, the claimant appeared as PW-4 and stated that he had worked with many companies like Blue Star, etc. and has extensive experience. Ultimately he joined M/s. Utility Engineers (India) Ltd. on 1st September, 1986 as Product and Development Engineer and was promoted from Middle Management Group to Senior Management Group on the basic pay of Rs.1400/- to Rs.1500/- plus other incidental benefits like special increment of Rs.100. At the time of accident, he was drawing basic pay of Rs.1900/- plus other incidental benefits total amounting to about Rs.3,000/- per month. His job was designing of air-conditioning project.

11. According to claimant the normal expectancy of life is 70 years and he was expected to earn up to the said age as a specialist in designing, refrigeration and air conditioning. After loss of the right arm due to accident he has become 100%

disabled as his earning capacity has gone down to zero in doing the specialized work like designing, refrigeration and air conditioning. The accident has completely jeopardized his mastery on the subject and his chances of future promotion and professional engagements have been virtually vanished.

12. The question regarding "Assessment of future loss of earnings due to permanent disability" was considered by this Court in *Raj Kumar vs. Ajay Kumar and Another,* (2011) 1 SCC 343, wherein this Court held as follows:

"8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act a

sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity,

and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co. Ltd.)"

13. In the present case, the percentage of permanent disability has not been expressed by the Doctors with reference to the full body or with reference to a particular limb. However, it is not in dispute that the claimant suffered such a permanent disability as a result of injuries that he is not in a position in doing the specialized job of designing, refrigeration and air conditioning. For the said reason, claimant's services were terminated by his employer but that does not mean that the claimant is not capable to do any other job including the desk job. Having qualification of B.SC degree and Post Diploma in Mechanical Engineering he can pe[illegible]e

application of mind is required than any physical work.

14. In view of the forgoing discussion we find no grounds made out to interfere with the finding of the High Court which determined the percentage of loss of earning capacity to 70% adopting the percentage of loss of earning capacity as per the Workmen's Compensation Act. The total loss of income thus rightly calculated by the High Court at Rs.6,04,800/-.

15. However from the award passed by the Tribunal and judgment rendered by the High Court, we find no ground shown by the Tribunal or the High Court in providing pecuniary and non-pecuniary damages at a lower rate. Against some of the heads even no amount has been allowed.

16. The Tribunal in its award has noticed that the claimant had to go to Hospital every 10 days for treatment. He was admitted in different Hospitals and was under treatment as indoor patient for about one and a half months. Claimant's hand was amputated and skin was grafted. Inspite of the same, no amount has been allowed towards loss of earning during the period of treatment nor any amount allowed towards future medical expenses.

17. From the High Court's judgment and award passed by the Tribunal it is clear that the claimant placed evidence to suggest that the cost of prosthesis was Rs.75,000/- . It was accepted at Bar that the cost of prosthesis was Rs.1,60,000/- . Inspite of the same the Tribunal did not chose to allow any amount towards prosthesis and the High Court allowed a petty amount of Rs.50,000/- for the same. No separate amount has been allowed towards travelling to the Hospitals though the claimant was required to go to attend the Hospital every 10 days for treatment. We further find that a meager sum of Rs.25,000/- has been allowed by the High Court towards pain and suffering.

18. Having regards to the fact that the Tribunal and the High

Court have not allowed reasonable amount for different pecuniary and the non-pecuniary damages, we, therefore, with a view to do complete justice to the claimant re-determined the amount of compensation on the following terms:

Pecuniary damages (Special damages)

(i)	Expenses relating to treatment, hospitalisation,medicines ,transportation, nourishing food, and miscellaneous expenditure. (medical expenses Rs.15,000 + Attendant Rs.15,000 + cost of prosthesis Rs.75,000)	Rs.1,05,000
(ii)	Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:	
	(a) Loss of earning during the period of treatment;	Rs.4,500
(b)	Loss of future earnings (on account of 70% permanent disability taking multiplier of 16)	Rs.6,04,800
(iii)	Future medical expenses.	Rs.50,000

Non-pecuniary damages (General damages)

(iv)	Damages for pain, suffering and trauma as a consequence of the injuries.	Rs.1,00,000
(v)	Loss of amenities	Rs.2,00,000
(vi)	Loss of expectation of life (shortening of normal longevity)	Rs.1,00,000
	Total	**Rs.11,64,300**

19. The respondent Insurance Company is directed to pay the claimant-appellant a sum of Rs.11,64,300/- minus the amount already paid pursuant to the order passed by the Tribunal within three months from the date of judgment with interest @ 12%. The order passed by the High Court and Tribunal stands modified to the extent above. The appeal filed by the claimant is allowed with the above observation and direction. No separate order as to costs.

K.K.T. Appeal allowed.

DOLIBEN KANTILAL PATEL
v.
STATE OF GUJARAT & ANR.
(Criminal Appeal No. 810 of 2013)

JULY 1, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Code of Criminal Procedure, 1973:

s.154 - Police complaint alleging rape in police custody - Non registration of FIR - Writ petition seeking direction to register FIR and direction for investigation by CBI - Dismissed - Held: High Court rightly dismissed the writ petition directing the complainant to take recourse to complaint to the Magistrate.

s.154 - FIR - Registration of - Held: Before registration of FIR, if the facts of the case are such which require some inquiry for the satisfaction of the charges or allegations made in the FIR, then a limited inquiry is permissible.

Constitution of India, 1950 - Articles 32 and 226 - Power under, to direct CBI to conduct an investigation - Held: In such cases, Court to exercise its extraordinary power sparingly, cautiously and in exceptional situations.

The case of the appellant was that with respect to certain land disputes, criminal case was lodged against her. She was arrested and was under police remand for five days. During the remand period, she was repeatedly raped in police custody by the complainant and the police officials. Thereafter, she was transferred to jail. When she was released on bail, she filed a complaint u/s. 376 r/w. s.120B IPC, but FIR was not lodged. She filed petition u/Art. 226 of the Constitution praying for direction

to the authorities to register the FIR and also to refer the matter to CBI for investigation. High Court dismissed the petition, directing her to avail recourse to the remedy of complaint before the Magistrate as provided under Cr.P.C. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. When the appellant had various opportunities to disclose the alleged offence of rape or misdeeds, it was not disclosed throughout the period neither to her mother when she was taken to her home twice during the period of remand nor to the female doctors of the Civil Hospital who examined her nor to the doctors of the Jail authorities. Even at the time of production before the Magistrate after the completion of the period of remand and subsequently, when she was remanded to the judicial custody, nothing was disclosed about any such misdeed or ill-treatment or harassment. [Para 9] [37-A-C]

1.2. High Court was justified in directing the appellant to avail the recourse to the remedy as provided in the Cr.P.C. by filing a complaint before the Magistrate. The High Court, in order to safeguard the stand of the appellant, issued certain directions to remedy her grievance against the persons concerned. The decision of the High Court is confirmed in the light of the facts relating to the background of the case, particularly, the land dispute, the complaint regarding the same and various subsequent circumstances including her silence about the non-disclosure of the alleged rape. [Para 12] [38-H; 39-A-C]

2. Before registration of the FIR, an officer should be satisfied. In other words, if the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR or he may have

entertained a reasonable belief or doubt, then he may make some inquiry. By virtue of the expression "reason to suspect the commission of an offence", the commission of cognizable offence, based on the facts mentioned has to be considered with the attending circumstances, if available. If there is a background/ materials or information, it is the duty of the officer to take note of the same and proceed according to law. If the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR then such a limited inquiry is permissible. [Para 10] [37-F-H; 38-A-B]

State of Haryana and Ors. vs. Bhajan Lal and Ors. 1992 Supp (1) SCC 335: 1990 (3) Suppl. SCR 259 - relied on.

3. Despite wide powers conferred by Articles 32 and 226 of the Constitution, the Courts must bear in mind certain self-imposed limitations on the exercise of such constitutional powers. Insofar as the question of issuing a direction to CBI to conduct an investigation, such an order is not to be passed as a matter of routine or merely because a party has leveled 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 instill 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, the 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. [Para 11] [38-C-G]

State of West Bengal and Ors [illegible] *for*

Protection of Democratic Rights, West Bengal and Ors. **(2010) 3 SCC 571: 2010 (2) SCR 979 - relied on.**

Case Law Reference:

1990 (3) Suppl. SCR 259	**relied on**	**Para 10**
2010 (2) SCR 979	**relied on**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 810 of 2013.

From the Judgment and Order dated 08.11.2012 of the High Court of Gujarat at Ahmedabad in SCRLA No. 2206 of 2012.

Jaideep Gupta, Udaya Kumar Sagar, Bina Madhvan, Praseena E. Joseph (for Lawyer's Knit & Co.,) for the Appellant.

L. Nageshwar Rao, Shamik Sanjanwala, Hemantika Wahi, Dhruv Tamta 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 08.11.2012 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 2206 of 2012 whereby the High Court dismissed the petition filed by the appellant herein.

3. Brief facts:

(a) The appellant herein is an American Citizen of Indian origin who came to India on 09.03.2010 to see her ailing father-Kantilal Ambalal Patel. Kantilal Ambalal Patel is having a number of properties in the form of lands, flats and societies in the State of Gujarat. Arvind Jani and Jayesh Dave are very close friends of the father of the appellant. They cheated the father of

the appellant in respect of a land dealing at Rajkot against which Civil Suit No. 186 of 2010 was filed in the Court at Rajkot wherein the said suit was decreed in the favour of the appellant herein. The present appeal pertains to the land situated at Vadodra in the name of Gayatrinagar Cooperative Housing Society Limited (group of five societies).

(b) Since certain disputes arose with respect to the above said land at Vadodra which, as per the appellant herein, belongs to her father and the appellant had a joint account with him, one Divyangbhai Jha filed an FIR being CR No. 5/2012 dated 21.05.2012 registered with Gandhinagar Police Station under Sections 406, 409, 420, 465, 467, 468, 174, 120B and 477A of the Indian Penal Code, 1860 (in short 'the IPC') against the appellant herein and 7 other accused persons in respect of grabbing of lands of cooperative societies using forged/ fabricated government permission letters.

(c) On 23/24.05.2012, the appellant herein was arrested at about midnight. On 24.05.2012, she was produced before the Judicial Magistrate and an application for remand was preferred by CID Crime, Ahmedabad. On the very same day, Judicial Magistrate granted remand for a period of 5 days.

(d) It was alleged by the appellant herein that from the very first day of remand, she was repeatedly raped in police custody by Jayesh Dave, Divyangbhai Jha (the complainant in abovesaid FIR), A.A. Shaikh, the investigating officer and also by an unknown person. However, Arvind Jani was present throughout the period of remand. It was further alleged that after the period of remand, she was sent to the Central Jail, Sabarmati, Gujarat without following the procedures prescribed under law.

(e) On 20.06.2012, she wrote an e-mail to Ms. Deepa Mehta, U.S Citizens Services in U.S Consulate, Mumbai describing the entire incident of rape and the atrocities meted out to her. It was also alleged in the said

and Jayesh Dave, in connivance with one Amam Shah, owner of a vernacular daily known as Gujarat Samachar got the complaint filed directly to the CID (Crime & Railways) to the effect that Kantilal Ambalal Patel and others are not the office bearers of the abovesaid cooperative society at Vadodra. On 11.07.2012, the appellant herein was released on bail by the High Court of Gujarat.

(f) On 14.07.2012, the appellant filed a complaint under Section 376 read with Section 120B of the IPC to the Police Inspector, Meghani Nagar Police Station, Ahmedabad narrating the alleged offence cited above to have occurred during the period of remand. On the very same date, based on the instructions of the Additional Commissioner of Police, Sector II, the investigation in respect of the above offence was transferred to the Mahila Police Station. It was alleged by the appellant herein that in spite of the complaint regarding a serious offence of rape, no FIR was lodged at Mahila Police Station. Vide notices dated 15/16.07.2012, the Police Inspector, Mahila Police Station called her to record her statement, but she refused to give any statement on the pretext of non-filing of FIR.

(g) Being aggrieved by the non-filing of FIR, the appellant herein filed Special Criminal Application No. 2206 of 2012 before the High Court praying for a direction to the authorities concerned to register an FIR and also to refer the matter to the CBI for investigation. In the meantime, on 27.07.2012, Chief of the American Citizens Services in the American Consulate, in pursuance of the e-mail dated 20.06.2012 forwarded an e-mail to gain access to the appellant herein. The High Court, vide order dated 08.11.2012, dismissed the petition filed by the appellant herein. Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

4. Heard Mr. Jaideep Gupta, learned senior counsel for

the appellant and Mr. L. Nageshwar Rao, learned senior counsel for the respondents.

5. In order to understand the claim of the appellant, it is useful to mention the relief prayed for in the writ petition filed under Article 226 of the Constitution of India. In the said writ petition, she prayed for appropriate direction to the authorities concerned, viz., the Police Inspector (Respondent No. 2 therein), Meghani Nagar Police Station, Ahmedabad, Gujarat to register an FIR for the offence punishable under Sections 376, 114 and 120B of the IPC in connection with the written complaint dated 14.07.2012 given by her and, thereafter, to transfer the investigation of the said registered FIR to the CBI for further investigation.

6. It is not in dispute that with reference to the land situated at Vadodra, a complaint has been filed against the appellant and her father which was registered as FIR being CR No.5/2012 at Gandhinagar Police Station. It is further seen that the appellant is an NRI/foreign national of Indian origin and she had been roped in the earlier complaint relating to the land dispute because she had a joint account with her father. Though it is pointed out that in order to pressurize the appellant for certain other land disputes at Rajkot, she has been arrested and raped, since we are concerned about her grievance about the alleged rape in police custody, there is no need to elaborate the details regarding the FIR being CR No. 5/2012. It is the grievance of the appellant that the arrest was made at midnight without the assistance of lady police personnel and during the period of police custody, she was raped by the Investigating Officer and other police personnel for which a complaint dated 14.07.2002 was made to Respondent No. 2 herein but no action was taken on the said complaint. Being aggrieved by the non-registration of the complaint, the appellant approached the High Court, under Article 226 of the Constitution, praying for the reliefs mentioned above. It is also highlighted that inasmuch as the police personnel are involved in the cri[illegible] of the attitude of the State police in not registe[illegible]e

prayed for investigation by the CBI.

7. It is the specific stand of the respondent-State that the original complaint was made by one Divyangbhai Jha which was registered as CR No. 5/2012 under Sections 420, 406 and 120B of IPC against the father of the appellant and the appellant herein with regard to the alleged land transaction at Vadodra. It is their further claim that thereafter, she had been arrested and at the time of her actual arrest, though female police personnel were not present but immediately thereafter she was taken to the nearest police station where female police personnel were present and they remained with the accused throughout. It is pointed out by the State that there was no complaint by the appellant with regard to any harassment from the place of her arrest till she was taken to the nearest police station and there was also no violation of the guidelines or statutory provisions. It is further pointed out that after her arrest on 24.05.2012, she was produced before the Magistrate and, thereafter, her remand was granted for 5 days, i.e., from 24.05.2012 to 29.05.2012 and on 29.05.2012, again she had been produced before the Magistrate but at no point of time, no complaint about harassment or alleged offence of rape has been made to the judicial officer. It is also pointed out that during the period of remand, she was taken to her house twice where her mother was also present and she had occasion to inform the same to her, but no grievance was made to anyone. Likewise, on 29.05.2012, when she was produced before the Magistrate and was remanded to the judicial custody, she had not made any statement or complaint to the Magistrate about the alleged offence of rape during the custody. It is further pointed out that she had not disclosed the same to anyone including her mother, judicial officer or even to the doctors who have examined her. Her medical examination was also done by the Doctors at the Civil Hospital on 26.05.2012 and 29.05.2012. It is further pointed out that thereafter, in Sabarmati Jail, she was examined by female jail doctor on 29.05.2012, 01.06.2012 and 02.06.2012. It is further pointed out that even in the bail

application filed before the High Court, no such grievance has been made with regard to the alleged offence of rape while she was in custody. Finally, it is pointed out by the State that when the statement of the appellant was sought to be recorded on 14.07.2012, she did not respond and again when she was called on 16.07.2012 and a reminder was sent, she was not present at her house on 17.07.2012 and even after further efforts, she was not available. By pointing out all these instances, it is projected by the State that if the appellant has any grievance that her complaint has not been registered as an FIR, the Code of Criminal Procedure, 1973 (in short 'the Code') provides that an application could be made to the Magistrate having jurisdiction who may proceed after making an inquiry or after getting further materials. In view of the same, it is pointed out that the High Court was fully justified in dismissing the petition filed under Section 226 and directing the appellant to avail the remedy provided under the Code before the court of Magistrate.

8. It is clear that if it is a case of rape at the hands of the police officials that too in the custody, undoubtedly, the persons concerned are answerable for not registering her written complaint. We have already referred to the earlier complaint by some of the parties relating to the land dispute which resulted in the FIR being CR No. 5/2012 for which the appellant and her father were arrested. We also noted that when the appellant had various opportunities of disclosing her grievance including the alleged offence of rape to various persons, viz., her mother, female medical officers and judicial Magistrate, admittedly, such remedy was not availed by her.

9. It is the assertion of the senior counsel for the appellant that when the information regarding a cognizable offence is laid before the officer in-charge of a police station under Section 154 of the Code, he is bound to register it as an FIR without any inquiry and he has no discretion to even consider whether the allegations made are *prima facie* bo[illegible]er

to answer this question, we have to examine the background of the case which we have already adverted to including the FIR being CR No. 5/2012 relating to the land dispute and we have also pointed out that when the appellant had various opportunities to disclose the alleged offence of rape or misdeeds, it has not been disclosed throughout the period neither to her mother when she was taken to her home twice during the period of remand nor to the female doctors of the Civil Hospital who examined her nor to the doctors of the Jail authorities. We have also noted that even at the time of production before the Magistrate after the completion of the period of remand and subsequently, when she was remanded to the judicial custody, nothing had been disclosed about any such misdeed or ill-treatment or harassment.

10. An elaborate discussion had been made with regard to Section 154 of the Code in *State of Haryana and Ors. vs. Bhajan Lal and Ors.,* 1992 Supp (1) SCC 335. It is seen from the discussion that the police officer in charge of a police station is obliged to register a case and then to proceed with the investigation subject to the provisions of Sections 156 and 157 of the Code. It is further seen that if the police officer in-charge of a police station refuses to exercise the jurisdiction vested in him and register the case on information of cognizable offence and violates the statutory right, the person aggrieved, can send the substance of the same to the higher authority, who, in turn, if satisfied that the information forwarded to him discloses a cognizable offence, can investigate the case himself or direct the investigation to be made by a subordinate officer. The elaborate discussion clearly shows that before registration of the FIR, an officer should be satisfied. In other words, if the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR or he may have entertained a reasonable belief or doubt, then he may make some inquiry. To put it clear, by virtue of the expression "reason to suspect the commission of an offence", we are of the view that commission of cognizable offence,

based on the facts mentioned has to be considered with the attending circumstances, if available. In other words, if there is a background/materials or information, it is the duty of the officer to take note of the same and proceed according to law. It is further made clear that if the facts are such which require some inquiry for the satisfaction about the charges or allegations made in the FIR then such a limited inquiry is permissible.

11. With regard to the direction for investigation by the CBI, a Constitution Bench of this Court in *State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors.,* (2010) 3 SCC 571 clarified that despite wide powers conferred by Articles 32 and 226 of the Constitution, the Courts must bear in mind certain self-imposed limitations on the exercise of such constitutional powers. Insofar as the question of issuing a direction to CBI to conduct an investigation, the Constitution Bench has observed that "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 leveled 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 instill 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, the 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."

12. Having regard to the Scheme of the Code, various provisions as to the course to be adopted and in the light of the peculiar/special facts and circumstances which we have already noted in the earlier paras, we are [illegible] h

Court was fully justified in directing the appellant to avail the recourse to the remedy as provided in the Code by filing a complaint before the Magistrate. We are also satisfied that the High Court, in order to safeguard the stand of the appellant, issued certain directions to remedy her grievance against the persons concerned. We confirm the decision of the High Court in the light of the facts relating to the background of the case, particularly, the land dispute, the complaint regarding the same and various subsequent circumstances including her silence about the non-disclosure of the alleged rape before her mother on two occasions and before the female doctors at Civil Hospital as well as Sabarmati Jail and also before the Magistrate. It is further made clear that while affirming the decision of the High Court, it cannot be presumed that we are underestimating the grievance of the appellant herein and it is for the Magistrate concerned to proceed in accordance with the provisions of the Code and arrive at an appropriate conclusion.

13. With the above observation, the appeal is dismissed.

K.K.T. Appeal dismissed.

KAMAL JORA
v.
STATE OF UTTARAKHAND & ANR.
(Civil Appeal No. 4835 of 2013)

JULY 01, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

Municipality:

Uttar Pradesh Municipal Corporations Act, 1959 - ss.3(2) and 8-AA - Dissolution of Municipal Council for its upgradation to Municipal Corporation - Without giving opportunity of hearing to the Municipal Council - After direction of the Court, State invited objections for the same by Public Notice - Municipal Council dissolved - Dissolution challenged by the Chairman of the Council on the ground that before dissolution, opportunity of hearing not given to the Municipal Council - Held: Dissolution of the Council was not without hearing the Council as several Municipal Councilors were heard before the dissolution - Constitution of India, 1950 - Article 243Q.

The State Government by a Notification dissolved the Municipal Council, in exercise of powers u/s. 3(2) of Uttar Pradesh Municipal Corporations Act, 1959 as applicable to the State of Uttarakhand r/w. Art.243Q(2) of the Constitution and s. 8AA of the Act. When the Notification was challenged by the appellant on the ground that opportunity of hearing was not given to the Municipal Council before its dissolution, the Court held that opportunity of hearing should have been given and quashed the Notification. Thereafter, the State issued public notice inviting objection to conversion of the

Municipal Council to Municipal Corporation. Date of hearing was also fixed and several Municipal Councilors were heard. Subsequently, the State issued two Notifications and declared conversion of the Municipal Council to Municipal Corporation and dissolution of the Municipal Council. The appellant again challenged the two Notifications, by filing writ petition, contending that no hearing was granted to the Municipal Council before its dissolution. Single Judge of High Court quashed the two Notifications. Appeal against the same was allowed by the Division Bench of High Court holding that opportunity of hearing was given to all the persons.

In appeal to this Court, the appellant contended that though objections were invited through public notice, but no hearing was given to the Municipal Council and yet the Municipal Council was dissolved.

The State contended that dissolution of Municipal Council for upgradation to Municipal Corporation cannot be termed as dissolution as envisaged under Article 243U of the Constitution and the proviso to Article 243U is not violated, if no opportunity of hearing is given before such dissolution.

Dismissing the appeal, the Court

HELD: 1. The earlier judgment of the Division Bench of the High Court holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, though not binding on this Court is binding on the parties because of the principle of res judicata. The State Government being the appellant in the aforesaid Special Appeal, cannot now contend that a hearing was not required to be granted to the Municipal Council, before it issued the two

notifications dissolving the Municipality and appointing an Administrator. [Para 11] [49-B-D]

2. However, the State Government had provided an opportunity of hearing to the objectors on their respective objections and amongst the objectors there were several Municipal Councilors. Hence, the appellant, who was the Chairman of the Municipal Council, could have also participated in the hearing in support of his objections. Thus, there is no infirmity in the impugned judgment of the Division Bench of the High Court that an opportunity of hearing was actually given to all persons likely to be affected by the two notifications. [Para 12] [51-A-D]

Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. **(1978) 1 SCC 405: 1978 (2) SCR 272;** *S.L. Kapoor v. Jagmohan and Ors.* **(1980) 4 SCC 379: 1981 (1) SCR 746;** *Swadeshi Cotton Mills v. Union of India* **(1981) 1 SCC 664: 1981 (2) SCR 533;** *State of Maharashtra and Ors. v. Jalgaon Municipal Council and Ors.* **(2003) 9 SCC 731: 2003 (1) SCR 1112 - referred to.**

Case Law Reference:

1978 (2) SCR 272	**referred to**	**Para 8**
1981 (1) SCR 746	**referred to**	**Para 8**
1981 (2) SCR 533	**referred to**	**Para 8**
2003 (1) SCR 1112	**referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4835 of 2013.

From the Judgment and Order dated 21.12.2011 of the High Court of Uttarakhand at Nainital i

Vijay Hansaria, Nagendra Singh, Vishwa Pal Singh for the Appellant.

Dr. Abhishek Atrey, Brijesh Panchal, Aishverya Shandilya 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 under Article 136 of the Constitution against the judgment dated 21.12.2011 of the Division Bench of the Uttarakhand High Court in Special Appeal No.289 of 2011.

Facts of the case

3. The relevant facts very briefly are that the appellant was elected as the Chairman of the Municipal Council, Haridwar, in May, 2008. When he was functioning as the Chairman of the Municipal Council, Haridwar a notification was issued on 20.05.2011 by the Government of Uttarakhand notifying that the Governor of Uttarakhand in exercise of powers under Section 3(2) of the Uttar Pradesh Municipal Corporations Act, 1959 (for short 'the Act') as applicable in Uttarakhand read with Article 243Q(2) of the Constitution and Section 8-AA of the Act has dissolved the Municipal Council, Haridwar, and appointed the District Magistrate, Haridwar, as Administrator for administering the area of the Municipal Corporation, Haridwar. The appellant filed Writ Petition No.1031 of 2011 on 20.05.2011 in the High Court of Uttarakhand, challenging the aforesaid notification mainly on the ground that no opportunity of hearing was given to the Municipal Council, Haridwar before the notification was issued and the learned Single Judge of the High Court who heard the writ petition held in his order dated 09.06.2011 that the dissolution of the Municipal Council, Haridwar was done and the Administrator was appointed to

administer the areas of Municipal Corporation, Haridwar under Section 8-AA of the Act without affording any opportunity of hearing or a show cause to the Municipal Council and hence the notification dated 20.05.2011 was in clear violation of the Constitution of India. By the order dated 09.06.2011, the learned Single Judge, therefore, allowed the writ petition and quashed the notification dated 20.05.2011 and directed the District Magistrate, Haridwar to handover the charge forthwith to the elected representatives of the Haridwar Municipality.

4. Aggrieved, the State of Uttarakhand filed Special Appeal No.104 of 2011 before the Division Bench of the High Court contending that the upgradation of the Municipal Council, Haridwar to Municipal Corporation, Haridwar, was done by the State Government in accordance with the mandate in Article 243Q of the Constitution and the dissolution of the Municipal Council, Haridwar was merely a consequence of such an upgradation and hence no show cause or opportunity of hearing was required to be given to the Municipal Council, Haridwar before the dissolution and before appointment of an Administrator to administer the areas of the Municipal Corporation, Haridwar. The Division Bench of the High Court in its judgment dated 23.06.2011, however, held that Section 8-AA of the Act does not provide for automatic dissolution of the Municipal Council on upgradation to a Municipal Corporation and since automatic dissolution of a Municipal Council has not been provided in the law, an opportunity of hearing should have been given to the persons likely to be affected by dissolution of the Municipal Council. The Division Bench of the High Court, therefore, upheld the order dated 23.06.2011 of the learned Single Judge and dismissed the appeal but on the prayer of the learned Advocate General stayed the operation of the order dated 23.06.2011 of the learned Single Judge for a period of three weeks.

5. Soon after the judgment dated 23.06.2011 of the

Division Bench of the High Court, the Government of Uttarakhand issued a public notice dated 29.06.2011 stating therein that in the opinion of the State Government, the small urban area of the Municipal Council, Haridwar needs to be converted into a larger urban area and consequently to Municipal Corporation, Haridwar. By the public notice dated 29.06.2011, the Chairman and the Councilors of Municipal Council, Haridwar and the entire public residing in the urban area of the Municipal Council, Haridwar were invited to give their objections and suggestions. The public notice dated 29.06.2011 also stated that on 13.07.2011, a hearing would be conducted by the Principal Secretary, Urban Department, Government of Uttarakhand between 1.30 p.m. to 4.00 p.m in which persons will be given an opportunity of personal hearing on their objections and suggestions and only thereafter the final decision will be taken by the State Government. By a corrigendum dated 08.07.2011 issued by the State Government, the date of hearing was altered to 16.07.2011. The appellant filed his objections before the Director of Urban Development in July, 2011 and also stated in his objection that he be given a personal hearing on his objections. Thereafter, on 21.07.2011, the Government of Uttarakhand issued two notifications. In one notification dated 21.07.2011, it was stated that the Governor was pleased to notify for overall development of Haridwar city the conversion of existing smaller urban area into a larger urban area in exercise of powers under Section 3(2) of the Act read with Article 243Q(2) of the Constitution and to further notify that the area included in the larger urban area would be the total of the area of Municipal Corporation, Haridwar. In the other notification dated 21.07.2011, it was stated that the Governor has directed under Section 8-AA(1) of the Act that the existing Municipal Council, Haridwar would stand dissolved from the date of issuance of the notification and the District Magistrate, Haridwar be appointed the Administrator for the administration of the larger urban area of the Municipal Corporation, Haridwar.

6. Aggrieved by these two notifications dated 21.07.2011, the appellant again filed Writ Petition (C) No.1533 of 2011, contending that no hearing was granted to the Municipal Council, Haridwar before the Municipal Council was dissolved and the Administrator was appointed for the larger urban area of the Municipal Corporation and hence the two notifications were liable to be quashed. The learned Single Judge by his order dated 15.12.2011 allowed the writ petition and quashed the two notifications dated 21.07.2011. Aggrieved, the State of Uttarakhand and the District Magistrate, Haridwar filed Special Appeal No.289 of 2011 before the Division Bench of the High Court and the Division Bench of the High Court held in the impugned judgment dated 21.12.2011 that an opportunity of being heard was given to all persons who were interested in the decision making process of the Municipal Council, Haridwar. By the impugned judgment, the Division Bench of the High Court therefore allowed the appeal and set aside the order of the learned Single Judge and dismissed the writ petition. Aggrieved, the appellant has filed this appeal.

Contentions of the learned counsel for the parties:

7. Mr. Vijay Hansaria, learned counsel appearing for the appellant, submitted that under Article 243U(1) of the Constitution and under Section 10-A of the U.P. Municipalities Act, 1916, every Municipality has the right to continue for a period of five years from the date of its first meeting unless sooner dissolved under any law for the time being in force. He submitted that the proviso to Article 243U(1) of the Constitution says that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. He submitted that the learned Single Judge of the High Court in his judgment dated 09.06.2011 in Writ Petition No.1031 of 2011 and the Division Bench of the High Court in its judgment dated 23.06.2011 in Special Appeal No.103 of 2011, therefore, held that the Municipal Council, Haridwar, was entitled to an opportunity of

hearing before it was dissolved and before the Administrator was appointed by the notification dated 20.05.2011. He submitted that after the judgment of the Division Bench of the High Court on 23.06.2011, the Government of Uttarakhand invited objections/suggestions by a public notice dated 29.06.2011, but no hearing was given to the Municipality and yet the Haridwar Municipality was again dissolved and an Administrator was appointed in its place by the impugned notification dated 21.07.2011 of the Government of Uttarakhand.

8. Mr. Hansaria submitted that it is a settled proposition of law that if a statute conferring power on an authority to take a decision having civil consequences does not expressly prohibit a personal hearing before the decision is taken, the rule of fair play requires that an opportunity of personal hearing is afforded to the persons likely to be affected by the decision. In support of this proposition, he cited the decisions in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* [(1978) 1 SCC 405], *S.L. Kapoor v. Jagmohan & Ors.* [(1980) 4 SCC 379] and *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664]. He submitted that Section 8-AA of the Act which empowers the State Government to dissolve a Municipal Council for the purpose of constituting a Municipal Corporation in its place does not expressly prohibit an opportunity of hearing to be given to the Municipal Council before its dissolution and therefore a personal hearing to the Municipal Council has to be granted where the State Government is of the opinion that the Municipal Council is to be dissolved for the purpose of constituting a Municipal Corporation in its place.

9. Mr. Hansaria next submitted that it will be clear from the language of sub-section (1) of Section 8-AA of the Act that dissolution of a Municipal Council is to take place only if the State Government is of the opinion that until the due constitution

of the Municipal Corporation for the larger urban area, "it is expedient" to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator. He submitted that there is nothing in the notifications dated 21.07.2011 of the State Government to show that the State Government formed the opinion that it was expedient to dissolve the Municipal Council and to appoint the Administrator.

10. In reply, Dr. Abhishek Atrey, learned counsel appearing for the State of Uttarakhand, on the other hand, submitted, relying on the counter affidavit filed on behalf of respondents no. 1 and 2 as well as the order dated 19.07.2011 of the Government of Uttarakhand annexed to the counter affidavit as Annexure-C-I, that the Division Bench of the High Court has rightly held in the impugned judgment that a personal hearing was granted by the public notice dated 29.06.2011 to all concerned including the Municipal Council, Haridwar. He cited the decision of this Court in State of Maharashtra & Ors. v. Jalgaon Municipal Council & Ors. [(2003) 9 SCC 731] in which the notification dated 16.10.2001, as amended by the notification dated 15.11.2001, dissolving the Jalgaon Municipal Council was held to satisfy the requirement of the principles of natural justice. He further submitted that in the judgment dated 26.02.2010 in *Nagar Palika Parishad & Ors. v. State of U.P. & Ors.* (Writ Petition (C) No.56954 of 2009) the Allahabad High Court has held that dissolution of a Municipality of a smaller urban area for the purpose of upgradation to Municipal Corporation of a larger urban area cannot be termed as dissolution as envisaged under Article 243U of the Constitution and the proviso to Article 243U is not violated if no opportunity of hearing is given to the Municipality before such dissolution. He submitted that though Special Leave Petition (C) No.13400 of 2010 was filed against the aforesaid judgment dated 26.02.2010 of the Allahabad High Court, this Court dismissed

the Special Leave Petition with costs by order dated 25.08.2010.

Findings of the Court

11. We have considered the submissions of learned counsel for the parties and we are of the opinion that the earlier judgment of the Division Bench of the High Court dated 23.06.2011 holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, Haridwar though not binding on this Court is binding on the parties in Special Appeal No.104 of 2011 in which the aforesaid judgment was rendered because of the principle of res judicata. The State Government of Uttarakhand was the appellant in the aforesaid Special Appeal No.104 of 2011 and it cannot therefore now contend that a hearing was not required to be granted to the Municipal Council, Haridwar, before it issued the two notifications dated 21.07.2011 dissolving the Haridwar Municipality and appointing an Administrator.

12. Hence, the first question that we have to decide is whether an opportunity of hearing was granted to the Municipal Council, Haridwar before the two notifications dated 21.7.2011 were issued dissolving the Haridwar Municipality and appointing an administrator under Section 8-AA of the Act. The public notice which was issued on 29.06.2011 soon after the judgment dated 23.06.2011 of the Division Bench of the High Court in Special Appeal No.104 of 2011 is extracted hereinbelow:

> "Under Section 3 sub-section (2) of Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act No.2 of 1959) (as applicable in the State of Uttarakhand) read with Article 243 U of Part 2, it is the considered opinion of the State Government that smaller Urban Area Nagar Palika Parishad, Haridwar be converted into a larger Urban Area and consequently into a Municipal Corporation, Haridwar.
>
> In view of the above, the Chairman of Nagar Palika Parishad, Haridwar, the councilors of Nagar Palika Parishad, Haridwar and the entire public who ordinarily reside in the said area are invited to give their objections and suggestions. The written objections and suggestions should reach the office of Director, Department of Urban Development, Uttarakhand 43/6, Mata Mandir Marg Dharmpur, Dehradun by 11th July 2011. Any suggestion and objection received after the said notified date will not be accepted. On the receipt of the written objections and suggestions, a hearing would be done on 13th July 2011 by Principal Secretary, Urban Development Department, Government of Uttarakhand in the office of Director, Department of Urban Development, Uttarakhand 43/6, Mata Mandir Marg, Dharmpur, Dehradun. The time would be 1.30 P.M. to 4.00 P.M. During the hearing the persons would also be given an opportunity of personal hearing. After receiving such objections and suggestions and after considering the same, the final decision to convert the place into a larger Urban Area will be taken."

It will be clear from the aforesaid public notice dated 29.06.2011 issued by the Government of Uttarakhand that the Chairman of the Haridwar Municipality, the Councilors of Haridwar Municipality and the entire public who ordinarily reside in the area were invited to give their objections and suggestions. It will also be clear from the public notice dated 29.06.2011 extracted above that on receipt of the written objections and suggestions, a hearing was to be conducted on 13th July 2011 by Principal Secretary, Urban Development Department, Government of Uttarakhand between 1.30 p.m. to 4.00 p.m. and during the hearing the persons were to be given an opportunity of personal hearing on the objections. By a subsequent corrigendum the date of hearing was altered to 16.07.2011. We further find from paragraph 4 of the order dated 19.07.2011 annexed to the counter affidavit filed on

behalf of respondent Nos. 1 and 2 as Annexure C-I that the Principal Secretary Urban Development Department, Government of Uttarakhand has provided an opportunity of hearing to the objectors on their respective objections on 16.07.2011 from 11.00 a.m. to 3.00 p.m. at Kumbh Fair Controlling House, Haridwar and amongst the objectors there were several Municipal Councilors of Haridwar Municipality, namely Dinesh Joshi, Rakesh Prajapati, Yashoda Devi, Leela Devi, Ashok Sharma, Jagdhir Singh, Nikhil Mehta, Idris Ansari, Satya Narayan, Karuna Sharma, Sanjay Sharma, Radhey Krishna, Prabha Ghai and Ram Ahuja. Hence, the appellant, who was the Chairman of the Municipal Council, Haridwar could have also participated in the hearing in support of his objections. We cannot, therefore, find any infirmity in the impugned judgment of the Division Bench of the High Court that an opportunity of hearing was actually given to all persons likely to be affected by the two notifications dated 21.07.2011.

13. At the time of hearing of this appeal, we were inclined to consider the other contention of Mr. Hansaria that the State Government must form an opinion that until the due constitution of the Municipal Corporation for an area, "it is expedient" to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator appointed by the State Government in view of the language of sub-section (1) of Section 8-AA of the Act. But we find that this ground was not raised in the Writ Petition before the High Court nor raised in the special leave petition before this Court. We further find that pursuant to the two notifications dated 21.07.2011, the elections to the Municipal Corporation have been notified to be held and completed by 30.04.2013. Hence, even if the appellant succeeds on this point, we cannot direct restoration of the Haridwar Municipality after the constitution of the Municipal Corporation, Haridwar. For these reasons, we refrain from

considering this question in this appeal and leave this question open to be decided in some other appropriate case.

14. In the result, we do not find any merit in this appeal and we accordingly dismiss the same, but without costs.

K.K.T. Appeal dismissed.

C.V. FRANCIS
v.
UNION OF INDIA & ORS.
(Special Leave Petition (Civil) No. 31250 of 2011)

JULY 3, 2013

[ALTAMAS KABIR, CJI, ANIL R. DAVE AND RANJANA PRAKASH DESAI, JJ.]

Service Law:

Voluntary Retirement Scheme - Employee seeking benefit under- Without waiting for the acceptance thereof, went on leave and took employment elsewhere - His leave not extended - On his failure to join duty, disciplinary proceedings initiated for unauthorized absence from duty and his services terminated - High Court upheld the termination - Held: Decision as regards grant of benefit under Voluntary Retirement Scheme is at the discretion of the employer, unless where the Scheme itself provides for the retirement to take effect at the end of notice period - In the instant case, there was no such stipulation under the Scheme - The employee was rightly terminated.

The petitioner applied to avail benefits under voluntary Retirement Scheme introduced by the respondent-Company. Without waiting for acceptance of his application seeking voluntary retirement, he proceeded to the United States after availing leave for one month and obtained employment there. From there, he applied for further leave, which was rejected and was asked to join. Since he did not join his duties, Disciplinary proceedings were initiated against him for unauthorized absence from duty. At the instance of the petitioner, High Court directed to consider his representation seeking to accept his request of voluntary retirement and to drop

disciplinary proceedings. His representation was rejected by respondent-State, and finding him guilty in the Departmental Proceedings, his services were terminated. His writ petition, challenging the termination order, was dismissed by Single Judge of High Court and the order was further confirmed by Division Bench of High Court in the writ appeal.

In the instant special leave petition, the petitioner inter alia contended that his application for voluntary retirement must be deemed to have been accepted on the expiry of notice period and thus disciplinary proceedings and termination order were invalid.

Dismissing the petition, the Court

HELD: 1. A voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company, except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood. [Para 13] [60-C-E]

2. In the instant case, there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the Petitioner's voluntary retirement application had been accepted. Once that is not accepted, the entire case of the Petitioner falls to the ground. The Petitioner having obtained employment in the United States of America, had no intention of rejoining his duties with the Respondent company. Instead of waiting for the notice period, the Petitioner moved to the U g

obtained employment there and his letters praying for leave were of no consequence. [Paras 12 and 14] [60-A-B, F-G]

Tek Chand vs. Dile Ram **(2001) 3 SCC 290: 2001 (1) SCR 527 - distinguished.**

Padubidri Damodar Shenoy vs. Indian Airlines Limited and Anr. **(2009) 10 SCC 514: 2009 (14) SCR 356 - referred to.**

Case Law Reference:

2001 (1) SCR 527	**distinguished**	**Para 14**
2009 (14) SCR 356	**referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 31250 of 2011.

From the Judgment and order dated 13.06.2011 of the High Court of Jharkhand at Ranchi in LPA No. 283 of 2009.

C.V. Francis, Petitioner-in-Peson.

Dhruv Mehta, Anurag Sharma (for AP & J Chambers) for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, CJI. 1. The Petitioner, who has appeared in person, was employed as a Manager by the Respondent, Bokaro Steel Limited, which subsequently became a unit of Steel Authority of India (SAIL) from 20.2.1998. On the same date a Voluntary Retirement Scheme was introduced and the Petitioner also applied on 7.4.1998 to avail the benefits of the Scheme. The Petitioner claims to have applied for leave from 30.4.1998 to 31.5.1998 which was purported to have been sanctioned.

2. However, without waiting for acceptance of his

application seeking voluntary retirement, the Petitioner proceeded to the United States and applied for further leave from 1.6.1998 to 30.6.1998. Such prayer was rejected and the Petitioner was asked by letter dated 26.6.1998 to join his duties from 1.7.1998. The Petitioner did not join his duties, as directed, but again applied for leave from 1.7.1998 to 31.8.1998. By its letter dated 3.8.1998, the Respondent Company informed the Petitioner that leave had not been granted and that he was being treated as absent from duty without leave, for which disciplinary proceedings were being contemplated against him for unauthorised absence. In the absence of any response from him, the Respondent Company once again wrote to the Petitioner on 14.8.1998, asking him to report for duty within ten days, failing which disciplinary action would be initiated against him, but the Petitioner failed to respond even to the said letter. On 11.10.1998, a disciplinary enquiry was initiated against the Petitioner for his unauthorised absence from duty.

3. Without replying to the charges against him, the Petitioner sent yet another representation dated 20.11.1998 to the Respondent Company to accept his request for voluntary retirement. As such prayer was rejected, the Petitioner moved the Kerala High Court in its writ jurisdiction for a direction upon the authorities to accept his prayer for voluntary retirement and to drop the disciplinary action initiated against him. The Kerala High Court disposed of the Writ Petition on the same day and by its Order dated 23.4.1999 directed the Union of India to dispose of the Petitioner's representation within a reasonable time. It was made clear that whatever action was taken would be subject to the order to be passed on the Petitioner's representation. The Petitioner was given ample opportunity to represent his case by the Respondent Union of India, which vide Order dated 11.10.1999, rejected the Petitioner's representation. Since, thereafter, on 29.12.1999, the Petitioner was found guilty in the departmental proceedings, his services were terminated.

4. The said Order was challenged by the Petitioner in the Kerala High Court by way of Writ Petition No. 26659 of 2009, which was, however, rejected on the ground that the Kerala High Court had no territorial jurisdiction to entertain the same. Thereafter, the Petitioner approached the Jharkhand High Court by way of Writ Petition (S) No. 4057 of 2004.

5. The Writ Petition having been dismissed by the learned Single Judge, the Petitioner preferred an appeal before the Division Bench in which Petitioner's counsel strongly urged that his application for voluntary retirement be accepted. He also added a new dimension to his submissions that since there was no response from the side of the Respondent, his application for voluntary retirement must be deemed to have been accepted. Accordingly, the subsequent proceedings taken by way of disciplinary proceedings and the order of termination of services passed therein, must be held to be entirely invalid.

6. In support of his submissions, the Petitioner relied heavily on the decision of this Court in *Tek Chand Vs. Dile Ram* [(2001) 3 SCC 290]. Although, the said decision was rendered in the context of an election, incidentally the question of voluntary retirement also came up for consideration. The learned Judges held that there were three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period.

7. The Petitioner then referred to Rule 48-A of the Central Civil Services Pension Rules, dealing with retirement on completion of 20 years' qualifying service. The Petitioner

pointed that under Sub-rule (1) at any time after the Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service. He also pointed that under Sub-rule (2), the notice of voluntary retirement given under sub-rule (1) would have to be accepted by the Appointing Authority. However, under the proviso thereto, it is further 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.

8. Drawing an analogy with the facts of his own case, the Petitioner contended that even in his case, upon expiry of the period of notice given by him to retire voluntarily in terms of the Voluntary Retirement Scheme, the retirement became ineffective on expiry of the said period of the notice. Accordingly, the subsequent letter addressed to him by the Respondent company to rejoin his duty was of little consequence and any action taken thereupon would be void. According to Petitioner, the termination of his services was in violation of the well-settled principles relating to acceptance of voluntary retirement laid down in *Tek Chand's* case (supra).

9. Appearing for the Respondent Company, Mr. Dhruv Mehta, learned Senior Advocate, strongly opposed the Petitioner's case on behalf of the Respondent Company primarily on the ground that in a scheme for voluntary retirement floated by a company, it is entirely the company's discretion to accept and allow an employee's application for voluntary retirement. The concept of deemed acceptance also was not available in the instant case, since the scheme did not contain such a provision.

10. Mr. Mehta highlighted the conduct of the Petitioner after applying for voluntary retirement. Mr. Mehta pointed out that without waiting for his prayer for voluntary retirement to be accepted, the Petitioner joined an Am[illegible]n

before the expiry of the notice period. In fact, it was quite evident from the tenor of his letters seeking leave, that the Petitioner never intended to rejoin his duty in the Respondent company. On the question of deemed acceptance of an employee's application for voluntary retirement, Mr. Mehta referred to the decision of this Court in *Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another* [(2009) 10 SCC 514], wherein, although, the Petitioner upon completing of 20 years' of qualifying service had applied for voluntary retirement, he was informed that such retirement would not be automatic on expiry of period of notice, but it would become effective only after the approval of the competent authority. In the said case, this Court also observed that the employee had never acted as if his services had been discontinued on the expiry of the three months' notice period, inasmuch as, he continued to attend his duties. Thus, the application for voluntary retirement made by the Petitioner therein, never really came into effect.

11. Mr. Mehta submitted that the facts of the present case were somewhat similar to the facts of the above case, where, although an application had been made for voluntary retirement, the same was not accepted and the services of the Petitioner therein did not stand terminated even after the expiry of the period of notice. Mr. Mehta urged that on the same reasoning, the decision in *Tek Chand's* case (supra) would have no application to the facts of this case.

12. Having considered the submissions made on behalf of the parties, we see no reason to interfere with the judgment and Order of learned Single Judge, as upheld by the Division Bench of the High Court, rejecting the Petitioner's prayer challenging the termination of his services. It may be noted that notice was issued on the Special Leave Petition on 11.11.2011 only to consider whether the order of dismissal passed against the Petitioner could be converted into an order of compulsory retirement. We have considered the matter from that angle and

do not find any justification to modify the Order of either the learned Single Judge or the Division Bench. As has been emphasised by the Division Bench of the High Court, it is obvious that the Petitioner having obtained employment in the United States of America, had no intention of rejoining his duties with the Respondent company. Instead of waiting for the notice period, the Petitioner moved to the United States, having obtained employment there and his letters praying for leave were of no consequence. Furthermore, instead of attending the disciplinary enquiry commenced against him, the Petitioner repeatedly requested the Respondent company to accept his application for voluntary retirement.

13. It is well-established that a Voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company, except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood.

14. The Petitioner's contention that his application for voluntary retirement came into effect on the expiry of the period of notice given by him must fail, since there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the Petitioner's voluntary retirement application had been accepted. Once that is not accepted, the entire case of the Petitioner falls to the ground. The decision in *Tek Chand's* case (supra) will not, therefore, have any application to the facts of this case, particularly when the Petitioner's application for voluntary retirement had not been accepted and he had been asked to rejoin his services. The Petitioner was fully aware of this position as he continued to apply for leave after the notice period v

15. We are not, therefore, inclined to interfere with the orders impugned in the Special Leave Petition which is, accordingly, dismissed.

16. Having regard to the facts of the case, there will be no order as to costs.

K.K.T. SLP dismissed.

SHIV NANDAN MAHTO
v.
STATE OF BIHAR & ORS.
(Civil Appeal No. 5306 of 2013)

JULY 8, 2013

[SURINDER SINGH NIJJAR AND RANJAN GOGOI, JJ.]

Service Law:

Back wages - Appointment as a clerk - In a school - During an inspection, name of the appellant inadvertently shown as 'Librarian' - School taken-over by State - Services of the appellant not taken-over, because the post of 'Librarian' was not approved - On representation, directions by the competent authority to adjust the appellant against the post of clerk in a school - Due to lack of vacancy, was not posted in any school - Writ petition seeking reinstatement and consequential benefits - Single Judge of High Court though directed his reinstatement with continuity of service, but denied remuneration for the period when he had not worked - Order of Single Judge confirmed in writ appeal, by Division Bench of High Court - Held: The appellant was entitled to full back wages for the period, he was illegally kept out of service, due to a mistake - Direction to pay the entire full backwages from the period, he was kept out of service till reinstatement with 9% interest.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5306 of 2013.

From the Judgment and Order dated 03.08.2011 of the High Court of Judicature at Patna in L.P.A. Bo. 1859 of 2010.

Dinesh Chandra Pandey for the Appellant.

Chandan Kumar (for Gopal Singh) for the Respondents.

The following order of the Court was delivered

O R D E R

1. We have heard learned counsel for the parties.

2. Leave granted.

3. The appellant was appointed against a permanent post of Clerk in the Raj Kishore Balika High School, Narhan, Samastipur, Bihar on 31.12.1978. He joined on the said post on 1.1.1979. Subsequently, the aforesaid school was granted permission by the Directorate of Secondary Education vide office memo No. 31346 dated 19.11.1981 for establishment of the aforesaid school. The school was inspected by the special Board on 6.8.1982. In the inspection report, the name of the appellant was inadvertently/wrongly shown as a Librarian. On coming to know of the aforesaid wrong entry, the appellant submitted a representation before the Directorate of Secondary Education seeking correction thereof. On 1.5.1983, the inspection committee submitted its report and confirmed that the appellant had been working as a clerk since the very beginning in the aforesaid school. The school was taken over by the Government of Bihar on 2.8.1983 in terms of the provisions of Section 3 of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. The services of the appellant were not taken over, as his name was wrongly shown against the post of Librarian, which post was not approved. Aggrieved by the action of the respondent, the appellant submitted a representation before the Director, Secondary Education, Patna on 17.11.1983 and the Director issued directions to adjust the appellant against the post of Clerk in a school in the aforesaid District. On 3.2.1984, the Director, Secondary Education, Patna directed the posting of the appellant as Clerk in the High School, Virhan,

Madhubani upon transfer of another teacher. However, it later transpires that there was no vacancy on the post of Clerk in the District. Therefore, directions were issued to adjust the appellant as and when vacancy is available. Since there was no post of Clerk in the High School Virhan, Madhubani, the appellant was made to join the office of the District Education Officer, Virhan with effect from 3.3.1984 and allotted duties and work in the aforesaid office. Subsequently, directions were issued to post the appellant as a Clerk in a different school. It appears that due to lack of vacancy, the appellant was not posted in any school for some time. The appellant again protested to the Director for not being given posting orders on the post of Clerk. It appears that the appellant was made a rolling stone for long period of time being shunted from school to school in an effort to locate a vacancy for him. In the meantime, the appellant had not received any salary from any source. Ultimately, the appellant moved the High Court by way of Civil Writ Petition No. 516 of 1990 with a prayer seeking reinstatement and consequential benefits.

4. The learned single Judge of the High Court, upon noticing the entire fact situation, accepted the plea of the appellant that he had been duly appointed as Clerk and wrongly shown as a Librarian. Consequently, directions were issued to reinstate the appellant forthwith. It was also noticed that the removal of the appellant from service was not for any fault of his. He was also directed to be given the benefit of continuity of service and other benefits. However, surprisingly, the learned single Judge directed that he will not be entitled to any remuneration for the period when he was not in service on the ground that he had not worked. The respondent did not challenge the finding of fact recorded by the learned single Judge. In fact, it was the appellant who challenged the judgment of the learned single Judge on the ground that he ought to have been granted full backwages for the period he had been kept out of service. The appeal was dismissed by the High Court in limine with the following observations :-

"Upon hearing learned counsel for the appellant, we dismiss this appeal for the reasons that it is settled law that no work no pay. Therefore, learned single Judge is correct in not ordering for salary during which the appellant was under suspension.

However, since reinstatement of the appellant, he shall be paid salary regularly as directed by the learned single Judge."

5. Having heard learned counsel for the parties, we are constrained to observe that the High Court failed to examine the matter in detail in declining the relief to the appellant. In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of backwages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full backwages for the period he was kept out of service.

6. Consequently, the appeal is allowed. The order passed by the Division Bench is quashed and set aside. The appellant has already been reinstated in service. The respondents are, however, directed to pay to the appellant the entire full backwages from the period he was kept out of service till reinstatement. The full backwages shall be paid to the appellant with 9% interest. Let the amount be paid to the appellant within a period of three months from the date of receipt of copy of this order.

K.K.T. Appeal allowed.

P. NAGESH AND ANOTHER
v.
STATE OF KARNATAKA
(Criminal Appeal No. 887 of 2013)

JULY 9, 2013

[T.S. THAKUR AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Penal Code, 1860 - ss. 302, 364, 379, 201 r/w s.34 - Murder case - Conviction of accused-appellants by trial court - Upheld by High Court in appeal - Held: The High Court being the Appellate Court was required to deal with each and every question raised on behalf of the appellants - Though such questions were raised before the trial court as well as the High Court, the High Court failed to discuss and decide the questions raised by the appellants - Matter therefore remitted to the High Court for fresh disposal in accordance with law - Appellants permitted to raise all the questions and objections as raised in this appeal or as taken before the High Court - Respondents may also contest the case in support of the judgment passed by the trial court - Practice & Procedure.

In a case relating to murder of a person, the trial court, relying on circumstantial evidence held the appellants (accused Nos. 1 and 2) guilty and convicted them under Sections 364, 302, 379, 201 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life. By the impugned judgment, the Division Bench held that the accused persons had failed to explain the circumstances under which they had come in possession of the motor cycle belonging to PW-1 which had been used by the deceased and, therefore, the presumption would arise against the accused under Section 106 of the Evidence Act, and accordingly, upheld

the order of conviction recorded by the trial court based on the circumstantial evidence.

This Court issued notice to the respondent limited to the question as to whether the matter can be remitted back to the High Court for fresh disposal in accordance with law.

Disposing of the appeal, the Court

HELD: 1. The High Court being the Appellate Court was required to deal with each and every question raised on behalf of the appellants. Though such questions were raised before the trial court as well as the High Court, it is found that the High Court failed to discuss and decide the questions raised by the appellants. [Para 7] [72-E-F]

2. In view of the finding recorded above, the case should be remitted to the High Court for fresh disposal in accordance with law. The impugned judgment passed by the Division Bench of the High Court is, accordingly, set aside. The case is remitted back to the High Court for fresh disposal of the appeal in accordance with law. It will be open to the appellants to raise all the questions and objections as raised in this appeal or as taken before the High Court. The respondents may also contest the case in support of the judgment passed by the trial court. [Para 8] [72-F-H; 73-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 887 of 2013.

From the Judgment and Order dated 19.01.2010 of the High Court of Karnataka at Bangalore in Crl. A. No. 968 of 2006.

C.S. Rajan, P. Rajesh, Tejaswi Kumar Pradhan for the Appellants.

V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This petition has been preferred by the appellants against the judgment dated 19th January, 2010 passed by the Division Bench of the High Court of Karnataka at Bangalore in Criminal Appeal No.968 of 2006. By the impugned judgment, the Division Bench upheld the order of conviction recorded by the trial court based on the circumstantial evidence.

The Presiding Officer, the Fast Track Court-IX, Bangalore City by its judgment dated 10th April, 2006, relying on circumstantial evidence held the appellants (accused Nos. 1 and 2) guilty and convicted them for the offence punishable under Sections 364, 302, 379, 201 read with Section 34 of the IPC and sentenced them to undergo imprisonment for life and a fine of Rs.2,000/-, in default, simple imprisonment for six months for the offence punishable under Section 302 of the IPC; rigorous imprisonment for seven years and a fine of Rs.2,000/-, in default, simple imprisonment for three months for the offence punishable under Section 364 of the IPC; five years imprisonment and a fine of Rs.1,000/-, in default, simple imprisonment for three months for the offence punishable under Section 201 of the IPC and imprisonment for two years for the offence punishable under Section 379 of the IPC and ordered that above sentences shall run concurrently.

2. The Division Bench noticed the circumstances relied on by the prosecution to prove the guilt of the accused and after much discussion on the relevance of the evidence produced and on the questions raised on behalf of the appellants dismissed the appeal. For the said reason, on 1st March, 2013, the case was taken up by this Court and a notice was issued to the respondent limited to the question as to whether the

matter can be remitted back to the High Court for a fresh disposal in accordance with law.

3. We have heard learned counsel for the parties and on the facts and circumstances of the case, delay of 974 days in filing and 29 days in re-filing the SLP is condoned. Leave is granted.

4. The Division Bench recorded in paragraphs 3 and 4 of the impugned judgment, the circumstances which prosecution relied on to prove the guilt of the accused and the submission on behalf of the appellants. The same is quoted hereunder:

"3. The prosecution has relied upon the following circumstances to prove the guilt:

i) Motive- causing death for robbing motor cycle.

ii) The accused being found in possession of the motor cycle. The number plate of the said motor cycle, although displayed a different registration number, but, the engine and chasis number of the seized vehicle tallies with the motor cycle of the accused bearing N RX KA 02 EF 3103.

iii) The discovery of the dead body at the voluntary instance of the accused persons. The dead body was buried in a land at Bhaktharahlli village, Kunigal Taluk.

iv) In the exhumation proceedings conducted by the TEM in presence of the I.O. and Doctor would lead to discovery of the buried dead body.

v) The identity of the dead body (corpus delecti) is established by the evidence of PW-10 - father of the deceased. PW-11 - brother of the deceased, who identified the dead body on the basis of the clothing found on it.

vi) The dead body, although fully decomposed, the post mortem report and the evidence of the Doctor would show that death is possible by strangulation by rope.

4. Smt. N. Padmavathi, counsel for the appellant submitted the following discrepant circumstances to assail the order of conviction:

(1) The theory of recovery of motor cycle from the accused by the police is false and concocted.

(2) The recovery of the dead body at the voluntary instance of the accused is false and concocted.

(3) The evidence of PW-4 discloses that the police had visited the place earlier to the exhumation.

(4) The medical evidence does not disclose the cause of death.

(5) The doctor has given opinion only on the basis of the attending circumstances."

5. After hearing the counsel for the parties, the Division Bench held that the accused persons have failed to explain the circumstances under which they had come in possession of the motor cycle belonging to PW-1 which had been used by the deceased and, therefore, the presumption would arise against the accused under Section 106 of the Evidence Act.

6. Learned counsel for the appellants submitted as follows:

(i) The prosecution failed to prove or

cycle from the possession of the appellant as the witnesses, who were the Panch had not stood to the test of cross-examination.

(ii) PW-40 was examined to prove the alleged seizure of motor cycle (MO5). But the said witness deposed that he reached the place after the seizure. PW-40 could not state the date and time when seizure was made and he signed in Mahazar (Ex.P.23). According to PW.40 he had signed the Mahazar at the cross of Nelagadahalli Village but according to Seizure Mahazar (Ex.P.23), the place of seizure was NITF Cross. In the cross-examination he admitted that he did not remember MO5 vehicle was seized by the police.

(iii) PW-2 in his deposition stated that the deceased had informed him that the motor cycle was seized for violation of Traffic Rules. This clearly shows that the motor cycle had already been seized by the Police.

(iv) The prosecution also failed to prove the recovery of Wrist Watch (MO6) of the deceased. To prove the said aspect prosecution examined PW-8 and PW-9. The case of the prosecution was that Wrist Watch (MO6) was seized from PW-8, the brother of accused No.1. But PW-8 turned hostile and stated that nothing has been seized from him. Another witness was PW-9, who in his evidence stated that he had not seen any seizure and also turned hostile. In Ex.P.1, the complainant, PW-17 (mother of the deceased) has not stated anything regarding Wrist Watch of the deceased. Therefore, it is clear that the story of Wrist Watch was subsequently inserted to create evidence against the accused, but the prosecution failed to establish.

(v) The prosecution failed to establish beyond reasonable

doubt the allegation that the exhumation of dead body was at the instance of the accused. The Investigation Officer (PW-45) in his cross-examination deposed that he knew the place of burial of dead body prior to the recording of the voluntary statement of the accused. Therefore, it can be said that the dead body has been recovered at the instance of the accused.

(vi) The prosecution also failed to prove the last seen theory. The Poojari who performed the Pooja of motor cycle has categorically stated that he cannot identify the persons who visited the temple, as thousands of people used to visit the temple in a day.

(vii) Once the prosecution has failed to prove the main offence under Section 302 of the IPC, offence under 201 IPC also does not survive for consideration. The evidence of PWs-2, 10, 11, 14 and 45, not at all stood the test of the cross-examination.

7. Having heard the learned counsel for the parties, we are of the opinion that the High Court being the Appellate Court was required to deal with each and every question raised on behalf of the appellants. Though the aforesaid questions were raised before the trial court as well as the High Court, we find that the High Court failed to discuss and decide the questions raised by the appellants.

8. In view of the finding recorded above, we are of the view that the case should be remitted to the High Court for fresh disposal in accordance with law. The impugned judgment dated 19th January, 2010 passed by the Division Bench of the High Court of Karnataka, Bangalore in Criminal Appeal No.968 of 2006 is, accordingly, set aside. The case is remitted back to the High Court for fresh disposal of the appeal in accordance with law. It will be open to the appellants to raise all the questions and objections as raised in t n

before the High Court. The respondents may also contest the case in support of the judgment passed by the trial court. The appeal stands disposed of with the aforesaid observation.

B.B.B. Appeal disposed of.

NATIONAL INSURANCE CO. LTD.
v.
BALKAR RAM & ORS.
(Civil Appeal No. 2159 of 2007)

JULY 9, 2013

[GYAN SUDHA MISRA AND KURIAN JOSEPH, JJ.]

Motor Vehicles Act, 1988 – Motor accident – Claim for compensation – Liability of Insurance Company – Motor Accident Tribunal held Insurance company as well as the owner of the insured vehicle jointly and severely liable – Appeal dismissed by High Court – Plea of Insurance company that the policy holder was not holding valid policy because his cheque towards premium was dishonoured prior to the date of accident and hence insurance company not liable – Held: Though the cheque was dishonoured prior to the date of accident, intimation thereof was given to the holder after the accident – Therefore Insurance company was liable to pay the compensation.

United India Insurance Co. Ltd. vs. Laxmamma and Ors. **(2012) 5 SCC 234: 2012 (5) SCR 261 – relied on.**

Case Law Reference:

2012 (5) SCR 261	**relied on**	**Para 4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2159 of 2007.

From the Judgment and Order dated 28.09.2004 of the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 2941 of 2004.

Kiran Suri, Nakibur Rahman Barbhuiya, Ritika Gambhir, Kirti Renu Mishra for the Appellant.

Ashok Mathur, Varinder Kumar Sharma for the Respondets.

The following Order of the Court was delivered

O R D E R

1. This appeal has been preferred by way of special leave against the judgment and order passed by the High Court of Punjab and Haryana in F.A.O. No. 2941 of 2004 dated 28.09.2004 wherein the appeal filed by the Appellant-insurance company was dismissed holding therein that the intimation by the Appellant-Insurance Company regarding dishonour of the cheque towards the issuance of policy was communicated to the policy-holder after the accident. Hence, it was liable to pay the compensation to the claimants/ Respondents and it could not recover the same from the owner.

2. To clarify the position, it may be stated that the vehicle which was insured with the appellant met with an accident and a compensation of Rs.1,24,035/- was ordered to be paid to the respondents-claimants along with interest and the owner as also the insurance company were jointly and severally held liable by the Motor Accidents Claims Tribunal ('Tribunal' for short)to pay the amount of compensation to the claimants.

3. The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the policy of insurance was issued on 7.04.2000 for which a cheque was submitted by the owner. However, the cheque was dishonoured by the bank on 17.04.2000. Subsequently, the vehicle which was insured with the appellant-insurance company met with an accident on 19.04.2000. The appellant-insurance company, therefore, contended that as the policy of insurance could not be held to be a valid document in view of the fact that the cheque towards the policy had been dishonoured even before the accident had taken place, the insurance company was not liable to indemnify the claimants

by paying the amount which fell into its share as per the Tribunal's award and it is the owner which is liable to pay the entire amount of compensation to the respondents/ claimants.

4. However, we compliment Ms. Kiran Suri, learned counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC 234 titled *United India Insurance Co. Ltd. Vs. Laxmamma & Ors.* wherein it has been held that the insurance company is liable to satisfy the award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus, the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them from making the payment of compensation. In this matter, admittedly the accident had taken place on 19.04.2000 and the cheque although had been dishonoured prior to the accident on 17.04.2000, the intimation to the policy-holder had been given by the insurance company on 26.04.2000, in view of which the insurance company cannot be allowed to contend that the policy-holder was not holding a valid policy of insurance in regard to the vehicle which met with an accident. Admittedly, the policy-holder had already issued another cheque substituting the cheque which had earlier been dishonoured.

5. In that view of the matter and following the ratio of the judgment referred to hereinbefore, this appeal has no substance and accordingly it is dismissed. No order as to costs.

K.K.T. Appeal dismissed.

DR. JAGMITTAR SAIN BHAGAT
v.
DIR. HEALTH SERVICES, HARYANA & ORS.
(Civil Appeal No. 5476 of 2013)

JULY 11, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Consumer Protection Act, 1986 - ss. 2 and 11 - Forum under the Act - Jurisdiction of, to deal with the service matters of government servants -Held: A government servant cannot raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act - The government servant does not fall under the definition of a "consumer" as defined u/s.2(1)(d)(ii) of the Act - Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose - Appropriate forum, for redressal of any his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Act.

Morgan Stanley Mutual Fund v. Kartick Das **(1994) 4 SCC 225: 1994 (1) Suppl. SCR 136;** *Secretary, Board of Secondary Education, Orissa v. Santosh Kumar Sahoo & Anr.* **AIR 2010 SC 3553: 2010 (8) SCC 353;** *Bihar School Examination Board v. Suresh Prasad Sinha* **AIR 2010 SC 93: 2009 (8) SCC 483;** *Maharshi Dayanand University v. Surjeet Kaur* **(2010) 11 SCC 159: 2010 (8) SCR 475 and** *Regional Provident Fund Commissioner v. Bhavani* **AIR 2008 SC 2957: 2008 (6) SCR 767 - referred to.**

Jurisdiction - Conferment of - Held: Is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court - If the Court passes a

decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause.

United Commercial Bank Ltd. v. Their Workmen **AIR 1951 SC 230: 1951 SCR 380;** *Smt. Nai Bahu v. Lal Ramnarayan & Ors.* **AIR 1978 SC 22: 1978 (1) SCR 723;** *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.* **AIR 1981 SC 537: 1981 (2) SCR 466;** *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.* **AIR 1999 SC 2213: 1999 (2) SCR 728;** *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. Lrs.* **(1990) 1 SCC 193: 1989 (2) Suppl. SCR 149;** *Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypor,* **AIR 1919 PC 150; State of** *Gujarat v. Rajesh Kumar Chimanlal Barot & Anr.* **AIR 1996 SC 2664: 1996 (4) Suppl. SCR 279;** *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & Anr.* **AIR 2005 SC 4446: 2005 (3) Suppl. SCR 495 and** *Carona Ltd. v. M/s. Parvathy Swaminathan & Sons* **AIR 2008 SC 187: 2007 (10) SCR 656 - relied on.**

Premier Automobiles Ltd. v. K.S. Wadke & Ors. **(1976) 1 SCC 496: 1976 (1) SCR 427;** *Kiran Singh v. Chaman Paswan* **AIR 1954 SC 340: 1955 SCR 117;** *Chandrika Misir & Anr. v. Bhaiyala,* **AIR 1973 SC 2391: 1974 (1) SCR 290 - referred to.**

Case Law Reference:

1951 SCR 380	**relied on**	**Para 7**
1978 (1) SCR 723	**relied on**	**Para 7**
1981 (2) SCR 466	**relied on**	**Para 7**
1999 (2) SCR 728	**relied on**	**Para 7**
1989 (2) Suppl. SCR 149	**relied on**	**Para 7**
1976 (1) SCR 427	**referred to**	**Para 8**
1955 SCR 117	**referred to**	**Para 8**

1974 (1) SCR 290	**referred to**	**Para 8**
AIR 1919 PC 150	**relied on**	**Para 9**
1996 (4) Suppl. SCR 279	**relied on**	**Para 9**
2005 (3) Suppl. SCR 495	**relied on**	**Para 9**
2007 (10) SCR 656	**relied on**	**Para 9**
1994 (1) Suppl. SCR 136	**referred to**	**Para 12**
2010 (8) SCC 353	**referred to**	**Para 13**
2009 (8) SCC 483	**referred to**	**Para 14**
2010 (8) SCR 475	**referred to**	**Para 14**
2008 (6) SCR 767	**referred to**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5476 of 2013.

From the Judgment and Order dated 26.11.2009 of the National Consumers Disputes Redressal Commission, New Delhi in RP No.1156 of 2007, MA No. 291 & 450 of 2008.

Dr. Jagmittar Sain Bhagat (Petitioner-In-Person), Prateesh Kapur (A.C.) for the Appellants.

Narendra Hooda, Sr. AAG, Dr. Monika Gusain for the Respondents.

The following Order of the Court was delivered

O R D E R

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 26.11.2009 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'Commission') constituted under the

Consumer Protection Act, 1986 (hereinafter referred to as the 'Act'), in Revision Petition No. 1156 of 2007, MA. No. 291 of 2008; and MA. No. 450 of 2008, by way of which, the Commission has dismissed the claim of the appellant as well as the review petition seeking certain reliefs.

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

A. The appellant joined Health Department, of the respondent State, as Medical Officer on 5.6.1953 and took voluntary retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the government accommodation, i.e. Bungalow No. B-8 from 11.5.1980 to 8.7.1981. Appellant claimed that he had not been paid all his retiral benefits, and penal rent for the said period had also been deducted from his dues of retiral benefits without giving any show cause notice to him.

B. Appellant made various representations, however, he was not granted any relief by the State authorities.

C. Aggrieved, the appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad (hereinafter referred to as the `District Forum') on 5.1.1995 and the said Forum vide order dated 24.3.2000 dismissed the complaint on merits observing that his outstanding dues i.e. pension, gratuity and provident fund etc. had correctly been calculated and paid to the appellant by the State authorities.

D. The appellant approached the appellate authority, i.e., the State Commission. The State Commission dismissed the appeal vide order dated 31.1.2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the appellant as he was not a "consumer" and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neit

jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.

E. Aggrieved, the appellant filed Revision Petition No. 1156 of 2007 before the Commission. The said revision stood dismissed vide order dated 1.4.2008 and the review filed by the appellant has also been dismissed vide order dated 26.11.2009.

Hence, this appeal.

4. Shri Narendra Hooda, learned Senior AAG, Haryana, has raised preliminary issue of the jurisdiction submitting that the service matter of a government servant cannot be dealt with by any of the Forum in any hierarchy under the Act. Therefore, the matter should not be considered on merit at all. More so, all the outstanding dues of the appellant had been paid, and none of the issues survive any more.

5. Shri Prateesh Kapur, learned Amicus Curiae, has raised a large number of grievances, *inter-alia,* that till today the appellant has not been paid all his retiral benefits as some of his outstanding dues have been withheld by the authorities, thus, he is entitled to recover the same with interest; whether the Forum was competent to entertain the complaint ought to have been decided by the District Forum first as a preliminary issue. It is difficult for a litigant to go back to any other appropriate Forum after such a long time. In the instant case, the appellant approached the District Forum in 1995, the matter could not be finalised till date, and at such a belated stage, the appellant if asked to approach the other forum, a great hardship would be caused to him.

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

7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can

neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: *United Commercial Bank Ltd. v. Their Workmen,* AIR 1951 SC 230; *Smt. Nai Bahu v. Lal Ramnarayan & Ors.,* AIR 1978 SC 22; *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.,* AIR 1981 SC 537; and *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.,* AIR 1999 SC 2213).

8. In *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. Lrs.,* (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in *Premier Automobiles Ltd. v. K.S. Wadke & Ors.,* (1976) 1 SCC 496; *Kiran Singh v. Chaman Paswan,* AIR 1954 SC 340; and *Chandrika Misir & Anr. v. Bhaiyalal,* AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner."

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, "it is an objection going to the nullity of t[illegible]d

of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: *Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore,* AIR 1919 PC 150; *State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr.,* AIR 1996 SC 2664; *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & Anr.,* AIR 2005 SC 4446; and *Carona Ltd. v. M/s. Parvathy Swaminathan & Sons,* AIR 2008 SC 187).

10. The Act was enacted to provide for the better protection of interest of consumers, such as the right to be protected against marketing of goods which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods, to protect the consumer against unfair trade practices; and right to seek redressal against an unscrupulous exploitation of consumers, and further to provide right to consumer education etc. as is evident from the statement of objects and reasons of the Act.

11. Section 2 of the Act which is a definition clause defines the following as under:

"2(b) 'Complainant' means-

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government;

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or

representative; who or which makes a complaint;

2(c) 'complaint' means any allegation in writing made by a complainant that-

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

xx xx xx

2(d) 'consumer' means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person; [but does not include a person who avails of such services for any commercial purpose;

xx xx xx

2(g) 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

2(o) 'service' means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction], entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

Section 11 of the Act deals with the jurisdiction of the District Forum as:

"(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed [does not exceed rupees twenty lakhs."

The aforesaid statutory provisions make it crystal clear that the Act is made to deal with the rights of consumers wherein marketing of goods, or "services" as defined under the Act have been provided. Therefore, the question does arise as to whether the Forum under the Act can deal with the service matters of government servants.

12. In *Morgan Stanley Mutual Fund v. Kartick Das,* (1994) 4 SCC 225, this Court examined the issue as to whether a prospective buyer can be "consumer" under the Act, and held:

"The consumer as the term implies is one who consumes.

As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

xx xx xx

Therefore, it is after allotment, rights may arise as per the contract (Article of Association of Company). But certainly not before allotment. At that stage, he is only a prospective investor (sic in) future goods……There is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under Section 2(1)(d)(i) of the said Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act".

13. In *Secretary, Board of Secondary Education, Orissa v. Santosh Kumar Sahoo & Anr.,* AIR 2010 SC 3553, this Court resolved the issue as to whether the Forum under the Act had jurisdiction to entertain and allow a complaint filed by a person for correction of his date of birth recorded in the matriculation certificate, observing that the impugned order was liable to be set aside because all the consumer forums failed to consider the issue of maintainability a

correct perspective. Before the District Forum could go into the issue of correctness of the date of birth recorded in the matriculation certificate of Respondent 1, it ought to have considered whether the so-called failure of the appellant to make correction in terms of the prayer made by Respondent 1 amounted to deficiency of service.

The court remitted the matter to the District Forum to decide the issue of maintainability of the complaint.

14. This Court in *Bihar School Examination Board v. Suresh Prasad Sinha,* AIR 2010 SC 93, considered the question as to whether a candidate can file a complaint before the District Forum under the Act raising any grievance regarding his examinations conducted by the Bihar School Examinations Board constituted under the Bihar School Examinations Board Act, 1952 and answered it in negative observing as under:

> "The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and consequently, complaint under the Act will not be maintainable against the Board."

(See also: *Maharshi Dayanand University v. Surjeet Kaur,* (2010) 11 SCC 159).

15. In *Regional Provident Fund Commissioner v. Bhavani,* AIR 2008 SC 2957, this Court dealt with the issue as to whether Dr. Padia's submissions regarding the non-applicability of the Act to the case of the Regional Provident Fund Commissioner - the person responsible for the working of a Pension Scheme, could be held to be a 'service giver' within the meaning of Section 2(1)(o) of the Act, as it was neither a case of rendering of free service nor rendering of service under a contract of personal service so as to bring the relationship between the parties within the concept of 'master and servant'. The court held:

> *"In our view, the respondent comes squarely within the definition of 'consumer' within the meaning of Section 2(1)(d)(ii), inasmuch as, by becoming a member of the Employees' Family Pension Scheme, 1971, and contributing to the same, she was availing of the services rendered by the appellant for implementation of the Scheme. The same is the case in the other appeals as well."*

16. In view of the above, it is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. The government servant does not fall under the definition of a "consumer" as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Act.

17. In view of the above, we hold

servant cannot approach any of the Forum under the Act for any of the retiral benefits.

18. Mr. Hooda has made a statement that all the dues for which the appellant had been entitled to had already been paid and the penal rent has also been dispensed with and the State is not going to charge any penal rent. If the State has already charged the penal rent, it will be refunded to the appellant within a period of two months. In view thereof, we do not want to pass any further order.

In view of the above, the appeal stands disposed of. Before parting with the case, we record our appreciation for the assistance rendered by Shri Prateesh Kapur, learned Amicus Curiae. He is entitled for full fees as per the Rules.

B.B.B. Appeal disposed of.

BHAVNAGAR MUNICIPAL CORPORATION

v.

SALIMBHAI UMARBHAI MANSURI

(Civil Appeal No. 5498 of 2013)

JULY 16, 2013

[K.S. RADHAKRISHNAN AND PINAKI CHANDRA GHOSE, JJ.]

Industrial Disputes Act, 1947 - s.2(oo) r/w s.2(bb) and ss.25G and H - Respondent appointed as a helper in appellant-Corporation for two fixed periods - On expiry of the second term, service of respondent terminated - Labour Court held that appellant-Corporation had violated the provisions of ss.25G and H and directed it to reinstate the respondent with continuity in service with consequential benefits - Order upheld by High Court - On appeal, held: Labour Court as well as the High Court completely misunderstood the scope of s.2(oo), (bb), as well as s.25G and H - Respondent had not worked continuously for 240 days in an year to claim the benefit of s.25F, G and H - He had worked only for 54 days in two fixed periods and on expiry of the second term, his service stood automatically terminated on the basis of the contract of appointment - Specific terms of the contract indicated that the employment was short-lived and liable to termination, on the fixed period mentioned in the contract - There was no retrenchment under s.2(oo) r/w s.2(bb), consequently, s.25H did not apply - Award passed by the Labour Court and confirmed by the High Court accordingly set aside.

The respondent was appointed on daily wages as a helper in the appellant Corporation for two fixed periods from 02.05.1988 to 30.06.1988 and 04.07.1988 to 15.07.1988. The service of the respondent stood terminated on 15.07.1988 after serving a total period of

54 days. The respondent raised an industrial dispute. The Labour Court held that the appellant-Corporation had violated the provisions of Sections 25G and H of the Industrial Disputes Act, 1947 and directed it to reinstate the respondent with continuity in service with consequential benefits. The order was upheld by the High Court, and therefore the present appeals.

The question which arose for consideration was whether termination of services of the respondent on the expiry of the contract period amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947.

Allowing the appeals, the Court

HELD: 1. The Labour Court as well as the High Court have completely misunderstood the scope of Section 2(oo), (bb), as well as Section 25G and H of the Industrial Disputes Act, 1947. The respondent had worked only for 54 days in two fixed periods and on expiry of the second term, his service stood automatically terminated on the basis of the contract of appointment. [Para 6] [94-F-H]

2. The respondent had not worked continuously for 240 days in an year to claim the benefit of Section 25F, G and H of the Act. [Para 7] [96-E]

3. Section 2(bb) of the Act says that if the termination of the service of workman is as a result of non-renewal of the contract between the employer and the workman on its expiry of such contract being terminated under a stipulation in that behalf contained therein, the same would not constitute retrenchment. [Para 9] [97-C-D]

4. The respondent's service was terminated on the expiry of the fixed periods mentioned in the office orders and that he had worked only for 54 days. The mere fact that the appointment orders used the expression "daily

wages" does not make the appointment "Casual" because it is the substance that matters, not the form. The contract of appointment consciously entered into by the employer and the employee, over and above the specific terms of the written agreement, indicates that the employment is short-lived and the same is liable to termination, on the fixed period mentioned in the contract of appointment. [Para 10] [97-D-F]

4. Section 25H will apply only if the respondent establishes that there had been retrenchment. There was no retrenchment under Section 2(oo) read with Section 2(bb) of the Act. Consequently, Section 25H would not apply to the facts of the case. [Para 12] [98-D]

5. The Labour Court as well as the High Court have not properly appreciated the factual and legal position in this case. The award passed by the Labour Court and confirmed by the High Court is set aside. [Para 13] [98-F]

CIVIL APPEALLATE JURISDICTION : Civil Appeal No. 5498 of 2013.

From the Judgment and Order dated 06.09.2011 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 1308 of 2011.

WITH

C.A. No. 5510 of 2013.

Jatin Zaveri for the Appellant.

O.P. Bhadani, Ashok Anand, Rakesh Kr. Singh for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. Leave granted.

1. We are concerned in this case with the question whether termination of services of the respondent on the expiry of the contract period would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 (for short "the ID Act"). We may refer to the facts in Civil Appeal arising out of SLP(C) No.5390 of 2012 for disposal of both the appeals, since the question of law involved in both the appeals is the same.

2. The respondent in Civil Appeal @ SLP(C) No.5390 of 2012 was appointed on daily wages as a helper in the Water Works Department in the appellant Corporation for two fixed periods from 02.05.1988 to 30.06.1988 and 04.07.1988 to 15.07.1988, under two separate office orders dated 19.05.1988 and 01.07.1988. The service of the respondent stood terminated on 15.07.1988 after serving a total period of 54 days. The respondent raised an industrial dispute on 07.12.1989 and the same was referred to Labour Court for adjudication which was registered as Reference (LCB) No.606 of 1989.

3. The Labour Court on 18.10.2003 passed an award holding that the Corporation had violated Section 25G and H of the ID Act by not calling the respondent for work before appointing new workmen. The Labour Court then directed the Corporation to reinstate the respondent with continuity in service. Aggrieved by above-mentioned order the Corporation preferred Writ Petition SCA No.3290 of 2004 before the Gujarat High Court. The High Court vide its judgment dated 12.08.2010 set aside the award of the Labour Court and remanded the matter to the Labour Court for fresh consideration. The Labour Court on 15.11.2010 held that the Corporation had violated the provisions of Sections 25G and H of the ID Act and directed the Corporation to reinstate the respondent with continuity in service with consequential benefits. The Corporation then preferred Writ Petition SCA No.7918 of 2011, which was dismissed by the learned Single Judge vide judgment dated

29.06.2011 against which Corporation preferred LPA No.1275 of 2011 which was also dismissed. Aggrieved by the same the Corporation has preferred this appeal.

4. Shri Jatin Zaveri, learned counsel appearing for the Corporation submitted that the Labour Court as well as the High Court has failed to appreciate the various terms and conditions of appointment and committed a grave error in holding that the Corporation had violated the provisions of Section 25G and H of the ID Act. Learned counsel submitted that going by the terms and conditions of the appointment order would clearly indicate that the provisions of Section 2(oo) and (bb) would apply to the facts of the case, consequently, the respondent cannot be said to have been retrenched and hence the provisions of Section 25G and H of the ID Act would not be attracted.

5. Mr. O.P. Bhadani, learned counsel appearing for the respondent, on the other hand, pointed out that there has been a clear violation of the provisions of Section 25G and H of the ID Act by not reinstating the respondent in service. Learned counsel submitted that the Labour Court has elaborately considered the rival contentions of the parties and rendered a reasoned award which has been affirmed by the learned Single Judge as well as the Division Bench of the High Court and, therefore, calls for no interference by this Court under Article 136 of the Constitution of India.

6. We are of the view that the Labour Court as well as the High Court have completely misunderstood the scope of Section 2(oo), (bb), as well as Section 25G and H of the ID Act. The contract of employment and the terms and conditions contained therein are crucial in the application of the above-mentioned provisions. Facts would clearly indicate that the respondent had worked only for 54 days in two fixed periods and on expiry of the second term his service stood automatically terminated on the basis of the contract of appointment. A reference to the contract would be use

nature of appointment of the respondent. Clause 1, 2 and 7 to 10 of the office order dated 19.05.1988 are relevant, which are extracted herein below for ready reference:

"1. With reference to your application dated _____, a meeting was held with us/the Commissioner and subject to the following conditions arrived at with mutual consent you are being appointed as a Daily Wager Helper in the Water Works Department from 1.5.88 to 30.6.88 at a daily minimum wages of Rs.12/13 and dearness allowance, daily special allowance of Rs.10/20 aggregating to Rs.22/33 in accordance with the Approval No.Commi O/CPO/M.No.204 dated 16.5.88 and upon completion of last duty on 30.6.88, your service shall stand automatically terminated.

2. Since a definite date of termination of your service has been specified, the Municipal Corporation shall not be liable and you shall not be entitled to any notice, wages in lieu of notice, retrenchment compensation etc.

3. x x x x

4. x x x x

5. x x x x

6. x x x x

7. If you are transferred as provided in Clause 6 above and if you fail to perform you duty at the appointed time then it would tantamount to that you are not willing to work and this contract of service shall automatically come to an end and as such your services shall stand terminated.

8. As per the aforesaid para no.1 of the Office Order you are being appointed as a daily wager from 2.5.88 to 30.6.66 subject to the condition that you have to come for work as and when required by the Municipal Corporation,

that is, if the Municipal Corporation does not require your service during the aforesaid period, then the Municipal Corporation is not bound to give you the work and you shall not be entitled to demand work for that day, of which you may take a special note.

9. Upon termination of your contract on the date specified above, you are not entitled to claim any right of seniority for the period for which you work nor are you entitled to be reinstated or make such a claim on account of the new appointment of daily wagers.

10. the Corporation shall be entitled to relieve you before the prescribed period if it no longer requires your services."

7. The above order was signed by the respondent and, therefore, bound by the terms and conditions of the office order. The question is, termination of the service of the respondent on the expiry of the periods mentioned above would amount to retrenchment? Facts in this case clearly show, so found by the Labour Court itself that the respondent had not worked continuously for 240 days in an year to claim the benefit of Section 25F, G and H of the ID Act. Therefore, the only question to be considered is whether termination of service of the respondent on the basis of the contract of appointment would amount to retrenchment within the meaning of Section 25H of the ID Act so as to claim reinstatement.

8. A reference to Section 2(oo) and (bb) of the Act would be apposite.

"2 **Definitions:-**

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplina[illegible]ot include-

xxx xxx xxx

xxx xxx xxx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

9. Section 2(bb) says that if the termination of the service of workman is as a result of non-renewal of the contract between the employer and the workman on its expiry of such contract being terminated under a stipulation in that behalf contained therein, the same would not constitute retrenchment.

10. Facts would clearly indicate that the respondent's service was terminated on the expiry of the fixed periods mentioned in the office orders and that he had worked only for 54 days. The mere fact that the appointment orders used the expression "daily wages" does not make the appointment "Casual" because it is the substance that matters, not the form. The contract of appointment consciously entered into by the employer and the employee would, over and above the specific terms of the written agreement, indicates that the employment is short-lived and the same is liable to termination, on the fixed period mentioned in the contract of appointment.

11. Learned counsel appearing for the respondent submitted that the respondent is entitled to the benefit of Section 25G & H, the same are extracted herein below:

"25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman

in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re- employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman] who offer themselves for re- employment shall have preference over other persons."

12. Section 25H will apply only if the respondent establishes that there had been retrenchment. Facts will clearly indicate that there was no retrenchment under Section 2(oo) read with Section 2(bb) of the ID Act. Consequently, Section 25H would not apply to the facts of the case. Similar is the factual and legal situation in the civil appeal arising out of SLP(C) No.5387 of 2012 as well.

13. We are sorry to note that the Labour Court, learned Single Judge and the Division Bench have not properly appreciated the factual and legal position in this case. When rights of parties are being adjudicated, needless to say, serious thoughts have to be bestowed by the Labour Court as well as the High Court. For the above-mentioned reasons we allow both the appeals, set aside the award passed by the Labour Court and confirmed by the High Court. However, there will be no order as to costs.

B.B.B. Appeals allowed.

NAGAPPAN

v.

STATE BY INSPECTOR OF POLICE, TAMIL NADU

(Criminal Appeal No. 1533 of 2009)

JULY 17, 2013

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Penal Code, 1860 - s.302 r/w s.34 - Murder - On account of previous enmity - Four accused - Eye-witness account of PWs 1 and 3 - As per prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod whereas A-3 was holding a stick - Doctor (PW-10), who conducted the post mortem, asserted that the deceased died due to head injuries - Trial court convicted A-1 to A-4 u/s. 302 r/w s.34 IPC - High Court confirmed the conviction - On appeal by A-3, held: PWs 1 & 3 asserted that A-1 and A-2 caused cut injuries to the deceased using knives - But PWs 1 & 3 did not specifically state whether the stick used by the appellant (A-3) struck on the head or neck of the deceased - They merely stated that appellant used the stick and hit on the back - Absolutely, no reference of any injury on the back of the deceased was made in the post mortem report as well as in the evidence of the Doctor (PW-10) - Also, stick allegedly used by the appellant was not shown to PW-10 - Conviction u/s.302 r/w s.34 IPC insofar as appellant is concerned, thus, liable to be set aside.

Evidence - Related/interested witness - Appreciation - Held: There is no bar in considering the evidence of relatives - Where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses.

The prosecution case was that A-1, A-2, A-3 and A-4 committed the murder of a person on account of enmity

between him and A-1. It was alleged that A-1 to A-4 assembled near a road with an ulterior motive of killing the deceased; and on seeing the deceased, attacked him using knives, stick and iron pipe. A-1 and A-2 inflicted injuries on the deceased using knives from behind on the head and neck respectively while A-3 attacked the deceased with a stick whereas A-4 attacked him using iron pipe over the rear portion of his neck.

The trial court convicted A-1 to A-4 under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life. The High Court confirming the conviction and sentence imposed by the trial Court. Against the said order, A-3 (the appellant) filed the instant appeal.

The appellant submitted that the conviction solely based on the evidence of PW-1 and PW-3, who are brothers and interested/related eye-witnesses, cannot be sustained in the absence of corroboration from other witnesses; that both the courts below failed to notice the fact that the medical evidence did not support the version of the prosecution in respect of the appellant (A-3) and in fact was contrary to the evidence of PW-1 and PW-3 and, therefore, the conviction and sentence of the appellant was liable to be set aside.

Allowing the appeal, the Court

HELD: 1.1. There is no bar in considering the evidence of relatives. The prosecution heavily relied on the evidence of PW-1, PW-3 and PW-10. The trial Court and the High Court, in view of their relationship, closely analysed their statements and ultimately found that their evidence is clear, cogent and without considerable contradiction. Where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible

merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect credibility of a witness. [Para 7] [106-F-H; 107-A-B]

1.2. On facts, as rightly observed by the Courts below, the evidence of PW-1 and PW-3 is clear, cogent and without much contradiction. In categorical terms, PWs 1 & 3 asserted before the Court that A-1 and A-2 caused cut injuries to the deceased using knives (M.Os 9 & 10) and the appellant (A-3), attacked the deceased with a stick and caused extensive injuries upon the head, neck and other places resulting into his death on the way to hospital. No doubt, they mentioned that the appellant (A-3) attacked the deceased with a stick, however, the evidence of PW-1 and PW-3 clearly implicated A-1 and A-2 and the courts below have rightly accepted the case of the prosecution. Insofar as the role of the appellant (A-3) is concerned, even according to the eye witnesses, viz., PWs 1 & 3, he attacked the deceased with a stick. There is no specific assertion about the exact blow on the head by use of stick by the appellant (A-3). They merely stated that A-3 used the stick and hit on the back. There is not even a whisper that the stick used by the appellant (A-3) hit on the neck or head of the deceased. The evidence of PW-1 and PW-3 are not sufficient to convict the appellant (A-3) under Section 302. [Para 8] [107-F-H; 108-A-C]

Dalip Singh & Ors. vs. State of Punjab **AIR 1953 SC 364: 1954 SCR 145;** *Guli Chand & Ors. vs. State of Rajasthan* **(1974) 3 SCC 698;** *Vadivelu Thevar vs. The State of Madras* **AIR 1957 SC 614: 1957 SCR 981;** *Masalti & Ors. vs. The State of U.P.* **AIR 1965 SC 202: 1964 SCR 133;** *The State of Punjab vs. Jagir Singh & Ors.* **(1974) 3 SCC 277: 1974 (1) SCR 328; AIR 1973 SC 2407;** *Lehna vs. State of Haryana* **(2002) 3 SCC 76: 2002 (1) SCR 377;** *Sucha Singh & Anr. vs. State of Punjab* **(2003) 7 SCC 643: 2003 (2) Suppl. SCR 35 = 2003(6) JT SC 348;** *Israr vs. State of U.P.* **(2005) 9 SCC 616: 2004 (6) Suppl. SCR 695;** *S. Sudershan Reddy & Ors. vs. State of A.P.* **(2006) 10 SCC 163: 2006 (3) Suppl. SCR 743; AIR 2006 SC 2716;** *Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra* **JT 2007 (9) SC 194;** *Waman and Others vs. State of Maharashtra* **(2011) 7 SCC 295: 2011 (6) SCR 1072;** *State of Haryana vs. Shakuntla and Others* **(2012) 5 SCC 171: 2012 (5) SCR 276;** *Raju @ Balachandran & Ors. vs. State of Tamil Nadu* **2012 (11) SCALE 357 and** *Subal Ghorai & Ors. vs. State of West Bengal* **(2013) 4 SCC 607 - relied on.**

2. Doctor (PW-10), who conducted the post mortem on the dead body, asserted that the deceased died due to head injuries. He explained that the deceased had 4 injuries on the head and one swelling injury over the right eye. Exh. P-10 is the post mortem certificate issued by him. Admittedly, the stick alleged to have been used by the appellant (A-3) was not shown to the Doctor (PW-10). Even PWs 1 & 3 have not specifically stated, namely, whether the stick used by the appellant (A-3) struck on the head or neck. In the post mortem report as well as in the evidence of the Doctor (PW-10), absolutely, there is no reference of any injury on the back of the deceased person. Considering the fact that even as per the prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod and A-3 was holding only stick, in the absence of specific assertion by PWs 1 & 3 about the specific role of the appellant (A-3) and no medical evidence from the Doctor in the post mortem certificate, the conviction and the ultimate sentence in respect of the appellant (A-3) cannot be sustained. Both the courts below failed to take note of the fact that the medical evidence has not supported the version of the prosecution in respect of the appellant (A-3) and in fact contrary to the evidence of PWs 1 & 3, therefore, the conviction and sentence of the appellant is liable to be set aside. The conclusion of the **e**

appellant along with others attacked the deceased with intention to cause injuries is without any basis and not supported by acceptable evidence. Therefore, the conviction under Section 302 read with Section 34 IPC insofar as the appellant is concerned is liable to be set aside. [Paras 9, 10] [108-C, G-H; 109-A-B, D-H; 110-A-B]

Case Law Reference:

1954 SCR 145	**relied on**	**Para 7**
(1974) 3 SCC 698	**relied on**	**Para 7**
1957 SCR 981	**relied on**	**Para 7**
1964 SCR 133	**relied on**	**Para 7**
1974 (1) SCR 328	**relied on**	**Para 7**
2002 (1) SCR 377	**relied on**	**Para 7**
2003 (2) Suppl. SCR 35	**relied on**	**Para 7**
2004 (6) Suppl. SCR 695	**relied on**	**Para 7**
2006 (3) Suppl. SCR 743	**relied on**	**Para 7**
JT 2007 (9) SC 194	**relied on**	**Para 7**
2011 (6) SCR 1072	**relied on**	**Para 7**
2012 (5) SCR 276	**relied on**	**Para 7**
2012 (11) SCALE 357	**relied on**	**Para 7**
(2013) 4 SCC 607	**relied on**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1533 of 2009.

From the Judgment and Order dated 12.04.2006 of the High Court of Judicature at Madras in Crl. Appeal No. 1861 of 2002.

K.K. Mani, Abhishek Krishna for the Appellant.

M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal has been filed against the judgment and order dated 12.04.2006 passed by the High Court of Judicature at Madras in Criminal Appeal No. 1861 of 2002 whereby the High Court dismissed the appeal filed by the appellants therein and confirmed the order of conviction and sentence dated 20.12.2002 passed by the Court of Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore in Sessions Case No. 230 of 2000.

2. **Brief facts**

(a) The case relates to the death of a person by name Pasupathy, resident of Periya Irusampalayam village, committed by Sivaraman (A-1), Mano (A-2), Nagappan (A-3) and Tamil@Tamilvanan (A-4) on account of enmity between the deceased-Pasupathy and Sivaraman (A-1). At one point of time, there was a quarrel between Sivaraman (A-1) and one Srinivasan (DW-1) which was pacified by Pasupathy and thereby A-1 had an impression that Pasupathy is in support of Srinivasan (DW-1). Due to this kind of impression, A-1 planned to eliminate Pasupathy.

(b) In order to materialize the same, on 08.05.2000, at 08:30 p.m., A-1 to A-4, assembled near the road leading to the graveyard of Periya Irusampalayam village with an ulterior motive of killing Pasupathy. At the relevant time, Sivaraj (PW-1) and Ganapathy (PW-3), who are brothers and relatives of Pasupathy, along with Vijayan, Murugan, Babu and Veerappan were having conversation near the electric post on the way to graveyard and Pasupathy was coming towards the same direction. On seeing Pasupathy, the accused persons, in order to grab the opportunity of killing him, attacked him using knives, stick and iron pipe. A-1 and A-2 inf[illegible]e

deceased using knives from behind on the head and neck respectively. A-3 attacked Pasupathy with a stick whereas A-4 attacked him using iron pipe over the rear portion of his neck. When PW-1 and others came to rescue Pasupathy, the accused persons ran away from the spot leaving behind the weapons used in the incident. Pasupathy was immediately taken to the hospital but he died on the way.

(c) On the very next day, i.e., on 09.05.2000, at 05:00 a.m., PW-1 lodged a complaint at Reddichavadi Police Station which came to be registered as Crime No. 132 of 2000 under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC').

(d) After investigation, the case was committed to the Court of Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore under Section 302 read with Section 34 of IPC which was numbered as Sessions Case No. 230 of 2000. The Additional District and Sessions Judge, by order dated 20.12.2002, convicted A-1 to A-4 for the offence punishable under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life along with a fine of Rs. 4,000/- each, in default, to further undergo rigorous imprisonment (RI) for 1 (one) year.

(e) Aggrieved by the said order, A-1 to A-3 preferred Criminal Appeal No. 1861 of 2002 before the High Court. The Division Bench of the High Court, by order dated 12.04.2006, dismissed their appeal by confirming the conviction and sentence imposed by the trial Court.

(f) Against the said order, Nagappan (the appellant herein and A-3 therein) has filed this appeal by way of special leave before this Court.

3. Heard Mr. K.K. Mani, learned counsel for the appellant-accused and Mr. M. Yogesh Khanna, learned counsel for the respondent-State.

Contentions:

4. Mr. K.K. Mani, learned counsel for the appellant, at the foremost, submitted that the conviction solely based on the evidence of Sivaraj (PW-1) and Ganapathy (PW-3), who are brothers and interested/related eye-witnesses, cannot be sustained in the absence of corroboration from other witnesses. He further submitted that both the courts below failed to notice the fact that the medical evidence did not support the version of the prosecution in respect of the appellant (A-3) and in fact contrary to the evidence of PW-1 and PW-3 and, therefore, the conviction and sentence of the appellant is liable to be set aside.

5. On the other hand, Mr. M. Yogesh Khanna, learned counsel for the State submitted that merely because the eye-witnesses in the case on hand, namely, PW-1 and PW-3, are brothers/related to the deceased, their evidence cannot be eschewed. According to him, the role of the Court is to scrutinize the evidence carefully. He also pointed out that in addition to the evidence of said eye-witnesses, medical evidence through Doctor (PW-10) also supports the prosecution case, and hence, there is no valid ground for interference.

6. We have carefully considered the rival submissions and perused all the relevant materials.

Discussion:

7. As regards the first contention about the admissibility of the evidence of PW-1 and PW-3 being closely related to each other and the deceased, first of all, there is no bar in considering the evidence of relatives. It is true that in the case on hand, other witnesses turned hostile and not supported the case of the prosecution. The prosecution heavily relied on the evidence of PW-1, PW-3 and PW-10. The trial Court and the High Court, in view of their relationship, closely analysed their statements and ultimately found that their evidence is clear, cogent and without considerable contradiction as claimed by their counsel. This Court, in series of d at

where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect credibility of a witness. [vide *Dalip Singh & Ors. vs. State of Punjab,* AIR 1953 SC 364, *Guli Chand & Ors. vs. State of Rajasthan,* (1974) 3 SCC 698, *Vadivelu Thevar vs. The State of Madras,* AIR 1957 SC 614, *Masalti & Ors. vs. The State of U.P.,* AIR 1965 SC 202, *The State of Punjab vs. Jagir Singh & Ors.* (1974) 3 SCC 277 = AIR 1973 SC 2407, *Lehna vs. State of Haryana,* (2002) 3 SCC 76, *Sucha Singh & Anr. vs. State of Punjab,* (2003) 7 SCC 643 = 2003(6) JT SC 348, *Israr vs. State of U.P.,* (2005) 9 SCC 616, *S. Sudershan Reddy & Ors. vs. State of A.P.,* (2006) 10 SCC 163 = AIR 2006 SC 2716 and *Abdul Rashid Abdul Rahiman Patel & Ors. vs. State of Maharashtra* JT 2007 (9) SC 194, *Waman and Others vs. State of Maharashtra,* (2011) 7 SCC 295, *State of Haryana vs. Shakuntla and Others,* (2012) 5 SCC 171, *Raju @ Balachandran & Ors. vs. State of Tamil Nadu,* 2012 (11) Scale 357, *Subal Ghorai & Ors. vs. State of West Bengal,* (2013) 4 SCC 607].

8. In the light of the above principles, let us consider the acceptability or otherwise of the evidence of Sivaraj (PW-1) and Ganapathy (PW-3). In view of the stand taken by the appellant, we have analysed the evidence of PWs 1 & 3. As rightly observed by the courts below, their evidence is clear, cogent and without much contradiction. In categorical terms, PWs 1 & 3 asserted before the Court that Sivaraman (A-1) and Mano (A-2) caused cut injuries to Pasupathy (deceased) using knives (M.Os 9 & 10) and Nagappan - the appellant herein (A-3), attacked the deceased with a stick and caused extensive injuries upon the head, neck and other places resulting into his death on the way to hospital. No doubt, they mentioned that the appellant (A-3) attacked Pasupathy with a stick, however, our analysis shows that the evidence of PW-1 and PW-3 clearly implicated A-1 and A-2 and the courts below have rightly

accepted the case of the prosecution. Insofar as the role of the appellant (A-3) is concerned, even according to the eye witnesses, viz., PWs 1 & 3, he attacked the deceased with a stick. There is no specific assertion about the exact blow on the head by use of stick by the appellant (A-3). They merely stated that A-3 used the stick and hit on the back. There is not even a whisper that the stick used by the appellant (A-3) hit on the neck or head of the deceased. We are satisfied that the evidence of PW-1 and PW-3 are not sufficient to convict the appellant (A-3) under Section 302.

9. Now let us consider the medical evidence. Doctor (PW-10), who conducted the *post mortem* on the dead body, in his evidence, has stated that he conducted the post mortem at 12.30 p.m. on 09.05.2000 and found the following injuries on the dead body:

"1. Bluish discolouration and swelling present over right upper eye lid.

2. Lacerated injury of 4 cm x 1 cm bone deep present over left Parietal region of head with fracture of underlying bone.

3. Lacerated injury of 5 cm x 1 cm bone deep over left occipital region of head.

4. Lacerated injury of 4cm x 1 cm bone deep present over left occipital region of head.

5. Obliquely placed incised wound 10 x 1.5 bone deep with fracture of underlying bone present over back of neck behind left ear."

PW-10 further stated that the deceased appeared to have died of the wounds on the head 6 to 24 hours before the *post mortem*. In other words, he asserted that the deceased died due to head injuries. He explained that the deceased had 4 injuries on the head and one swelling injury over the right eye. He further explained that out of 4 injuries

on the rear left side, one injury was found on the rear of the head and one injury was found near the left ear. According to him, injury Nos. 2 to 5 were at bone depth. He also stated that the 5th injury was cut injury. Injury Nos. 2 to 4 were lacerated injuries. Exh. P-10 is the post mortem certificate issued by him. Admittedly, the stick alleged to have been used by the appellant (A-3) was not shown to the Doctor (PW-10). In his cross examination, he admitted that he did not remember that the police had enquired by showing the weapons to him. He also stated that Injury Nos. 1-4 may be possible by attack with iron pipe. He also admitted that there was no injury on the back of the deceased person. He concluded that there was no other injury other than what he had stated in the examination-in-chief as well as noted in the *post mortem* certificate (Ex.P-10).

10. In the earlier paragraph of our discussion, we mentioned the minimal role alleged to have been played by the appellant (A-3). Even PWs 1 & 3 have not specifically stated, namely, whether the stick used by the appellant (A-3) struck on the head or neck. In the *post mortem* report as well as in the evidence of the Doctor (PW-10), absolutely, there is no reference of any injury on the back of the deceased person. Considering the fact that even as per the prosecution case, A-1 and A-2 were armed with knives, A-4 was armed with iron rod and A-3 was holding only stick, in the absence of specific assertion by PWs 1 & 3 about the specific role of the appellant (A-3) and no medical evidence from the Doctor in the *post mortem* certificate, we are of the view that the conviction and the ultimate sentence in respect of the appellant (A-3) cannot be sustained. We are satisfied that both the courts below failed to take note of the fact that the medical evidence has not supported the version of the prosecution in respect of the appellant (A-3) and in fact contrary to the evidence of PWs 1 & 3, therefore, the conviction and sentence of the appellant is liable to be set aside. The conclusion of the High Court that the appellant along with others attacked the deceased with intention to cause injuries is without any basis and not

supported by acceptable evidence. Therefore, the conviction under Section 302 read with Section 34 IPC insofar as the appellant is concerned is liable to be set aside.

11. In the light of the above discussion, the conviction and sentence of the appellant under Section 302 read with Section 34 IPC is set aside. The appeal is allowed. The appellant is directed to be released forthwith, if not required in any other case.

B.B.B. Appeal allowed.

YASHWANT SINGH & ORS.

v.

STATE OF BIHAR & ORS.

(Special Leave Petition (Civil) No. 26824 of 2012)

JULY 18, 2013

[ALTAMAS KABIR, CJI, ANIL R. DAVE AND VIKRAMAJIT SEN, JJ.]

Service Law - Appointment - Of primary teachers - SLPs filed by trained teachers for direction upon the State of Bihar to appoint them in the vacancies of primary teachers in the State of Bihar - SLPs withdrawn on an undertaking given on behalf of the State of Bihar - State of Bihar failed to abide by its commitments -Contempt Petition filed - Same disposed of with direction upon the State of Bihar to implement the undertaking given earlier - Further default on part of the State of Bihar - Another Contempt Petition - Applications made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties - Orders passed by Supreme Court directing that trained teachers be appointed against the available vacancies - Dispute in regard to the list of eligible candidates - Retired High Court Judge appointed by Supreme Court as Special Officer in whose presence the list could be settled - List submitted by him accepted and in terms of the recommendations made, 34,540 candidates appointed in different primary schools in the State of Bihar - However, some candidates, who had not appeared before said retired High Court Judge, came up with fresh applications in support of their cases - Most of the applicants were aggrieved by some defect or the other in the preparation of the select list - Applications, SLPs and writ petitions filed before Supreme Court directed to be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the

appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working - Bihar Education Code - Chapters 6 and 7 - Bihar Elementary Teachers Appointment Rules, 2003.

CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 26824 of 2012.

From the Judgment and Order dated 14.05.2012 of the High Court of Judicature at Patna in CWJC No. 8551 of 2012.

WITH

I.A.Nos. 668, 669, 671, 674, 675, 676, 677, 679, 680, 681, Dy. Nos. 96650,102358, 102908, 107866/2011, 1117, 1251, 3372, 3363, 4307, 4775, 5820, 4785, 5802, 7277, 8002, 7861, 7860, 8223, 8232, 8025, 8709, 9296, 9291, 9610, 9582, 10029, 10303, 10783, 10777, 10773, 10772, 10817, 10822, 11173, 4069, 11080, 11355, 11872, 12010, 12009, 12012, 12523, 4473, 13535, 13533, 13883, 14230, 14529, 14902, 14901, 15677, 5602, 17890, 17893, 19256, 20919, 20920, 5727, 22003, 30504/2012, Contempt Petition (C) No.87 of 2013 in Contempt Petition (C) No. 297 of 2007 in SLP (C) No.22882 of 2004, W.P. (C) No. 49 of 2013, SLP (C) No. 5946 of 2013, W.P. (C) No. 344 of 2012.

U.U. Lalit, L.N. Rao, P.H. Parekh, R.P. Bhatt, L. Nageshwara Rao, S.B. Sanyal, S.R. Singh, Nagendra Rai, Neeraj Kumar Jain, Santosh Kumar, Madhurendra Sharma (for Mushtaq Ahmad), Santosh Kumar (for Mushtaq Ahmad), Venkita Subramoniam T.R., Mushtaq Ahmad, Kumud Lata Das, Vishal Prasad, P.N. Puri, Nischal Kumar Neeraj, Jitendra Kumar, Sanjeev Kumar, C.P. Yadav, Syed Md. Rafi, Rameshwar Prasad Goyal, Subhro Sanyal, Bhawana Arora, Rakesh U. Upadhyay, Ranjit B. Raut, Neeraj Shekhar, Shirish K. Deshande, Dinesh Kumar Tiwary, N.N. Jha, Chandan Kumar, V.S. Mishra, Raghvendra Tiwary, Santosh Kumar Tripathi, Mukesh Verma, Pawan Kumar Shukla, Yashpal Dhingra, S. Chandrashekhar, D.K. Thakur, Devend[illegible],

Manu Shanker Mishra, Anshuman Upadhyay, R.D. Upadhyay, Amit Kumar, Atul Kumar, Ashish Kumar, Rekha Bakshi, Avijit Mani Tripathi, Rituraj, Nirnimesh Dube, Iftekhar Ahmad, M. Qamaruddin, Ambar Qamaruddin, Abhishek, M. Qamaruddin, M.M, Singh, D.K. Sinha, Dharmedra Kishor, Binay K. Jha, Bipin K. Jha, Anilendra Pandey, V. Sushant Gupta, Dr. Kailash Chand, Prabhash Kumar Yadav, Pushpa Mishra, Vijay Pratap Yadav, Bankey Bihari Sharma, Braj Kishore Mishra, Aparna Jha, Siddhartha Arya, Sanjay Jain, Shantanu Sagar, Smarhar Singh, Abhishek K. Singh, Gopi Raman, Ram Shankar Das, Chandra Prakash, Dr. S.K. Verma, Aftab Ali Khan, Nitin Kumar Thakur, Rajesh Kumar Bachchan, B.K. Choudhary, Ravishankar Kumar, Arun Kumar, E.C. Vidyasagar, Prem Prakash, M.P. Jha, Ram Shankar Singh, Ram Ekbal Roy, Pranav Kumar Jha, Harshvardhan Jha, Amit Kishore Sinha, Sunil Kumar Verma, Shahid Anwar, Sumit Kumar, Shekhar Kumar, S.K. Tirpathi, Rajiv Shankar Dvivedi, Manish Kumar Saran, Satya Prakash Sharan, Manjit Pathak, Rajan K. Chourasia, Nirmal Kumar Ambastha, Sanjeev Kumar, Sudhanshu Pole, Venkateswar Rao Anomolu, Pradeep Misra, Amit Sibal, Jafar Alam, Gaurav Dudeja, Md. Izhar Alam, M.P. Singh, Hetu Arora Sethi, Gopal Singh, Manish Kumar, Susmita Lal. Pranay Ranjan, Praneet Ranjan, Piyush Sharma, Dinesh C. Pandey, Dhruv K. Jha, Ravi C. Prakash, K.K. Jaipuria, Bijan Ghosh, Purushottam S.T., Filza Moonis, Brij Bhushan, Chandan Ramamurthi, Dharam Bir Raj Vohra, K.N. Rai, Lakshmi Raman Singh, Mohan Pandey, Prem Sunder Jha, S.K. Sabhrawal, S.K. Sinha, Shree Pal Singh, In-person (in I.A. No. 439), Revathy Raghavan, Anil Kumar Jha, B.K. Satija, Prashant Chaudhary, Anil Kumar Tandale, Subramonium Prasad, Ajay Jain, Karun Mehta, Varun Tandon, Neha Agarwal, Vishwajit Singh, Ambhoj Kumar Sinha, Shekhar Prit Jha, Abhijit Sengupta, Ratan Kumar Choudhuri, Kanhaiya Priyadarshi, T. Mahipal, Aniruddha P. Mayee, P.V. Yogeswaran, Shashi Bhushan Kumar, Vishnu Sharma, Gaurav Agrawal Prakash Kumar Singh, Amit Pawan, Sridhar Potaraju, Devashish Bharuka, Milind Kumar, Abhay Kumar, Arup Banerjee,

Abhishek Atrey, Aruna Gupta, Rajiv Shankar Dvivedi, Mithilesh Kumar Singh, Mohit Kumar Shah, Sanjay Kumar Visen, G.P. Singh, Manendra Dubey, Abhishek, Shirish K. Deshpande, Vikas Giri for the appearing parties.

The Order of the Court was delivered by

O R D E R

ALTAMAS KABIR, CJI. 1. Special Leave Petition (Civil) Nos. 22882-22888 of 2004 were filed by several trained teachers for a direction upon the State of Bihar to appoint them in the vacancies in the post of primary teachers in the State of Bihar. The same was withdrawn on an undertaking given on behalf of the State of Bihar on 18th January, 2006, whereby the State of Bihar committed itself to recruiting and filling up the vacant posts of teachers in primary schools with trained teachers. The undertaking given by the State of Bihar reads as follows:

> "That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.
>
> That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna High Court, while making recruitment of teachers.
>
> That it is respectfully submitted that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may [illegible]d

the order of this Hon'ble Court and of the Patna High Court in this regard may be modified"

2. The application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the Petitioner, Nand Kishore Ojha, filed Contempt Petition (Civil) No. 207 of 2006, and the same was disposed of with a direction upon the State of Bihar to implement the undertaking given earlier, upon a categorical statement being made that priority would be given to the trained teachers in matters of appointment in the said posts.

3. Thereafter, on account of further default on the part of the State of Bihar to honour its commitments, another Contempt Petition, being Contempt Petition (Civil) No. 297 of 2007, was filed and several applications were made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties to the proceedings. Ultimately, the learned Attorney General appeared before us on 25th August, 2009, and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf. Since there had been a change in the administrative set up in the State of Bihar, the situation had become more complex and it had become difficult to work out a solution to the problem posed in filling up the vacancies in the post of primary school teachers throughout the State of Bihar. When Contempt Petition (Civil) No. 297 was taken up for consideration, we heard the same along with several interlocutory applications filed by several teachers having individual grievances and reserved judgment.

4. By our order dated 13th October, 2011, on the Contempt Petition filed in SLP(C) No. 22882 of 2004, arising out of the breach of undertaking given on 18th January, 2006, by the State of Bihar and the order passed on the basis thereof on 23rd January, 2006 in the aforesaid SLP, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts, should be given appointment

in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement, which had been published for recruitment of primary school teachers and took the number of available vacancies to be 34,540. We had further directed that the said vacancies be filled up with the said number of trained teachers as a one time measure to give effect to the undertakings given on 18th January, 2006 and 23rd January, 2006.

5. Subsequently, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and the genuineness of some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the Petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

6. When the said dispute could not be resolved in terms of the list produced by the State of Bihar, we thought it fit to entrust a neutral person with the work and, accordingly, we had appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list. After much debate, the list submitted by Justice Chattopadhyay was accepted and in terms of the recommendations made, 34,540 candidates were appointed in different primary schools in the State of Bihar.

7. The matter did not end there. On account of the fact that some of the candidates, who had not ap[illegible]e

Chattopadhyay, came up with fresh applications in support of their cases and urged that there were various omissions from the final select list, we decided to entertain the said applications, particularly, on account of the directions, which we had given, in our judgment and order dated 13th October, 2011, that no court would entertain any objection or applications with regard to the list of candidates, who had already been appointed, in terms of our earlier order.

8. During the hearing of these applications, special leave petitions and writ petitions, what emerged is that most of the applicants were aggrieved by some defect or the other in the preparation of the select list, which occurred on account of the failure of the candidates to give their relevant particulars to the Committee headed by Justice Chattopadhyay.

9. Be that as it may, in the event, some discrepancies had crept in the final select list, the individual grievances contained various anomalies, which it is difficult for us to unravel. Accordingly, we modify our order dated 13th October, 2011, and allow the applicants to approach the High Court for redressal of their grievances. We also direct that the applications, special leave petitions and writ petitions filed before us be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working. We have been informed during the hearing that about 2413 posts out of the 34,540 posts were still left to be filled up. All the applications, Special Leave Petitions and Writ Petitions are, therefore, disposed of in the light of the aforesaid observations. We make it clear that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question.

B.B.B. SLPs & Writ Petitions disposed of.

SANT LONGOWAL INSTT. OF ENGG. & TECH. & ANR.
v.
SURESH CHANDRA VERMA
(Civil Appeal No. 5828 of 2013)

JULY 18, 2013

[K.S. RADHAKRISHNAN AND PINAKI CHANDRA GHOSE, JJ.]

SERVICE LAW:

Study leave - Availed by Lecturer to pursue Ph.D. course - Certificate for completion of study course not produced - Recovery of salary and other benefits paid during the period of study leave - Held: A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect, is doing a disservice to the institute as well as its students - Public money cannot be spent unless there is mutual benefit - However, in the instant case, considering the fact that the bond executed by respondent is found to be vague, there is no reason for appellant-institute to recover the balance amount from him -- But the amount already recovered be not refunded, since public interest has suffered due to non-obtaining of Ph.D by respondent after availing of entire salary and other benefits - This order is made taking into consideration all aspects of the matter and to do complete justice between the parties - Constitution of India,1950 - Art. 142 - Central Civil Services (Leave) Rules, 1972 - rr.53(5) and 63.

Granting of study leave - Object of - Explained.

The respondent, a Lecturer in the appellant Institute, after availing of study leave for three years to pursue Ph.D. course, resumed his duties as Lecturer in the Institute, but failed to produce the certificate of obtaining

the Ph.D. for which study leave was granted. The appellant-Institute took steps to recover the amount of Rs.12,32,126/- paid to the respondent during the period of study leave. The writ petition filed by the respondent was allowed by the single Judge of the High Court and the Institute was directed to refund with interest the amount already recovered from him. The appeal of the Institute was dismissed by the Division Bench of the High Court.

Allowing the appeal in part, the Court

HELD: 1.1 The specific case of the appellant before this Court is that the respondent is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, though the question as to whether r. 63 of the 1972 Rules is also applicable to the respondent was not specifically urged by the appellant-institute before the High Court. [para 10 and 13] [124-D; 128-B]

1.2 Rule 63 of the Central Civil Services (Leave) Rules 1972 mandates that if a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is, thus, unable to furnish the certificates as required under sub-rule (5) of Rule 53, he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India. The provision has a laudable object to achieve. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute, the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. [para 14-15] [129-G-H; 130-A-B, C-D]

1.3 A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect, is doing a disservice to the institute as well as to its students. Such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. [para 15] [130-D-F]

1.4 In the instant case, there is no clear cut provision in the bond either expressly referring to Rule 63 or strictly imposing a condition that if a candidate fails to complete the course study during the period of sanctioned leave, he will have to refund to the Institute the total amount of leave, salary and other benefits availed of by him during the period of study leave. However, such a specific provision was incorporated in bond by the Board of Governors of the appellant-institute in its 22nd meeting held on 28.06.2002. [para 10-11] [124-D-F]

1.5 The appellant-Institute has already recovered an amount of Rs.6.5 lacs from the salary and arrears of salary of the respondent and claims balance amount of Rs.6,18,000/-. Considering the facts and circumstances of the case and the fact that the bond executed by the respondent is found to be vague, there is no reason for the appellant-Institute to recover the balance amount from him. But, the amount already recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. This order is made taking into consideration all aspects of the matter and to do complete justice between the parties. [para 16-17] [130-G-H; 131-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5828 of 2013.

From the Judgment and Order dated 23.08.2012 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 363 of 2012.

Ajay Jain, B.N. Gaur, Jinendra Jain for the Appellants.

Himanshu Shekhar for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The question that has come up for consideration in this appeal is whether the appellant-institute is justified, in directing the respondent to refund the entire amount of Rs.12,32,126/- paid to him towards salary and other allowances for pursuing Ph.D studies at IIT, Kanpur, on failure to produce the certificate of obtaining the Ph.D, for which study leave was granted.

3. The appellant-institute was established by the Ministry of Human Resource & Development, Government of India in the year 1989 and has been fully funded by the Central Government. The respondent joined the service in the appellant-institute as Lecturer in Mechanical Engineering on 30.08.1993. He applied for grant of study leave for pursuing his Ph.D at IIT, Kanpur. The competent authority acceded to that request and granted three years study leave commencing from 24.07.1999 to 22.07.2002. The respondent after executing necessary bond proceeded on study leave on 24.07.1999 and three years period was completed on 24.07.2002. Due to various reasons, the respondent could not complete his Ph.D studies and he joined back in service as Lecturer in the Institute in November 2003. The respondent was asked to produce the completion certificate of the Ph.D course which respondent could not produce, hence, the appellant-institute demanded the refund of the amount of Rs. 12,32,126/- paid to him during the period of study for pursuing Ph.D as per the terms and conditions of bond executed by the respondent.

4. Aggrieved by the steps taken by the appellant-institute to recover the amount, the respondent filed Civil Writ Petition No. 12555 of 2010 before the High Court of Punjab and Haryana.

Writ Petition was allowed by learned Single Judge vide judgment dated 02.02.2012 quashing the demand notice and also ordered refund of the amount already recovered with interest from the respondent.

5. Aggrieved by the same, the appellant preferred LPA No. 363 of 2012 before the Division Bench of the High Court of Punjab & Haryana and the High Court vide judgment dated 23.08.2012 took the view that the appellant could not point out any term in the bond executed by the respondent that he had to complete the Ph.D programme within a period of three years and that the only condition was that the respondent had to serve for a period of six years after joining service on the expiry of the study leave. The appeal was dismissed by the Division Bench of the High Court.

6. Aggrieved by the judgment of the Division Bench of the High Court, this appeal has been preferred.

7. Shri Ajay Jain, learned counsel appearing for the appellant submitted that the High Court has completely misunderstood terms and conditions on which the respondent was granted study leave which is reflected in the bond executed by the respondent on 5.05.1999. Learned counsel submitted that the High Court has completely ignored the salutary principle of "no work no pay" and that the respondent during the period of study not only not worked in the appellant-institute but also was not successful in obtaining the Ph.D. Consequently, neither the institute, the respondent nor the students have been benefited and public money has been spent for no use.

8. Shri Himanshu Shekhar, learned counsel for the respondent, on the other hand, submitted

his course work required for the Ph.D programme, completed comprehensive examination etc. but the thesis could not be completed due to retirement of the guide. Further, it was pointed out that the respondent had also made a written request on 24.05.2002 seeking extension of six months period so that the respondent could complete his thesis work. Another representation was made on 04.06.2002 and all those representations left unattended. Under such circumstances, he had to join duty without obtaining Ph.D. Learned counsel also pointed out that similarly situated employee named Abanish Kumar Singh was provided extension of time but the same was not done in the case of the respondent. Further, it was pointed out that there is no condition in the bond that if the respondent could not complete the Ph.D then the entire salary and other benefits could be recovered from the respondent. Learned counsel pointed out that the High Court has rightly interpreted terms and conditions of bond, consequently the demand made for the reimbursement of the salary and other allowances is not justified.

9. We have gone through terms and conditions of the bond executed by the respondent on 05.05.1999. Some of the relevant portions of the bond read as follows:

> "Whereas I, Suresh Chandra Varma, am granted (kind of leave) by the Institute.
>
> And whereas for the better protection of the Institute, I have agreed to execute this Bond with such conditions as hereunder is written.
>
> Now the condition of the above written obligation is that in the event of my failing of resume duty, or resigning or retiring from service or otherwise quitting service without returning from duty after the expiry of termination of the period of study leave or at any time within a period of three years after my return to duty, I shall forthwith pay to the institute or as may be directed by the Institute, on demand,

> pay & allowances received by me during study leave, the said amount of Rs.10,000/- (ten thousand only) together with interest thereon from the date of demand at Govt. rates for the time being in force on Govt. loan.
>
> And upon my making such payment the above written obligation shall be avoided and of no effect, otherwise I shall be and remain in full force and virtue.
>
> The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India."

10. Further, it is the specific case of the appellant that the respondent herein is governed by the provisions of the Central Civil Services (Leave) Rules, 1972 forming part of the Fundamental Rules and Supplementary Rules, Part III framed by the Constitution of India. We notice there is no clear cut provision in the bond either expressly referring to Rule 63 or strictly imposing a condition that if a candidate fails to complete the course study during the period of sanctioned leave, he will have to refund to the appellant-institute the total amount of leave, salary and other benefits availed of by him during the period of study leave.

11. Of late, such a specific provision was incorporated in bond by the Board of Governors of the appellant-institute in its 22nd meeting held on 28.06.2002, which reads as follows:

> **TO APPROVE THE AMENDMENT IN BOND CONDITIONS TO BE EXECUTED BY THE FACULTY MEMBERS WHILE PROCEEDING ON STUDY LEAVE.**
>
> The Board of Governors of the Institute in its 22nd meeting held on 28.06.2002 decided that a faculty member, who is granted study leave for possessing higher education such as M.E./M.Tech. and Ph.D, [illegible] to

execute a bond to serve the Institute for double the period of study leave after returning from study leave.

The conditions of the bond are silent on the point when a faculty member resume his/her duty but fails to produce the educational qualifying certificate for which he/she was sanctioned study leave.

Following provision may kindly be allowed to be incorporated in the proforma of bond to be executed by a faculty member while proceeding on study leave / extra ordinary leave of study / special leave for training / sabbatical leave on the pattern of Central Government Rules to avoid legal complicacy.

Proforma of bond presently filled by a faculty members while proceeding on study leave / extra ordinary leave of study/special leave for training/sabbatical leave	**Proposed Proforma of bond to be filled by a faculty members while proceeding on study leave/extra ordinary leave of study / special leave for training / sabbatical leave.**
KNOW ALL MEN BY THESE PRESENTS THAT I,_____resident of _____ at present employed as _____ in the Sant Longowal Institute of Engineering & Technology, do hereby bind myself and my heirs, executors and administrators to pay to the Director, Sant Longowal Institute of Engineering & Technology (hereinafter called the Institute) on demand the sum of Rs._____(Rs._____only)	KNOW ALL MEN BY THESE PRESENTS THAT I, _____ resident of _____ in the district of _____ at present _____ employed as _____in the Sant Longowal Institute of Engineering & Technology, do hereby bind myself and my heirs, executors and administrators to pay to the Director, Sant Longowal Institute of Engineering & Technology (hereinafter called the Institute) the total amount of leave salary and other

together with interest thereon from the date of demand at Government rates for the time being in force on Government loans or, if payment is made in a country other than India, the equivalent of the said amount in the currency of that country converted at the official rate of exchange between that country and India AND TOGETHER WITH all costs between attorney and client and all charges and expenses that shall/or may have incurred by the Institute.	expenses incurred by the Institute, if any, along with bond money prescribed the Institute together with interest thereon from the date of demand at Government Rates for the time being in force on Government loans or if payment is made in a country other than India, the equivalent of the said amount in the currency of that country converted at the official rate of exchange between that country and India AND TOGETHER WITH all costs between attorney and client and all charges and expenses that shall/or may have incurred by the Institute.
WHEREAS I, _____, am granted _____(kind of leave) by Institute.	WHEREAS I, _____am granted _____(kind of leave) by Institute.
AND WHEREAS for the better protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written	AND WHEREAS FOR THE BETTER protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written.
NOW THE CONDITION OF THE ABOVE WRITTEN OBLIGATION IS THAT in the event of my failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry of termination of the period of study leave or at any time within a double the period	AND WHEREAS for the better protection of the Institute, I have agreed to execute this bond with such condition as hereunder is written.
	NOW T

of study leave after my return to duty, I shall forthwith pay to the Institute or as may be, directed by the Institute on demand, the said sum of Rs._____only together with interest thereon from the date of demand at Government Rates for the time being in force on Government loans. AND upon my making such payment the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue. The bond shall in all respects be governed by laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India. The Institute has agreed to bear the stamp duty payable on this bond. Signed and dated this _____day of one thousand nine hundred and signed and delivered by in the presence of _____.	THE ABOVE WRITTEN OBLIGATION IS THAT in the event of my failing to resume duty, or resigning or retiring from service or otherwise quitting service without returning to duty after the expiry or termination of the period of study leave or failing to complete the course of study or at any time within the period of sanctioned leave after my return to duty, I shall forthwith pay to the Institute the total amount of leave salary and other expenses incurred by the Institute, if any, along with bond money prescribed by the Institute together with interest thereon from the date of demand at Government Rates for the time being in force on Government loans. AND upon my making such payment the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue. The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall, where necessary, be accordingly determined by the appropriate courts in India.

12. The above mentioned clause was inserted in the absence of a specific clause to that effect in the bond executed by the faculty members.

13. The question as to whether Rule 63 referred to above is also applicable to the respondent was not seen specifically urged by the appellant-institute either before the learned Single Judge or before the Division Bench, hence, the High Court had no occasion to examine its applicability. In this connection, we may refer to Rule 63 which reads as follows:

"63. Resignation or retirement after study leave or non-completion of the course of study.

(1) If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus unable to furnish the certificate as required under sub-rule (5) of Rule 53 he shall be required to refund-

(i) The actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India; and

(ii) The actual amount, if any, of the cost incurred by other agencies such as foreign Government, Foundations and Trusts in connection with the course of study, together with interest thereon at rates for the time being in force on Government loans from the date of demand, before his resignation is accepted or permission to retire is granted or his quitting service otherwise.:

(iii) Provided that except in the case of employees who fail to complete the course of study nothing in this rule shall apply -

(a) To a Government servant who, after return to duty from study leave, is permitted to retire from service on medical grounds; or

(b) To a Government servant who, after return to duty from study leave, is deputed to serve in any Statutory or Autonomous Body or Institution under the control of the Government and is subsequently permitted to resign from service under the Government with a view to his permanent absorption in the said Statutory or Autonomous body or Institution in the public interest.

(2) (a) The study leave availed of by such Government servant shall be converted into regular leave standing at his credit on the date on which the study leave commenced, any regular leave taken in continuation of study leave being suitably adjusted for the purpose and the balance of the period of study leave, if any, which cannot be so converted, treated as extraordinary leave.

(b) In addition to the amount to be refunded by the Government servant under sub-rule (1), he shall be required to refund any excess of leave salary actually drawn over the leave salary admissible on conversion of the study leave.

(3) Notwithstanding anything contained in this rule, the President may, if it is necessary or expedient to do so, either in public interest or having regard to the peculiar circumstances of the case or class of cases, by order, waive or reduce the amount required to be refunded under sub-rule(1) by the Government servant concerned or class of Government servant."

14. If a Government servant resigns or retires from service or otherwise quits service without returning to duty after a period of study leave or within a period of three years after such return to duty or fails to complete the course of study and is thus

unable to furnish the certificates as required under sub-rule (5) of Rule 53, he shall be required to refund the actual amount of leave salary, study allowance, cost of fees, travelling and other expenses, if any, incurred by the Government of India.

15. The above mentioned provision has a laudable object to achieve. A Government servant or person like the respondent is given study leave with salary and allowances etc. so as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, he could have raised his grievances at the appropriate forum.

16. We notice that the appellant-institute has already recovered an amount of Rs.6.5 lacs as monthly installments from the salary of the respondent and the appellant-institute has also recovered an amount of Rs.1,75,000/- from the salary of the respondent and Rs.4,75,000/- from the arrears of revised scales admissible to the respondent with effect from 01.01.2006 and as such approximately Rs.6,50,000/- has been

recovered from the respondent. Now the appellant-institute claims balance amount of Rs.6,18,000/-.

17. Considering the facts and circumstances of the case and considering the fact that the bond executed by the respondent is found to be vague, we find no reason for the appellant-institute to recover the balance amount of Rs.6,18,000/- from the respondent but the amount already recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the respondent after availing of the entire salary and other benefits. We do so taking into consideration all aspects of the matter and to do complete justice between the parties.

18. Appeal is allowed to the above extent and the judgment of the learned Single Judge and Division Bench is modified accordingly and no further amount be recovered by the appellant-institute from the respondent.

R.P. Appeal partly allowed.

UNION OF INDIA & ORS.

v.

RAJESH KUMAR GOND

(Special Leave Petition (Civil) No. 17419/2009)

JULY 25, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Service Law - Equal pay for equal work - Respondent, a Junior Hindi Translator under the Commerce Ministry - He sought parity of pay with Junior Translators in the Central Secretariat Official Language Service (CSOLS) - Plea of respondent not accepted - He filed application in the Administrative Tribunal on the basis of 'equal pay for equal work' - Application opposed by the petitioners who stated that the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement - However, no material placed before the Tribunal to show as to how the functional requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat - Tribunal held in favour of respondent stating that there was no reason to deny parity in pay - Order challenged - Held: Since no material was placed before the Tribunal about the functional distinction, the order of the Tribunal cannot be faulted - Though principle of 'equal pay for equal work' is not expressly declared by the Constitution to be a fundamental right, but it certainly is a constitutional right - Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principe of State Policy - To the vast majority of the people, equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get - To them the equality clauses will have some substance if equal work means equal

pay - Constitution of India, 1950 - Articles 14, 16 and 39(d).

Randhir Singh vs. Union of India and Ors. **(1982) 1 SCC 618: 1982 (3) SCR 298 - relied on.**

Case Law Reference:

1982 (3) SCR 298	**relied on**	**Para 6, 8**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 17419 of 2009.

From the Judgment and Order dated 09.07.2008 of the High Court at Calcutta in Writ Petition CT No. 632 of 2007.

WITH

C.A. No. 1119 of 2013 & SLP (C) No. 37255 of 2012.

P.P. Malhotra, ASG, Ashok Kumar Panda, Yasir Rauf, Lingaraj Sarangi, Arvind Kumar Sharma R. Balasubramanian, Gunwant Dara, Aditya Singla (for B.V. Balaram Das), Anil Katiyar, Subodh Kr. Pathak, Shashi Ranjat (for Dharmendra Kumar Sinha), Pragati Neekhra, Parth Tiwari for the appearing Parties.

The following order of the Court was delivered by

O R D E R

S.L.P.(C) No. 17419/2009

1. Delay condoned.

2. Heard Mr. P.P. Malhotra, learned Additional Solicitor General in support of this special leave petition and Mr. Subodh Kr. Pathak, learned counsel appearing for the respondent.

3. This special leave petition seeks to challenge the judgment and order dated 9.7.2008 passed by the High Court

of Calcutta in Writ Petition No.632 of 2007 which confirmed the judgment dated 9.11.2006 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No.939 of 2004.

4. The respondent is a Junior Hindi Translator working in the office of Director General of Commercial Intelligence & Statistics under the Commerce Ministry and he sought parity of pay with the Junior Translators who were working in the Central Secretariat Official Language Service (CSOLS). The Home Ministry had issued Office Memorandum dated 9.2.2003, upgrading the pay-scales of Junior Hindi Translators from Rs.5000-1050-8000 to Rs.5500-175-9000, which were made applicable from 11.2.2003. The respondent sought the same pay-scale but it was denied to him. It is, therefore, that he filed an application in the Central Administrative Tribunal on the basis of 'equal pay for equal work'. The application filed by the respondent was opposed by the petitioners by filing a counter, wherein amongst other things, in paragraph 9 they stated that the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement. However, no material whatsoever was placed before the Tribunal to show as to how the functional requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat. Both the posts required the work of translation to be done and, therefore, the Tribunal came to the conclusion that there was no reason to deny parity in pay. The Tribunal relied upon the judgment of a Bench of three Judges of this Court in *Randhir Singh Vs. Union of India and Ors.,* (1982) 1 SCC 618, which is a judgment granting equal pay to the drivers in Delhi Police Force as available to those in the Central Government and Delhi Administration. The petitioners herein challenged the order of the Tribunal by approaching the Calcutta High Court which dismissed the writ petition and therefore, this special leave petition.

5. Mr. Malhotra, learned Additional Solicitor General appearing for the Union of India submitted that the two posts cannot be equated but having noted that when no material was placed before the Tribunal about the functional distinction, in our view, the order of the Tribunal could not be faulted. The High Court was, therefore, right in dismissing the writ petition.

6. Before we conclude, we may profitably refer to the observations of Chinnappa Reddy, J., in paragraph 8 of the judgment in *Randhir Singh* (supra) which reads as follows:

> "8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principe of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for every one and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcered with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay....."

7. This special leave petition is, therefore, dismissed.

S.L.P.(C) No.37255/2012:

1. The respondents herein were working as Senior Translators/Assistant Directors in the offices under the Ministry of Defence. They also sought parity with the translators in the Central Secretariat which has been granted by the Central Administrative Tribunal, Chandigarh by its judgment dated 18.5.2009. That judgment is left undisturbed by the Punjab and Haryana High Court in C.W.P. No.23126 of 2010 by its order dated 23.3.2011.

2. Mr. Balasubramanian, learned counsel appearing for the appellant submitted that their source of recruitment was different. However, having noted that no functional difference was shown in their work, we cannot find any fault with the judgments of the Tribunal and the High Court for the reasons stated in the earlier special leave petition. The special leave petition is, therefore, dismissed. There will be no order as to costs.

CIVIL APPEAL NO. 1119 OF 2013:

The respondent in this appeal was working as a Junior Hindi Translator in the office of the Commissioner of Central Excise-I, Kolkata. He claimed parity of pay with the Junior Translators who were working in the Central Secretariat. In his case also, what we find is that there is no functional distinction as far as the work of these translators is concerned. Therefore, we do not take a different view. The civil appeal is dismissed. There will be no order as to costs. Interim orders will stand vacated.

B.B.B. Appeal dismissed.

KANTILAL MARTAJI PANDOR
v.
STATE OF GUJARAT & ANR.
(Criminal Appeal No. 1567 of 2007)

JULY 25, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Penal Code, 1860 - s.498A - Suicide by second wife of appellant - One day earlier, the deceased-wife had written letter to the police station against the appellant - Conviction of appellant u/s.498A - Justification - Held: Not justified - Explanation u/s.498A defines "cruelty" for purpose of s.498A to mean any of the acts mentioned in clause (a) or clause (b) of the Explanation - Alleged acts or conduct of the appellant did not amount to cruelty within meaning of clauses (a) or (b) of the Explanation - As the cause of the death of deceased was not in question, the statements made by her in her letter to the Police Station cannot be taken to be proof of cruel acts committed by the appellant for holding him guilty u/s.498A - Except the letter written by the deceased to the Police Station, no other witness spoke about the appellant having starved her of food and having committed acts of mental cruelty to her - In view of the evidence of deceased's mother (PW-3), the High Court could not have come to the conclusion that the deceased was subjected to financial exploitation and starving and mental cruelty by the appellant - Finding of the High Court that the appellant committed a cruel act by permitting his first wife to enter the house of the deceased with new born child, is erroneous - No evidence of any physical harm or mental cruelty by the appellant against the deceased - Appellant therefore acquitted.

The appellant had two wives. The second wife of the appellant wrote a letter dated 26.03.1992 to the police

station complaining that the appellant's family was living on her salary and the appellant had started torturing her to a limit no longer tolerable by her and she was also not given meals and that the appellant was threatening to kill her and for all this the appellant and his first wife and his other family members were involved. The next day, the appellant's second wife jumped into a well and died.

In view of the allegations made by the deceased in her letter dated 26.03.1992 to the police station, FIR was registered under Sections 498A and 306 IPC. The trial court acquitted the first wife of the appellant, but convicted the appellant under Sections 498A and 306, IPC. In appeal, the High Court acquitted the appellant from the charge under Section 306, IPC, but maintained the conviction under Section 498A, IPC, and therefore the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. It is clear from the language of Section 498A, IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under Section 498A defines "cruelty" for the purpose of Section 498A to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand. [Para 10] [146-C-E]

1.2. The first limb of clause (a) of the Explanation of Section 498A, IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commi

liable for the offence of abetment of suicide under Section 306, IPC, the High Court has given a clear finding in the impugned judgment that the conviction of the appellant under Section 306, IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under Section 306, IPC. This part of the finding has not been challenged by the State in appeal before the Supreme Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any wilful conduct which was of such a nature as is likely to drive the deceased to commit suicide. [Para 11] [146-E-H]

1.3. The second limb of clause (a) of the Explanation of Section 498A, IPC, states that cruelty means any illful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under Section 498A, IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under Section 498A, IPC. [Para 12] [147-A-C]

1.4. The finding of the High Court that permitting the first wife to enter the house of deceased with new born child amounts to a cruel act is erroneous as such act cannot amount to cruelty within the meaning of second limb of clause (a) of the Explanation under Section 498-A, IPC. However, the High Court, relying on the letter written by the deceased to the Police Station on 26.03.1992 (Ext.10), has also come to a finding that the appellant had starved the deceased of food when she was pregnant by spending the salary earned by the deceased on his own family and had also subjected the deceased to other acts of mental cruelty. [Para 13] [148-F-H]

1.5. The letter written by the deceased on 26.03.1992 could be relevant only under Section 32(1) of the Indian Evidence Act, 1872, which provides that a statement, written or verbal, of relevant facts made by a person who is dead, is relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. The High Court in the present case has already held that the appellant was not guilty of abetting the suicide of the deceased and was, therefore, not guilty of the offence under Section 306, IPC. As the cause of the death of the deceased is no more in question in the present case, the statements made by the deceased in the letter dated 26.03.1992 to the Police Station cannot be taken to be proof of cruel acts committed by the appellant for the purpose of holding him guilty under Section 498A, IPC. [Para 14] [149-B-E]

1.6. In the present case, except Ext.10, the letter written by the deceased to the Police Station on 26.03.1992, no other witness has spoken about the appellant having starved the deceased of food and having committed acts of mental cruelty to the deceased. On the other hand, in view of the evidence of the deceased's mother (PW-3) in her cross-examination, the High Court could not have come to the conclusion that the deceased was subjected to financial exploitation and starving and mental cruelty by the appellant. There is no evidence of any physical harm having been caused by the appellant to the deceased nor any acts of mental cruelty committed by him. Hence, the appellant cannot be held guilty of any cruelty within the meaning of clause (a) of the Explanation under Section 498A, IPC. The appellant is therefore acquitted of the charge under Section 498A, IPC. [Paras 16, 17, 18] [150-G; 151-B-D]

Inderpal v. State of M.P. **(2001) 10**

State of West Bengal v. Orilal Jaiswal & Anr. **(1994) 1 SCC 73;** *Manju Ram Kalita v. State of Assam* **(2009) 13 SCC 330: 2009 (9) SCR 902 - referred to.**

Case Law Reference:

(1994) 1 SCC 73	**referred to**	**Para 7, 8, 17**
2009 (9) SCR 902	**referred to**	**Para 7**
(2001) 10 SCC 736	**relied on**	**Para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1567 of 2007.

From the Judgment and Order dated 13.09.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 294 of 1994.

Aishwarya Bhati, Gp. Cap. Karan Singh Bhati, Dr. Prikhshayat Singh, Sanjoli Mittal, Pawan Kr. Saini for the Appellant.

Pinky Behera, Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment and order dated 13.09.2007 of the Gujarat High Court in Criminal Appeal No.294 of 1994.

FACTS

2. The facts very briefly are that the appellant was married to Laxmiben in 1980. The appellant, who was a teacher, used to travel in a bus along with Amriben, who was also a teacher, for their work in their respective schools located at a distance of 2 kms. from each other. The appellant and Amriben fell in love and got married in 1990. A daughter was born to Amriben

in 1991. The appellant, Laxmiben and Amriben were living together in different portions of one house of the appellant in village Dhuleta Palla. On 26.03.1992, a letter written by Amriben was received in Shamlaji Police Station. In this letter, Amriben alleged inter alia that the appellant was more interested in money and not in love and he had threatened and kidnapped her, although he had a wife and three children and the appellant had cheated her and persuaded her to have civil marriage on 21.08.1990. She further alleged in the letter that after marriage the appellant's family was living on her salary and the appellant had started torturing her to a limit which was no longer tolerable by her and she was also not given meals and the appellant was threatening to kill her and for all this the appellant and his first wife Laxmiben and his other family members were involved. On 26.03.1992 in the afternoon, the appellant came to the school of Amriben and enquired from the Principal of the school and the teacher of Amriben as to whether Amriben had made a complaint to the Police Station. That evening, the appellant who usually took Amriben back from her school instead requested the Principal of her school, Ms. Timothibhai, to take seat on the scooter with him and as a result Amriben had to walk along with Lilavatiben, who was holding her little daughter, to the bus stand. During the night of 26.03.1992, the appellant slept with Laxmiben while Amriben slept with her new born daughter in another room of the house. On 27.03.1992, early in the morning, the appellant and Laxmiben heard the little daughter of Amriben crying and they found that Amriben had jumped into the well and had died.

3. A post mortem on the dead body of Amriben (for short 'the deceased') was conducted on 28.03.1992 at 2.30 p.m. and the cause of the death was found to be drowning. Initially, on the report of the appellant, the Shamlaji Police Station registered an accidental death case under Section 174 of the Criminal Procedure Code, (for short 'the Cr.P.C.'). Subsequently, however, on 03.04.1992 an FIR was registered by Shamlaji Police Station under Sect of

the Indian Penal Code (for short 'the IPC') in view of the allegations made by the deceased in her letter dated 26.03.1992 to the police station. Investigation was carried out and a charge-sheet was filed against the appellant and Laxmiben under Sections 498A and 306, IPC.

4. At the trial, amongst other witnesses examined on behalf of the prosecution, Ms. Timothibhai, Principal of the school, was examined as PW-1, the doctor who carried out the post mortem was examined as PW-2, the mother of the deceased was examined as PW-3, Lilavatiben, co-teacher of deceased was examined as PW-4 and the Investigating Officer was examined as PW-10. The appellant also examined various witnesses in his defence. The trial court by its judgment dated 10.02.1994 in Sessions Case No.59/92 acquitted Laxmiben, but convicted the appellant under Sections 498A and 306, IPC, and sentenced him to simple imprisonment for one year and two years for the two offences respectively and also imposed a fine of Rs.100/- for each of the offences. Aggrieved, the appellant filed criminal appeal before the High Court, and by the impugned judgment, the High Court acquitted the appellant from the charge under Section 306, IPC, but maintained the conviction and sentence on the appellant under Section 498A, IPC. Aggrieved, the appellant has filed this appeal.

Contentions of the learned Counsel for the parties:

5. Learned counsel for the appellant, Ms. Aishwarya Bhati, submitted that in the impugned judgment, the High Court found the appellant to be guilty of the offence under Section 498A, IPC, because of some conduct or acts of the appellant of which the deceased has complained of in her letter to the Police Station on 26.03.1992. She submitted that the High Court held that the acts or conduct of the appellant amounted to cruelty for which the appellant was liable for the offence under Section 498A, IPC, but did not amount to abetment of suicide within the meaning of Section 306, IPC. She submitted that the statements of the deceased in the letter of the deceased to the

Police Station (Ext.10) were not proof of the acts or conduct of the appellant in the letter and in any case these acts or conduct of the appellant did not amount to cruelty within the meaning of clauses (a) or (b) of the Explanation under Section 498A, IPC.

6. Ms. Bhati submitted that the evidence of PW-3, the mother of the deceased, would show that when the deceased was carrying the child, PW-3 had been to see the deceased and she did not find that the deceased had any food problem. She also referred to the evidence of PW-4 to show that the appellant's conduct was not such as to amount to cruelty or harassment within the meaning of clauses (a) or (b) of the Explanation of Section 498A, IPC. She submitted that the post mortem report (Ext.15), on the other hand, would show that the deceased was well-nourished and was well-built and did not suggest that she was starved of any food.

7. Ms. Bhati cited the decision of this Court in *State of West Bengal v. Orilal Jaiswal & Anr.* [(1994) 1 SCC 73] in which it has been held that the charges made against an accused under Section 498A, IPC, must be proved beyond all reasonable doubt and that the requirement of proof is not satisfied by surmises and conjectures. She also cited the decision of this Court in *Manju Ram Kalita v. State of Assam* [(2009) 13 SCC 330] wherein it has been held that for holding an accused guilty under Section 498A, IPC, it has to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time to the lodging of the complaint and petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498A, IPC, though mental torture to the extent that it becomes unbearable may be termed as cruelty. She vehemently submitted that in this case the prosecution has not proved beyond reasonable doubt that the appellant was in any way guilty of any act or conduct which is of the nature described in clauses (a) and (b) of Section 498A, IPC, so as to amount to cruelty within the meaning of this Sect

appellant is entitled to be acquitted by this Court of the charge under Section 498A, IPC.

8. Ms. Pinky Behera, learned counsel appearing for the respondent-State, on the other hand, relied on Ext.10, which is the letter written by Amriben to Shamlaji Police Station on 26.03.1992 to the Police Station and submitted that there was sufficient evidence in Ext.10 to show that the appellant had treated the deceased with cruelty within the meaning of Section 498A, IPC. She also relied on the findings of the High Court in paragraph 15 of the impugned judgment in which the High Court has found the appellant guilty of the offence punishable under Section 498A, IPC. She vehemently argued that even though the High Court has found that the appellant was not guilty of abetment of suicide within the meaning of Section 306, IPC, the appellant can still be held liable for the offence under Section 498A, IPC, if he had committed acts of cruelty towards the deceased. In support of this contention, she relied on the decision of this Court in *West Bengal v. Orilal Jaiswal & Anr.* (supra).

Findings of the Court:

9. Section 498A, IPC, under which the appellant's conviction has been maintained by the High Court is extracted hereinbelow:

> **"498A. Husband or relative of husband of a woman subjecting her to cruelty.**-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation.- For the purposes of this section, "cruelty" means-
>
> (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

10. It will be clear from the language of Section 498A, IPC, that if a husband subjects his wife to cruelty, he shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The Explanation under Section 498A defines "cruelty" for the purpose of Section 498A to mean any of the acts mentioned in clause (a) or clause (b). In this case, clause (b) is not attracted as there was no harassment by the husband with a view to coercing her to meet any unlawful demand for any property or valuable security or on account of failure by her to meet such demand.

11. The first limb of clause (a) of the Explanation of Section 498A, IPC, states that "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. In the present case, although the trial court found the appellant guilty of conduct which had driven the deceased to commit suicide and hence liable for the offence of abetment of suicide under Section 306, IPC, the High Court has given a clear finding in paragraph 13 of the impugned judgment that the conviction of the appellant under Section 306, IPC, cannot be sustained in the eye of law and the appellant deserves to be acquitted of the charge of abetment of suicide under Section 306, IPC. This part of the finding has not been challenged by the State in appeal before this Court and has, therefore, become final. Thus, the appellant cannot be held guilty of any wilful conduct which was of such a nature as is likely to drive the deceased to commit suicide.

12. The second limb of clause (a) of the Explanation of Section 498A, IPC, states that cruelty means any wilful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. In the present case, the High Court has recorded findings against the appellant to hold him guilty of the offence under Section 498A, IPC, presumably for "cruelty" which falls within the second limb of clause (a) of the Explanation under Section 498A, IPC. The relevant findings of the High Court in paragraph 15 of the impugned judgment are extracted hereunder:

> "As discussed earlier, permitting to enter his first wife in the house of deceased Amariben with new born child, is an act of the appellant - accused, which can be said to be a cruel act. The document Exhibit 10 indicates that she was financially exploited and the demand of money were made by the appellant - accused frequently. She has stated that on account of this, she was falling in starving. It is not in evidence that this Court can notice on one fact based on biological reasons assigned that the pregnant lady or lady, who has given birth to child, need more food, as such women are feeling more hungry then other normal women. She was facing very much financial problem and there should be possibility to go into depression and the present appellant - accused was the responsible person for creating this situation. The deceased was dropped woman, but self-respect is privilege of each individuals. The accused depended on the income of deceased Amariben after performing second marriage with her and was under legal as well as moral obligation to see that she may be treated well and may not be felt to insult or ignore. It is settled position that the cruelty includes mental cruelty, physical marks falls over the body are not required to be proved by the prosecution. The date of the application received by the police is 26.3.1992 and the evidence of PW-1 also show that on 26.3.1992 the appellant-accused had come to the school to inquire whether the deceased

> Amariben had made an application to the Principal of school or not. He must have been frightened that the deceased may complain genuinely to the school authority and Government and he may lose the job or at least, may invite some departmental action, so anxiety of the appellant-accused is found, which is exposed in the deposition of PW-1. When the deceased Amariben felt in creating apprehension in the mind that she may be killed by her husband is sufficient to conclude that the wife must have been treated with cruelty either mentally or physically or both types of cruelty and that too frequently made otherwise the defence ought to have prove that she was a patient of depression. No such suggestive evidence made to the school teacher or other witness including mother. Meaning thereby, there is sufficient evidence to show that the deceased was treated with cruelty and that had led her to frustration and thereafter, depression, this is not an act of commission of a lady with child. She had decided to jump into the well leaving the child and accused behind, therefore, the act of the suicide appears to be intentional act to get rid of the frequent insult, ignorance and exploitation. The learned Trial Judge has rightly linked the accused with the offence punishable under Section 498A. There is no error in evaluating the evidence so far as cruelty is concerned.

13. Obviously, the finding of the High Court that permitting the first wife to enter the house of deceased Amriben with new born child amounts to a cruel act is erroneous as such act cannot amount to cruelty within the meaning of second limb of clause (a) of the Explanation under Section 498-A, IPC. However, the High Court, relying on the letter written by the deceased to the Police Station on 26.03.1992 (Ext.10), has also come to a finding that the appellant had starved the deceased of food when she was pregnant by spending the salary earned by the deceased on his own family and had also subjected the deceased to other acts o

14. The question that we have, therefore, to decide is whether the Court could have arrived at this finding that the appellant has starved the deceased and committed various acts of mental cruelty towards the deceased only on the basis of the contents of the letter dated 26.03.1992 written by the deceased to the Police Station. The letter written by the deceased on 26.03.1992 could be relevant only under Section 32(1) of the Indian Evidence Act, 1872, which provides that a statement, written or verbal, of relevant facts made by a person who is dead, is relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. The High Court in the present case has already held that the appellant was not guilty of abetting the suicide of the deceased and was, therefore, not guilty of the offence under Section 306, IPC. As the cause of the death of the deceased is no more in question in the present case, the statements made by the deceased in the letter dated 26.03.1992 to the Police Station cannot be taken to be proof of cruel acts committed by the appellant for the purpose of holding him guilty under Section 498A, IPC.

15. For taking this view, we are supported by the decision of this Court in *Inderpal v. State of M.P.* [(2001) 10 SCC 736]. In this case, Inderpal was charged and tried for the offence under Section 306, IPC, and convicted by the trial court for the said offence of abetment of suicide. In appeal filed by Inderpal, the High Court found that the offence under Section 306, IPC, was not made out as it could not be held that death of the deceased was due to commission of suicide, but the High Court held the appellant guilty of the offence under Section 498A, IPC. This finding of the High Court was based on the evidence of the father, mother, sister and another relative of the deceased who deposed on the basis of inter alia the two letters (Exhibits P-7 and P-8) written by the deceased Damyanti that Inderpal, her husband, had subjected her to beating. This Court found that apart from the statement attributed to the deceased,

none of the witnesses had spoken of anything which they had seen directly and the question that this Court had to decide was whether the statement attributed to the deceased could be used as evidence including the contents of Exts.P-7 and P-8 and this Court held that the contents of Exts. P-7 and P-8 written by the deceased could not be treated as proof of the acts of cruelty by Inderpal for the purpose of offence under Section 498A, IPC. The reasons given by this Court in paragraph 7 of the judgment as reported in the SCC are as follows:

> "7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned.

16. In the present case also, except Ext.10, the letter written by the deceased to the Police Station on 26.03.1992, no other witness has spoken about the appellant having starved the deceased of food and having committed acts of mental cruelty to the deceased. On the other hand, the mother of the deceased (PW-3) has stated in her cross-examination:

> "I have not recorded in my statement before police that Amri was giving her salary to her [illegible]e

that when I went to see Amri, at that time, my daughter was crying she had food problem, I say it is false."

17. This being the evidence of the mother of the deceased, the High Court could not have come to the conclusion that the deceased was subjected to financial exploitation and starving and mental cruelty by the appellant. Unlike the case of *State of West Bengal v. Orilal Jaiswal & Anr.* (supra) cited by Ms. Behera in which there was evidence of the husband coming home drunk and abusing and assaulting the deceased wife, in this case there is no evidence of any physical harm having been caused by the appellant to the deceased nor any acts of mental cruelty committed by him. Hence, the appellant cannot be held guilty of any cruelty within the meaning of clause (a) of the Explanation under Section 498A, IPC.

18. In the result, we set aside the impugned judgment of the High Court and acquit the appellant of the charge under Section 498A, IPC. Since the appellant is on bail, his bail bonds be discharged.

B.B.B. Appeal allowed.

SMT. T.GAYATRI DEVI
v.
DR.TALLEPANENI SREEKANTH
(Civil Appeal No. 6721 of 2013)

AUGUST 5, 2013

[GYAN SUDHA MISRA AND PINAKI CHANDRA GHOSE, JJ.]

Transfer Petition - Petition of appellant-wife for transfer of divorce proceeding instituted by respondent-husband pending trial in Family Court, Hyderabad to Family Court at Kakinada - Rejected by High Court - Propriety - Held: Not proper - Approach of the High Court and the reasons assigned by it clearly unsustainable - High Court lost sight of the fact that respondent-husband on the one hand has filed a divorce proceeding against appellant-wife and further expects the same to be tried at a place of his choice, which is Hyderabad - High Court refused to transfer it to the place where the wife is working on the ground that she is not an indigent lady and is capable of contesting the suit by undertaking journey from Kakinada to Hyderabad - It completely overlooked the implication of this view as on the one hand the appellant-wife would be expected to contest the divorce proceeding to her detriment and at the same time would have to undertake the journey from Kakinada to Hyderabad which is bound to affect discharge of her professional duties where she is working as apart from the journey she would also have to seek leave which surely would affect her work performance further and put her job at risk - Considering the implication of the aforesaid situation and circumstance, the view taken by the High Court refusing to transfer the case is fit to be struck down as illegal, devoid of practical fallout and wisdom - Divorce proceeding along with its records permitted to be transferred from the Family Court, Hyderabad to the Family Court, Kakinada.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6721 of 2013.

From the Judgment and Order dated 23.07.2012 of the High Court of Judicature A.P. at Hyderabad in Transfer Civil Misc. Petition No. 89 of 2012.

M. Vijaya Bhaskar for the Appellant.

Aniruddha P. Mayee for the Respondent.

The following order of the Court was delivered

O R D E R

1. Leave granted.

2. This appeal has been filed challenging the order passed by the High Court of Judicature of Andhra Pradesh at Hyderabad dated 23.07.2012 by which the learned Single Judge was pleased to reject the petition filed by the appellant for transfer of a divorce proceeding instituted by the respondent-husband bearing O.P. No. 1256/2011 which is pending trial in the Family Court, Hyderabad to the Family Court at Kakinada.

3. The High Court appears to have rejected the petition essentially on the ground that the appellant-wife is not a student depending upon her parents and is stated to be employed in a private sector as Company Secretary and, therefore, the High Court held that it was not a case of a destitute woman depending on the charity of her parents and taking shelter in her parental house so as to allow the transfer of the divorce proceeding on the ground that she could not afford the expenditure of travel and accommodation at Hyderabad.

4. We find the approach of the High Court and the reasons assigned clearly unsustainable as the High Court appears to have lost sight of the fact that the respondent-husband on the

one hand has filed a divorce proceeding against the appellant-wife and further expects the same to be tried at a place of his choice, which is Hyderabad. The High Court refused to transfer it to the place where the wife is working on the ground that the petitioner-wife is not an indigent lady and she is capable of contesting the suit by undertaking journey from Kakinada to Hyderabad. The learned Single Judge has completely overlooked the implication of this view as on the one hand the appellant-wife would be expected to contest the divorce proceeding to her detriment and at the same time would have to undertake the journey from Kakinada to Hyderabad which is bound to affect discharge of her professional duties where she is working as apart from the journey she would also have to seek leave which surely would affect her performance in the company further and put her job at risk. The import of the order clearly is that on the one hand the appellant-wife should live alone, maintain herself by living at her parents place and on the top of it give more attention to contest the divorce proceeding rather than looking to her job on which she is surviving in absence of any support from her husband who not only seeks a decree of divorce but also at convenience by choosing a place of his choice to secure a decree of divorce.

5. Considering the implication of the aforesaid situation and circumstance, the view taken by the High Court refusing to transfer the case is fit to be struck down as illegal, devoid of practical fallout and wisdom.

6. We, therefore, set aside the order passed by the High Court, allow this appeal and permit the transfer of the divorce proceeding along with its records bearing O.P. No. 1256 of 2011 from the Family Court, Hyderabad to the Family Court, Kakinada.

B.B.B. Appeal allowed.

THE SECRETARY, DEPARTMENT OF ATOMIC ENERGY & OTHERS.

v.

M.K. BAWANE

(Civil Appeal No. 6389 of 2013)

AUGUST 7, 2013

[ANIL R. DAVE AND A.K. SIKRI, JJ.]

Service Law - Incentive increment - To re-employed persons - For undergoing sterilization operation - Respondent re-employed as a Male Nurse - Entitlement of respondent - Held: Not entitled - Policy of the Government was to the effect that a re-employed person was not entitled to such incentive increment, if he or his spouse had undergone sterilization operation prior to his re-employment - Tribunal justified in rejecting the claim of respondent in view of such policy, since sterilization operation was undertaken by wife of respondent, prior to his re-employment - Policy decision taken by the Government was quite reasonable and had nexus with the purpose to be achieved - High Court ought not to have become lenient by allowing the writ petition of respondent and awarding incentive increment to him in violation of the Government policy - G.I., Department of Posts letter No.6-2/ 1999 (Mis.)-PAP, dated 18.9.2002.

Government Policy - Interference with - Scope - Held: Normally the courts should not interfere with the just policies framed by the Government.

Government Policy - Implementation - Duty of the Court - Held: Courts not to take lenient approach in the matter of implementation of Government policies.

Precedent - Mistake committed in one case cannot be treated as a precedent.

The respondent-employee was re-employed as a Male Nurse at Nuclear Fuel Complex, Hyderabad. According to the case of the respondent-employee, prior to his re-employment, a sterilization operation was undertaken by his wife and therefore, as per the policy of the appellant-organization, he was entitled to one incentive increment for promoting small family norms. The respondent was, however, not given the increment and therefore, he approached the Central Administrative Tribunal. The Tribunal rejected his application relying upon the policy of the Government to the effect that a re-employed person, if he or his spouse had undergone sterilization operation prior to his re-employment, was not entitled to an increment by way of incentive. The respondent-employee filed Writ Petition challenging the validity of the order of the Tribunal. The petition was allowed and the High Court directed the appellants to give special incentive increment to the respondent-employee. The High Court observed in its judgment that in some other cases, benefit of incentive increment was given even after re-employment and therefore, the case of respondent-employee ought to have been considered favorably by the employer. For some special reason in an order passed by the Tribunal in the case of one 'V', though re-employed, incentive increment was granted and therefore, the High Court directed to give the same benefit to the respondent-employee in terms of parity. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. On perusal of the order passed by the Tribunal in the case of 'V, it is found that there was some special reason for which 'V' was granted the benefit of incentive increment, though the Tribunal has not given the special reason for which that benefit was given to the said retired employee. It is not know[illegible]d

case, which was decided on 20.12.2004, 'V' had undergone sterilization before or after 18.9.2002, the date on which the policy decision was taken. Be that as it may, a mistake, if committed in one case cannot be treated as a precedent. [Para 12] [160-E-F]

2. The Tribunal while rejecting the application of the respondent-employee had clearly referred to the policy decision taken on 18.9.2002. The said decision is contained in G.I., Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002. The Tribunal was absolutely justified in rejecting the application of the respondent-employee in view of the aforestated policy of the Government. [Paras 13, 14] [160-G-H; 161-G]

3. A small effort made by the Government to control the size of the family members of its employees would also go in vain if courts would take such lenient approach in the matter of implementation of the Government policies. Normally the courts should not interfere with the just policies framed by the Government. The policy decision taken by the Government dated 18.9.2002, is quite reasonable and it has nexus with the purpose which is to be achieved. In the circumstances, the High Court ought not to have become lenient by allowing the petition and by awarding incentive increment to the respondent-employee in violation of the Government policy. The High Court committed an error while allowing the petition and giving direction with regard to giving incentive increment to the respondent-employee and therefore, the said direction is quashed and set aside. [Paras 15, 16] [161-H; 162-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6389 of 2013.

From the Judgment and Order dated 07.09.2010 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 24132 of 2009.

Dr. Sarbjit Sharma, Arpita, Shreekant N. Terdal for the Appellants.

Rakesh Kumar Khanna, ASG, Surya Kant for the Respondents.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Delay condoned.

2. Leave granted.

3. Though served and sufficient opportunities granted, none has appeared for the respondent-employee and therefore, the appeal is taken up for hearing.

4. The facts giving rise to the appeal, in a nutshell, are as under:

The respondent-employee was re-employed as a Male Nurse at Nuclear Fuel Complex, Hyderabad. According to the case of the respondent-employee, prior to his re-employment, a sterilization operation was undertaken by his wife and therefore, as per the policy of the appellant-organization, he was entitled to one incentive increment for promoting small family norms. In spite of his repeated requests he was not given the increment and therefore, he had approached the Central Administrative Tribunal, Hyderabad by filing O.A.No.254 of 2009. The Tribunal rejected his application relying upon the policy of the Government to the effect that a re-employed person, if he or his spouse had undergone sterilization operation prior to his re-employment, was not entitled to an increment by way of incentive.

5. The Tribunal did not grant the application in view of the policy decision of the Government to the effect that the special incentive increment was not to be given to a person who/whose spouse had undergone the sterilization operation before his re-employment. The appellant-organizat e

reason and conveyed the same to the respondent-employee under letter dated 20.1.2007 for which the respondent-employee was not given the incentive. The said reason, as recorded by the Tribunal, is reproduced hereinbelow:

> "Incentive increment is not admissible to re-employed pensioners who or whose spouse had undergone sterilization operation before the date of re-employment. Re-employment is a fresh employment wherein incentive increment for earlier employment cannot be continued."

6. Not being satisfied with the rejection of the application, the respondent-employee had filed Writ Petition No.24132 of 2009 in the High Court of Andhra Pradesh challenging the validity of the order of the Tribunal. The petition was allowed and the High Court has directed the appellants to give special incentive increment to the respondent-employee.

7. Being aggrieved by the aforestated judgment delivered by the High Court, this appeal has been filed.

8. Before dealing with the facts of the case, let us see the circumstances in which the Government had framed a policy with regard to giving special incentive increment to its employees for undergoing sterilization operation.

9. It is a known fact that our country is having a severe problem with regard to explosion of population and so as to curb the population, the Government had framed certain policies. The Government had made an effort to give incentive to those who had tried to control the size of their families and as per one of the policies, with which we are concerned at present, an employee or his/her spouse undergoing sterilization operation, was to be given one incentive increment. It was, however, clarified under policy dated 18.9.2002 that the re-employed persons were not entitled to incentive, if the sterilization operation was undergone prior to the re-employment.

10. Assailing the impugned judgment of the High Court, the learned Additional Solicitor General had submitted that the High Court committed a mistake by giving a direction to the appellant-organization for giving incentive increment to the respondent-employee in spite of the fact that the aforestated policy had been duly considered by the Tribunal while rejecting the application of the respondent-employee.

11. The High Court, while allowing the petition has observed in its judgment that in some other cases benefit of incentive increment was given even after re-employment and therefore, the case of the respondent-employee ought to have been considered favorably by the employer. It appears that for some special reason in an order passed by the Tribunal in O.A.No.142 of 2004, in the case of Sri Vijay Kumar, though re-employed, incentive increment was granted and therefore, the High Court directed to give the same benefit to the respondent-employee in terms of parity.

12. Upon perusal of the order passed by the Tribunal, we find that there was some special reason for which the above named Sri Vijay Kumar was granted the benefit under Order dated 20th December, 2004, though the Tribunal has not given the special reason for which that benefit was given to the said retired employee. We do not know whether in the said case, which was decided on 20.12.2004, Sri Vijay Kumar had undergone sterilization before or after 18.9.2002, the date on which the policy decision was taken. Be that as it may, a mistake, if committed in one case cannot be treated as a precedent.

13. The Tribunal while rejecting the application of the respondent-employee had clearly referred to the policy decision taken on 18.9.2002. The said decision contained in G.I., Department of Posts letter No.6-2/1999 (Mis.)-PAP, dated 18.9.2002 as recorded by the Tribunal is reproduced below:

"incentive not admissible to the re-employed person who had sterilization operation prior to re-employment.

1. This is regarding grant of special increment for promoting small family norms to ex-servicemen who are re-employed in Government.

2. The matter was taken up with Nodal Ministry, i.e., Ministry of Finance, Department of Expenditure, based on a reference received from Karnataka Postal Circle.

3. It has been clarified by Ministry of Finance vide I.P. No.587/E-III (A)/2002, dated 2.9.2002 that incentive for adopting small family norms is admissible during service life of eligible Government servants. Once an employee demits office/retire from/ceases to be in the Government service on whatsoever consideration, his/her service life ends, and the incentive for adoption of small family norms also comes to an end. In the case of re-employment which is in the nature of fresh employment/ appointment, the incentive admissible in the past service before re-employment cannot automatically be continued. Consequently, re-employed persons are not entitled to incentive, if the sterilization operation on this account was undergone prior to re-employment.

4. Any such cases pending in your circle may be disposed of based on this clarification given by Ministry of Finance."

14. In our opinion, the Tribunal was absolutely justified in rejecting the application of the respondent-employee in view of the aforestated policy of the Government.

15. No harsh steps are taken by the Government to control the population which is increasing by leaps and bound. A small

effort made by the Government to control the size of the family members of its employees would also go in vain if courts would take such lenient approach in the matter of implementation of the Government policies. We are of the view that normally the courts should not interfere with the just policies framed by the Government. In our opinion, the policy decision taken by the Government which is reproduced hereinabove dated 18.9.2002, is quite reasonable and it has nexus with the purpose which is to be achieved. In the circumstances, the High Court ought not to have become lenient by allowing the petition and by awarding incentive increment to the respondent-employee in violation of the Government policy.

16. For the reasons recorded hereinabove, we are of the view that the High Court committed an error while allowing the petition and giving direction with regard to giving incentive increment to the respondent-employee and therefore, we quash and set aside the said direction. The appeal is allowed with no order as to costs.

B.B.B. Appeal allowed.

LALU PRASAD @ LALU PRASAD YADAV
v.
STATE OF JHARKHAND
(Criminal Appeal No.1166 of 2013)

AUGUST 13, 2013

[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI AND RANJAN GOGOI, JJ.]

Criminal trial - Fodder scam - Prosecution initiated in 1997 - After prolonged trial, the matter reached final stage, namely, pronouncement of the decision - Petition filed by appellant at this stage for transfer of the case from the Court of Special Judge IV, CBI (AHD) to any other court of competent jurisdiction on the apprehension that a fair and impartial trial cannot be done by the aforesaid court - Dismissed by High Court - Justification - Held: Claim of appellant for transfer of the entire case from the file of the Special Judge to any other competent court cannot be entertained - Merely because some of the distantly related members were in the midst of the present Chief Minister, it cannot be presumed that the Presiding Judge would conclude against the appellant - If appellant really had any apprehension in his mind, this could have been raised at the earliest point of time and not after conclusion of evidence and arguments, particularly, on the eve of pronouncement of judgment - Objection relating to bias on the eve of passing orders, cannot be entertained - In a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour - Also, procedure adopted by the Special Judge cannot be faulted with, except one aspect which was also noticed by the High Court i.e. intimating the parties in the midst of the arguments and compelling them to file written arguments on or before a particular date - Except the said recourse, which is not in consonance with the scheme of the

Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the Judge cannot be faulted with - Inconvenience, if any, can be set at right by granting further time for arguments - Further time of 5 days granted for the prosecution and 15 days for all the accused including the appellant - Transfer petition.

Judiciary - Independence of - Requirement of upholding the dignity of high office with full sense of responsibility - Held: Independence of judiciary is basic feature of the Constitution - Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State - Public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.

Administration of Justice - Held: In administering justice, Judges should be able to act impartially, objectively and without any bias.

A sum of Rs.35.66 crores was alleged to have been illegally withdrawn from the Treasury of Chaibasa by the officials of Animal Husbandry Department, Government of Bihar in connivance with the politicians and suppliers in the year 1994-95 which culminated into the registration of a FIR being R.C. No. 20(A)/1996 dated 27.03.1996 under Sections 409, 420, 467, 468, 471, 477, 477A, 201, 511 read with Section 120B of IPC and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 against a number of accused persons including the appellant.

After investigation, a charge sheet was submitted in the Court of the Special Judge IV, CBI (AHD), Ranchi in the year 1997 and the charges wer[illegible]r

2000 in respect of various offences punishable under the IPC and the PC Act. The prosecution argued its case against the appellant from 22.04.2013 to 15.05.2013 and thereafter the case was posted on 16.05.2013 for arguments to be advanced on behalf of the appellant on day-to-day basis which continued till 31.05.2013. On 10.06.2013, an order was passed by the Special CBI Judge stating that on the next date, if the arguments would not be advanced on behalf of the appellant, the case will be closed. Thereupon, the arguments were advanced for 5 more days till 18.06.2013. On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered on or before 15.07.2013.

At this stage, Criminal Misc. Petition was filed before the High Court by the appellant for the transfer of the case from the Court of Special Judge IV, CBI (AHD) to any other court of competent jurisdiction on the apprehension that a fair and impartial trial cannot be done by the aforesaid court. The High Court dismissed the petition which resulted in the present appeal by way of special leave.

The appellant made two fold submissions:- 1) that conduct of the trial Judge made it obvious that fair opportunity was not being given to the appellant to defend himself and there was every likelihood that he would not get justice, hence, it was a fit case for transfer; and (ii)that the Presiding Judge was related to a political rival of the appellant who was also a Minister in the Government of Bihar; and in such circumstance, because of the relationship and closeness, the appellant may not get fair justice at the hands of the Presiding Judge.

Dismissing the appeal, the Court

HELD: 1.1. On going through all the details including the Order Sheet of the Fodder Scam case, it is clear that the procedure adopted by the Special Judge cannot be faulted with, except one aspect which was also noticed by the High Court intimating the parties in the midst of the arguments and compelling them to file written arguments on or before 01.07.2013 and judgment to be pronounced on 15.07.2013. Except the said recourse, which is not in consonance with the scheme of the Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the Judge cannot be faulted with. In view of the same, this Court is inclined to provide further time for the accused as well as prosecution to complete their arguments, if they so desire. [Para 8] [172-E-H]

1.2. Merely because some of the distantly related members were in the midst of the present Chief Minister, it cannot be presumed that the Presiding Judge would conclude against the appellant. Admittedly, the above criminal proceedings were heard by the very same Judge from November, 2011. After examination of witnesses and after hearing the arguments on both the sides, it is not clear how the appellant has such an apprehension at this stage. If the appellant really had any apprehension in his mind, this could have been raised at the earliest point of time and not after the conclusion of evidence and arguments, particularly, on the eve of pronouncement of judgment. In administering justice, Judges should be able to act impartially, objectively and without any bias. The only error which the Special Judge has committed is that after granting time for arguments, it abruptly issued a notice informing the parties that the written arguments are to be submitted on or before 01.07.2013 and the judgment would be deli

15.07.2013. Inconvenience, if any, can be set at right by granting further time for arguments. Accordingly, the claim of the appellant for transfer of the entire case from the file of the Special Judge to any other competent court cannot be entertained. The prosecution was initiated as early as in 1997 and after prolonged trial, the matter has reached final stage, namely, pronouncement of the decision. In a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour. [Para 10] [174-C-H; 175-A]

1.3. In the light of the entire factual scenario, particularly, the objection relating to bias which came to be raised at the fag end of the trial that is on the eve of passing orders, this Court is not inclined to entertain such objection. The Presiding Judge will take note of the grievance expressed and eliminate the apprehension of the appellant. It goes without saying that every litigant is entitled to fair justice. [Para 12] [175-D]

1.4. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent. [Para 13] [175-E-G]

1.5. There is no valid and acceptable reason for interference with the impugned order of the High Court. However, keeping in view the submissions made that arguments are still to be advanced, a further time of 5 days is granted for the prosecution and 15 days for all the accused including the appellant. After completion of the arguments as prescribed, the Special Judge shall pronounce the decision as early as possible, uninfluenced by any of the observations made by the High Court and this Court. [Paras 14] [176-A-B]

Manak Lal, Advocate vs. Dr. Prem Chand Singhvi and Ors. **AIR 1957 SC 425: 1957 SCR 575 - referred to.**

Case Law Reference:

1957 SCR 575	**referred to**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1166 of 2013.

From the Judgment and Order dated 01.07.2013 of the High Court of Jharkhand at Ranchi in Crl. M.P. No. 1619 of 2013.

Mohan Parasaran, S.G., Ram Jethmalani, P.H. Parekh, Shanti Bhushan, E.R. Kumar, Karan Kalia, Praanv Diesh, P.R. Mala, Galav Sharma, Ekansh Mishra (Parekh & Co.), D.L. Chidananda, Anupam Prasad, Rohit Sharma, B.V. Balaram Das, Rohit K. Singh, Gopal Singh, Kartik Seth, Manish Kumar for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 01.07.2013 passed by the High Court of Jharkhand at Ranchi in Criminal Misc. Petition No. 1619 of

2013 whereby the High Court dismissed the petition filed by the appellant herein for transferring the case being R.C. No. 20(A)/1996 from the Court of Special Judge-IV, CBI, (AHD), Ranchi to any other Court of competent jurisdiction.

3. Brief facts:

(a) This appeal relates to illegal withdrawal of a sum of Rs.35,66,42,086/- from the Treasury of Chaibasa by the officials of Animal Husbandry Department, Government of Bihar in connivance with the politicians and suppliers in the year 1994-95 which culminated into the registration of a First Information Report (FIR) being R.C. No. 20(A)/1996 dated 27.03.1996 under Sections 409, 420, 467, 468, 471, 477, 477A, 201, 511 read with Section 120B of the Indian Penal Code, 1860 (in short 'the IPC') and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') against a number of accused persons including the appellant herein.

(b) After investigation, a charge sheet was submitted in the Court of the Special Judge IV, CBI (AHD), Ranchi in the year 1997 and the charges were framed in the year 2000 in respect of various offences punishable under the IPC and the PC Act. The prosecution started its arguments and concluded on 10.12.2012 and the arguments advanced on behalf of 43 out of 45 accused persons got concluded on 25.02.2013. The prosecution argued its case against the appellant from 22.04.2013 to 15.05.2013 and, thereafter, the case was posted on 16.05.2013 for arguments on behalf of the appellant which continued till 31.05.2013. Considering the fact that the matter has been lingering on since 1997, the Court below passed an order dated 10.06.2013 that on the next date, if the arguments would not be advanced on behalf of the appellant, it shall be closed. Thereupon, the arguments were advanced till 18.06.2013. On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered

on or before 15.07.2013. At this stage, Criminal Misc. Petition No. 1619 of 2013 was filed before the High Court by the appellant for the transfer of the case from the Court of Special Judge IV, CBI (AHD) to any other court of competent jurisdiction on the apprehension that a fair and impartial trial cannot be done by the aforesaid court.

(c) The High Court, after considering the rival submissions and taking note of the fact that the case has reached the stage of delivering judgment, by order dated 01.07.2013, provided a further time of 10 days for conclusion of the arguments and dismissed the petition which resulted in the present appeal by way of special leave.

(d) On the day when the matter was posted for hearing, one Rajiv Ranjan Singh @ Lallan Singh, Member of the Lok Sabha from Munger Parliamentary Constituency in the State of Bihar, filed Criminal Misc. Petition No. 14939 of 2013 seeking intervention in the abovesaid appeal. It was also stated that he was one of the writ petitioners before the High Court of Patna in a writ petition filed in public interest which led to the unearthing of the fodder scam in the State of Bihar during the period 1977 to 1996. According to him, he has been fighting all along for a free and fair investigation of the case and expeditious conclusion of the trial so that the guilty are brought to book and public confidence in the judicial system is not shaken. It is also highlighted that due to various orders of the monitoring Bench of the High Court of Jharkhand, the matter has reached its concluding stage, hence, there is no bona fide and the claim of the appellant is devoid of any merit and deserves to be dismissed in the interest of justice.

(e) Serious objection was raised by the appellant and the respondent-State through its Investigation Officer-CBI about the role of the intervenor in a criminal trial.

4. Heard Mr. Ram Jethmalani, learned senior counsel for the appellant, Mr. Mohan Parasaran, le[illegible]al

for the respondent-CBI and Mr. Shanti Bhushan, learned senior counsel for the intervenor.

Submissions:

5. Mr. Ram Jethmalani, learned senior counsel for the appellant, at the foremost, submitted as under:-

(i) The conduct of the trial Judge gives a reasonable apprehension of not getting fair justice. In other words, according to him, from the conduct of the trial Judge, it is obvious that fair opportunity was not being given to the appellant to defend himself and there is every likelihood that he would not get justice, hence, it is a fit case for transfer; and

(ii) The younger sister of the Presiding Judge of the CBI, viz., Mrs. Minu Devi, is married to Mr. Jainendra Shahi, the cousin of Mr. P.K. Shahi, who, besides having appeared for the CBI, is a political rival of the appellant in the Public Interest Litigations and presently a Minister in the Government of Bihar. In such circumstance, according to Mr. Jethmalani, because of the relationship and closeness, the appellant may not get fair justice at the hands of the Presiding Judge.

6. On the other hand, Mr. Mohan Parasaran, learned Solicitor General appearing for the CBI, after adverting to the factual scenario, left the issue to the decision of this Court, however, he strongly pointed out about the maintainability of the application for intervention.

7. Mr. Shanti Bhushan, learned senior counsel for the intervenor, by placing the factual details starting from the taking of cognizance, filing of the charge sheet, various dates on which the evidence was led in by both the sides and the arguments advanced submitted that it is not a fit case for transfer at this juncture, particularly, when the Special Judge is going to pronounce the judgment shortly. He also submitted that the applicant has filed several petitions before the High Court as

well as in this Court highlighting various issues relating to 'fodder scam'.

Discussion:

8. With regard to the first submission relating to the apprehension in the mind of the appellant that he may not get fair and impartial trial, it is relevant to point out that cognizance of various offences punishable under the IPC and the PC Act was taken against the accused persons in the year 1997 and charges were framed against them in the year 2000. It is further seen that the prosecution took 13 years in examining the witnesses. The prosecution argued its case against the present appellant from 22.04.2013 to 15.05.2013 and thereafter the case was posted on 16.05.2013 for arguments to be advanced on behalf of the appellant on day-to-day basis which continued till 31.05.2013. It is the grievance of the appellant that on 10.06.2013, an order was passed by the Special Judge stating that on the next date, if the arguments would not be advanced on behalf of the appellant, the case will be closed. Thereupon, the arguments were advanced for 5 more days till 18.06.2013. On 20.06.2013, a notice was issued by the trial Judge informing all the parties that written arguments may be filed on or before 01.07.2013 and judgment is to be delivered on or before 15.07.2013. On going through all the details including the Order Sheet of the Fodder Scam case, we are of the view that the procedure adopted by the Special Judge cannot be faulted with except one aspect which was also noticed by the High Court intimating the parties in the midst of the arguments and compelling them to file written arguments on or before 01.07.2013 and judgment to be pronounced on 15.07.2013. Except the said recourse, which is not in consonance with the scheme of the Code, particularly, in a criminal trial, considering the magnitude of the case pending since 1997, the conduct of the Judge cannot be faulted with. In view of the same, this Court is inclined to provide further time for the accused as well as prosecution to complete their argument

9. Coming to the second apprehension about the closeness of the trial Judge with the person in power, it is pointed out that Mr. P.K. Shahi, Ex-Advocate General of the State of Bihar, presently a Minister in the Government of Bihar is a close relative of the trial Judge. While elaborating further, Mr. Ram Jethmalani submitted that the sister of the Presiding Judge, Mrs. Minu Devi, is married to Mr. Jainendra Shahi, grand son of Late Fulena Shahi, whose one of the brothers was Late Hari Shankar Shahi and Mr. P.K. Shahi happens to be the grand son of Late Hari Shankar Shahi and as such Jainendra Shahi, husband of the sister of trial Judge happens to be the cousin of Mr. P.K. Shahi, who on account of his defeat in a Parliamentary election at the hands of the candidate belonging to the appellant's party is quite anxious to settle the score by making his influence to get the appellant convicted so that there would be a political death of the appellant. With regard to the above aspect, Mr. Jethmalani heavily relied on a decision of this Court in *Manak Lal, Advocate, vs. Dr. Prem Chand Singhvi & Ors.,* AIR 1957 SC 425 and submitted that with regard to bias, proof of actual prejudice is not necessary. This Court, in paragraph 4 of the judgment, enunciated the following principles:

> "4…….It is well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done……."

10. In order to substantiate the contention relating to bias, namely, the Presiding Judge would be influenced by his brother-in-law or even by his sister or Mr. P.K. Shahi to go against the interest of the appellant, Mr. Ram Jethmalani, learned senior counsel, placed some photographs taken on 13.01.2013 during the visit of Hon'ble the Chief Minister of Bihar Shri Nitish Kumar to the ancestral house of Shri P.K. Shahi along with the entire Shahi family at House No. 147 Village Angota Block, Nautan P.S., District Sivan. By showing these photographs, it is argued that there is a reasonable apprehension of real likelihood of bias on the part of the Presiding Judge. Apart from the relationship, as mentioned by the appellant, we were also shown the genealogical table. In our opinion, merely because some of the distantly related members were in the midst of the present Chief Minister, it cannot be presumed that the Presiding Judge would conclude against the appellant. Admittedly, the above criminal proceedings were heard by the very same Judge from November, 2011. After examination of witnesses and after hearing the arguments on both the sides, it is not clear how the appellant has such an apprehension at this stage. If the appellant really had any apprehension in his mind, this could have been raised at the earliest point of time and not after the conclusion of evidence and arguments, particularly, on the eve of pronouncement of judgment. In administering justice, Judges should be able to act impartially, objectively and without any bias. The only thing which, according to us, is that the Special Judge has committed an error that after granting time for arguments, abruptly issued a notice informing the parties that the written arguments are to be submitted on or before 01.07.2013 and the judgment would be delivered on or before 15.07.2013. As observed earlier, inconvenience, if any, can be set at right by granting further time for arguments. Accordingly, the claim of the appellant for transfer of the entire case from the file of the Special Judge to any other competent court cannot be entertained. We have already highlighted that the prosecution was initiated as early a…er

prolonged trial, the matter has reached final stage, namely, pronouncement of the decision. In our view, in a matter of this nature, it is not at all desirable to shift the case to some other court at the last hour.

11. It is also brought to our notice that the case was being monitored by the High Court of Jharkhand at Ranchi by way of getting status/progress reports. We also noticed that the High Court at Ranchi, by order dated 17.06.2013, directed the trial Court to expeditiously proceed in the matter. In fact, the Court directed the trial Judge to submit a progress report by 06.08.2013.

12. In the light of the entire factual scenario, particularly, the objection relating to bias which came to be raised at the fag end of the trial that is on the eve of passing orders, as observed earlier, we are not inclined to entertain such objection. The Presiding Judge, in our view, will take note of the grievance expressed and eliminate the apprehension of the appellant. It goes without saying that every litigant is entitled to fair justice.

13. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.

14. In the light of what is stated above, we do not find any

valid and acceptable reason for interference with the impugned order of the High Court. However, keeping in view the submissions made that arguments are still to be advanced, we grant a further time of 5 days for the prosecution and 15 days for all the accused including the appellant herein. After completion of the arguments as prescribed, we direct the Special Judge to pronounce the decision as early as possible, uninfluenced by any of the observations made by the High Court and this Court.

15. The appeal is dismissed with the above direction. In view of the above conclusion, without expressing any opinion on the maintainability, the application for intervention is dismissed.

B.B.B. Appeal dismissed.

STATE OF JHARKHAND & ORS.
v.
JITENDRA KUMAR SRIVASTAVA & ANR.
(Civil Appeal No. 6770 of 2013)

AUGUST 14, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Service Law - Pension - State Government withholding a part of pension and/or gratuity during pendency of departmental/ criminal proceedings, in absence of any such provision in the Pension Rules - Propriety - Held: Gratuity and pension are not bounties - It is hard earned benefit which accrues to an employee and is in the nature of "property" - This right to property cannot be taken away without due process of law as per Article 300 A of the Constitution - Present case governed by Bihar Pension Rules, as applicable to the State of Jharkhand - Rule 43(b) of the Pension Rules made it clear that even after conclusion of departmental inquiry, it was permissible for the Government to withhold pension etc. only when a finding was recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in discharge of his duty while in his office - No provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings was still pending - Attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced - Executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of Article 300A - On basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity - Bihar Pension Rules, as applicable to the State of Jharkhand - r.43(b) - Constitution of India, 1950 - Article 300A.

Service Law - Pension - Held: Right to receive pension is recognized as a right in "property".

The question which arose for consideration in the instant appeal was: whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings. The High Court had answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Hence the present appeal by the State of Jharkhand.

Dismissing the appeals, the Court

HELD: 1.1. Gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution. [Paras 7, 8] [184-A; 185-B-C]

1.2. The present case is admittedly governed by Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withhold[illegible]/

gratuity when such departmental proceedings or judicial proceedings are still pending. [Paras 9, 11] [185-D; 187-F-G]

1.3. Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. The executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different. [Paras 13, 14 & 15] [192-D-E, G-H; 193-A-B]

Sant Ram Sharma vs. Union of India **1968 (1) SCR 111 - held inapplicable.**

D.S. Nakara and Ors. vs. Union of India **(1983) 1 SCC 305: 1983 (2) SCR 165;** *Deokinandan Prasad vs. State of Bihar* **(1971) 2 SCC 330: 1971 (0) Suppl. SCR 634 and** *State of West Bengal vs. Haresh C. Banerjee and Ors.* **(2006) 7 SCC 651: 2006 (5) Suppl. SCR 620 - relied on.**

Dr. Dudh Nath Pandey vs. State of Jharkhand and Ors. **2007 (4) JCR 1 - referred to.**

Case Law Reference:

2007 (4) JCR 1	**referred to**	**Para 4**
1968 (1) SCR 111	**held inapplicable**	**Para 5**
1983 (2) SCR 165	**relied on**	**Para 7**
1971 (0) Suppl. SCR 634	**relied on**	**Para 12**
2006 (5) Suppl. SCR 620	**relied on**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6770 of 2013.

From the Judgment and Order dated 31.10.2007 of the High Court of Jharkhand at Ranchi in L.P.A. No. 678 of 2005.

WITH

C.A. No. 6771 of 2013.

Amarendra Sharma, Anil K. Jha, Priyanka Tyagi for the Appellants.

J.S. Attri, Gaurav Sharma, B.K. Sharma, Priyanka Bharihoke, Sushma Suri, Rajiv Shankar Dvivedi for the Respondents.

The Judgment of the Court was delivered by

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

2. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings? The High Court has answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.

3. For the sake of convenience we will gather the facts from Civil Appeal arising out of SLP(Civil) N

facts which need to be noted, giving rise to the aforesaid questions of law, are the following:

The respondent was working in the Department of Animal Husbandry and Fisheries. He joined the said Department in the Government of Bihar on 2.11.1966. On 16.4.1996, two cases were registered against him under various Sections of the Indian Penal Code as well as Prevention of Corruption Act, alleging serious financial irregularities during the years 1990-1991, 1991-1992 when he was posted as Artificial Insemination Officer, Ranchi. On promulgation of the Bihar Reorganisation Act, 2000, State of Jharkhand (Appellant herein) came into existence and the Respondent became the employee of the appellant State. Prosecution, in respect of the aforesaid two criminal cases against the respondent is pending. On 30th January, 2002, the appellant also ordered initiation of disciplinary action against him. While these proceedings were still pending, on attaining the age of superannuation, the respondent retired from the post of Artificial Insemination Officer, Ranchi on 31.08.2002. The appellant sanctioned the release and payment of General Provident Fund on 25.5.2003. Thereafter, on 18.3.2004, the Appellant sanctioned 90 percent provisional pension to the respondent. Remaining 10 percent pension and salary of his suspension period (30.1.2002 to 30.8.2002) was withheld pending outcome of the criminal cases/ departmental inquiry against him. He was also not paid leave encashment and gratuity.

4. Feeling aggrieved with this action of the withholding of his 10 percent of the pension and non-release of the other aforesaid dues, the respondent preferred the Writ Petition before the High Court of Jharkhand. This Writ Petition was disposed of by the High Court by remitting the case back to the Department to decide the claim of the petitioner for payment of provisional pension, gratuity etc. in terms of Resolution No. 3014 dated 31.7.1980. The appellant, thereafter, considered the representation of the respondent but

rejected the same vide orders dated 16.3.2006. The respondent challenged the rejection by filing another Writ Petition before the High Court. The said petition was dismissed by the learned Single Judge. The respondent filed Intra Court Appeal which has been allowed by the Division Bench vide the impugned orders dated 31.10.2007. The Division Bench has held that the question is squarely covered by the full Bench decision of that Court in the case of *Dr. Dudh Nath Pandey vs. State of Jharkhand and Ors.* 2007 (4) JCR 1. In the said full Bench Judgment dated 28.8.2007, after detailed discussions on the various nuances of the subject matter, the High Court has held:

"To sum up the answer for the two questions are as follows:

(i) Under Rule 43(a) and 43(b) of Bihar Pension Rules, there is no power for the Government to withhold Gratuity and Pension during the pendency of the departmental proceeding or criminal proceeding. It does not give any power to withhold Leave Encashment at any stage either prior to the proceeding or after conclusion of the Proceeding.

(ii) The circular, issued by the Finance Department, referring to the withholding of the leave encashment would not apply to the present facts of the case as it has no sanctity of law".

5. Mr. Amarendra Sharan, the learned Senior Counsel appearing for the petitioner accepted the fact that in so far as the Pension Rules are concerned, there is no provision for withholding a part of pension or gratuity. He, however, submitted that there are administrative instructions which permit withholding of a part of pension and gratuity. His submission was that when the rules are silent on a particular aspect, gap can be filled by the administrative instructions which was well settled legal position, laid down way back in the year 1968 by the Constitution Bench Judgment of th*e* *Supreme Court*

Sharma vs. Union of India 1968 (1) SCR 111. He, thus, argued that the High Court has committed an error in holding that there was no power with the Government to withhold the part of pension or gratuity, pending disciplinary/criminal proceedings.

6. The aforesaid arguments of the learned Senior Counsel based on the judgment in Sant Ram Sharma would not cut any ice in so far as present case is concerned, because of the reason this case has no applicability in the given case. *Sant Ram judgment* governs the field of administrative law wherein the Constitution Bench laid down the principle that the rules framed by the authority in exercise of powers contained in an enactment, would also have statutory force. Though the administration can issue administrative instructions for the smooth administrative function, such administrative instructions cannot supplant the rules. However, these administrative instructions can supplement the statutory rules by taking care of those situations where the statutory rules are silent. This ratio of that judgment is narrated in the following manner:

> "It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions and inconsistent with the rules already framed".

There cannot be any quarrel on this exposition of law which is well grounded in a series of judgments pronounced post Sant Ram Sharma case as well. However, the question which is posed in the present case is altogether different.

7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in *D.S. Nakara and Ors. Vs. Union of India;* (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

> "The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
>
> What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.
>
> The antiquated notion of pension being a bounty a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad v. State of Bihar and Ors.* [1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the pu[illegible]e

amount having regard to service and other allied maters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. V. Iqbal Singh* (1976) IILLJ 377SC".

8. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.

9. Having explained the legal position, let us first discuss the rules relating to release of Pension. The present case is admittedly governed by Bihar Pension Rules, as applicable to the State of Jharkhand. Rule 43(b) of the said Pension Rules confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances. This Rule 43(b) reads as under:

"43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty to grave misconduct, or to have caused pecuniary loss to Government misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement".

From the reading of the aforesaid Rule 43(b), following position emerges:-

(i) The State Government has the power to withhold or withdraw pension or any part of it when the

pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the department proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

10. There is also a Proviso to Rule 43(b), which provides that:-

"A. Such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment.

i. Shall not be instituted save with the sanction of the State Government.

ii Shall be in respect of an event which took place not more than four years before the institution of such proceedings.

iii Shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made:-

B. Judicial proceedings, if not instituted while the Government Servant was on duty either before retirement or during re-employment shall h[illegible]n

accordance with sub clause (ii) of clause (a) and

C. The Bihar Public Service Commission, shall be consulted before final orders are passed.

It is apparent that the proviso speaks about the institution of proceedings. For initiating proceedings, Rule 43(b) puts some conditions, i.e, Department proceeding as indicated in Rule 43(b), if not instituted while the Government Servant was on duty, then it shall not be instituted except:-

(a) With the sanction of the Government,

(b) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.

(c) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made.

Thus, in so far as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.

12. Right to receive pension was recognized as right to property by the Constitution Bench Judgment of this Court in *Deokinandan Prasad vs. State of Bihar;* (1971) 2 SCC 330, as is apparent from the following discussion:

"29. The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19(1)(f) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

30. According to the petitioner the right to receive pension is property and the respondents by an executive order dated June 12, 1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr. Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

31. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated tha[illegible]n

does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

32. The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India A.I.R. 1962 Pun 503. It was held that such a right constitutes "property" and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh I.L.R. 1965 Pun 1 approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

33. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab* I.L.R. 1967 P & H 278. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regardin

to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

34. This Court in *State of Madhya Pradesh v. Ranojirao Shinde and Anr.* MANU/SC/0030/1968 : [1968]3SCR489 had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Articles 19(1)(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

35. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by Sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1)of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That

does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law".

13. In *State of West Bengal Vs. Haresh C. Banerjee and Ors.* (2006) 7 SCC 651, this Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum- Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court. Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property".

14. Article 300 A of the Constitution of India reads as under:

"300A Persons not to be deprived of property save by authority of law. - No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

16. We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs. 10,000/- each.

B.B.B. Appeals dismissed.

YOGESH YADAV

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 6799 of 2013)

AUGUST 16, 2013

[ANIL R. DAVE AND A.K. SIKRI, JJ.]

Selection - Benchmark - Fixation of, for appointment to Post of Deputy Director (Law) in the Other Backward Class (OBC Category) in the office of Competition Commission of India (CCI) - Challenge to - Held: The entire selection was undertaken in accordance with the criterion laid down at the time of recruitment process - After conducting the interview, marks of the written test and viva voce were to be added - However, since benchmark was not stipulated for giving the appointment, a decision was taken to give appointments only to those persons who secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category - In absence of any rule on this aspect in the first instance, this did not amount to changing the "rules of the game" - Fixation of such a benchmark in order to have meritorious persons for those posts, was legitimate giving a demarcating choice to the employer - There was no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview - It was short listing which was done by fixing the benchmark, to recruit best candidates on rational and reasonable basis - That was clearly permissible under the law.

Appointments to vacancies in the post of Deputy Director (Law) in the Other Backward Class (OBC Category) were to be made in the office of Competition Commission of India (CCI). CCI issued notification through public notice inviting applications for such post.

The three appellants (who belonged to the OBC category) were amongst the candidates who appeared in the written test. After qualifying the written test, they also faced the interview. However, their names did not appear in the list of candidates finally selected.

On obtaining the information from the respondents under the Right to Information Act 2005, the appellants learnt that the respondents had fixed the benchmark of 70 marks for the General Category and 65 marks for the Reserved Category candidates and since the total marks obtained by all these appellants were less than 65, that was the reason for their non-selection. This fixation of benchmark agitated the appellants as according to them it amounted to changing the selection procedure mid-way, which is illegal.

The appellants filed writ petition contending that their non-selection was the result of alteration of the prescribed mode of selection mid-way i.e. after the initiation of recruitment process which was impermissible. The appellants contended that the selection criteria was changed arbitrarily that too after the advertisement and the law did not permit the respondents to change the rules of the game after the game had started. The precise contention in this behalf was that the benchmark which was fixed at 70 and 65 marks or above in the General and Reserved category respectively for the purposes of selection was not mentioned earlier i.e. before the start of selection process, either in the advertisement or otherwise. The High Court dismissed the writ petition, holding that fixation of the benchmark was legal and justified, and therefore the instant appeal.

The question which therefore arose for consideration before this Court was whether fixation of benchmark amounted to change in the criteria of selection in the

midstream when there was no such stipulation in that regard in the advertisement.

Dismissing the appeals, the Court

HELD: 1.1. In the instant case, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment, in the instant case a decision was taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game". The High Court rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision was taken to give appointment to only those who fulfilled the benchmark prescribed. Fixation of such a benchmark is permissible in law. [Para 14] [204-G-H; 205-A-D]

1.2. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/ appointment which is always permissible. The intention of the CCI was to get more meritorious candidates. There was no change of norm or procedure and no mandate

was fixed that a candidate should secure minimum marks in the interview. In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. There is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview. It was short listing which was done by fixing the benchmark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law. [Paras 15, 16 and 17] [205-E; 206-F-G; 207-D-F]

Himani Malhotra vs. High Court of Delhi **(2008) 7 SCC 11: 2008 (5) SCR 1066 - distinguished.**

State of Haryana vs. Subash Chander Marwaha & Ors. **(1974) 3 SCC 220: 1974 (1) SCR 165 and** *M.P. Public Service Commission vs. Navnit Kumar Potdar & Anr.* **(1994) 6 SCC 293: 1994 (3) Suppl. SCR 665 - relied on.**

Lila Dhar vs. State of Rajasthan **(1981) 4 SCC 159: 1982 (1) SCR 320 and** *K.Manjusree vs. State of A.P.* **(2008) 3 SCC 512: 2008 (2) SCR 1025 - referred to.**

Case Law Reference:

2008 (5) SCR 1066	**distinguished**	**Para 12**
1982 (1) SCR 320	**referred to**	**Para 12**
2008 (2) SCR 1025	**referred to**	**Para 12**
1974 (1) SCR 165	**relied on**	**Para 15**
1994 (3) Suppl. SCR 665	**relied on**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6799 of 2013.

From the Judgment and Order dated 05.08.2011 of the High Court of Delhi at New Delhi in LPA No. 561 of 2011.

WITH

C.A. No. 6800 & 6801 of 2013.

Jayant Bhushan, Himanshu Shekhar, Chandan Kumar Rai, Vibhu Shanker Mishra, Harish Pandey, Shubhangi Tuli for the Appellant.

Parag Tripathi, B.K. Satija, Mahima Gupta, Sushma Suri, Pankaj Seth, Manjeet Chawla, A.K. Shrivastava, Gaurav Sharma, Rajeev Gupta, Anurag Singh, Avni Singh, Balbir Singh, Chandra Prakash, Rupender Singh for the Respondents.

The Judgment of the Court was delivered by

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

2. Counsel for the parties were heard at length on the issue involved in these cases. We now proceed to decide the same by this order.

3. Matter pertains to appointment to the post of Deputy Director (Law) in the Other Backward Class (OBC Category). Appointments to the vacancies in the aforesaid post were to be made in the office of Competition Commission of India (CCI). The three appellants in these three appeals were also the candidates who appeared in the written test. After qualifying the written test, they also faced the interview. However, their names did not appear in the list of candidates finally selected. According to the appellants, their non-selection was the result of altering the prescribed mode of selection mid-way i.e. after the initiation of recruitment process which was impermissible. This contention has not found favour with either the learned Single Judge in the Writ Petitions filed by them or the Division Bench of the High Court in the appeals filed by them challenging the order of the learned Single Judge[illegible],

before us also, remains the same. Therefore, the issue which needs to be decided is as to whether there was any change in the mode of selection after the process of selection had started.

4. Seminal facts which are necessitated to understand the controversy are recapitulated herein below.

5. CCI had issued the notification through public notice dated 11th November, 2009 inviting applications for various posts. We are concerned with the post of Deputy Director (Law) for which 13 vacancies were notified - 9 were in General category, 1 in SC Category and 3 posts were reserved for OBC category. Clause 7 of the notification stipulated the mode of selection in the following manner:

"7. **Mode of Selection**

All the applications received by the due date will be screened with reference to the minimum qualification criteria. From amongst the eligible candidates, suitable candidates will be short listed through a transparent mechanism and the short listed candidates will be called for interview before final selection. Mere fulfilling of minimum qualifications by itself would not entitle any applicant for being called for interview."

6. The eligibility / qualification /experience required for this post was also provided in the advertisement. It is undisputed that the appellants fulfilled the eligibility condition, being holder of degree of Bachelor of Law (Professional) as well as 3 years' experience in the relevant field including in the Corporate Sector. Written test for this post was held on 14th February, 2010 for short listing of candidates for interview. Admit card was also issued to the appellants for appearing in the written test along with the detailed instructions including the scheme of examination. Paragraphs 4 and 9 of the Instruction which were given to the examinees/candidates are relevant for our purposes and therefore we reproduce the same hereunder:

"4. The selection to all the positions advertised will be based on a written test followed by an interview. The written test will carry 80% of the marks and interview will have 20% of the marks. The written test will be in two parts. The first part will be based on multiple choice questions for 50 marks. There is no negative marking in this multiple choice questions. The second part carrying 30 marks will be distributed to the descriptive questions on the subject of your specialization within the broad outline of the subject of specialization as indicated in the advertisement.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

9. Candidates who do not secure 50% of the marks in the test will not be called for the interview. However, for candidates belonging to the reserved categories, the cut off marks will be 40% of the total marks."

7. Written examination was of 80 marks and the appellants secured more than 50% marks therein. They were called for the interview which was held on 19th March 2010 and the result of which was published on the website of the CCI. Finally, only 5 candidates, that too from the General category, were selected. Nobody from the OBC category, to which category the appellants belonged, emerged successful. On obtaining the information from the respondents under the Right to Information Act 2005, the appellant in CA___/2013 (@SLP(C) No. 34427 of 2011) came to know that he had secured only 2 marks out of 20 marks in the interview. In this manner, total marks secured by him were 53 out of 100 marks. He also learnt that the respondents had fixed the benchmark of 70 marks for the General Category and 65 marks for the Reserved Category candidates. Since the total marks obtained by all these appellants were less than 65, that was the reason for their non selection. It is this fixation of benchmark which has agitated the appellants and according to them it amounts to changing the selection procedure mid-way, which is illegal

8. The appellants approached the High Court of Delhi by filing a Writ Petitions challenging their non- selection primarily on the ground that the selection criteria was changed arbitrarily that too after the advertisement and the law did not permit the respondents to change the rules of the game after the game had started. The precise contention in this behalf was that the benchmark which was fixed at 70 and 65 marks or above in the General and Reserved category respectively for the purposes of selection was not mentioned earlier i.e. before the start of selection process, either in the advertisement or otherwise.

9. The Writ petitions were contested by the respondents. In the counter affidavit filed by the CCI, it was explained that there was an overwhelming response received from the candidates for selection to the aforesaid post and having regard to the large number of applications received, the CCI decided to undertake the selection to all posts notified in the advertisement on the basis of written test followed by interview and accordingly it was determined that written test would be for 80 marks while 20 marks were attributed to interview. Further, candidates who secured minimum of 50 marks in the written test in the General category and minimum of 40 marks in the reserved category were called for interview in the ratio of three times of the number of vacancies where the number of vacancies were more than 10 and 5 times of the number of the vacancies for less than the 10. The marks obtained in the written test were not disclosed to the interview committee and the committee independently and without being influenced by the marks obtained in the written test adjudged the candidates on the basis of Viva Voce test and awarded the marks. The marks of the written test, which were kept in the sealed cover, were opened after the marks given to candidates in the interview by the interview board and tabulated merit list was prepared accordingly. The CCI, keeping in view the nature and purpose of the post, decided to fix the percentage for final selection were 70 marks out of 100 for unreserved Category

and minimum 65 marks out of 100 for reserved category for professional categories in which category the post of Deputy Director (Law) falls. It was argued that such a course of action was permissible and it was not a case where the mode of selection, at any time was changed and in so far as fixation of benchmark is concerned that was prerogative of the employer.

10. The learned Single Judge of the High Court accepted the plea of the respondents as he did not perceive this to be the change in criteria in the selection procedure, holding that fixation of the benchmark was legal and justified. As pointed out above, Letter Patent Appeals filed by the appellants against the learned Single Judge have also met the same fate.

11. In the aforesaid backdrop, the question that falls for consideration is as to whether fixation of benchmark would amount to change in the criteria of selection in the midstream when there was no such stipulation in that regard in the advertisement.

12. Mr. Jayant Bhushan, the learned senior counsel appearing for one of the appellants submitted that the case is squarely covered by the ratio of judgment of this Court in *Himani Malhotra vs. High Court of Delhi* (2008) 7 SCC 11. That case pertained to recruitment to the Higher Judicial Service in Delhi. The mode of selection was written test and viva voce. 250 marks were assigned for written test and 750 marks prescribed for viva voce test. When the advertisement was given there was no stipulation prescribing minimum marks/cut off marks at viva voce test after the written test was held. The persons who qualified the written test were called for interview. Interview was, however, postponed by the interview committee and it felt that it was desirable to prescribe minimum marks for the viva voce test as well. The matter was placed before the Full Court and Full Court resolved to fix minimum qualifying marks in viva voce which were 55% for general category, 50% for SC/ST candidates. After this change was effected in the criteria thereby prescribing fixation of minimum

interviews were held. The petitioners in that case were not selected as they secured less than 55 % marks. Those two petitioners filed the Writ Petition submitting that prescribing minimum cut off marks in the viva voce test, after the selection process had started, when there was no such stipulation at the time of initiation of recruitment process, was unwarranted and impermissible. The Court, taking notice of its earlier judgments in *Lila Dhar vs. State of Rajasthan* (1981) 4 SCC 159 and *K.Manjusree vs. State of A.P.* (2008) 3 SCC 512 held that when the previous procedure prescribing minimum marks was not permissible at all after the written test was conducted, the ratio of the case is summed up in paragraph 15 of the Judgment, as under:

> "15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal."

13. This very argument based on the aforesaid judgment was taken in the LPAs before the High Court as well. However, the High Court took the view that the aforesaid judgment was not applicable in the instant case as the factual scenario was altogether different. Since we are agreeing with the view of the High Court, it would be apposite to take notice of the relevant discussion on this aspect:

> "18. From the aforesaid pronouncement of law, it is vivid that an amended rule cannot affect the right of a candidate who has qualified as per the terms stipulated in the advertisement and is entitled to claim a selection in

> accordance with the rules as they existed on the date of the advertisement; that the selection can be regulated by stipulating a provision in the rule or laying a postulate in the advertisement for obtaining minimum marks are not prescribed for viva voce before the commencement of the selection process, the authority, during the selection process or after the selection process, cannot add an additional requirement/qualification that the candidate should also secure minimum marks in the interview; that the norms or rules as existing on the date when the process of selection begins will control such selection and that revisiting the merit list by adopting a minimum percentage of marks for interview is impermissible.
>
> 19. The factual scenario in the present case has a different backdrop. The advertisement stipulated that the short listed candidates would be called for interview before the final selection and mere fulfilling of minimum qualifications by itself would not entitle any applicant for being called for interview. Thereafter, in the instruction, the marks were divided. Regard being had to the level of the post and the technical legal aspects which are required to be dealt with, a concise decision was taken to fix 65% marks for OBC category in toto, i.e., marks obtained in the written examination and marks secured in the interview. It is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement. A standard was fixed for the purpose of selection."

14. Instant is not a case where no minimum marks prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the int[illegible]n

was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game". The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. Fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra case.

15. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/appointment which is always permissible. For this course of action of the CCI, justification is found by the High Court noticing the judgment of this Court in the *State of Haryana vs. Subash Chander Marwaha & Ors.* (1974) 3 SCC 220. In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject matter of interpretation. This rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and High Court issued Mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under:

> "It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointment to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility."

16. Another weighty reason given by the High Court in the instant case, while approving the aforesaid action of the CCI, is that the intention of the CCI was to get more meritorious candidates. There was no change of norm or procedure and no mandate was fixed that a candidate should secure minimum marks in the interview. In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. In the words of the High Court:

> "In the case at hand, as we n

of the Commission was to get more meritorious candidates. There has been no change of norm or procedure. No mandate was fixed that a candidate should secure minimum marks in the interview. Obtaining of 65% marks was thought as a guidelines for selecting the candidate from the OBC category. The objective is to have the best hands in the field of law. According to us, fixation of such marks is legitimate and gives a demarcating choice to the employer. It has to be borne in mind that the requirement of the job in a Competition Commission demands a well structured selection process. Such a selection would advance the cause of efficiency. Thus scrutinized, we do not perceive any error in the fixation of marks at 65% by the Commission which has been uniformly applied. The said action of the Commission cannot be treated to be illegal, irrational or illegitimate."

17. It is stated at the cost of repetition that there is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview. It is the short listing which is done by fixing the benchmark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law.(*M.P.Public Service Commission vs. Navnit Kumar Potdar & Anr.* (1994) 6 SCC 293).

18. The result of the aforesaid discussion would be to dismiss the appeals as bereft of any merit. No costs.

B.B.B. Appeals dismissed.

VIKAS

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1190 of 2013)

AUGUST 16, 2013

[H.L. DATTU AND M.Y. EQBAL, JJ.]

Code of Criminal Procedure, 1973 - s.319 - Abduction of girl - Three accused - PW4 filed application u/s.319 CrPC for trial of appellant alongwith other accused persons - Trial Court took cognizance and summoned appellant through issuance of non-bailable warrant - Appellant filed application for converting the non-bailable warrant into bailable warrant - Trial Court rejected the application - Order confirmed by High Court - Whether the attendance of appellant could have been best secured by issuing a summon simplicitor or a bailable warrant instead of a non-bailable warrant in an application u/s.319 CrPC - Held: s.319 CrPC demands more circumspection by the Trial Court while exercising its powers since it confers an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated - Issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of appellant impaired his personal liberty - Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result - The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued - Direction given that summons be issued against the appellant for his appearance instead of non-bailable warrant - Penal Code, 1860 - ss. 363, 366 and 376.

Inder Mohan Goswami; **2007 12 SCC 1: 2007 (10) SCR 847;** *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and Anr.* **(2012) 9 SCC 791: 2007 (10) SCR 847** *State of U.P. vs. Poosu and Anr;* **1976 3 SCC 1: 1976 (3) SCR 1005 - referred to.**

Case Law Reference:

2007 (10) SCR 847	**referred to**	**Para 14**
2007 (10) SCR 847	**referred to**	**Para 14**
1976 (3) SCR 1005	**referred to**	**Para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1190 of 2013.

From the Judgment and Order dated 04.04.2013 of the High Court of Judicature for Rajasthan, Bench at Jaipur, in S.B. Criminal Misc. Petition No. 1080 of 2013.

Sushil K. Jain, Puneet Jain, Anas M. Riyaz, Pratibha Jain for the Appellant.

Dr. Manish Singhvi, AAG, Irshad Ahmad for the Respondent.

The following order of the Court was delivered

O R D E R

1. Leave granted.

2. This appeal is directed against the order passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Criminal Misc. Petition No. 1080 of 2013 dated 4th April, 2013, whereby the High Court has dismissed the petition filed by the appellant under section 482 of Criminal Procedure Code, 1973 (for short, "the Cr.P.C.").

3. The Facts in brief are: - The incident occurred on

01.12.2011 at about 4.00 a.m. PW-4, the complainant had lodged an FIR before the Police Station at Singhana, District Jhunjhunu to the effect that PW5, the daughter of the Complainant, Sonu was abducted by the accused persons namely Deshram, Vikash, Ravi Kumar and Amit Kumar. On the fateful day, PW-5, had gone out of her house, when the appellant along with the other accused persons hatched a conspiracy to forcibly abduct her and in pursuance of the same abducted PW-5.

4. The FIR was registered and after completion of the investigation, the investigating agency had filed a charge-sheet against the accused, Amit Kumar (A1) for the offences under Sections 363, 366 and 376 of Indian Penal Code ("the IPC" for short) and Ravi Kumar (A2) and Ajit (A3) for the offences under Sections 363, 366(A) and 120B of the IPC. The Trial Court, thereafter, commenced with the trial against A1, A2 and A3 respectively.

5. During the course of trial, the Trial Court appreciated the evidence available on record and framed charges against A1 under Sections 363, 366 and 376 and under Sections 363, 366(A) and 120B of the IPC against A2. Thereafter, PW4, filed an application before the Trial Court under Section 319 of the Cr.P.C. for the trial of the appellant along with the other accused persons for having been involved in the commission of the offence.

6. The Trial Court placing reliance on the evidence produced in the course of the trial has come to the conclusion that the court is satisfied that the appellant has committed an offence for which the appellant can be tried along with the other accused persons and therefore had taken cognizance for the offences under Sections 363, 366(A), 120B and 376(2)(g) of the IPC against the appellant herein and were summoned through an issuance of a non-bailable warrant.

7. Being aggrieved by the issuan e

warrant, the appellant filed an application before the Trial Court for converting the non-bailable warrant into bailable warrant. The Trial Court, by its order dated 04.03.13 rejected the application of the appellant.

8. Aggrieved by the order of the Trial Court, the appellant had filed an appeal before the High Court. The High Court after re-consideration confirmed the order of the Trial Court.

9. It is the correctness or otherwise of the judgment and order passed by the High Court which is called in question by the appellant in this appeal.

10. Heard learned counsel for the parties to the lis.

11. The learned counsel appearing for the appellant, would submit that the Trial Court, to seek attendance of the appellant and the other accused persons had issued non-bailable warrants instead of bailable warrants which was not justified.

12. The only question for consideration before us is whether in the circumstances of the case, the attendance of the appellant could have been best secured by issuing a summon simplicitor or a bailable warrant instead of a non-bailable warrant in an application under Section 319 of the Cr.P.C.

13. A Perusal of Section 319 of the Cr.P.C. would clearly indicate that on the objective satisfaction of the court a person may be 'arrested' or 'summoned' as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused. The section demands more circumspection by the Trial Court while exercising its powers since it confers

an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of rule of law and basic tenets of criminal law jurisprudence are not vitiated.

14. The Constitution of India is the grundnorm- the paramount law of the country. All other laws derive their origin and are supplementary and incidental to the principles laid down in the Constitution. Therefore, Criminal Law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in the case of Inder Mohan Goswami; 2007 12 SCC 1 and in the case of *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and Anr;* (2012) 9 SCC 791 wherein it has been observed that personal liberty and the interest of the State Civilized countries is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. The issuance of non-bailable warrant involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants.

15. In order to examine the reason[illegible]t,

the case is to be understood in its own facts and circumstances. In the instant case, the Trial Court after appreciating the evidence available had reasonable satisfaction from the evidence already collected during the trial that the appellant had committed an offence along with the other accused who had undergone the Trial and therefore issued a non-bailable warrant to seek the attendance of the appellant-herein under an application of Section 319 of the Cr.P.C. To appreciate the present case, it is pertinent to discuss the meaning of 'bailable offences' and 'non-bailable offences' and the circumstances in which a non-bailable warrant can be issued. In the legislative history for the purposes of bail, the term 'bailable' and 'non-bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non- bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 of the Cr.P.C. The power under Section 319 of the Cr.P.C being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are re-iterated in the case of Inder *Mohan Goswami* (Supra) and in the case of *State of U.P. vs. Poosu and Anr;* 1976 3 SCC 1, wherein it is mentioned that Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to

have the desired result. This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

16. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued.

17. In view of the above, we modify the orders passed by the Trial Court and confirmed by the High Court, and direct that summons be issued against the appellant for his appearance instead of non-bailable warrants which were ordered to be issued against him.

18. The Criminal appeal is disposed of accordingly.

Ordered accordingly.

B.B.B. Appeal disposed of.

SUNITA JUGALKISHORE GILDA
v.
RAMANLAL UDHOJI TANNA (DEAD) THR. LRS. AND OTHERS
(Civil Appeal No. 6966 of 2013)

AUGUST 21, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Transfer of Property Act, 1882 - s.52 - Mortgagor inducting tenant in a mortgaged property, to the prejudice of the mortgagee, pendente lite - Permissibility - On facts, mortgagor (respondent no.2 & 3) inducted respondent no.1 as a tenant without consent of the mortgagee (appellant) - Induction of respondent no.1-tenant was during subsistence of the mortgage and also subsistence of various legal proceedings pending before various courts between the mortgagor and the mortgagee - Suit of appellant-mortgagee against respondents for recovery of possession, and damages for use and occupation - Held: Rule of lis pendens applies to suit by a mortgagee as well - s.52 of the TPA prevents a mortgagor from creating any lease during the pendency of mortgaged suit so as to effect the right of a mortgagee - However, in view of s.52, if the mortgagor grants such a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of litigation and if the property is sold in execution of the decree, the lessee cannot resist a claim for possession by auction purchaser - Tenant inducted during subsistence of the mortgage is not entitled to get protection of the Rent Act - The courts below erred in non-suiting the appellant - Appellant entitled to get decree, as prayed for, since respondent no.1 was inducted illegally by respondent nos. 2 & 3 and to the prejudice of appellant-mortgagee - Suit of appellant decreed, however, without any mesne profits - Maharashtra Rent Act.

Doctrines - Doctrine of lis pendens - Rationale for - Held: The doctrine is intended to prevent one party to a suit making an assignment inconsistent with the rights which may be decided in the suit and which might require a further party to be impleaded in order to make effectual the court's decree.

'G', the grand mother-in-law of the appellant, became a mortgagee of the property in question in 1953 by a registered mortgage deed executed by one 'V", father of Respondent Nos.2 and 3 for himself and as guardian of Respondent No.2. Suit was filed by 'G' for enforcing the mortgage, which was decreed by the civil court on 01.09.1956 and preliminary decree later became final as against the share of 'V'. 'G' purchased ½ share in the mortgaged property from 'V' on 02.03.1960 which was confirmed in her favour by the civil court and was placed in joint possession by the executing court on 25.11.1960. Respondent no.1 was inducted as a tenant while all these proceedings were pending before the court. The entry of respondent no.1 into the suit property was not with the consent and knowledge of 'G' even though she was a mortgagee of a portion of the property from 1953 onwards.

Several civil suits were also pending between the mortgagor and the mortgagee and it is during the course of those proceedings, evidently, respondent no.1 was inducted as a tenant. 'G' filed civil suit against the respondents for recovery of possession, damages for use and occupation. The trial court dismissed the suit on the ground that Respondent Nos.2 and 3 being mortgagors were entitled to induct Respondent No.1 as a tenant. Appeal before the District Judge was dismissed. 'G' later bequeathed the suit property in favour of the appellant. Subsequently the appellant filed Second Appeal, which was dismissed by the High Court and therefore the instant appeal.

The question that arose for consideration in the instant appeal was whether the mortgagor can induct a person as tenant in a mortgaged property, to the prejudice of the mortgagee, pendente lite, in violation of Section 52 of the Transfer of Property Act, 1882.

Allowing the appeal, the Court

HELD: 1.1. The induction of respondent no.1 was during the subsistence of the mortgage and pendency of court proceedings. Rule of lis pendens applies to suit on mortgagee as well. The doctrine is intended to prevent one party to a suit making an assignment inconsistent with the rights which may be decided in the suit and which might require a further party to be impleaded in order to make effectual the court's decree. Law is well settled that a mortgagee, who has purchased a mortgaged property in execution of his mortgage decree is entitled to avoid a transfer on the ground that it was mortgaged by the mortgagor during the pendency of a mortgage suit. Section 52 of the TPA prevents a mortgagor from creating any lease during the pendency of mortgaged suit so as to effect the right of a mortgagee or the purchaser. [Para 12 and 13] [224-E-H; 225-A]

1.2. Section 65-A of the TPA deals with the mortgagee's powers to lease. However, in view of Section 52, if the mortgagor grants such a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of litigation and if the property is sold in execution of the decree, the lessee cannot resist a claim for possession by auction purchaser. Section 52 deals with cases of transfer of anything otherwise dealing with any immovable property after any suit or proceeding in which any right to such immovable property is directly and specifically in question has been filed. Section 65-A of the TPA deals with the powers of the mortgagor to grant a lease of mortgaged property, while the mortgagor

remains in lawful possession of the same. If the mortgagor grants a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of the litigation. [Paras 14, 15] [225-E-H; 226-A-B]

1.3. On facts, it is found that the induction of the first respondent was during the subsistence of the mortgage and also subsistence of the various legal proceedings pending before various courts. A plea was raised by the counsel for the respondent that he is entitled to get the protection of the Maharashtra Rent Act. This plea has no basis in the facts of this case. A tenant who is inducted during the subsistence of the mortgage is not entitled to get the protection of the Maharashtra Rent Act. The courts below have not appreciated the various legal issues and committed an error in non-suiting the appellant. The appellant is entitled to get a decree, as prayed for, since the original first respondent was inducted illegally and to the prejudice of the original mortgagee. Consequently, the judgments of the courts below are set aside and the suit is decreed, however, without any mesne profits. [Paras 16, 17] [226-B-D, E-G]

Mangru Mahto and Others vs. Thakur Math **AIR 1967 SC 1390;** *Dev Raj Dogra and Others vs. Gyan Chand Jain and Others* **(1981) 2 SCC 675: 1981 (3) SCR 174;** *Om Prakash Garg vs. Ganga Sahai and Others* **AIR 1988 SC 108: 1987 (3) SCC 553 and** *Carona Shoe Co. Ltd. And another vs. K.C. Bhaskaran Nair* **AIR 1989 SC 1110: 1989 (1) SCR 974 - relied on.**

Smt. Gangabai vs. Vijay Kumar and Others **(1974) 2 SCC 393: 1974 (3) SCR 882 - referred to.**

Bellamy vs. Sabine **(1857) 1 De G J 566 - referred to.**

Case Law Reference:

1974 (3) SCR 882 referred

AIR 1967 SC 1390	**relied on**	**Para 10**
(1857) 1 De G J 566	**referred to**	**Para 13**
1981 (3) SCR 174	**relied on**	**Para 15**
1987 (3) SCC 553	**relied on**	**Para 15**
1989 (1) SCR 974	**relied on**	**Para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6966 of 2013.

From the Judgment and Order dated 13.03.2007 of the High Court of Judicature at Bombay in Second Appeal No. 548 of 2003.

V.A. Mohta, J.K. Gilda, Nilkanta Nayak, Rameshwar Prasad Goyal for the Appellant.

D.K. Pradhan, Shashibhushan P. Adgaonkar for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. The question that arises for our consideration is whether the mortgagor can induct a person as tenant in a mortgaged property, to the prejudice of the mortgagee, pendente lite, in violation of Section 52 of the Transfer of Property Act, 1882.

3. Gangabai, the grand mother-in-law of the appellant, was a mortgagee in respect of a three storied building, popularly known as Gowardhandas Mathurdas Mohta, along with the suit premises and open space situated at Nazrul Plot Nos. which was executed by one Vijaysingh Mohta, father of Respondent Nos.2 and 3 for himself and as guardian of Respondent No.2 on 24.03.1953. A partition deed was executed by Mohta and Respondent Nos.2 and 3 on 11.1.1956.

4. Gangabai, on 01.09.1956, filed a civil suit No.3-A/1956 for enforcing the mortgage in the court of the First Additional District Judge, Amravati. On 02.03.1960, Gangabai also purchased the ½ share in the property belonging to Mohta, with the leave of the court in auction. The auction was confirmed by the court on 21.09.1960 in favour of Gangabai after rejecting the objections raised by Respondent Nos.2 and 3. On 25.11.1960 Gangabai was placed in joint possession of the mortgaged property in execution by the civil court.

5. Gangabai then filed a SCS No.1109 of 1961 and 1110 of 1961 against two tenants for recovery of ½ share in rent, which suits were, however, dismissed by the trial court. Gangabai, later, filed a revision before the High Court, which was allowed decreeing her claim for ½ share in the rent. Gangabai, on 05.01.1963, filed a SCS No.33 of 1963 against all the tenants including Respondent Nos.2 and 3 for a declaration and injunction that she was the owner of ½ share in the property and entitled to1/2 share in the rent thereof from each of the tenants. SCS No.33 of 1963 was later decreed by the civil court, Amravati on 23.03.1983 in favour of Gangabai, granting the reliefs sought for. Thereafter Respondent Nos.2 and 3, without the consent of Gangabai, however, started recovering rent from Respondent No.1 on the strength of some alleged rent receipts. Brij Lal, the real brother of Respondent No.1, who was also one of the tenants/defendants in the above-mentioned suit, left the decreed premises, without raising any claim.

6. The First Appeal No.40 of 1959, filed by Gangabai, was later withdrawn on 20.03.1967 since final decree had already been passed. The First Appeal No.72 of 1959 filed by Respondent Nos.2 and 3 was, however, allowed setting aside the preliminary decree dated 20.09.1958. Gangabai then preferred civil appeal No.582 of 1969 before this Court against that order, which was allowed on 09.04.1974, the judgment of which is reported in *Smt. Gangabai*

Others (1974) 2 SCC 393. This Court set aside the judgment of the High Court and restored that of the trial court.

7. Respondent Nos.2 and 3 then filed SCS No.76 of 1974 in October 1974 for setting aside the preliminary decree dated 20.09.1958 before the Civil Judge, Senior Division, Amravati. The suit was, however, dismissed with costs by the civil court on 31.01.1980. Respondent Nos.2 and 3 then filed RCA No.234 of 1980 before the District Court, Amravati. Before the District Court, Amravati, Gangabai and Respondent Nos.2 and 3 filed a compromise application and 21.08.1987 and agreed to partition the suit property. District Judge, Amravati vide its order dated 12.10.1988 passed a compromise decree disposing of RCA No.234 of 1980 in view of the compromise application filed on21.08.1987. In view of the compromise arrived at between Gangabai and Respondent Nos.2 and 3, the suit property was partitioned and the area occupied by Respondent No.1 came to the share of Gangabai. Respondent Nos.2 and 3, however, filed Second Appeal No.57 of 1989 challenging the compromise order dated 12.10.1989 before the Bombay High Court, Nagpur Bench. The second appeal was, however, dismissed by the High Court vide its judgment dated 31.08.1989.

8. Gangabai then issued legal notice to Respondent No.1 on 05.10.1989 asking him to vacate the suit property contending that he was a trespasser and had been occupying the suit property without her consent and the transfer of interest made by Respondent No.2 and 3 in favour of Respondent No.1 was hit by doctrine of lis pendens. Gangabai following the above-mentioned notice, preferred SCS No.6 of 1990 against the respondents for recovery of possession, damages for use and occupation before the Civil Judge, Senior Division, Amravati. Respondent No.1 filed his written statement claiming that he was a tenant of the original owners, namely, Respondent Nos.2 and 3. The trial court vide its judgment dated 26.10.1994 dismissed the suit filed by Gangabai on the ground that

Respondent Nos.2 and 3 being mortgagors were entitled to induct Respondent No.1 as a tenant. The Court also recorded the finding that Respondent No.1 was not a trespasser when he was initially inducted into suit property. Gangabai then preferred RCA No.7 of 1995 before the District Judge, Amravati, which was also dismissed on 21.07.2003 on the ground that Section 44 of the Transfer of Property Act (for short the TPA) did not debar a co-owner from inducting a tenant and Section 65 of the Act was inapplicable as there was no relationship of mortgagor-mortgagee.

9. Gangabai later bequeathed the suit property in favour of the appellant. Consequently the appellant filed Second Appeal No.548 of 2003 challenging the findings recorded by the trial court as well as by the District Court. The High Court by the impugned judgment found no substantial question of law which arose for its consideration and dismissed the appeal on 13.03.2007 against which this appeal has been preferred by special leave.

10. Shri V.A. Mohta, learned senior counsel appearing for the appellant submitted that the courts below have committed a serious error in not answering various substantial questions of law which were raised for their consideration. Learned senior counsel submitted that it was during the pendency of the litigation that Respondent No.1 was inducted into the property in question without consent and to the detriment of Gangabai as well as appellant's interest and that Respondent No.1 had full knowledge of the pending litigation between Gangabai, on the one hand, and Respondent Nos.2 and 3, on the other. Gangabai had issued a notice to the tenant on 05.01.1989 calling upon him to vacate the suit premises and he did not vacate the premises consequently Gangabai had to file a civil suit for possession and damages for use and occupation against the first respondent. Learned senior counsel also submitted that the premises in possession of Brij Lal were got vacated and thereafter in or about year 1965-66 first respondent entered into possession with

consent of Gangabai. Learned senior counsel submitted that in view of the provisions of Section 52 of the TPA a mortgagor cannot be permitted to induct any person as a tenant in the mortgaged property which is the subject matter of litigation between the mortgagor and the mortgagee, to the prejudice of the mortgagee. In support of his contention, reliance was placed on the Judgment of this Court in *Mangru Mahto and Others v. Thakur Math* AIR 1967 SC 1390. Learned senior counsel submitted that the questions of law raised were not properly appreciated or considered by the courts below and hence calls for interference by this Court.

11. Shri D.K. Pradhan, learned counsel appearing for the respondents, on the other hand, submitted that first respondent was occupying the premises as a legally inducted tenant peacefully for over 40 years from the mortgagor and the mortgagor and the mortgagee being co-owners, there is no bar in one co-owner, inducting a tenant in the property. Learned counsel also submitted that rent receipts produced by the first respondent would indicate that he was a legally inducted tenant. Learned counsel also submitted that by virtue of Section 65 of the Code of Civil Procedure, though sale of the joint ½ share of the property in favour of Gangabai became absolute on 09.04.1974 yet it would be deemed that joint ½ share of the property vested in her only in the year 1960. Learned counsel also submitted that even though sale in question became absolute at a later date by assumption of law, the right in property purchased was deemed to be vested in the purchaser only from the date of sale. Learned counsel also submitted that all these aspects and legal issues were considered by all the courts below and they have concurrently found that the plaintiff Gangabai or the appellant could not establish her right over the property in question. Learned counsel, therefore, prays that the appeal be dismissed with costs.

12. We have narrated the facts in detail to indicate as to when the rights had been accrued to Gangabai. Gangabai, as

already stated, became a mortgagee of the property as early as in 1953 by a registered mortgage deed and the suit filed by Gangabai for enforcing the mortgage was decreed by the civil court on 01.09.1956 and that preliminary decree later became final as against the share of Vijaysingh Mohta. Gangabai purchased ½ share in the mortgaged property from Mohta on 02.03.1960 which was confirmed in her favour by the civil court and was placed in joint possession by the executing court on 25.11.1960. Facts would clearly indicate that the first respondent was inducted as a tenant while all these proceedings were pending before the court and that the entry of the first respondent into the suit property was not with the consent and knowledge of Gangabai even though she was a mortgagee of a portion of the property from 1953 onwards. Several civil suits were also pending between the mortgagor and the mortgagee and it is during the course of those proceedings, evidently, first respondent was inducted as a tenant. The question is whether such induction was in violation of Sections 52 and 65 of the TPA and to the prejudice of the mortgagee Gangabai. On facts, we are convinced that the induction of the respondent was during the subsistence of the mortgage and pendency of court proceedings and the legality of that action has to be tested on the touchstone of above statutory provisions and the precedents set by this Court.

13. Rule of lis pendens applies to suit on mortgagee as well. Lord Justice Turner has succinctly dealt with this principle in the leading case of *Bellamy v. Sabine* (1857) 1 De G J 566 (Courtesy Mulla on T.P. Act). The doctrine is intended to prevent one party to a suit making an assignment inconsistent with the rights which may be decided in the suit and which might require a further party to be impleaded in order to make effectual the court's decree. Law is well settled that a mortgagee, who has purchased a mortgaged property in execution of his mortgage decree is entitled to avoid a transfer on the ground that it was mortgaged by the mortgagor during the pendency of a mortgage suit. Section 52 of the TPA or

from creating any lease during the pendency of mortgaged suit so as to effect the right of a mortgagee or the purchaser. This Court in *Mangru Mahto and Others* (supra) had an occasion to consider the scope of Section 52 of the TPA in that very context and held as follows:

> "……..But in view of Section 52 of the Transfer of Property Act, if the mortgagor grants such a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of the litigation. If the property is sold in execution of the decree passed in the suit, the lessee cannot resist a claim for possession by the auction-purchaser. The lessee could apply for being joined as a party to the suit and ask for an opportunity to redeem the property. But if he allows the property to be sold in execution of the mortgage decree and they have now lost the present case, the lessees allowed the suit lands to be sold in execution of the mortgage decree and they have now lost the right of redemption. They cannot resist the claim of the auction purchaser of recovery of possession of the lands."

14. Section 65-A of the TPA deals with the mortgagee's powers to lease. However, in view of Section 52, if the mortgagor grants such a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of litigation and if the property is sold in execution of the decree, the lessee cannot resist a claim for possession by auction purchaser.

15. Section 52 deals with cases of transfer of anything otherwise dealing with any immovable property after any suit or proceeding in which any right to such immovable property is directly and specifically in question has been filed. Section 65-A of the TPA deals with the powers of the mortgagor to grant a lease of mortgaged property, while the mortgagor remains in lawful possession of the same. In *Dev Raj Dogra and Others v. Gyan Chand Jain and Others* (1981) 2 SCC 675,

following the judgment in *Mangru Mahto and Others* (supra), this Court held that if the mortgagor grants a lease during the pendency of a suit for sale by the mortgagee, the lessee is bound by the result of the litigation.

16. Above legal proposition, in our view, will squarely apply to the facts of this case. On facts, we have already found that the induction of the first respondent was during the subsistence of the mortgage and also subsistence of the various legal proceedings pending before various courts. A plea was raised by the counsel for the respondent that he is entitled to get the protection of the Maharashtra Rent Act. In our view, this plea has no basis in the facts of this case. A tenant who is inducted during the subsistence of the mortgage is not entitled to get the protection of the Maharashtra Rent Act. This legal position has been settled by this Court in *Om Prakash Garg v. Ganga Sahai and Others* AIR 1988 SC 108. In this connection reference may also be made to the Judgment of this Court in *Carona Shoe Co. Ltd. and Another v. K.C. Bhaskaran Nair* AIR 1989 SC 1110.

17. In the above-mentioned circumstances, we are of the view that the courts below have not appreciated the various legal issues and committed an error in non-suiting the appellant. We answer those questions in favour of the appellant and hold that the appellant is entitled to get a decree, as prayed for, since the original first respondent was inducted illegally and to the prejudice of the original mortgagee. Consequently, the judgments of the courts below are set aside and the suit is decreed, however, without any mesne profits. The appeal is allowed, but without any order as to costs.

B.B.B. Appeal allowed.

BASAWARAJ & ANR.
v.
THE SPL. LAND ACQUISITION OFFICER
(Civil Appeal No. 6974 of 2013)

AUGUST 22, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Land Acquisition Act, 1894 - s.54 - Time barred appeal - Appeals under - Dismissal of, by High Court on ground of limitation, after dismissal of applications for condonation of delay - Justification - Held: Justified - Condonation of delay is to be based on sound legal parameters - In the instant case, there was a delay of 5-1/2 years in filing the appeals u/s.54 before the High Court - The only explanation offered for approaching the court at such a belated stage was that one of the appellants had taken ill -No "sufficient cause" given by the appellants which prevented them to approach the High court within limitation - No court could be justified in condoning such an inordinate delay - Limitation Act, 1963 - s.5.

Limitation - Statute of - Aim and rationale - Public policy - To secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression - Held: Limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches - The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes - The Court has no power to extend the period of limitation on equitable grounds - Maxims - Maxim "dura lex sed lex"

Constitution of India, 1950 - Article 14 - Scope of - Held: It is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases - The said

provision does not envisage negative equality but has only a positive aspect - If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order - Doctrines - Doctrine of equality.

Words and Phrases - "Sufficient cause" - Meaning of.

The land of the appellants was acquired in pursuance of notification under Section 4(1) of the Land Acquisition Act, 1894. Thereafter, an award under Section 11 of the Act was made fixing the market value of the land. The appellants preferred references under Section 18(1) of the Act whereupon the reference court passed award dated 28-2-2002.

Aggrieved, the appellants filed appeals under Section 54 of the Act before the High Court on 16.8.2007 with applications for condonation of delay. The applications for condonation of delay stood rejected as the High Court did not find any sufficient cause to condone the delay, and dismissed the appeals on the ground of limitation. Hence, these appeals.

Dismissing the appeals, the Court

HELD: 1. Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an e ot

be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. [Para 8] [236-D-H]

Chandigarh Administration & Anr. v. Jagjit Singh & Anr. **AIR 1995 SC 705: 1995 (1) SCR 126** *M/s. Anand Button Ltd. v. State of Haryana & Ors.* **AIR 2005 SC 565: 2005 (9) SCC 164;** *K.K. Bhalla v. State of M.P. & Ors.* **AIR 2006 SC 898: 2006 (1) SCR 342;** *Fuljit Kaur v. State of Punjab* **AIR 2010 SC 1937: 2010 (7) SCR 317 - relied on.**

2.1. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and

circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. [Para 9] [237-B-F]

2.2. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. [Para 11] [238-B-C]

Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors. **AIR 1964 SC 1336: 1964 SCR 495;** *Lala Matadin v. A. Narayanan* **AIR 1970 SC 1953: 1970 (2) SCR 90;** *Parimal v. Veena @ Bharti* **AIR 2011 SC 1150: 2011 (2) SCR 648;** *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* **AIR 2012 SC 1629: 2012 (5) SCC 157;** *Madanlal v. Shyamlal* **AIR 2002 SC 100: 2001 (5) Suppl. SCR 252;** *Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.* **AIR 2002 SC 1201: 2002 (2) SCR 77 - relied on.**

Arjun Singh v. Mohindra Kumar **AIR 1964 SC 993: 1964 SCR 946 - referred to.**

3.1. The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation o[illegible]s.

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. [Para 12] [238-D-F]

3.2. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. [Para 13] [238-G-H]

3.3. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches. [Para 13] [239-C-D]

Popat and Kotecha Property v. State Bank of India Staff Assn. **(2005) 7 SCC 510: 2005 (2) Suppl. SCR 1030;** *Rajendar Singh & Ors. v. Santa Singh & Ors.* **AIR 1973 SC 2537: 1974 (1) SCR 381;** *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project* **(2008) 17 SCC 448: 2008 (15) SCR 135 - relied on.**

P. Ramachandra Rao v. State of Karnataka **AIR 2002 SC 1856: 2002 (4) SCC 578;** *A. R. Antulay v. R.S. Nayak* **AIR 1992 SC 1701: 1991 (3) Suppl. SCR 325 - referred to.**

4.1. Where a case has been presented in the court

beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. [Para 15] [239-G-H; 240-A-B]

4.2. In the instant case, admittedly, there was a delay of 5-1/2 years in filing the appeals under Section 54 of the Act before the High Court. The only explanation offered for approaching the court at such a belated stage has been that one of the appellants had taken ill. In view of above, no interference is required with impugned judgment and order of the High Court. [Paras 6, 16] [236-A-B; 240-C]

Halsbury's Laws of England, Vol. 24, p. 181 **- referred to.**

Case Law Reference:

1995 (1) SCR 126	**relied on**	**Para 8**
2005 (9) SCC 164	**relied on**	**Para 8**
2006 (1) SCR 342	**relied on**	**Para 8**
2010 (7) SCR 317	**relied**	

1964 SCR 495	**relied on**	**Para 9**
1970 (2) SCR 90	**relied on**	**Para 9**
2011 (2) SCR 648	**relied on**	**Para 9**
2012 (5) SCC 157	**relied on**	**Para 9**
1964 SCR 946	**referred to**	**Para 10**
2001 (5) Suppl. SCR 252	**relied on**	**Para 11**
2002 (2) SCR 77	**relied on**	**Para 11**
2005 (2) Suppl. SCR 1030	**relied on**	**Para 13**
1974 (1) SCR 381	**relied on**	**Para 13**
2008 (15) SCR 135	**relied on**	**Para 13**
2002 (4) SCC 578	**referred to**	**Para 14**
1991 (3) Suppl. SCR 325	**referred to**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6974 of 2013.

From the Judgment and Order dated 10.06.2011 of the High Court of Karnataka at Gulbarga in MFA No. 10766 of 2007.

WITH

Civil Appeal No. 6975 of 2013.

Basava Prabhu S. Patil, D. Basu, B.S. Prasad (for R.D. Upadhaya) for the Appellants.

Naveen R. Nath, Darpan K.M., Hetu Arora Sethi for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals have been

preferred against the common impugned judgment and order dated 10.6.2011 passed by the High Court of Karnataka at Gulbarga in MFA Nos.10765 and 10766 of 2007 by which the appeals of the appellants under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') have been dismissed on the ground of limitation.

2. For the purpose of convenience, the facts of C.A. No. 6974 of 2013 are taken, which are as under:

A. The land of the appellants in Survey No.417/2 admeasuring 4 acres and Survey No.418 admeasuring 23 acres, 1 guntha; and 5 acres, 23 gunthas of phut kharab situated in the revenue estate of village Mahagaon, Tehsil and Distt. Gulbarga was acquired in pursuance of notification dated 23.4.1994 under Section 4(1) of the Act.

B. After completing the formalities as required under the Act, an award under Section 11 of the Act was made on 23.10.1997 fixing the market value of the land at the rate of Rs.11,500/- per acre and Rs.100/- per acre in respect of phut kharab land.

C. The appellants preferred references under Section 18(1) of the Act for enhancement of compensation and the reference court vide award dated 28.2.2002 fixed the market value of the land from Rs.31,500/- to Rs.70,000/- per acre depending upon the quality and geographical situation of the land. For phut kharab land, assessment was made at the rate of Rs.1,000/- per acre.

D. Aggrieved, the appellants filed appeals under Section 54 of the Act before the High Court on 16.8.2007 with applications for condonation of delay. The applications for condonation of delay stood rejected as the High Court did not find any sufficient cause to condone the delay.

Hence, these appeals.

3. Shri Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellants, has submitted that the High Court committed an error in not condoning the delay as there was sufficient cause for not approaching the High Court within time. One of the appellants was suffering from ailments and it was in itself a good ground for condonation of delay. The High Court ought to have kept in view that in a large number of identical matters, huge delays had been condoned on the condition that the claimant would not be entitled for interest of the delay period, thus, the High Court itself has given discriminatory and contradictory verdicts which itself is a good ground for interference by this Court. The appeals deserve to be allowed.

4. Per contra, Shri Naveen R. Nath, learned counsel appearing on behalf of the respondent, has opposed the appeal contending that the delay can be condoned keeping in mind the provisions contained in Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Act 1963'). The order of condonation of delay is to be based on sound legal parameters laid down by this Court. No condition can be imposed while condoning the delay. The question whether a claimant should be awarded interest or not would arise at the time of final hearing of the appeal and such condition cannot be imposed for admitting a time barred appeal. If the High Court has committed such a grave error in other cases, that cannot be a ground for interference by this Court as it is a settled legal proposition that doctrine of equality does not apply for perpetuating an illegal and erroneous order. The appeals before the High Court were hopelessly time barred as the same had been preferred after about 5-1/2 years and no satisfactory explanation could be furnished in the applications for condonation of delay for not approaching the court in time. Thus, the appeals lack merit and are liable to be dismissed.

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

6. Admittedly, there was a delay of 5-1/2 years in filing the said appeals under Section 54 of the Act before the High Court. The only explanation offered for approaching the court at such a belated stage has been that one of the appellants had taken ill.

7. Shri Patil, learned senior counsel, has taken us through a large number of judgments of the High Court wherein delay had been condoned without considering the most relevant factor i.e. "sufficient cause" only on the condition that applicants would be deprived of interest for the delay period. These kinds of judgments cannot be approved. The High Court while passing such unwarranted and uncalled for orders, failed to appreciate that it was deciding the appeals under the Act and not a writ petition where this kind of order in exceptional circumstances perhaps could be justified.

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.

(Vide: *Chandigarh Administration & Anr. v. Jagjit Singh & Anr.,* AIR 1995 SC 705, *M/s. Anand Button Ltd. v. State of Haryana & Ors.,* AIR 2005 SC 565; *K.K. Bhalla v. State of M.P. & Ors.,* AIR 2006 SC 898; and *Fuljit Kaur v. State of Punjab*, AIR 2010 SC 1937).

9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: *Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.,* AIR 1964 SC 1336; *Lala Matadin v. A. Narayanan,* AIR 1970 SC 1953; *Parimal v.Veena @ Bharti* AIR 2011 SC 1150; and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629.)

10. In *Arjun Singh v. Mohindra Kumar,* AIR 1964 SC 993 this Court explained the difference between a "good cause" and

a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof that that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: *Madanlal v. Shyamlal,* AIR 2002 SC 100; and *Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.,* AIR 2002 SC 1201.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim *"dura lex sed lex"* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

(See: *Popat and Kotecha Property v. State Bank of India Staff Assn.* (2005) 7 SCC 510; *Rajendar Singh & Ors. v. Santa Singh & Ors.,* AIR 1973 SC 2537; and *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project,* (2008) 17 SCC 448).

14. In *P. Ramachandra Rao v. State of Karnataka,* AIR 2002 SC 1856, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *A.R. Antulay v. R.S. Nayak,* AIR 1992 SC 1701.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No

court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

16. In view of above, no interference is required with impugned judgment and order of the High Court. The appeals lack merit and are, accordingly, dismissed.

B.B.B. Appeals dismissed.

POPAT BAHIRU GOVARDHANE ETC.

v.

SPECIAL LAND ACQUISITION OFFICER & ANR.

(Civil Appeal Nos. 6976-6980 of 2013)

AUGUST 22, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Land Acquisition Act, 1894 – s.28A – Limitation for filing application for re-determination of compensation u/s.28A of the Act – If commences from the date of the award or from the date of knowledge of the award on the basis of which such application is being filed – Held: As the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of the 1963 Act would not apply and, therefore, application u/s.28A of the Act, has to be filed within the period of limitation as prescribed u/s.28A – Such application is to be filed within 3 months from the date of the award of the court – Period of limitation is to be calculated excluding the date on which the award was made and the time requisite for obtaining the copy of the award – Date of acquisition of knowledge by the applicant is not relevant – Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes – The Court has no power to extend the period of limitation on equitable grounds –"Inconvenience is not" a decisive factor to be considered while interpreting a statute – Limitation Act, 1963 – Maxims – Maxim "dura lex sed lex" – Applicability.

By the impugned judgment, the High Court upheld the judgment of the Land Acquisition Collector rejecting the application under Section 28A of the Land Acquisition Act, 1894 on the ground of limitation.

The question which arose for consideration in the instant appeals was whether limitation for filing application for re-determination of compensation under Section 28A of the Land Acquisition Act, 1894 would commence from the date of the award or from the date of knowledge of the award on the basis of which such application is being filed.

Dismissing the appeals, the Court

HELD:1. As the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of the 1963 Act would not apply and, therefore, the application under Section 28A of the Land Acquisition Act, has to be filed within the period of limitation as prescribed under Section 28A of the Land Acquisition Act. The said provisions require that an application for re-determination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. The date of acquisition of knowledge by the applicant is not relevant. [Paras 10, 11] [248-C-D, F]

1.2. The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. "Inconvenience is not" a decisive factor to be considered while interpreting a statute. [Para 13] [250-F-H]

Raja Harish Chandra Raj Sin

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Acquisition Officer & Anr. **AIR 1961 SC 1500: 1962 SCR 676 – distinguished.**

Union of India & Ors. etc. v. Mangatu Ram etc. **AIR 1997 SC 2704: 1997 (3) SCR 1121;** *Tota Ram v. State of U.P. & Ors.* **(1997) 6 SCC 280: 1997 (2) Suppl. SCR 184;** *State of A.P. & Anr. v. Marri Venkaiah & Ors.* **AIR 2003 SC 2949: 2003 (1) Suppl. SCR 841;** *Des Raj (deceased by L.Rs.) & Anr. v. Union of India & Anr.* **AIR 2004 SC 5003: 2004 (4) Suppl. SCR 934; and** *State of Orissa & Ors. v. Chitrasen Bhoi* **(2009) 17 SCC 74: 2009 (14) SCR 558 – relied on.**

The Martin Burn Ltd. v. The Corporation of Calcutta **AIR 1966 SC 529: 1966 SCR 543 and** *Rohitas Kumar & Ors. v. Om Prakash Sharma & Ors.* **AIR 2013 SC 30: 2012 SCR 47 – referred to.**

Bhagwan Das & Ors. v. State of U.P. & Ors. **AIR 2010 SC 1532 2010 (2) SCR 1145;** *Premji Nathu v. State of Gujarat & Anr.* **AIR 2012 SC 1624: 2012 (3) SCR 1042 – cited.**

Case Law Reference:

2010 (2) SCR 1145	**cited**	**Para 3**
2012 (3) SCR 1042	**cited**	**Para 3**
1997 (2) Suppl. SCR 184	**relied on**	**Para 4**
1997 (3) SCR 1121	**relied on**	**Para 4**
2003 (1) Suppl. SCR 841	**relied on**	**Para 4**
2004 (4) Suppl. SCR 934	**relied on**	**Para 4**
2009 (14) SCR 558	**relied on**	**Para 4**
1962 SCR 676	**distinguished**	**Para 9**
1966 SCR 543	**referred to**	**Para 13**
2012 SCR 47	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6976-6980 of 2013.

From the Judgment and Order dated 25.01.2012 of the High Court of Bombay in W.P. Nos. 2140, 2141, 2142, 2143 and 2144 of 2009.

Gaurav Agrawal, Shankar Narayanan for the Appellant.

Madhavi Divan, Sanjay Kharde, Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. These appeals have been preferred against the judgment and order dated 25.1.2012 passed by the High Court of Judicature at Bombay in Writ Petition Nos. 2140-44 of 2009, wherein the High Court has upheld the judgment of the Land Acquisition Collector rejecting the application under Section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') on the ground of limitation.

2. Facts and circumstances giving rise to these appeals are that:

A. The land of the appellants stood notified under Sections 4 and 6 of the Act in 1994-95. Award in respect of the said land was also made on 14.12.1995.

B. Appellants did not file applications under Section 18 of the Act rather some other "interested persons" whose land was also covered by the same notification under Section 4 of the Act filed references and one such reference, i.e. L.A.R. No. 314 of 1999 was decided on 3.4.2006.

C. For the purpose of filing application under Section 28A of the Act, counsel for the appellants ap

of the Court award on 17.5.2006, and though the copy of the said award was ready for delivery on 29.5.2006, it was obtained by learned counsel for the appellants only on 3.6.2006. Application for re-determination of the amount of compensation was filed on 18.7.2006 by the appellants, on the basis of the said Court's award.

D. The Special Land Acquisition Collector vide order dated 22.9.2008, rejected the said application on the ground that the same was filed with a delay of 4 days.

E. Aggrieved, the appellants challenged the said order before the High Court. The same stood dismissed vide impugned judgment and order dated 25.1.2012.

Hence, these appeals.

3. Shri Gaurav Agarwal, learned counsel appearing on behalf of the appellants has submitted that Section 28-A of the Act was inserted by amendment in 1987 and being a beneficial legislation it should be interpreted liberally and period of limitation should be considered and determined on all equitable grounds. It is well-neigh possible for any person to file an appeal without having knowledge of the order/award and therefore, the limitation should be counted from the date of acquisition of knowledge of the Court award. More so, the delay was only of two days and certainly not of four days. In order to fortify his case Shri Gaurav Agarwal has placed reliance upon the judgments of this Court in *Bhagwan Das & Ors. v. State of U.P. & Ors.,* AIR 2010 SC 1532; and *Premji Nathu v. State of Gujarat & Anr.,* AIR 2012 SC 1624.

4. Ms. Madhavi Divan, learned counsel appearing on behalf of the respondents, has opposed the appeal contending that personal inconvenience or hardship of an individual cannot be a consideration for interpreting statutory provisions in case the language of the statute is plain and unambiguous. It is to be given only strict literal interpretation. In the instant case, there

is no ambiguity so far as the statutory provisions are concerned. Therefore, limitation is to be taken as prescribed under the statute. In support of her case Ms. Madhavi Divan has placed reliance upon the judgments of this Court in *Tota Ram v. State of U.P. & Ors.,* (1997) 6 SCC 280; *Union of India & Ors. etc. v. Mangatu Ram etc.,* AIR 1997 SC 2704; *State of A.P. & Anr. v. Marri Venkaiah & Ors.,* AIR 2003 SC 2949; *Des Raj (deceased by L.Rs.) & Anr. v. Union of India & Anr.,* AIR 2004 SC 5003; and *State of Orissa & Ors. v. Chitrasen Bhoi,* (2009) 17 SCC 74.

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

The sole question for the consideration of the court is whether limitation for filing the application for re-determination of the compensation under Section 28A of the Act would commence from the date of the award or from the date of knowledge of the court's award on the basis of which such application is being filed.

6. Though, there is nothing on record to substantiate the appellants' claim that they could acquire the knowledge of the Court's award only on 17.7.2006 and immediately took steps to file application for re-determination under Section 28A of the Act.

7. The issue involved herein is no more *res-integra*. The appellants' case before the High Court as well as before us has been that the limitation would commence from the date of acquisition of knowledge and not from the date of award. Though, Shri Gaurav Agarwal, learned counsel for the appellants, has fairly conceded that there is no occasion for this Court to consider the application of the provisions of the Limitation Act, 1963 (hereinafter called the 'Act 1963') inasmuch as the provisions of Section 5 of the said Act.

8. Section 28A of the Act reads as

"28-A. *Redetermination of the amount of compensation on the basis of the award of the court*.-(1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4 sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

(Emphasis added)

9. In *Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer & Anr.,* AIR 1961 SC 1500, this Court dealt with the issue of limitation while dealing with an application under Section 18 of the Act, and it was observed therein that unless a party had knowledge of the order, the question of approaching the appropriate forum challenging the order, does not arise. Therefore, it is the date of the knowledge from which the limitation would start. The Court observed :

".....The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression…….In our opinion, therefore, it would be unreasonable……..where the rights of a person are affected by any order and limitation is prescribed for the

enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned…"

10. This Court in *Union of India & Ors. v. Mangatu Ram & Ors.* (supra); and *Tota Ram v. State of U.P. & Ors.* (supra), dealt with the issue involved herein and held that as the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of the Act 1963 would not apply and, therefore, the application under Section 28A of the Act, has to be filed within the period of limitation as prescribed under Section 28A of the Act. The said provisions require that an application for re-determination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

11. In *State of A.P. & Anr. v. Marri Venkaiah & Ors.* (Supra), this Court reconsidered the aforesaid judgments including the judgment in *Raja Harish Chandra Raj Singh* (supra) and held that the statute provides limitation of 3 months from the date of award by the court excluding the time required for obtaining the copy from the date of award. It has no relevance so far as the date of acquisition of knowledge by the applicant is concerned. In view of the express language of the statute, the question of knowledge did not arise and, therefore, the plea of the applicants that limitation of 3 months would begin from the date of knowledge, was clearly unsustainable and could not be accepted. The Court also rejected the contention of the applicants that a beneficial legislation should be given a liberal interpretation observing that whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within time limit prescribed under the statute. Such an applicant must at lea g

efforts to find out whether the other land owners have filed any reference application and if so, what is the result thereof. If that is not done then the law cannot help him. The ratio of the judgment in *Raja Harish Chandra Raj Singh* (supra) was held to be non-applicable in case of Section 28-A of the Act. The Court observed:

> *".....In that case, the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of the proviso was not applicable in the said case because the person making the application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to the second part of the proviso which provides that such application can be made within six months from the date of the Collector's award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge, actual or constructive, of the party affected by the award was an essential requirement of fair play and natural justice. Therefore, the second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.*
>
> *The aforesaid reasoning would not be applicable for interpretation of Section 28-A because there is no question of issuing notice to such an applicant as he is not a party to the reference proceeding before the court. The award passed by the court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the court to issue notice to the landowners who have not initiated proceedings for*

> *enhancement of compensation by filing reference applications; maybe, that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award."* (Emphasis added)

A similar view has been reiterated by this Court in *Des Raj* (supra) and *Chitrasen Bhoi* (supra).

12. In view of above, there is no occasion for us to consider the judgments cited at the bar on behalf of the appellants in support of its case. More so, the said judgments have been delivered by this Court while dealing with the applications under Section 18 of the Act. If there are directly applicable precedents on the issue, the same have to be followed rather than to search for a new interpretation unless it is established that the earlier judgments require reconsideration. The suggestion of reconsideration has specifically been rejected by this Court in *Marri Venkaiah* (supra).

13. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision

to relieve what it considers a distress resulting from its operation."

(See : *The Martin Burn Ltd. v. The Corporation of Calcutta,* AIR 1966 SC 529; and *Rohitas Kumar & Ors. v. Om Prakash Sharma & Ors.,* AIR 2013 SC 30)

In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable.

14. As the matters are squarely covered by the above referred to judgments, these appeals are devoid of any merit. The cases do not warrant any interference. The appeals are, accordingly, dismissed.

B.B.B. Appeals dismissed.

M/S YOUNG ACHIEVERS

v.

IMS LEARNING RESOURCES PVT. LTD.

(Civil Appeal No. 6997 of 2013)

AUGUST 22, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Arbitration - Contract containing arbitration clause, superseded by another contract not containing any arbitration clause - Effect of, on arbitration clause contained in the earlier contract - Held: Arbitration clause contained in the earlier contract did not survive once such contract was superseded / novated by the later contract - Arbitration and Conciliation Act, 1996 - s.8, r/w s.5.

The respondent filed suit in the High Court for a permanent injunction restraining infringement of a registered trademark, infringement of copyright, passing off of damages, rendition of accounts of profits and also for other consequential reliefs against the appellant. Appellant preferred IA under Section 8, read with Section 5 of the Arbitration and Conciliation Act, 1996 for rejecting the plaint and referring the dispute to arbitration and also for other consequential reliefs. Respondent-plaintiff raised objection to the said application stating that the suit was perfectly maintainable.

The High Court rejected the application holding that the earlier agreements dated 01.04.2007 and 01.04.2010 between the parties which contained arbitration clause stood superseded by a new contract dated 01.02.2011 arrived at between the parties by mutual consent, and therefore the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. Survival of the arbitration clause, as sought by the appellant in the agreements dated 01.04.2007 and 01.04.2010 has to be seen in the light of the terms and conditions of the new agreement dated 01.02.2011. An arbitration clause in an agreement cannot survive if the agreement containing arbitration clause has been superseded/novated by a later agreement. [Para 6] [257-D-E]

1.2. It is the common case of the parties that the subsequent agreement titled "Exit paper/agreement" dated 01.02.2011 entered into between the parties does not contain any arbitration clause. The Exit paper would clearly indicate that it is a mutually agreed document containing comprehensive terms and conditions which admittedly does not contain an arbitration clause. The High Court is right in taking the view that the case on hand, is not a case involving assertion by the respondent of according a satisfaction in respect of the earlier contracts dated 01.04.2007 and 01.04.2010. If that be so, it could have referred to arbitrator in terms of those two agreements going by the dictum in the case Kishorilal Gupta. This Court in Kishorilal Gupta's case laid down the principle that if the contract is superseded by another, the arbitration clause, being a component part of the earlier contract, falls with it. But where the dispute is whether such contract is void ab intio, the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity. [Paras 7, 8] [258-A-B; 259-H; 260-A-D]

1.3. So far as the present case is concerned, parties have entered into a fresh contract contained in the Exit paper which does not even indicate any disputes arising under the original contract or about the settlement thereof, it is nothing but a pure and simple novation of the original contract by mutual consent. Above being the

factual and legal position, no error is found in the view taken by the High Court. [Para 9] [260-F-H]

Union of India v. Kishorilal Gupta and Bros. **AIR 1959 SC 1362: 1960 SCR 493;** *Branch Manager, /s Magma Leasing & Finance Limited and another v. Potluri Madhavilata and another* **(2009) 10 SCC 103;** *National Agricultural Cooperative Marketing Federation India Ltd. V. Gains Trading Ltd.* **(2007) 5 SCC 692 - referred to.**

Nolde Bros., Inc. v. Bakery Workers **430 US 243 and** *Heyman v. Darwins Limited* **1942 (1) All. E.R 337 - referred to.**

Case Law Reference:

(2009) 10 SCC 103	**referred to**	**Para 3**
(2007) 5 SCC 692	**referred to**	**Para 3**
430 US 243	**referred to**	**Para 4**
1960 SCR 493	**referred to**	**Para 8**
1942 (1) All. E.R 337	**referred to**	**Para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6997 of 2013.

From the Judgment and Order dated 10.07.2012 of the High Court of Delhi at New Delhi in FAO No. 290 of 2012.

Manu T. Ramachandran, V.K. Sidharthan for the Appellants.

Sai Krishna Rajgopal, Vaibhav V., Shantanu Sood, Aamna Hasan, Julien, Vijay Kumar for the Respondent.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. IMS Learning Resources Private Limited, the respondent herein, filed CS (OS) No.2316 of 2011 in the High Court of Delhi at New Delhi for a permanent injunction restraining infringement of a registered trademark, infringement of copyright, passing off of damages, rendition of accounts of profits and also for other consequential reliefs against the appellant herein. Appellant preferred IA No.18 of 2012 under Section 8, read with Section 5 of the Arbitration and Conciliation Act, 1996 for rejecting the plaint and referring the dispute to arbitration and also for other consequential reliefs. Respondent-plaintiff raised objection to the said application stating that the suit is perfectly maintainable. The High Court rejected the application vide its order dated 16.04.2012 holding that that earlier agreements dated 01.04.2007 and 01.04.2010, which contained arbitration clause stood superseded by a new contract dated 01.02.2011 arrived at between the parties by mutual consent. Defendant aggrieved by the said order filed FAO (OS) No.290 of 2012 before the Division Bench of the Delhi High Court, which confirmed the order of the learned Single Judge and dismissed the appeal against which this appeal has been preferred by special leave.

3. Mr. Manu T. Ramachandran, learned counsel appearing for the appellant raised the following question of law:

"a) Whether an arbitration clause is a collateral term in the contract, which relates to resolution of disputes, and not performance and even if the performance of the contract comes to an end on account of repudiation, frustration of breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract?

b) Whether the impugned judgment is contrary to the law settled by this Hon'ble Court in *Branch Manager, M/s Magma Leasing & Finance Limited and another v. Potluri Madhavilata and another* (2009) 10 SCC 103 and

National Agricultural Cooperative Marketing Federation India Ltd. V. Gains Trading Ltd. (2007) 5 SCC 692?

c) Whether the Hon'ble High Court is correct in holding that the law settled by this Hon'ble Court in The Branch Manager, *M/s Magma Leasing & Finance Limited and another v. Potluri Madhavilata and another* (2009) 10 SCC 103 and *National Agricultural Cooperative Marketing Federation India Ltd. V. Gains Trading Ltd.* (2007) 5 SCC 692 is applicable in case of unilateral termination of agreement by one of the parties and not in mutual termination for accord and satisfaction of the earlier contract?"

4. Learned counsel also submitted that arbitration clause is a collateral term in the contract, which relates to resolution of disputes and not performance and even if the performance of the contract comes to an end on account of repudiation, frustration of breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract. Learned counsel also submitted that the court has erroneously held that the case of the appellant is not a case involving the assertion by the respondent of accord and satisfaction in respect of earlier contracts, especially when the sole purpose of the Exit paper dated 01.02.2011 was to put an end to the contractual relationship between them under the aforesaid earlier contracts. Apart from the decisions referred hereinbefore, reliance was also placed on the judgment of the *U.S. Court in Nolde Bros., Inc. v. Bakery Workers* 430 US 243.

5. Mr. Sai Krishna Rajgopal, learned counsel appearing for the respondent placing reliance on the detailed counter affidavit filed on behalf of the respondent submitted that the arbitration clause in the agreements dated 01.04.2007 and 01.04.2010 cannot be invoked since both the above-mentioned agreements were superseded and abrogated by the new agreement dated 01.02.2011. Learned

that in the new agreement it was mutually decided by the parties that any violation of the respondent's trade mark IMS would entitle the respondent to take legal recourse against the appellant. Reference was made to clause 4 of the penultimate paragraph of the new agreement dated 01.02.2011. Learned counsel also submitted that Suit No. CS (OS) 2316 of 2011 was based on prior trade mark rights and not on the agreements dated 01.04.2007 and 01.04.2010. Further it was also pointed out that the new agreement dated 01.02.2011 records the mutual agreement between the parties that the appellant shall not be eligible to use the trade mark IMS in any form and any breach thereof entitles respondent to seek legal recourse on violation of trade mark IMS.

6. We are of the view that survival of the arbitration clause, as sought by the appellant in the agreements dated 01.04.2007 and 01.04.2010 has to be seen in the light of the terms and conditions of the new agreement dated 01.02.2011. An arbitration clause in an agreement cannot survive if the agreement containing arbitration clause has been superseded/ novated by a later agreement. The agreement dated 01.04.2010 contained the following arbitration clause:

"20. Arbitration

All disputes and questions whatsoever which may arise, either during the substance of this agreement or afterwards, between the parties shall be referred to the arbitration of trhe managing director of IMS Learning Resources Pvt. Ltd. Or his nominee and such arbitration shall be in the English language at Mumbai. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment thereof for the time being in force and award or awards of such arbitrator shall be binding on all the parties to the said dispute."

7. We have now to examine terms of the subsequent

agreement titled "Exit paper" dated 01.02.2011. It is the common case of the parties that the Exit paper/agreement entered into between the parties does not contain any arbitration clause. It is useful to extract the relevant portion of the Exit paper, which is as follow:

"With reference to your mail/letter dated 1st February, 2011 on closing the center, from the aforesaid date with mutual consent we have agreed on the following:

"1. Enrolled students

All enrolled students of IMS with you will be serviced by you with respect to their classes, workshops and conduct of test series, GD/PI and any other servicing required as per the product manual.

2. Premises

IMS will reserve the first right of utilization to occupy the premises. In an eventuality of IMS exercising the right to use the premises, then IMS will reimburse the monthly rent for the corresponding months before changing the rental agreement onto IMS name.

3. Marketing

From the above-mentioned date you are not eligible to do any marketing and promotional activities in the name of IMS.

4. Brand

"From the above-mentioned date you are not eligible to use IMS brand in any form.

5. Monthly claims

The partner abides to deposit all the course fees collected for any of IMS programs till now as y

of IMS. All monthly claims will be settled till 31st January, 2011 and the claims would be released after the date of termination of the partner agreement.

6. Security Deposit

The security deposit amount will be refunded back to you after the completion of servicing of all enrolled IMS students. In case of any due on partner to the company (unsettled fees, loan or advance for centre activities etc.), same amount will be deducted from the security deposit.

7. Non Compete Clause

The partner has averred that neither he, nor his family members are directly or indirectly interested in any business in direct competition with that of IMS and the partner agrees and undertakes to ensure that neither he nor his family members shall be involved in or connected to any business in direct competition with that of IMS at any time during the currency of this agreement and for a further period of six months therafter.

8. Full and final settlement

I/We accept all the above-mentioned points and confirm that upon receipt of the sum stated hereinafter in full and final settlement of all my/our claims, neither me/we nor any person claiming by or through me/us shall have any further claims against IMS whatsoever.

Any violation of points 1,3,4,5 & 7 from the partner's end will attract legal course of action and penalties from IMS ranging from forfeiture of the security deposit & pending claims.

I hereby accept above terms and conditions."

8. Exit paper would clearly indicate that it is a mutually agreed document containing comprehensive terms and

conditions which admittedly does not contain an arbitration clause. We are of the view that the High Court is right in taking the view that in the case on hand, is not a case involving assertion by the respondent of accord a satisfaction in respect of the earlier contracts dated 01.04.2007 and 01.04.2010. If that be so, it could have referred to arbitrator in terms of those two agreements going by the dictum in *Union of India v. Kishorilal Gupta and Bros.* AIR 1959 SC 1362. This Court in *Kishorilal Gupta's* case (supra) examined the question whether an arbitration clause can be invoked in the case of a dispute under a superseded contract. The principle laid down is that if the contract is superseded by another, the arbitration clause, being a component part of the earlier contract, falls with it. But where the dispute is whether such contract is void ab intio, the arbitration clause cannot operate on those disputes, for its operative force depends upon the existence of the contract and its validity. The various other observations were made by this Court in the above-mentioned judgment in respect of "settlement of disputes arising under the original contract, including the dispute as to the breach of the contract and its consequences". Principle laid down by the House of Lords in *Heyman v. Darwins Limited* 1942 (1) All. E.R. 337 was also relied on by this Court for its conclusion. The Collective bargaining principle laid down by the US Supreme Court in *Nolde Bros.* case (supra) would not apply to the facts of the present case.

9. We may indicate that so far as the present case is concerned, parties have entered into a fresh contract contained in the Exit paper which does not even indicate any disputes arising under the original contract or about the settlement thereof, it is nothing but a pure and simple novation of the original contract by mutual consent. Above being the factual and legal position, we find no error in the view taken by the High Court. The appeal, therefore, lacks merit and stands dismissed, with no order as to costs.

B.B.B.

UNION OF INDIA & ORS.

v.

SHRI G.R.RAMA KRISHNA & ANR.

(Civil Appeal No. 7032 of 2013)

AUGUST 23, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Service Law - Recruitment - Promotion - Andaman Lakshdeep Harbour Works (ALHW) - Post of Executive Engineer - Three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment - Held: If some departmental candidate is available and eligible to be considered, promotion method is to be resorted to in the first instance - However, on facts, no departmental candidate was available - Respondent had not completed 8 years regular service as Assistant Engineer, as required for promotion to the post of Executive Engineer - In such circumstances only out of sympathy, the High Court could not have given the impugned direction for appointment of respondent as Executive Engineer - This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution which are statutory in nature was clearly misplaced and needs to be denounced - Such a direction is clearly unsustainable and is accordingly set aside - Constitution of India, 1950 - Article 309.

The respondent was working as Assistant Engineer (Mechanical) in Andaman Lakshdeep Harbour Works (ALHW). The U.P.S.C. advertised the post of Executive Engineer (Mechanical) for filling up on direct recruitment basis. This move for filling up of the post of Executive Engineer (Mechanical) adopting the mode of direct

recruitment was taken on the premise that no departmental candidate was available inasmuch as 8 years regular service as Assistant Engineer was needed for promotion to the post of Executive Engineer, and no departmental employee fulfilled this condition.

The respondent filed O.A. before the Central Administrative Tribunal challenging the proposal of the UPSC to fill the post on direct recruitment basis contending that he was eligible to be considered for such a promotion as after counting the ad-hoc period he had completed the requisite number of years as Assistant Engineer. The O.A. was dismissed. The respondent then filed Writ Petition. The High Court allowed the Writ Petition and modified the order of the Tribunal by directing that the respondent be appointed as Executive Engineer after observing all other formalities, and therefore the present appeal.

Allowing the appeal, the Court

HELD: 1. The approach of the High Court cannot be appreciated. As per the extant rules for promotion to the post of Executive Engineer (Mechanical) 8 years regular service as Assistant Engineer is imperative. The Rules do not provide for any relaxation in this behalf. This is clear from the reading of the said rules which provide for appointment to the post of Executive Engineer (Mechanical). As per the Recruitment Rules, post of Executive Engineer (Mechanical) is a selection post. The mode of recruitment stated in the Rules is as under: "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment." The Recruitment Rules also stipulate eligibility condition in all the three circumstances, namely, promotion, transfer on deputation as well as direct recruitment. [Para 8] [266-F-H; 267-A]

2. It is apparent that there are three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment. No doubt, if some departmental candidate is available and eligible to be considered, the promotion method is to be resorted to in the first instance. However, no departmental candidate was available. Concededly, the respondent had not completed 8 years regular service as Assistant Engineer. In such circumstances only out of sympathy the High Court could not have given the impugned direction. This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution of India which are statutory in nature is clearly misplaced and needs to be denounced. Such a direction is clearly unsustainable and is accordingly set aside. As a result, the order of the Tribunal is restored. [Para 9] [267-C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7032 of 2013.

From the Judgment & Order dated 11.01.2010 of the High Court of Calcutta in WPCT No. 281 of 2009.

J.S. Attri, S. Nagrajan, D.S. Mahra, Priyanka Bharihoke, Sarfraz A. Siddiqui, S.K. Mishra, Satya Siddiqui for the Appellants.

The Judgment of the Court was delivered by

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

2. The respondent No.1 herein (hereinafter referred to as the respondent) was appointed as Engineering Assistant (Mechanical) in Andaman Lakshdeep Harbour Works (ALHW) on ad-hoc basis with effect from 17.4.1979. Though this ad-hoc

period was of one year, the respondent continued to work in the capacity even thereafter without obtaining the approval of the Department of Personnel and Training. The services were continued as ALHW was facing lots of problems due to shortage of staff at various levels. He was later on promoted as Inspector of Works on ad-hoc with effect from 11.11.1984. This post was later on merged with that of Junior Engineer and thus the respondent was accorded the status of Junior Engineer.

3. Next promotion from Junior Engineer is to the post of Assistant Engineer. Again on ad-hoc basis, the respondent was promoted as Assistant Engineer with effect from 23.9.1999. He was given regular promotion as Assistant Engineer (Mechanical) on 2.6.2005 and was put on probation for a period of two years from that date. The respondent submitted his representation dated 13.10.2008 for treating the ad-hoc period of Assistant Engineer from the 23.9.1999 to 24.8.2005 as regular service for promotion to the next higher post i.e. Executive Engineer (Mechanial). This representation was turned down by the authorities with the result that the respondent was treated as regularly appointed Assistant Engineer only from 24.8.2005.

4. On 10/16.1.2009, the U.P.S.C. advertised the post of Executive Engineer (Mechanical) for filling up on direct recruitment basis and fixed the date of interview as 27.2.2009. This move for filling up of the post of Executive Engineer (Mechanical) adopting the mode of direct recruitment was taken on the premise that no departmental candidate was available inasmuch as 8 years regular service as Assistant Engineer was needed for promotion to the post of Executive Engineer, and no departmental employee fulfilled this condition.

5. The respondent filed O.A. before the Central Administrative Tribunal challenging the proposal of the UPSC to fill the post on direct recruitment basis contending that he was eligible to be considered for such

counting the ad-hoc period he had completed the requisite number of years as Assistant Engineer.

6. This O.A. was dismissed by the Tribunal taking note of the recruitment rules as per which regular service of 8 years is mentioned as qualifying service to become eligible for the post of Executive Engineer. The relevant portion of the order of the Central Administrative Tribunal in this behalf reads as under:

> "The point to be considered here is whether the applicant has any legal right to be considered for the post of Executive Engineer (Mechanical). It is seen he was an ad-hoc appointee for various periods of time from 23.3.1999 till his regularization as Assistant Engineer on 29.4.2005. His orders on 29.4.2005 appointing him as an Assistant Engineer on regular basis also stipulated that he would be on probation for two years. The applicant at the time of such regularization on 29.4.2005 did not challenge the same nor did he make a representation at that time for treating his previous service on ad-hoc basis from 23.3.99 to 29.4.2005 as regular service. He accepted the order as per Annexure-A/1 together with the probation of two years period. Having done this he cannot now come and make a claim that his entire period from 23.3.99 onwards should be regularized so that he can avail of the recruitment rules for being promoted as Executive Engineer on the promotion quota. As per recruitment of Executive Engineer, the applicant is not eligible since 8 years of regular service is required."

The Tribunal thus opined that the respondent had not made any case for quashing the steps taken by the U.P.S.C. for filling up the post of the Executive Engineer (Mechanical) through direct recruitment as recruitment rules.

7. Against the judgment of the Tribunal, the respondent filed the Writ Petition in the High Court of Calcutta (District : Andaman). The High Court has allowed the Writ Petition and

modified the order of the Tribunal by directing that the respondent be appointed as Executive Engineer after observing all other formalities. This direction is given by the High Court as a special case, without setting it as precedence, as is clear from the operative portion of this order:

> "In this case the petitioner by way of a stop gap arrangement worked in an ad-hoc basis which in other words amounted to a permanent arrangement since he was allowed to perform for a long time since the post is still vacant. There is no reason as to why the petitioner who had put in such a length of service should be denied an opportunity of being promoted in the absence of any adverse situation against him.
>
> Keeping in view peculiar facts and circumstances of the present case, without setting it as a precedence and as a very special case more so as the Petitioner has been working since 1990 till date in the capacity of Assistant Engineer which is a feeder post of the Executive Engineer (Mechanical), we would direct that he be appointed as Executive Engineer (Mechanical) in the establishment of the Respondent No.1 after observing all other formalities."

8. We are unable to appreciate the aforesaid approach of the High Court. It is not disputed before us that as per the extant rules for promotion to the post of Executive Engineer (Mechanical) 8 years regular service as Assistant Engineer is imperative. The Rules do not provide for any relaxation in this behalf. This is clear from the reading of the said rules which provide for appointment to the post of Executive Engineer (Mechanical). As per the Recruitment Rules, post of Executive Engineer (Mechanical) is a selection post. The mode of recruitment stated in the Rules is as under:

> "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment."

The Recruitment Rules also stipulate eligibility condition in all the three circumstances, namely, promotion, transfer on deputation as well as direct recruitment. In so far as filling up of this post by way of promotion is concerned, following requirements are stipulated for a candidate to be eligible in that category:

"PROMOTION:

Assistant Engineer (Mechanical) with 8 years regular service in the grade."

9. From the aforesaid, it becomes apparent that there are three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment. No doubt, if some departmental candidate is available and eligible to be considered, the promotion method is to be resorted to in the first instance. However, no departmental candidate was available. Concededly, the respondent had not completed 8 years regular service as Assistant Engineer. In such circumstances only out of sympathy the High Court could not have given the impugned direction. This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution of India which are statutory in nature is clearly misplaced and needs to be denounced. Such a direction is clearly unsustainable and is accordingly set aside. As a result, the appeal is allowed restoring the order of the Tribunal dismissing the O.A. filed by the respondent. No costs.

B.B.B. Appeal allowed.

MASTER MALLIKARJUN

v.

DIVISIONAL MANAGER, THE NATIONAL INSURANCE COMPANY LIMITED & ANR.

(Civil Appeal No. 7139 of 2013)

AUGUST 26, 2013

[GYAN SUDHA MISRA AND KURIAN JOSEPH, JJ.]

Motor Vehicles Act, 1988 - s.166 - Compensation claim - By child victim who suffered disability in a motor accident - Held: While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act - The main stress in the formula is on pecuniary damages - For children there is no income - Only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year - A child cannot be equated to such a non-earning person - Therefore, compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. - Main elements of damage in case of child victims are pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs - The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability - In case of children suffering disability on account of a motor vehicle accident, appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs - For permanent disability upto 10%, it should be Re.1 lakh, unless there are

exceptional circumstances to take different yardstick - In the instant case, the disability was to the tune of 18% -- Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents -Appellant, hence, would be entitled to get total compensation of Rs.3,75,000/-along with interest @ 6% per annum from the date of the petition.

The appellant, a 12 year old child, was hit by a motorcycle. He suffered various injuries. The surgeon assessed the disability of appellant to the extent of 34% of right lower limb and 18% to the whole body. The Motor Accidents Claims Tribunal in a petition filed by appellant claiming compensation to the tune of Rs.4,00,000/-, awarded compensation of Rs.63,500/-.The High Court enhanced the compensation to Rs.1,09,500/. Appellant still not satisfied, came before this Court.

What is the just and fair compensation to be awarded to a child, who suffered disability in a motor accident, was the main point arising for consideration in the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. While assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the

case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc. [Para 8] [274-A-G]

1.2. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6

lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get total compensation of Rs.3,75,000/-.The claimant will be entitled to a total compensation of Rs.3,75,000/- along with interest @ 6% per annum from the date of the petition. [Para 12 and 13] [275-D-G; 276-F-G]

R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and Others **(1995) 1 SCC 551: 1995 (1) SCR 75 - relied on.**

Sapna vs. United Indian Insurance Company Limited and Another **(2008) 7 SCC 613: 2008 (8) SCR 791;** *Iranna vs. Mohammadali Khadarsab Mulla and Another* **2004 ACJ 1396 and** *Kum. Michael vs. Regional Manager, Oriental Insurance Company Limited and Another* **JT 2013 (3) SC 311 - referred to.**

Case Law Reference:

1995 (1) SCR 75	**relied on**	**Para 8**
2008 (8) SCR 791	**referred to**	**Para 9**
2004 ACJ 1396	**referred to**	**Para 10**
JT 2013 (3) SC 311	**referred to**	**Para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7139 of 2013.

From the Judgment & Order datd 9.07.2010 of the High Court of Karnataka at Bangalore in M.F.A. No. 1146 of 2008 (M.V.)

V.N. Raghupathy for the Appellant.

S.L. Gupta, Ram Ashray, Shyam Sunder Gupta, Shalu Sharma, Rajesh Mahale, Krutin R. Joshi for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. What is the just and fair compensation to be awarded to a child, who suffered disability in a motor accident, is the main point arising for consideration in this case.

THE UNDISPUTED FACTS

3. Appellant at the age of 12 years was hit by a motorcycle on 05.06.2006. He suffered the following injuries: -

a. (Right) lower 1/3 leg deformity, movements restricted diagnosis of fracture.

b. Two abrasions over left elbow posteriorly over olecrenon both measuring 4x1 cms.

c. Abrasion over dorsal aspect right hand at the basis of index finger.

4. Negligence of the rider was proved. The child was treated as inpatient from 05.06.2006 to 01.08.2006, for 58 days. He was operated on 24.06.2006. Six months after the discharge, he was seen by the doctor on 15.02.2007 for follow up. It is in evidence that the patient had the following discomforts/ disabilities, i.e.:

i. Patient walks with limp on to the right side.

ii. Puckered scar on and aspect of middle 1/3 of (Right) leg with operated scar on either side.

iii. Shortening of right lower limb by 1.5 cms.

iv. Limitation of right knee mov

v. Muscle power around right knee Gr.IV against Gr.V.

vi. Limitation of right ankle movement by 20%.

vii. Muscle power around (right) ankle is Gr. IV against Gr.V.

viii. Check X ray No. 3791 dated 15.02.2007 shows disunited fracture of right tibia with plate and screw fixation in situ. Mal union fracture of right tibia.

5. The surgeon had assessed the disability to the extent of 34% of right lower limb and 18% to the whole body.

6. The Motor Accidents Claims Tribunal in a petition filed claiming compensation to the tune of Rs.4,00,000/-, awarded compensation to the tune of Rs.63,500/- under the following heads:-

HEAD	**COMPENSATION AMOUNT**
Pain and suffering.	Rs.25,000/-
Inconvenience caused to parents.	Rs.10,000/-
Medical expenses.	Rs.4,500/-
Loss of future amenities.	Rs.10,000/-
Conveyance, food nourishment. expenses	Rs.4,000/-
Future surgery.	Rs.10,000/-
TOTAL:-	**Rs.63,500/-**

7. On approaching the High Court, the compensation was enhanced to Rs.1,09,500/-. The enhancement was mainly under the head "Loss of future amenities" wherein the appellant was awarded Rs.50,000/-. Appellant still not satisfied, filed this Special Leave Petition.

8. It is unfortunate that both the Tribunal and the High Court

have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in *R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and Others*[1], while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

9. *Sapna vs. United Indian Insurance Company Limited*

1. (1995) 1 SCC 551.

and Another[2] is the case of a 12 year old girl who suffered 90% disability in her left leg. This Court granted a lump sum amount of Rs.2,00,000/- on these heads.

10. In *Iranna vs. Mohammadali Khadarsab Mulla and Another*[3], a Division Bench of the Karnataka High Court granted an amount of Rs.4,00,000/- on these heads to the child who suffered 80% permanent disability.

11. In *Kum. Michael vs. Regional Manager, Oriental Insurance Company Limited and Another*[4], this Court considered the case of an eight year old child suffering a fracture on both legs with total disability only to the tune of 16%. It was held that the child should be entitled to an amount of Rs.3,80,000/- on these counts.

12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows: -

2. (2008) 7 SCC 613.
3. 2004 ACJ 1396.
4. JT 2013 (3) SC 311.

HEAD	COMPENSATION AMOUNT
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalization.	Rs.25,000/-
Medical and incidental expenses during the period of hospitalization for 58 days.	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment.	Rs.25,000/-
TOTAL:-	**Rs.3,75,000/-**

13. The impugned judgment of the High Court in M.F.A. No. 1146 of 2008 is accordingly modified. The claimant will be entitled to a total compensation of Rs.3,75,000/- along with interest @ 6% per annum from the date of the petition. First respondent - Insurance Company is directed to deposit the enhanced compensation with interest as above within two months from today. On such deposit, it will be open to the appellant to approach the Tribunal for appropriate orders on withdrawal. The appeal is allowed as above.

14. There is no order as to costs.

B.B.B.

GURDIP SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 1308 of 2013)

SEPTEMBER 3, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND KURIAN JOSEPH, JJ.]

Penal Code, 1860 - ss.304B & 489A - Death of married woman - Allegations of cruelty and harassment - Two accused- husband and father-in-law - Conviction of appellant (father-in-law) u/ss. 304B & 498A - By courts below - Challenge to - Held: Evidence that deceased had been harassed by both the accused before two weeks of her death - Clear proof in evidence of PWs 1 & 2 that appellant was taunting the deceased demanding dowry - Deceased was even sent out from her matrimonial home on this account - Yet, for conviction u/s.304B, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage - Sans the requirement of seven years, the offence would fall only u/s.498A - On facts, trial Court went only on assumptions with regard to the date of marriage - S.304B IPC permits presumption of law only in a given set of facts and not presumption of fact - Fact is to be proved and then only, law will presume - In the instant case, prosecution failed to establish the crucial fact on the death occurring within seven years of marriage - Conviction u/s.304B IPC set aside, but conviction u/s.498A IPC confirmed - Evidence Act, 1872 - s.113B.

Penal Code, 1860 - s.489A - Cruelty by husband or relative of a married woman -Conviction u/s.498A - Held: No requirement u/s.498A that the cruelty should be within seven years of marriage - No invariable necessity u/s. 498A that the cruelty should be in connection with the demand for dowry.

Penal Code, 1860 - ss.304B & 489A - Introduction of - Purpose - Held: S.498A was introduced to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" - s.304B was introduced to make the penal provisions "more stringent and effective".

Penal Code, 1860 - s.304B - Words "shall be deemed" - Meaning - Held: Though the expression "presumed" is not used u/s.304B of IPC, the words "shall be deemed" u/s.304B carry, literally and under law, the same meaning since the intent and context requires such attribution.

Evidence Act, 1872 - ss. 113A and 113B - Introduction of - Vide amendments -Effect - Held: The amendments are only consequential to the amendments under the Dowry Prohibition Act and IPC - Under s.113A, the expression is "court may presume" whereas u/s.113B, the expression is "court shall presume" - The Parliament intended the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Acts - Dowry Prohibition Act, 1961 -Penal Code, 1860.

In a case relating to the death of a married woman, the appellant-father-in-law was the second accused. First accused was husband of the deceased, who is no more alive.

The Sessions Court had convicted both the accused under Section 498A of IPC for rigorous imprisonment for a period of two years, and under Section 304B of IPC for rigorous imprisonment for a period of ten years. The sentences were ordered to run concurrently. The High Court, in appeal, had maintained the conviction but reduced the sentence under Section 304B of IPC to seven years rigorous imprisonment and confirmed the rest.

The appellant challenged his conviction under Sections 498A/304B before this Court.

Partly allowing the appeal, the Court

HELD: 1.1."Dowry death" in the Indian Penal Code was introduced under Section 304B as per Act 43 of 1986. Under the said provision, if a married woman dies, (i) on account of burns or bodily injury or dies otherwise than under normal circumstances, (ii) such death occurs within seven years of marriage, (iii) it is shown that she was subjected to cruelty or harassment by her husband or any relative, (iv) such cruelty or harassment be soon before her death and (v) such cruelty or harassment by the husband or his relative be or for or in connection with demand for dowry, such death is called dowry death under Section 304B of IPC and the husband or relative shall be presumed to have caused the dowry death. Section 498A of IPC deals with the offence of cruelty by the husband or relative. If a married woman is subjected to cruelty by the husband or his relative, he is liable for conviction under Section 498A. There is no requirement under Section 498A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498A that the cruelty should be in connection with the demand for dowry. Section 498A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" and Section 304B was introduced as per Act 43 of 1986 to make the penal provisions "more stringent and effective". [Para 5] [284-D-H; 285-A-B]

1.2. Though the expression "presumed" is not used under Section 304B of IPC, the words "shall be deemed" under Section 304B carry, literally and under law, the same meaning since the intent and context requires such attribution. Section 304B of IPC on dowry death and

Section 113B of the Indian Evidence Act, 1872, on presumption, were introduced by the same Act, i.e., Act 43 of 1986, with effect from 19.11.1986, and Section 498A of IPC and Section 113A of the Evidence Act were introduced by Act 46 of 1983, with effect from 25.12.1983. [Para 7] [286-G-H; 287-A-B]

3. The amendments under the Evidence Act are only consequential to the amendments under the Dowry Prohibition Act, 1961 and the Indian Penal Code. Under Section 113A, the expression is "court may presume" whereas under Section 113B, the expression is "court shall presume". The Parliament did intend the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Act. [Para 8] [287-B-C]

4. Being a mandatory presumption on the guilty conduct of an accused under Section 304B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away. [Para 9] [287-D-E]

91st Report on Dowry Deaths and Law Reform by Justice K.K. Mathew, Chairman, Law Commission of India on 10-8-1983 - referred to.

4. In the instant case, it has clearly been proved in the evidence of PW-1 and PW-2 that the appellant/ accused was also taunting the deceased demanding dowry. They were all staying in the same premises. The issue had also been brought before the Village Panchayat many times. The deceased was even sent out from her matrimonial home on this account. There is also evidence that the deceased had been harassed by both accused before two weeks of her ll

these, for conviction under Section 304B of IPC, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Sans the requirement of seven years, in this case, the offence would fall only under Section 498A of IPC. And for that matter, sans any of the five ingredients of Section 304B IPC, the offence will fall out of Section 304B of IPC. The Sessions Court has not addressed this crucial aspect and has gone only on assumptions with regard to the date of marriage. Neither PW-1, father of the deceased nor PW-2 Sarpanch or any other witness has given any evidence with regard to the date of marriage. No document whatsoever has been produced with regard to the marriage. There is no evidence even with regard to the date of birth of the children. Also, according to PW-1 father of the deceased, the marriage had taken place five to seven years back. DW-1 elder devrani/sister-in-law of the deceased had stated in her evidence that the marriage had taken place around eleven years back. Nobody has even spoken on the exact date of marriage. The death reportedly took place on 06.04.1990. The evidence was recorded in 1996. The High Court counted the eleven years from the date of recording of the evidence. However, on going through the evidence, it is not at all clear as to whether the same is with respect to the date of tendering evidence or with respect to the date of the incident. In view of the mandatory presumption of law under Section 304B of IPC/113B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304B of IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume. In the instant case, prosecution has failed to establish the crucial fact on the death occurring within seven years of marriage. [Para 10] [288-A-H; 289-A-C]

5. The conviction of the appellant under Section 304B IPC is set aside. The conviction under Section 498A IPC is confirmed. However, taking note of the late evening age of the appellant, the substantive sentence is limited to the period undergone by him during the investigation/ trial. [Para 11] [289-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1308 of 2013.

From the Judgment & Order datd 11.08.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 676/DB of 1997.

Ishma Randhawa, S.K. Verma for the Appellant.

Saurabh Ajay Gupta, AAG, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J. 1. Close to be called a centenarian, the appellant is before us challenging the conviction and sentence under Sections 498A/304B of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC').

2. Appellant is the second accused in Sessions Case No. 41/1991 on the file of Additional Sessions Judge, Amritsar. First accused is his son. The prosecution case as succinctly summarized by the High Court in the impugned judgment is extracted below:

"Harjit Kaur, daughter of Mohinder Singh was married with Mohan Singh accused. Mohinder Singh along with Hari Singh Sarpanch, who was his brother from the brotherhood, had gone to village Gharyala to see his daughter Harjit Kaur because the in-laws of Harjit Kaur were in the habit of picking up quarrels with her for bringing less dowry. The in-laws of Harjit Kaur used to pressurize her to bring scooter, refrigerator and [illegible]s.

On her failure to do so, they after conspiring with each other, threatened to kill her by giving some poisonous substance. Gurdip Singh, father-in-law of Harjit Kaur, on many occasions told Harjit Kaur that in case she failed to bring the above said articles before Rabi crop, then after murdering her, he will re-marry his son. This fact was disclosed to Mohinder Singh by Harjit Kaur on many occasions but he ignored the same with the hope that Harjit Kaur may settle in her in-laws house.

The prosecution story further is that on 6.4.1990, Mohinder Singh along with Hari Singh had gone to the residential farm house of Mohan Singh accused here the dead body of Harjit Kaur was lying on the ground. No one was present in the house. Mohinder Singh suspected that his daughter Harjit Kaur had consumed some poisonous substance out of frustration or the accused have murdered her by administering her some poisonous substance. Hari Singh was deputed to look after the dead body.

Mohinder Singh made his statement before the police on 6.4.1990 on the basis of which the present case was registered.

The investigation in the case was conducted and after the completion of investigation, challan was presented against the appellants in the Court.

The accused were charge-sheeted under Sections 498-A/304-B IPC to which they pleaded not guilty and claimed trial.

To substantiate the charge against the accused, the prosecution examined PW-1 Mohinder Singh, PW-2 Hari Singh, PW-3 Gurcharan Singh, PW-4 Rishi Ram, PW-5 ASI Gulbag Singh, PW-6 Harbhajan Singh, PW-7 SI Amrik Singh and PW-8 Dr. Ram Krishan Sharma."

3. The Sessions Court convicted both the accused under Section 498A of IPC for rigorous imprisonment for a period of two years and fine of Rs.500/- each and, in default of payment of fine, for another three months, and under Section 304B of IPC for rigorous imprisonment for a period of ten years and fine of Rs.500/- each and, in default of payment of fine, for another three months. The sentences were ordered to run concurrently. The High Court, in appeal, maintained the conviction but reduced the sentence under Section 304B of IPC to seven years rigorous imprisonment and confirmed the rest.

4. It is reported that the husband-first accused Mohan Singh is no more.

5. "Dowry death" in the Indian Penal Code was introduced under Section 304B as per Act 43 of 1986. Under the said provision, if a married woman dies,

(i) on account of burns or bodily injury or dies otherwise than under normal circumstances,

(ii) such death occurs within seven years of marriage,

(iii) it is shown that she was subjected to cruelty or harassment by her husband or any relative,

(iv) such cruelty or harassment be soon before her death and

(v) such cruelty or harassment by the husband or his relative be or for or in connection with demand for dowry,

such death is called dowry death under Section 304B of IPC and the husband or relative shall be presumed to have caused the dowry death. Section 498A of IPC deals with the offence of cruelty by the husband or relative. If a married woman is subjected to cruelty by the husband or his relative, he is liable for conviction under Section 498A. Th nt

under Section 498A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498A that the cruelty should be in connection with the demand for dowry. It is interesting to note that Section 498A was introduced as per Act 46 of 1983 to "suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws" and Section 304B was introduced as per Act 43 of 1986 to make the penal provisions "more stringent and effective".

(Emphasis supplied)

6. In this context, the background for the amendments would be a relevant reference. In the 91st Report on Dowry Deaths and Law Reform submitted by Justice K. K. Mathew, Chairman, Law Commission of India, on 10.08.1983, it is stated at Paragraphs 1.3 to 1.5 as follows:

> "1.3 If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-
>
> (i) either the facts do not fully fit into the pigeon-hole of any known offence: or
>
> (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.
>
> The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that

> amounts to "abetment" of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe "abetment" in this context widely, the position is not beyond doubt.
>
> The second situation mentioned above finds illustration in those incidents in which even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence.
>
> 1.4. Speaking of the law of evidence, it may be mentioned that one of the devices by which the law usually tries to bridge the gulf between one fact and another, where the gulf is so wide that it cannot be crossed with the help of the normal rules of evidence, is the device of inserting presumptions. In this sense, it is possible to consider the question whether, on the topic under discussion, any presumption rendering the proof of facts in issue less difficult, ought to be inserted into the law.
>
> 1.5. Coming to substantive criminal law, if a deficiency is found to exist in such law, it can be filled up only by creating a new offence. Before doing so, of course, the wise law maker is expected to take into account a number of aspects, including the nuances of ethics, the ever-fluctuating winds of public opinion, the Demands of law enforcement and practical realities."

(Emphasis supplied)

7. Though the expression "presumed" is not used under Section 304B of IPC, the words "shall be deemed" under Section 304B carry, literally and under law, the same meaning since the intent and context requires such attribution. Section 304B of IPC on dowry death and Secti n

Evidence Act, 1872, on presumption, were introduced by the same Act, i.e., Act 43 of 1986, with effect from 19.11.1986, and Section 498A of IPC and Section 113A of the Evidence Act were introduced by Act 46 of 1983, with effect from 25.12.1983.

8. The amendments under the Evidence Act are only consequential to the amendments under the Dowry Prohibition Act, 1961 and the Indian Penal Code. It is significant to note that under Section 113A, the expression is "court may presume" whereas under Section 113B, the expression is "court shall presume". The Parliament did intend the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the amending Act.

9. Being a mandatory presumption on the guilty conduct of an accused under Section 304B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away. Yet another reference to Paragraph 1.8 in the 91st Report of the Law Commission of India would be fruitful in this context:

> "1.8. Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family: other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family."
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> (Emphasis supplied)

10. Having carefully gone through the entire evidence as appreciated by both the Sessions Court as well as the High Court, we are not inclined to take a different view except on one aspect, viz., the date of marriage. As far as other aspects regarding cruelty or harassment are concerned, it has clearly been proved in the evidence of PW-1 and PW-2 that the appellant/accused was also taunting the deceased demanding dowry. They were all staying in the same premises. The issue had also been brought before the Village Panchayat many times. The deceased was even sent out from her matrimonial home on this account. There is also evidence that the deceased had been harassed by both accused before two weeks of her death. Yet with all these, for conviction under Section 304B of IPC, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Sans the requirement of seven years, in this case, the offence would fall only under Section 498A of IPC. And for that matter, sans any of the five ingredients discussed at Paragraph 6 above herein, the offence will fall out of Section 304B of IPC. The Sessions Court, unfortunately, has not addressed this crucial aspect and has gone only on assumptions with regard to the date of marriage. It has to be noted that the deceased had two children, the son had died earlier and there is a surviving daughter who is stated to be around seven years. Whether the said age of the daughter is at the time of evidence or at the time of the death of the deceased, is not clear. Neither PW-1, father of the deceased nor PW-2 Sarpanch or any other witness has given any evidence with regard to the date of marriage. No document whatsoever has been produced with regard to the marriage. There is no evidence even with regard to the date of birth of the children. Also, according to PW-1 father of the deceased, the marriage had taken place five to seven years back. It has to be noted that DW-1 elder devrani/sister-in-law of the deceased had stated in her evidence that the marriage had taken place around eleven years back. Nobody has even spoken on the exact date of marriage. [illegible]y

took place on 06.04.1990. The evidence was recorded in 1996. The High Court counted the eleven years from the date of recording of the evidence. However, on going through the evidence, it is not at all clear as to whether the same is with respect to the date of tendering evidence or with respect to the date of the incident. In view of the mandatory presumption of law under Section 304B of IPC/113B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304B of IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume. In the instant case, prosecution has failed to establish the crucial fact on the death occurring within seven years of marriage.

11. Hence, we set aside the conviction of the appellant under Section 304B of the Indian Penal Code (45 of 1860). The conviction under Section 498A of the Indian Penal Code (45 of 1860) is confirmed. However, taking note of the late evening age of the appellant, the substantive sentence is limited to the period undergone by him during the investigation/trial.

12. The appeal is allowed as above.

B.B.B. Appeal partly allowed.

NAGAR PANCHAYAT, KURWAI & ANR.
v.
MAHESH KUMAR SINGHAL AND ORS.
(Civil Appeal No. 7821 of 2013)

SEPTEMBER 6, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Municipalities - Madhya Pradesh Municipalities Act, 1961 - s.358(7)(m) - Appellant- Nagar Panchayat - If justified in demanding any fee, for parking of motor, trucks and buses in the bus stand, owned and maintained by it - Held: Municipalities need funds for carrying out various welfare activities and for said purpose, it can always utilize its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented - Bus stand was provided by the Nagar Panchayat for benefit of all vehicle owners and the passengers, spending public money - Nagar Panchayat has to get a reasonable return for its upkeep and maintenance - Article 243W(a)(i) and (ii) read with Entry 17 of the Twelfth Schedule of the Constitution and clause (7)(m) of s.358 of the Madhya Pradesh Municipalities Act and the general principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the Bus stand owned and maintained by it - However, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law - Constitution of India, 1950 - Article 243W(a)(i) and (ii); Twelfth Schedule, Entry 17 - Motor Vehicles Rules, 1994 - Rule 203 and Rule 204.

Municipalities - Madhya Pradesh Municipalities Act, 1961 - Nagar Panchayat - Powers of - Held: Nagar Panchayat

is a unit of self-government, which is a sovereign body having both constitutional and statutory status - It has considerable powers to carry out schemes for economic development and social justice.

Bus stand was constructed on the land owned by the appellant Nagar Panchayat. The appellant in exercise of the powers conferred under Section 357(3) read with Section 349(2), 357 (5) and 358(4) (b) and (d) of Madhya Pradesh Municipality Act, 1961, imposed parking fee on the owners of vehicles, motors, trucks, buses, matadors etc. Following that a notice was issued by the appellant demanding Rs.20/- per day or Rs.600/- per month, imposing entry fees on motors, trucks, buses and matadors parked in the bus stand. Challenging the same, writ petition was preferred by the vehicle owners before the High Court, seeking a writ of certiorari to quash the above-mentioned bye-law and also for a direction to the Nagar Panchayat not to collect any fees from the petitioners.

A Single Judge of the High Court found no merit in the writ petition and dismissed the same. The Division Bench allowed Writ Appeal, holding that Section 349 of Act of 1961 does not confer any power to impose the licence fees for the use of bus stand and the same is not covered under Sections 358(4)(b) and (d) or (7) (m) of the Act of 1961, and hence the present appeal by the Nagar Panchayat.

The question which arose for consideration was whether the appellant-Nagar Panchayat was justified in demanding any fee, for the parking of the motor, trucks and buses in the bus stand, owned and maintained by the Nagar Panchayat.

Allowing the appeals, the Court

HELD: 1.1. Nobody has a fundamental right to use

the land belonging to another without the latter's permission or paying for it, if demanded. [Para 5] [295-E]

1.2. The respondents are operating their vehicles with the stage carriage permits granted by the competent authority under the Motor Vehicles Act. As per the provisions of the Motor Vehicles Act the State Government or any other authorized authority has jurisdiction to determine a place at which a motor vehicle be parked, either indefinitely or for a specified time for taking up and alighting passengers. Rule 203 and Rule 204 of the Motor Vehicles Rules, 1994 provide for maintenance and management of the parking places and make the concerned local authorities responsible for the said purpose. As per the conditions of the permit they are required to commence the journey of their vehicles from the bus stand or place fixed for getting and alighting passengers. Such a condition has been imposed on the licence by the authorities under the Motor Vehicles Act since operators would commence the journey of their respective vehicles on the routes from the bus stand only and would not stop the vehicles on the streets, causing inconvenience to the public. Since vehicle operators started using the bus stand, Nagar Panchayat passed the Resolution, charging the parking fees for the purpose of maintaining of bus stand and providing other facilities. [Para 6] [295-F-H; 296-A-B]

1.3. Nagar Panchayat is a unit of self-government, which is a sovereign body having both constitutional and statutory status. Article 243Q and 243W(a)(i) and (ii) read with Entry 17 in Tenth Schedule of the Constitution, confer considerable powers on the Nagar Panchayat to carry out various schemes for economic development and social justice. Municipalities need funds for carrying out the various welfare activities and for the said purpose, it can always utilize its assets in a profitable manner to its advantage so that various welfar[illegible]d

to it under law could be properly addressed and implemented. Bus stand has been provided by the Nagar Panchayat for the benefit of all vehicle owners and the passengers, spending public money. Nagar Panchayat has to get a reasonable return for its upkeep and maintenance. [Para 8] [297-E-G]

1.4. Clause 7(m) of Section 358 of the Madhya Pradesh Municipalities Act, 1961, empowers the municipality to regulate or prohibit the use of any ground under its control and it does not compel anybody to use it as halting place of vehicles. Article 243W(a)(i) and (ii) read with Entry 17 of the Twelfth Schedule of the Constitution and clause (7)(m) of Section 358 of the Madhya Pradesh Municipalities Act, 1961 and the general principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the Bus stand owned and maintained by it. Needless, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law. [Para 14] [299-H; 300-A-B, C-E]

Municipal Board, Hapur and others v. Jassa Singh and others **(1996) 10 SCC 377: 1996 (5) Suppl. SCR 547 - relied on.**

Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and another **(1973) 2 SCC 478: 1974 (1) SCR 274 and** *Municipal Council, Manasa v. M.P. State Road Transport Corpn. And another* **(1997) 11 SCC 640 - held inapplicable.**

Case Law Reference:

1996 (5) Suppl. SCR 547	**relied on**	**Para 9**
1974 (1) SCR 274	**held inapplicable**	**Para 10**
(1997) 11 SCC 640	**held inapplicable**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7821 of 2013.

From the Judgment & Order dated 01.05.2008 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Writ Appeal No. 458 of 2007.

WITH

C.A. No. 7822 of 2013

T.S. Doabia, Jagjit Singh Chhabra, Ashutosh K. Singh, Sushil Kumar Jain, Puneet Jain, Chrsti Jain for the Appellants.

Rishi Malhotra, Mishra Saurabh, Rani Chhabra for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are in these cases concerned with the question whether the appellant, Nagar Panchayat, Kurwai (in Civil Appeal No. 7821 of 2013 @ SLP(C) No.20997 of 2008) is justified in demanding any fee, for the parking of the motor, trucks and buses in the bus stand, owned and maintained by the Nagar Panchayat.

3. The High Court held that Nagar Panchayat has no power to collect that amount and allowed the writ appeal against which the Nagar Panchayat has come up with this appeal.

4. The appellant in exercise of the powers conferred under Section 357(3) read with Section 349(2), 357 (5) and 358(4) (b) and (d) of Madhya Pradesh Municipality Act, 1961, imposed parking fee on the owners of vehicles, motors, trucks, buses, matadors etc. Following that a notice was issued by the appellant demanding Rs.20/- per day or Rs.600/- per month, imposing entry fees on motors, trucks, buses and matadors parked in the bus stand. Challenging the

preferred by the vehicle owners before the High Court of Madhya Pradesh at Jabalpur, seeking a writ of certiorari to quash the above-mentioned bye-law and also for a direction to the Nagar Panchayat not to collect any fees from the petitioners. The learned Single Judge found no merit in the writ petition and same was dismissed on 10.07.2007. Aggrieved by the same, writ petitioners took up the matter in Writ Appeal No.458 of 2007, which was allowed by the Division Bench, holding that Section 349 of Act of 1961 does not confer any power to impose the licence fees for the use of bus stand and the same is not covered under Sections 358(4)(b) and (d) or (7) (m) of the Act of 1961. Respondents are merrily using the bus stand owned and maintained by the Nagar Panchayat, free of cost, not bothering about its maintenance and upkeep. The question is, can a court, on the basis of such an interpretation sideline the larger public interest and deny the right of the Nagar Panchayat to claim parking fees which can be utilized for the benefit of people?

5. We, before examining the question, shall not forget the basic fundamental principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded.

6. The respondents are operating their vehicles with the stage carriage permits granted by the competent authority under the Motor Vehicles Act. As per the provisions of the Motor Vehicles Act the State Government or any other authorized authority has jurisdiction to determine a place at which a motor vehicle be parked, either indefinitely or for a specified time for taking up and alighting passengers. Rule 203 and Rule 204 of the Motor Vehicles Rules, 1994 provide for maintenance and management of the parking places and make the concerned local authorities responsible for the said purpose. As per the conditions of the permit they are required to commence the journey of their vehicles from the bus stand or place fixed for getting and alighting passengers. Such a condition has been imposed on the licence by the authorities under the Motor

Vehicles Act since operators would commence the journey of their respective vehicles on the routes from the bus stand only and would not stop the vehicles on the streets, causing inconvenience to the public. Since vehicle operators started using the bus stand, Nagar Panchayat passed the Resolution, as already indicated, charging the parking fees for the purpose of maintaining of bus stand and providing other facilities. Bus stand, as already indicated, was constructed on the land owned by the Nagar Panchayat.

7. The Constitution (74th Amendment) Act, 1992 Part IXA which deals with Municipality, came into force on 20.04.1993. Article 243P(e), 243Q and Article 243W(a)(1)(4) are relevant and hence extracted below:

"243P(e): "Municipal" means an institution of self-government constituted under Article 243Q.

243Q. Constitution of Municipalities.-(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

243W – Powers, authority and responsibilities of Municipalities, etc. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow–

(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such c e

specified therein, with respect to –

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.

(b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

Twelfth Schedule was inserted w.e.f. 01.06.1993. Entry 17 therein reads as follows:

"Entry 17 – Public amenities including street lighting, parking lots, bus stops and public conveniences."

8. Nagar Panchayat is, therefore, a unit of self-government, which is a sovereign body having both constitutional and statutory status. Article 243Q and 243W(a)(i) and (ii) read with Entry 17, confer considerable powers on the Nagar Panchayat to carry out various schemes for economic development and social justice. Municipalities need funds for carrying out the various welfare activities and for the said purpose, it can always utilize its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented. Bus stand has been provided by the Nagar Panchayat for the benefit of all vehicle owners and the passengers, spending public money. Nagar Panchayat has to get a reasonable return for its upkeep and maintenance.

9. We may, in this connection, refer to the decision of this Court in *Municipal Board, Hapur and others v. Jassa Singh and others* (1996) 10 SCC 377, wherein this Court while interpreting the provisions of U.P. Municipalities Act, 1916 in

the light of the Constitutional (73rd Amendment) Act, 1992 (actually 74th Amendment Act) upheld the right of the Municipality in levying the bus stand fee in respect of stage carriage. The operative portion of the same reads as follows:

"Even under the recent amendment brought by the Constitution (73rd Amendment) Act, 1992 which came into force w.e.f. 20-4-1993, it imposes the statutory responsibilities on the municipalities. Article 243-P(d) defines "municipal area" to mean the territorial area of a municipality as is notified by the Governor. Article 243-W(a)(i) envisages that subject to the provisions of the Constitution, the legislature of a State may, by law, endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions, as may be specified therein, with respect to the preparation of plans for economic development and social justice. Entry 17 of the Twelfth Schedule provides for public amenities including street lighting, parking lots, bus-stops and public conveniences. Thus, the Constitution enjoins the appropriate legislature to provide for preparation of the plans for economic development and social justice including power to provide public amenities including street lighting, parking lots, bus-stops and public conveniences. On such public amenities including bus-stops having been provided by the municipalities, as is a statutory duty, it is the duty of the user thereof to pay fee for service rendered by the municipality."

10. Vehicle owners placing reliance on the Judgments of this court reported in *Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and another* (1973) 2 SCC 478 and *Municipal Council, Manasa v. M.P. State Road Transport Corpn. And another* (1997) 11 SCC 640, questioned the powers of the

demanding the parking fee, while using the bus stand and enjoying the facilities.

11. Noticeably both the above-mentioned Judgments were dealing with demands made prior to the Constitutional (74th Amendment) Act, 1992 by which Part IXA was incorporated.

12. This Court in *Municipal Council, Bhopal* (supra), held that M.P. Municipal Council Act does not empower a municipality to pass a bye law declaring certain place as a Municipal bus stand and cannot compel the persons plying motor buses or for hire to park the buses anywhere within the municipal limits except at the municipal bus stand for the purpose of taking up or setting down of passengers. Court further held that if a Municipality provides for a Bus stand without compelling anybody to use it, a fee can be charged on bus operators using it voluntarily. In Municipal Council, Manasa, the question which came up for consideration was whether a municipal council is competent to levy toll tax on motor vehicles in view of the provisions contained in Section 6 of the M.P. Motor Vehicles Taxation Act, 1947, which has been extended to the whole of M.P. by the Madhya Pradesh Taxation Laws (Extension) Act, 1957. The Court took the view that Madhya Pradesh Motor Vehicles Taxation Act is a special enactment while the Madhya Pradesh Municipalities Act is a general enactment and that the provisions of Section 127(1)(iii) and Section 6 are to be read in a way that both can stand together. Consequently, the words "tax on vehicles" used in Section 127(1)(iii) of the Madhya Pradesh Municipalities Act was held to mean vehicles other than motor vehicles.

13. Above-mentioned Judgments, on facts as well as on law, do not apply to the facts of the present case, especially in view of to the 74th Constitutional Amendment and in view of Section 358(7)(m) of the M.P. Municipality Act, which was not properly addressed in those cases.

14. We have already dealt with the scope of the 74th Constitutional Amendment Act. Section 358(7)(m), has to be read in the light of the Constitutional Amendment Act. Clause

7(m) of Section 358 of the Madhya Pradesh Municipalities Act, 1961, empowers the municipality to regulate or prohibit the use of any ground under its control and it does not compel anybody to use it as halting place of vehicles. Section 358(7)(m) of the Madhya Pradesh Municipalities Act, 1961 is extracted hereinbelow:

> "358(7)(m) : regulating and prohibiting the stationing of carts or picketing of animals on any ground under the control of the Council or the using of such ground as halting place of vehicles or animals or as a place for enactment or the causing or permitting of any animal to stay and imposition of fee for such use."

Article 243W(a)(i) and (ii) read with Entry 17 of the Twelfth Schedule and clause (7)(m) of Section 358 and the general principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded, in our view, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the Bus stand owned and maintained by it. Needless to say, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law.

15. The High Court of Madhya Pradesh at Jabalpur disposed of the Writ Appeal No.147 of 2010 placing reliance on the Judgment of this Court in Municipal Council, Bhopal (supra). The facts of Civil Appeal No. 7822 of 2013 @ SLP(C) No.18332 of 2010 are also identical. Since we have found no illegality in demanding the parking fee in using the Bus stand in Civil Appeal No. 7822 of 2013 @ SL(C) No.20997 of 2008, Civil Appeal No. 7822 of 2013 @ SLP(C) No.18332 of 2010 is liable to be allowed. Consequently, both the appeals are allowed. The judgments of the High Court are accordingly set aside and the Resolution passed by the appellants imposing the bus stand fee is upheld. However, there will be no order as to costs.

B.B.B.