DEEPALI GUNDU SURWASE
v.
KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA (D.ED.)
AND OTHERS
(Civil Appeal No. 6767 of 2013)

AUGUST 12, 2013

[G.S. SINGHVI AND V. GOPALA GOWDA, JJ.]

Service Law:

Back wages on reinstatement — Suspension and termination of services of school teacher – Declared by Tribunal as illegal – Reinstatement – Award of full back wages, set aside by High Court – Held: High Court committed grave error by interfering with the order passed by Tribunal for payment of back wages, ignoring that the charges levelled against appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice — Impugned order set aside and order passed by Tribunal restored — Management shall pay full back wages to appellant.

Award of back wages, when termination of employee found to be illegal – Principles culled out – Labour law – Industrial Disputes Act, 1947 – s.11-A – Back wages.

Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977:

Objects of the Act – Explained.

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981:

r.34 – Suspension of employee – Entitlement to subsistence allowance – Discussed.

Words and Phrases:

'Reinstatement' in the context of termination of service of an employee – Connotation of – Explained.

The appellant was appointed as a teacher in a Primary School run by a trust and receiving grant in aid, which included rent for the building. In 2005, the Municipal Corporation raised a tax bill of Rs.79,974/- treating the said property as commercial. Thereupon, the Headmistress of the school, who was also President of the Trust, addressed a letter to all the employees including the appellant requiring them to contribute a sum of Rs.1500/- per month towards the tax liability. The appellant refused to comply with the said dictate. The management issued as many as 25 memos to the appellant and then placed her under suspension by letter dated 14.11.2006. She was not even paid subsistence allowance. The management issued notice dated 28.12.2006 for holding an inquiry against the appellant under rr. 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The appellant's nominee was not allowed to participate in the inquiry proceedings, which were conducted ex parte. Ultimately, the appellant's services were terminated by order dated 15.6.2007. The appeal filed by the appellant was allowed by the School Tribunal with full back wages. In the writ petition filed by the Management, the High Court concurred with the Tribunal that suspension and termination of the appellant were violative of the statutory provisions and the principles of natural justice, but, it, relying upon the judgments in *J.K. Synthetics Ltd*[1]. and *Zilla Parishad*[2]*, Gadchiroli,* set aside the direction for payment of back wages.

Allowing the appeal, the Court

1. *K.P. Agrawal and another* 2007 (2) SCR 60.
2. *Prakash s/o Nagorao Thete and another* 2009 (4) Mh. L.J. 628.

HELD: 1.1. The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 was enacted to regulate the recruitment and conditions of service of employees in private schools in the State and to instill a sense of security among the employees so that they may fearlessly discharge their duties towards the pupil, the institution and the society. Another object of the Act is to ensure that the employees become accountable to the management and contribute their might for improving the standard of education. [Para 12] [20-E-G]

1.2. Rule 35 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 empowers the management to suspend an employee with the prior approval of the competent authority. The exercise of this power is hedged with the condition that the period of suspension shall not exceed four months without prior permission of the authority concerned. The suspended employee is entitled to subsistence allowance under the scheme of payment [Rule 34] through Co-operative Bank for a period of four months. A suspended employee can be denied subsistence allowance only in the contingencies enumerated in clauses (3) and (4) of r. 33, i.e., when he takes up private employment or leaves the headquarters without prior approval of the Chief Executive Officer. [Para 13] [21-D-G]

2.1. The word "reinstatement" has not been defined in the Act and the Rules. Its dictionary meaning, in the context, may be taken as 'to restore to a state or position from which the object or person had been removed.' The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. [Paras 16 and 17] [28-H; 29-D-E]

Shorter Oxford English Dictionary, **Vol. II, 3rd Edition; Law Lexicon, 2nd** *Edition; Merriam Webster Dictionary; Black's Law Dictionary,* **6th Edition – referred to.**

2.2. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the employee, but his entire family suffers grave adversities. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or court that the action taken by the employer is *ultra vires* the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages, subject to the employer pleading and proving that during the intervening period the employee was gainfully employed and was getting the same emoluments. The propositions in this regard culled out from the judgments of this Court are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) The rule (i) is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she

was not gainfully employed or was employed on lesser wages. Once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) The cases in which the Labour Court/Industrial Tribunal exercises power u/s. 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/ Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

(v) The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Art. 226 or Art. 136 of the Constitution to interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the

employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages.

(vi) In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited.**

(vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* that on reinstatement the employee/ workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman. [Para 17 and 33] [29-D-F, G-H; 30-A; 47-E-H; 48-A-H; 49-A-G]**

Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* **1979 (1) SCR 563 = (1979) 2 SCC 80, *Surendra Kumar Verma v. Central*

Government Industrial Tribunal-cum-Labour Court, New Delhi **1981 (1) SCR 789 = (1980) 4 SCC 443;** *Mohan Lal v. Management of Bharat Electronics Limited* **1981 (3) SCR 518 = (1981) 3 SCC 225;** *Workmen of Calcutta Dock Labour Board and Another v. Employers in relation to Calcutta Dock Labour Board and Others* **(1974) 3 SCC 216;** *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* **2000 (4) Suppl. SCR 50 = (2001) 2 SCC 54;** *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya* **2002 (1) Suppl. SCR 127 = (2002) 6 SCC 41;** *M.P. State Electricity Board v. Jarina Bee* **2003 (1) Suppl. SCR 535 =(2003) 6 SCC 141 – relied on.**

Indian Railway Construction Co. Ltd. v. Ajay Kumar **2003 (2) SCR 387 = (2003) 4 SCC 579;** *Kendriya Vidyalaya Sangathan v. S.C. Sharma* **2005 (1) SCR 374 =(2005) 2 SCC 363;** *General Manager, Haryana Roadways v. Rudhan Singh* **2005 (1) Suppl. SCR 569 = (2005) 5 SCC 591;** *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* **2005 (5) Suppl. SCR 609 = (2006) 1 SCC 479;** *Andhra Pradesh State Road Transport Corporation v. P. Jayaram Reddy* **2008 (17) SCR 1185 = (2009) 2 SCC 681;** *Novartis India Limited v. State of West Bengal* **2008 (16) SCR 918 = (2009) 3 SCC 124;** *Metropolitan Transport Corporation v. V. Venkatesan* **2009 (12) SCR 583 = (2009) 9 SCC 601;** *Jagbir Singh v. Haryana State Agriculture Marketing Board* **2009 (10) SCR 908 = (2009) 15 SCC 327 – referred to.**

***J.K. Synthetics Ltd. v. K.P. Agrawal and Another* **2007 (2) SCR 60 =2007 (2) SCC 433 – disapproved.**

2.3. In the case in hand, the management's decision to terminate the appellant's service was found by the Tribunal as wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous, and after satisfying itself that she was not gainfully employed anywhere, ordered her reinstatement with full back wages. [Para 34] [50-A, B-C]

2.4. The single Judge of the High Court, while setting aside the award of back wages by making a cryptic observation that the appellant had not proved the factum of non-employment during the intervening period, not only overlooked the order passed by the Division Bench in the earlier writ petition, but also r. 33 which prohibits an employee from taking employment elsewhere. It was not even the pleaded case of the management that during the period of suspension, the appellant had left the Headquarters without prior approval of the Chief Executive Officer and thereby disentitled her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere. The single Judge committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges levelled against the appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice. The impugned order is set aside and the order passed by the Tribunal restored. The management shall pay full back wages to the appellant. [Para 35-37] [50-D-H; 51-A]

Case Law Reference:

2007 (2) SCR 60	**disapproved**	**para 9**
1979 (1) SCR 563	**relied on**	**para 10**
1981 (1) SCR 789	**relied on**	**para 10**
1981 (3) SCR 518	**relied on**	**para 10**
1974 (3) SCC 216	**relied on**	**para 10**
2005 (5) Suppl. SCR 609	**referred to**	**para 11**
2008 (17) SCR 1185	**referred to**	**para 11**
2008 (16) SCR 918	**referred to**	**para 11**

2009 (12) SCR 583	**referred to**	**para 11**
2009 (10) SCR 908	**referred to**	**para 11**
2000 (4) Suppl. SCR 50	**relied on**	**para 20**
2002 (1) Suppl. SCR 127	**relied on**	**para 21**
2003 (1) Suppl. SCR 535	**relied on**	**para 10**
2003 (2) SCR 387	**referred to**	**para 22**
2005 (1) SCR 374	**referred to**	**para 25**
2005 (1) Suppl. SCR 569	**referred to**	**para 25**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6767 of 2013,

From the Judgment & Order dated 28.09.2011 of the High Court of Bombay at Aurangabad in W.P. No. 10032 of 2010.

Gaurav Agrawal for the Appellant.

Sudhanshu S. Choudhari, Sachin J. Patil, Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted.

2. The question which arises for consideration in this appeal filed against order dated 28.9.2011 passed by the learned Single Judge of the Bombay High Court, Aurangabad Bench is whether the appellant is entitled to wages for the period during which she was forcibly kept out of service by the management of the school.

3. The appellant was appointed as a teacher in Nandanvan Vidya Mandir (Primary School) run by a trust established and controlled by Bagade family. The grant in aid given by the State Government, which included rent for the building was received

by Bagade family because the premises belonged to one of its members, namely, Shri Dulichand. In 2005, the Municipal Corporation of Aurangabad raised a tax bill of Rs.79,974/- by treating the property as commercial. Thereupon, the Headmistress of the school, who was also President of the Trust, addressed a letter to all the employees including the appellant requiring them to contribute a sum of Rs.1500/- per month towards the tax liability. The appellant refused to comply with the dictate of the Headmistress. Annoyed by this, the management issued as many as 25 memos to the appellant and then placed her under suspension vide letter dated 14.11.2006. She submitted reply to each and every memorandum and denied the allegations. Education Officer (Primary) Zilla Parishad, Aurangabad did not approve the appellant's suspension. However, the letter of suspension was not revoked. She was not even paid subsistence allowance in terms of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'the Rules') framed under Section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, 'the Act').

4. Writ Petition No.8404 of 2006 filed by the appellant questioning her suspension was disposed of by the Division Bench of the Bombay High Court vide order dated 21.3.2007 and it was declared that the appellant will be deemed to have rejoined her duties from 14.3.2007 and entitled to consequential benefits in terms of Rule 37(2)(f) of the Rules and that the payment of arrears shall be the liability of the management. Paragraphs 4 and 5 of that order read as under:

> "4. Considering the order we intend passing it is not necessary for us to deal with the rival contentions of the parties. That will be for the Inquiry Committee to decide. In view of the apprehensions expressed regarding the inquiry being dragged on unnecessarily, it is necessary to safeguard the interests of the petitioner as well.

5. In the circumstances, Rule is made absolute in the following terms.

(i) The Inquiry Committee shall conclude the proceedings and pass a final order on or before 31.5.2007.

(ii) The petitioner shall be at liberty to have her case represented by Smt.Sulbha Panditrao Munde.

(iii) The petitioner/her representative shall appear, in the first instance, before the Inquiry Committee at 11 a.m. on 26.3.2007 and, thereafter, as directed by the Inquiry Committee.

(iv) The petitioner is entitled to the benefit of Rule 37 (2) (f) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, as specified in paragraph 11 of the order and judgment of the Division Bench in the case of *Hamid Khan Nayyar s/o Habib Khan v. Education Officer, Amravati and Others* (supra). The petitioner shall be deemed to have rejoined the duties from 14.3.2007 and entitled to consequential benefits that would flow out of Rule 37 (2) (f). The payment of arrears shall be the liability of the management."

5. In the meanwhile, the management issued notice dated 28.12.2006 for holding an inquiry against the appellant under Rules 36 and 37 of the Rules. The appellant nominated Smt. Sulbha Panditrao Munde to appear before the Inquiry Committee, but Smt. Munde was not allowed to participate in the inquiry proceedings. The Inquiry Committee conducted ex parte proceedings and the management terminated the appellant's service vide order dated 15.6.2007.

6. The appellant challenged the aforesaid order under Section 9 of the Act. In the appeal filed by her on 25.6.2007, the appellant pleaded that the action taken by the management

was arbitrary and violative of the principles of natural justice. She further pleaded that the sole object of the inquiry was to teach her a lesson for refusing to comply with the illegal demand of the management.

7. The management contested the appeal and pleaded that the action taken by it was legal and justified because the appellant had been found guilty of misconduct. It was further pleaded that the inquiry was held in consonance with the relevant rules and the principles of natural justice.

8. By an order dated 20.6.2009, the Presiding Officer of the School Tribunal, Aurangabad Division (for short, 'the Tribunal') allowed the appeal and quashed the termination of the appellant's service. He also directed the management to pay full back wages to the appellant. The Tribunal considered the appellant's plea that she had not been given reasonable opportunity of hearing and observed:

> "Now let us test for what purpose and for what subject inquiry was initiated in what manner inquiry was conducted, which witnesses have been examined and how injury was conclude. I have already demonstrate above that starting point against this appellant is calling upon staff members collection of fund for payment for tax dues page 54 of appeal memo. All the staff members have objected this joining hands together page 58 of appeal. Fact finding committee have submitted its report Exhibit 62. Report of Education Officer (Primary) in regard to the proposal of appointment of Administrator page 71. If we see issuance of memo by Head Mistress, I observe that language which is used to revengeful against this appellant. It seems that attitude towards this appellant was of indecent and I also observed that behaviour of the appellant have also instigated Head Mistress for the same. Language is of law standard use in the letter by imputing defamed language and humiliation to the appellant.

If we see memos, we can find that some memos are of silly count i.e. late for 3 minutes page 95, query about the examination page 93 to which appellant have replied that when no examinations were held where is the question of getting inquiry by the parents page 96. In regard to the memo, in regard to the black dress on 15.08.2005 and 06.12.2005 and about issuance of show cause notice for issuing false affidavit page 143.

We can find attitude of this Head Master towards appellant. Three minute late is very silly ground query about examination which was not at all held, wearing of black dress during course of argument there was argument on photograph, however, no such photograph is submitted on record. In this regard during course of argument, it was brought to my notice that on 15.08.2005 this appellant have wore black colour blouse, however, she had wore white sari on her person. First thing is that there is no such rule about so called colour that it is bogus colour or this colour is being used for protesting or otherwise. How and why Head Mistress and Management have made issue of this black colour blouse I cannot understand. I have gone through the whole record but I do not find any circular issued by Head Mistress by which all the staff members have been called upon to come in dress for this function. So in the absence of such circular, how it can be an issue of inquiry.

Another aspect is that one of the staff Vijay Gedam have lodged appeal before this Tribunal in favour of him, this appellant and one another staff teacher have swear affidavit. I do not find how this issue can be a subject of inquiry that appellant have swear false affidavit. Is Head Mistress having authority to say that this appellant have swear false affidavit. Here I find 5 to 6 staff members have supported this appellant, at the same time some teachers have also come forward this Head Mistress. They were in

dilemma to whom they may favour. So over all attitude of this Head Mistress against this appellant is revengeful with ulterior motive to drag this appellant in inquiry proceeding.

I gone through the statement recorded of the witnesses. I find that all the statements are general in nature and it is repetition of statement of first witness Surajkumar Khobragade. Nobody has made statement specifically with date and incident. The deposition is a general statement which is already in memos which have been issue by the Head Mistress to the appellant.

More important in this regard that no cross examination of witnesses by the appellant. In the statement of witnesses, I do not find any endorsement that appellant was absent or appellant is present, she declined to cross examine or otherwise. These statements have been concluded that witnesses have stated before inquiry committee, that is all. If we read first statement of first witnesses we can find carry forward of the statement for other witnesses by some minor change in the statement.

One crucial aspect in regard to the proceeding is that this Head Mistress who had issued more than 25 bulky memos against this appellant and on whose complaint or grievances this inquiry was initiate, have not been examined by the inquiry committee. I am surprised that why such a key witness is not examined. In reply this appellant have put her grievances against Head Mistress. By taking advantage of this Chief Executive Officer of the inquiry i.e. Sonia Bagale called upon written explanation from Head Mistress to cover up complaint and grievances of the appellant. It is on 21.05.2007, page 777, 778 and 781 by this explanation again one issues have been brought which were not subject matter of the chargesheet. So it is serious lacuna in this inquiry proceeding that witnesses Head Mistress have not been examined."

The Tribunal then adverted to the charges levelled against the appellant and held:

> "It is also demonstrated in the course of argument that permission was not granted as per letter dated 22.11.2006 of Education Officer. So naturally suspension of this appellant was in question. It is another aspect that on persuasion appellant have been paid subsistence allowance. However, remaining subsistence allowance till today is not paid to the appellant. So it can be another ground for vitiating inquiry.
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> 204(1)Mh. L.J. page 676 in case of *Awdhesh Narayan K. Singh vs. Adarsh Vidya Mandir Trust and Another,* (a) Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981, R.R. 35 and 33- Failure to obtain prior permission of Authority under Rule 33(1) before suspending an employee does not affect the action of suspension pending inquiry- If prior permission is obtained, Rule 35(3) is attracted and the suspended employee is entitled for subsistence allowance under the scheme of payment through Cooperative Banks for a period of four months after which period the payment is to be made by the Management. If an employee is suspended without obtaining prior approval of the Education Authority, payment of subsistence allowance for entire period has to be made by the Management. So if considered all these aspects, we can find that appeal deserves to be allowed by quashing inquiry held against appellant."

The Tribunal finally took cognizance of the fact that the appellant was kept under suspension from 14.11.2006 and she was not gainfully employed after the termination of her service and declared that she is entitled to full back wages. The operative portion of the order passed by the Tribunal reads as under:

> "(1) Appeal is allowed.
>
> (2) The termination order dated 15.06.2007 issued by Respondent on the basis of inquiry report is hereby quashed and set aside.
>
> (3) The appellant is hereby reinstated on her original post and Respondents are directed to reinstate the appellant in her original post as Asst. Teacher Nandanvan Vidyamandir (Primary School), Aurangabad with full back wages from the date of termination till date of reinstatement.
>
> (4) The Respondent Nos.1 to 3 are hereby directed to deposit full back wages i.e. pay and allowances of the appellant from the date of her termination till the date of her reinstatement in the service, within 45 days in this Tribunal from the date of this order.
>
> (5) The appellant will be entitled to withdraw the above amounts from this Tribunal immediately after it is deposited."

9. The management challenged the order of the Tribunal in Writ Petition No. 10032 of 2010. The learned Single Judge examined the issues raised by the management in detail and expressed his agreement with the Tribunal that the decision of the management to suspend the appellant and to terminate her service were vitiated due to violation of the statutory provisions and the principles of natural justice. While commenting upon the appellant's suspension, the learned Single Judge observed:

> "It has also come on record that the appellant was suspended by suspension letter dated 14.11.2006. The appellant made representation to the Education Officer. The Education Officer refused to approve suspension of the appellant as per his letter dated 22.11.2006. From careful perusal of the material brought on record, I do not

find that, there arose extraordinary situation to suspend services of the appellant without taking prior approval of the Education Officer, as contemplated under Rules. No doubt, the Management can suspend services of an employee without prior approval of the Education Officer, but for that there should be extraordinary situation. However, in the facts of this case, nothing is brought on record to suggest that there was extraordinary situation existing so as to take emergent steps to suspend services of the appellant without taking prior approval of the Education Officer (Primary), Zilla Parishad, Aurangabad. It is also not in dispute that the Education Officer declined to approve suspension of the appellant as per his letter dated 22.11.2006.

Therefore, taking into consideration facts involved in the present case, conclusion is reached by the School Tribunal that the Management of the petitioner-school/Institution is dominated by the members of Bagade family."

The learned Single Judge then considered the finding recorded by the Tribunal that the Inquiry Committee was not validly constituted and observed:

"In the present case, admittedly petitioners herein did not file any application or made prayer for reconstituting the inquiry committee and to proceed further for inquiry by newly reconstituted committee. On the contrary, from reading the reply filed by the petitioners herein before the School Tribunal, it is abundantly clear that the petitioners went on justifying constitution of the Committee and stating in the reply that no fault can be attributed with the constitution of the Committee. Therefore, in absence of such prayer, the School Tribunal proceeded further and dealt with all the charges which were levelled against the appellant i.e. Respondent No.3 herein. Therefore, in my opinion, further adjudication by the Tribunal on merits of the matter cannot be said to be beyond jurisdiction or powers

of the School Tribunal. In the facts of this case, as it is apparent from the findings recorded by the School Tribunal, that as the case in hand is a case of victimization and petitioner Management as well as the Inquiry Committee having joined hands against the delinquent right from the beginning, no premium can be put over the action of the petitioner-Management and Inquiry Committee who threw the principles of natural justice in the air. It would be a travesty of justice, in these circumstances, to allow the petitioner-Management to once again hold inquiry in such a extreme case."

However, the learned Single Judge set aside the direction given by the School Tribunal for payment of back wages by relying upon the judgments in *J.K. Synthetics Ltd. v. K. P. Agrawal and Another* (2007) 2 SCC 433 and *Zilla Parishad, Gadchiroli and Another v. Prakash s/o Nagorao Thete and Another* 2009 (4) Mh. L. J. 628. The observations made by the learned Single Judge on this issue are extracted below:

"Bare perusal of above reproduced para 40 of the judgment of the School Tribunal would make it abundantly clear that, the advocate for the appellant, in the course of arguments, argued that the appellant was kept under suspension from 14.11.2006 till the appeal is finally heard. It was argued that the appellant was not gainfully employed anywhere during the period of suspension and termination and therefore, she is entitled to back wages from the date of her suspension. The Tribunal has observed that no rebuttal argument by other side. Therefore, it appears that, the School Tribunal has considered only oral submissions of the Counsel appearing for the appellant, in the absence of any specific pleadings, prayers and evidence for payment of back wages. There was no application or pleadings before the School Tribunal on oath by the appellant stating that she was not gainfully employed from the date of suspension till reinstatement. Therefore, in my

considered opinion, finding recorded by the Tribunal in clauses 3 to 5 of the operative order, in respect of payment of back wages, cannot be sustained, in the light of law laid down by this Court and Honourable Supreme Court in respect of payment of back wages."

10. Learned counsel for the appellant relied upon the judgments of this Court in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (1979) 2 SCC 80, *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (1980) 4 SCC 443, *Mohan Lal v. Management of Bharat Electronics Limited* (1981) 3 SCC 225, *Workmen of Calcutta Dock Labour Board and Another v. Employers in relation to Calcutta Dock Labour Board and Others* (1974) 3 SCC 216 and argued that the impugned order is liable to be set aside because while the appellant had pleaded that she was not gainfully employed, no evidence was produced by the management to prove the contrary. Learned counsel submitted that the order passed by the Tribunal was in consonance with the provisions of the Act and the Rules and the High Court committed serious error by setting aside the direction given by the Tribunal to the management to pay back wages to the appellant on the specious ground that she had not led evidence to prove her non-employment during the period she was kept away from the job. He emphasized that in view of the embargo contained in Rule 33(3), the appellant had not taken up any other employment and argued that she could not have been deprived of full pay and allowances for the entire period during which she was forcibly kept out of job.

11. Learned counsel for the respondent supported the impugned order and argued that the High Court did not commit any error by setting aside the direction given by the Tribunal for payment of back wages to the appellant because she had neither pleaded nor any evidence was produced that during the period of suspension and thereafter she was not employed

elsewhere. Learned counsel relied upon the judgments in *M.P. State Electricity Board v. Jarina Bee* (2003) 6 SCC 141, *Kendriya Vidyalaya Sangathan v. S.C. Sharma* (2005) 2 SCC 363, *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (2006) 1 SCC 479, *J.K. Synthetics Ltd. v. K.P. Agrawal and Another* (supra), *The Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy* (2009) 2 SCC 681, *Novartis India Ltd. v. State of West Bengal and Others* (2009) 3 SCC 124, *Metropolitan Transport Corporation v. V. Venkatesan* (2009) 9 SCC 601 and *Jagbir Singh v. Haryana State Agriculture Marketing Board and Another* (2009) 15 SCC 327 and argued that the rule of reinstatement with back wages propounded in 1960's and 70's has been considerably diluted and the Courts/Tribunal cannot ordain payment of back wages as a matter of course in each and every case of wrongful termination of service. Learned counsel submitted that even if the Court/Tribunal finds that the termination, dismissal or discharge of an employee is contrary to law or is vitiated due to violation of the principles of natural justice, an order for payment of back wages cannot be issued unless the employee concerned not only pleads, but also proves that he/she was not employed gainfully during the intervening period.

12. We have considered the respective arguments. The Act was enacted by the legislature to regulate the recruitment and conditions of service of employees in certain private schools in the State and to instill a sense of security among such employees so that they may fearlessly discharge their duties towards the pupil, the institution and the society. Another object of the Act is to ensure that the employees become accountable to the management and contribute their might for improving the standard of education. Section 2 of the Act contains definitions of various words and terms appearing in other sections. Section 8 provides for constitution of one or more Tribunals to be called "School Tribunal" and also defines the jurisdiction of each Tribunal. Section 9(1) contains a *non obstante* clause and provides for an appeal by any employee

of a private school against his/her dismissal or removal from service or whose services are otherwise terminated or who is reduced in rank. The employee, who is superseded in the matter of promotion is also entitled to file an appeal. Section 10 enumerates general powers and procedure of the Tribunal and Section 11 empowers the Tribunal to give appropriate relief and direction. Section 12 also contains a *non obstante* clause and makes the decision of the Tribunal final and binding on the employee and the management. Of course, this is subject to the power of judicial review vested in the High Court and this Court. Section 16(1) empowers the State Government to make rules for carrying out the purposes of the Act. Section 16(2) specifies the particular matters on which the State Government can make rules. These include Code of Conduct and disciplinary matters and the manner of conducting inquiries.

13. Rule 35 of the Rules empower the management to suspend an employee with the prior approval of the competent authority. The exercise of this power is hedged with the condition that the period of suspension shall not exceed four months without prior permission of the concerned authority. The suspended employee is entitled to subsistence allowance under the scheme of payment (Rule 34) through Co-operative Bank for a period of four months. If the period of suspension exceeds four months, then subsistence allowance has to be paid by the management. In case, the management suspends an employee without obtaining prior approval of the competent authority, then it has to pay the subsistence allowance till the completion of inquiry. A suspended employee can be denied subsistence allowance only in the contingencies enumerated in clauses (3) and (4) of Rule 33, i.e., when he takes up private employment or leaves headquarter without prior approval of the Chief Executive Officer.

14. For the sake of reference, Sections 2(7), 9, 10, 11 and 16 of the Act are reproduced below:

"**2(7) "Employee,"** means any member of the teaching

and non teaching staff of a recognized school and includes Shikshan Sevak;

9. Right of appeal to Tribunal to employees of a private school.

(1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,-

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion;

and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8.

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) to (4) xxxx xxxx xxxx

10. General Powers and procedure of Tribunal.

(1) For the purpose of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908, and shall have the power to stay the operation of any order against which an appeal is made

on such conditions as it may think fit to impose and such other powers as are conferred on it by or under this Act.

(2)The Presiding Officer of the Tribunal shall decide the procedure to be followed by the Tribunal for the disposal of its business including the place or places at which and the hours during which it shall hold its sitting.

(3) xxxx xxxx xxxx

11. Powers of Tribunal to give appropriate relief and direction.

(1) On receipt of an appeal, where the Tribunal, after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in section 9 or is not maintainable by it, or there is no sufficient ground for interfering with the order of the Management it may dismiss the appeal.

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

(a) to reinstate the employee on the same post or on a lower post as it may specify;

(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify;'

(c) to give arrears of emoluments to the employee for such period as it may specify;

(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

(e) where it is decided not to reinstate the employee or in any other appropriate case, to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the services of the school for ten years or more and six months salary (pay and allowances, if any) if he has been in service of the school for less then ten year, by way or compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder, as it may specify; or

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

(3) It shall be lawful for the Tribunal to recommend to State Government that any dues directed by it to be paid to the employee, or in case of an order to reinstate the employee an emoluments to be paid to the employee till he is reinstated, may be deducted from the grant due and payable, or that may become due and payable in future, to the Management and be paid to the employee directly.

(4) Any direction issued by the Tribunal under sub-section (2) shall be communicated to both parties in writing and shall be complied by the Management within the period specified in the direction, which shall not be less than thirty days from the date of its receipt by the Management.

16. Rules.

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of

the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) to (c) xx xx xx xx

(d) the other conditions of service of such employees including leave, superannuation, re-employment and promotions;

(e) the duties of such employees and Code of Conduct and disciplinary matters;

(f) the manner of conducting enquiries;

(g) xx xx xx xx

(2A) to (4) xx xx xx "

15. Rules 33 (1) to (4), 34(1), (2) and 35, which have bearing on the decision of this appeal read as under:

"**33. Procedure for inflicting major penalties.**

(1) If an employee is alleged to be guilty of any of the grounds specified in sub-rule (5) of rule 28 and if there is reason to believe that in the event of the guilt being proved against him, he is likely to be reduced in rank or removed from service, the Management shall first decide whether to hold an inquiry and also to place the employees under suspension and if it decides to suspend the employee, it shall authorise the Chief Executive Officer to do so after obtaining the permission of the Education Officer or, in the case of the Junior College of Educational and Technical High Schools, of the Deputy Director. Suspension shall not be ordered unless there is a prima facie case for his removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. If the Management decides to suspend the employee, such employee shall,

subject to the provisions of sub-rule (5) stand suspended with effect from the date of such orders.

(2) If the employee tenders resignation while under suspension and during the pendency of the inquiry such resignation shall not be accepted.

(3) An employee under suspension shall not accept any private employment.

(4) The employee under suspension shall not leave the headquarters during the period of suspension without the prior approval of the Chief Executive Officer. If such employee is the Head and also the Chief Executive Officer, he shall obtain the necessary prior approval of the President.

34. Payment of subsistence allowance.

(1) (a) A subsistence allowance at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half pay and in addition, Dearness allowance based on such leave salary shall be payable to the employee under suspension.

(b) Where the period of suspension exceeds 4 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first 4 months as follows, namely :-

(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first 4 months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the employee.

(ii) The amount of subsistence allowance may be reduced

by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first 4 months, if in the opinion of the said authority the period of suspension has been prolonged due to reasons, to be recorded in writing directly attributable to the employee.

(iii) The rate of Dearness allowance shall be based on the increased or on the Decreased amount of subsistence allowance, as the case may be, admissible under sub-clauses (i) and (ii).

(2) Other compensatory allowances, if any, of which the employee was in receipt on the date of suspension shall also be payable to the employee under suspension to such extent and subject to such conditions as the authority suspending the employee may direct:

Provided that the employee shall not be entitled to the compensatory allowances unless the said authority is satisfied that the employee continues to meet the expenditure for which such allowances are granted:

Provided further that, when an employee is convicted by a competent court and sentenced to imprisonment, the subsistence allowance shall be reduced to a nominal amount of rupee one per month with effect from the date of such conviction and he shall continue to draw the same till the date of his removal or reinstatement by the competent authority :

Provided also that, if an employee is acquitted by the appellate court and no further appeal or a revision application to a higher court is preferred and pending, he shall draw the subsistence allowance at the normal rate from the date of acquittal by the appellate court till the termination of the inquiry if any, initiated under these rules:

Provided also that, in cases falling under sub-rules (1) and

(2) above, where the management refuses to pay or fails to start and continue payment of subsistence allowance and other compensatory allowances, if any, to an employee under suspension, payment of the same shall be made by the Education Officer or Deputy Director, as the case may be, who shall deduct an equal amount from the non-salary grant that may be due and payable or may become due and payable to the school.

35. Conditions of suspension.

(1) In cases where the Management desires to suspend an employee, he shall be suspended only with the prior approval of the appropriate authority mentioned in rule 33.

(2) The period of suspension shall not exceed four months except with the prior permission of such appropriate authority.

(3) In case where the employee is suspended with prior approval he shall be paid subsistence allowance under the scheme of payment through Co-operative Banks for a period of four months only and thereafter, the payment shall be made by the Management concerned.

(4) In case where the employee is suspended by the Management without obtaining prior approval of the appropriate authority as aforesaid, the payment of subsistence allowance even during the first four months of suspension and for further period thereafter till the completion of inquiry shall be made by the Management itself.

(5) The subsistence allowance shall not be withheld except in cases of breach of provisions of sub-rules (3) or (4) of rule 33."

16. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary,

Vol.II, 3rd Edition, the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.'

17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is *ultra vires* the relevant statutory provisions or the

principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

18. A somewhat similar issue was considered by a three Judge Bench in *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.* (supra) in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held:

> "It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been

deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and

would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular."

(emphasis supplied)

After enunciating the above-noted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75 % of the back wages.

19. Another three Judge Bench considered the same issue

in *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (supra) and observed:

> "Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."
>
> (emphasis supplied)

20. The principle laid down in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra) was reiterated in *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (2001) 2 SCC 54. That case makes an interesting reading. The respondent had worked

as helper for 11 months and 18 days. The termination of his service was declared by Labour Court, Chandigarh as retrenchment and was invalidated on the ground of non-compliance of Section 25-F of the Industrial Disputes Act, 1947. As a corollary, the Labour Court held that the respondent was entitled to reinstatement with continuity of service. However, only 60% back wages were awarded. The learned Single Judge of the Punjab and Haryana High Court did not find any error apparent in the award of the Labour Court but ordered payment of full back wages. The two Judge Bench of this Court noted the guiding principle laid down in the case of Hindustan Tin Works Private Limited and observed:

> "While it is true that in the event of failure in compliance with Section 25-F read with Section 25(b) of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which in Hindustan Tin Works (P) Ltd. case this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however, recording the guiding principle for the grant of relief of back wages this Court in Hindustan case, itself reduced the back wages to 75%, the reason being the contextual facts and circumstances of the case under consideration.
>
> The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any

misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in *Syed Yakoob v. K.S. Radhakrishnan* AIR 1964 SC 477.

Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. In the event, however, the High Court's interference is sought for, there exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable. There ought to be available in the judgment itself a finding about the perversity or the erroneous approach of the Labour

Court and it is only upon recording therewith the High Court has the authority to interfere. Unfortunately, the High Court did not feel it expedient to record any reason far less any appreciable reason before denouncing the judgment."

21. The aforesaid judgment became a benchmark for almost all the subsequent judgments. In *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya* (2002) 6 SCC 41, the Fifth Industrial Tribunal, West Bengal had found that the finding of guilty recorded in the departmental inquiry was not based on any cogent and reliable evidence and passed an award for reinstatement of the workman with other benefits. The learned Single Judge allowed the writ petition filed by the employer and quashed the award of the Industrial Tribunal. The Division Bench of the High Court reversed the order of the learned Single Judge. This Court issued notice to the respondent limited to the question of back wages. After taking cognizance of the judgments in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra) and *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra), the Court observed:

"As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid as wages or subsistence allowance during

the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."

(emphasis supplied)

22. In *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003) 4 SCC 579, this Court was called upon to consider whether the services of the respondent could be terminated by dispensing with the requirement of inquiry enshrined in Indian Railway Construction Co. Ltd. (Conduct, Discipline and Appeal) Rules, 1981 read with Article 311(2) of the Constitution. The learned Single Judge of the Delhi High Court held that there was no legal justification to dispense with the inquiry and ordered reinstatement of the workman with back wages. The Division Bench upheld the order of the learned Single Judge. The two Judge Bench of this Court referred to the judgments in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra) and P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (supra) and held that payment of Rs.15 lakhs in full and final settlement of all claims of the employee will serve the ends of justice.

23. In *M.P. State Electricity Board v. Jarina Bee (Smt.)* (supra), the two Judge Bench referred to *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra) and held that it is always incumbent upon the Labour Court to decide the question relating to quantum of back wages by considering the evidence produced by the parties.

24. *In Kendriya Vidyalaya Sangathan v. S. C. Sharma* (supra), the Court found that the services of the respondent had

been terminated under Rule 19(ii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the charge that he was absconding from duty. The Central Administrative Tribunal held that no material was available with the disciplinary authority which could justify invoking of Rule 19(ii) and the order of dismissal could not have been passed without holding regular inquiry in accordance with the procedure prescribed under the Rules. The Division Bench of the Punjab and Haryana High Court did not accept the appellants' contention that invoking of Rule 19(ii) was justified merely because the respondent did not respond to the notices issued to him and did not offer any explanation for his willful absence from duty for more than two years. The High Court agreed with the Tribunal and dismissed the writ petition. The High Court further held that even though the respondent-employee had not pleaded or produced any evidence that after dismissal from service, he was not gainfully employed, back wages cannot be denied to him. This Court relied upon some of the earlier judgments and held that in view of the respondent's failure to discharge the initial burden to show that he was not gainfully employed, there was ample justification to deny him back wages, more so because he had absconded from duty for a long period of two years.

25. In *General Manager, Haryana Roadways v. Rudhan Singh* (2005) 5 SCC 591, the three Judge Bench considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The factual matrix of that case was that after finding the termination of the respondent's service as illegal, the Industrial Tribunal-cum-Labour Court awarded 50% back wages. The writ petition filed by the appellant was dismissed by the Punjab and Haryana High Court. This Court set aside award of 50% back wages on the ground that the workman had raised the dispute after a gap of 2 years and 6 months and the Government had made reference after 8 months. The Court then proceeded to observe:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

26. In *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey* (supra), the two Judge Bench observed:

"No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be

correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

27. The Court also reiterated the rule that the workman is required to plead and prima facie prove that he was not gainfully employed during the intervening period.

28. In *Depot Manager, Andhra Pradesh State Road Transport Corporation v. P. Jayaram Reddy* (supra), this Court noted that the services of the respondent were terminated because while seeking fresh appointment, he had suppressed the facts relating to earlier termination on the charges of grave misconduct. The Labour Court did not find any fault with the procedure adopted by the employer but opined that dismissal was very harsh, disproportionate and unjustified and accordingly exercised power under Section11-A of the Industrial Disputes Act, 1947 for ordering reinstatement with back wages. This Court referred to the judgments in *P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar* (supra) and *J.K. Synthetics Ltd. v. K. P. Agrawal* (supra) and held that the Labour Court was not justified in awarding back wages.

29. In *Novartis India Limited v. State of West Bengal* (supra), the services of the workman were terminated on the charge of not joining the place of transfer. The Labour Court quashed the termination of services on the ground of violation of the rules of natural justice and passed an award of reinstatement of the workman with back wages. The learned Single Judge of the High Court dismissed the writ petition filed by the appellant but the letters patent appeal was allowed by the Division Bench on the ground that the State of West Bengal was not the appropriate Government for making the reference. The special leave petition filed by the workman was allowed by this Court and the Division Bench of the High Court was asked to decide the letters patent appeal on merits. In the

second round, the Division Bench dismissed the appeal. This Court referred to shift in the approach regarding payment of back wages and observed:

> "There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.
>
> It is also trite that for the purpose of grant of back wages, conduct of the workman concerned also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case. Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right."

30. In *Metropolitan Transport Corporation v. V. Venkatesan* (supra), the Court noted that after termination of service from the post of conductor, the respondent had acquired Law degree and started practice as an advocate. The Industrial Tribunal declared the termination of the respondent's service by way of removal as void and inoperative on the ground that the Corporation had not applied for approval under

Section 33(2)(b) of the Industrial Disputes Act. At one stage, the High Court stayed the order of the Industrial Tribunal but finally dismissed the writ petition. The workman filed application under Section 33-C(2) of the Industrial Disputes Act claiming full back wages. The Labour Court allowed the claim of the respondent to the extent of Rs.6,54,766/-. The writ petition filed against the order of the Labour Court was dismissed by the learned Single Judge and the appeal was dismissed by the Division Bench. This Court referred to the earlier precedents and observed:

> "First, it may be noticed that in the seventies and eighties, the directions for reinstatement and the payment of full back wages on dismissal order having been found invalid would ordinarily follow as a matter of course. But there is change in the legal approach now.
>
> We recently observed in *Jagbir Singh v. Haryana State Agriculture Mktg. Board* that in the recent past there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that the relief of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is held to be in contravention of the prescribed procedure.
>
> Secondly, and more importantly, in view of the fact that the respondent was enrolled as an advocate on 12-12-2000 and continued to be so until the date of his reinstatement (15-6-2004), in our thoughtful consideration, he cannot be held to be entitled to full back wages. That the income received by the respondent while pursuing legal profession has to be treated as income from gainful employment does not admit of any doubt. In *North-East Karnataka RTC v. M. Nagangouda* this Court held that "gainful employment" would also include self-employment. We respectfully agree.

It is difficult to accept the submission of the learned Senior Counsel for the respondent that he had no professional earnings as an advocate and except conducting his own case, the respondent did not appear in any other case. The fact that he resigned from service after 2-3 years of reinstatement and re-engaged himself in legal profession leads us to assume that he had some practice in law after he took sanad on 12-12-2000 until 15-6-2004, otherwise he would not have resigned from the settled job and resumed profession of glorious uncertainties."

31. In *Jagbir Singh v. Haryana State Agriculture Marketing Board* (supra), this Court noted that as on the date of retrenchment, respondent No.1 had worked for less than 11 months and held:

"It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages."

32. We may now deal with the judgment in *J.K. Synthetics*

Ltd. v. K.P. Agrawal and Another (supra) in detail. The facts of that case were that the respondent was dismissed from service on the basis of inquiry conducted by the competent authority. The Labour Court held that the inquiry was not fair and proper and permitted the parties to adduce evidence on the charges levelled against the respondent. After considering the evidence, the Labour Court gave benefit of doubt to the respondent and substituted the punishment of dismissal from service with that of stoppage of increments for two years. On an application filed by the respondent, the Labour Court held that the respondent was entitled to reinstatement with full back wages for the period of unemployment. The learned Single Judge dismissed the writ petition and the Division Bench declined to interfere by observing that the employer had willfully violated the order of the Labour Court. On an application made by the respondent under Section 6(6) of the U.P. Industrial Disputes Act, 1947, the Labour Court amended the award. This Court upheld the power of the Labour Court to amend the award but did not approve the award of full back wages. After noticing several precedents to which reference has been made hereinabove, the two Judge Bench observed:

"There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed.

Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with

the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/ retirement benefits, and not for other benefits like

increments, promotions, etc.

But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

33. The propositions which can be culled out from the aforementioned judgments are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before

the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a

different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

(vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan *Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

(vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

34. Reverting to the case in hand, we find that the

management's decision to terminate the appellant's service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

35. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellant's service was *per se* illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non-employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Writ Petition No.8404/2006, but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the Headquarter without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere.

36. In view of the above discussion, we hold that the learned Single Judge of the High Court committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges levelled against the

appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice.

37. In the result, the appeal is allowed, the impugned order is set aside and the order passed by the Tribunal is restored. The management shall pay full back wages to the appellant within four months from the date of receipt of copy of this order failing which it shall have to pay interest at the rate of 9% per annum from the date of the appellant's suspension till the date of actual reinstatement.

38. It is also made clear that in the event of non-compliance of this order, the management shall make itself liable to be punished under the Contempt of Courts Act, 1971.

R.P. Appeal allowed.

PRABHUDAS DAMODAR KOTECHA & ORS.

v.

MANHABALA JERAM DAMODAR & ANR.

(Civil Appeals Nos. 6726-6727 of 2013)

AUGUST 13, 2013

[K.S. RADHAKRISHNAN, AND DIPAK MISRA, JJ.]

PRESIDENCY SMALL CAUSE COURTS ACT, 1882:

s.41(1) - Suits or proceedings between licensors and licensees - Suit for eviction of gratuitous licensee - Held: Is maintainable before the Small Causes Court ¬ Expression 'licensee' used in PSCC Act is a term of wider import intended to bring in a gratuitous licensee as well and is used in general sense of term as defined in s. 52 of Easements Act - It does not derive its meaning from the expression 'licensee' as used in sub-s. (4A) of s. 5 of Rent Act Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 - ss. 5(4-A) and 15-A - Interpretation of statutes - Contemporenea exposition -- Easements Act, 1882 - s.52 - Transfer of Property Act, 1882.

s.41(1) -Suits or proceedings between licensors and licensees and landlord and tenant - Jurisdiction - Held: s.41(1) confers jurisdiction on Small Causes Court to entertain and try all suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee -- High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in s. 41(1) and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between "landlord and tenant" and "licensor and licensee" whether under Rent Act or under PSCC Act under one umberalla to avoid unnecessary delay, expenses and hardship.

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES (CONTROL) ACT, 1947:

ss. 5(4-A) and 15-A - 'Licensee" - Held: Under sub-s. (4A) of s. 5, "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge" -- The definition of "licensee" under sub-s. (4A) of s. 5 is both exhaustive as well as inclusive -- But licensee under sub-s. (4A) must be a licensee whose licence is supported by material consideration meaning thereby a gratuitous licensee is not covered under the definition of 'licensee' under sub-s. (4A) of s. 5.

INTERPRETATION OF STATUTES:

Contemprenea expositio - Held: Is a recognized rule of interpretation -- Concept of licence and lease were dealt with by contemporary statutes: Easements Act, Transfer of Property Act and s. 41 of PSCC Act -- Therefore, s. 41(1) of PSCC Act could not have contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by s.52 of Easements Act.

Provisions 'pari materia' - Held: Bombay Rent Act, 1947 and Chapter VII of PSCC Act cannot be said to be pari pateria statutes - s.5(4-A) of Bombay Rent Act and s.52 of Easements Act reflecting the expression 'licensee' are not pari material.

Noscitur a sociis - Held: When the intention of legislature in using the expression 'licensee' in s. 41(1) of the PSCC Act is clear and unambiguous, the principle of noscitur a sociis is not to be applied.

Statement of objects and Reasons - Relevance of interpreting a provision - Explained.

Respondent Nos.1 and 2 along with other plaintiffs filed a suit u/s 41 of the Presidency Small Cause Courts

Act, 1882 before the Small Causes Court, Bombay against the appellants (original defendants) for recovery and vacant possession of the suit premises and also for other consequential reliefs. It was the case of the plaintiffs that the defendants were in use and occupation of the suit premises as their guest-house and in this regard no monetary consideration was charged by them from the defendants. Permission granted to the defendants to use the premises was later revoked and since they did not vacate the suit flat, the suit was filed for eviction. The Small Causes Court decreed the suit and ordered eviction of the defendants-appellants with a specific finding that they were gratuitous licensees. The appeal of the appellants was dismissed by the Appellate Bench of Small Causes Court. The appellants as well as the respondents filed writ petitions before the High Court; the respondents' writ petition was for claiming mesne profits. The matter was referred to a Full Bench, which held that the expression 'licensee' would include a 'gratuitous licensee' and the suit was tenable before the Small Causes Court u/s 41 of PSCC Act.

In the instant appeals, the question for consideration before the Court was: "whether a suit filed by a licensor against a gratuitous licensee u/s 41(1) of the Presidency Small Cause Courts Act, 1882, as amended by the Maharashtra Act No.19 of 1976 is maintainable before a Small Causes Court."

Dismissing the appeals, the Court

HELD: 1.1. "Licensees" were brought within the purview of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (Bombay Rent Act) by adding s. 5(4A) and s.15A by way of amendment in the year 1973. The expression "licensee" was inserted by sub-s. (4A) in s. 5 which provided that a person in occupation of the premises or of such part thereof which is not less than a

room, as the case may be, in a subsisting agreement for license given only for a license fee or charge but excluded from its sweep a gratuitous licensee. [para 21 and 23] [74-C-D; 75-D-E]

1.2 Maharashtra Act 19 of 1976 made drastic changes and Chapter VII was substituted for the original Chapter VII (ss. 41 to 49) of the Presidency Small Cause Courts Act, 1882 (PSCC Act). Under Chapter VII of the 1976 Amendment, the proceedings for recovery of possession u/s 41 no more remained summary and they were given status of regular suits. The expressions "licensor" and "licensee" were introduced in s 41(1) of the PSCC Act by the 1976 Amendment. The statement of Objects and Reasons of the 1976 Amendment, inter alia, states that in order to avoid multiplicity of proceedings between a landlord and tenant or a licensor and licensee in different courts, it was considered expedient to make the required supplementary provisions in the Presidency Small Causes Court Act. [para 24-26] [75-F-G; 76-F; 77-G-H; 78-A-C]

1.3 It is trite law that if the words of a statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. [para 28] [78-G]

Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Others **1979 (1) SCR 26 = (1979) 2 SCC 34,** *Kehar Singh and Others v. State (Delhi Admn.)* **1988 (2) Suppl. SCR 24 = AIR 1988 SC 1883,** *District Mining Officer and Others v. Tata Iron and Steel Co. and Another* **2001 (1) Suppl. SCR 147 = (2001) 7 SCC 358,** *Gurudevdatta VKSSS Maryadit and Others v. State of Maharashtra and Others* **2001 (2) SCR 654 = AIR 2001 SC 1980,** *State of H.P. v. Pawan Kumar* **2005 (3) SCR 417 = (2005) 4 SCC 350 and** *State of Rajasthan v. Babu Ram* **2007 (7) SCR 939 = (2007) 6 SCC 55 - referred to.**

1.4 In Mansukhlal Dhanraj Jain's case while interpreting s. 41(1) of the PSCC Act, the Court stated that before taking the view that jurisdiction of regular competent civil court is ousted, the conditions that must be satisfied are: (i) it must be a suit or proceeding between the licensee and licensor; (ii) or between a landlord and a tenant; and (iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or (iv) relating to the recovery of the licence fee or charges or rent thereof. For the purpose of the instant case, condition nos. (i) and (iii) are relevant. [para 29-30] [79-C-F]

Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale **1995 (1) SCR 996 = (1995) 2 SCC 665 - referred to.**

1.5 In view of sub-s. (2) of s. 41 of the PSCC Act, s.41(1) takes in its compass "licensees" who do not fall within the ambit of s. 5(4A) read with s. 5(11) and s. 15A of the Rent Act 1947. Gratuitous licensee does not fall within s. 5(4A) read with ss. 5(11) and 15A of the Rent Act 1947. The provisions of s. 41(1) also do not specifically exclude a gratuitous licensee nor does it make any distinction between the licensee with material consideration or without material consideration. Further, s. 28 of the Rent Act 1947 does not confer jurisdiction on the Small Causes Court to entertain a suit against a gratuitous licensee. Section 28 read with s.5(4A) would show that a party who claims to be a gratuitous licensee is not entitled to any protection under the Rent Act 1947. [para 31-32] [80-C-F]

2.1 "Pari materia" words are used in s. 28 of the Bombay Rent Act, 1947 and s. 41(1) of PSCC Act and referring to the nature of suits in both the provisions would indicate that those provisions confer exclusive jurisdiction on Small Causes Court meaning thereby it alone can entertain suits or proceedings relating to

recovery or possession of the premises. Section 28 of the Bombay Rent Act deals with the suits between landlord and tenant and between licensor and licensee relating only to recovery of licence fee or charge while s. 41 of the PSCC Act deals with such suits between licensor and licensee also. Where the premises are not governed by the Rent Act, the provisions of s. 41 of the PSCC Act would apply, at the same time where the premises are governed by the provisions of Rent Act, the provisions of s. 28 would be attracted. From a reading of both the provisions, it is clear that the nature of such suits as envisaged by both the sections is the same. However, keeping in view the provisions of the two Statutes, it cannot be said that the Rent Act and Chapter VII of the PSCC Act are pari materia statutes. [para 34, 35 and 37] [81-C-G; 83-D-E]

State of Punjab v. Okara Grain Buyers Syndicate Ltd. Okara **1964 SCR 387 =AIR 1964 SC 669** *Shah & Co., Bombay v. State of Maharashtra* **1967 SCR 466 = AIR 1967 SC 1877- relied on.**

Ahmedabad Pvt. Primary Teachers Assn. V. Administrative Officer and Ors. **2004 (1) SCR 470 = (2004) 1 SCC 755 - cited.**

A.G. v. HRH Prince Ernest Augustus of Hanover **(1957) 1 All ER 49;** *R. v. Loxdale* **(1758) 97 ER 394; and** *R v. Herrod* **(1976) 1 All ER 273 (CA) - referred to.**

2.2 "Noscitur a sociis" is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words are intentionally used by the legislature in order to make the scope of the defined word correspondingly wider. The expression "licensee" in s. 41 of the PSCC Act has been used to fully achieve the object and purpose especially of 1976 Amendment Act; and legislature has used clear and plain language and the principle noscitur a sociis is inapplicable when intention

is clear and unequivocal. It is only where the intention of the legislature in associating wider words with words of a narrow significance is doubtful or otherwise not clear, the rule of noscitur a sociis can be applied. When the intention of the legislature in using the expression 'licensee' in s. 41(1) of the PSCC Act is clear and unambiguous, the principle of noscitur a sociis is not to be applied. [para 38-39] [83-G-H; 84-A, C-E]

The State of Bombay and Others v. The Hospital Mazdoor Sabha and Others **(1960) 2 SCR 866 =AIR 1960 SC 610,** *Bank of India v. Vijay Transport and Others,* **(1988) 1 SCR 961 = AIR 1988 SC 151,** *M/s Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise,* **1990 (2) SCR 797 = (1990) 3 SCC 447,** *Samatha v. State of Andhra Pradesh* **1997 (2) Suppl. SCR 305 = (1997) 8 SCC 191,** *M/s Brindavan Bangle Stores & Ors. v. The Assistant Commissioner of Commercial Taxes & Another,* **2000 (1) SCR 97 = (2000) 1 SCC 674 - referred to.**

2.3 Contemporenea expositio is the best and most powerful law and it is a recognized rule of interpretation. The PSCC Act came into force on 01.07.1882. In that year, the Transfer of Property Act and the Easements Act were also enacted. In the instant case, the concept of licence and lease were dealt with by contemporary statutes: Easements Act, Transfer of Property Act and s. 41 of the PSCC Act. Therefore, s. 41(1) of the PSCC Act could not have contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by s.52 of the Easements Act. The PSCC Act is a procedural law and the expressions "licensor" and "licensee" or "landlord" and "tenant" used in s. 41 of the PSCC Act (as amended by Maharashtra Act No. XIX of 1976) relate to immovable property and s. 52 of the Easements Act which defines a licence has an inseparable connection to immovable property and

property law. Legislature was well aware of those contemporaneous statutes, that was the reason, why the expression licence as such has not been defined in the PSCC Act with the idea that the expression used in a contemporaneous statute would be employed so as to interpret s. 41 of the PSCC Act. The principle of contemporenea expositio would apply to the instant case. [para 17, 40 and 41] [71-B; 84-F, G-H; 85-A-D]

National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater, Bombay **1969 (3) SCR 565 = (1969) 1 SCC 541 and** *The Tata Engineering and Locomotive Company Ltd. v. Gram Panchayat* **1977 (1) SCR 306 = (1976) 4 SCC 177 - referred to.**

2.4 The PSCC Act does not define the expressions "licensor" and "licensee". Both these expressions find a place in s. 41(1) of the PSCC Act. Section 41(1) confers jurisdiction on Small Causes Court to entertain and try all the suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the Rent Act defines the term "licensee" so also s.52 of the Easements Act, 1882. Sub-s. (4A) of s. 5 of the Rent Act provides that "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge". The definition of "licensee" under sub-s. (4A) of s. 5 is both exhaustive as well as inclusive. But it is relevant to note that the licensee under sub-s. (4A) must be a licensee whose licence is supported by material consideration, meaning thereby, a gratuitous licensee is not covered under the definition of licensee under sub-s. (4A) of s. 5 of the Rent Act. [para 42] [85-D-H]

2.5 Keeping in view the meaning of the term 'licensee' as defined in s.52 of the Easements Act, and in various

other situations, it is evident that the word 'licence' is not popularly understood to mean that it should be on payment of licence fee, it can also cover a gratuitous licensee as well. A licensor can permit a person to enter into another's property without any consideration, it can be gratuitous as well. [para 46] [87-C-D]

State of Punjab v. Brig. Sukhjit Singh **1993 (3) SCR 944 = (1993) 3 SCC 459; and** *Surendra Kumar Jain v. Royce Pereira* **1997 (5) Suppl. SCR 221 = (1997) 8 SCC 759. - relied on.**

C.M. Beena and Anr. v. P.N. Ramachandra Rao **2004 (3) SCR 306 = (2004) 3 SCC 595,** *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit* **(1971) 1 SCC 276,** *Union of India (UOI) v. Prem Kumar Jain and Ors.* **1976 (Suppl.) SCR 166 = (1976) 3 SCC 743,** *Chandy Varghese and Ors. v. K. Abdul Khader and Ors.* **2003 (2) Suppl. SCR 322 = (2003) 11 SCC 328 - referred to.**

P.R. Aiyar's the Law Lexicon, Second Edition 1997; Black's Law Dictionary, Sixth Edition; and Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 **- referred to.**

2.6 The expression "licence" as reflected in the definition of licensee under sub-s. (4A) of s. 5 of the Rent Act and s. 52 of the Easements Act are not pari materia. Under sub-s. (4A) of s. 5, there cannot be a licence unsupported by the material consideration; whereas u/s 52 of the Easements Act payment of licence fee is not an essential requirement for subsistence of licence. The legislature in its wisdom has not defined the word "licensee" in the PSCC Act. The purpose is evidently to make it more wide so as to cover gratuitous licensee as well with an object to avoid multiplicity of proceedings in different courts causing unnecessary delay, waste of money and time etc. The object is to see that all suits and

proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee irrespective of the value of the subject matter should go to and be disposed of by Small Causes Court. The object behind bringing the licensor and the licencee within the purview of s. 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/licensor and to defeat their right of approaching the court for quick relief, and to avoid multiplicity of litigation with an issue of jurisdiction thereby lingering the disputes for years together. [para 47] [87-D-H; 88-A-B]

Km. Sonia Bhatia v. State of U.P. and Ors. **(1981) 2 SCC 585 - relied on.**

2.7 The interpretation of the expressions 'licensor' and 'licensee' used in s. 41(1) is in tune with the objects and reasons reflected in the amendment of the PSCC Act by the Maharashtra Act (XIX) of 1976. The objects and reasons as such may not be admissible as an aid of construction to the statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time of introduction of the bill and the extent and urgency of the evil which was sought to be remedied. This Court, therefore, cannot restrict the meaning and expression 'licensee' occurring in s. 41(1) of the PSCC Act to mean the licensee with monetary consideration as defined u/s 5(4A) of the Rent Act. [para 49] [88-E-G; 89-B-C]

M.K. Ranganathan and Anr. v. Government of Madras and Ors. **1955 SCR 374 = AIR 1955 SC 604; and** *Bhaiji v. Sub Divisional Officer, Thandla and Ors.* **2002 (5) Suppl. SCR 116 = (2003) 1 SCC 692 -- referred to.**

2.8 The High Court has correctly noticed that the

clubbing of the expression "licensor and licensee" with "landlord and tenant" in s. 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the "landlord and tenant" and the "licensor and licensee" under one umberalla to avoid unnecessary delay, expenses and hardship. The act of the legislature was to bring all suits between "landlord and tenant" and "licensor and licensee" whether under the Rent Act or under the PSCC Act under one roof. It cannot be said that the legislature after having conferred exclusive jurisdiction in one court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction. The various amendments made to Rent Act as well the Objects and Reasons of the Maharashtra Act XIX of 1976 would clearly indicate that the intention of the legislature was to avoid unnecessary delay, expense and hardship to the suitor. In such a situation, courts also should give a liberal construction and attempt should be to achieve the purpose and object of the legislature and not to frustrate it. This Court, therefore, holds that the expression 'licensee' employed in s. 41 of PSSC Act is used in general sense of term as defined in s. 52 of the Easements Act. Looking from all angles, the expression 'licensee' used in s.4(1) of the PSCC Act does not derive its meaning from the expression 'licensee' as used in sub-s. (4A) of s. 5 of the Rent Act, but is a term of wider import intended to bring in a gratuitous licensee as well. Since the expression 'licensee' means and includes a 'gratuitous licensee' also, the Small Causes Court will have jurisdiction to entertain the suit in question. [para 30, 50,51 and 52] [79-F; 89-D-G; 90-A-D]

Ramesh Dwarikadas Mehra v. Indirawati Dwarika Das Mehra **AIR 2001 Bombay 470 - disapproved.**

Prabhudas Damodar Kotecha & Ors. v. Manhabala

Jeram Damodar & Anr. **2007 (5) Maharashtra Law Journal 341 - affirmed.**

Case Law Reference:

AIR 2001 Bombay 470	**disapproved**	**para 3**
2007 (5) Maharashtra Law Journal 341	**affirmed**	**para 5**
1995 (1) SCR 996	**referred to**	**para 11**
(1976) 1 All ER 273 (CA)	**referred to**	**para 11**
2004 (1) SCR 470	**cited**	**para 11**
1979 (1) SCR 26	**referred to**	**para 28**
1988 (2) Suppl. SCR 24	**referred to**	**para 28**
2001 (1) Suppl. SCR 147	**referred to**	**para 28**
2001 (2) SCR 654	**referred to**	**para 28**
2005 (3) SCR 417	**referred to**	**para 28**
2007 (7) SCR 939	**referred to**	**para 28**
(1957) 1 All ER 49	**referred to**	**para 33**
(1758) 97 ER 394	**referred to**	**para 33**
1964 SCR 387	**relied on**	**para 33**
1967 SCR 466	**relied on**	**para 33**
(1960) 2 SCR 866	**referred to**	**para 38**
(1988) 1 SCR 961	**referred to**	**para 38**
1990 (2) SCR 797	**referred to**	**para 38**
1997 (2) Suppl. SCR 305	**referred to**	**para 38**
2000 (1) SCR 97	**referred to**	**para 38**
1969 (3) SCR 565	**referred to**	**para 40**
1977 (1) SCR 306	**referred to**	**para 40**
1993 (3) SCR 944	**relied on**	**para 43**
2004 (3) SCR 306	**referred to**	**para 44**
(1971) 1 SCC 276	**referred to**	**para 44**
1976 (0) Suppl. SCR 166	**referred to**	**para 44**
2003 (2) Suppl. SCR 322	**referred to**	**para 44**
1997 (5) Suppl. SCR 221	**relied on**	**para 45**
(1981) 2 SCC 585	**relied on**	**para 48**
1955 SCR 374	**referred to**	**para 49**
2002 (5) Suppl. SCR 116	**referred to**	**para 49**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6726-27 of 2013.

From the Judgment and Order dated 10.07.2007 of the High Court of Bombay in W.P. Nos. 148 of 2004 & 561 of 2005.

Soli J. Sorabjee, Pretesh Kapoor, R.N. Karanjawala, Manik Karanjawala, Nandini Gore, Abhishek Roy, Tahira Karanjawala, Mehernaz Mehta for the Appellants.

Shekhar Naphade, Ranjana Parikh, Siddharth Bhatnagar, T. Mahipal for the Respondents.

The Judgment of the Court was delivered by

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

2. We are, in these appeals, concerned with the question whether a suit filed by a licensor against a gratuitous licensee under Section 41(1) of the Presidency Small Causes Courts Act, 1882 (for short "the PSCC Act"), as amended by the

Maharashtra Act No.XIX of 1976 (for short "1976 Amendment Act") is maintainable before a Small Causes Court, Mumbai.

3. The Division Bench of the Bombay High Court in *Ramesh Dwarikadas Mehra v. Indirawati Dwarika Das Mehra* (AIR 2001 Bombay 470) held that a suit by a licensor against a gratuitous licensee is not tenable before the Presidency Small Causes Court under Section 41 (1) of the PSCC Act, and it should be filed before the City Civil Court or the High Court depending upon the valuation. The Division Bench held that the expression "licensee" used in Section 41(1) of the PSCC Act has the same meaning as in Section 5 (4A) of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947 (in short "the Rent Act"). Further it was held that the expression "licensee" as used in Section 5(4A) does not cover a gratuitous licensee. The Division Bench in that case rejected the ejectment application holding that the Small Causes Court at Bombay lacked jurisdiction.

4. In Bhagirathi Lingawade and others v. Laxmi Silk Mills, in an unreported judgment of the Bombay High Court dated 03.09.1993, another Division Bench of the Bombay High Court expressed the view that Section 5(4A) and Section 13(1) of the Rent Act, 1947 are not at all relevant in interpreting the scope and ambit of Section 41 of the PSCC Act, under which suit was filed.

5. The Full Bench of the Bombay High Court, which is the Judgment under appeal, reported in 2007 (5) Maharashtra Law Journal 341, answered the question in the affirmative overruling the *Ramesh Dwarikadas Mehra* case (supra), the legality of which is the question, that falls for our consideration.

FACTUAL MATRIX

6. Respondent Nos.1 and 2 along with other plaintiffs (who are now deceased) filed a suit L.E. and C. No.430/582 of 1978 under Section 41 of the PSCC Act before the Small Causes

Court, Bombay against the appellants (original defendants) for recovery and vacant possession of one bed room in Flat No.16, Ram Mahal, Churchgate, Mumbai and also for other consequential reliefs. Plaintiffs submitted that the defendants were in use and in occupation of the above premises as their guest-house and so far as hall and kitchen are concerned, family members of the plaintiff and defendants were using it as common amenities. The plaintiffs also claim that they are in occupation of another bed-room in the suit flat and no monetary consideration was charged by them from the defendants for exclusive use and occupation of one bed-room and joint use of the hall and kitchen as common amenities. Permission granted to the defendants to use the premises was later revoked and since they did not vacate the suit flat and continued to hold possession wrongfully and illegally, suit was filed for eviction.

7. The Small Causes Court decreed the suit on 07.02.1997 and ordered eviction of the appellants with a specific finding that they are gratuitous licensee. The appellants preferred an appeal before the Appellate Bench of Small Causes Court, which was dismissed on 05.04.2003. Against that order both the appellants and respondents filed writ petitions before the High Court, Bombay and the respondents' writ petition was for claiming mesne profits.

8. The Defendants questioned the jurisdiction of the Small Causes Court, Mumbai to entertain and try the suit before the learned Single Judge of the High Court of Bombay, placing reliance on the judgment of the Division Bench in *Ramesh Dwarkadas Mehra's* case (supra) contending that the licence created by the plaintiffs in favour of the defendants was gratuitous, i.e. without consideration, hence the suit is not maintainable in that Court. Learned Single Judge vide his order dated 16.01.2006 referred the matter to a larger bench. Consequently, a Full Bench was constituted.

9. The Full Bench of the Bombay High Court formulated the following questions for its consideration:

(i) Whether the expression "Licensee" used in section 41(1) in Chapter VII of PSCC Act, not having been defined therein, would derive its meaning from the expression "licensee" as used in sub-section (4A) of section 5 of the Rent Act and/or whether the expression "licensee" used in section 41(1) of PSCC Act is a term of wider import so as to mean and include a "gratuitous licensee" also?

(ii) Whether a suit by a "licensor" against a "gratuitous licensee" is tenable before the Presidency Small Cause Court under section 41 of PSCC Act?

Both the above mentioned questions, as already indicated, were answered by the Full Bench in the affirmative, the correctness of otherwise of those findings is the issue that falls for our consideration.

Arguments

10. Shri Soli J. Sorabjee, learned senior counsel appearing for the appellants, submitted that the Full Bench was in error in overturning a well-reasoned judgment of the Division Bench of the High Court in Ramesh Dwarkadas Mehra's case and contended that the licence created by the plaintiffs in favour of the defendants was admittedly gratuitous and hence a suit for eviction of such a licensee is not maintainable in a Small Causes Court. Further, it was pointed out that the intention of the Legislature was that the "licence" contemplated in Section 41 of PSCC Act must take its colour from Section 5(4A) of the Rent Act 1947, which specifically excludes a gratuitous licensee, hence, such a suit is maintainable only before a competent civil court. Learned senior counsel also pointed out that it is an established position of law that, under Section 9 of the Code of Civil Procedure, 1908, the jurisdiction of a Civil

Court cannot be ousted unless such an ouster is expressed or clearly implied and such a provision has to be strictly construed. Shri Sorabjee also submitted that Section 41 of the PSCC Act, as initially enacted, used the expression "permission" and not "licence", despite the Easements Act, 1882, which is indicative of the legislative intent that Section 52 of the Easements Act, not being pari materia, ought not be relied on in determining the scope and meaning of the term "licensee" in Section 41 of PSCC Act.

11. Shri Sorabjee also pointed out that, till 1976, the PSCC Act continued to use the expression "permission" and the 1976 Amendment to the PSCC Act was inspired only by 1973 Amendment to the Rent Act 1947. Further, it was also submitted that 1976 Amendment was specifically made to PSCC Act to harmonize it with the Rent Act 1947. Shri Sorabjee also submitted that Section 41 of the PSCC Act, by virtue of the 1976 Amendment, was completely reworded to specifically reflect the language used in Section 28 of the Rent Act 1947 so as to make it *pari materia*. In other words, it was submitted that, after the 1976 Amendment, the Rent Act 1947 and PSCC Act, are cognate and pari materia statutes which form part of the same system. Learned senior counsel pointed out that the statutes dealing with the same subject matter or forming part of the same system are pari materia statutes. Reference was made to the judgments of this Court reported in *Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale* (1995) 2 SCC 665, *R v. Herrod* (1976) 1 All ER 273 (CA) and *Ahmedabad Pvt. Primary Teachers Assn. V. Administrative Officer and Ors.* (2004) 1 SCC 755.

12. Shri Sorabjee also submitted that the Statement of Objects and Reasons of 1976 Amendment proceeds on the premise that the "licence" contemplated by Section 41 of PSCC Act is a non-gratuitous one which provides that, under the existing law, the licensor had to go to different Courts for recovery of possession and licence fee and that the intention

of the Legislature was always to confine the jurisdiction of the Small Causes Court to eviction proceedings and proceedings for the recovery of rent/licence fee, not to evict a gratuitous licensee. Shri Sorabjee also submitted that the expression "licence" contemplated in Section 41 of PSCC Act does not include a gratuitous licensee, which is also in consonance with the principle of Nocitur a sociis, which provides that words must take colour from words with which they are associated. In support of this contention, reliance was placed on the judgment of this Court in *Ahmedabad Pvt. Primary Teachers Assn.'s* case.

13. Shri Sorabjee also submitted that the respondents have proceeded on a wholly incorrect premise that the Rent Act 1947 only protects the licensees who were in possession on 01.02.1973. It was pointed out that by virtue of 1973 Amendment to the Rent Act 1947, protection was given to all "licensees" defined in Section 5(4A). It was also submitted that certain licensees were given the status of deemed tenants under Section 15A and that only those licensees who had subsisting license on 01.02.1973 were given the status of deemed tenants. Learned senior counsel pointed out that if all the licensees were deemed tenants, there would not have been any need to insert the word "licence" in various provisions of the Act. Learned senior counsel also pointed out that these aspects were overlooked by the judgment in appeal, unsettling the law laid down by the Division Bench of the High Court in *Ramesh Dwarkadas Mehra's* case (supra).

14. Shri Shekhar Naphade, learned senior counsel appearing for the respondents, submitted that the Full Bench of the Bombay High Court is right in holding that the expression "licensee" used in Section 41(1) of PSCC Act does not derive its meaning from the expression "licensee" as defined in Section 5(4A) of the Rent Act 1947 and that the expression "licensee" used in Section 41(1) of PSCC Act is a term of wide import so as to mean and include a gratuitous licensee.

Learned senior counsel also submitted that the argument of the appellants that the Rent Act 1947 is pari materia with Section 41 of PSCC Act or same system statute, is totally misconceived. Shri Naphade also submitted that the "licence" contemplated in Section 41(1) of PSCC Act be considered as licence, as defined in Section 52 of the Easements Act. Shri Naphade also pointed out that though Section 41(1) of PSCC Act, as originally enacted, refers to occupation of premises with permission, such permission means permission as referred to in Section 52 of the Easements Act which is a contemporaneous statute, i.e. Easements Act, the Transfer of Property Act and Section 41 of PSCC Act. In support of that principle, learned senior counsel placed reliance on the judgment of this Court in *National & Grindlays Bank Ltd. v. The Municipal Corporation of Greater Bombay* (1969) 1 SCC 541 and *Tata Engineering and Locomotive Company Ltd. v. The Gram Panchayat, Pimpri Wachere* (1976) 4 SCC 177.

15. Shri Naphade also submitted that the expression "licensor" or "licensee" or "landlord" and "tenant" used in Section 41 of PSCC Act, as amended by the Maharashtra Act No. XIX of 1976, relate to "immoveable property" and Section 52 of the Easements Act which defines a "licence" has a inseparable connection to immoveable property and property law. Learned senior counsel pointed out that the expression "licensee" is used as an antithesis to the concept of tenant and, therefore, the licensee under Section 41(1) must mean a person having a licence as defined in Section 52 of the Easements Act. Shri Naphade also submitted that the Maharashtra Act of 1976 made necessary changes in Chapter VII of PSCC Act which contained Sections 41 to 49 and by virtue of the amendment, the pecuniary restriction on the jurisdiction of the Small Causes Court placed by Section 18 has been removed to speed up the proceedings for eviction and to avoid multiplicity of proceedings. The Legislature also intended that all cases of licensees and tenants should be tried only by the Small Causes Court under Section 41(1) of PSCC Act.

16. Before considering the rival contentions raised by the counsel on either side and the reasoning of the Full Bench, it is necessary to examine the historical settings of the various legislations.

LEGISLATIVE HISTORY

PSCC Act:

17. The PSCC Act came into force on 01.07.1882. In that year, the Transfer of Property Act as well as the Easements Act was also enacted. Under the PSCC Act, Small Causes Courts were established in Calcutta, Madras, Ahmedabad and Bombay and the PSCC Act was enacted to consolidate and amend the law relating to Courts of Small Causes established in the Presidency Towns. Small Causes Court was conferred with the jurisdiction to try all suits of a civil nature where value of the subject matter did not exceed Rs.10,000/- as per Section 18, subject to exceptions in Section 19 of PSCC Act. Small Causes Courts, at that time, were treated as a Civil Courts in the hierarchy of the Courts. Chapter VII of PSCC Act, as it stood prior to the Maharashtra Amendment Act, 1976, contained Sections 41 to 46 conferring limited jurisdiction of recovery of possession of immoveable property on Small Causes Court giving summary remedy for recovery of possession of immoveable property of the prescribed value. Section 41 of PSCC Act then stood as follows:

> **"41. Summons against persons occupying property without leave.-** When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed two thousand rupees, as the tenant, or by permission, or another person, or of some person through whom such other person claims,
>
> and such tenancy or permission has determined or been withdrawn,

> and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,
>
> such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

18. Proceedings at that time were initiated by filing an application, not a suit. Even the Bombay Rent Act, 1939 and Bombay Rent Act, 1944, did not give exclusive jurisdiction to any Court. Legislative history indicates that in respect of premises having annual rack rent up to Rs.2,000/-, the proceedings for recovery of possession between landlord and tenant were to be filed in Small Causes Court under Chapter VII of the PSCC Act and in case where the annual rack rent exceeded Rs.2,000/-, the recovery suits were to be filed in the Original Side of the High Court.

19. Bombay Rent Act 1947 also brought lot of changes to the Rent Act of 1939 and 1944 and Section 28 of the 1947 Act provided that exclusive jurisdiction was conferred on the Small Cause Court in respect of all the suits between landlord and tenant relating to recovery of rent or possession irrespective of value of the subject-matter. Suits between landlord and tenant pending on the original side of the High Court were transferred to the Presidency Small Cause Courts, Mumbai and were to be tried under the provisions of the Rent Act. Even landlords were prohibited from recovering any amount in excess of standard rent which was pegged down at the level of rent in September, 1940 or on the date of first letting. Even the landlord's right of evicting tenant was also severely curtailed and the landlords could recover possession only on proof of grounds of eviction enumerated under the Rent Act, therefore, they

started letting out their premises under an agreement of leave and license. Proceedings for recovery of possession against the licensee though started filing suits under Section 41 of the Small Cause Courts Act, the defendants in those cases starting denying that there were licensees but tenants and that the agreement of leave and licence was sham and bogus and hence not binding. Even the findings rendered by the Small Cause Court in exercise of its jurisdiction under Section 41 on the question of tenancy was not final and the aggrieved party had a right to file a regular suit for declaration of the title resulting in multiplicity of the proceedings. Chapter VII of the PSCC Act was later amended by the Maharashtra Act No. XLI of 1963. The object of the Amendment in a nutshell is as follows:

> "In view of the fact that the provisions of Section 47 of the Presidency Small Cause Courts Act, 1882 are abused by the parties in an application under Section 41 and the litigation is protracted on account of parties in certain cases claiming the right to be tried under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Act deletes sections 45 to 47 of the Presidency Small Cause Courts Act, 1882 and empowers the Small Cause Court to decide as a preliminary issue the question whether an occupant is entitled to the protection of the Rent Control Act and to lay down that only one appeal can be preferred against the order and no further appeal can lie. New Section 49 provides that recovery of possession shall be a bar to a suit in any court except on the basis of title to the immovable property other than as title."

20. Section 42A which provided that if in an application made under Section 41, the occupant raises a defence that he is a tenant within the meaning of Bombay Rent Act, 1947 then notwithstanding anything contained in that Act, the question shall be decided by the Small Cause Court as a preliminary issue. The question of filing civil suits against licensee even

after the introduction of Section 42A depended upon the value of subject matter.

Bombay Rent Act

21. Bombay Rent Act, 1925 was repealed by the Bombay Rent Protection Act, 1939. Both the Acts did not contain any special or separate definition of "license" nor did they deal with "licensees". In the year 1944, Bombay Rent, Hotel and Lodging House Rates (Control) Act 1944 was enacted followed by the 1947 Act. Rent Act, 1947 also did not deal with expressions "license" or "licensee" and their rights and there were widespread attempts to evade the rigour of the rent control legislation by entering into "leave and licence" agreements in order to prevent rampant evasion. Bombay Rent Act was amended in the year 1973 to bring "licensees" within the purview of the Rent Act, 1947 by adding Section 5(4A) and Section 15A.

22. Statement of Objects and Reasons of Maharashtra Act 19 of 1973 reads as follows:

> "It is now notorious that the Bombay Rents, Hotel and lodging House Rates Control Act, 1947, is being avoided by the expedient of giving premises on leave and license for some months at a time; often renewing from time to time at a higher license fee. Licensees are thus charged excessive license fees' in fact, several times more than the standard rent, and have no security of tenure, since the licensee has no interest in the property like a lessee. It is necessary to make provision to bring licensees within the purview of the aforesaid Act. It is therefore provided by Cl.14 in the Bill that persons in occupation on the 1st day of February 1973 (being a suitable anterior date) under subsisting licenses, shall for the purposes of the act, be treated as statutory tenants and will have all the protection that a statutory tenant has, under the Act. It is further provided in Cl. 8 that in the case of other licenses, the

charge shall not be more than a sum equivalent to standard rent and permitted increases, and a reasonable amount for amenities and services. It is also provided that no person shall claim or receive anything more as license fee or charge, than the standard rent and permitted increases, and if he does receive any such excessive amounts, they should be recoverable from the licensor."

23. Section 15-A introduced in the said Act stated that a person as on 1st February, 1973 in occupation of any premises or any part of which is not less than a room as licensee under a subsisting agreement of leave and license, he shall on that day deemed to have become tenant of the landlord for the purpose of Bombay Rent Act, 1947 in respect of the premises or part thereof in his occupation. The definition of the expression "tenant" in Section 5(11) was also amended to include such licensee as shall be deemed to be the tenant by virtue of Section 15A. The expression "licensee" was also inserted by Sub-section (4A) in Section 5 which provided that a person in occupation of the premises or of such part thereof which is not less than a room, as the case may be, in a subsisting agreement for license given only for a license fee or charge but excluded from its sweep a gratuitous licensee.

Maharashtra Act XIX of 1976

24. Maharashtra Act XIX of 1976 made drastic changes in Chapter VII of PSCC Act by which Chapter VII was substituted for the original Chapter VII (Sections 41 to 49). Under Chapter VII of the 1976 Amendment, the proceedings for recovery of possession under Section 41 no more remained summary and they were given status of regular suits. For easy reference, we may refer to both sub-sections (1) and (2) of Section 41, which reads as follows:

41. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of

possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Cause Court.-

(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant relating the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or of licence fees or charges of rent thereof, to which the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Bombay Housing Board Act, 1948 or any other law for the time being in force, applies.

25. The Statement of Objects and Reasons of the 1976 Amendment is also relevant and same is extracted hereunder:

"STATEMENT OF OBJECTS AND REASONS

At present in Greater Bombay, all suits and proceedings between a landlord and tenant relating to recovery of possession of premises or rent, irrespective of the value of the subject matter lie in the Court of Small Causes, Bombay under Section 28 of the Bombay, Rent, Hotel and Lodging House Rates Control Act, 1947. Under that section, suits and proceedings for the recovery of the license fee between a licensor and licensee as defined in

that Act also lie in the Court of Small Causes, irrespective of the value of the subject matter. Under Chapter VII of the Presidency Small Causes Court Act, 1882 an application can be made by a licensor for recovery of possession of premises, of which the annual value at a rack rent does not exceed three thousand rupees. If the rack rent exceeds three thousand rupees, the licensor has to take proceedings in the City Civil Court where the rack rent does not exceed twenty five thousand rupees and for higher rents in the High Court. Similarly, for recovery of license fees to which the provisions of the Bombay Rent Control Act do not apply, the licensor has to seek his remedy in the Small Causes Court, the City Civil Court or the High Court, as the case may be, according to the value of the subject matter. Under the existing law, the licensor has to go to different Courts for recovery of possession of premises and license fees and if the plea of tenancy is raised by the defendant and succeeds, the matter has again to go to the Small Causes Court. Similarly, where proceedings on the basis of tenancy are started in the Small Causes Court and subsequently the plea of license is taken and succeeds, the plaint is returned and has to be represented to the City Civil Court or the High Court as the case may be, depending on the valuation. Thus, there is unnecessary delay, expense and hardship caused to the suitors by going from one Court to another to have the issue of jurisdiction decided. Moreover, Chapter VII of the Presidency Small Causes Courts Act envisages applications which culminate in orders and are always susceptible of being challenged by separate suits on title where relationship is admittedly not between a landlord and tenant.

2. In order to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and unnecessary delay, hardship and expense to the suitors, and to have uniformity of procedure, it is considered

expedient to make the required supplementary provisions in the Presidency Small Causes Court Act, so that all suits and proceedings between a landlord and tenant or a licensor and licensee for recovery of possession of premises or for recovery of rent or license fee, irrespective of the value of the subject matter should go to and be disposed of by the Small Causes Court, either under that Act or the Rent Control Act.

3. The Bill is intended to achieve these objects."

26. We may, on the basis of the above legal and historical settings, examine the exact intent of the Legislature in inserting the expressions "licensor" and "licensee" in Section 41(1) of the PSCC Act by the 1976 Amendment and also whether all disputes between licensors and licensees are intended to be tried only by the Small Causes Courts. Before embarking upon such an exercise, we have to deal with the basic principles of interpretation of the expressions which figures in the Statutes under consideration.

Golden Rule

27. Golden-rule is that the words of a statute must be prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain. This, by itself proclaims the intention of the legislature in unequivocal terms, the same must be given effect to and it is unnecessary to fall upon the legislative history, statement of objects and reasons, frame work of the statute etc. Such an exercise need be carried out, only when the words are unintelligible, ambiguous or vague.

28. It is trite law that if the words of a Statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The above principles have been applied by this Court in several cases, the judgments of which are reported in

Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Others (1979) 2 SCC 34, *Kehar Singh and Others v. State (Delhi Admn.)* AIR 1988 SC 1883, *District Mining Officer and Others v. Tata Iron and Steel Co. and Another* (2001) 7 SCC 358, *Gurudevdatta VKSSS Maryadit and Others v. State of Maharashtra and Others* AIR 2001 SC 1980, *State of H.P. v. Pawan Kumar* (2005) 4 SCC 350 and *State of Rajasthan v. Babu Ram* (2007) 6 SCC 55.

29. Section 41(1), as such, came up for consideration before this Court in *Mansukhlal Dhanraj Jain's* case (supra). While interpreting the said provision, the Court stated that the following conditions must be satisfied before taking the view that jurisdiction of regular competent civil court is ousted:

(i) It must be a suit or proceeding between the licensee and licensor; or

(ii) between a landlord and a tenant

(iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or

(iv) relating to the recovery of the licence fee or charges or rent thereof.

30. We are primarily concerned with the condition nos. (i) and (iii) and if we hold that both the above conditions are satisfied, then Small Causes Courts will have the jurisdiction to entertain the suit in question, provided the expression "licensee" means and include "gratuitous licensee" also. In that context, we have also to examine whether the expression "licensee" in Section 41(1) of the PSCC Act would mean only "licensee" within the meaning of sub-section (4A) of Section 5 of the Rent Act 1947.

31. Let us, in this context, make a brief reference to Sub-section (2) of Section 41 of the PSCC Act, which states,

nothing contained in Sub-section (1) shall apply to suit or proceeding for the recovery of possession of any immovable property or of licence fee or charges or rent thereof, to which provisions of Rent Act 1947 apply. A plain reading of this sub-section shows that the provisions of sub-section shall not apply to suit or proceeding for recovery of possession of any immovable property or licence fee to which Rent Act 1947 apply, meaning thereby, if the provisions of Sub-section (4A) and Sub-section (11) of Section 5 read with Section 15A of the Rent Act 1947 are attracted, the provisions of Sub-section (1) of Section 41 of the PSCC Act cannot be resorted to to institute a suit between the licensor and licensee, relating to recovery of licence fee, therefore, if a licensee is covered by Section 15A read with Section 5(4A) of the Rent Act 1947, the suit under Section 41(1) would not be maintainable. Section 41(1), therefore, takes in its compass "licensees" who do not fall within the ambit of Section 5(4A) read with Section 5(11) and Section 15A of the Rent Act 1947.

32. Gratuitous licensee, it may be noted, does not fall within Section 5(4A) read with Sections 5(11) and 15A of the Rent Act 1947. The provisions of Section 41(1) also do not specifically exclude a gratuitous licensee or makes any distinction between the licensee with material consideration or without material consideration. Further, it may also be noted that Section 28 of the Rent Act 1947 do not confer jurisdiction on the Small Causes Court to entertain a suit against a gratuitous licensee. Section 28 read with Section 5(4A) would show that a party who claims to be a gratuitous licensee is not entitled to any protection under the Rent Act 1947.

PARI MATERIA:

33. Viscount Simonds in *A.G. v. HRH Prince Ernest Augustus of Hanover* (1957) 1 All ER 49, conceived the above mentioned principle to be a right and duty to construe every word of a statute in its context and used the word "context" in its widest sense, including "other statutes in pari materia".

Earlier, same was the view taken in *R. v. Loxdale* (1758) 97 ER 394 stating that when there are different statutes in pari materia, though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory to each other. This Court in *State of Punjab v. Okara Grain Buyers Syndicate Ltd. Okara* AIR 1964 SC 669 held that when two pieces of legislation are of different scopes, it cannot be said that they are in pari materia. In *Shah & Co., Bombay v. State of Maharashtra* AIR 1967 SC 1877, this Court held that the Rent Act 1947 and the Bombay Land Requisition Act, 1948 were not held to be the acts in pari materia, as they do not relate to the same person or thing or to same class of persons of things.

34. *"Pari materia"* words, it is seen, are used in Section 28 of the Bombay Rent Act, 1947 and Section 41(1) of PSCC Act referring to the nature of suits in both the provisions would indicate that those provisions confer exclusive jurisdiction on Small Causes Court meaning thereby it alone can entertain suits or proceedings relating to recovery or possession of the premises. Section 28 of the Bombay Rent Act deals with the suits only between landlord and tenant and between licensor and licensee relating only to recovery of licence fee or charge while Section 41 of the PSCC Act deals with such suits between licensor and licensee also. Where the premises are not governed by the Rent Act, the provisions of Section 41 of the PSCC Act would apply, at the same time where the premises are governed by the provisions of Rent Act, the provisions of Section 28 would be attracted.

35. When we look at both the provisions, it is clear that the nature of such suits as envisaged by both the sections is the same. In this connection, a reference may be made to the judgment of this Court in *Mansukhlal Dhanraj Jain's* case (supra) wherein this court has dealt with a question whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor who

is said to be threatening to disturb the possession of the plaintiff - licensee without following due process of law is cognizable by the Court of Small Causes Bombay as per Section 41(1) of the PSCC Act or whether it is cognizable by City Civil Court, Bombay? This Court while dealing with that question held that the Court of Small Cause have jurisdiction and that in Section 41(1) of the PSCC Act and Section 28 of the Bombay Rent Act, 1947, pari materia words are used, about the nature of the suits in both these provisions, for conferring exclusive jurisdiction on Small Causes Courts. Paragraphs 17 and 18 of that judgment would make it clear that in that case this Court only observed that some expressions in Section 28 of the Rent Act only are pari materia with the expressions employed in Section 41(1) of the Small Cause Court and not stated that the PSCC Act and the Rent Act are pari materia statutes.

36. We may in this respect refer to Section 51 of the Rent Act which provides for the removal of doubt as regards proceedings under Chapter VII of the PSCC Act which states that for removal of doubt, it is declared that unless there is anything repugnant in the subject or context references to suits or proceedings in this Act shall include references to proceedings under Chapter VII of the PSCC Act and references to decrees in this Act shall include references to final orders in such proceedings. The Full Bench of the Bombay High Court, in our view, is right in holding that Section 51 of the Rent Act will have to be read with Section 50. The Court rightly noticed that on the date when the Rent Act came into force, there were two types of proceedings for recovery of possession pending in two different courts in the City of Bombay, that is proceedings under Chapter VII were pending in the Small Causes Court and also suits were pending on the original side of the High Court. Section 50 provides that suits pending in any court which also includes the High Court shall be transferred to and continued before the courts which would have jurisdiction to try such suits or proceedings under the Rent Act and shall be continued in such Courts as the case may be

and all provisions of the Rent Act and the Rules made thereunder shall apply to all such suits and proceedings. In other words, the suits pending in the High Court would be transferred to the Small Causes Court and would be heard and tried there and all the provisions of the Rent Act and the Rules made thereunder would apply to such suits. Section 50 also provided that all proceedings pending in the Court of Small Cause under Chapter VII shall be continued in that court and all provisions of the Rent Act and the Rules made thereunder shall apply to such proceedings. Pending proceedings under Chapter VII were to be continued as proceedings under the Rent Act and all provisions and the Rules under the Rent Act were to apply to such proceedings.

37. Section 51 in that context states that references to suits or proceedings under the Rent Act shall include references to the proceedings under Chapter VII of the PSCC Act and references to decrees in the Rent Act shall include references to final order in such proceedings. When we make a comparative analysis of the abovementioned provisions, it is not possible to hold that the Rent Act and Chapter VII of the PSCC Act are pari materia statutes.

Noscitur a sociis Principle

38. The Latin maxim *"noscitur a sociis"* states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings - Bennion on Statutory Interpretation, Fifth Edition. A-G Prince Ernest Augustus of Hanover [1957] AC 436, Viscount Simonds has opined that "a word or phrase in an enactment must always be construed in the light of the surrounding text. "….words and particularly general words, cannot be read in isolation; their colour and their content are derived from their context." Noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words are intentionally used by the legislature in order to make the scope of the

defined word correspondingly wider. The above principle has been applied in several judgments of this Court like *The State of Bombay and Others v. The Hospital Mazdoor Sabha and Others* [AIR 1960 SC 610, (1960) 2 SCR 866] *Bank of India v. Vijay Transport and Others,* [AIR 1988 SC 151, (1988) 1 SCR 961], *M/s Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise,* (1990) 3 SCC 447, *Samatha v. State of Andhra Pradesh,* (1997) 8 SCC 191, *M/s Brindavan Bangle Stores & Ors. v. The Assistant Commissioner of Commercial Taxes & Another,* (2000) 1 SCC 674 etc.

39. We find the expression "licensee" in Section 41 of the PSCC Act has been used to fully achieve the object and purpose especially of 1976 Amendment Act and legislature has used clear and plain language and the principle noscitur a sociis is inapplicable when intention is clear and unequivocal. It is only where the intention of the legislature in associating wider words with words of a narrow significance is doubtful or otherwise not clear, the rule of Noscitur a Sociis can be applied. When the intention of the legislature in using the expression 'licensee' in Section 41(1) of the PSCC Act is clear and unambiguous, the principle of Noscitur a Sociis is not to be applied.

Contemporenea Expositio

40. Contemporenea Expositan is the best and most powerful law and it is a recognized rule of interpretation. Reference may be made to the judgments of this Court in *National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater, Bombay* (1969) 1 SCC 541 and *The Tata Engineering and Locomotive Company Ltd. v. Gram Panchayat* (1976) 4 SCC 177.

41. We notice in the instant case that the concept of licence and lease were dealt with by contemporary statutes - Indian Easement Act, Transfer of Property Act and Section 41 of the PSCC Act and, as already indicated, all those statutes were

enacted in the year 1882. Therefore, Section 41(1) of the PSCC Act could not have been contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by Section 52 of the Indian Easements Act. The PSCC Act is a procedural law and as already indicated, the expression "licensor" and "licensee" or "landlord" and "tenant" used in Section 41 of the PSCC Act (as amended by Maharashtra Act No. XIX of 1976) relate to immovable property and Section 52 of the Indian Easements Act which defines a licence has an inseparable connection to immovable property and property law. Legislature was well aware of those contemporaneous statutes, that was the reason, why the expression licence as such has not been defined in the PSCC Act with the idea that the expression used in a contemporaneous statutes would be employed so as to interpret Section 41 of the PSCC Act. Above-mentioned principle, in our view, would apply to the instant case.

Licensor - Licensee

42. The PSCC Act, as already indicated, does not define the expression "licensor" and "licensee". Both these expressions find a place in Section 41(1) of the PSCC Act. Section 41(1) confers jurisdiction on Court of Small Causes to entertain and try all the suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the Rent Act defines the term "licensee" so also Section 52 of the Indian Easement Act, 1882. Sub-section (4A) of Section 5 of the Rent Act provides that "licensee" means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a "licence fee or charge". The definition of "licensee" under sub-section (4A) of Section 5 is both exhaustive as well as inclusive. But it is relevant to note that the licensee under sub-section (4A) must be a licensee whose licence is supported by material consideration meaning thereby a gratuitous licensee is not covered under the definition of

licensee under sub-section (4A) of Section 5 of the Rent Act.

43. Let us now examine the definition of "licence" under Section 52 of the Indian Easement Act which provides that where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful and such right does not amount to easement or an interest in the property, the right is called a licence. This Court in State of *Punjab v. Brig. Sukhjit Singh* (1993) 3 SCC 459 has observed that "payment of licence fee is not an essential attribute for subsistence of licence. Section 52, therefore, does not require any consideration, material or non material to be an element, under the definition of licence nor does it require the right under the licence must arise by way of contract or as a result of a mutual promise.

44. We have already referred to Section 52 of the Indian Easement Act and explained as to how the legislature intended that expression to be understood. The expressions "licensor" and "licensee" are not only used in various statutes but are also understood and applied in various fact situations. The meaning of that expression "licence" has come up for consideration in several judgments. Reference may be made to the judgment of this Court in *C.M. Beena and Anr. v. P.N. Ramachandra Rao* (2004) 3 SCC 595, *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit* (1971) 1 SCC 276, *Union of India (UOI) v. Prem Kumar Jain and Ors.* (1976) 3 SCC 743, *Chandy Varghese and Ors. v. K. Abdul Khader and Ors.* (2003) 11 SCC 328.

45. The expression "licensee" has also been explained by this Court in *Surendra Kumar Jain v. Royce Pereira* (1997) 8 SCC 759. In P.R. Aiyar's the Law Lexicon, Second Edition 1997, License has been explained as "A license in respect to real estate is defined to be an authority to do a particular act or series of acts on another's land without possessing any estate therein". The word "licensee" has been explained in

Black's Law Dictionary, Sixth Edition to mean a person who has a privilege to enter upon land arising from the permission or consent, express, or implied, of the possessor of land but who goes on the land for his own purpose rather than for any purpose or interest of the possessor. Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 provides the meaning of word "licensee" to mean a licensee is a person who has permission to do an act which without such permission would be unlawful.

46. We have referred to the meaning of the expressions "licence" and "licensee" in various situations rather than one that appears in Section 52 of the Indian Easement Act only to indicate that the word licence is not popularly understood to mean that it should be on payment of licence fee, it can also cover a gratuitous licensee as well. In other words, a licensor can permit a person to enter into another's property without any consideration, it can be gratuitous as well.

47. We have already indicated the expression "licence" as reflected in the definition of licensee under sub-section (4A) of Section 5 of the Rent Act and Section 52 of the Indian Easement Act are not pari materia. Under sub-section (4A) of Section 5, there cannot be a licence unsupported by the material consideration whereas under Section 52 of the Indian Easement Act payment of licence fee is not an essential requirement for subsistence of licence. We may indicate that the legislature in its wisdom has not defined the word "licensee" in the PSCC Act. The purpose is evidently to make it more wide so as to cover gratuitous licensee as well with an object to avoid multiplicity of proceedings in different courts causing unnecessary delay, waste of money and time etc. The object is to see that all suits and proceedings between a landlord and a tenant or a licensor and a licensee for recovery of possession of premises or for recovery of rent or licence fee irrespective of the value of the subject matter should go to and be disposed of by Small Cause Court. The object behind bringing the

licensor and the licencee within the purview of Section 41(1) by the 1976 Amendment was to curb any mischief of unscrupulous elements using dilatory tactics in prolonging the cases for recovery of possession instituted by the landlord/ licensor and to defeat their right of approaching the Court for quick relief and to avoid multiplicity of litigation with an issue of jurisdiction thereby lingering the disputes for years and years.

48. We may in this connection also refer to the judgment of this Court in *Km. Sonia Bhatia v. State of U.P. and Ors.* (1981) 2 SCC 585, wherein this Court was concerned with the ambit of expression "transfer" and "consideration" occurring in U.P. Imposition of Ceiling on Land Holdings Act. Both the expressions were not defined in the Act. In such circumstances, this Court observed that the word "transfer" has been used by the legislature in general sense of the term as defined in the Transfer of Property Act. This Court also observed that the word "transfer" being a term of well known legal significance having well ascertained incidents, the legislature did not think it necessary to define the term "transfer" separately. The ratio laid down by the apex court in the above-mentioned judgment in our view is also applicable when we interpret the provisions of the PSCC Act because the object of the Act is to suppress the mischief and advance the remedy.

49. The interpretation of the expressions licensor and licensee which we find in Section 41(1), in our view, is in tune with the objects and reasons reflected in the amendment of the PSCC Act by the Maharashtra Act (XIX) of 1976 which we have already extracted in the earlier part of the judgment. The objects and reasons as such may not be admissible as an aid of construction to the statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time of introduction of the bill and the extent and urgency of the evil which was sought to be remedied. The legal position has been well settled by the judgment of this Court in *M.K. Ranganathan and Anr. v. Government of Madras and Ors.* AIR 1955 SC 604.

It is trite law that the statement of objects and reasons is a key to unlock the mind of legislature in relation to substantive provisions of statutes and it is also well settled that a statute is best interpreted when we know why it was enacted. This Court in *Bhaiji v. Sub Divisional Officer, Thandla and Ors.* (2003) 1 SCC 692 stated that the weight of the judicial authority leans in favour of the view that the statement of objects and reasons cannot be utilized for the purpose of restricting and controlling statute and excluding from its operation such transactions which it plainly covers. Applying the above-mentioned principle, we cannot restrict the meaning and expression licensee occurring in Section 41(1) of the PSCC Act to mean the licensee with monetary consideration as defined under Section 5(4A) of the Rent Act.

ONE UMBERALLA POLICY

50. We are of the considered view that the High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the "landlord and tenant" and the "licensor and licensee" under one umberalla to avoid unnecessary delay, expenses and hardship. The act of the legislature was to bring all suits between "landlord and tenant" and "licensor and licensee" whether under the Rent Act or under the PSCC Act under one roof. We find it difficult to accept the proposition that the legislature after having conferred exclusive jurisdiction in one Court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction. The various amendments made to Rent Act as well the Objects and Reasons of the Maharashtra Act XIX of 1976 would clearly indicate that the intention of the legislature was to avoid unnecessary delay, expense and hardship to the suitor or else they have to move from the one court to the other not only on the question of jurisdiction but also getting reliefs.

51. We are of the view that in such a situation the court also should give a liberal construction and attempt should be to achieve the purpose and object of the legislature and not to frustrate it. In such circumstances, we are of the considered opinion that the expression licensee employed in Section 41 is used in general sense of term as defined in Section 52 of the Indian Easement Act.

52. We have elaborately discussed the various legal principles and indicated that the expression 'licensee' in Section 41(1) of the PSCC Act would take a gratuitous licensee as well. The reason for such an interpretation has been elaborately discussed in the earlier part of the judgment. Looking from all angles in our view the expression 'licensee' used in the PSCC Act does not derive its meaning from the expression 'licensee' as used in Sub-section (4A) of Section 5 of the Rent Act and that the expression "licensee" used in Section 41(1) is a term of wider import intended to bring in a gratuitous licensee as well.

53. We are, therefore, in complete agreement with the reasoning of the Full Bench of the High Court. In such circumstances, the appeals lack merits and are, therefore, dismissed. There is no order as to costs.

R.P. Appeals dismissed.

ASSISTANT ENGINEER, RAJASTHAN STATE AGRICULTURE MARKETING BOARD, SUB-DIVISION, KOTA

v.

MOHAN LAL

(Civil Appeal No. 6795 of 2013)

AUGUST 16, 2013

[R.M. LODHA AND MADAN B. LOKUR, JJ.]

Labour Law:

Termination of services of workman - Industrial dispute raised belatedly - No objection as to delay raised - Reinstatement ordered by Labour Court holding that termination was in violation of s.25-F o ID Act - Held: Delay in raising industrial dispute is an important circumstance which the Labour Court must keep in view, notwithstanding whether or not such objection has been raised -- Legal position to be followed in case of non-compliance of s.25-F, emphasized - In the instant case, workman worked as a work-charged employee for 286 days - Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by him - Judicial discretion exercised by Labour Court is, thus, flawed and unsustainable - In the circumstances, in lieu of reinstatement, compensation of Rs.1 lac shall be paid by employer to workman - Industrial Disputes Act, 1947 -- s.25-F

The services of the respondent-workman, who was engaged by the appellant-employer on 1.11.1984 as 'Mistri' on muster roll, were terminated on 18.2.1986, without issuing one month's prior notice or payment of salary in lieu thereof or any retrenchment compensation to him. The workman raised an industrial dispute in 1992 and, ultimately, the Labour Court held his termination as

violative of s.25-F of the Industrial Disputes Act, 1947, and directed his reinstatement with 30% back wages. The Single Judge of the High Court observed that the workman was not entitled to reinstatement as he raised the industrial dispute with a delay of six years, and allowed Rs.5,000/- to be paid as compensation. However, the Division Bench of the High Court restored the award of the Labour Court.

Allowing the appeal in part, the Court

HELD: 1.1 It has been held by this Court that non-compliance of provisions of s.25-F would not automatically lead to grant of relief of reinstatement with full back wages and continuity of service, and the Labour Court must take into consideration the relevant facts for exercise of its discretion in granting the relief. The legal position laid down by this Court in Gitam Singh's case that must be invariably followed, is that the Labour Court, before exercising its judicial discretion, has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief. [para 8 and 20] [96-G; 97-A-B; 103-F-G]

Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh **(2013) 5 SCC 136;** *Nagar Mahapalika v. State of U.P. and Ors.* **2006 (1) Suppl. SCR 681 = (2006) 5 SCC 127;** *Municipal Council, Sujanpur v. Surinder Kumar;* **2006 (1) Suppl. SCR 914 = (2006) 5 SCC 173;** *Haryana State Electronics Development Corporation Ltd. v. Mamni* **2006 (1) Suppl. SCR 638 = (2006) 9 SCC 434;** *Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr.* **2008 (2) SCR 1069 = (2008) 4 SCC 261;** *Telecom District Manager v. Keshab Deb* **2008 (7) SCR 835 = (2008) 8 SCC 402;** *Jagbir Singh v. Haryana State Agriculture Marketing Board;* **2009 (10) SCR 908 = (2009) 15 SCC 327;**

Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta **2008 (13) SCR 1051 = (2009) 16 SCC 562;** *Bharat Sanchar Nigam Limited v. Man Singh* **(2012) 1 SCC 558;** *Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Ors.* **(2010) 6 SCC 773 - referred to.**

1.2 Though, Limitation Act, 1963 is not applicable to the reference made under the Industrial Disputes Act, 1947, but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. Ajaib Singh, cannot be read as laying down an absolute proposition of law that where plea of delay is not raised by the employer, the delay in raising the industrial dispute by the workman pales into insignificance and the Labour Court will be unjustified in taking this circumstance into consideration for moulding the relief. On the contrary, the Court said that on account of admitted delay, the Labour Court ought to have appropriately moulded the relief. [para 18 and 20] [102-B; 103-A-B, E]

Uttaranchal Forest Development Corporation v. M.C. Joshi **2007 (3) SCR 114 = (2007) 9 SCC 353 - relied on.**

Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr. **1999 (2) SCR 505 = (1999) 6 SCC 82; and** *Balbir Singh v. Punjab Roadways* **(2001) 1 SCC 133 - referred to.**

1.3 In the instant case, the workman worked as a work-charged employee for 286 days. He raised the industrial dispute after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the

High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. At the same time, the compensation awarded by the Single Judge was too low and needed to be enhanced. Therefore, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1 lac is paid by the employer to the workman. Ordered accordingly. [para 21-22] [103-G-H; 104-A-D]

Case Law Reference:

(2001) 1 SCC 133	**referred to**	**para 6**
1999 (2) SCR 505	**referred to**	**para 7**
2006 (1) Suppl. SCR 681	**referred to**	**para 8**
2006 (1) Suppl. SCR 914	**referred to**	**para 9**
2006 (1) Suppl. SCR 638	**referred to**	**para 10**
2007 (3) SCR 114	**relied on**	**para 11**
2008 (2) SCR 1069	**referred to**	**para 12**
2008 (7) SCR 835	**referred to**	**para 13**
2009 (10) SCR 908	**referred to**	**para 14**
2009 (10) SCR 908	**referred to**	**para 15**
2008 (13) SCR 1051	**referred to**	**para 15**
(2012) 1 SCC 558	**referred to**	**para 15**
(2010) 6 SCC 773	**referred to**	**para 15**
(2013) 5 SCC 136	**referred to**	**para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6795 of 2013.

From the Judgment and Order dated 19.11.2005 of the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur

in D.B. Civil Special Appeal (Writ) No. 941 of 2001 in S.B. Civil Writ Petition No. 2375 of 1999.

Aruneshwar Gupta, Manish Raghav, Nikhil Singh for the Appellant.

Badri Prasad Singh for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted.

2. The consequent relief to be granted to the workman whose termination is held to be illegal being in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, "ID Act") is the sole question for our decision in this appeal. Were it not for the argument strongly pressed by the learned counsel for the respondent that the delay in raising industrial dispute in the absence of any such objection having been raised by the employer before the Labour Court is no ground to mould the relief of reinstatement, we would not have gone into the question which is already answered in a long line of cases of this Court.

3. Mohan Lal, the workman, was engaged as "Mistri" on muster roll by the appellant, employer, from 01.11.1984 to 17.02.1986. On 18.02.1986, the services of the workman were terminated. While doing so, the workman was neither given one month's notice nor was he paid one month salary in lieu of that notice. He was also not paid retrenchment compensation.

4. In 1992, the workman raised industrial dispute which was referred by the appropriate government to the Labour Court, Kota (Rajasthan) for adjudication. The dispute referred to the Labour Court reads as under:

> "Whether 18.02.86 termination of labour Shri Mohan Lal S/o Shri Dhanna Lal (Post-Mistri), who has been represented by Regional Secretary, Hind Mazdoor Sabha, Kota Cantt., from service by the Employer - Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division - Kota is legal and justifiable? If not, then applicant - labour is entitled to get what relief and compensation?"

5. The Labour Court in its award dated 03.02.1999 held that the workman had completed more than 240 days in a calendar year and his services were terminated in violation of Section 25-F of the ID Act. Having held that, the Labour Court declared that the workman was entitled to be reinstated with continuity in service and 30% back wages.

6. The employer was successful in challenging the above award before the Single Judge of the High Court. The Single Judge in his judgment dated 23.08.2001 though agreed with the Labour Court that the employer had terminated workman's services in violation of Section 25-F but he was of the view that the Labour Court was not justified in directing the reinstatement of the workman because the workman had raised the industrial dispute after 6 years of his termination. Relying upon the decision of this Court in *Balbir Singh*[1], the Single Judge substituted the order of reinstatement by the compensation which was quantified at Rs.5,000/-.

7. The workman challenged the order of the learned Single Judge in an intra-court appeal. The Division Bench of the High Court allowed the workman's appeal on 19.11.2005 by relying upon the decision of this Court in *Ajaib Singh*[2]. The Division Bench restored the award passed by the Labour Court.

8. In *Nagar Mahapalika*[3], it was held by this Court that non compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (this provision is broadly pari

1. Balbir Singh v. Punjab Roadways; (2001) 1 SCC 133.
2. Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Anr. (1999) 6 SCC 82.
3. Nagar Mahapalika v. State of U.P. and Ors. (2006) 5 SCC 127.

materia with Section 25-F), although, leads to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the workman, the same would not mean that such relief is to be granted automatically or as a matter of course. It was emphasised that the Labour Court must take into consideration the relevant facts for exercise of its discretion in granting the relief.

9. The same Bench that decided *Nagar Mahapalika*[3] in *Municipal Council, Sujanpur*[4], reiterated the above legal position. That was a case where the Labour Court had granted reinstatement in service with full back wages to the workman as statutory provisions were not followed. The award was not interfered with by the High Court. However, this Court granted monetary compensation in lieu of reinstatement.

10. In *Mamni*[5] following *Nagar Mahapalika*[3], this Court held that the reinstatement granted to the workman because there was violation of Section 25-F, was not justified and modified the order of reinstatement by directing that the workman shall be compensated by payment of a sum of Rs.25,000/- instead of the order of the reinstatement.

11. In *M.C. Joshi*[6], this Court was concerned with the situation which was very similar to the present case. The workman in that case was employed as a daily wager by the

4. Municipal Council, Sujanpur v. Surinder Kumar; (2006) 5 SCC 173.

5. Haryana State Electronic Development Corporation Ltd. v. Mamni, (2006) 9 SCC 434.

6. Uttaranchal Forest Development Corporation v. M.C. Joshi; (2007) 9 SCC 353.

*. Pg. 358; (2007) 9 SCC 353

"We are, therefore, of the opinion that keeping in view the nature and period of services rendered by the respondent herein as also the period during which he had worked and the fact that he had raised an industrial dispute after six years, interest of justice would be met if the impugned judgments are substituted by an award of compensation for a sum Rs. 75,000/- in favour of the respondent."

Uttaranchal Forest Development Corporation on 01.08.1989. His services were terminated on 24.11.1991 in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. He had completed 240 days of continuous work in a period of twelve months preceding the order of termination. The workman approached the Conciliation Officer on or about 02.09.1996, i.e., after a period of about five years. The Labour Court granted to the workman, M.C. Joshi, relief of reinstatement with 50% back wages. In the writ petit on filed by the Corporation, the direction of reinstatement was mai tained but back wages were reduced from 50% to 25%. This Court substituted the award of reinstatement by compensation for a sum of Rs.75,000/-.

12. In *Ashok Kumar*[7], this Court was concerned with the question as to whether the Labour Court was justified in awarding relief of reinstatement in favour of the workman who had worked as daily wager for two years. His termination was held to be violative of U.P. Industrial Disputes Act. This Court held that the Labour Court should not have directed reinstatement of the workman in service and substituted the order of reinstatement by awarding compensation of Rs.50,000/-**.

13. In *Keshab Deb*[8], the termination of the workman who was a daily wager, was held illegal on diverse grounds including

7. Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (2008) 4 SCC 261.

** Pg. 265; (2008) 4 SCC 261.

"Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000/- to the first respondent. The said sum should be paid to the respondent within eights weeks from date, failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid extent. However, in the facts and circumstances of this case, there shall be no order as to costs."

8. Telecom District Manager v. Keshab Deb; (2008) 8 SCC 402.

violation of the provisions of Section 25-F. This Court held that even in a case where order of termination was illegal, automatic direction for reinstatement with full back wages was not contemplated. The Court substituted the order of reinstatement by an award of compensation of Rs.1,50,000/-?***.

14. In Jagbir Singh[9], the Court speaking through one of us (R.M. Lodha,J) in a case where the workman had worked from 01.09.1995 to 18.07.1996 as a daily wager granted compensation of Rs.50,000/- to the workman in lieu of

7. Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (2008) 4 SCC 261.

** Pg. 265; (2008) 4 SCC 261.

"Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000/- to the first respondent. The said sum should be paid to the respondent within eights weeks from date, failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid extent. However, in the facts and circumstances of this case, there shall be no order as to costs."

8. Telecom District Manager v. Keshab Deb; (2008) 8 SCC 402.

.*** Pg. 412; (2008) 8 SCC 402

"27. Even if the provisions of Section 25-F of the Industrial Disputes Act had not been complied with, the respondent was only entitled to be paid a just compensation. While, however, determining the amount of compensation we must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to the absence of jurisdiction in the Tribunal. They admittedly did not comply with the order passed by the Tribunal for a long time. It had raised a contention which is not otherwise tenable.

28. We, therefore, are of the opinion that in the peculiar facts and circumstances of the case interest of justice shall be subserved if the respondent is directed to be paid a compensation of Rs 1,50,000 (Rupees one lakh fifty thousand only). The said sum should be paid to him within four weeks, failing which it will carry interest @ 9% per annum."

9 Jagbir Singh v. Haryana State Agriculture Marketing Board; (2009) 15 SCC 327

reinstatement with back wages***.

15. It is not necessary to refer to subsequent three decisions of this Court, namely, *Laxmi Kant Gupta*[10]*, Man Singh*[11] and *Santosh Kumar Seal*[12], where the view has been taken in line with the cases discussed above. As a matter of fact in *Santosh Kumar Seal*[12], this Court awarded compensation of Rs.40,000/- to each of the workmen who were illegally retrenched as they were engaged as daily wagers about 25 years back and worked hardly for two or three years. It was held that the relief of reinstatement cannot be said to be justified and instead granted monetary compensation.

16. Recently in the case of *Gitam Singh*[13]*,* this Court

.**** Pg. 335; (2009) 15 SCC 327

"14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employees.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.

18. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 1-9-1995 to 18-7-1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs 50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum."

10. Uttar Pradesh State Electricity Board v. Laxmi Kant Gupta ; (2009) 16 SCC 562

11. Bharat Sanchar Nigam Limited v. Man Singh ; (2012) 1 SCC 558

12 Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Ors. ; (2010) 6 SCC 773

13. Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh; (2013) 5 SCC 136

speaking through one of us (R.M. Lodha,J) on consideration of the most of the cases cited above reiterated the principle regarding exercise of judicial discretion by the Labour Court in a matter where the termination of the workman is held to be illegal being in violation of Section 25-F in these words : "The Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute".

17. Mr. Badri Prasad Singh, learned counsel for the workman, however, vehemently contended, which was also the contention of the workman before the Division Bench, that plea regarding delay was not raised before the Labour Court and, therefore, the delay in raising the industrial dispute should not come in the way of the workman in grant of relief of reinstatement. He relied upon *Ajaib Singh*[2]. In that case, the services of the workman, Ajaib Singh were terminated on 16.07.1974. Ajaib Singh issued the notice of demand on 18.12.1981. No plea regarding delay was taken by the employer before the Labour Court. The Labour Court directed the employer to reinstate Ajaib Singh with full back wages. The award was challenged before the High Court. The Single Judge held that Ajaib Singh was disentitled to relief of reinstatement as he slept over the matter for 7 years and confronted the management at a belated stage when it might have been difficult for the management to prove the guilt of the workman. The judgment of the Single Judge was upheld by the Division Bench. The judgment of the Division Bench was challenged by the workman before this Court. The Court was persuaded by the grievance of the workman that in the absence of any plea on behalf of the employer and any evidence regarding delay, the workman could not be deprived of the benefits under the I.D. Act merely on the technicalities of law. However, the Court was of the opinion that on account of th admitted delay, the

Labour Court ought to have appropriately moulded the relief by denying some part of the back wages.*****

18. *Ajaib Singh*[2], in our view, cannot be read as laying down an absolute proposition of law that where plea of delay is not raised by the employer, the delay in raising the industrial

.*****Pg. 91; (1999) 6 SCC 82

"11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just fight between equals", the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he cold not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution.

12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with the modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8-12-1981 when he raised the demand for justice till the date of award of the Labour Court, i.e., 16-4-1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs.5,000 to be paid by the respondent management."

dispute by the workman pales into insignificance and the Labour Court will be unjustified in taking this circumstance into consideration for moulding the relief. On the contrary, in *Ajaib Singh*[2], the Court said that on account of admitted delay, the Labour Court ought to have appropriately moulded the relief though this Court moulded the relief by denying the workman some part of the back wages.

19. In a subsequent decision in *Balbir Singh*[1], this Court observed that *Ajaib Singh*[2] was confined to the facts and circumstances of that case. It is true that in *Balbir Singh*[1], the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh1 where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially".

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh*[13] that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

21. Now, if the facts of the present case are seen, the position that emerges is this: the workman worked as a work-charged employee for a period from 01.11.1984 to 17.02.1986 (in all he worked for 286 days during his employment). The services of the workman were terminated with effect from

18.02.1986. The workman raised the industrial dispute in 1992, i.e., after 6 years of termination. The Labour Court did not keep in view admitted delay of 6 years in raising the industrial dispute by the workman. The judicial discretion exercised by the Labour Court is, thus, flawed and unsustainable. The Division Bench of the High Court was clearly in error in restoring the award of the Labour Court whereby reinstatement was granted to the workman. Though, the compensation awarded by the Single Judge was too low and needed to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief.

22. In our opinion, interest of justice will be subserved if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid by the appellant (employer) to the respondent (workman). We order accordingly. Such payment shall be made by the appellant to the respondent within six weeks from today failing which the same will carry interest @ 9% per annum.

23. The appeal is partly allowed to the above extent with no order as to costs.

R.P. Appeal partly allowed.

VENKATESAN
v.
RANI & ANR.
(Criminal Appeal No. 462 of 2008)

AUGUST 19, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

CODE OF CRIMINAL PROCEDURE, 1973:

ss.397 and 401 - Revision against order of acquittal - Scope of - High Court held that order of acquittal deserved reversal and remitted the matter to trial court for a fresh decision - Held: Revisional jurisdiction of High Court, while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice - Further, re-appreciation of evidence is not to be made - In the instant case, the view taken by the trial court in acquitting the accused cannot be held to be a view impossible of being reached -- Keeping in mind the limited jurisdiction for a scrutiny of the foundation of the order of acquittal passed by the trial court, the reversal ordered by the High Court cannot be sustained.

PENAL CODE, 1860:

ss. 498-A, 304-B and 302 - Death of a married woman by burn injuries - Acquittal of husband by trial court - Set aside by High Court with a direction for decision afresh - Held: The investigation and the evidence of prosecution witnesses do not reveal any harassment and ill-treatment to the deceased by the accused prior to her death and, as such, no case u/s 304-B as well as u/s 498-A is made out against the accused -- Insofar as the offence u/s 302 is concerned, there is no eye

witness to the occurrence -- By the time the witnesses reached the place of occurrence, deceased was already engulfed in flames - There are contradictions in the depositions of prosecution witnesses -- Further, the evidence of the doctor of Government Hospital that deceased herself had stated that she had been injured due to bursting of the stove while she was cooking, casts a further doubt on the prosecution story - Order of High Court is set aside, and that of trial court restored.

The appellant was prosecuted for committing offences punishable u/ss 498-A, 304-B and 302 IPC, on the allegations that he harassed and ill treated his wife for insufficient dowry and ultimately burnt her to death by pouring kerosene on her and setting her on fire. The trial court acquitted the appellant, but the High Court in the revision filed by the mother of the deceased, held that the order of acquittal suffered from inherent flaws which justified a reversal of the same and remission of the matter for a fresh decision.

Allowing the appeal, the Court

HELD: 1.1 The revisional jurisdiction of the High Court while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. If within the limited parameters, interference of the High Court is justified, the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of s.401 of the Code makes it amply clear, there is no power vested in the High Court

to convert a finding of acquittal into one of conviction. [para 7] [113-D-G]

1.2 In the instant case, PW-1 and PW-2 had stated in their depositions that there was no demand for dowry by the accused and that the accused and deceased had married on their own volition. No dying declaration was recorded. However, PW-10, the doctor, who was working in the casualty section of the Government Hospital, deposed that when questioned, the deceased had reported to her that she got injured due to bursting of the stove while she was cooking. From the evidence of PWs 1, 2, 3 and 4, the charge against the accused-appellant u/s 304-B of the IPC could not be sustained. The evidence of PW-12, the I.O. that the investigation did not reveal any harassment and ill-treatment to the deceased by the accused prior to her death, makes the prosecution case against the accused u/s 304-B as well as u/s 498A of the IPC, wholly unsustainable. [para 8-9] [113-G-H; 114-A, F-H, 115-C-E]

1.3 Insofar as the offence u/s 302 of the IPC is concerned, there is no eye witness to the occurrence. PWs-1 to PW-4 though examined as eye witnesses cannot be understood to have actually witnessed any of the events that would be crucial for the determination of the liability of the accused-appellant. By the time they reached the place of occurrence the deceased was already engulfed in flames. There are contradictions in the depositions of prosecution witnesses. Further, the evidence of PW-10, the doctor of the Government Hospital that the deceased herself had stated that she had been injured due to bursting of the stove while she was cooking, casts a further doubt on the prosecution story. The absence of the proof of seizure of the material objects, made by the Mahazar (Ext. P-10) and the contradiction between the oral testimony and the contents of Ext. P-9 with regard to the actual place of

occurrence, further demolishes the credibility of the prosecution version. [para 9] [115-E-F, G-H; 116-A-B]

1.5 In the facts and circumstances of the case, the view taken by the trial court in acquitting the accused cannot be held to be a view impossible of being reached. Keeping in mind the limited jurisdiction for a scrutiny of the foundation of the order of acquittal passed by the trial court, the reversal ordered by the High Court cannot be sustained. The order of the High Court is set aside and the order of acquittal passed by the trial court, restored. [para 9-10] [116-C-D, E-F]

Pakalapati Narayana Gajapathi Raju vs. Bonapalli Peda Appadu **(1975) 4 SCC 477,** *Akalu Ahir v. Ramdeo Ram* **(1974) 1 SCR 130 = (1973) 2 SCC 583,** *Mahendra Pratap Singh v. Sarju Singh* **(1968) SCR 287 = AIR 1968 SC 707,** *K. Chinnaswamy Reddy v. State of A.P.* **(1963) SCR 412 = AIR1962 SC 1788, and** *Logendranath Jha v. Polai Lal Biswas* **(1951) SCR 676 = AIR 1951 SC 316;** *Vimal Singh v. Khuman Singh* **(1998) 2 Supp. 170 = (1998) 7 SCC 223 - referred to.**

Case Law Reference:

(1975) 4 SCC 477	**referred to**	**para 6**
(1974) 1 SCR 130	**referred to**	**para 6**
(1968) SCR 287	**referred to**	**para 6**
(1951) SCR 676	**referred to**	**para 6**
(1998) 2 Supp. 170	**referred to**	**para 6**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 462 of 2008.

From the Judgment and Order dated 27.04.2006 of the High Court of Judicature at Madras in Crl. R.C. No. 1390 of 2004.

K.K. Mani for the Appellant.

M. Yogesh Kanna, A Santha Kumaran, S. Sasikala for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. What are the true contours of the jurisdiction vested in the High Courts under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter for short 'the Code') while examining an order of acquittal passed by the Trial Court? Whether the principles governing the exercise of the aforesaid jurisdiction have been rightly determined by the High Court in the present case and, therefore, had been correctly applied to reverse the order of acquittal of the accused-appellant passed by the learned Trial Court and to remit the matter to the said Court for a de novo disposal, is the further question that arises in the present appeal filed against an order dated 27.04.2006 passed by the High Court of Judicature at Madras.

2. The appellant is the husband of one Anusuya who, according to the prosecution, was put to death by the appellant on 19.4.2000 by pouring kerosene on her and thereafter setting her on fire. The marriage between the appellant and the deceased took place sometime in the year 1998 on the own accord of the parties. According to the prosecution, after the marriage, the appellant raised demands for various dowry items including cash. As such demands were only partially met by the parents of the deceased the appellant, according to the prosecution, harassed and ill treated the deceased and eventually caused her death on 19.4.2000. On the basis of the aforesaid facts alleged by the prosecution, the accused-appellant was put to trial for commission of offences under Sections 498A, 304-B and 302 of the Indian Penal Code. The Trial Court, on the grounds and reasons assigned, which will be duly noticed, acquitted the accused-appellant. Aggrieved, the mother of the deceased invoked the revisional jurisdiction

of the High Court to challenge the acquittal. By the impugned judgment and order dated 27.04.2006 the High Court held that the order of acquittal passed by the learned Trial Court suffered from certain inherent flaws which justified a reversal of the same and for remission of the matter for a fresh decision in accordance with law and the directions set out in the said order of the High Court.

3. We have heard Mr. K.K. Mani, learned counsel for the appellant and Mr. M. Yogesh Kanna, learned counsel appearing for the State.

4. Learned counsel for the appellant has submitted that the acquittal of the accused-appellant made by the learned Trial Court is based on a full and complete consideration of the evidence and materials on record. It is submitted that cogent reasons have been assigned by the learned Trial Court in support of the acquittal ordered by it. It is also contended that the High Court has erroneously taken the view that the order of the learned Trial Court lacks clarity on the vital aspects of the case as outlined in the order of the High Court dated 27.04.2006. All the issues highlighted by the High Court in its order dated 27.04.2006 have, in fact, been dealt with by the learned Trial Court. The reversal of the acquittal by the High Court is, therefore, contended to be wholly unjustified.

5. Opposing the contentions advanced on behalf of the accused-appellant, learned counsel for the State has urged that no acceptable basis for the impugned acquittal is evi ent in the order of the learned Trial Court. Learned counsel has supported the findings recorded by the High Court by contending that there is lack of clarity and absence of categorical findings on vital issues of the case which makes it imperative that the impugned order of remand made by the High Court by its order dated 27.04.2006 be maintained. No interference with the same would be justified.

6. To answer the questions that have arisen in the present

case, as noticed at the very outset, the extent and ambit of the revisional jurisdiction of the High Court, particularly in the context of exercise thereof in respect of a judgment of acquittal, may be briefly noticed. The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in *Pakalapati Narayana Gajapathi Raju vs. Bonapalli Peda Appadu*[1], *Akalu Ahir v. Ramdeo Ram*[2], *Mahendra Pratap Singh v. Sarju Singh*[3], *K. Chinnaswamy Reddy v. State of A.P.*[4] and *Logendranath Jha v. Polai Lal Biswas*[5] may be referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of *Akalu Ahir v. Ramdeo Ram* (supra) may be usefully extracted below.

"8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

(i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;

(ii) Where the trial court has wrongly shut out evidence which the prosecution wished to produce;

(iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and

1. (1975) 4 SCC 477.
2. (1973) 2 SCC 583.
3. AIR 1968 SC 707.
4. AIR 1962 SC 1788.
5. AIR 1951 SC 316.

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal."

"10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."

The observations in para 9 in the case of *Vimal Singh v. Khuman Singh*[6] would also be apt for recapitulation and, therefore, are being extracted below.

"9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court

6. (1998) 7 SCC 223.

has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.

8. In the present case, the prosecution had examined as many as 12 witnesses. PW-1 Thiru Srinivasan is the father of the deceased whereas PW-2 Thirumathi Rani (petitioner before the High Court) is the mother. Both the aforesaid witnesses had stated in their depositions that there was no demand for dowry

by the accused and that the accused and deceased had married on their own volition. The two witnesses had further stated that whatever was given by them as dowry items was voluntary. Insofar as demand for cash (allegedly made on three different occasions) is concerned, PW-1 and PW-2 could not account for the source from which the aforesaid payments were allegedly made. PW-1 Thiru Srinivasan and PW-2 Thirumathi Rani are admittedly not eye witnesses to the occurrence because they had come to the house where the accused and the deceased had lived only after noticing smoke from the said house. PW-3 Thiru Vincent (brother-in-law of the deceased) and PW-4 Thirumathi Mary (sister of the deceased) are also not eye witnesses to the occurrence. It must also be taken note of that all the aforesaid witnesses, i.e., PW-1 to PW-4 had deposed that when they had reached the house of the deceased they saw her in flames and the deceased was unable to speak as there was a piece of cloth in her mouth. The aforesaid part of the prosecution story, however, does not find support from the testimony of PW-11 Dr. Santhakumar who had conducted the postmortem of the deceased inasmuch as in cross-examination PW-11 had clearly stated that he did not find any blisters in the mouth of the deceased. PW-5 Thiru Balaraman did not sign the mahazar (Exh. P-10) showing the seizure of a burnt kerosene can, a partially burnt saree and a matchbox allegedly recovered from the place of occurrence. PW-6 Dr. Prakash had deposed that the deceased was brought to his clinic at about 7.30 a.m. on 19.4.2000 but considering the burn injuries suffered he had referred the case to the government hospital. PW-7 Dr. Vijayalakshmi had deposed that though a magistrate had come to the hospital to record the dying declaration, the deceased was unconscious and not in a position to make any statement. PW-10 Dr. N. Usha who was working in the casualty section of the Chennai Kilpauk Government Hospital had deposed that when questioned, the deceased Anusuya had reported to her that she got injured due to bursting of the stove while she was cooking. PW-11 Dr. Santhakumar had conducted the

postmortem and the most significant part of his evidence has already been noticed hereinabove, namely, that he did not find any blisters in the mouth of the deceased. PW-12 Thiru Subramaniyam is the Investigating Officer of the case who had, *inter alia,* deposed that the investigation did not disclose that the accused had harassed or ill-treated the deceased Anusuya prior to her death.

9. In view of the specific case of the prosecution that the accused had poured kerosene on the deceased and thereafter set her on fire and had gagged her mouth with a piece of cloth to prevent her from screaming, which version has been unfolded by PWs 1, 2, 3 and 4, it is difficult to see as to how the charge against the accused-appellant under Section 304-B of the IPC could be sustained. The evidence of PW-12 Thiru Subramaniyam, Investigating Officer of the case, that the investigation did not reveal any harassment and ill-treatment of the deceased by the accused prior to her death makes the prosecution case against the accused under the aforesaid Section as well as under Section 498A of the IPC wholly unsustainable. Insofar as the offence under Section 302 of the IPC is concerned, there is no eye witness to the occurrence. PWs-1 to PW-4 though examined as eye witnesses cannot be understood to have actually witnessed any of the events that would be crucial for the determination of the liability of the accused-appellant. By the time they had reached the place of occurrence the deceased was already engulfed in flames. The fact that PW-6 had stated that the deceased had come to his clinic unaccompanied by PWs 1, 2, 3 and 4 who in their depositions have claimed otherwise is too significant a contradiction to be ignored. There is a further contradiction in the evidence of PWs 1 and 2 on the one hand and PW-12 on the other. According to PW-1 and PW-2 they had made a complaint to the police station immediately after the occurrence and thereafter went to the hospital whereas PW-12 had deposed that the complaint was lodged after PW-1 and PW-2 had returned from the hospital. The evidence of PW-10 Dr. N.

Usha that the deceased herself had stated that she was injured due to bursting of the stove while she was cooking casts a further doubt on the prosecution story. The absence of the proof of seizure of the material objects, made by the Mahazar (Exh. P-10) and the contradiction between the oral testimony and the contents of Exh. P-9 with regard to the actual place of occurrence, in our considered view, further demolishes the credibility of the prosecution version. In the above facts the view taken by the Trial Court in acquitting the accused cannot be held to be a view impossible of being reached. Keeping in mind the extremely limited keyhole available for a scrutiny of the foundation of the order of acquittal passed by the learned Trial Court the reversal ordered by the High Court does not commend to us. We have also noticed that the High Court had found the order of the learned Trial Court to be vitiated by lack of clarity on several counts as specified in its order dated 27.04.2006. The said deficiencies, when juxtaposed against the reasoning of the learned Trial Court, appear to have been adequately answered by the learned Trial Court in the light of the evidence and the material brought before it.

10. For the aforesaid reasons we find it difficult to accept the conclusion reached by the High Court in the present matter. We, therefore, allow this appeal, set aside the order of the High Court dated 27.04.2006 and restore the order of acquittal dated 16.07.2003 passed by the learned Trial Court.

R.P. Appeal allowed.

DR. RAM TAWAKYA SINGH
v.
STATE OF BIHAR AND OTHERS
(Civil Appeal No. 6831 of 2013)

AUGUST 19, 2013

[G.S. SINGHVI AND V. GOPALA GOWDA, JJ.]

UNIVERSITIES:

Appointment of Vice-Chancellors and Pro-Vice-Chancellors - 'Consultation with State Government' - Expression 'consultation' - Connotation of - Explained - Held: Though, the final decision is with the consulter, he cannot generally ignore the advice of the consultee except for good reasons -- There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved -- Consultation is not complete or effective unless the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views.

Appointment of Vice-Chancellors and Pro Vice Chancellors - Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of candidates as Vice-Chancellors and Pro Vice-Chancellors of different Universities in State of Bihar - Held: As regards the instant matters, Chancellor has been consistently flouting the mandate of law and making appointments completely disregarding the requirement of academic excellence and experience and without effectively consulting the State Government -- He neither adopted any transparent method of making selection nor did he keep in view the qualifications enumerated in the relevant statutory provisions -- He also acted in contemptuous disregard of the pronouncements

made by the High Court in two rounds of litigation, that appointments of Vice-Chancellors and Pro Vice-Chancellors must precede meaningful and effective consultation with State Government - He selected for appointment some persons who were facing prosecution under various criminal laws and/or involved in financial irregularities -- The mechanism adopted by Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Art. 14 of the Constitution - Impugned Notifications are quashed - Consequential directions issued - Bihar State Universities Act, 1976 -ss.10 and 12 - Patna University Act, 1976 - ss. 11 and 14 - Nalanda Open University Act, 1995 - ss.11 and 13 - Constitution of India, 1950 - Art. 14.

Vice-Chancellors and Pro Vice-Chancellors - Appointment to the offices of - Held: Position of Vice Chancellor and Pro Vice Chancellor is extremely important in every University - They are responsible for maintaining the academic standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions -- Relevant statutory provisions prescribe the qualification of academic excellence as a condition precedent for appointment to these posts - Even if the language of the relevant provisions may not postulate selection of Vice-Chancellor or Pro Vice-Chancellor by inviting application through open advertisement, the candidate must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University, and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across the country -- Art. 14 of the Constitution which mandates that every action of the State authority must be transparent and fair has to be read in the language of these provisions -- The UGC Regulations, which provide for constitution of a Search Committee consisting of eminent educationists /

academicians are intended to fill up an apparent lacuna in the provisions - Bihar Acts No. 12/2013, 13/2013 and 14/2013 have subsequently amended the relevant provisions in consonance with the relevant UGC Regulations.

LOCUS STANDI:

Appointment of Vice Chancellors and Pro Vice-Chancellors - Writ petition by a Professor and Head of Department in a University, in the State, challenging the appointments, though he was not a candidate for such appointments - Held: Maintainable - Further, even assuming that the writ petitioner does not have any direct personal interest in such appointments, High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits - Public interest litigation.

CONSTITUTION OF INDIA, 1950:

Art.136 - Appeal by State Government challenging order of High Court after the Chancellor initiated process of making appointments of Vice-Chancellors and Pro Vice-Chancellors pursuant to order of High Court - Maintainability of - Discussed.

Appointments of two persons as Vice-Chancellors of Magadh and Veer Kunwar Singh Universities in terms of Notifications dated 9.4.2010 and 15.4.2010 were challenged by the appellant and another on the ground that the Chancellor had not consulted the State Government as per the requirement of s. 10(2) of the Bihar State Universities Act, 1976 ('the BSU Act'). The Single Judge of the High Court allowed the writ petition and quashed the notifications issued by the Chancellor. Letters Patent Appeals Nos. 822 and 824 of 2011 filed by the appointees were dismissed by the Division Bench of the High Court and their special leave petitions were

dismissed by the Supreme Court on 29.9.2011. During the pendency of the Letters Patent Appeals, the Chancellor issued Notifications dated 1.8.2011 and 3.8.2011 for appointment of ten persons as Vice-Chancellors and Pro Vice-Chancellors of different Universities in the State. The said appointments were challenged in another writ petition filed by the appellant mainly on the ground that the Chancellor had not consulted the State Government as per the mandate of s. 10(2) of the BSU Act and s. 11(2) of the Patna University Act, 1976. The Division Bench of the High Court quashed the appointments and directed that the Chancellor would propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the named Universities to the State Government with the relevant materials and the latter would forward its opinion in respect of all such names to the Chancellor.

The appellant filed C.A. No. 6831 of 2013 challenging the direction given by the High Court. He has also questioned the direction given by the High Court virtually debarring him from being considered for appointment as Vice-Chancellor or Pro Vice-Chancellor. The State of Bihar and others filed C.A. No. 6830 of 2013 challenging the order of the High Court on the ground that the view taken by it on the scope of ss.10(2) and 12(1) of the BSU Act and ss.11(2) and 14(1) of the PU Act was contrary to the one expressed by the coordinate Bench in LPA Nos. 822 and 824 of 2011. After the order dated 7.12.2012 passed by the Division Bench of the High Court, the Governor-cum-Chancellor, Bihar issued notifications dated 9.2.2013 and 19.2.2013 for appointment of certain persons as Vice Chancellors and Pro-Vice-Chancellors of different Universities. This was challenged by the appellant in Writ Petition No. 158 of 2013. On 18.3.2013, the Supreme Court stayed the operation of Notifications dated 9.2.2013 and 19.2.2013 and directed that the senior

most Deans in the Universities would discharge the function of the Vice-Chancellors and Pro Vice-Chancellors. Meanwhile, the Governor-cum-Chancellor issued yet another order dated 14.3.2013 appointing one person as Vice-Chancellor and two as Pro Vice-Chancellors.

It was contended for the writ petitioner and appellants that the direction given by the Division Bench of the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors was liable to be set aside and the appointments made by him were liable to be quashed because by taking advantage of the direction contained in the impugned order, the Chancellor arbitrarily prepared the list of the persons to be appointed as Vice-Chancellors and Pro Vice-Chancellors without making any selection whatsoever and without following any transparent method for making a choice from amongst the persons of academic excellence, unquestionable integrity and institutional commitment and without effectively consulting the State Government. It was pointed out that the said list issued by the Chancellor included some persons against whom criminal cases were registered with the police and/or were pending in the court(s). It was submitted that even though the BSU Act and the PU Act were not suitably amended for incorporating the UGC regulations dated 30.6.2010, the Chancellor was duty bound to keep in mind the parameters laid down by the UGC for selecting the candidates for appointment as Vice-Chancellors and Pro Vice-Chancellors.

Allowing the appeals and the writ petition, the Court.

HELD: 1.1 Section 10 of the BSU Act and s.11 of the PU Act make it clear that the position of Vice-Chancellor

is extremely important in every University. The Pro-Vice Chancellor appointed in terms of s.12 of BSU Act and s.14 of P.U. Act is also a whole time officer of the University and is entitled to exercise such powers and perform such duties which may be prescribed or which may be conferred or imposed on him by the Vice-Chancellor. He is responsible for admission and conduct of examination upto Bachelor course and also the student welfare. The Vice-Chancellor and the Pro Vice-Chancellor are responsible for maintaining the academic standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions. This is the precise reason why s.10(1) of the BSU Act and s.11(1) of the PU Act are couched in negative form and prescribe the qualification of academic excellence as a condition precedent for appointment as Vice-Chancellor. [para 12-14] [181-G-H; 182-G-H; 183-A-B]

1.2 The word 'consultation' used in ss.10(2) and 12(1) of the BSU Act and s.11(2) and 14(1) of the PU Act is of crucial importance. Consultation is a process which requires meeting of minds between the parties involved in the process. Though, the final decision is with the consultor, but he cannot generally ignore the advice of the consultee except for good reasons. In order for two minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration full and identical facts, which can constitute both the source and foundation of the final decision. There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved. Consultation is not complete or effective unless the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views. [para 15-16] [183-G-H; 184-A-E]

Chandramouleshwar Prasad v. Patna High Court **(1970) 2 SCR 666,** *Union of India v. Sankalchand Himatlal Sheth and Another* **(1977) 4 SCC 193;** *Union of India vs. Sankar Chand Himatlal Sheth and Another* **1996 (5) Suppl. SCR 419 = 1996 (10) SCC 469;** *S.P Gupta vs. Union of India* **1982 SCR 365 = 1981 Suppl. SCC 87;** *Gauhati High Court and another vs. Kuladhar Phukan* **2002 (2) SCR 808 = 2002 (4) SCC 524 - referred to.**

Rollo v. Minister of Town and Country Planning **(1948) 1 All ER 13,** *Fletcher v. Minister of Town and Country Planning* **(1947) 2 All ER 946 - referred to.**

Words and Phrases (Permanent Edn. 1960, Vol.9), Corpus Juris Secundum (Vol.16A, 1956 Edn.) **- referred to.**

1.3 As regards the instant matters, the Chancellor has been consistently flouting the mandate of law and making appointments of Vice-Chancellors and Pro Vice-Chancellors without effectively consulting the State Government and completely disregarding the requirement of academic excellence and experience. He did not adopt any transparent method of making selection nor did he keep in view the qualifications enumerated in s.10(1) of the BSU Act and s.11(1) of the PU Act. Further, the extraordinary haste exhibited by the Chancellor in getting the notifications issued on 9.2.2013 speaks volume of his intention to prevent the State Government from bringing to the fore, the facts relating to criminal cases pending against some of his nominees. [para 19,20 and 22] [187-D; 188-C-D; 190-D-E]

1.4 The entire exercise undertaken by the Chancellor was ex-facie against the mandate of ss. 10(1), 10(2) and 12(1) of the BSU Act and ss. 11(1), 11(2) and 14(1) of the PU Act, because he made every possible effort to prevent the State Government from providing inputs about the candidates and conveying its opinion on their suitability

to be appointed as Vice-Chancellors and Pro Vice-Chancellors. He also acted in contemptuous disregard of the pronouncements made by the High Court in two rounds of litigation, that the appointments of the Vice-Chancellors and Pro Vice-Chancellors must precede meaningful and effective consultation with the State Government. What is most shocking is that the Chancellor selected some persons for appointment as Vice-Chancellor and Pro Vice-Chancellor despite the fact that they are facing prosecution under various criminal laws and/or are involved in financial irregularities. The mechanism adopted by the Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Art. 14 of the Constitution. [para 23] [191-B-E, G]

2.1 For the last many years the Chancellors have been appointing Vice-Chancellors and Pro Vice-Chancellors without adopting any transparent and fair method of selection. Even though the language of ss.10(1) and 12(1) of the BSU Act and ss.11(1) and 14(1) of the PU Act does not postulate selection of Vice-Chancellor or Pro Vice-Chancellor by inviting application through open advertisement, a wholesome reading of these sections makes it clear that Vice-Chancellor must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across the country. Art. 14 of the Constitution which mandates that every action of the State authority must be transparent and fair has to be read in the language of these provisions and if that is done, it becomes clear that the Chancellor has to follow some mechanism whereby he can prepare panel by considering persons of eminence in the field of education, integrity, high moral standard and character

who may enhance the image of the particular University. [para 23-24] [191-E-F, H; 192-A-D]

2.2 The UGC regulations, which provide for constitution of a Search Committee consisting of eminent educationists / academicians are intended to fill up an apparent lacuna in the provisions like s.10(1) of the BSU Act and s. 11(1) of the PU Act. If the UGC regulations had been engrafted in the two Acts, an unseemly controversy relating to appointment of Vice-Chancellors and Pro Vice-Chancellors could have been avoided. However, it has been brought to the notice of the Court that subsequently, by Bihar Acts Nos. 14/2003, 13/2013 and 12/2013, ss.10 and 12 of the BSU Act, ss.11 and 14 of the PU Act and ss.11 and 13(a) of the Nalanda Open University Act, 1995 respectively, have been amended in consonance with the UGC Regulations. [para 25-26] [192-E-F; 193-B-D]

3.1 Challenge to the locus standi of the appellant (in CA No. 6831 of 2013) was rightly rejected by the High Court. It is not in dispute that he is a Professor and Head of the Department of Chemistry in Veer Kunwar Singh University, Ara. Therefore, the mere fact that he did not project himself as a candidate for the office of Vice-Chancellor or Pro Vice-Chancellor is not sufficient to deny him the right to question the appointments made by the Chancellor. His anxiety to ensure that eminent educationists are appointed as Vice-Chancellors and Pro Vice-Chancellors in the State can very well be appreciated. Even if it may be possible to say that the appellant does not have any direct personal interest in the appointment of Vice-Chancellors and Pro Vice-Chancellors in the State Universities, the High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits. [para 28-29] [195-C-G]

Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi **1987 (1) SCR 458 = (1987) 1 SCC 227- relied on.**

3.2 It is true that the State Government moved this Court only after the Chancellor initiated the process of making appointments and an apparently incorrect statement was made before the Court on 18.3.2005 in the context of the Governor's refusal to approve the amendments made in the two Acts but these factors are not sufficient to negate the State Government's challenge to the direction given by the High Court which, gave free hand to the Chancellor to manipulate the appointment of the persons of his choice, some of whom are embroiled in criminal cases, without getting a selection made keeping in view the requirements of s.10(1) of the BSU Act and s.12 (1) of the PU Act. [para 30] [196-G-H; 197-A-B]

4(i) In the result, Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities are declared illegal and quashed.

(ii) The direction given by the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is modified and it is directed that the Chancellor shall prepare a panel of suitable persons for appointment to the offices of Vice-Chancellors and Pro Vice-Chancellors keeping in view the provisions of ss. 10(1), 10(2) and 12 of the BSU Act and ss. 11(1), 11(2) and 14 of the PU Act as amended by Bihar Act No.14/2013 and 13/2013 respectively and by following a transparent and fair method of selection.

(iii) The Chancellor shall make appointments after effective and meaningful consultation with the State Government, as indicated in the orders passed by the Single Judge in CWJC No. 8141/2010 and the Division

Bench of the High Court in L.P.A. Nos. 822 and 824 of 2011. [para 31] [197-C-H]

Case Law Reference:

1996 (5) Suppl. SCR 419	**referred to**	**para 3.2**
1982 SCR 365	**referred to**	**para 3.2**
2002 (2) SCR 808	**referred to**	**para 3.2**
(1970) 2 SCR 666	**referred to**	**para 17**
(1977) 4 SCC 193	**referred to**	**para 18**
(1948) 1 All ER 13	**referred to**	**para 18**
(1947) 2 All ER 946	**referred to**	**para 18**
1987 (1) SCR 458	**relied on**	**para 29**

CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 6831 of 2013.

From the Judgment and Order dated 07.12.2012 of the High Court of Patna in CWJC No. 15123 of 2011.

WITH

C.A. Nos. 6830 of 2013 & W.P. (C) No. 158 of 2013.

Ranjit Kumar, Ram Jethmalani, Manan Kumar Mishra, L. Nageshwara Rao, Vijay Hansaria, Rudreshwar Singh, Abhinav Mukerji, Kumar Ranjan, Gopal Jha, Sishir Pinaki, Sanjay Jain, Ravi Shankar Kumar, Birendra Kumar Chaudhary, Arun Kumar, D.K. Thakur, Priyambica Jha, Dr. V.P. Appan, Ashish Dixit, Karan Kalia, Pranav Dinesh, Nitin Kumar Thakur, Amit Pawan, Rajiv Kumar, Hareesh Ahmad Minhaaj, Sudhanshu Saran, Tarkeshwar Nath, B.K. Pandey, Nirmal Singh, T.G. Narayanan Nair, Rohit Kumar Singh, Rakesh Kumar Singh, Prem Prakash, V.V. Gautam, Rikesh Singh, Sanjay Kapur, Anmol Chandan, Priyanka Das, Shubhra Kapur, Atul Jha, Sandeep Jha, D.K. Sinha, Shantanu Sagar, Smarhar Singh, Abhishek Kr. Singh,

Gopi Raman, Mohd. Shahid Anwar, Syed Rehan, Minhajul Rashid, Navin Gupta, Neeraj Shekhar, Kunal Verma, Ardhendumauli Kumar Prasad, Irshad Ahmad, Rameshwar Prasad Goyal, Tayenjam Momo Singh for the appearing parties.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. Leave granted in the special leave petitions.

2. Dr. Ram Tawakya Singh, who had filed writ petition before the Patna High Court for quashing the appointments of Vice-Chancellors and Pro Vice-Chancellors of different Universities in the State of Bihar, has questioned the directions contained in order dated 7.12.2012 passed by the Division Bench of that Court. The State of Bihar and two others have also filed an appeal against the order of the High Court and simultaneously questioned the notifications issued by the Chancellor for appointment of Vice-Chancellors and Pro Vice-Chancellors. Dr. Ram Tawakya Singh has filed Writ Petition No.158/2013 for quashing the appointments of the private respondents as Vice-Chancellors and Pro Vice-Chancellors.

The background facts

3.1 By Notifications dated 9.4.2010 and 15.4.2010, the Chancellor appointed Dr. Arvind Kumar and Dr. Subhash Prasad Sinha as Vice-Chancellor of Magadh and Veer Kunwar Singh Universities, respectively. The same were challenged by Dr. Pramod Kumar Singh and Dr. Ram Tawakya Singh in CWJC No.8141/2010 on the ground that the Chancellor had not consulted the State Government as per the requirement of Section 10(2) of the Bihar State Universities Act, 1976 (for short, 'the BSU Act'). The learned Single Judge of the Patna High Court allowed the writ petition and quashed the notifications issued by the Chancellor. He referred to the affidavits filed by the parties, the documents produced by them as also the documents summoned by the Court and observed:

"23. From the various averments as well as the relevant extract of the notings of the file annexed with the supplementary counter affidavit filed on behalf of the State there is sufficiency of material to show that the stand of the State is un-ambiguous that there was no consultation of any kind on the issue of appointment of Vice Chancellors including the two Vice Chancellors whose appointments are under challenge in the present writ application. The Court opines that if there was any consultation, there would not have been occasion for the Minister or the State to take such clear and categorical stand on the issue of consultation and to annex all those notings of the file to show that there was actually no consultation, so far as the State was concerned.

24. Now, let us take notice of the stand taken by the office of the Chancellor on whose behalf counter affidavit dated 23.03.2011 was initially filed. This counter affidavit has been sworn by one Kumar Braj Kishore Sahani, who is stated to be the Joint Secretary in the Governor's Secretariat and he has stated that he was well acquainted with the facts and circumstances of the case. The affidavit also states that he has been authorized to swear affidavit in this case on behalf of respondent no. 2 i.e. Chancellor of Universities, Raj Bhawan, Patna. What is relevant in this affidavit is paragraph 5 which is being reproduced for ready reference :-

"That the Vice Chancellor of V.K.S. University, Ara and the Vice Chancellor of Magadh University, Bodh Gaya have been appointed by the Hon?ble Chancellor in consultation with the State Government on 29th March, 2010, and Notifications of appointments of Vice Chancellors as per provisions of Section 10(2) of the B.S.U. Act, 1976 were issued from the Chancellor's Secretariat on 9.4.2010 (Ann. 7 of the I.A.) and on 15.4.2010 (Ann. 8 of the I.A.). It is wrong to allege that there had been no consultation with

the State Government."

25. A stand has been taken on behalf of the Chancellor that since the notification itself talks in terms of consultation with the State Government on 29.03.2010, then it is a complete answer to the controversy which have been created in the matter of appointment of two Vice Chancellors because nothing more is required to be seen beyond the notification.

26. Court was not satisfied with such a sweeping stand taken on behalf of the Chancellor, in view of other over-whelming evidence which have been brought on record not only by the petitioners but also by the State Government.

27. In this background, the Court directed production of the file relating to consultation which supposedly took place with the State Government on 29.03.2010.

28. Learned Senior Counsel representing the Chancellor, namely, Mr. Y. V. Giri tendered a file for perusal by the Court to show that there was consultation with the then H. R.D. Minister on the issue, based on which the Chancellor made the appointments of the two Vice Chancellors. The file in question is file No. ACT - 01/10 which has an endorsement "Bihar State Universities Tribunal Act." Reliance was placed by the learned Senior Counsel representing the Chancellor to pages 51, 52 and 53 of the said file. The Court observed that since the file in question did not relate to appointment of Vice Chancellors but with regard to constitution of a University Tribunal and the objections of the Governor to ratification of the said bill. The relevant pages, namely, page nos. 51, 52 and 53 of the said file was ordered to be brought on record by way of an affidavit so that all the parties to the dispute including the Court had the benefit of looking into the same closely on the question of consultation with the State.

29. A counter affidavit again on behalf of respondent no. 2 i.e. the Chancellor duly sworn by Kumar Brij Kishore Sahani, Joint Secretary in the Governor's Secretariat dated 18.04.2011 was filed annexing the said pages as Annexure R-2/1. This is supposed to be the portion of the file in which the so called consultation for appointment of Vice Chancellors took place or its evidence is reflected though the main minutes in the file deals with constitution of Bihar Universities Tribunal.

30. Since the noting on the question of consultation is in the purported hand of the Chancellor which speaks for itself, therefore, the Court feels that all the pages itself should be reproduced as part of this order. Annexure- R-2/1, therefore, is duly scanned and forms part of this order.

The note of the Chancellor is not fully legible.

32. The Court has meticulously gone through the said note of the Chancellor which has been purportedly made in his own pen. The first thing which the Court notices is that the note does not have any initial of the Minister and it has been incorporated in a file not even related to the question of appointment of Vice Chancellors to the Universities of Bihar muchless the Universities in question. There is obvious evidence that the visit of the Minister to the Raj Bhawan and the discussion he had with the Chancellor, primarily, related to the objections the Governor had in giving his assent to the Universities Tribunal Bill, which was pending approval of His Excellency for many a months, if not more than a year. Another significant aspect which emerges from the noting is that no separate Minutes came to be drawn up on a separate file or piece of paper as if Chancellor's Secretariat lacks stationery or Secretarial assistance. It was not even sent to the Minister for his signature or acknowledgment of what was recorded. It also shows that even a file was not opened on the issue

of appointment to such important posts of Vice Chancellors. What was the compelling circumstance under which such a noting was done remains a mystery wrapped in an enigma. A reading of the said note, even if it is accepted as evidence of the so called consultation, it does not show that the two names were even mentioned for appointment as Vice Chancellors to the two Universities, namely, Magadh University or Veer Kunwar Singh University, in the so called discussion. There is generality of discussion that vacancies are existing in the Universities and there was some urgency of filling up those vacancies on due priority. But that by itself did not mean by giving a go bye to the law.

33. It is also not further understood or explained as to why the so called "Minutes", if at all, could not be drawn up subsequently and referred to the concerned Minister of H.R.D. for obtaining his signature as a proof of his agreeing of what was recorded therein. The Court is not aware of any Minutes being drawn up unilaterally without any endorsement or acknowledgment thereto of the parties to such consultation or deliberations. It is also not understood as to what was the occasion for the Chancellor to make such endorsement on a file and on a Minute which dealt through and through with regard to objections His Excellency had to give assent to a Bill relating to constitution of a Tribunal for the Universities.

34. Court has serious reservation whether the above exercise amounts to consultation on behalf of the State, based on which the Chancellor could go ahead and make unilateral appointments of Vice Chancellors, without even basic materials or subject of consultation existing before the two authorities. How did the Chancellor zero down on these two names still stands a mystery and unexplained.

35. No further comments on the issue as well as the so called material of consultation is required to be offered by

the Court. Inferences are obvious. The Court can now well appreciate the background to the H.R.D. Minister?s notings and letters denying any consultation on the issue of appointment of Vice Chancellors. Though he does accept that his visit to Raj Bhawan related to discussion on the Tribunal Bill and that alone, the stand of the Minister stands corroborated and seems more closer to the actual state of affairs, as noting by the Chancellor is in the file relating to the University Tribunal Bill and that too on the page of the Minutes dealing with the Tribunal Bill.

36. The Court, therefore, has serious reservation or doubt whether this evidence or proof can be taken as the ultimate answer or material showing consultation between the State and the Chancellor, meeting the requirement of consultation undern section 10(2) of the Act, vesting him with the authority to make appointments at his level on the post of Vice Chancellors to the two Universities."

(emphasis supplied)

3.2 The learned Single Judge then adverted to the judgments of this Court in *Union of India v. Sankat Chand Himatlal Sheth and Another* AIR 1977 SC 2328, *S.P. Gupta v. Union of India* AIR 1982 SC 149, *Gauhati High Court and Another v. Kuladhar Phukan* (2002) 4 SCC 524 and held:

"51. There could be an arguable case that even the Chancellor has some flexibility with regard to suggesting names which may come within his knowledge or domain but those details and opinion must be shared and deliberated between the State Government and the Chancellor and some kind of opinion reached, before it can be said that there was consultation with regard to the persons who are fit or otherwise deserving to be appointed as Vice Chancellors. Obviously, the manner and the way appointments to the two posts have been made, in the opinion of this Court, does not satisfy the

requirement of consultation and there is much a-miss with regard to the way the whole exercise has been carried out at the office of the Chancellor and in the manner in which Chancellor has gone about making appointments to the post.

52. Consultation with the State is a must. Consultation with the State must be effective. Consultation also means placing of materials between the consulting and the consulted party. There has to be proper deliberations by producing all materials duly recorded to show that such exercise was carried out and there was application of mind with regard to all those persons who may be otherwise eligible. If all these elements are missing and there is no evidence in this regard in existence, then the Court will have no hesitation in recording that any appointment made, may be at the behest or at the level of the Chancellor, would be in clear breach of the requirements of Section 10(2) of the Act. There is no absolute power of the Chancellor to make appointment on the post of Vice Chancellor or Pro Vice Chancellor at his level without the consultation with the State within the meaning of law enunciated by Courts and as mandated and that alone would satisfy the requirement of consultation under section 10(2) of the Act.

53. In this case there are predominant materials to show that there was never any consultation with any State authorities and the Chancellor on the question of appointment of two Vice Chancellors. If the two Vice Chancellors came to be appointed in breach of Section 10(2) of the Act, then the appointment will have to be interfered with and the issue cannot be allowed to rest."

(emphasis supplied)

3.3 Letters Patent Appeal Nos. 822 and 824 of 2011 filed by Dr.Subhash Prasad Sinha and Dr. Arvind Kumar,

respectively were dismissed by the Division Bench of the High Court vide judgment dated 8.9.2011, paragraphs 18 and 19 of which are extracted below:

> "18 The word "shall" is only indicative. The need of consultation is between two constitutional authorities, one is the Chancellor whose rule has been noticed above and the other is the State Government which has a high stake in ensuring that standard of higher education in the State is maintained and the hundreds of crores of rupees allocated to the Universities every year are well utilized by appointment of suitable persons who are not only reputed for their scholarship and academic interest but can also be good administrators, capable of safeguarding the finances and interests of the Universities. The Governor as Chancellor does not have the elaborate requisite machinery to enable him to form the appropriate opinion for appointing persons as Vice Chancellors and this is adequately taken care of by providing consultation with the State Government. The nature of duty of both the Constitutional authorities in this context is to promote public interest and interest of higher education by selecting and appointing best persons available out of eligible candidates. To achieve this object the stipulated consultation has to be effective. It is not only desirable but clearly a must, before selection and appointment.
>
> 19. Though the judgment of the Supreme Court in the case of *Indian Administrative Service (SCS) Association v. Union of India* (1993 1 Supp. 22 SCC 731) has been cited on behalf of the appellants, a careful perusal shows that the settled principles as to what shall constitute consultation and when it is mandatory do not support the case of the appellants. The judgment approves that prior consultation is mandatory and moreso if its violation would affect fundamental rights or fair procedure. In the present case, the dispute whether opinion or advice of the State

> Government will bind the Chancellor or not is not at all in issue. The controversy is in respect of earlier stage as to whether the State Government should have adequate opportunity to give its opinion or advice in respect of the appointees. The procedure and details as to who shall be taken into consideration on account of eligibility and who shall be selected out of eligible persons has rightly not been prescribed by the Act because the appointment and consultation process has been left in the hand of high Constitutional functionaries. Nonetheless, like any selection process it must be fair. Consultation with the State Government has been introduced by the Legislature with the obvious aim of making the selection procedure wider in ambit, deeper in contents, transparent and fair. The State Government has the means to render intensive and extensive information and input in course of consultation. The consultation in such important matter and at such high level needs to be effective so that after the Chancellor has made tentative choice on considering the entire information and input given by the State Government, the latter may provide further relevant information, if available, in respect of tentatively selected persons, in order to avoid the risk of Universities being placed in the hands of wrong persons or unsuitable persons."
>
> (emphasis supplied)

3.4 The special leave petitions filed by the two appointees, which were registered as SLP (C) Nos. 27644/2011 and 27725/2011, were dismissed by this Court on 29.9.2011.

3.5 During the pendency of the letters patent appeals before the High Court, the Chancellor issued Notifications dated 1.8.2011 and 3.8.2011 for appointment of as many as ten persons as Vice-Chancellors and Pro Vice-Chancellors of different Universities of the State. The details of these

appointments are as under:

Sl No.	Notification date	Memo No.	Name	Appointed as
1	01/08/11	BSU-13/2011-1789(GS (I)	Dr. Shambhu Nath Singh	Vice-Chancellor of Patna University, Patna
2	01/08/11	BSU-13/2011-1834(GS (I)	Dr. Bimal Kumar	Vice-Chancellor of B.R.A. University, Muzafar
3	01/08/11	BSU-13/2011-1864(GS (I)	Dr. Ram Vinod Sinha	Vice-Chancellor of J.P. University, Chapra
4	01/08/11	BSU-13/2011-1819(GS (I)	Dr. Arun Kumar	Vice-Chancellor of B.N.Mandal University, Madhepura
5	01/08/11	BSU-13/2011-1849(GS (I)	Dr. Arvind Kumar Pandey	Vice-Chancellor of K.S.D. Sanskrit University, Darbhanga.
6	01/08/11	BSU-13/2011-1804(GS (I)	Dr. Md. Shamsuzzoha	Vice-Chancellor of Maulana Maharul Haque Arabic & Persian University, Patna
7	01/08/11	BSU-13/2011-1924(GS (I)	Dr. Pushpendra Kumar Verma	Pro Vice-Chancellor of B.N. Mandal University, Madhepura

8	01/08/11	BSU-13/2011-1894(GS (I)	Dr. Kumaresh Prasad Singh	Pro Vice-Chancellor of L.N. Mithila University, Darbhanga
9	01/08/11	BSU-13/2011-1879(GS (I)	Dr. Sultana Khushood Jabeen	Pro Vice-Chancellor of Maulana Mazharul Haque Arabic & Persian University, Patna
10	03/08/11	BSU-13/2011-1941(GS (I)	Dr. Lal Keshwar Prasad Singh	Pro Vice-Chancellor of Patna University

3.6 The afore-mentioned appointments also became subject matter of challenge in C.W.J.C. No.15123 of 2011 filed by Dr. Ram Tawakya Singh mainly on the ground that the Chancellor had not consulted the State Government as per the mandate of Section 10(2) of the BSU Act and Section 11(2) of the Patna University Act, 1976 (for short, 'the PU Act').

3.7 In the counter affidavits filed by the appointees an objection was taken to the *locus standi* of Dr. Ram Tawakya Singh on the premise that he was not eligible to be appointed as Vice-Chancellor or Pro Vice-Chancellor. The Division Bench of the High Court rejected the objection by observing that being a member of the teaching faculty of a University in the State, the petitioner was legitimately entitled to see that appointments to the offices of Vice-Chancellor and Pro Vice-Chancellor are made in accordance with law from amongst those who are qualified and are meritorious. The Division Bench then considered the question whether the Chancellor had made

appointments in consultation with the State Government and answered the same in negative by recording the following observations:

> "It is evident that the Chancellor had the meeting with the Chief Minister, and that both the Chancellor and the Chief Minister were aware of the subject matter of discussion. The Chief Minister being the representative of the State Government, we cannot say that the Chancellor did not consult the State Government or that the State Government was not aware of the names selected by the Chancellor.
>
> But, in our opinion, it is not enough that the State Government was aware of the subject matter. If the State Government were satisfied by mere discussion, we would say that the State Government failed in discharge of its duty or abdicated its power.
>
> A proper consultation would be when the Chancellor forwards the names selected by him with the relevant materials and the State Government considers such names and scrutinizes the materials, the State Government may have or may collect further materials from its own resources and records its own opinion in respect of each such name. The matter of appointment of Vice-Chancellors or Pro Vice-Chancellors cannot be taken lightly. It would be the duty of the Chancellor and the State Government to select the best person or at least not to select a wrong person.
>
> We do not propose to enter into the eligibility, academic qualifications, general reputation, integrity or moral standards of any of the respondents Vice-Chancellors or Pro Vice-Chancellors. It is the function of the Chancellor to examine the materials on hand and to consider the opinion of the State Government and the materials forwarded by the State Government, if any. Once, the Chancellor has examined the materials and is satisfied, that would be sufficient compliance with the statutory provisions.
>
> We do not propose to say that the Chancellor is required to receive recommendations from the State Government or that the opinion of the State Government is binding upon the Chancellor. No, that is not what the Legislature has intended. All that the Legislature has intended is that the Chancellor should obtain opinion of the State Government before he makes the appointment of Vice-Chancellors or Pro Vice-Chancellors selected by him. The opinion of the State Government may or may not be accepted by the Chancellor. The Chancellor being the supreme authority, it is the decision of the Chancellor which shall prevail, but not without obtaining the opinion of the State Government on the proposed names.
>
> As recorded hereinabove, at no point of time before the Chancellor discussed the matter with the Chief Minister, the names proposed by the Chancellor were disclosed to the State Governent. In absence of the disclosure of the names, the State government could not have applied its mind or formed an opinion. A mere discussion without application of mind or forming an opinion, in our view, is not the "Consultation" envisaged by the above referred Acts of 1976."
>
> (emphasis supplied)

3.8 In view of the findings recorded by it, the Division Bench of the High Court allowed the writ petition and quashed the appointments of Vice-Chancellors and Pro Vice-Chancellors and directed that fresh appointments be made in consultation with the State Government. The operative portion of order dated 7.12.2012 passed by the Division Bench reads thus:

"For the aforesaid reasons, we hold that the appointment of the respondent nos. 20 to 29 as Vice-Chancellors or Pro-Vice-Chancellors in the concerned Universities have been made without "Consultation" as envisaged by Sections 10(2) and 12 of the Bihar Universities Act, 1976 and by Sections 11 and 14 of the Patna University Act, 1976. All the ten appointments are, therefore, vitiated and are void ab initio.

For the aforesaid reasons, CWJC No. 15123 of 2011 is allowed. The impugned notifications dated 1st August, 2011 and 3rd August, 2011 are quashed and set aside. The appointment of the respondent nos. 2O to 29 is held to be illegal and contrary to the Bihar Universities Act, 1976 or the Patna University Act, 1976, as the case may be, and are set aside.

The Chancellor will, within one month from today, propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the above referred Universities to the State Government with the relevant materials. The State Government will, within 30 days therefrom, forward its opinion in respect of all such names to the Chancellor. After receipt of such opinion, the Chancellor will make the appointment of Vice-Chancellors and Pro Vice-Chancellors in the respondents Universities.

We make it clear that the petitioner will have no right to submit his candidature or a right to be considered for appointment as Vice-Chancellor or Pro Vice-Chancellor in any of the respondents Universities."

4. Dr. Ram Tawakya Singh has challenged the direction given by the High Court mainly on the ground that the selection of Vice-Chancellors and Pro Vice-Chancellors cannot be left in the hands of the Chancellor without any mechanism for preparation of panel of candidates by a Search Committee

consisting of academicians and educationists. He has also questioned the direction given by the High Court virtually debarring him from being considered for appointment as Vice-Chancellor or Pro Vice-Chancellor. The State of Bihar and others have challenged the order of the High Court on the ground that the view taken by it on the scope of Sections 10(2) and 12(1) of the BSU Act and Sections 11(2) and 14(1) of the PU Act is contrary to the one expressed by the coordinate Bench in LPA Nos. 822 and 824 of 2011.

5. On 18.3.2013, this Court heard the arguments of learned counsel for the State and some of the private respondents who had appeared on caveat and stayed the operation of Notifications dated 9.2.2013 and 19.2.2013 issued by the Chancellor appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors. That order is being reproduced below because one of the contentions urged by the counsel for the private respondents is that the appellants had misled the Court in passing an interim order:

"Delay condoned.

This petition is directed against order dated 7.12.2012 passed by the Division Bench of the Patna High Court in Civil Writ Jurisdiction Case No. 15123 of 2011, whereby certain directions were given in the mater of appointments of Vice-Chancellors and Pro Vice-Chancellors in various universities of the State. The operative portion of the High Court's order reads thus:

"For the aforesaid reasons, we hold that the appointment of the respondent nos. 20 to 29 as Vice-Chancellors or Pro Vice-Chancellors in the concerned Universities have been made without "Consultation" as envisaged by Section 10(2) and 12 of the Bihar Universities Act, 1976 and by Sections 11 and 14 of the Patna University Act,

1976. All the ten appointments are, therefore, vitiated and are void ab initio.

For the aforesaid reasons, CWJC No. 15123 of 2011 is allowed. The impugned Notifications dated 1st August 2011 and 3rd August, 2011 are quashed and set aside. The appointment of the respondent nos. 20 to 29 is held to be illegal and contrary to the Bihar Universities Act, 1976 or the Patna University Act, 1976, as the case may be, and are set aside.

The Chancellor will, within one month from today, propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors in the above referred Universities to the State Government with the relevant materials. The State Government will, within 30 days therefrom, forward its opinion in respect of all such names to the Chancellor. After receipt of such opinion, the Chancellor will make the appointment of Vice-Chancellors and Pro Vice-Chancellors in the respondents Universities.

We make it clear that the petitioner will have no right to submit his candidature or a right to be considered for appointment as Vice-chancellor or Pro Vice-Chancellor in any of the respondents Universities."

(Copied from the SLP Paper book)

The petitioners have also questioned the consequential actions taken by the Chancellor for appointment of Vice-Chancellors and Pro Vice Chancellors in various Universities of the State.

We have heard Shri Harish Salve, learned senior counsel for the petitioners and perused the record.

Issue notice, returnable on 16.04.2013. Dasti, in addition, is permitted.

Shri Amit Pawan, learned counsel instructing Dr. Rajeev Dhawan, Shri Amrendra Sharan and Shri Uday U Lalit, learned senior counsel accepts notice on behalf of respondent nos. 20, 21 and 22.

Shri Harish Salve strongly pressed for stay not only of the order passed by the High Court, but also of notifications dated 9.2.2013 and 19.02.2013 issued by the Governor-cum-Chancellor, Bihar for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities. Dr. Rajeev Dhawan, S/Shri Amrendra Sharan and Uday U Lalit vehemently opposed the prayer made by Shri Salve. Dr. Dhawan submitted that the exercise undertaken by the Chancellor and the Government for appointment of Vice-Chancellors and Pro Vice-Chancellors cannot be questioned in the special leave petition which is essentially directed against order dated 7.12.2012 of the High Court and if any person feels aggrieved by the appointments made in furtherance of the directions given by the High Court, then he can avail appropriate legal remedy. Learned senior counsel submitted that this Court can examine the legality of notifications dated 9.2.2013 and 19.02.2013 only if an independent writ petition is filed for that purpose. Dr. Dhawan was joined by Shri Sharan and Shri Lalit in making a submission that the prayer made by Shri Salve should not be accepted because only few of the candidates mentioned in the list annexed with communication dated 5.1.2013 sent by the Secretary to the Governor are shown to be facing criminal cases and any deficiency in their candidature cannot be used against the other respondents, who are fully qualified and have been found suitable for the posts of Vice-Chancellors and Pro Vice Chancellors. Learned counsel then submitted that

it will not be desirable to create vacuum in the positions of Vice-Chancellors and Pro Vice-Chancellors because that would adversely affect the functioning of the Universities and the students community.

In his rejoinder submissions, Shri Salve invited the Court's attention to the regulations framed by the University Grants Commission, which were circulated on 30.06.2010 for selection of Vice-Chancellors and Pro Vice-Chancellors of the Universities and claimed that even though Legislature of the State of Bihar had made appropriate amendments in the relevant enactments and forwarded the same to the Governor in the month of March, 2011, the latter has neither approved nor returned the same to the State Legislature.

We have considered the respective submissions.

The record of the case shows that in the purported compliance of the direction given by the High Court on 7.12.2012, the Secretary to the Governor sent letter No. 2C/GS/GB dated 5.1.2013 to the Principal Secretary to the Chief Minister, Government of Bihar stating therein that in exercise of powers conferred upon him under Section 10(1) and (2) and Section 12(1) of the Bihar State Universities Act, 1976 (as amended up to date) as well as Sections 11 and 14 of the Patna University Act, 1976 (as amended up to date) and Sections 11(1) and (2) of the Nalanda Open University Act, 1995 (as amended up to date), the Chancellor proposes to appoint the persons named in Annexure-A and Annexure-B as Vice-Chancellors and Pro Vice-Chancellors against the vacancies existing in the Universities and sought the Chief Minister's view on the names. In the last column of the lists enclosed with letter dated 5.1.2013, few lines were recorded about the capabilities of the candidates to be appointed as Vice-Chancellors and Pro Vice-Chancellors.

In response to the aforesaid letter, the Principal Secretary to the Chief Minister of Bihar sent communication dated 21.1.2013 to the Special Secretary to the Governor, paragraphs 1 to 3 and last paragraph of which read as under:

> "1. In compliance of the Hon'ble High Court order in the CWJC No. 10569 of 2011, the envisaged "Consultation" process has to be meaningful and based on substantive material. The order clearly mentions that "the legislature has cast a duty upon the State Government to scrutinize the names proposed by the Chancellor for appointment of Vice-Chancellors and Pro-Vice-Chancellors for their academic qualifications, experience, integrity and moral standards".
>
> It is to bring to your notice that the list sent by you contains only qualifications and experience and that too in a very brief and inadequate manner. There is no record of their vigilance clearance or integrity and moral standards. Hence it is not possible for us to scrutinize the names as envisaged in the Hon'ble High Court order.
>
> 2. Further prima facie, this is to point out that the proposed list contains name of one such person who has the criminal proceedings pending against him i.e. Sl. No.4 of the proposed Vice Chancellors' List. Please refer page no.16 of the Hon'ble High Court order wherein it has been admitted by the advocate of the person referred above.
>
> 3. The list also do not mention the name of the University against which proposed names are contemplated for consideration.
>
> You are therefore requested to kindly arrange for

the required information with details in your possession so that an effective consultation takes place between the consulting parties."

(copied from the SLP paper book)

Thereafter, the Secretary to the Governor sent letter dated 28.1.2013 to the Principal Secretary to the Chief Minister mentioning therein that if the latter is in possession of substantive and credible materials as to the integrity and moral standards of the persons named in the communication sent by the Governor's Secretariat, then the same may be forwarded for being placed before the Chancellor. The Secretary to the Governor also wrote that if the Chief Minister has any record of judicial conviction, instead of merely criminal proceedings pending, against the name at serial no.4 in the list, then he may send the same for being considered by the Chancellor.

After 12 days, the Principal Secretary to the Chief Minister sent letter dated 9.2.2013 to the Special Secretary to the Governor enclosing therewith summary of the report received from the Department of Education on various candidates mentioned in the list forwarded by the office of the Chancellor. On the same date, the Governor-cum-Chancellor issued notification dated 9.2.2013 appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities.

In response to the Court's query, the learned senior counsel appearing for respondent Nos. 20 to 22 gave out that they are not in a position to say whether or not the amendments made by the State Legislature have been approved by the Governor. The question whether the Governor had kept pending for two years, the Bill passed by the State Legislature and whether there was any

justification will require serious consideration by the Court at the time of final adjudication of the matter. However, at this stage, we are prima facie satisfied that the selection of Vice-Chancellors and Pro Vice-Chancellors has not been made by following the procedure laid down in the UGC Regulations because no such Committee was constituted by the Chancellor for preparing panel of the candidates who could be considered for such appointments. We may also observe that even in the absence of UGC Regulations, appointment to the posts of Vice-Chancellors and Pro Vice-Chancellors could have been made by the Chancellor in consultation with the competent authority only after following some procedure consistent with the doctrine of equality enshrined in Article 14 of the Constitution so as to enable all eligible persons to compete for selection.

In a somewhat similar case, this Court had an opportunity to consider the legality of the appointment of Director of the Indian Statistical Institute and it was held that selection made without following the procedure laid down in the bye-laws of the society and issuing public notice was contrary to Article 14 of the Constitution. (See *B.S. Minhas v. Indian Statistical Institute and Others* (1983) 4 SCC 582).

De hors the above observations, we are of the view that even though the special leave petition is primarily directed against the order of the High Court, this Court can take cognizance of the subsequent events including notifications dated 9.2.2013 and 19.2.2013 issued by the Chancellor and pass appropriate order in the matter.

A reading of the letter sent by the Principal Secretary to the Chief Minister to the Special Secretary to the Governor on 9.2.2013 shows that criminal complaints are pending against some of the candidates who were

proposed by the Chancellor to be appointed as Vice-Chancellors and Pro Vice-Chancellors and were actually appointed against those posts on 9.2.2013. Against two of them charge sheets have already been filed in the competent Court. Against one of the candidates, charge sheet has been filed under Sections 341/342/506 and other provisions of IPC read with Section 3(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Against another candidate, a case has been registered under Section 420/409/467/468/471 and other provisions of IPC read with Sections 13 and 14 of Prevention of Corruption Act. One more case is said to have registered against him under Sections 420/409/467 and other provisions of IPC.

All this, prima facie, indicate that the Chancellor did not at all apply his mind on the question of suitability and desirability of appointing the particular candidates as Vice-Chancellors and Pro Vice-Chancellors. Why this was done would require serious scrutiny by the Court which is possible only after giving opportunity of hearing to the private respondents and the Chancellor. However, the manner in which the Chancellor has made appointments albeit in the guise of adhering to the time schedule fixed by the Division Bench of the High Court leaves much to be desired. The High Court had not fixed any time limit for the Chancellor to take final decision after receiving the opinion of the State Government. One month's time was fixed by the Court for the Chancellor to propose the names for appointment of Vice-Chancellors and Pro Vice-Chancellors in various Universities and forward the same to the Government with relevant materials. The State Government was required to forward its opinion within next 30 days. However, there was no time limit for Chancellor to take final decision in the matter. Notwithstanding this, the Chancellor exhibited undue haste and ensured that the

notifications appointing the particular candidates are issued in less than 24 hours of the receipt of the opinion of the Chief Minister. It is a matter of serious concern that candidates facing criminal prosecution have been appointed as Vice-Chancellors/Pro Vice-Chancellors.

In the premise aforesaid, we are convinced that it is a fit case in which an interim order should be passed by the Court.

Accordingly, the operation of notifications dated 9.2.2013 and 19.2.2013 issued by the Governor-cum-Chancellor, Bihar appointing the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities is stayed and they are restrained from functioning as Vice Chancellors and Chancellors of the concerned Universities.

With a view to ensure that functioning of the various Universities is not jeopardized, we direct that as a purely stop gap arrangement, the senior most Deans in the Universities shall discharge the function of the Vice-Chancellors and Pro Vice-Chancellors.

It shall be the duty of the petitioners to serve the remaining respondents well before 16.04.2013.

A copy of this order be sent to the Secretary to the Governor of Bihar by fax. He shall ensure that the entire record relating to the selection of Vice-Chancellors and Pro Vice-Chancellors be sent to this Court in sealed envelopes through a messenger and deposited with the Secretary General of this Court on or before 10.04.2013.

Copies of this order be also sent to the Registrars of all the Universities by fax. They should place the order before the senior most Dean in the concerned University so as to enable him to discharge the function of Vice-

Chancellor till the next date of hearing i.e. 16.4.2013."

6. In compliance of the direction given by the Court, Shri Sudhir Srivastava, Special Secretary to the Governor-cum-Chancellor sent the relevant file in a sealed envelope along with letter dated 27.3.2013. The sealed cover was opened in the Court and the papers contained in the file were perused. Subsequently, the file was made available to the learned counsel for the parties for their perusal and all of them availed the opportunity. The counsel representing State of Bihar also produced File No.15/M 1-02/12 (part), Computer No.7058/13 maintained by the Education Department of the State.

7. A careful scrutiny of these files reveal the following facts:

i. The order passed by the Division Bench of the High Court was placed before the Governor-cum-Chancellor on 12.12.2012.

ii. On 5.1.2013, the Governor-cum-Chancellor passed an order proposing appointments of Prof. (Dr.) Bimal Kumar, Dr. (Prof.) Arun Kumar, Dr. Ram Vinod Sinha, Dr. Kumaresh Prasad Singh, Dr. Sheo Shankar Singh, Dr. Samrendra Pratap Singh, Dr. Tapan Kumar Shandilya as Vice Chancellors and Dr. Ramayan Prasad, Dr. Birendra Kumar Singh, Dr. Dharma Nand Mishra, Dr. Sultana Khushood Jabeen, Prof. (Dr.) Shailendra Kumar Singh, Dr. Padmasha Jha, Dr. Anwar Imam, Prof. (Dr.) Chakradhar Prasad Singh and Prof. (Dr.) Raja Ram Prasad as Pro Vice Chancellors. On the same day, Special Secretary to the Governor sent letter No. 2C/GS/GB dated 5.1.2013 to the Principal Secretary to the Chief Minister, Bihar conveying the Chancellor's proposal to appoint the persons whose names were mentioned in Annexure-A and Annexure-B attached to the letter as Vice-Chancellors and Pro Vice-Chancellors of different Universities. The details contained in the two charts are quite significant and, therefore, the same are reproduced below:

"To,

Shri Sudhir Shrivastava,
Special Secretary,
Governor Secretariat,
Governor House, Patna.
Patna, dated 21 January, 2013.

Sub : Appointment of Vice Chancellors and Pro- Vice Chancellors.

Sir,

With reference to your letter no. 20/GS/GB dated 5.1.2013, it seems necessary to raise some of the required and essential points to enable the Government to render its opinion for meaningful and effective Consultation with the Chancellor of the universities of State of Bihar.

1. In compliance of the Hon'ble High Court order in the CWJC No. 10569 of 2011, the envisaged "Consultation" process has to be meaningful and based on substantive material. The order clearly mentions that "the legislature has cast a duty upon the State Government to scrutinize the names proposed by the Chancellor for appointment of Vice-Chancellors and Pro-Vice Chancellors for their academic qualifications, experience, integrity and moral standards."

It is to bring to your notice that the list sent by you contains only qualifications and experience and that too in a very brief and inadequate manner. There is no record of their vigilance clearance or integrity and moral standards. Hence it is not possible for us to scrutinize the names as envisaged in the Hon'ble High Court order.

2. Further prima-facie, this is to point out that the proposed list contains name of one such person who has the criminal proceedings pending against him i.e. SI. No. 4 of the

proposed Vice Chancellors' list. Please refer page no. 16 of the Hon'ble High Court order wherein it has been admitted by the advocate of the person referred above.

3. The list also do not mention the name of the University against which proposed names are contemplated for consideration.

In these circumstances it is nearly impossible to properly scrutinize the names and form an opinion for a valid consultation as envisaged in the statutes and Hon'ble High Court's order.

You are therefore requested to kindly arrange for the required information with details in your possession so that an effective consultation takes place between the consulting parties."

(emphasis supplied)

iv. The Secretary to the Governor then sent letter dated 28.1.2013 to the Principal Secretary to the Chief Minister and asked him to forward substantive and credible materials as to the integrity and moral standards of the persons named in letter dated 5.1.2013. It was also mentioned in the letter that record of judicial conviction, instead of merely criminal proceedings pending against the person named at serial no.4 in the list, may be sent for consideration of the Chancellor.

v. The letter of the Secretary to the Governor was sent by the Chief Minister's Secretariat to the Principal Secretary, Education, who wrote D.O.No.29/C/2013 dated 1.2.2013 to the Principal Secretary (Vigilance Department) with the request to provide update on vigilance matters with regard to the candidates. The Vigilance Department got conducted the necessary enquiries and submitted the required information to the Principle Secretary, Education.

vi. In the meanwhile, the Principal Secretary to the Chief Minister sent letter to the Special Secretary to the Governor pointing out that the matter has been referred to the Vigilance Department and the information is likely to become available in a few days. That letter reads as under:

"Government of Bihar
Chief Minister Secretariat

Letter No.4610032/CMS 4 February 2013

From,

Secretary to the Chief Minister,

Government of Bihar,
Patna.

To,

The Special Secretary,
Governor's Secretariat,
Raj Bhawan, Patna.

Subject: Appointment of Vice Chancellors and Pro Vice Chancellors

Reference: Your letter no. 63, dated 28th January 2013.

Sir,

This has reference to letter no. 144/PSC/CMS dated 21 January, 2013 and your letter no. 63/GS(I)/GB dated 28 January, 2013.

In letter dated 21st January, 2013 it was categorically mentioned that for valid, effective and meaningful consultation in regard to appointment of Vice-Chancellor/ Pro Vice Chancellor in the State Universities it would be essential to have full and complete input in possession of Hon'ble Chancellor. A list containing names of prospective

candidates has been forwarded by you. However, very sketchy information in regard to each of the candidates has been made available. No information regarding which of the candidate is proposed for appointment to which University has been provided.

It is to be noted that the list of name has been finalized by the Hon'ble Chancellor and therefore it has to be presumed that he is in possession of all relevant materials, such as document in support of eligibility /qualification, experience, moral character/integrity. Appointment in each University is an independent decision which has to be preceded by effective and meaningful consultation. In the absence of requisite materials, any exercise would appear as mere formality. As ordained by Hon'ble Court's order, the State Government is required to give it opinion. As the names have been short listed by Hon'ble Chancellor, it is considered imperative that State Government before tendering opinion should have full materials with specific detail as to which candidate is being considered for which University.

However, instead of responding to the Government's request, you have asked us to make available substantive and credible materials as to integrity and moral standards of persons included in the list. You have also mentioned to make available pending proceeding against the person at SI. No. 4.

Vice Chancellor/Pro Vice-Chancellor of University is expected to possess basic eligibility as prescribed by the Universities Grants Commission. Besides, the candidate is required to have credible experience of a high position and should be perceived to have good reputation. Serious allegation of misconduct as holder of the post for any omission or commission being investigated by State Vigilance/Police is sufficient reason not to recommend such a person.

Since the State Government has not been provided the grounds on which the candidates have been recommended or at least the due diligence that was undertaken before suggesting the names, it is impossible for the State Government to engage in a meaningful consultation. The State Government has requested the Vigilance Department for information based on simply the names of the candidates recommended, without any other information or bio data. It is likely that such information will be available in a few days.

The orders of the Hon'ble Court have been absolutely clear regarding the consultation process. Any hasty decision without conforming to the basic framework for consultation as outlined by the Hon'ble Court, will amount to a contravention of the Court's orders. The State Government would like to request that appointments should only be made after the process of consultation, as outlined in the Court's orders, are fully complied with."

(emphasis supplied)

vii. On 8.2.2013, the Special Secretary to the Governor-cum-Chancellor recorded a note, which reads as under:

"As per order of the Hon'ble Chancellor dated 05.01.2013, a list of names for appointment as Vice Chancellors and Pro-Vice Chancellors was sent to the Principal Secretary to Chief Minister vide this Secretariat letter No.20/GS/GB dated 5th January, 2013.

The Principal Secretary to Chief Minister, Bihar vide his letter No. 144/PSC/CMS dated 21 January, 2013 sought some clarifications against one person named in the list.

Thereafter, as directed by H.E. a reply was sent to the Principal Secretary to Chief Minister vide this Secretariat letter No.63 GS/GB dated 28 January, 2013 conveying him

that in case he is in possession of substantive and credible materials as to integrity and moral standards of the persons named in the list, he was requested to forward the same to this Secretariat. It was also mentioned that similarly, if he has any record of judicial conviction, instead of merely criminal proceedings pending, against person in serial No. 4 in the list, he was also requested to send it for consideration of the Hon'ble Chancellor.

In response to our letter dated 28 January, 2013, the Secretary to Chief Minister, Bihar has sent his reply vide his letter No. 4610032/CMS dated 4th February, 2013 that State Govt. has requested the Vigilance Department for information regarding candidates proposed.

Today is 8/2/2013 and the State Government has not given any specific objection or opinion against the individual persons named in the list proposed by the Hon'ble Chancellor on 5/1/2013 to the State Government.

H.E. to take decision please."

viii. On the same day, the Governor-cum-Chancellor recorded the following note:

"As discussed with you, please prepare draft Notifications for appointment of VCs and Pro VCs as per relevant provisions of the Acts and in consonance with ratio decidendi / ratiocination of the High Court judgment for immediate issuance."

The Governor-cum-Chancellor also approved the draft format of the notifications to be issued for appointing Vice-Chancellors and Pro Vice-Chancellors and directed that the same be issued when ordered by him. Below that note the Special Secretary recorded the following:

"Notification formats ready. H.E. may like to indicate names of VCs and date of issue of notifications."

ix. On the next day, i.e., 9.2.2013, Governor-cum-Chancellor recorded the following noting:

"Notifications in the approved format appointing the following persons as Vice-Chancellors may be issued on 9th February, 2013, at the Universities shown against their names. The order is to take immediate effect.

	"Name of VC	University
1.	Prof Shambhu Nath Singh, interim Vice-Chancellor, Patna University, Patna	Patna University, Patna.
2.	Prof.(Dr.) Md.Shamsusuzzha, interim Vice-Chancellor, MMH Arabic and Persian University, Patna	MMH Arabic and Persian University, Patna.
3.	Prof.(Dr.) Arun Kumar, interim Vice-Chancellor, B.N.Mandal University, Madhepura	Magadh University, Bodh Gaya.
4.	Prof.(Dr.) Bimal Kumar, interim Vice-Chancellor, BRA Bihar University, Muzaffarpur	J.P. University, Chapra.
5.	Dr. Ram Binod Sinha, interim Vice-Chancellor, J.P. University, Chapra	B.N. Mandal University, Madhepura.
6.	Dr. Sheo Shankar Singh, Principal, Maharaja College, Ara	V.K.S. University, Ara.
7.	Dr. Kumaresh Prasad Singh, In-Charge Vice-Chancellor, V.K.S. University, Ara	BRA Bihar University, Muzzaffarpur.
8.	Dr. Arvind Kumar Pandey, interim Vice-Chancellor, KSD Sanskrit University, Darbhanga	KSD Sanskrit University, Darbhanga.

Thereafter, the Special Secretary to Governor-cum-Chancellor made a recording that all the eight notifications have been sent to the concerned Universities by fax.

x. On 9.2.2013, the Principal Secretary to the Chief Minister, Bihar sent a report received from the Education Department, which got conducted enquiry through the Vigilance Department, to the Special Secretary to the Governor. The relevant portions of that report are as under:

"In the category of Vice-Chancellors

1. Prof. (Dr.) Bimal Kumar

Vigilance Department of the State Government is enquiring charges against him regarding financial irregularities, appointment of lecturers illegally and corrupt misuse of post when he was posted as Registrar, Magadh University. Complaint Case No. 13/12. 14/12 and 35/12 have been filed against Dr. Bimal Kumar in the Special Vigilance Court, Muzaffarpur and the same has been forwarded to the Vigilance Investigation Bureau for further enquiry. These relate to financial irregularity. The Vidhan Parishad has also discussed a Call Attention Motion regarding financial irregularity and corruption against Dr. Bimal Kumar which has been referred by the Education Department to the Vigilance Department for enquiry. From Bhagalpur also charges regarding corruption in Bhagalpur University against Dr. Bimal Kumar has been leveled which is

currently under enquiry in the Vigilance Department.

As per information from Sr. S.P., Muzaffarpur charge sheet has been filed in University Police Station Case No. 21/11 dated 24.9.11 under Section 341/342/506/509/386/834 of IPC and 3(x) SC/ST Act.

These clearly indicate that the moral character and the integrity of Dr. Bimal Kumar is not good enough to be considered for appointment as the Vice Chancellor and enquiries and investigations are currently going on in the Vigilance Department.

2. Dr. Prof. Arun Kumar

Complaint has been received by the Vigilance Department against Prof. Kumar regarding irregularies in evaluation of answer books, irregular financial drawal, illegal gratification from contractors and having investment beyond his known source of income. The Vigilance Department is currently enquiring into these. These charges are of financial nature and clearly shows that his appointment as the Vice Chancellor will not be in the interest of good goverance in the University.

3. Dr. Ram Binod Sinha

Charges have been leveled in the Bihar Vidhan Parishad in Nivedan No. 278/12 regarding not following reservation rule in recruitment, irregular drawal in the name of medical bill, illegal payment for court cases etc. As per information available in the Education Department his age does not make him eligible to become a Vice Chancellor under the regulation of University Grants Commission.

4. Dr. Arvind Kumar Pandey

As per information available from Sr. S.P. Darbhanga Case No. 126/10 dated 29.6.10 under Section 420/409/467/468/471/197/218/120(B) IPC and Sections 13/14 of Prevention of Corruption Act and Case No. 150/10 dated 23.8.10 under Sections 420/409/467/488/471/120(B) of IPV have been registered and are currently under investigation.

As per information available from Sr. S.P. Gaya, Case against Dr. Arvind Kumar Pandey have been filed in Bodh Gaya Police Station Case No.135/10 dated 30.6.2010 under Sections 197/208/409/420/468 and 120(B) of IPC and the same is under investigation. Snaskrit Chetna Parishad has made serious charges of financial irregularieis against Dr. Pandey which has been sent to the Governor Secretariat as well. The Governor Secretariat vide letter no. 3950 dated 1.10.2007 forwarded complaint against Dr. Pandey to Vigilance Department for further enquiry. The charge against him at that time was that in the year 2006 he took money from students for awarding Shastri and Upshastri. The Governor Secretariat vide letter no. 916 dated 9.6.2003 forwarded other complaint against Dr. Pandey to the Vigilance Department for further enquiry.

Based on the details mentioned above Dr. Pandey should not be considered for appointment as Vice Chancellor as he lacks moral character and integrity. Details regarding his educational qualification also need to be examined very carefully whether he has basic qualification for appointment to the post of Vice-Chancellor as per the regulation of U.G.C.

6. Prof. Shambhu Nath Singh

As per information available complaint against him has been forwarded by the Education Department to the Vigilance Department for enquiry. A complaint case no. 43/12 has been filed against Prof. Singh in the Vigilance Court, Patna and the same has been forwarded to the

Vigilance Investigation Bureau for further enquiry. These pertain to financial irregularity which include irregular drawal of TA/DA, unnecessary expenditure on legal case etc. The audit conducted by the Principal Accountant General has also pointed out major financial irregularities in the Patna University some of which directly at the level of the Vice Chancellor. Audit report of the Pr. Accountant General was sent to the Vice Chancellor, Patna University for commends and comments received was sent against to the Pr. Accountant General for his response to the comments. Report has been received from the Pr. Accountant General where they have not accepted the explanation in a few serious financial irregularities pointed out by the audit. These reports have also been forwarded to the Vigilance Department for thorough enquiry and appropriate action. Beside these many other complaints have been received from time to time against Sri Singh including the issue whether his qualifications are good enough to be appointed as Vice Chancellor under Patna University Act. The Department of Education has forwarded serious complaints and Pr. Accountant General's final report to the Vigilance Department and also to the Governor Secretariat for necessary action.

Based on the facts mentioned above Dr. Singh is not fit to be appointed as Vice Chancellor.

9. Dr. Sheo Shankar Singh

Complaints have been received from one Sri Ramashankar Yadav, Vill. Jaitpur, P.O. Asani, P.S. Udwantnagar, Bhojpur regarding financial irregularity against Sri Singh. These have to be further enquired into. Without further details about his academic qualifications, quality to publications and experience it is difficult to suggest Dr. Singh's name as appointment of Vice-Chancellor.

In the category of Pro Vice-Chancellors

6. Dr. Padmasha Jha

As per information available from Sr. S.P. Muzaffarpur charge sheet has been submitted against her in case no. 10/11 dated 23.5.11 under Sections 342/341/323/504/507 of IPC on 30.06.2011. Charge sheet has also been submitted against her in case nol. 21/11 dated 24.9.2011 under sections 341/342/506/504/386/34 and under section 3(x) under SC/ST Act. In the light of these she is not suited for appointment as pro Vice-Chancellor.

9. Prof.(Dr.) Raja Ram Prasad

While no complaint has been received more detail regarding educational qualification, quality of publications and work experience is required before commending on the candidature.

As the brief summary above will clearly indicate investigations and enquiry are currently going on against a number of candidates whose names have been forwarded. In many cases details of educational qualification, quality of publications and work experience etc. have not been forwarded. In the circumstances it is considered view of the State Govt. That a Search Committee as suggested in para-1 should be constituted immediately for short listing candidates for the post of Vice Chancellor and Pro-Vice Chancellor and appointment by the Chancellor should only be made from the list of short listed candidates."

(The letter sent by the Principal Secretary is said to have been received in the Governor's Secretariat on 12.2.2013)

xi. On 13.2.2013, the Principal Secretary to Governor-cum-Chancellor recorded the following note:

"The Principal Secretary to Chief Minister, Bihar, Patna vide letter No.4610034/2013 dated 09/02/2013 (72-78/C) alongwith the Education Deptt summary individual report about the persons whose names were proposed for the appointment of Vice-Chancellors and Pro-Vice-Chancellors in Annexure-A and Annexure-B, received in this Secretariat on 12/02/2013, may kindly be perused.

In this connection, it is submitted that on the orders of Hon'ble Chancellor dated 09/02/2013, notifications with regard to appointment of 8 (eight) Vice-Chancellors for different Universities have already been issued and communicated to them on 09/02/2013 and the incumbents have already joined their notified posts and sent their joining report to this Secretariat which are placed on the filed."

xii. On 19.2.2013, Governor-cum-Chancellor recorded the following order:

"Secretary

Pl issue Notifications, in continuation to my order dated 09/02/2013, today itself appointing Dr. Tapan Kumar Shandilya, as V.C. of Nalanda Open University, Patna, with immediate effect.

Also issue Notifications appointing the following persons as Pro-Vice-Chancellors in the Universities shown against their names:

1.	Dr. Ramayan Prasad	Magadh University, Bodh Gaya.
2.	Dr. Birendra Kumar Singh	KSD Sanskrit University, Darbhanga.
3.	Dr. Dharma Nand Mishra	B.N. Mandal University, Madhepura.

4.	Dr. Sultana Khushood Jabeen	MMH Arabic and Persian University, Patna.
5.	Prof.(Dr.) Shailendra Kumar Singh	J.P. University, Chapra.
6.	Dr. Anwar Imam	VKS University, Ara.

Pl issue another Notification appointing temporarily Dr. Arun Kumar, V.C., Magadh University, to assume and hold charge of the office of Vice-Chancellor, T.M. Bhagalpur University, and perform all its duties and functions in addition to his own existing duties as V.C. of M.U. with immediate effect and until the appointment of a regular Vice-Chancellor of T.M. Bhagalpur University within a short span of time."

Thereupon, the Special Secretary communicated the orders to the concerned Universities.

xiii. After about one month, the Governor-cum-Vice-Chancellor issued order dated 14.3.2013 for appointment of Dr. Anjani Kumar Sinha, Prof. and HOD of Botany Deptt. B.N. Mandal University, Madhepura, as the Vice-Chancellor of T.M. Bhagalpur University, Bhagalpur, with immediate effect. He also directed that two notifications may be issued appointing Prof.(Dr.) Raja Ram Prasad, Prof. and HOD of Maithili Deptt., B.N. Mandal University, Madhepura, as Pro-Vice-Chancellor of Patna University, Patna, and Dr. Padmasha Jha, ex-Pro-Vice-Chancellor of L.N. Mithila University, Darbhanga, as Pro-Vice-Chancellor of B.R.A. Bihar University, Muzaffarpur, with immediate effect.

8. Dr. Ram Tawakya Singh challenged the appointments made by the Chancellor in C.W.J.C. No.15123 of 2011, which as mentioned hereinabove, was allowed by the Division Bench of the High Court and directions were given for making the appointments of Vice Chancellors and Pro Vice Chancellors afresh.

9. Shri Harish N. Salve, learned senior counsel appearing for the State and Shri Prashant Bhushan, learned counsel appearing for Dr. Ram Tawakya Singh referred to the provisions of the BSU Act and PU Act as also the regulations framed by the University Grants Commission (UGC) under Section 26 of the University Grants Commission Act, 1956 for selection of Pro Vice-Chancellors / Vice-Chancellors and argued that the direction given by the Division Bench of the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is liable to be set aside and the appointments made by him are liable to be quashed because by taking advantage of the direction contained in the impugned order, the Chancellor arbitrarily prepared the list of the persons to be appointed as Vice-Chancellors and Pro Vice-Chancellors without making any selection whatsoever and without following any transparent method for making a choice from amongst the persons of academic excellence, unquestionable integrity and institutional commitment and without effectively consulting the State Government. Both, Shri Salve and Shri Prashant Bhushan emphasised that the Chancellor did not even try to find out whether persons of academic excellence are available in the country and prepared the list which included some persons against whom criminal cases are registered with the police and/or are pending in the Court(s). Learned counsel relied upon UGC regulations dated 30.6.2010 and argued that even though the BSU Act and the PU Act were not suitably amended for incorporating the regulations, the Chancellor was duty bound to keep in mind the parameters laid down by the UGC for selecting the candidates for appointment as Vice-Chancellors and Pro Vice-Chancellors and prepared list of eligible persons having highest level of competence, integrity, morals and institutional commitment and this could have been possible only if he had made a holistic selection by extending zone of selection beyond the frontiers of the State. Learned counsel submitted that instead of making a fair selection, the Chancellor manipulated re-appointment of those who were ousted by virtue

of the High Court's order. Shri Prashant Bhushan submitted that the Chancellor had shown his scant respect to the law laid down by the learned Single Judge and the Division Bench of the High Court and made appointments without effective consultation with the State Government. He submitted that the haste with which the Chancellor ensured the issue of Notifications dated 9.2.2013 is a proof of the oblique motive with which he pushed the appointments of even those who are facing trial for criminal offences. Shri Salve submitted that after having learnt about the vigilance inquiries being conducted into the antecedents of the candidates proposed by him, the Chancellor should have waited for the vigilance reports and then only he could have made appointments.

10. Shri Ram Jethmalani, Shri Anil B.Divan, senior advocates and other learned counsel appearing for the private respondents defended the appointments of their clients and argued that the methodology adopted by the Chancellor cannot be dubbed as arbitrary because he had consulted the State Government before ordering the issue of Notifications dated 9.2.2013. Learned senior counsel submitted that the UGC regulations cannot be invoked for quashing the appointments of the private respondents because the State legislature has not engrafted the same in the BSU Act and the PU Act by making appropriate amendments. Shri Jethmalani argued that the regulations framed by the UGC are in the nature of subordinate legislation and they cannot override the plenary legislation, i.e., the State Acts. In support of this argument, he relied upon judgments of this Court in *State of U.P. v. Manbodhan Lal Srivastava* AIR 1957 SC 912 and *Prem Chand Garg v. Excise Commissioner* AIR 1963 SC 996. Learned senior counsel also relied upon the judgment of this Court in *Kishore Samrite v. State of U.P.* (2013) 2 SCC 398 and argued that Dr. Ram Tawakya Singh does not have the locus standi to challenge the appointments of Vice-Chancellors and Pro Vice-Chancellors because he was not a competitor for any of the posts. Shri Jethmalani and Shri Divan submitted

that the appeal filed by the State and its functionaries should be dismissed because they not only waited till the issue of notifications for fresh appointments but also made misleading statement about the so called delay on the Governor's part in approving the amendments made by the State legislature purporting to incorporate the UGC regulations. Shri Anil Divan strongly criticised the State Government for deliberately not amending the relevant enactments to bring them in tune with the UGC regulations and submitted that the Governor cannot be blamed for not approving the Bill passed by the legislature because composition of the Search Committee proposed in the amendment made by the State legislature was loaded with bureaucrats, who would have never allowed others to play their role in selecting suitable persons and this would have effectively frustrated the object of appointing Vice-Chancellors and Pro Vice-Chancellors from amongst distinguished academicians. Learned counsel pointed out that majority of the appointees are having excellent academic record and vast experience of teaching in different Universities/Colleges and argued that their appointment should not be quashed simply because some of the candidates are facing prosecution. In the end, Shri Anil Divan submitted that even if this Court comes to the conclusion that the appointments made by the Chancellor are contrary to the scheme of the BSU Act and the PU Act, the private respondents who have clean record should be allowed to hold the posts and discharge the functions of Vice-Chancellors and Pro Vice-Chancellors till fresh appointments are made so that their image and integrity may not be adversely affected.

11. We have considered the respective arguments / submissions. For deciding the main question arising in the appeals and the writ petition it will be useful to notice the relevant statutory provisions. The same are as under:

BSU Act

"10. The Vice-Chancellor. - (1) No person shall be deemed to be qualified to hold the office of Vice-Chancellor unless such person is, in the opinion of the Chancellor, reputed for his scholarship and academic interest, and no person shall be deemed to be qualified to hold the office of the Vice-Chancellor of the Kameshwar Singh Darbhanga Sanskrit University unless such person is, in the opinion of the Chancellor, reputed for his scholarship in Sanskrit or has made notable contribution to Sanskrit education.

(2) The Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government.

(3)(a) The Vice-Chancellor shall be wholetime officer and shall hold office during the pleasure of the Chancellor.

(b) Subject to the foregoing provisions of this section the Vice-Chancellor shall ordinarily hold office for a term of three years and on the expiry of the said term he may be reappointed by the Chancellor in consultation with the State Government and he shall hold office at the pleasure of the Chancellor for a term not exceeding three years.

(5) The Vice-Chancellor shall be the principal executive and academic officer of the University, the Chairman of the Syndicate and of the Academic Council and shall be entitled to be present and speak at any meeting of any authority or other body of the University and shall in the absence of the Chancellor preside over meetings of the Senate and of any convocation of the University:

Provided that the Vice-Chancellor shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(6) The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the

ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants.

(7) .....

(8) The Vice-Chancellor shall have the powers to visit and inspect the Colleges and buildings, laboratories, workshops and equipments thereof and any other institution associated with the University, and he shall have the right of making an inquiry or causing an inquiry to be made, in like manner in respect of any matter connected with such Colleges and institutions.

(9) The Vice-Chancellor shall address the Principal of such College with reference to the result of such inspection or inquiry and, thereupon, it shall be the duty of such Principal to communicate the views of the Vice-Chancellor to the governing body of the College and to report to the Vice-Chancellor such action, if any, taken or proposed to be taken upon the result of such inspection or inquiry.

(10) It shall be lawful for the Vice-Chancellor to issue, from time to time, any direction to the Principal of a College in which post-graduate teaching conducted under clause (16) of section 4 and such Principal shall comply with all such directions accordingly.

(11) The Vice-Chancellor shall exercise general control over the educational arrangement of University and shall be responsible for the discipline of the University. It shall be lawful for the Vice-Chancellor to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University.

(12) If at any time, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to

take such immediate action involving the exercise of any power vested in the Syndicate or Academic Council by or under this Act, the Vice-Chancellor shall take such action as he deems fit, and shall report the action taken by him to such authority which may either confirm the action so taken or disapprove of it.

(13) It shall be the duty of the Vice-Chancellor to see whether the proceeding of the University are carried on in accordance with the provisions of this Act, the Statutes, the Ordinance, the Regulations and the Rules or not and the Vice-Chancellor shall report to the Chancellor every proceeding which is not in conformity with such provisions.

For so long as the orders of the Chancellor are not received on the report of the Vice-Chancellor that the providing of the University is not in accordance with this Act, the Statutes, the Ordinance, the Regulation and the Rules, the Vice-Chancellor shall have the powers to stay the proceeding reported against.

(14) .....

Illustration- 'equivalent post' means Reader and Principal in the pay-scale of Reader, Professor and Principal in the pay-scale or Professor.

(15) The Vice-Chancellor shall exercise such other powers and perform such other duties as are conferred or imposed on him by this Act, the Statutes, the Regulations or the Rules.

(16) The Vice-Chancellor shall have overall responsibility in maintaining good academic standard and promoting the efficiency and good order of the University.

(17) Save as otherwise provided in the Act, or the Statutes the Vice-Chancellor shall appoint officer (other than the Pro-Vice-Chancellor) with the approval of the Chancellor,

and teachers and shall define their duties;

(18) The Vice-Chancellor shall have the power to take disciplinary action against all employees of the University including officers and teachers of the University;

(19) An appeal shall lie to the Chancellor against the order of the Vice-Chancellor imposing the penalty of dismissal, removal from service or reduction in rank.

12. Pro-Vice-Chancellor-(1) The Chancellor shall appoint the Pro-Vice-Chancellor, in consultation with the State Government.

(2) The Pro-Vice-Chancellor shall be a whole-time officer of the University. He shall hold office, on such conditions as may be determined, by the Chancellor, in consultation with the State Government, for a period not exceeding three years during the pleasure of the Chancellor.

(3) Where the person appointed as Pro-Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of his salary as Pro-Vice-Chancellor.

(4) Subject to the provisions of this Act, the Pro-Vice-Chancellor shall exercise such powers and perform such duties as may be prescribed or as may be conferred or imposed on him, from time to time, by the Vice-Chancellor.

(5) The Pro-Vice-Chancellor shall be responsible for admission and conduct of the examination up to Bachelor course and the publication of the result of the examination conducted by the University up to Bachelor course and shall be responsible for student welfare."

PU Act

"11. The Vice-Chancellor.-(1) No person shall be deemed to be qualified to hold the office of the Vice-Chancellor, unless he-

(i) is an educationist having experience of administering the affairs of any University of India for not less than six years, or

(ii) is or has been Principal or Head of the Department of any University or College, and has a teaching experience of not less than 10 years in the University or in any other University or in any college.

(2) The Vice-Chancellor shall be appointed by Chancellor, in consultation with the State Government from amongst persons having qualification as mentioned in sub-section (1) and he shall hold office during the pleasure of the Chancellor.

(3) The Vice-Chancellor shall be whole-time officer and shall hold office for a period of three years with effect from the date on which he assumed charge. On the expiry of the said period, he may be re-appointed for another term not exceeding three years.

(4)(i) Other terms and conditions of his appointment shall be determined by the Chancellor in consultation with the State Government.

(ii) Where the person appointed as Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of his salary as Vice-Chancellor.

(5) The Vice-Chancellor shall be the principal executive and academic officer of the University, Chairman of the Syndicate and of the Academic Council, and shall be entitled to be present and speak at any meeting of any

authority or other body of the University and shall, in the absence of the Chancellor, preside at meetings of the Senate and any convocation of the University;

Provided that the Vice-Chancellor shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(6) The Vice-Chancellor shall, subject to the provisions of this Act, the Statutes and the Ordinances, made thereunder, have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servant of the University, not being teachers and officers of the University, and have control and full disciplinary powers over such staff and servants.

(7) …….

(8) The Chancellor shall have the right to visit and inspect the Colleges and building, laboratories, workshops, and equipments thereof and any other institutions associated with the University.

(9) The Vice-Chancellor shall carry out the orders of the Syndicate in respect of appointment, transfer, discharge or suspension of officers and teachers of the University, and shall exercise general control over the educational arrangement of the University, and shall be responsible for the discipline of the University.

(10) If any time, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to take immediate action involving the exercise of any power vested in the Syndicate or the Academic Council by or under this Act, the Vice-Chancellor shall take such action as he deems fit, and shall report the action taken by him

to such authority which may either confirm the action so taken or disapprove of it.

(11) Subject to the provision of this Act, it shall be the duty of the Vice-Chancellor to see whether the proceedings of the University are carried out in accordance with the provisions of this Act, the Statutes, the Ordinances, the Regulations and the Rules or not, and the Vice-Chancellor shall report to the Chancellor every such proceeding which is not in confirmity with such provisions.

Till such time as the orders of the Chancellor are not received on the report of the Vice-Chancellor that the proceedings of the University is not in accordance with this Act, the Statutes, the Ordinances, the Regulation and the Rules, the I Vice-Chancellor shall have the powers to stay the proceeding reported against.

(12) …….

(13) The Vice-Chancellor shall exercise such other powers and perform such other duties as are conferred or imposed on him by this Act, the Statutes, the Regulations or the Rules.

(14) The Vice-Chancellor shall have overall responsibility in maintaining good academic standard and promoting the efficiency and good order of the University.

(15) Save as otherwise provided in the Act, or the Statutes the Vice-Chancellor shall appoint officers (other than the Pro-Vice-Chancellor) with the approval of the Chancellor, and teachers and shall define their duties.

(16) The Vice-Chancellor shall have power to take disciplinary action against officers, teachers and all employees of the University.

(17) An appeal shall lie to the Chancellor against the order

of the Vice-Chancellor imposing the penalty of dismissal, removal from service or reduction in rank."

(Most of the remaining provisions contained in this section are identical to those contained in Section 10 of the Bihar State Universities Act.)

"14. Pro-Vice-Chancellor.-(1) The Chancellor shall appoint the Pro-Vice Chancellor in consultation with the State Government.

(2) The Pro-Vice-Chancellor shall be a whole time officer of the University. He shall hold office for a period not exceeding three years during the pleasure of the Chancellor on such conditions as may be determined by the Chancellor in consultation with the State Government.

(3) Where the person appointed as Pro-Vice-Chancellor gets pension from the Central or the State Government or any University or from any other source, the amount of pension due to him from such source shall be deemed to be the part of this salary as Pro-Vice-Chancellor.

(4) Subject to the provisions of this Act, the Pro-Chancellor shall exercise such powers and perform such duties as may be prescribed or as may be conferred or imposed on him from time to time by the Vice-Chancellor.

(5) The Pro-Vice-Chancellor shall be responsible for admission and conduct of examination up to Bachelor course and the publication of the result of the examination conducted by the University up to Bachelor Course and he shall be responsible for student welfare also."

12. An analysis of the above quoted provisions makes it clear that the position of Vice-Chancellor is extremely important in every University established under the BSU Act and the PU Act. He is the heart and soul of the functional apparatus of the University. He is the principal executive and academic officer

of the University, Chairman of the Syndicate and the Academic Council and is entitled, as of right, to remain present and speak in any meeting of any other authority / body of the University. If the Chancellor is not available, the Vice-Chancellor is entitled to preside over the meetings of the Senate and Convocation of the University. He has the power to make appointments of ministerial staff and other servants of the University except the teachers and officers and exercise disciplinary control over such staff and servants. The Vice-Chancellor is entitled to visit and inspect the Colleges and also make an inquiry or cause an inquiry to be made in respect of any matter connected with such Colleges and institutions. He is required to inform the concerned College about the result of inspection and/or inquiry and also seek report about the action taken or proposed to be taken on the result of inspection or inquiry. The Vice-Chancellor is empowered to issue any direction to the Principal of a College in which post-graduate teaching is conducted under Section 4(16) and the Principal is bound to comply with such direction. The Vice-Chancellor is required to exercise general control over the educational arrangement of the University and is responsible for the discipline of the University. He is also entitled to take all the steps necessary for maintaining the academic standard and administrative discipline of the University. In case of emergency, the Vice-Chancellor can exercise any power vested in the Syndicate or the Academic Council. The Vice-Chancellor is duty bound to ensure that the proceedings of the University are carried on in accordance with the provisions of the Act, the Statutes, the Ordinances, the Regulations and the Rules. He is to report to the Chancellor every proceeding which is not in consonance with the provisions of the plenary as well as the delegated legislations.

13. The Pro Vice-Chancellor is also a whole time officer of the University and is entitled to exercise such powers and perform such duties which may be prescribed or which may be conferred or imposed on him by the Vice-Chancellor. He is responsible for admission and conduct of examination up to

Bachelor course and also the student welfare.

14. It is thus evident that the Vice-Chancellor and the Pro Vice-Chancellor are responsible for maintaining the academic standard and discipline of the University and also ensure that all the bodies and authorities conduct themselves in conformity with the statutory provisions. This is the precise reason why Section 10(1) of the BSU Act and Section 11(1) of the PU Act are couched in negative form and prescribes the qualification of academic excellence as a condition precedent for appointment as Vice-Chancellor. Section 10(1) of the BSU Act declares that no person shall be qualified to hold the office of Vice-Chancellor unless such person, in the opinion of the Chancellor, is reputed for scholarship and academic interest. In case of Kameshwar Singh Darbhanga Sanskrit University, the person must be reputed for his scholarship in Sanskrit or must have made notable contribution in the field of Sanskrit education. Section 11(1) of the PU Act declares that no person shall be deemed to be qualified to hold the office of the Vice-Chancellor unless he is an educationist having experience of administering affairs of any University of India for not less than six years or he is or has been Principal or Head of the Department of any University or College, and has teaching experience of not less than 10 years in any University or any College. Sub-section (2) of both the sections makes the consultation with the State Government mandatory for appointment of the Vice-Chancellor. Similarly, Section 12(1) of the BSU Act and 14(1) of the PU Act makes consultation with the State Government sine qua non for appointment of Pro Vice-Chancellor.

15. The word 'consultation' used in Sections 10(2) and 12(1) of the BSU Act and Section 11(2) and 14(1) of the PU Act is of crucial importance. The word 'consult' implies a conference of two or more persons or impact of two or more minds in respect of a topic/subject. Consultation is a process which requires meeting of minds between the parties involved

in the process Consultation on the material facts and points to evolve a correct or at least satisfactory solutions. Consultation may be between an uninformed person and an expert or between two experts. In either case, the final decision is with the consultor, but he will not be generally ignoring the advice of the consultee except for good reasons.

16. In order for two minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration fully and identical facts, which can at once constitute both the source and foundation of the final decision. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. If there is more than one person to be consulted, all the persons to be consulted should know the subject with reference to which they are consulted. Each one should know the views of the other on the subject. There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved. The consultor cannot keep one consultee in dark about the views of the other consultee. Consultation is not complete or effective before the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views.

17. In *Chandramouleshwar Prasad v. Patna High Court* (1970) 2 SCR 666, this Court considered the question whether there was due compliance with Article 233(1) of the Constitution which provides that appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State "in consultation with the High Court" exercising jurisdiction in relation to such State. While holding that a Government notification appointing the petitioner as an officiating District and Sessions Judge was in violation of Article 233, a Constitution Bench of this Court observed:

"Consultation or deliberation is not complete or effective

before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation."

18. In *Union of India v. Sankalchand Himatlal Sheth and Another* (1977) 4 SCC 193, a Constitution of Bench of this Court interpreted the word 'consultation' ap

earing in Article 222(1) of the Constitution. Y.V. Chandrachud, J. (as he then was) referred to Words and Phrases (Permanent Edn. 1960, Vol.9), Corpus Juris Secundum (Vol.16A, 1956 Edn.), the judgments in *Rollo v. Minister of Town and Country Planning* (1948) 1 All ER 13, *Fletcher v. Minister of Town and Country Planning* (1947) 2 All ER 946 and observed:

"Thus, deliberation is the quintessence of consultation. That implies that each individual case must be considered separately on the basis of its own facts. Policy transfers on a wholesale basis which leave no scope for considering the facts of each particular case and which are influenced by one-sided governmental considerations are outside the contemplation of our Constitution."

In the same judgment, Krishna Iyer, J. expressed his views in the following words:

"The key words in this Article are "consultation" and "transfer". What is consultation, dictionary-wise and popular parlance-wise? It implies taking counsel, seeking advice. An element of deliberation together is also read into the concept. "To consult" is to apply to for guidance, direction or authentic information, to ask the advice of - as to consult

a lawyer; to discuss something together; to deliberate. (Hewey v. Metropolitan Life Ins. Co.). The word "consult" means to seek the opinion or advice of another; to take counsel; to deliberate together; to confer; to apply for information or instruction. (CIR v. John A. Wathen Distillery Co.). "Consult" means to seek opinion or advice of another; to take counsel; to deliberate together; to confers; to deliberate on; to discuss; to take counsel to bring about; devise; contrives to ask advice of; to seek the information of; to apply to for information or instruction; to refer to. Teplitsky v. City of New York. Stroud's Law Lexicon defines "consultation" thus:

"Consultation. [New towns Act, 1946 (9 & 10 Geo. 6, c. 68), Section 1(1)]. "Consultation with any local authorities". "Consultation means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice" per Bucknill, L.J., in Rollo v. Minister of town and Country Planning. See also Fletcher v. Minister of town and Country Planning."

We consult a physician or a lawyer, an engineer or an architect, and thereby we mean not casual but serious, deliberate seeking of informed advice, competent guidance and considered opinion. Necessarily, all the materials in the possession of one who consults must be unreservedly placed before the consultee. Further, a reasonable opportunity for getting information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him. The consultant, in turn, must take the matter seriously since the subject is of grave importance. The parties affected are high-level functionaries and the impact of erroneous judgment can be calamitous. Therefore, it follows that the President must communicate to the Chief Justice all the material he has

and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the administration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system. However, consultation is different from consentaneity. They may discuss but may disagree; they may confer but may not concur. And in any case the consent of the Judge involved is not a factor specifically within the range of Article 222."

19. The facts encapsulated in the earlier part of this judgment shows that the Chancellor has been consistently flouting the mandate of law and making appointments of Vice-Chancellors and Pro Vice-Chancellors without effectively consulting the State Government and completely disregarding the requirement of academic excellence and experience. The appointments made by the Chancellor in 2010 were quashed by the learned Single Judge who found that there was virtually no consultation with the State Government. He opined that even though the Chancellor has some flexibility in suggesting the names which may come to his knowledge or domain but he is duty bound to share the details with the State Government and then decide who is suitable to be appointed as Vice-Chancellor. The Division Bench approved the view taken by the learned Single Judge and observed that the objective of making consultation with the State Government mandatory is to ensure that the selection procedure is transparent and fair. The Division Bench observed that the State Government has the means to enquire into the background of the candidates and provide inputs to the Chancellor which could be extremely useful in making final choice of the candidate. The Division Bench also emphasised that consultation in such an important matter must be effective so that the Chancellor may make final choice after considering the information and inputs given by the State

Government and that would obviate the risk of University being placed in the hands of wrong or unsuitable person.

20. What the Chancellor did after the High Court quashed the appointments made vide Notifications dated 1.8.2011 and 3.8.2011 is extremely disturbing. By taking advantage of the language used in the penultimate paragraph of order dated 7.12.2012 passed in CWJC No.15123/2011, the Chancellor prepared a list of persons proposed to be appointed as Vice-Chancellors and Pro Vice-Chancellors and forwarded the same to the State Government. How the Chancellor picked those names is a matter of mystery because he did not adopt any transparent method of making selection keeping in view the qualifications enumerated in Section 10(1) of the BSU Act and Section 11(1) of the PU Act. In the charts annexed with letter dated 5.1.2013 sent by the Special Secretary to the Governor there was a mention of the academic qualifications and experience of the persons proposed to be appointed as Vice-Chancellors and Pro Vice-Chancellors but there was no indication of their academic excellence or eminence in the field of education. In the last column, the following identical remarks were given qua the first eight candidates:

"Comprehensively considered most suitable. Not a word as to his/her qualification, eligibility and suitability in the judgement."

For the remaining three candidates in the category of Vice-Chancellors, the following remarks were given:

"Considered duly qualified and best suitable for the job.

In the category of Pro Vice-Chancellor, the following remarks were given in respect of the first eight candidates:

"Considered best suitable for the job."

In respect of the last candidate, the following remarks were recorded:

"Most OBC candidate. Considered best suitable for the job."

Not only this, letter dated 5.1.2013 sent by the Special Secretary to the Governor to the Principal Secretary to the Chief Minister and the charts annexed therewith were conspicuously silent about the particular University in which the particular person was proposed to be appointed as Vice-Chancellor or Pro Vice-Chancellor.

21. The Principal Secretary to the Chief Minister sent reply dated 21.1.2013 and conveyed the State Government's inability to make effective inquiry about the antecedents of the candidates. What followed was nothing but a farce enacted by the Chancellor to make a show of effective consultation with the State Government. In his letter, the Principal Secretary to the Chief Minister had pointed out that letter dated 5.1.2013 only contained a brief reference to the qualifications and experience of the persons nominated by the Chancellor but there was no record of their vigilance clearance or integrity and moral standard so as to enable the State Government to scrutinise the names in terms of the direction given by the High Court. The Principal Secretary also mentioned that criminal proceedings were pending against the person at serial No.4. When that letter was placed before the Governor, he directed the Special Secretary to send another communication requiring the Government to forward substantive and credible evidence as to the integrity and moral standard of the persons named in letter dated 5.1.2013 and also indicate whether there is any record of judicial conviction. The Chancellor brushed aside the factum of pendency of criminal proceedings against the person named at serial No.4. On receipt of the second letter sent by the Special Secretary to the Governor-cum-Chancellor, the Principal Secretary, Education forwarded the same to the Principal Secretary, Vigilance Department with the request to get an inquiry conducted into the antecedents of the candidates. An intimation to this effect was also sent to the Governor's

Secretariat on 4.2.2013 and a request was made that appointments should be made only after the exercise for consultation with the State Government is completed. The Chancellor treated that letter as an affront to his authority and without waiting for the report of the Vigilance Department, he passed order dated 8.2.2013 on the file for preparation of draft notifications, which were finally issued on 9.2.2013.

22. Though the counsel for the private respondents tried to make capital out of the fact that letter dated 9.2.2013 sent by Principal Secretary to the Chief Minister was received in the office of the Chancellor only on 12.2.2013 and, therefore, he did not get an opportunity to consider the report annexed therewith, they could not explain as to why the Chancellor did not wait for the report of the Vigilance Department despite the fact that vide letter dated 4.2.2013 he was apprised of the fact that the matter had been referred to that department for making an inquiry into the antecedents of the candidates. The extraordinary haste exhibited by the Chancellor in getting the notifications issued on 9.2.2013 speaks volume of his intention to prevent the State Government from bringing to the fore facts relating to criminal cases pending against some of his nominees. The singular objective of the Chancellor to appoint his men as Vice-Chancellors and Pro Vice-Chancellors is evinced from the fact that he did not stop the process of appointment on 9.2.2013. By Notifications dated 19.2.2013, he ordered appointment of Dr. Tapan Kumar Shandilya as Vice-Chancellor of Nalanda Open University, Patna and six others as Pro Vice-Chancellors of different Universities. Not only this, after about one month the Chancellor passed order dated 14.3.2013 for appointment of Dr.Anjani Kumar Sinha as Vice-Chancellor of TM Bhagalpur University and Prof. (Dr.) Raja Ram Prasad and Dr. Padmasha Jha as Pro Vice-Chancellors of Patna University and BRA Bihar University, Muzaffarpur, respectively. While ordering the appointments which were notified on 19.2.2013 and 14.3.2013, the Chancellor had before him the report sent by the State Government but he simply

ignored the same and ordained appointment of his nominees.

23. In our view, the entire exercise undertaken by the Chancellor was ex-facie against the mandate of Sections 10(1), 10(2) and 12(1) of the BSU Act and Sections 11(1), 11(2) and 14(1) of the PU Act because he made every possible effort to prevent the State Government from providing inputs about the candidates and conveying its opinion on their suitability to be appointed as Vice-Chancellors and Pro Vice-Chancellors. He also acted in contemptuous disregard to the pronouncements made by the High Court in the two rounds of litigation that the appointments of the Vice-Chancellors and Pro Vice-Chancellors must precede meaningful and effective consultation with the State Government. What is most shocking is that the Chancellor selected two persons for appointment as Vice-Chancellors and one person as Pro Vice-Chancellor despite the fact that they are facing prosecution under various provisions of IPC, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Prevention of Corruption Act, 1988. Against some other candidates there were complaints of wrongful drawal of TA / DA and other financial irregularities. It can only be a matter of imagination as to how the Universities would be safe in the hands of such persons. The reason for this malady is not far to seek. For the last many years the Chancellors have been appointing Vice-Chancellors and Pro Vice-Chancellors without adopting any transparent and fair method of selection. In the process they may have accommodated some persons having allegiance to the political party in power and thereby averted any conflict with the State Government. However, we do not have the slightest hesitation to hold that the mechanism adopted by the Chancellor in making appointments is blatantly violative of the scheme of the BSU Act and the PU Act and also Article 14 of the Constitution.

24. We may add that even though the language of Sections 10(1) and 12(1) of the BSU Act and Sections 11(1) and 14(1)

of the PU Act does not postulate selection of Vice-Chancellor or Pro Vice-Chancellor by inviting application through open advertisement, a wholesome reading of these sections makes it clear that Vice-Chancellor must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University and selection of such a person is possible only if a transparent method his followed and efforts are made to reach out people across the country. Article 14 which mandates that every action of the State authority must be transparent and fair has to be read in the language of these provisions and if that is done, it becomes clear that the Chancellor has to follow some mechanism whereby he can prepare panel by considering persons of eminence in the field of education, integrity, high moral standard and character who may enhance the image of the particular University. Surely, Section 10(1) of the BSU Act and Section 11(1) of the PU Act do not contemplate preparation of panel of suitable persons by the Chancellor sitting in his office.

25. The UGC regulations, which provide for constitution of a Search Committee consisting of eminent educationists / academicians are intended to fill up an apparent lacuna in the provisions like Section 10(1) of the BSU Act and Section 11(1) of the PU Act. We have no doubt that if the UGC regulations had been engrafted in the two Acts, an unseemly controversy relating to appointment of Vice-Chancellors and Pro Vice-Chancellors could have been avoided.

26. At this stage, we may mention that on 11.7.2013, Shri Vikas Singh, learned senior counsel appearing for the Chancellor made a statement that the Ordinance sent by the State Government in April, 2013 for the approval of the Governor is not in consonance with the UGC regulations and the same will be immediately returned to the State Government. Thereupon, Shri Harish Salve, learned senior counsel appearing for the State Government gave out that the Ordinance

will be re-submitted to the Governor within one week after making appropriate amendment. On 24.7.2013, i.e., the date on which the order was reserved, Shri Ranjit Kumar, learned senior counsel, who appeared for the State Government made a statement that if the two Acts are amended for incorporation of UGC regulations then he would inform the Court about the same. On 16.8.2013, the counsel assisting Shri Ranjit Kumar handed over xerox copies of Bihar Gazette (Extraordinary) dated 13.8.2013. The first Gazette contains the amendments made in the BSU Act by Bihar Act No.14/2013. The second Gazette contains the amendments made in the PU Act by Bihar Act No.13/2013 and the third Gazette contains the amendment made in Nalanda Open University Act, 1995 by Bihar Act No.12/2013. By these amendments, Sections 10 and 12 of the BSU Act, Sections 11 and 14 of the PU Act and Sections 11 and 13(a) of the Nalanda Open University Act, 1995 have been amended. For the sake of reference, Sections 2 and 3 of the amendment made in the BSU Act is reproduced below:

2. Amendment of section 10 of Bihar Act, 23 of 1976.- In the Bihar State Universities Act 1976 (Bihar Act 23, 1976) sub section (1) of Section-10 shall be substituted by the following, namely :-

"(1) (i) Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic administrative organization.

(ii) The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of

eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Chancellor.

(iii) Following shall be the constitution of the Search Committee.

(a) A member nominated by the Chancellor, who shall be an eminent Scholar / Academician of national repute or a recipient of Padma Award in the field of education and shall be the Chairman.

(b) The Director or Head of an institute or organization of national repute, such as, Indian Institute of Technology, Indian Institute of Science, Indian Space Research Organization, National Law University or National Research Laboratory or Vice-Chancellor of a statutory University nominated by the Chancellor as Member.

(c) A member nominated by the State Government who shall be an eminent Academician and have full knowledge of the academic structure and problems of higher education of the State."

3. Amendment of section 12 of Bihar Act, 23 of 1976.- In the Bihar State Universities Act 1976 (Bihar Act 23, 1976) sub section (1) of Section 12 shall be substituted by the following namely :-

"(1) The Pro Vice-Chancellor shall be appointed by the Chancellor in consultation with the State Government in the same manner as prescribed for appointment of Vice-

chancellor."

27. In view of the aforementioned amendments, it is not necessary to delve into the question whether the UGC regulations are in the nature of subordinate legislation and they cannot override the provisions contained in the BSU Act and the PU Act.

28. Before concluding, we shall deal with the objection raised by Shri Jethmalani to the locus standi of Dr. Ram Tawakya Singh and another objection raised by him and Shri

Anil Divan to the maintainability of the appeal filed b the State of Bihar. In our view, challenge to the *locus standi* of Dr. Ram Tawakya Singh was rightly rejected by the High Court. It is not in dispute that he is a Professor and Head of the Department of Chemistry in Veer Kunwar Singh University, Ara. Therefore, the mere fact that he did not project himself as a candidate for the office of Vice-Chancellor or Pro Vice-Chancellor is not sufficient to deny him the right to question the appointments made by the Chancellor. His anxiety to ensure that eminent educationists are appointed as Vice-Chancellors and Pro Vice-Chancellors in the State can very well be appreciated. Therefore, we do not find any justification to non-suit him by accepting the respondents' challenge to his standing.

29. The issue deserves a look from another angle. Even if it may be possible to say that Dr. Ram Tawakya Singh does not have any direct personal interest in the appointment of Vice-Chancellors and Pro Vice-Chancellors in the State Universities, the High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits as was done in *Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi* (1987) 1 SCC 227. Some of the observations made in that judgment are worth noticing, which we hereby do:

"The allegations made in the petition disclose a lamentable

state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.

The allegations of the petitioner have been noted about the role of the Chief Minister. It is well to remember that Rajagopala Ayyangar, J. speaking for this Court in *C.S. Rowjee v. APSRTC* (1964) 6 SCR 330 observed at p. 347 of the Report that where allegations of this naturewere made, the court must be cautious. It is true that allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. This Court made these observations as early as 1964. It is more true today than ever before. But it has to be borne in mind that things are happening in public life which were never even anticipated before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the courts are bound to take judicial notice."

30. The other objection raised by learned senior counsel relates to the maintainability of the appeals / special leave petitions. It is true that the State Government moved this Court only after the Chancellor initiated the process of making appointments and an apparently incorrect statement was made before the Court on 18.3.2005 in the context of the Governor's

refusal to approve the amendments made in the two Acts but these factors are not sufficient to negate the State Government's challenge to the direction given by the High Court which, as mentioned above, gave free hand to the Chancellor to manipulate the appointment of the persons of his choice, some of whom are embroiled in criminal cases, without getting a selection made keeping in view the requirements of Section 10(1) of the BSU Act and 12 (1) of the PU Act.

31. In the result, the appeals and the writ petition are allowed in the following terms:

(i) Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of the private respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities are declared illegal and quashed.

(ii) The direction given by the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is modified and it is directed that the Chancellor shall prepare a panel of suitable persons for appointment to the offices of Vice-Chancellors and Pro Vice-Chancellors keeping in view the provisions of Sections 10(1), 10(2) and 12 of the BSU Act and Sections 11(1), 11(2) and 14 of the PU Act as amended by Bihar Act No.14/2013 and 13/2013 respectively and by following a transparent and fair method of selection.

(iii) The Chancellor shall make appointments after effective and meaningful consultation with the State Government, as indicated in the orders passed by the learned Single Judge and the Division Bench of the High Court in the case of Dr. Subhash Prasad Sinha and Dr. Arvind Kumar.

(iv) The aforesaid exercise shall be completed within a maximum period of three months and appointments of the selectees shall be made within next four weeks.

(v) The persons who are currently holding charge of the offices of Vice-Chancellors and Pro Vice-Chancellors shall continue to discharge the duties of their respective offices till the joining of new appointees.

R.P. Appeals & Writ Petition allowed.

PROF. K.V. RAJENDRAN

v.

SUPERINTENDENT OF POLICE, CBCID SOUTH ZONE, CHENNAI & ORS.

(Criminal Appeal No. 1167 of 2013)

AUGUST 21, 2013

[DR. B.S. CHAUHAN, SUDHANSU JYOTI MUKHOPADHAYA AND KURIAN JOSEPH, JJ.]

INVESTIGATION:

Transfer of investigation to CBI - Held: Supreme Court or High Court can exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases - Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law - In the instant case, the facts and circumstances do not present special features warranting transfer of investigation to CBI - Besides, the incident occurred 15 years back and final report u/s 173(2) Cr.P.C. has already been submitted before the competent criminal court - It is open to the Magistrate to accept the final report or to reject the same and to direct further investigation u/s 173(8) Cr.P.C. - Constitution of India, 1950 - Arts. 136 and 226 - Code of Criminal Procedure, 1973 - ss. 173(2) and 173(8).

The appellant, an Associate Professor in a College, filed a complaint against the Revenue Divisional Officer (`RDO') and other officials alleging that on 26.8.1998, the said RDO and other persons brutally tortured him for making a complaint regarding the smuggling of teakwood

in that area and that on the following day, he was handed over to the local Police. Subsequently, he was remanded to judicial custody, and was released on bail. However, no case was registered. The appellant then filed a criminal petition which was disposed of by the High Court directing the transfer of investigation to CBI. In the SLP filed by the DSP, SBCID, the Supreme Court set aside the order of the High Court giving liberty to the appellant to file a fresh criminal petition u/s 482 Cr.P.C. for transferring the investigation from the State police authorities to CBI, depending upon subsequent events. The appellant was summoned by the DSP, SBCID on 7.7.2010 and again on 25.10.2010 and his statements were recorded. Being unsatisfied with the investigation conducted by the SBCID, the appellant filed another criminal petition, which was dismissed by the High Court.

Dismissing the appeal, the Court

HELD: 1.1 This Court or High Courts can exercise their Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases, e.g. where high officials of State authorities are involved; the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. [para 6 and 10] [207-D-E; 209-B-D]

State of West Bengal v. Committee for Protection of Democratic Rights, **2010 (2) SCR 979 = AIR 2010 SC 1476;** *Sakiri Vasu v. State of UP,* **2011 (3) SCR 597 = AIR 2008 SC 907;** *Ashok Kumar Todi v. Kishwar Jahan & Ors.,* **AIR 2011 SC 1254;** *Gudalure M.J. Cherian & Ors. v. Union of India & Ors.,* **1991 (3) Suppl. SCR 251 = (1992) 1 SCC 397;** *R.S. Sodhi v. State of U.P. & Ors.,* **AIR 1994 SC 38;** *Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors.,* **1993 (3) Suppl. SCR 915 = AIR 1994 SC 1023;** *Vineet Narain & Ors., v. Union of India & Anr.,* **1996 (1) SCR 1053 = AIR 1996 SC 3386;** *Union of India & Ors. v. Sushil Kumar Modi & Ors.,* **1996 (8) Suppl. SCR 393 = AIR 1997 SC 314;** *Disha v. State of Gujarat & Ors.,* **2011 (9) SCR 359 = AIR 2011 SC 3168;** *Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors.* **2011 (10) SCR 260 = (2011) 13 SCC 329; and** *State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc.* **2011 (15) SCR 540 = AIR 2012 SC 364;** *Rubabbuddin Sheikh v. State of Gujarat & Ors.* **2010 (1) SCR 991 = (2010) 2 SCC 200 - referred to.**

1.2 In the instant case, firstly, the facts and circumstances do not present such special features warranting transfer of investigation to CBI, and that too, at a belated stage where the final report u/s 173(2) Cr.P.C. has already been submitted before the competent criminal court. The allegations are only against the then RDO who might have been transferred to various districts during these past 15 years. Secondly, various other police officials might have investigated the case and it is difficult to assume that every police official was under his influence and all of them acted with malafide intention. Further, in view of the earlier order of this Court dated 2.9.2008, no subsequent development has been brought to the notice of the court which could warrant interference by superior courts and transfer the investigation to CBI. Besides, the Magistrate has not passed any order as regards the final report submitted

u/s 173(2) CrPC. The appellant can still take appropriate steps, as it is always open to the Magistrate to accept the final report or reject the same and he has the power to direct further investigation u/s 173(8) Cr.P.C. [para 11 and 14] [210-B-C; 211-B-D]

Case Law Reference:

1991 (3) Suppl. SCR 251	**referred to**	**para 6**
AIR 1994 SC 38	**referred to**	**para 6**
1993 (3) Suppl. SCR 915	**referred to**	**para 6**
1996 (1) SCR 1053	**referred to**	**para 6**
1996 (8) Suppl. SCR 393	**referred to**	**para 6**
2011 (9) SCR 359	**referred to**	**para 6**
2011 (10) SCR 260	**referred to**	**para 6**
2011 (15) SCR 540	**referred to**	**para 6**
2010 (1) SCR 991	**referred to**	**para 7**
2010 (2) SCR 979	**referred to**	**para 8**
2011 (3) SCR 597	**referred to**	**para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1167 of 2013.

From the Judgment and Order dated 08.12.2011 of the High Court of Judicature at Madras in Crl. O.P. No. 9639 of 2011.

K. Ramamurthy, Nagendra Rai, Mukul Gupta, Kamini Jaiswal, M. Yogesh Kanna, Sriram, A. Santha Kumaran, A. Radhakrishnan, Syed Tanweer Ahmed, Anjali Chauhan, B.V. Balaram Das for the appearing parties.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order dated 8.12.2011 passed by the High Court of Judicature at Madras in Crl.O.P. No. 9639 of 2011, by way of which the High Court has rejected the prayer of the appellant to transfer the investigation of his case/ complaint to Central Bureau of Investigation (hereinafter referred to as the `CBI').

2. The case has a chequered history as the matter has moved from the court of the Magistrate to this Court time and again. Facts and circumstances necessary to adjudicate upon the controversy involved herein are that:

A. The appellant, who is an Associate Professor in Physics in the Presidency College, Chennai, went to his village on 26.8.1998. At about 11.00 P.M., approximately ten people headed by the then Revenue Divisional Officer (hereinafter referred to as the `RDO'), forcibly took him in a government jeep and brought him to the Taluk office and enquired about why he had given a false complaint regarding the smuggling of teakwood in that area. The then RDO and other officials treated him with utmost cruelty and caused severe injuries all over his body and then obtained his signatures on blank papers which were filled up as directed by the then RDO. On the next day, he was handed over to the local Police Inspector along with the statement purported to have been written by the officials concerned.

B. The appellant was produced before the Magistrate on 27.8.1998 at 10.30 A.M. and he was remanded to judicial custody. His request to the Judicial Magistrate in regard to medical examination of the injuries which had been caused to him was rejected. The appellant was kept in Sub Jail, Poraiyar, wherein he was treated by the jail doctor on 28.8.1998. On being released on bail, the appellant got treatment of his injuries in a private hospital.

C. The appellant filed a complaint against the said RDO

and other officials. The said complaint was also sent to the office of Hon'ble Chief Minister of the State, the Director General of Police and other officials, alleging the brutal torture caused to him by the then RDO. The case was entrusted for investigation to Deputy Superintendent of Police, SBCID, Nagapattinam. A confidential report was forwarded to higher officials by the said DSP in this regard. However, no progress could be made in the investigation and no case was registered in respect of the complaint of the appellant.

D. The appellant approached the High Court of Madras by filing Crl. O.P. No. 19352/1998 with the prayer to direct the registration of First Information Report (FIR) based on his complaint. In view of the fact that a confidential report of Deputy Superintendent of Police, SBCID revealed that the preliminary enquiry was conducted in a proper manner, the High Court did not transfer the investigation to CBI, however, the petition was allowed vide order dated 1.3.2001 issuing the direction to register a case.

E. The DSP, SBCID filed an application i.e. Crl.M.P. No. 3713/2001 before the High Court in the disposed of case i.e. Crl.O.P. No. 19352/1998 stating that there was no post of DSP, SBCID on the date of the order as the same had been abolished, so proper directions needed to be issued. In the meanwhile, the appellant also filed another petition to transfer the case to CBI. Both the said applications were heard together and the order dated 1.10.2004 was passed modifying the earlier order dated 1.3.2001 for transferring the investigation to CBI.

F. Aggrieved, the DSP, SBCID, preferred Criminal Appeal No. 1389 of 2008 before this Court. The said criminal appeal was disposed of by this Court vide a detailed judgment and order dated 2.9.2008. It was observed that by the first order dated 1.3.2001, the High Court had declined to handover the investigation to CBI, therefore, it was not proper for the High

Court to pass a fresh order in a petition that had been disposed of, directing again the investigation to be made by the CBI. This view was taken in view of the provisions of Section 362 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the `Cr.P.C.'). This Court also took note of the fact that it was not the application by the appellant to transfer the case to CBI. Thus, the said order dated 1.10.2004 transferring the investigation to CBI by the High Court was set aside. However, this Court kept it open that the appellant could prefer a fresh criminal petition under Section 482 Cr.P.C. for transferring the investigation from the State police authorities to CBI, depending upon subsequent events. In such an eventuality, it would be open to High Court to entertain such application and decide the same in accordance with law.

G. The appellant was summoned by the DSP, SBCID on 7.7.2010 and again on 25.10.2010 and his statements were recorded. Being un- satisfied with the investigation conducted by the SBCID, the appellant filed Crl. O.P. No. 9639 of 2011 in April 2011 before the High Court, seeking transfer of the investigation to CBI. The said application has been dismissed vide impugned judgment and order dated 8.12.2011.

Hence, this appeal.

3. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant, has submitted that there was no justification for the High Court to reject the application seeking transfer of the investigation from the State investigating agency to CBI as the State investigating agency did not conduct the investigation properly as its investigation has been tainted and biased, favouring the then RDO. The SBCID threatened the witnesses and recorded their version under coercion. Moreover, inordinate delay had been there in concluding the investigation. The High Court could not be justified in making such an observation that even if a shabby investigation had been made, it could not be a ground to change the investigating agency. Further, there was no material to show as observed

by the High Court, that the appellant had improved his case stage by stage. Even if the investigation was at the verge of conclusion or already stood concluded, it is permissible in law to change the investigating agency. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri K. Ramamurthy and Shri Nagendra Rai learned senior counsel appearing on behalf of the State and respondent no. 3, the then RDO, have opposed the appeal contending that there was no subsequent development on the basis of which the transfer of investigation could be sought to CBI. Moreover, it is not a fit case to transfer to CBI. The appellant is pursuing a trivial issue since 1998 and had been moving from one court to another for the last 15 years. The liberty was given to the appellant by this Court vide order dated 2.9.2008 to move the High Court for transfer of investigation to CBI only on the basis of subsequent events, if any. In fact there has been no such subsequent event, which could warrant such a course of action. This Court has laid down certain parameters for transferring the case to CBI and the present case does not fall within the ambit thereof. The State police has already investigated the matter and filed the final report under Section 173(2) Cr.P.C. before the court concerned. The appellant has already filed the protest petition and it is for the learned Magistrate to decide the case in accordance with law. The Magistrate is not bound to accept the report so submitted by the investigating agency, he may take cognizance and also direct further investigation under Section 173(8) Cr.P.C. Thus, there is no justification to transfer the case to CBI and the appeal is liable to be rejected.

Shri Mukul Gupta, learned senior counsel appearing on behalf of the CBI, supported the case of the respondents and further submitted that the CBI has a shortage of manpower and is already overburdened. More so, the present case does not present special features warranting transfer to CBI for investigation.

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

6. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: *Gudalure M.J. Cherian & Ors. v. Union of India & Ors.,* (1992) 1 SCC 397; *R.S. Sodhi v. State of U.P. & Ors.,* AIR 1994 SC 38; *Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors.,* AIR 1994 SC 1023; *Vineet Narain & Ors., v. Union of India & Anr.,* AIR 1996 SC 3386; *Union of India & Ors. v. Sushil Kumar Modi & Ors.,* AIR 1997 SC 314; *Disha v. State of Gujarat & Ors.,* AIR 2011 SC 3168; *Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors.,* (2011) 13 SCC 329; and *State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc.,* AIR 2012 SC 364).

7. In *Rubabbuddin Sheikh v. State of Gujarat & Ors.,* (2010) 2 SCC 200, this Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of

persons in a fake encounter and the Gujarat police after the conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

8. In *State of West Bengal v. Committee for Protection of Democratic Rights,* AIR 2010 SC 1476, a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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.

(See also: *Ashok Kumar Todi v. Kishwar Jahan & Ors.,* AIR 2011 SC 1254).

9. This Court in the case of *Sakiri Vasu v. State of UP,* AIR 2008 SC 907 held:

"This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with

a large number of cases and would find it impossible to properly investigate all of them."

(Emphasis added)

10. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is *prima facie* found to be tainted/biased.

11. The case is required to be examined in view of aforesaid settled legal propositions.

The matter originated in September 1998 and a period of 15 years has already been lapsed. During this period, respondent no. 3, the then RDO, against whom the allegations are made, might have been transferred to various districts of th State. The allegations of malafide had been made against the police in general without impleading any person by name. During the period of 15 years, investigation could have been carried out by many police officers. It cannot be presumed that each of them could be influenced by the respondent no. 3. This Court had also given the liberty to the appellant to approach the High Court for transferring the investigation to CBI provided there is sufficient material available subsequent to the earlier orders passed by the High Court. Even if the investigating agency did not proceed promptly and was in deep slumber for a long time, the appellant also did not make any attempt to move the court for issuance of appropriate direction to transfer the case to the CBI. It was at a belated stage when the High Court was approached. In the meanwhile, the High Court came

to the conclusion that the investigation of the case has already been concluded and, therefore, did not transfer the case to CBI. Admittedly, the final report has already been filed and the appellant is fully aware of those facts. If he has not already taken the appropriate steps to meet the present situation, he can still do so as the learned Magistrate concerned, as we are informed, has not yet passed any final order. It is always open to the Magistrate to accept the final report or reject the same and has the power to direct further investigation under Section 173(8) Cr.P.C.

12. The High Court while passing the impugned judgment and order had, in fact, taken note of the earlier judgment of this Court dated 2.9.2008 and rejected the application observing that the subsequent development would not warrant the transfer of investigation. The High Court has further taken note of the fact that the investigation had been properly conducted by the State investigating agency, 46 witnesses had been examined and a large number of documents had been filed and the investigating agency had concluded the investigation in respect of allegations labelled by the appellant against the alleged accused.

13. The High Court has further taken note of the earlier judgment of this Court dated 2.9.2008 wherein this Court had given liberty to the appellant to move a fresh application under Section 482 Cr.P.C., if it is so required in view of the "subsequent events having been taken place". The relevant part of the order of this Court reads as under:

> "We make it clear once again that if a fresh criminal petition under Section 482 of the Code is filed by the respondent for transferring the investigation from State Police authorities to CBI **after bringing certain subsequent events that had taken place after the disposal of the original criminal petition if there be any,** it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law

for which we express no opinion on merit."

(Emphasis added)

14. In sum and substance, firstly, the facts and circumstances of the instant case do not present special features warranting transfer of investigation to CBI, and that too, at such a belated stage where the final report under Section 173(2) Cr.P.C. has already been submitted before the competent criminal court. The allegations are only against the then RDO who might have been transferred to various districts during these past 15 years. Similarly various other police officials might have investigated the case and it is difficult to assume that every police official was under his influence and all of them acted with malafide intention. In view of the earlier order of this Court dated 2.9.2008, no subsequent development has been brought to the notice of the court which could warrant interference by superior courts and transfer the investigation to CBI.

15. In view of the above, we do not see any cogent reason to interfere with the impugned judgment and order of the High Court. The appeal lacks merit and is, accordingly, dismissed.

R.P. Appeal dismissed.

IN RE: RAMESHWAR PRASAD GOYAL, ADVOCATE
(SUO MOTU CONTEMPT PETITION NO. 312 of 2013)

AUGUST 22, 2013

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

SUPREME COURT RULES, 1966:

O. 4, r.8A read with r.6 - Advocate on Record - Misconduct - AOR lending his signatures in large number of cases, but not appearing in Court, inspite of Court's directions - Show cause notice issued - AOR tendered absolute and unconditional apology and promised not to repeat such misconduct - Held: Rule 8A enables the Court to deal with a situation where an AOR commits misconduct or he/she conducts himself/herself in a manner unbecoming of an AOR -- The Court is competent to proceed against an AOR suo motu, without any complaint from any person, if prima facie it is of the opinion that the AOR is guilty of misconduct or of conduct unbecoming of an AOR -- Though the conduct of the noticee-AOR, has been reprehensible and not worth pardoning, considering the fact and circumstances, his conduct is censured and he is warned not to behave in future in such manner -- Court shall examine his conduct for one year and, if no improvement is found, may initiate the proceedings again.

O.4, rr.4 and 6 - Advocate-on-Record - Role and duty - Misconduct - AsOR lending their signatures in large number of cases and not appearing in Court - Held: The institution of AsOR is to facilitate the working of the Court, as contained in O.4. r.6. -- It entitles an AOR to act, plead, conduct and prosecute before the Court in respect of all matters filed by him -- To act means to file an appearance or any pleading or any application in the Court and such a task has been entrusted solely upon an AOR and no other advocate can file

an appearance or act for the party without his authorization -- In case an AOR is only lending his signatures without taking any responsibility for conducting the case, the very purpose of having the institution of AsOR stands defeated -- In such a fact-situation, lending of signatures for consideration would amount to misconduct of his duty towards Court and such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant -- Conduct of such an AOR is unbecoming of an AOR - An AOR is the source of lawful recognition through whom the litigant is represented - As per the Rules, no unauthorised person can deal with the Registry and it must strictly adhere to the Rules.

INTERPRETATION OF STATUTES:

Ejusdem generis - Term, 'otherwise' occurring in r.8A of Supreme Court Rules, 1966 - Held: Should be construed as ejesdum generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law.

During the course of hearing of application for setting aside then order dismissing a civil appeal in default, the Court asked the counsel appearing for the applicant to call for the Advocate-on-Record concerned, but the latter was stated to have refused to come to the Court. It was pointed out that the said AOR had filed an extremely large number of cases in Supreme Court, but he never appeared in those cases. The application was ultimately dismissed. However, the Court issued a show cause notice to the said AOR as to why his name should not be removed from the register of AsOR, as his conduct was 'unbecoming' of an AOR. The Court took note of the practice that some AsOR were lending their signatures for consideration and taking no responsibility for the matter and never appeared in Court. The Court requested the Association of AsOR through its President and Secretary to assist it in dealing with the situation.

Closing the matter for the time being, the Court

Held: 1.1 Rule 8A of Order IV of the Supreme Court Rules, 1966 enables this Court to deal with a situation where an AOR commits misconduct or he/she conducts himself/herself in a manner unbecoming of an AOR. This Court is competent to proceed against an AOR suo motu, if prima facie it is of the opinion that an AOR is guilty of misconduct or of conduct unbecoming of an AOR. The term "otherwise" contained in r.8-A should be construed as ejesdum generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law. [para 5,7 and 8] [221-C-D; 222-B-D]

Vijay Dhanji Chaudhary v. Suhas Jayant Natawadkar **2009 (16) SCR 518 = (2010) 1 SCC 166;** *Kavalappara Kottarathil Kochuni @ Moopil Nayar & Ors. v. The State of Madras and Kerala & Ors.,* **AIR 1960 SC 1080;** *George Da Costa v. Controller of Estate Duty, Mysore,* **1967 SCR 1004 = AIR 1967 SC 849;** *Krishan Gopal v. Shri Prakashchandra & Ors.* **1974 (2) SCR 206 = AIR 1974 SC 209;** *Municipal Corporation of Delhi v. Tek Chand Bhatia,* **1980 (1) SCR 910 = AIR 1980 SC 360;** *S.R. Bommai v. Union of India & Ors.,* **1994 (2) SCR 644 = AIR 1994 SC 1918; and** *International Airport Authority of India & Ors. v. Grand Slam International & Ors.* **1995 (2) SCR 149 = (1995) 3 SCC 151;** *Supreme Court Bar Association v. U.O.I. & Anr.* **1998 (2) SCR 795 = AIR 1998 SC 1895 - referred to.**

1.2 This Court has conferred a privilege upon the AsOR to carry out certain responsibilities and failure to carry out the same would tantamount to unbecoming conduct of an AOR. The institution of AsOR is to facilitate the working of the Court as contained in O.4. r.6. It entitles an AOR to act, plead, conduct and prosecute before this Court in respect of all matters filed by him. To act means to file an appearance or any pleading or any application

in the Court and such a task has been entrusted solely upon an AOR and no other advocate can file an appearance or act for the party without his authorisation. In case the AOR is only lending his signatures without taking any responsibility for conducting of a case, the very purpose of having the institution of AsOR stands defeated. If the AOR does not act in a responsible manner and does not appear whenever the matter is listed or does not take any interest in conducting the case, it would amount to not playing any role whatsoever. In such a fact-situation, lending signatures for consideration would amount to misconduct of his duty towards court. [para 8, 11, 12 and 16] [222-D-E; 224-B-C; 225-D-E]

Ex Capt. Harish Uppal v. UOI & Anr., **2002 (5) Suppl. SCR 186 = AIR 2003 SC 739;** *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)* **1984 (2) SCR 438 = AIR 1984 SC 618- relied on**

Mr. 'P', an Advocate, **1964 SCR 697 = AIR 1963 SC 1313;** *T.C. Mathai & Anr. v. District & Sessions Judge, Thiruvananthapuram,* **1999 (2) SCR 305 = AIR 1999 SC 1385;** *D.P. Chadha v. Triyugi Narain Mishra & Ors.* **2000 (5 Suppl. SCR 345 = AIR 2001 SC 457; and** *Smt. Poonam v. Sumit Tanwar,* **2010 (3) SCR 557 = AIR 2010 SC 1384 - referred to.**

1.3 Transparency in functioning of the court and accountability with respect to the Bench and the Bar are fundamentals in a democracy. A lawyer has to plead the case of his client with full sincerity and responsibility. Lawyers play an important part in the administration of justice. As an officer of the court, the overriding duty of a lawyer is to the court, the standards of his profession and to the public. Where the AOR merely lends his signatures and does not know the client, has no attachment to the case and no emotional sentiments

towards the poor cheated clients, such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant. Conduct of such AOR is certainly unbecoming of an AOR. [para 9 and 19] [222-E-F; 226-G-H; 227-A-D]

Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr., **AIR 1993 SC 1182 - relied on.**

Manak Lal v. Dr. Prem Chand Singhvi & Ors., **1957 SCR 575 =AIR 1957 SC 425;** *Smt. Jamilabai Abdul Kadar v. Shankarlal Gulabchand & Ors.,* **1975 (Suppl.) SCR 336 =AIR 1975 SC 2202;** *The Bar Council of Maharashtra v. M.V. Dabholkar,* **1976 (2) SCR 48 = AIR 1976 SC 242;** *S.P. Gupta & Ors. v. President of India & Ors.,* **1982 SCR 365 = AIR 1982 SC 149; and** *Sheela Barse v. State of Maharashtra,* **1983 (2) SCR 337 =AIR 1983 SC 378;** *Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting,* **1995 (3) SCR 450 = (1995) 3 SCC 619- referred to.**

1.4 An AOR is the source of lawful recognition through whom the litigant is represented and, therefore, he cannot deviate from the norms prescribed under the Rules, which have been framed to authorize a legally trained person with prescribed qualification to appear, plead and act on behalf of a litigant. Not only his physical presence but effective assistance in the Court is also required. He is accountable and responsible for whatever is written and pleaded by putting his appearance to maintain solemnity of records of the court. The defective psychology of not appearing in the court is contrary to the first principle of advocacy. It is clarified that as per the Rules, no unauthorised person can deal with the Registry and it must strictly adhere to the Rules. [para 21-22] [227-H; 228-A-B, D, G; 229-B]

1.5 In the instant case, the AOR, whom the litigant has never briefed or engaged, has lended his signature for a

petty amount with a clear understanding that he would not take any responsibility for any act in any of the proceedings in the Registry or the Court in the matter. At the time of hearing, the notice-AOR, not only tendered absolute and unconditional apology and promised not to repeat such misconduct, but also assured the Court that he would remain present in the court in all the cases where he had entered appearance for either of the parties. Though the conduct of the noticee-AOR, has been reprehensible and not worth pardoning but considering the fact and circumstances, his conduct is censured and he is warned not to behave in future in such manner. The Court shall examine his conduct for one year from now and if no improvement is found, may initiate the proceedings again. [para 20, 23 and 24] [227-E-F; 229-B-C, D-E]

Case Law Reference:

1980 (1) SCR 910	**referred to**	**para 5**
1994 (2) SCR 644	**referred to**	**para 5**
1995 (2) SCR 149	**referred to**	**para 5**
1998 (2) SCR 795	**referred to**	**para 9**
1957 SCR 575	**referred to**	**para 9**
1975 (0) Suppl. SCR 336	**referred to**	**para 9**
1976 (2) SCR 48	**referred to**	**para 9**
1982 SCR 365	**referred to**	**para 9**
1983 (2) SCR 337	**referred to**	**para 9**
1995 (3) SCR 450	**referred to**	**para 9**
1964 SCR 697	**referred to**	**Para 11**
1999 (2) SCR 305	**referred to**	**Para 11**
2000 (5) Suppl. SCR 345	**referred to**	**Para 11**
2010 (3) SCR 557	**referred to**	**Para 11**
2002 (5) Suppl. SCR 186	**relied on**	**para 13**
1984 (2) SCR 438	**relied on**	**para 14**
AIR 1993 SC 1182	**relied on**	**para 15**

CIVIL ORIGINAL JURISDICTION : Suo Motu Contempt Petition No. 312 of 2013.

IN

Civil Appeal No. 1398 of 2005.

For Petitioner: By Court's Motion.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Civil Appeal No. 1398 of 2005, Mohamed Israfil v. Raufunessa Bibi (D) by L.Rs. & Ors., was dismissed in default vide order dated 8.3.2013 as none appeared to press the appeal. An application for restoration of the said appeal was filed by Shri Rameshwar Prasad Goyal, Advocate-on-Record (hereinafter referred to as AOR). The said application was listed in the Court on 8.7.2013. The Court was of the view that the facts contained in the application were not correct and the counsel appearing for the applicant was not able to clarify the same. The Court passed over the matter and asked the counsel appearing therein to call the AOR who would be able to explain the factual controversy. When the matter was taken up in the second round, the Court was informed that Shri Rameshwar Prasad Goyal, AOR refused to come to the Court. It has also been pointed out that the said AOR has filed extremely large number of cases in this Court but never appears in the Court. In view of the refusal of the AOR to come to the Court, this Court had no other option but to dismiss the application. However, the Court issued a show cause notice

to the said AOR as to why his name should not be removed from the register of AsOR, as his conduct was 'unbecoming' of an AOR. Prima facie, his conduct would tantamount to interfering with the administration of justice. Being an AOR, he ought to have appreciated that the institution of AsOR has been created under the Supreme Court Rules, 1966 (hereinafter referred to as the 'Rules') and no one can appear in this Court except by the authority of an AOR; or unless instructed by an AOR. Considering the gravity of the issue involved herein, this Court also requested the Association of AsOR, through its President and Secretary, to assist the Court in dealing with this situation as our experience has been that some AsOR, who have filed a large number of cases have been lending their signatures for consideration and take no responsibility for the matter and never appear in the Court.

2. In response to the same, Shri Rameshwar Prasad Goyal, AOR has filed his reply tendering an absolute and unconditional apology and has given an undertaking that he would not repeat such a mistake again in future. He has also given many reasons for not appearing in the Court but none of them has impressed us and none of them is worth mentioning herein. It is not that he has entered appearance in very few cases; the information received reveals that Mr. Rameshwar Prasad Goyal has entered appearance in as many as 1678 cases in the year 2010, in 1423 cases in the year 2011, and in 1489 cases in the year 2012. Upto 19.7.2013, he has entered appearance in 922 cases. The number of cases filed by him is too big.

3. In *Vijay Dhanji Chaudhary v. Suhas Jayant Natawadkar,* (2010) 1 SCC 166, this Court made an attempt to deal with the menace of lending of signatures for a petty amount by a few AsOR without any sense of responsibility and rendering any assistance to the Court. The record reveals that the matter stood subsequently dismissed on some other grounds. However, the issue of conduct of an AOR, particularly

in respect of name lending was referred to the Supreme Court Rules Committee vide order dated 12.10.2011.

4. Relevant rules for the purpose of adjudicating upon the issue involved herein are contained in Order IV of the Rules, which read as under:

"4. Any advocate not being a senior advocate may, on his fulfilling the conditions laid down in rule 5, be registered in the Court as an advocate on record:

xxx xxx xxx xxx xxx

6. (a) An advocate on record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, be entitled-

(i) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or …

xxx xxx xxx xxx xxx

(b) **No advocate other than an advocate on record shall be entitled to file an appearance or act for a party in the Court.**

xxx xxx xxx xxx xxx

8A. When, on the complaint of any person or **otherwise**, the Court is of the opinion that an advocate on record has been guilty of misconduct or **of conduct unbecoming of an advocate on record,** the Court may make an order removing his name from the register of advocates on record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the

said fact to the Bar Council of India and to State Bar Council concerned:

xxx xxx xxx xxx xxx

10. **No advocate other than an advocate on record shall appear** and plead in any matter unless he is instructed by an advocate on record."

(Emphasis added)

5. The term "Otherwise" contained in Rule 8-A has been defined in dictionary to mean contrarily, different from that to which it relates; in a different manner; in another way; in any other way; in some other like capacity; in other circumstances; in other respects; and relating to a distinct and separate class altogether. The word 'otherwise' should be construed as ejesdum generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law.

(See: *Kavalappara Kottarathil Kochuni @ Moopil Nayar & Ors. v. The State of Madras and Kerala & Ors.,* AIR 1960 SC 1080; *George Da Costa v. Controller of Estate Duty, Mysore,* AIR 1967 SC 849; *Krishan Gopal v. Shri Prakashchandra & Ors.,* AIR 1974 SC 209; *Municipal Corporation of Delhi v. Tek Chand Bhatia,* AIR 1980 SC 360; *S.R. Bommai v. Union of India & Ors.,* AIR 1994 SC 1918; and *International Airport Authority of India & Ors. v. Grand Slam International & Ors.,* (1995) 3 SCC 151).

6. This Court in *Supreme Court Bar Association v. U.O.I. & Anr.,* AIR 1998 SC 1895 observed :

"……In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the

privilege includes **the power to revoke or suspend it**……"

(Emphasis added)

7. Thus, it is evident that this Court is competent to proceed against an AOR suo motu, without any complaint from any person, if *prima facie* it is of the opinion that an AOR is guilty of misconduct or of conduct unbecoming of an AOR.

8. The Rules make the position clear that in order to carry out its work smoothly, this Court has framed the rules under which the institution of AsOR is created. Rule 8A, Order IV enables the Court to deal with a situation where an AOR commits misconduct or he conducts himself/herself in a manner unbecoming of an AOR.

In fact, this Court has conferred a privilege upon the AsOR. To carry out certain responsibilities and failure to carry out the same would definitely tantamount to unbecoming conduct of an AOR, if not misconduct.

9. Lawyers play an important part in the administration of justice. The profession itself requires the safeguarding of high moral standards. As an officer of the court the overriding duty of a lawyer is to the court, the standards of his profession and to the public. Since the main job of a lawyer is to assist the court in dispensing justice, the members of the Bar cannot behave with doubtful scruples or strive to thrive on litigation. Lawyers must remember that they are equal partners with judges in the administration of justice. If lawyers do not perform their function properly, it would be destructive of democracy and the rule of law. (Vide: *Manak Lal v. Dr. Prem Chand Singhvi & Ors.,* AIR 1957 SC 425; *Smt. Jamilabai Abdul Kadar v. Shankarlal Gulabchand & Ors.,* AIR 1975 SC 2202; *The Bar Council of Maharashtra v. M.V. Dabholkar,* AIR 1976 SC 242; *S.P. Gupta & Ors. v. President of India & Ors.,* AIR 1982 SC 149; and

Sheela Barse v. State of Maharashtra, AIR 1983 SC 378).

10. In *Re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting,* (1995) 3 SCC 619, this Court while dealing with the issue held :

> ".....Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system..... The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society..... The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving.." (Emphasis added)

11. "Law is no trade, briefs no merchandise". An advocate being an officer of the court has a duty to ensure smooth functioning of the Court. He has to revive the person in distress and cannot exploit the helplessness of innocent litigants. A wilful and callous disregard for the interests to the client may in a proper case be characterised as conduct unbefitting an advocate. (See : *In the matter of Mr. 'P', an Advocate,* AIR 1963 SC 1313; *T.C. Mathai & Anr. v. District & Sessions Judge, Thiruvananthapuram,* AIR 1999 SC 1385 *D.P. Chadha v.*

Triyugi Narain Mishra & Ors., AIR 2001 SC 457; and *Smt. Poonam v. Sumit Tanwar,* AIR 2010 SC 1384)

12. If the AOR does not discharge his responsibility in a responsible manner because he does not appear whenever the matter is listed or does not take any interest in conducting the case, it would amount to not playing any role whatsoever. In such a fact-situation, lending signatures for consideration would amount to misconduct of his duty towards court. In case the AOR is only lending his signatures without taking any responsibility for conduct of a case, the very purpose of having the institution of AsOR stands defeated.

13. In *Ex Capt. Harish Uppal v. UOI & Anr.,* AIR 2003 SC 739, this court has categorically held that if a lawyer refuses to attend the court, it is not only unprofessional but also unbecoming of a lawyer disentitling him to continue to appear in Court.

> ". .....The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts."

14. In *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.),* AIR 1984 SC 618, this Court held that it is the duty of every advocate who accepts a brief to attend the trial and this duty cannot be overstressed. It was further reminded by this Court that "having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend." The court further relied on Warvelle's Legal Ethics, at p. 182 which is as under:

> "A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom."

15. This Court has depreciated the practice of name lending in *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.,* AIR 1993 SC 1182, wherein the High Court had dealt with a case of a firm of advocates merely lending its name and did not take further responsibility to plead or act. The High Court found such an arrangement most unfortunate and contrary to the duty and obligation of a counsel towards the clients as well as to the court. Approving the said view, this Court held as under:

> "Legal profession must give an introspection to itself. The general impression which the profession gives today is that the element of service is disappearing and the profession is being commercialised. It is for the members of the Bar to act and take positive steps to remove this impression before it is too late."

16. The institution of AsOR is to facilitate the working of the Court as contained in Order IV Rule 6. It entitles an AOR to act, plead, conduct and prosecute before this Court in respect of all matters filed by him. To act means to file an appearance or any pleading or any application in the Court and such a task has been entrusted solely upon an AOR and no other advocate can file an appearance or act for the party without his authorisation. The Court conducts an examination before enrolling a person as an AOR and the basic purpose to have such an examination is to verify whether the person is well versed with the rules, practice and procedure of the Court and to test his legal acumen and ethics. He must be fully acquainted with the drafting of proceedings as well as its manner of filing in the Registry. An AOR is not beneficial only to the Court but also assists in the working of the Registry. In such a fact-situation, an AOR cannot lend his signatures just to camouflage the requirement of rules. He, in addition to doing the work of drafting, filing appearance and assisting the Court, must maintain professional ethics and proper standards so that the Court may rely upon him without any reservation.

17. Availability of justice to all which is a social goal, must be made a reality. However, it cannot be done unless there is an easy access to the Bench and the Bar both. If the Court is not working properly or if the Bar is not rendering proper assistance, it would lead to a travesty of justice and destroy the basic democracy, which would tantamount to failure of administration of justice. The people and particularly, the common man would cease to be beneficiaries of democracy. Justice is based on law and law in modern democracy is too complicated, therefore, it is not possible for an ordinary litigant to raise his voice without engaging a lawyer. In case the lawyer is negligent or not willing to assist the court, or fails to perform his duty towards the court, loss to the poor litigant is beyond imagination.

18. In the present era, the legal profession, once known as a noble profession, has been converted into a commercial undertaking. Litigation has become so expensive that it has gone beyond the reach and means of a poor man. For a longtime, the people of the nation have been convinced that a case would not culminate during the life time of the litigant and is beyond the ability of astrologer to anticipate his fate. It is in this context that a suggestion has been made to amend the statutory provision in respect of substitution of the legal representative(s) of a party, to the effect that both the plaintiff and defendant must make a statement in the plaint/written statement respectively as who would be his legal representative(s) as they cannot expect that matter could be decided in their life time. Any order passed by the Trial Court on the application of substitution of legal representative(s) is generally challenged time and again right up to this Court with the proceedings in the Courts below remaining stayed.

19. Transparency in functioning of the court and accountability with respect to the Bench and the Bar are fundamentals in a democracy. Therefore, the Bench as well as the Bar have to carry out their duties with full sense of responsibility.

The Courts exist for the litigants, where a lawyer has to plead the case of his client with full sincerity and responsibility. In a system, as revealed in the instant case, a half baked lawyer accepts the brief from a client coming from a far distance, prepares the petition and asks an AOR, having no liability towards the case, to lend his signatures for a petty amount. The AOR happily accepts this unholy advance and obliges the lawyer who has approached him without any further responsibility. The AOR does not know the client, has no attachment to the case and no emotional sentiments towards the poor cheated clients. Such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant. In our humble opinion, conduct of such AOR is certainly unbecoming of an AOR. Though the observations by this Court in *Tahil Ram Issardas Sadarangani* (supra) were made two decades ago, the same are apposite even today. The Bar failed to have an introspection and improve the situation.

20. The facts of this case present a very sorry state of affair. A noble profession has been allowed to be converted by this AOR into a profession of cheating. An AOR, whom the litigant has never briefed or engaged, has lent his signature for a petty amount with a clear understanding that he would not take any responsibility for any act in any of the proceedings in the Registry or the Court in the matter. The Advocate who has been obliged by such an AOR must be going inside the Registry in an unauthorised manner and must be appearing in the Court directly or engaging a senior advocate without any knowledge/authorisation of the AOR. It is beyond our imagination what could be more devastating and degrading for the institution of AsOR. Even a few of them indulging in such an obnoxious practice spoils the working of this court, without realising that Bench and Bar, both have to give strict adherence to moral code.

21. An AOR is the source of lawful recognition through whom the litigant is represented and therefore, he cannot

deviate from the norms prescribed under the Rules. The Rules have been framed to authorise a legally trained person with prescribed qualification to appear, plead and act on behalf of a litigant. Thus, not only is his physical presence but effective assistance in the court is also required. He is not a guest artist nor is his job of a service provider nor is he in a professional business nor can he claim to be a law tourist agent for taking litigants for a tour of the court premises. An AOR is a seeker of justice for the citizens of the country. Therefore, he cannot avoid court or be casual in operating and his presence in the court is necessary. There are times when pleadings and records have to be explained and thus, he has to do a far more serious job and cannot claim that his role is merely a formal one or his responsibilities simply optional. An AOR is accountable and responsible for whatever is written and pleaded by putting his appearance to maintain solemnity of records of the court.

The multi-tier operation of one lawyer hauling a client and then acting as a facilitator for some other lawyer to draw proceedings or engage another lawyer for arguing a case is definitely an unchartered and unofficial system which cannot be accepted as in essence, it tantamounts to a trap for litigants which is neither ethically nor professionally a sound practice. Such conduct is ridiculously low from what is expected of a lawyer. This kind of conduct directly affects the functioning of the court and causes severe damage that at times becomes irreparable and uncompensatory. It is ironic that an AOR who has cleared an examination to get himself authorised lawfully for assisting the court becomes conspicuous by his absence though his presence is maintained on record. The defective psychology of not appearing in the court is contrary to the first principle of advocacy.

22. Shri Sushil Jain, the learned President of the Advocates-on-Record Association, has given certain suggestions to check activities of such unscrupulous AsOR in

the Court and Registry but as those suggestions had earlier been forwarded to the Supreme Court Rules Committee, it is not desirable for us to issue any direction in this regard. However, it is clarified that as per the Rules, no unauthorised person can deal with the Registry and Registry must strictly adhere to the Rules.

23. At the time of hearing, Shri Rameshwar Prasad Goyal, AOR, not only tendered absolute and unconditional apology and promised not to repeat the misconduct in future but also assured the court that he would remain present in the court in all the cases where he had entered appearance for either of the parties. Some senior advocates and a large number of members of the Bar have also asked the Court to pardon him as he would abide by the undertaking given by him.

24. In view of above, though the conduct of Shri Goyal, AOR, has been reprehensible and not worth pardoning but considering the fact and circumstances involved herein, his conduct is censured and we warn him not to behave in future in such manner and to appear in court in all the cases wherever he has entered appearance. The court shall examine his conduct for one year from now and if no improvement is found, may initiate the proceedings again. With these observations, the matter stands closed for the time being.

R.P. Matter closed for the time being

RAJA @ SASIKUMAR & ANR.
v.
STATE THROUGH INSPECTOR OF POLICE
(Criminal Appeal No. 1839 of 2009)

AUGUST 22, 2013

[P. SATHASIVAM, CJI AND RANJAN GOGOI, J.]

PENAL CODE, 1860:

s. 302/34 - Murder - Conviction of 3 out of 7 accused - Appeal by two of the convicts -- Held: In a case of several accused persons, on the same set of evidence, if it is possible to remove the chaff from the grain, then the court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact - In the instant case, testimonies of PWs are acceptable insofar as the involvement of appellants in the crime is concerned -- The conclusion arrived at by High Court is concurred with.

FIR:

Contents of FIR - Witnesses not named in complaint -- Held: There is no need to mention all the details graphically in the complaint and it depends upon so many factors such as condition of the injured etc.

The two appellants along with five others, were prosecuted for committing offences punishable u/ss 302/ 34, 120-B and 342 IPC. The prosecution case was that ill will between a car cleaner and a car driver because of a woman (PW 6), created bad blood between their respective supporters, namely, A-7 and deceased 'B'. On the date of incident A-1 to A-6 attacked 'B', who went inside the shed of PW3 and fell down. PW 2 and PW 3 took him to hospital, where he succumbed to his injuries. PW 2 then lodged a complaint and the police registered

the FIR. The trial court convicted A-1 to A-6 u/ss 302/34 and 342 IPC. A-1 to A-7 were acquitted of the charge u/s 120-B IPC; and A-7 was acquitted of all the charges. The High Court affirmed the conviction of A-1 to A-3 u/s 302 IPC and acquitted the remaining accused. Aggrieved, A-2 and A-3 filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1 If the prosecution case is the same against all the accused or with regard to some of the accused on the same set of evidence available on record and if it is possible to remove the chaff from the grain, then the court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact. [Para 7] [236-F-G]

1.2 It is true that in the earliest information, there was no reference to the presence of PWs 2 to 5. However, the High Court has rightly observed that there is no need to mention all the details graphically in the complaint and it depends upon so many factors such as condition of the injured etc. The FIR was registered based on the written complaint made by the complainant (PW-2). In the complaint PW-2 has implicated A-1, A-2 and A-3, and specifically stated that they inflicted fatal injuries on the deceased and that with the aid of PW-3 he admitted the deceased in the Government Hospital where he succumbed to the injuries. The same has been endorsed by the Inspector. The genesis of the crime is also mentioned in the complaint. There was no delay in making the complaint and the same was duly registered by the police. PW-2 is a local resident. In his evidence, he deposed that he knew all the accused persons. The injuries and other aspects have been noted in the Accident Register and a copy of the same has been marked as Ext. P-18. Though the Doctor who issued Ext. P-18 has not been examined, all the details have been

explained by the Doctor who conducted the *post mortem* on the body of the deceased. It is also noted that PW-3 was also present in the hospital along with PW-2. The evidence of PW 2 has been corroborated by PW 3, another local resident. The name of PW-3 has also been mentioned in the accident register (Ex. P-18). [para 8-12] [236-G-H; 237-A-D, F-H; 238-B-C, F-H; 239-A-C]

1.3 There is no valid reason to reject the evidence of eye-witnesses, viz., PWs 2 and 3. The prosecution has established the motive for the commission of offence. The variations in the statements of PWs 2 and 3 and the Investigating Officer (PW-14) are negligible. The testimonies of PWs 2 and 3 are acceptable insofar as the involvement of A-2 and A-3 in the crime in question is concerned. This Court concurs with the conclusion arrived at by the High Court. [Para 12-13] [239-C-D, E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1839 of 2009.

From the Judgment and Order dated 15.03.2007 of the High Court of Judicature at Madras in Criminal Appeal No. 963 of 2005.

V. Kanagaraj, Kovilan Poongkuntran, Geetha Kovilan for the Appellants.

Yogesh Kanna, A. Santha Kumaran, S. Sasikala for the Respondent.

The Judgment of the Court was delivered by

P.SATHASIVAM, CJI. 1. This appeal is directed against the judgment and order dated 15.03.2007 passed by the High Court of Judicature at Madras in Criminal Appeal No. 963 of 2005 whereby the Division Bench of the High Court disposed of the appeal by acquitting A4 to A6 and confirmed the order of conviction and sentence dated 27.10.2005 in respect of A1

to A3 passed by the Additional District Sessions Judge, Salem in Sessions Case No. 254 of 2004.

2. The facts and circumstances giving rise to this appeal are as under:

(a) This case relates to the death of one person by name Babu - resident of Kullaveeranpatti, Mettur, Tamil Nadu. One Arumugam@Arupaiyan, who was working as a car driver at Sadurangadi, Mettur, was having an affair with one Chitra (PW-6), who, at the relevant time, was working at Krishna Medicals. One Palanichami, who was working as a car cleaner, too was in love with her.

(b) When Chitra informed Arumugam@Arupaiyan about Palanichami, he confronted the cleaner and when the driver of the car-Senthil (A-7) asked him as to why he confronted him, Arumugam@Arupaiyan started beating Senthil which resulted in enmity between A-7 and Arumugam@Arupaiyan. A-7 also developed grudge against one Babu - the deceased, friend of Arumugam@Arupaiyan, who also helped him during the abovesaid incident and even at one point of time, when both the groups were fighting, A-7 shouted at him that he (A-7) will not spare him at any cost.

(c) On 18.04.2001, when Babu was trying to start his motorcycle, the accused persons, viz., Saravanan (A-1), Raja@Sasikumar (A-2), Natesan@Natarajan (A-3), Karthik (A-4), Chandran@Chandramohan (A-5) and Sakthivel (A-6), intercepted him and prevented him from going further from that spot and A-1 inflicted a sickle blow on his hand. In order to escape, Babu went inside the shed of one Sengodan (PW-3), but A-1, A-2 and A-3 also went inside that shed and inflicted cuts on him indiscriminately as a result of which he fell down and the accused persons fled away assuming that he was dead.

(d) Babu was immediately taken to the Government

Hospital, Mettur for treatment by one Radhakrishnan (PW-2) and Sengodan (PW-3) but he succumbed to his injuries. Radhakrishnan (PW-2) lodged a complaint against the accused persons with the Police Station, Mettur which was registered as FIR No. 402 of 2001 under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC').

(e) After investigation, charges were framed against all the above named accused persons including Senthil (A-7) under Section 302 read with Section 34, Section 120-B and Section 342 IPC and the case was committed to the Court of the Additional District Sessions Judge, Salem and was numbered as Sessions Case No. 254 of 2004. The Additional District Sessions Judge, by order dated 27.10.2005, sentenced A-1 to A-6 to suffer rigorous imprisonment (RI) for 6 months for the offence punishable under Section 342 of IPC and imprisonment for life for the offence punishable under Section 302 read with Section 34 IPC along with a fine of Rs. 1,000/- each, in default, to further undergo RI for 3 months. However, A-1 to A-7 were acquitted under Section 120-B IPC and A-7 was acquitted of all the charges.

(f) Being aggrieved of the order dated 27.10.2005, A-1 to A-6 filed Criminal Appeal No. 963 of 2005 before the High Court. The Division Bench of the High Court, by order dated 15.03.2007, disposed of the appeal by acquitting A-4 to A-6 while sustaining the conviction and sentence of A-1 to A-3.

(g) Being aggrieved by the order of the High Court, A-2 and A-3 has preferred this appeal by way of special leave before this Court.

3. Heard Mr. V. Kanagaraj, learned senior counsel for the appellants-accused and Mr. M. Yogesh Kanna, learned counsel for the respondent-State.

Contentions:

4. Mr. V. Kanagaraj, learned senior counsel for the

appellants submitted that the evidence of eye-witnesses, viz., PWs 2 & 3, read with the evidence of other prosecution witnesses, creates a doubt about the case of the prosecution, hence, the conviction based on such evidence cannot be sustained. He also submitted that inasmuch as Kasinathan (PW-14) - the Investigating Officer has stated in his evidence that he examined PW-3 on 20.04.2001 and PW-3 in his evidence before the Court contradicted his statement that the police never examined him, the evidence of PW-3 has to be disbelieved in toto. He also pointed out that with regard to the actual place of occurrence, the evidence of PWs 2 and 3 contradicts each other, therefore, it is not safe to rely upon their evidence. He further pointed out that both PWs 2 and 3, could not identify the weapon and this aspect was also not considered by the High Court. He also submitted that as per the evidence of PW-2, he has given only oral complaint which was reduced into writing by the police and was attested by one Maheswaran whereas as per the Investigating Officer (PW-14), PW-2 has given a written complaint and the same was registered and not attested by the aforesaid person. In such circumstance, learned senior counsel submitted that it is not safe to rely upon the case of the prosecution. He also submitted that the prosecution failed to establish the motive, i.e., the love affair by examining Arumugam@Arupaiyan and Palanichami. The said two persons having enmity between them and the deceased alleged to have died on supporting Arumugam@Arupaiyan and the accused persons alleged to have supported Palanichami.

5. On the other hand, Mr. Yogesh Kanna, learned counsel for the respondent-State submitted that the prosecution has fully established the motive for the crime. He also pointed out that the courts below, particularly, the High Court, rightly relied on the evidence of PWs 2 and 3, who witnessed the incident and convicted the appellants herein. He also pointed out that PW-2, being the author of the complaint (Exh. P-1), there is no reason to disbelieve his statement. He further highlighted that PWs 2 and 3 were the persons who brought the injured to the

hospital within 20 minutes after the occurrence and the presence of PW-3 was also proved by marking a copy of the Accident Register dated 18.04.2001 as Exh. P.-18. He finally submitted that due to minor contradictions in the evidence of the prosecution witnesses, the entire prosecution case cannot be thrown out.

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

Discussion:

7. It is not in dispute that out of 7 accused, the conviction relating to A-1 to A-3 was confirmed by the High Court and A-2 and A-3 alone preferred this appeal, therefore, we are concerned about the role and involvement of A-2 and A-3 in the commission of the crime as projected by the prosecution. Though the prosecution has examined PWs 2 to 5 as eye-witnesses to the crime, the High Court itself has disbelieved the evidence of PWs 4 and 5 and the entire prosecution case rests upon the evidence of PWs 2 and 3. We are conscious of the fact that relying upon the prosecution witnesses, the High Court set aside the conviction of A-4 to A-6 in toto and acquitted them. It is also relevant to point out that the High Court took note of the general principle that if the prosecution case is the same against all the accused or with regard to some of the accused on the same set of evidence available on record with reference to any of the accused, then the Court would not be committing any mistake in acquitting all the accused and conversely, if it is possible to do so, namely, to remove the chaff from the grain, the Court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact.

8. It is true that in the earliest information, there was no reference to the presence of PWs 2 to 5. In other words, their names did not find place in the complaint (Exh. P-1). As rightly observed by the High Court, there is no need to mention all the

details graphically in the complaint and it depends upon so many factors such as condition of the injured etc. It is also not in dispute that the incident occurred on 18.04.2001 at 8.20 p.m. Inasmuch as PWs 4 & 5 were examined by the Investigating Officer only on 20.04.2001, there were vast inconsistencies in noting the presence of the accused at the scene of occurrence as well as in the number of assailants at the earliest point of time and the High Court has rightly disbelieved the version of PWs 4 & 5. If there is any tangible and acceptable material from the evidence of PWs 2 and 3 in the earliest information, i.e., the complaint (Exh. P-1), which is believable, there is no reason to reject the case of the prosecution insofar as the appellants are concerned.

9. A perusal of the FIR (Exh. P-19) discloses that the incident occurred on 18.04.2001 at 8.20 p.m. and the information was received by the Police Station, Mettur at 10.00 p.m. on the same day itself and an FIR being No. 402 of 2001 was registered based on the written complaint by the complainant-Radhakrishnan (PW-2). It is stated that one Arumugam@Arupaiyan was his friend and he was having an affair with one Chitra (PW-6), who at the relevant time was working at Krishna Medicals. Another person, by name Palanichami, who was working as a car cleaner, too was in love with her. It is further stated that Arupaiyan confronted the said cleaner and when the driver of the car, viz., Senthil (A-7) questioned the same, Arupaiyan had beaten Senthil. Based on the said incident, the accused persons, including the present appellants, threatened the deceased and his persons. In the said complaint, PW-2 has made a specific reference about the role of A-1, A-2 and A-3. It is also asserted that it was A-1 to A-3 who inflicted cut injuries on Babu (the deceased). The complainant has also stated that with the aid of one Sengodan (PW-3), he admitted Babu in the Government Hospital at Mettur for treatment but in spite of the same, he succumbed to the injuries. The same has been endorsed by the Inspector, Mettur on 18.04.2001 at 2130 hrs. at Government Hospital, Mettur and

a case was registered in Mettur PS Crime No. 402/2001 under Section 302 IPC on 18.04.2001 at 2200 hrs. It is clear from the complaint that the complainant (PW-2) has implicated A-1 to A-3 (A-2 & A-3 are the appellants herein) and specifically stated that they are the persons who inflicted fatal injuries on Babu (the deceased). There was no delay in making complaint and the same was duly registered by the police.

10. Insofar as the evidence of PW-2 is concerned, he is also a resident of Kullaveerampatti in Mettur. In his evidence, he deposed that he knew all the accused persons and on 18.04.2001 when he and Babu (the deceased) were on election duty, they parked their Bullet Motor Cycle in front of Sengodan's Lathe Shed near Navapatti Agricultural Cooperative Bank and, thereafter, they went for the election work. When they returned after completing their work, at that time, suddenly, 5 persons came from the west main road and attacked on the back of Babu. Immediately, in order to escape, Babu ran inside the Lathe Shed of Sengodan (PW-3). In the open Court, PW-2 identified A-2 and A-3 correctly. He further deposed that after inflicting cut injuries to Babu, they ran towards the South of the Lathe Shed. Thereafter, PWs 2 & 3 went inside the Lathe Shed and saw that Babu was lying in a pool of blood and struggling for life. They took Babu in an auto-rickshaw and admitted him in a Hospital where Doctor informed them that Babu has died. The injuries of all other aspects have been noted in the Accident Register and a copy of the same has been marked as Exh. P-18. Though Shri R. Raju, the Doctor who issued Exh. P-18, i.e. the Accident Register, has not been examined, all the details have been explained by the Doctor who conducted the post mortem on the body of the deceased. It is also noted that PW-3 was also present in the hospital along with PW-2.

11. Deposition of Sengodan (PW-3) shows that he was also a native of Kullaveerampatti in Mettur. He also narrated the entire incident implicating A-1 to A-3. He deposed before

the court as to how Radhakrishnan (PW-2) came to the spot along with Babu (the deceased) and how he was attacked by A-1 to A-3. He also mentioned that it was Radhakrishnan (PW-2) who took the deceased to the Hospital in an auto-rickshaw along with him.

12. As rightly observed by the High Court, inasmuch as in the earliest document, namely, the complaint, there is a specific reference to the involvement and role of the appellants including A-1 supported by the evidence of PWs 2 & 3 and the name of PW-3 has also been mentioned in the accident register (Ex. P-18), there is no valid reason to reject the evidence of eye-witnesses, viz., PWs 2 & 3. No doubt, there were some variations in the statements of PWs 2 & 3 and the Investigating Officer (PW-14), however, when the variations are negligible about making of the complaint, taking note of the assertion of PWs 2 and 3 and various injuries inflicted on Babu, we concur with the conclusion arrived at by the High Court in accepting their evidence (PWs 2 & 3) on all aspects insofar as A-1 to A-3.

13. Inasmuch as the prosecution has established the motive for the commission of offence, the evidence of PWs 2 & 3 are acceptable insofar as the involvement of A-2 and A-3 in the crime in question is concerned. In view of the presence of PW-3, which is also noted in the Accident Register (Exh. P-18) and of the fact that the contradictions are minor in nature, we agree with the conclusion arrived at by the High Court. Consequently, we reject all the arguments advanced by learned senior counsel for the appellants.

14. In the light of the above discussion, we do not find any merit in the appeal, consequently, the same is dismissed.

R.P. Appeal dismissed.

FIONA SHRIKHANDE
v.
STATE OF MAHARASHTRA AND ANOTHER
(Criminal Appeal No. 1231 of 2013)

AUGUST 22, 2013

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

CODE OF CRIMINAL PROCEDURE, 1973:

s. 202 -Complaint - Order of Magistrate taking cognizance and issuing process against accused - Challenged - Held: Scope of enquiry u/s 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of allegations made in the complaint -- He is not expected to embark upon a detailed discussion of merits or demerits of the case, but only to consider inherent probabilities apparent on the statement made in the complaint -- Once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for higher courts to substitute its own discretion for that of the Magistrate -- In the instant case, the complaint discloses a prima facie case made out for initiating proceedings for the offence punishable u/s 504 IPC - Penal Code, 1860 - s.504.

PENAL CODE, 1860:

s. 504 - Intentional insult with intent to provoke breach of peace - Ingredients - Explained.

Respondent no. 2, filed a complaint case against her sister-in-law (accused-appellant) stating that the latter entered the Puja room and proceeded to drag the 'Devara' out in such a manner that all its frames were dislodged and idols of 'Kula Devatas' along with the lamp

lit therein fell to the floor. It was stated that the accused did this with the deliberate intention of wounding the religious feelings of the complainant and her husband. The Additional Chief Metropolitan Magistrate found a prima facie case to take cognizance of offence punishable u/s 504 IPC against the appellant and issued process to her. The revisional court and the High Court declined to interfere.

Dismissing the appeal, the Court,

HELD: 1. At the complaint stage, the scope of enquiry u/s 202 Cr. P. C. is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have. Once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the higher courts to substitute its own discretion for that of the Magistrate. [Para 11] [246-D-G]

Nagawwa v. Veeranna Shivalingappa Konjalgi and Others **1976 (0) Suppl. SCR 123 = (1976) 3 SCC 736, relied on.**

2. The ingredients of s.504, IPC are: (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to

commit any other offence. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction u/s 504 IPC. In the instant case, a reading of the complaint discloses that a prima facie case has been made out for initiating proceedings for the offence punishable u/s 504 IPC. [Para 13 and 15] [247-C-D, E-F; 248-B-C]

Case Law Reference:

1976 (0) Suppl. SCR 123 relied on para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1231 of 2013.

From the Judgment and Order dated 12.10.2012 of the High Court of Bombay in Criminal Writ Petition No. 2944 of 2012.

C.U. Singh, Siddhesh Bhole, Bhargava, V. Desai, Shreyas Mehrotra for the Appellant.

Uday U. Lalit, Farid F. Karachiwala for the Respondents.

The Judgment of the Court was delivered by

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

2. We are, in this case, concerned with an incident which happened in Flat No. 5, 2nd Floor, Goolestan, East Wing, Cuffe Parade, Mumbai, which led to the filing of a complaint alleging offences under Sections 294 and 504 IPC.

3. The Complainant (2nd respondent herein) is the sister-in-law of the accused, being the wife of the complainant's brother. Complainant and her brother are the sole surviving heirs of their parents who are no more. Facts indicate that the father

had the tenancy rights over the flat where the incident is alleged to have taken place.

4. Complaint Case No. 4701623/SS/11 was filed before the Additional Chief Metropolitan Magistrate, 47th Court at Esplanade Mumbai alleging offences punishable under Sections 298 and 504 IPC. Complainant stated that she moved into the above mentioned flat on 23.04.2011 along with her husband, her servants and necessary household belongings. Having come to know of the same, her brother along with accused came to India from USA and occupied one out of the four bedrooms in the flat and then indulged in several unlawful acts with a view to push the complainant out of the flat. On 8.5.2011, the accused accompanied by her daughter (born to her from her first marriage) came to the flat at about 4.00 p.m. and then left for filing a complaint before the Cuffe Parade Police Station against the complainant stating that she had broken the locks of their rooms in the flat. After lodging the complaint, she came back to the flat and rushed into the room where the idols are kept and shouted that she would not permit anyone to enter the Puja room. The complainant has described the incident as follows:

> "….As I and my husband were explaining to S.I. Pawar that she had no right whatsoever to deny or prevent our access to the Puja Room the Accused shouted that if I was so keen on doing Puja, she would move the Devara outside. She ran to the Devara and began to push it. Finding it a little heavy, she then ran in frenzy, picked up my clothes and that I had left on the bed, took them to the living room and threw them on the sofa. She then came back to the Puja Room and in a premeditated fashion made a second attempt to push the Devara out of the room. She proceeded to drag the Devara in a rough manner thereby dislodging all the frames and idols of our Kula Devatas making them fall to the floor. The lamp that I had lit also fell to the ground and the flame was extinguished. She did

> this with the deliberate intention of wounding the religious feelings of me and my husband knowing fully well that it would not only wound our religious feelings but will cause us a lot of hurt and anguish at this sacrilege at her hands. At this point of time, even S.I. Pawar tried to reason with her not to indulge in such a sacrilegious act. Even then, the Accused ignored the pleas of her own daughter and of S.I. Pawar to stop indulging in such sacrilege to our Gods, and intentional insult to me and my husband. Thereafter, Marisha shouted at the Accused and asked her to stop indulging in such acts."

(emphasis supplied)

5. On the basis of the above allegations, the complainant preferred a complaint on 18.5.2011, which was registered as Complaint Case No. 4701623/SS/11. Learned Additional Chief Magistrate, after perusal of the complaint, found a prima facie case to take cognizance under Section 504 IPC against the accused and, consequently, issued process to the accused vide his order dated 23.8.2011.

6. The appellant then preferred Criminal Revision Application No. 1124 of 2011 challenging the order issuing the process for offence punishable under Section 504 IPC. It was contented that the allegation that she had indulged in any action with an intention to provoke the complainant to break breach of public peace or commit any other offence, was totally unfounded. Further, it was also pointed out that no details had been furnished in that complaint to show in what manner the appellant had attempted to provoke the complainant, so as to attract Section 504 IPC. Further, it was pointed out that the complaint ought to have disclosed the actual words if, at all, used by the appellant, which would have provoked her to commit any other offence. It was also pointed out that the learned Magistrate has not properly understood the scope of Section 202 Cr.P.C. in issuing the process to the appellant.

7. The Revision Application was resisted to by the complainant and, referring to various statements made in the complaint, it was submitted that the ingredients of Section 504 IPC have been fully satisfied. Further, it was also pointed out that it is not necessary that the complaint should verbatim reproduce the words spoken by the appellant and that once the complaint makes out a prima facie case for issuing the process and the Court is satisfied of the same, the Court has got the power to issue the process under Section 202 Cr.P.C.

8. Learned Additional Sessions Judge, after examining the rival contentions, found no merits in the application and dismissed the same vide his order dated 27.7.2012. Aggrieved by the same, the accused preferred Criminal Writ Petition No. 2944 of 2012 for quashing the proceedings initiated under Section 504 IPC before the High Court. Learned single Judge of the High Court, after perusing the rival contentions, also found no merits in the said petition and dismissed the same, against which this appeal has been preferred.

9. Shri C.U. Singh, learned senior counsel appearing for the appellant, submitted that the learned Magistrate has committed an error in taking cognizance of an offence under Section 504 IPC, in the absence of any material specifying the insulting words actually used by the accused, which would have provocated the complainant to commit any other offence. Learned senior counsel submitted that the learned Magistrate ought not to have taken the cognizance and issued the process on a complaint which is nothing but verbatim reproduction of the language of Section 504 IPC, without any particulars.

10. Mr. Uday U. Lalit, learned senior counsel appearing for the respondents, on the other hand, contended that the complaint discloses sufficient materials leading to the offence under Section 504 IPC and the learned Magistrate has correctly taken cognizance of the same and issued the process and the Sessions Judge as well as the High Court has rightly rejected the prayer for quashing the proceedings initiated under Section

504 IPC. Learned senior counsel submitted that if the averments in the complaint *prima facie* make out a case, the Magistrate can always taken cognizance of the same and it is not necessary that the complaint should verbatim reproduce all the ingredients of the offence nor is it necessary that the complaint should state in so many words that the intention of the accused was fraudulent.

11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a *prima facie* case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to *prima facie* satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In *Nagawwa v. Veeranna Shivalingappa Konjalgi and Others* (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.

12. Having noticed the scope of Section 202 Cr.P.C., let us examine whether the ingredients of Section 504 IPC have been made out for the Magistrate to initiate proceedings. Section 504 is extracted for easy reference:

"504. Intentional insult with intent to provoke breach of the peace.- Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

13. Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, *prima facie,* that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the

occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.

15. We have already extracted the relevant portions of the complaint. If they are so read in the above legal settings, in our view, a *prima facie* case has been made out for initiating proceedings for the offence alleged under Section 504 IPC.

16. In such circumstances, we find no reason to take a different view from that of the High Court. The appeal is accordingly dismissed, without expressing any opinion on the merits of the case.

R.P. Appeal dismissed.

STATE OF ORISSA
v.
KHAGA @ KHAGESWAR NAIK & ORS.
(Criminal Appeal No. 1249 of 2013)

AUGUST 23, 2013

[R.M. LODHA AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860:

s.302/34 and s.300, Exception 4 - Ingredients of - Explained - Held: Evidence discloses that when the victim abused the accused, two of them brought weapons and lathi and attacked the victim - Thus, the accused had sufficient time to cool down and, therefore, it cannot be said that the crime was committed in a heat of passion - Further, deceased being an old man had merely abused the accused, verbal abuses are not fight - Therefore, this ingredient is also not satisfied - High Court erred in holding the convicts guilty u/s.304 (Part-II) - Judgment of High Court, in so far as it altered the conviction of respondents from s.302/34 to that of s.304/34, is set aside and the conviction as recorded by trial court, restored.

The respondents were prosecuted for committing offences punishable u/ss.457, 354, 506, 302 and 201 read with s.34 IPC. The prosecution case was that on 11.10.1995, at about 11.00 p.m. the three accused-respondents entered the room of the informant and molested her. Hearing her shouts, her father, who was sleeping in the adjacent room, reached there and abused the accused. Thereupon, one accused went to his nearby house and brought a 'budia', while the other brought a 'lathi' and both attacked the old man. His dead body was found lying in a 'nala', the following day. The trial court convicted the accused of the offences charged and

sentenced them, inter alia, to life imprisonment u/s.302/34 IPC. The High Court interfered only to the extent that it converted the offence punishable u/s.302 to one u/s.304 (Part-II) and sentenced the accused to 8 years RI.

In the instant appeal, the State challenged the alteration of the conviction from s.302/34 to s.304 (Part-II) read with s.34 IPC.

Allowing the appeal, the Court

HELD: 1.1 Exception 4 to s. 300, IPC shall be attracted only if the death is caused (i) without premeditation, (ii) in a sudden fight and (iii) in a heat of passion upon a sudden quarrel. If all these ingredients are satisfied, the Exception will come into play only when the court comes to the conclusion that the offender had not taken undue advantage or acted in a cruel or unusual manner. Above all, this section would be attracted when the fight had taken place with the person killed. [Para 8] [255-A-B]

Pappu vs. State of M.P. **2006 (3) Suppl. SCR 394 = (2006) 7 SCC 391 - relied on.**

1.2 On the facts of the instant case, Exception 4 to s. 300, IPC is not at all attracted. The convicts had entered the room of the daughter of the deceased in midnight, molested her and the poor father, perhaps because of his age, could not fight with the convicts and only abused them. Verbal abuses are not fight, as at least two persons are needed to fight. Therefore, this ingredient is not satisfied. [Para 10] [255-G-H; 256-A-B]

1.3 If time is taken to cool down, then the crime cannot be said to have been committed in a heat of passion. It is the specific case of the prosecution, as has also been accepted by the High Court, that when the victim abused the accused, accused 'K' being annoyed

brought a budia from his house and accused 'D' brought a lathi and both the accused attacked the victim. This clearly shows that both the convicts had sufficient time to cool down and, therefore, it cannot be said that the crime was committed in a heat of passion. The third accused was convicted with the aid of s.34, IPC. All of them had gone together and participated in the crime and, thus, shared the common intention. [Paras 11 and 12] [256-B-E]

1.4 The High Court erred in holding the convicts guilty u/s.304 (Part-II), IPC. The judgment of the High Court, in so far as it altered the conviction of the respondents from s.302/34 to that of s.304/34, IPC is set aside and the conviction as recorded by the trial court, is restored. [Paras 13 and 14] [256-F-G]

Case Law Reference:

2006 (3) Suppl. SCR 394 relied on Para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1249 of 2013.

From the Judgment and order dated 01.09.2009 of the High Court of Orissa at Cuttack in Criminal Appeal No. 274 of 1997.

Radha Shyam Jena for the Appellant.

Rachana Joshi Issar for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. State of Orissa, aggrieved by the judgment and order dated 1st September, 2009 passed in Criminal Appeal No.274 of 1997 whereby the Division Bench of the High Court has altered the conviction of the respondents from Section 302/34 to Section 304 Part II of

the Indian Penal Code (hereinafter to be referred to as 'the IPC'), has preferred this Special Leave Petition.

2. Leave granted.

3. In the present appeal, as we are concerned with the nature of the offence said to have been committed by the respondents (hereinafter to be referred to as 'the convicts'), we shall refer to only those facts which are necessary for decision on the said issue. Occurrence in the present case had taken place in Raghunathpali, a hamlet within the district of Sambalpur in the State of Orissa. As usual, on 11th October, 1995 Mohini Naik and her father, Tikeshwar Naik were sleeping at their home in separate rooms adjoining each other. When the entire village was fast asleep, the convicts came to their house at 11.00 P.M. and knocked the door in which Mohini, the rustic villager was sleeping. She was asked to open the door of her room. She could recognize the convict Khageswar from his voice and on enquiry as to who was knocking the door, Khageswar disclosed his name. She opened the door and saw the three convicts standing at the door. Two of them i.e. Khageswar and Kampa entered into her room and molested her. She raised alarm whereupon her father, Tikeshwar woke up and arrived at the spot and abused the convicts in obscene language. All the three convicts caught hold of her father, assaulted him by kicks and blows and dragged him towards the orchard. He was followed by his daughter, Mohini, the informant of the case. She was threatened that if she will come out, they will kill her. Mohini saw her father being assaulted from a distance by Khageswar and Dusasan. While Tikeswar was abusing the convicts, Khageswar brought one 'budia' from his house and gave blows to him. Similarly, convict Dusasan brought a 'lathi' from his home and assaulted her father. Ultimately, Mohini could see the dead body of her father lying in 'Nala' at about 3.00 P.M. on 12th October, 1995.

4. Police after usual investigation submitted the charge-

sheet and the convicts were ultimately committed to the Court of Session to face the trial. The convicts were charged for commission of the offences under Sections 457,354,506,302 and 201/34 of the IPC. They pleaded not guilty and claimed to be tried. Their defence is false implication but no defence witness has been examined.

5. The trial court on appreciation of evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt against the convicts and accordingly, it convicted them for offences under Sections 457,354,506,302, 201/34 of the IPC. On appeal, the High Court accepted the case of the prosecution but held that the allegations proved construed an offence under Section 304Part-II of the IPC. Accordingly, while maintaining the conviction of the respondents under Sections 457,354,506 and 201/34 of the IPC, the High Court altered their conviction from Section 302/34 of the IPC to that of Section 304 Part II of the IPC and sentenced them to undergo rigorous imprisonment for a period of eight years for offence under Section 304, Part II of the IPC. While doing so, the High Court observed as follows:

> "17. We, however, find that the prosecution has failed to establish that the accused persons had any prior motive or pre-meditation to kill deceased Tikeswar and admittedly, the prosecution has not been able to establish that there was any enmity between deceased Tikeswar or his daughter Mohini (P.W.4) with the accused persons. It appears, the accused persons who had gone to the house of P.W.4 to commit sexual act, on being abused by Tikeswar in obscene language, got provoked and attacked Tikeswar in a fit of anger and on the spur of the moment, without any prior planning or design. The act of the accused persons appears to be more by way of sudden retaliation in the heat of passion, on being abused by deceased Tikeswar in obscene language and was not pre-planned or intentional. Accordingly, we feel, the interest of

> justice would be best served, if the conviction of the accused persons under Section 302/34 IPC is modified and reduced to one under Section 304 Part II IPC. The conviction of the accused persons under Sections 457/354/506/201/34 IPC needs no interference."

6. This is how the appellant- State of Orissa is before us and challenges the alteration of conviction from Section 302/34 to that of Section 304 Part II of the IPC.

7. Mr. Radha Shyam Jena, learned counsel appearing on behalf of the appellant submits that the allegations proved clearly make out a case of murder punishable under Section 302 of the IPC and the High Court erred in altering the same to Section 304 Part II of the IPC. Mrs. Rachana Joshi Issar, learned counsel appearing on behalf of the respondents supports the judgment of the High Court and contends that the offence having been committed without pre-meditation in a heat of passion, Exception 4 to Section 300 of the IPC is clearly attracted and hence the allegation proved is culpable homicide not amounting to murder. Accordingly, she submits that the order of the High Court does not call for any interference.

8. The rival submission necessitates examination of Exception 4 to Section 300 of the IPC, same reads as follows:

> **"300. Murder.-**
>
> xx xx xx
>
> Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

From a plain reading of the aforesaid exception it is evident that it shall be attracted only if the death is caused (i) without premeditation, (ii) in a sudden fight and (iii) in a heat of passion upon a sudden quarrel. If all these ingredients are satisfied, the exception will come into play only when the Court comes to the conclusion that the offender had not taken undue advantage or acted in a cruel or unusual manner. Above all, this section would be attracted when the fight had taken place with the person killed.

9. The aforesaid view finds support from a judgment of this Court in *Pappu vs. State of M.P.* (2006) 7 SCC 391 in which it has been held as follows:

> "13…… The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case….."

10. In this background when we consider the facts of the present case, we have no manner of doubt that Exception 4 to Section 300 of the IPC is not at all attracted. In the case in hand, the convicts had entered the room of the daughter of the deceased in midnight, molested her and the poor father,

perhaps because of his age, could not do anything other than to abuse the convicts. He gave choicest abuses but did not fight with the convicts. Verbal abuses are not fight as it is well settled that at least two persons are needed to fight. Therefore, this ingredient is not satisfied.

11. Then, can it be said that the crime has been committed in a heat of passion? If time is taken to cool down, then the crime cannot be said to have been committed in a heat of passion. It is the specific case of the prosecution, which in fact, has also been accepted by the High Court that "when her father Tikeswar abused them, the accused Khageswar being annoyed brought a budia from his house, which is nearby, and dealt blows to her father and accused Dusasan brought a lathi and assaulted her father." This clearly shows that both the convicts had sufficient time to cool down and therefore, it cannot be said that the crime was committed in a heat of passion.

12. So far as the convict, Kampa @ Sricharan Naik is concerned, he is convicted with the aid of Section 34 of the IPC. All of them have come together and participated in the crime which goes to show that these convicts shared the common intention.

13. In the face of what we have observed above, it is clear that the High Court erred in holding that the offence for which the convicts can be held guilty shall be Section 304 Part II of the IPC.

14. In the result, we allow this appeal, set aside that portion of the judgment of the High Court whereby it had altered the conviction of the respondents from Section 302/34 of the IPC to that of Section 304/34 of the IPC and restore that of the trial court. The respondents, if have not already undergone the sentence awarded by the trial court, shall forthwith be taken into custody to serve out the remainder of the sentence.

R.P. Appeal allowed.

KAMLESH PRABHUDAS TANNA & ANOTHER
v.
STATE OF GUJARAT
(Criminal Appeal No. 1517 of 2007)

AUGUST 26, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

Appeal - High Court affirming the conviction - Held: It is the sacrosanct duty of appellate court, while sitting in appeal against judgment of trial court, to be satisfied that the guilt of accused has been established beyond all reasonable doubt -- Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal - In the instant case, High Court, while dealing with the statutory appeal has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason -- There is total lack of deliberation and proper ratiocination - Judgment of High Court set aside and matter remitted to it for disposal of the appeal afresh.

The marriage between appellant-accused No. 1 (A-1) and the sister of the informant (PW-2) was solemnized on 24.9.1997. Two children, one son and a daughter were born to the couple. On 11.9.2001, A-1 informed PW-2 telephonically that his sister had committed suicide. PW-2 lodged an FIR alleging that after the marriage of his sister, A-1 and his mother had been constantly asking for dowry of Rs.2 lacs, but as the said demand could not be satisfied they started ill-treating her in the matrimonial home because of which she was compelled to commit suicide.

The trial court convicted the accused of the charges and sentenced them on all counts including 8 years RI u/s. 304-B IPC. The High Court affirmed the conviction and the sentence.

Disposing of the appeal, the Court

HELD: 1.1 It is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial court, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not subserved, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt. [Para 12-13] [265-C-F]

1.2 In the instant case, the High Court, while dealing with the statutory appeal under the Code of Criminal Procedure, has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason. There is total lack of deliberation and proper ratiocination. There has been no assessment of evidence on record. The credibility of the witnesses has not appositely been adjudged. Affirmative satisfaction recorded by the High Court is far from being satisfactory. The trial judge has written an extremely confused judgment replete with repetitions and in such a situation it becomes absolutely obligatory on the part of the High Court to be more careful to come to a definite conclusion about the guilt of the accused persons, for their liberty

is jeopardized. Consequently, the judgment and order passed by the High Court is set aside and the matter is remitted to the High Court to dispose of the appeal afresh as expeditiously as possible. [Para 7, 12 and 14] [263-A-B; 265-A-C, F-G]

Padam Singh v. State of U.P. **1999 (5) Suppl. SCR 59 = (2000) 1 SCC 621;** *Rama and others v. State of Rajasthan* **(2002) 4 SCC 571;** *Iqbal Abdul Samiya Malek v. State of Gujarat* **2012 SCR 1012 = (2012) 11 SCC 312;** *Bani Singh v. State of U.P.* **1996 (3) Suppl. SCR 247 = (1996) 4 SCC 720;** *Majjal v. State of Haryana* **(2013) 6 SCC 798 - referred to.**

Case Law Reference:

1999 (5) Suppl. SCR 59	**referred to**	**para 8**
(2002) 4 SCC 571	**referred to**	**para 9**
2012 SCR 1012	**referred to**	**para 10**
1996 (3) Suppl. SCR 247	**referred to**	**para 10**
(2013) 6 SCC 798	**referred to**	**para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1517 of 2007.

From the Judgment and Order dated 06.09.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 531 of 2004.

Ranjbir Singh Yadav, P. Kakra, Anzu K. Varkey, Nidhi (A.C.) for the Appellants.

Pinky Behera, Hemantika Wahi, Subada Deshpanda for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Assailing the legal acceptability of

the judgment and order passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 531 of 2004 whereby the Division Bench of the High Court has given endorsement to the judgment passed by the learned Additional Sessions Judge, Fast Track Court No. 1, Jamnagar in Sessions Case No. 158 of 2001 wherein the learned trial Judge had found the appellants guilty of the offences under Sections 304B, 306 and 498A read with Section 34 of the Indian Penal Code (for short "IPC") and Section 4 of the Dowry Prohibition Act, 1961 and imposed the sentence of rigorous imprisonment of seven years and a fine of Rs.1,000/- on the first score, five years rigorous imprisonment and a fine of Rs.1,000/- on the second score, eighteen months rigorous imprisonment and a fine of Rs.500/- on the third count and six months rigorous imprisonment and a fine of Rs.250/- on the fourth count with the default clause for the fine amount in respect of each of the offences. The learned trial Judge stipulated that all the sentences shall be concurrent.

2. Filtering the unnecessary details, the prosecution case, in brief, is that the marriage between the appellant No. 1 and deceased Sandhya, sister of the informant, PW-2, was solemnized on 24.9.1997. After the marriage the deceased stayed with her husband and the mother-in-law, the appellant No.2 herein, at the matrimonial home situate at Jamnagar in Patel Colony Sheri No. 1. In the wedlock, two children, one son and a daughter were born. On 11.9.2001, the informant, brother of the deceased, got a telephonic call from the accused No. 1 that his sister Sandhya had committed suicide. On receipt of the telephone call he travelled from Goa along with his friend, Sandil Kumar, PW-20, and at that juncture, the husband of Sandhya, Kamlesh, informed that the deceased was fed up with the constant ill-health of her children and the said frustration had led her to commit suicide by tying a 'dupatta' around her neck. The brother of the deceased did not believe the version of Kamlesh, and lodged an FIR alleging that the husband and the mother-in-law of the deceased, after the marriage, had been constantly asking for dowry of Rs.2 lacs from the father of the

deceased, but as the said demand could not be satisfied due to the financial condition of the father, the husband and his mother started ill-treating her in the matrimonial home and being unable to tolerate the physical and mental torture she was compelled to commit suicide. Be it noted, as the death was unnatural, the police had sent the dead body for post mortem and the doctor conducting the autopsy opined that the death was due to suicide. After the criminal law was set in motion on the base of the FIR lodged by the brother, the investigating officer examined number of witnesses and after completing all the formalities laid the charge sheet under Sections 304B, 306 and 498A read with Section 34 IPC and under Section 4 of the Dowry Prohibition Act, 1961 before the competent Court, who, in turn, committed the matter to the Court of Session.

3. The accused persons denied the allegations and claimed to be tried. The prosecution, in order to establish the charges levelled against the accused persons, examined 22 witnesses and got marked number of documents. The defence chose not to adduce any evidence.

4. The learned trial Judge principally posed four questions, namely, whether the accused persons had inflicted unbearable torture on the deceased as well as caused mental harassment to make themselves liable for punishment under Section 498A IPC; whether the material brought on record established the offence under Section 304B read with Section 34 IPC; whether the physical and mental torture on the deceased compelled her to commit suicide on 11.9.2001 as a consequence of which the accused persons had become liable to be convicted under Section 306 read with Section 34 IPC; and whether the accused persons had demanded a sum of Rs.2 lacs towards dowry from the parents of Sandhya so as to be found guilty under Section 4 of the Dowry Prohibition Act. The learned trial Judge answered all the questions in the affirmative and opined that the prosecution had been able to prove the offences to the hilt and, accordingly, imposed the sentence as stated hereinbefore.

5. Grieved by the judgment of conviction and the order of sentence the appellants preferred Criminal Appeal No. 531 of 2004. The High Court at the stage of admission had suo motu issued notice for enhancement of sentence which was eventually converted to Criminal Revision Application No. 444 of 2007. The State had preferred Criminal Appeal No. 1889 of 2004 for the self-same purpose. The appeals and the revision application were disposed of by a common judgment dated 6.9.2007 whereby the Division Bench of the High Court concurred with the view expressed by the learned trial Judge and, accordingly, dismissed the appeals preferred by the accused as well as by the State and resultantly Criminal Revision initiated suo motu by the High Court also stood dismissed. The non-success in the appeal has compelled the accused-appellants to prefer this appeal by special leave.

6. We have heard Mr. Ranbir Singh Yadav, learned counsel for the appellant No. 1, Ms. Nidhi, learned counsel for the appellant No. 2, and Ms. Pinky Behera, learned counsel appearing for the respondent-State.

7. In the present appeal we are constrained to note that the High Court has really not appreciated and analysed the evidence on record and it is perceptible that it has narrated the prosecution version, referred to the names of witnesses examined and the documents exhibited during the trial, reproduced the findings recorded by the learned trial Judge, recorded the submissions of learned counsel for the respective parties and thereafter, referred to the post mortem report, the FSL report, inquest panchnama and other documentary evidence and, ultimately referring to the deposition of prosecution witnesses in a cryptic manner, has come to hold that there is no lacuna in the oral evidence and the same has been duly corroborated by the documentary evidence. The High Court has dealt with the factum of suicide at some length which was not disputed. Thereafter, there has been advertence to the issue of enhancement of sentence in the appeal preferred by the State and how the said appeal did not merit consideration.

As we perceive, the High Court, while dealing with a statutory appeal under the Code of Criminal Procedure, has failed to appreciate and scrutinize the evidence in proper perspective, and the reasons ascribed by it for accepting the evidence and concurring with the view of the trial court is not supported by any acceptable reason.

8. At this juncture, we are obliged to state that though it may be difficult to state that the judgment suffers from sans reasons, yet it is not at all difficult to say that the reasons ascribed are really apology for reasons. If we allow ourselves to say so, one may ascribe certain reasons which seem to be reasons but the litmus test is to give seemly and condign reasons either to sustain or overturn the judgment. The filament of reasoning must logically flow from requisite analysis, but, unfortunately, the said exercise has not been carried out. In this context, we may refer with profit to the decision in *Padam Singh v. State of U.P.*[1], wherein a two-Judge Bench, while dealing with the duty of the appellate court, has expressed thus: -

> "It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court."
>
> [Emphasis supplied]

1. (2000) 1 SCC 621.

9. In *Rama and Others v. State of Rajasthan*[2], the Court has stated about the duty of the appellate court in the following terms: -

> "It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

10. In *Iqbal Abdul Samiya Malek v. State of Gujarat*[3], relying on the pronouncements in *Padam Singh* (supra) and *Bani Singh v. State of U.P.*[4], this Court has reiterated the principle pertaining to the duty of the appellate court.

11. Recently, a three-Judge Bench in *Majjal v. State of Haryana*[5] has ruled thus: -

> "It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter."

2. (2002) 4 SCC 571.
3. (2012) 11 SCC 312.
4. (1996) 4 SCC 720.
5. (2013) 6 SCC 798.

12. Tested on the touchstone of the aforesaid principles we find that there is total lack of deliberation and proper ratiocination. There has been really no assessment of evidence on record. The credibility of the witnesses has not appositely been adjudged. Affirmative satisfaction recorded by the High Court is far from being satisfactory. We are pained to say so, as we find that the learned trial Judge has written an extremely confused judgment replete with repetitions and in such a situation it becomes absolutely obligatory on the part of the High Court to be more careful to come to a definite conclusion about the guilt of the accused persons, for their liberty is jeopardized. It may be stated at the cost of repetition that it is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record.

13. It can be stated with certitude that appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not subserved, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt. Ergo, the emphasis is on the duty of the appellate court.

14. Consequently, the impugned judgment and order passed in Criminal Appeal No. 531 of 2004 by the High Court is set aside and the appeal preferred by the appellants is remitted for fresh disposal. The High Court is requested to dispose of the appeal as expeditiously as possible so that the Sword of Damocles is not kept hanging on the head of the appellants. As the appellants are on bail, they shall continue to remain on bail on same terms and conditions till the disposal of the appeal by the High Court.

15. The appeal stands disposed of accordingly.

R.P. Appeal disposed of.

PEPSU ROAD TRANSPORT CORPORATION
v.
NATIONAL INSURANCE COMPANY
(Civil Appeal No. 8276 of 2009)

AUGUST 26, 2013

[GYAN SUDHA MISRA AND KURIAN JOSEPH, JJ.]

MOTOR VEHICLES ACT, 1988:

s. 149 (2) (a) (ii) - Plea of fake driving licence raised by insurer-Held: Onus is on the insurer to establish the defence - As far as owner of vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence - Thereafter he has to satisfy himself as to the competence of the driver - If that is done, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle - He is not expected to verify the genuineness of driving licence with the licensing authority - In the instant case, the driver had been put to a driving test and had also been imparted training by the appellant employer - In view of the evidence of licensing authority, it cannot be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake - Insurer is liable to indemnify the insured.

The instant appeal filed by the insured arose out of the order of the Motor Accidents Claims Tribunal whereby it awarded the dependants of a fatal accident victim a compensation of Rs. 11,03,404/- and absolved the insurer of its liability holding that the licence issued to the driver was found to be fake.

Allowing the appeal, the Court

HELD: 1.1 In a claim for compensation, it is certainly

open to the insurer u/s 149(2)(a)(ii) of the Motor Vehicles Act, 1988 to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. [para 8] [274-C-F]

United India Insurance Company Limited vs. Lehru and Others **2003 (2) SCR 495 = (2003) 3 SCC 338;** *National Insurance Company Limited vs. Swaran Singh and Others* **2004 (1) SCR 180 = 2004 (3) SCC 297,** *National Insurance Company Limited vs. Laxmi Narain Dhut* **2007 (3) SCR 579 = (2007) 3 SCC 700-relied on.**

1.2 In the instant case, the driver, in the process of employment, had been put to a driving test and he had been imparted training also by the employer. The accident took place after six years of his service. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. Further, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. The respondent - insurance company is liable to indemnify the appellant. [para 9-10] [275-B-E]

Case Law Reference:

2003 (2) SCR 495	**relied on**	**para 5**
2004 (1) SCR 180	**relied on**	**para 6**
2007 (3) SCR 579	**relied on**	**para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8276 of 2009.

From the Judgment and Order dated 17.09.2008 of the High Court of Punjab & Haryana at Chandigarh in First Appeal from Order No. 1477 of 2008.

K.K. Mohan for the Appellant.

S.L. Gupta, Vikash Chandra, Ram Ashray, Inder Mohan Singh, Kamlesh Vaswani (for Shalu Sharma) for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J. 1. Breach of conditions under Section 149(2)(a) of the Motor Vehicles Act, 1988 absolves the insurer of its liability to the insured. Section 149(2)(a)(ii) deals with the conditions regarding driving licence. In case the vehicle at the time of accident is driven by a person who is not duly licensed or by a person who has been disqualified from holding or obtaining a driving licence during the period of disqualification, the insurer is not liable for the compensation. In the instant case, we are called upon to deal with a situation where the driver allegedly possessing only a fake driving licence.

2. Widow and two minor sons of late Gurjinder Singh Modi are claimants before the Motor Accidents Claims Tribunal, Chandigarh in M.A.C.T. No. 63/481 filed in the year 2002. The allegation was that Gurjinder Singh Modi died out of a motor accident on 04.10.2001 on account of the negligent driving of bus no. PB-11-K-8512 of the Pepsu Road Transport

Corporation (for short, 'PRTC'), Patiala, the appellant herein. Rs.30,00,000/- was claimed as compensation. Negligence was proved. The Tribunal awarded Rs.11,03,404/- as compensation. However, the insurance company was absolved of its liability since the licence issued to the driver was found to be fake. The insurance company took the Local Commissioner to licensing authority, Darjeeling, West-Bengal and, on verification of the available records, it was reported that no such licence as possessed by the driver has been issued by the said licensing Authority at Darjeeling. Thus, aggrieved, the owner of the vehicle, viz., PRTC, Patiala has come up in appeal.

3. It is the contention of the appellant that they had appointed the third respondent - Nirmal Singh as driver with PRTC in 1994, he was given proper training from the driving school at Patiala and, thus, having taken reasonable steps in verifying the driving licence and, thereafter, having trained the driver by the employer himself, it cannot be said that the insurance company is not liable. There is no breach of any conditions by the insured. In other words, it is contended that even if the licence is fake, the owner having taken all reasonable steps, the insurer is liable. The other contention on merits is that the insurer had not established before the Tribunal that the licence issued to Nirmal Singh was fake. In this context, our reference has been invited to Annexure-2-evidence of the licensing authority before the Tribunal. It is stated that as per the available office records, no driving licence was issued to Nirmal Singh on 12.06.1985 with no.12385 of 1985. Licence numbers of 1985 as per record start from 22579 of 1985. Photocopy of the register maintained for issuing the licences was marked as R-1. However, it was also stated that: -

> "…It can be possible that other licence register pertaining to year 1985 are not available today as it might be misplaced during the shifting of our office…"

Still further, it was stated:

> "… It is possible that the registers which are misplaced might contain the name of Nirmal Singh."

4. Though the appellant is entitled to succeed on the ground that the insurer had not proved beyond doubt that driver Nirmal Singh did not possess a valid driving licence, we shall also advert to the legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed a fake driving licence.

5. In *United India Insurance Company Limited vs. Lehru and Others*[1], a two-Judge Bench of this Court has taken the view that the insurance company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer. The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer not taking appropriate action to get the same duly verified from the issuing authority. We may extract the relevant paragraphs from the judgment:

> "18. Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a "breach". As held in Skandia and Sohan Lal Passi cases the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that

1. (2003) 3 SCC 338.

he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic "No". To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relatives of the person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance, at least third party insurance, compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no

breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/ insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the views expressed therein and see no reason to take a different view."

6. The matter was subsequently considered by a three-Judge Bench of this Court in National Insurance Company Limited vs. Swaran Singh and Others . The said Bench was of the view that in case the insured did not take reasonable and adequate care and caution to verify the genuineness or otherwise of the licence, the liability would still be open-ended and will have to be determined on the basis of facts of each case. The relevant discussions are available at paragraphs 92, 99, 100 and 101, which are extracted below:

"92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In Lehru case, the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and

2. (2004) 3 SCC 297.

not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever."

"99. So far as the purported conflict in the judgments of Kamla and Lehru is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case."

"100. This Court, however, in Lehru must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case."

"101. The submission of Mr. Salve that in Lehru case, this Court has, for all intent and purport, taken away the right of insurer to raise a defence that the licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver.

7. *Swaran Singh's* case (supra) was subsequently considered by a two-Judge Bench of this Court in *National Insurance Company Limited vs. Laxmi Narain Dhut*[3]. It was explained that:

"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer

3. (2007) 3 SCC 700.

against either the insured or the third parties. To avoid its liability towards the insured the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time…"

8. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in *Swaran Singh's* case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such

circumstances, the insurance company is not liable for the compensation.

9. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position.

10. In the above circumstances, the appeal is allowed. The fourth respondent - insurance company is liable to indemnify the appellant and, hence, there can be no recovery of the compensation already paid to the claimants.

11. There is no order as to costs.

R.P. Appeal allowed.

RAJASTHAN AGRICULTURE UNIVERSITY, BIKANER

v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 7160 of 2013)

AUGUST 27, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Service Law:

Retiral benefits – CPF Scheme and Pension Scheme – Belated option of employee for CPF scheme accepted by employer – After getting retiral benefits accordingly, employee claiming benefit of Pension Scheme – Held: A special favour was done to respondent by appellant University by accepting his option even after the prescribed period was over, and, therefore, he cannot be permitted to take undue advantage of the same – Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17.8.1991.

Respondent No. 2, while in employment of the appellant-University, belatedly opted for the C.P.F. Scheme, which was accepted by the appellant-University. On his retirement from the appellant-University, he was paid all his retirement benefits payable to him under the C.P.F. Scheme. Thereafter, he approached the University stating that as he had not exercised his option within the prescribed period of 3 months from the date of the Notification dated 17.08.1991, as per the conditions incorporated in the said Notification, he should have been deemed to have opted for the Pension Scheme and, therefore, he should be paid pension as per the Pension Scheme. The University did not accept the prayer. Respondent No. 2 then filed a writ petition, which was allowed by the single Judge of the High Court, giving a direction to the appellant-University to consider his case. The Division Bench of the High Court directed the

appellant-University to give pension to respondent No. 2.

Allowing the appeal, the Court.

HELD: Though, respondent No. 2 had not exercised his option within the period prescribed under the Notification dated 17.8.1991, but when he exercised the option on 3.1.1992, for continuing to be under the C.P.F. Scheme and the appellant-University accepted the same, he would not get benefit under the deeming fiction incorporated in the Notification. It was his conscious effort to see that he continues with the C.P.F. Scheme. A special favour was done to respondent No. 2 by the employer by accepting his option ever after the prescribed period was over, and, therefore, he cannot be permitted to take undue advantage of the same. The High Court was in error by giving a direction to the appellant-University that respondent No. 2 should be given pension as if he had opted for the Pension Scheme. [para 22,24 and 25] [282-B-C, F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7160 of 2013.

From the Judgment & Order dated 20.01.2011 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 32 of 2008.

Dr. Manish Singhvi, AAG, Pragati Neekhra, H.D. Thanvi, Rishi Motoliya, Preeti Thanvi, Sarad Kumar Singhania, S.S. Shamshery, V.M. Vishnu, Arun Bhardwaj, Bharat Sood, C.S. Ashri, Milind Kumar for the appearing parties.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the judgment delivered in D.B. Civil Special Appeal (Writ) No. 32 of 2008 in S.B. Civil Writ Petition No. 1738 of 2003 dated 20th January, 2011, by the High Court of Rajasthan, the Rajasthan Agriculture University has filed this appeal.

3. The facts giving rise to the present appeal, in a nutshell,

are as under :-

Respondent No. 2 was in employment of the appellant-University. Prior to his employment under the appellant-University, respondent No. 2 had worked with the State of Rajasthan in Veterinary & Animal Husbandry Department. After taking voluntary retirement from his State service, he had joined the erstwhile Mohanlal Sukhadia University, Udaipur. Subsequently, the said university had been bifurcated and the appellant-University was formed. Service of respondent No. 2 had been taken over by the appellant-University.

4. The question which is to be decided is whether respondent No. 2 is entitled to pension as claimed by him or he is eligible to get his retirement benefits under Contributory Provident Funds Scheme (for short "the C.P.F. Scheme").

5. Upon taking voluntary retirement from the State of Rajasthan, respondent No. 2 is getting pension from the State of Rajasthan in respect of the services rendered by him to the State of Rajasthan. After being in employment of the appellant-University, along with entire staff of the appellant-University, respondent No. 2 was also asked to give his option whether he was inclined to opt for a Pension Scheme or for a C.P.F. Scheme. The options were invited by the appellant-University under Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17th August, 1991. It was stated in the said Notification that the employees who were in service of the appellant-University as on 1st January, 1990, shall have to exercise their option in writing, either for the Pension Scheme or for continuation under the existing C.P.F. Scheme within 3 months from the date of the Notification. It was further provided in the Notification that the employees, who would not exercise the option within 3 months from the date of the Notification, would be deemed to have opted for the Pension Scheme.

6. Unfortunately, respondent No. 2 could not intimate his option to the appellant-University within the period prescribed but by his letter dated 3rd January, 1992, he had opted for the C.P.F. Scheme. He specifically stated in his communication dated 3rd January, 1992 that he did not opt for the Pension Scheme. Perhaps as a special case, the option exercised by him had been accepted by the appellant-University and the

acceptance was kept on record after the authorized signatory of the appellant-University had accepted the option. Thus, his option for continuation under the C.P.F. Scheme had been accepted by the appellant-University.

7. On 30th June, 1997, respondent No. 2 retired from service and as per the record of the University, as he had opted for the C.P.F. Scheme, he was paid all his retirement benefits payable to him under the C.P.F. Scheme.

8. Respondent No. 2, thereafter made a grievance that as he had not exercised his option within the prescribed period of 3 months from the date of the Notification dated 17th August, 1991, as per the conditions incorporated in the said Notification, he should have been deemed to have opted for the Pension Scheme and therefore, he should be paid pension as per the Pension Scheme.

9. The request made by respondent No. 2 had not been accepted because the appellant-University had already accepted the option of C.P.F. Scheme exercised by him.

10. In the circumstances, after about 6 years, respondent No. 2 filed S.B. Civil Writ Petition No. 1738 of 2003 praying for a direction to the effect that the appellant-University should pay pension to him. The High Court allowed the petition by giving a direction to the appellant-University to consider the case of respondent No. 2. Being aggrieved by the aforestated direction, the appellant-University had filed D.B. Civil Special Appeal (W) No. 32 of 2008 and at the same time a decision was taken by the appellant-University not to change its decision with regard to giving benefit of the C.P.F. Scheme to respondent No. 2.

11. By virtue of the impugned judgment delivered by the High Court, the appellant-University was directed to give pension to respondent No. 2. Thus, the Division Bench of the High Court has directed the appellant-University to change the manner in which retirement benefits should be calculated and give pension to respondent No. 2 as if he had opted for the Pension Scheme.

12. The appellant-University has been aggrieved by the aforestated judgment and therefore, this appeal has been filed.

13. The learned counsel appearing for the appellant-University had submitted that having once opted for the C.P.F. Scheme under letter dated 3rd January, 1992 and when the said request made by the respondent No. 2 had been accepted by the appellant-University and as the amount payable to respondent No. 2 had already paid to him, it was not open to respondent No. 2 to change his stand and ask for pension as if he had opted for the Pension Scheme. The learned counsel had further submitted that the writ petition had been filed after more than 5 years and that too, after accepting the total amount payable to him under the C.P.F. Scheme.

14. The learned counsel had submitted that respondent No. 2 could not have been permitted to change his stand after his retirement. He had drawn our attention to the letter of option duly signed and filed before the appellant-University by respondent No. 2 and the said option exercised by him, even though at a belated stage, had been accepted by the appellant-University. This was a favour done to respondent No. 2 by the appellant-University.

15. According to the learned counsel, it was not a case where no option was exercised by respondent No. 2. It is true that respondent No. 2 did not exercise his option within the period prescribed but his delay in exercising option had been impliedly condoned and the option exercised by respondent No. 2 was accepted by the appellant-University and therefore, the deeming fiction incorporated in the Notification would not be of any help to respondent No. 2, so as to treat him as if he had opted for the Pension Scheme by default.

16. The learned counsel for the appellant-University had further submitted that the University has limited funds and if such changes in exercise of option is permitted, the appellant-University would be in great financial difficulties. He had also submitted that the High Court had become unduly lenient towards respondent No. 2. He had, therefore, submitted that the appeal should be allowed and the direction given by the High Court with regard to payment of pension to respondent No. 2 be quashed.

17. On the other hand, the learned counsel appearing for respondent No. 2 had vehemently submitted that once respondent No. 2 had not exercised his option within the period

prescribed in the Notification dated 17th August, 1991, he ought to have been treated as if he had opted for the Pension Scheme as per the deeming fiction incorporated in the Notification. He had further submitted that immediately upon retirement, respondent No. 2 had made a grievance that he was wrongly considered to have opted for the C.P.F. Scheme and had written several letters and therefore, in fact, there was no delay as alleged. The learned counsel had also tried to compare provisions with regard to payment of retirement benefits by other universities of the State of Rajasthan and had made an effort to persuade this Court to the effect that respondent No. 2 ought to have been given pension in view of the fact that similarly situated employees of other universities were also paid pension.

18. We have heard the learned counsel and also have considered the relevant record forming part of the paper book.

19. We are of the view that the High Court ought not to have given a direction to the appellant-University to give pension to respondent No. 2 as if he had opted for the Pension Scheme.

20. It is an admitted fact that respondent No. 2 had exercised his option not within the period prescribed but little late. Though late, respondent No. 2 had opted for joining or continuing with the C.P.F. Scheme.

21. The appellant-University accepted the option exercised by respondent No. 2 and therefore, it cannot be said that the deeming fiction incorporated in the Notification would help respondent No. 2. For sake of convenience, relevant extract of the Notification dated 17th August, 1991, is reproduced hereinbelow :-

> "....Thus all employees who were in service on 1.1.1990 shall have to exercise their option in writing, either for the pension scheme under these regulations or for continuance under the existing C.P.F. Scheme, within 3 months from the date of notification of this provision and shall submit the same to the Comptroller, Rajasthan Agriculture University, Bikaner in the prescribed form. The existing employees who do not exercise option within the period specified under these regulations shall be deemed to have opted for the pension scheme. Option once exercised shall be final and irrevocable..."

22. Though, respondent No. 2 did not exercise his option within the period prescribed under the aforestated Notification, when he had exercised the option on 3rd January, 1992, for continuing to be under the C.P.F. Scheme and when the appellant-University had graciously accepted the option exercised by respondent No. 2, he would not get benefit under the deeming fiction incorporated in the Notification. It would be unfair to the University if the submission of respondent No. 2 is accepted. A special favour was done to respondent No. 2 by accepting his option even after the prescribed period was over. Now, at this stage, after his retirement, respondent No. 2 wants to take undue advantage of the favour done to him by the appellant university, which cannot be permitted. Had respondent No. 2 not exercised his option at all, he would have been surely treated to have accepted the Pension Scheme but as he had given his option late, which had been graciously accepted by the appellant-University, it cannot be said that respondent No. 2 should be treated to have accepted the Pension Scheme.

23. All averments pertaining to employees of other universities are not relevant because each employer university would have its own scheme with regard to payment of retirement benefits to its employees.

24. We may add here that respondent No. 2 is a highly literate person and he must have known the consequences, when he had opted for the C.P.F. Scheme under his letter of option dated 3rd January, 1992. It was his conscious effort to see that he continues with the C.P.F. Scheme and the said effort was respected by the appellant-University by showing special favour, as his option was accepted even after the time prescribed in the Notification was over.

25. For the aforestated reasons, we are of the view that the High Court was in error by giving a direction to the appellant-University that respondent No. 2 should be given pension as if he had opted for the Pension Scheme.

26. The appeal stands allowed with no order as to costs.

R.P. Appeal allowed.