ARIKALA NARASA REDDY

v.

VENKATA RAM REDDY REDDYGARI & ANR.

(Civil Appeal Nos. 5710-5711 of 2012)

FEBRUARY 4, 2014

[DR. B.S. CHAUHAN, J. CHELAMESWAR AND M.Y. EQBAL, JJ.]

REPRESENTATION OF PEOPLE ACT, 1951:

s.87 - Election petition - Applicability of Code of Civil Procedure, 1908 and Evidence Act, 1872 - Discussed.

ss.97, 100 - Election petition filed on the ground that 3 votes in favour of election petitioner were wrongly rejected and one vote of Returning Candidate ought to have been declared invalid - Order for recounting of votes - Held: Election petition had raised dispute only about 4 votes and the case should have been restricted only to that limited question - High Court wrongly enlarged the scope of dispute by counting and recounting - On consideration of the alleged 4 votes in the election petition, it was found that both parties got equal number of votes - In such a situation, matter required to be decided by draw of lots u/s.102 of the Act - Lots drawn in the presence of all parties in open court - Result in favour of appellant and he succeeded.

s.94 - Secrecy of a ballot - Held: Is to be preserved in view of the statutory provision contained in s.94 of the Act - Secrecy of ballot has always been treated as sacrosanct and indispensable adjunct of free and fair election - Such principle of secrecy is based on public policy aimed to ensure that voter may vote without fear or favour and is free from any apprehension of its disclosure against his will.

ss.97, 100 - Election petition and Recrimination petition - Held: In a composite election petition wherein the petitioner claims not only that the election of the returned candidate is void but also that the petitioner or some other person be declared to have been duly elected, s.97 of the Act comes into play and allows the returned candidate to recriminate and raise counter-pleas in support of his case, "but the pleas of the returned candidate u/s.97 have to be tried after a declaration has been made u/s.100 of the Act." - If the returned candidate does not recriminate as required by s.97, then he cannot make any attack against the alternative claim made by the election petitioner.

ELECTION LAWS:

Election dispute - Applicability of doctrine of equity - Held: Statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute - All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation - Representation of People Act, 1951.

Recounting of votes - Essential conditions to be satisfied - Discussed.

Jurisdiction of court to order recount of votes - Held: Court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void - The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts.

Instructions contained in the Handbook for Returning Officer - Binding effect - Held: It is a settled legal proposition that the instructions contained in the handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers.

CONDUCT OF ELECTIONS RULES, 1961: r.73(2)(d) - Marking and writing on ballot papers - Held: r.73(2)(d) provides that a ballot paper shall be invalid if "there is any mark or wring by which the elector can be identified." - There must be some casual connection between the mark and the identity of the voter and such writing or marking itself must reasonably give indication of the voter's identity - As to whether such marking or writing in a particular case would disclose the identity of the voter, would depend on the nature of writing or marking on the ballot involved in each case - Therefore, such marking or writing must be such as to draw an inference about the identity of the voter.

PLEADINGS: Held: A decision of the case should not be based on grounds outside the pleadings of the parties - In absence of pleadings, evidence if any, produced by the parties, cannot be considered - No party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them.

The election for the post of Member of Legislative Council (MLC) was held on 30.03.2009 wherein out of 706 votes, 701 votes were cast. The votes were counted on 02.04.2009 in which both the parties got 336 each while 29 votes were declared invalid. The appellant asked for recounting in which the appellant got 336 while respondent no. 1 got 335 and the appellant was declared elected. Respondent no. 1 filed election petition alleging that 3 votes polled in his favour were wrongly rejected and one vote of the appellant ought to have been

declared invalid.

The appellant filed a Recrimination Petition under Section 97 of the Representation of People Act, 1951 and also written statement. Respondent no. 2, the Returning Officer also filed written statement. Meanwhile, the High Court directed the Registrar (J) to scrutinize and recount all the ballot papers and submit report. The appellant filed SLP against this in which it was ordered that the question of validity of 3 votes should be decided first and then recounting be done, if found necessary. Pursuant thereto, the High Court on scrutiny held that the said 3 votes (Ex X-1, X-2, X-3) were wrongly rejected and same be counted in favour of respondent no. 1. The appellant filed an SLP against this and it was held that it was not appropriate to interfere at that stage but the appellant may urge the said point at the time of final hearing. The High Court during the trial of the election petition picked up 17 ballot papers from the bundle of rejected ballot papers as determined by the Returning Officer and marked the same as Ex.Y-1 to Y-17. The two ballot papers were picked up from the valid votes of the appellant and marked the same as Ex.R-1 and R-2 and four ballot papers were picked up from the valid votes of respondent no.1 and marked as Ex.P-16 to P-19. After considering all these ballot papers, the High Court allowed the election petition holding that certain votes cast in favour of respondent no.1 had wrongly been rejected and the vote which should have been declared as invalid had wrongly been counted in favour of the appellant as valid and thus, the respondent no.1 was declared as successful candidate and elected as MLC. The instant appeals were filed challenging the order of the High Court.

Disposing of the appeal, the Court

HELD: 1.1 Section 87 of the Representation of People Act, 1951 provides that the e o

be tried by the High Court applying the provisions of the Code of Civil Procedure, 1908 (CPC) "as nearly as may be" and in accordance with the procedure applicable under CPC and the provisions of the Indian Evidence Act, 1872 shall also be applicable subject to the provisions of the Act. [Para 6] [307-E-F]

1.2 It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow. "Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results". However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step. [Para 7] [307-G-H; 308-A-E]

1.3 Before the court permits the recounting, the following conditions must be satisfied: (i) The court must be satisfied that a prima facie case is established;(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;(iv) An opportunity should be given to file objection; and (v) Secrecy of the ballot should be guarded. [Para 8] [308-E-G]

1.4 The court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with pre[illegible]y

averments of material facts. [Para 9] [308-H; 309-A-E]

Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors. **AIR 1964 SC 1249: 1964 SCR 235;** *Bhabhi v. Sheo Govind & Ors.* **AIR 1975 SC 2117:1975 (0) Suppl. SCR 202;** *M. Chinnasamy v. K.C. Palanisamy & Ors.* **(2004) 6 SCC 341: 2003 (6) Suppl. SCR 17 - relied on.**

1.5 There may be an exceptional case where the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions, but in refutation of the case set up by the other side. Only in such circumstances, absence of an issue may not be fatal and a party may not be permitted to submit that there has been a mis-trial and the proceedings stood vitiated. [Para 10] [309-G-H]

Kalyan Singh Chouhan v. C.P. Joshi **AIR 2011 SC 1127: 2011 (2) SCR 216 - relied on.**

2.1 The secrecy of a ballot is to be preserved in view of the statutory provision contained in Section 94 of the Act. Secrecy of ballot has always been treated as sacrosanct and indispensable adjunct of free and fair election. Such principle of secrecy is based on public policy aimed to ensure that voter may vote without fear or favour and is free from any apprehension of its disclosure against his will. Though secrecy of ballot is an inherent principle in conducting elections, however, the said principle has diminished to some extent in view of the rule of whip as prescribed in Tenth Schedule to the Constitution of India. The issue of marking and writing on ballot papers is governed by the Conduct of Elections Rules, 1961. Rule 73(2)(d) provides that a ballot paper shall be invalid if "there is any mark or wring by which the elector can be identified." There must be some casual connection between the mark and the identity of the voter and such writing or marking itself must reasonably

give indication of the voter's identity. As to whether such marking or writing in a particular case would disclose the identity of the voter, would depend on the nature of writing or marking on the ballot involved in each case. Therefore, such marking or writing must be such as to draw an inference about the identity of the voter. [Para 11 to 14, 17] [310-A-B, E-H; 311-A-B; 313-F-G]

S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra & Ors. **AIR 1980 SC 1362: 1980 SCR 1302;** *Kuldip Nayar v. Union of India & Ors.* **AIR 2006 SC 3127: 2006 (5) Suppl. SCR 1;** *People's Union for Civil Liberties & Anr. v. Union of India & Anr.* **(2013) 10 SCC 1;** *Dr. Anup Singh v. Shri Abdul Ghani & Anr.* **AIR 1965 SC 815: 1965 SCR 38;** *Era Sezhiyan v. T.R. Balu & Ors.* **AIR 1990 SC 838: 1990 SCR 767;** *Hari Vishnu Kamath v. Syed Ahmad Ishaque & Ors.* **AIR 1955 SC 233: 1955 SCR 1104;** *Km. Shradha Devi v. Krishna Chandra Pant & Ors.* **AIR 1982 SC 1569: 1983 (1) SCR 681 - relied on.**

2.2. Whether election petition and recrimination petition have to be tried simultaneously? In a composite election petition wherein the petitioner claims not only that the election of the returned candidate is void but also that the petitioner or some other person be declared to have been duly elected, Section 97 of the Act comes into play and allows the returned candidate to recriminate and raise counter-pleas in support of his case, "but the pleas of the returned candidate under Section 97 have to be tried after a declaration has been made under Section 100 of the Act." The first part of the enquiry is in regard to the validity of the election of the returned candidate which is to be tried within the narrow limits prescribed by Section 100 (1) (d) (iii) while the latter part of the enquiry governed by Section 101 (a) will have to be tried on a broader basis permitting the returned candidate to lead evidence in support of the pleas

recrimination petition. If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the election petitioner. In such a case an enquiry would be held under Section 100 so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry, declaration is made that the election of the returned candidate is void, then the Tribunal will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate. [Para 18] [314-A-G]

Jabar Singh v. Genda Lal **AIR 1964 SC 1200: 1964 SCR 54;** *Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors.* **AIR 1975 SC 2182 : 1976 (1) SCR 191;** *Bhag Mal v. Ch. Parbhu Ram & Ors.* **AIR 1985 SC 150: 1985 (1) SCR 1099 - relied on.**

3. In the instant case, there were 706 total votes, out of which 701 votes were polled. At the time of initial counting on 2.4.2009, both the candidates got equal votes as 336 and 29 votes were found invalid. On the request of the appellant, the Returning Officer permitted recounting of the votes and the appellant got 336 votes while the respondent no.1 got 335 votes and 30 votes were found to be invalid. In the election petition, the only grounds had been that 3 votes i.e. Ex.X-1 to X-3 polled in favour of respondent no.1 which had wrongly been rejected and one vote Ex.Y-13 which had been counted in favour of the appellant ought to have been declared invalid. In view of the pleadings in the election petition, the case should have been restricted only to these four votes and even if the recrimination petition is taken into account, there could have been no occasion for the High Court to direct recounting of all the votes and in case

certain discrepancies were found out in recounting of votes by the Registrar of the High Court as per the direction of the High Court, it was not permissible for the High Court to take into consideration all such discrepancies and decide the election petition or recrimination petition on the basis thereof. The course adopted by the High Court is impermissible and cannot be taken note of being in contravention with statutory requirements. Therefore, the case has to be restricted only to the four votes in the election petition and the allegations made in the recrimination petition ignoring altogether what had been found out in the recounting of votes as under no circumstance the recounting of votes at that stage was permissible. [Paras 19 and 20] [314-H; 315-A-F]

4. It is a settled legal proposition that the instructions contained in the handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers. Instruction 16 of the Handbook deals with cases as to when the ballot is not to be rejected. The Returning Officers are bound by the Rules and such instructions in counting the ballot as has been done in this case. [Para 25] [317-E-G]

5. The reasoning given by the High Court with respect to Ex. X-1 and 2 was correct. However, Ex.X-3 has to be held to be an invalid ballot because of the ambiguity and the additional marking i.e. "his vote is for Venkata Rama Reddy" on it. Further, though the elector has put the mark '1' in front of the name of the respondent no. 1, however, he has also put a tick mark in front of the name of the appellant. Therefore, it is impossible to make out in whose favour the elector has voted and, therefore, this ballot is rejected as being invalid. As regards Ex.Y-13, the voter has, in addition to putting the n

name of the respondent no. 1, put his signature as well. The said signature is legible and distinguishable and keeping in mind that only 701 votes were polled, it would not be difficult to identify the elector and, thus, the ballot is invalid being hit by Rule 73 (2) (d) of the Rules. In view of the above, after modification of the impugned judgment and order, the appellant and the respondent no.1 get equal number of votes i.e. 336 votes each. Therefore, the judgment of the High Court insofar as it relates to allowing the election petition is modified to that extent. In such a fact-situation provisions of Section 102 of the Act have to be resorted to, however, as the result of the election stood materially affected, the recrimination petition filed by the appellant is considered first. As regards the ground (d) it is to be noticed that the same is non-descriptive and vague. Any ground raised in a recrimination petition has to be specific and the court cannot be asked to make a roving and fishing enquiry on the mere asking of a party. Thus, ground (d) is not worth consideration. Coming to ground (a), the same related to Ex.P-19. The appellant has claimed that on the said ballot mark `7' had been put which was treated as mark `1' and counted in favour of the respondent no. 1. On a careful examination of the said exhibit, it is to be held that though the same may appear to be `7' but it is also another form of writing `1' and thus, there was no illegality committed by the Returning Officer in holding the same in favour of the respondent no. 1. Ground (b) related to Ex.P-16, wherein one long stroke is made to make a mark denoting the number `1'. However, on the upper side of the stroke there is also a small curve connecting the stroke. The appellant has claimed that due to the said curve the figure on the ballot is in fact `9' and, hence, should have been declared invalid. The contention is noted just to be rejected as such a figure is to be read only as `1' for it is impossible to take such a technical and impractical view. If all the ballots are started to be

scrutinized and examined in such a hyper technical manner then most of the ballots would only stand rejected. Hence, the mark `1' is made on Ex.P-16 and the same is to be counted in favour of respondent no. 1 as has been done. However, Ex.Y-11 is to be declared as invalid. Not only is there scribbling on the said ballot but the final mark that is made on the ballot is `2' which is in direct conflict with Rule 73(2)(a) of the Rules and hence, the Returning Officer rightly rejected the same. In view of the above, even after deciding the Recrimination Petition, the appellant and the respondent no.1 have received equal number of votes. In such a fact-situation the decision as to who will be the returned candidate is to be decided by the draw of lots by virtue of the provisions of Section 102 of the Act. In view of the above, in the presence of all the learned counsel for the parties the lots are drawn in the open Court and by draw of lots, the appellant succeeded. [Paras 28, 29, 30, 31, 32 and 37] [320-A-F; 321-D-H; 322-A-E]

Case Law Reference:

1964 SCR 235	Relied on	Para 9
1975 (0) Suppl. SCR 202	Relied on	Para 9
2003 (6) Suppl. SCR 17	Relied on	Para 9
2011 (2) SCR 216	Relied on	Para 10
1980 SCR 1302	Relied on	Para 11
2006 (5) Suppl. SCR 1	Relied on	Para 11
(2013) 10 SCC 1	Relied on	Para 11
1965 SCR 38	Relied on	Para 14
1990 SCR 767	Relied on	Para 15
1955 SCR 1104	Relied on	Para 15
1983 (1) SCR 681	Relied o	

1964 SCR 54	**Relied on**	**Para 18**
1976 (1) SCR 191	**Relied on**	**Para 18**
1985 (1) SCR 1099	**Relied on**	**Para 18**
2009 (14) SCR 836	**Relied on**	**Para 19**
2009 (9) SCR 538	**Relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5710-5711 of 2012.

From the Judgment and order dated 20.07.2012 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Election Petition No. 2 of 2009 and Recrimination Petition No. 1 of 2009.

B. Adinarayana Rao, Vinesh Chandel, Gantur Perumal Kumar, Guntur Prabhakar for the Appellant.

P.P. Rao, S. Udaya Kumar Sagar, Bina Madhavan, Praseena E. Joseph, Shivendra Singh, Rahul Pandey (for Lawyer's Knit & Co.) for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 20.7.2012, as amended vide order dated 23.7.2012, of the High Court of Judicature of Andhra Pradesh at Hyderabad in Election Petition No.2 of 2009 and Recrimination Petition No.1 of 2009.

2. Facts and circumstances giving rise to these appeals are that:-

A. An election was held on 30.3.2009 for 18-Nizamabad Local Authority Constituency of the Andhra Pradesh Legislative Council wherein the appellant stood declared as successful candidate and had since then been a Member of Legislative

Council (MLC).

B. The respondent no.1, defeated candidate, filed Election Petition No.2 of 2009 on the ground that certain invalid votes had been counted in favour of the appellant and certain valid votes which were cast in favour of the respondent no.1 had wrongly been declared invalid.

C. The election petition was to be decided on the basis of the fact that election for the said post was held on 30.3.2009 wherein out of 706 total votes, 701 votes were cast.

D. The votes were counted on 2.4.2009 and initially both the contesting candidates are said to have got equal number of votes as 336 each while 29 votes were found invalid.

E. On the application of the appellant herein, the Returning Officer allowed re-counting of all the votes wherein the appellant got 336 votes and the respondent no.1 secured 335 votes and 30 votes were found to be invalid and therefore, the appellant was declared to be the successful candidate and elected as MLC by a margin of one vote.

F. The election petition was filed mainly on the ground that 3 votes in question Ex.X-1 to X-3 polled in favour of the respondent no.1 had been wrongly rejected and one vote Ex.Y-13 which had been counted in favour of the appellant ought to have been declared invalid.

G. The High Court issued notice to the appellant regarding the lodgment of the election petition and the appellant not only entered appearance but also filed a Recrimination Petition No.1 of 2009 under Section 97 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act').

H. The appellant filed the written statement refuting the allegations and averments made in the petition.

I. The respondent no.2, Returning s

written statement and it appears that during the pendency of the election petition vide order dated 23.9.2011, the High Court directed the Registrar (Judicial), High Court of Andhra Pradesh to scrutinize and re-count all the ballot papers in the presence of the parties and their counsel as per the rules and regulations, and the instructions and guidelines issued by the Election Commission of India and submit a report within a stipulated period.

J. Aggrieved, the appellant challenged the said order by filing Special Leave Petition (Civil) No.29095 of 2011 and this Court vide an order dated 20.10.2011 set aside the impugned order of the High Court and directed to first determine the question relating to the validity of the 3 disputed votes and, thereafter, to examine the issue of re-counting of all the votes, if required.

K. The High Court, in pursuance of the order of this Court, scrutinized and examined the 3 disputed votes in question in the presence of the parties and their counsel from the bundle of disputed votes, and after identifying them with the assistance of the parties and their counsel, had taken the photocopies thereof. The said photocopies were supplied to the parties and were marked as Ex.X-1, X-2 and X-3.

L. The High Court scrutinized and examined the 3 votes on 24.1.2012 and came to the conclusion that the Returning Officer had wrongly rejected the said 3 votes as invalid and ordered that all the 3 disputed votes to be counted in favour of respondent no.1.

M. Aggrieved, the appellant challenged the said order dated 24.1.2012 by filing Special Leave Petition (C) No.4728 of 2012 and this Court disposed of the said SLP on 7.2.2012 observing that it was not appropriate to interfere at that stage but the appellant would be at liberty to urge the same point at the time of final hearing. Thus, this Court did not interfere with the same being an interim order.

N. The High Court during the trial of the election petition picked up 17 ballot papers from the bundle of rejected ballot papers as determined by the Returning Officer and marked the same as Ex.Y-1 to Y-17. The High Court also picked up 2 ballot papers from the valid votes of the appellant and marked the same as Ex.R-1 and R-2. Four ballot papers were picked up from the valid votes of respondent no.1 and marked as Ex.P-16 to P-19. After considering all these ballot papers, the High Court vide judgment and order dated 20.7.2012 allowed the election petition holding that certain votes cast in favour of respondent no.1 had wrongly been rejected and the vote which should have been declared as invalid had wrongly been counted in favour of the appellant as valid and thus, the respondent no.1 was declared as successful candidate and elected as MLC. The operation of the aforesaid judgment dated 20.7.2012 was stayed only for a period of 4 weeks to enable the appellant to approach this Court.

Hence, these appeals.

3. Shri B. Adinarayana Rao, learned senior counsel appearing for the appellant has submitted that the election petition has not been decided by the High Court giving strict adherence to the provisions of the Act and the Rules framed for this purpose. It was not permissible for the High Court to go beyond the pleadings of the election petition. The entire controversy could only be in respect of 3 votes as pleaded in the election petition by the respondent no.1 which had been declared invalid and another vote which ought to have been declared invalid but had been counted in favour of the appellant as valid. It was not permissible for the High Court to count all the votes and pick up large number of votes from the bundle of invalid votes, totaling 30, or from the valid votes duly counted in favour of the appellant or the respondent no.1. Counting has to take place strictly in accordance with the rules and there was no occasion for the court to find out the intention of the voters or draw an inference in whose favour the [illegible]e.

More so, the petition filed by the appellant had not been decided in the correct perspective. Therefore, the appeals deserve to be allowed.

4. Per contra, Shri P.P. Rao, learned senior counsel appearing for the respondents has vehemently opposed the appeals contending that even if the case is restricted to aforesaid 4 votes, as submitted by learned counsel for the appellant, the result so declared by the High Court is not materially affected. The Returning Officer had committed an error in declaring the 3 valid votes in favour of the respondent no.1 as invalid and miscounted one vote as valid. Thus, in such a fact-situation, the intention of the elector has to be inferred in view of the statutory rules and executive instructions issued by the Election Commission for counting the ballot papers. Therefore, the judgment delivered by the High Court can by no means be termed as perverse and no interference is called for. The appeals lack merit and are liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record.

6. Section 87 of the Act provides that the election petition is to be tried by the High Court applying the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') "as nearly as may be" and in accordance with the procedure applicable under CPC and the provisions of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') shall also be applicable subject to the provisions of the Act.

7. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and

courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow. "Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results". However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step.

8. Before the court permits the recounting, the following conditions must be satisfied:

(i) The court must be satisfied that a prima facie case is established;

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot should be guarded.

9. This Court has consistently held that the court cannot go beyond the pleadings of the parties. Th e

proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts. (Vide: *Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors.,* AIR 1964 SC 1249; *Bhabhi v. Sheo Govind & Ors.,* AIR 1975 SC 2117; and *M. Chinnasamy v. K.C. Palanisamy & Ors.,* (2004) 6 SCC 341).

10. There may be an exceptional case where the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions, but in refutation of the case set up by the other side. Only in such circumstances, absence of an issue may not be fatal and a party may not be permitted to submit that there has been a mis-trial and the proceedings stood vitiated. (Vide: *Kalyan Singh Chouhan v. C.P. Joshi,* AIR 2011 SC 1127).

11. The secrecy of a ballot is to be preserved in view of the statutory provision contained in Section 94 of the Act. Secrecy of ballot has always been treated as sacrosanct and indispensable adjunct of free and fair election. Such principle of secrecy is based on public policy aimed to ensure that voter may vote without fear or favour and is free from any apprehension of its disclosure against his will.

In the case of *S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra & Ors.,* AIR 1980 SC 1362, a Constitution Bench of this Court considered the aspect of secrecy of vote and held that such policy is for the benefit of the voters to enable them to cast their vote freely. However, where a benefit, even though based on public policy, is granted to a person, it is open for that person and no one else to wave of such benefit. The very concept of privilege inheres a right to wave it. (See also: *Kuldip Nayar v. Union of India & Ors.,* AIR 2006 SC 3127; and *People's Union for Civil Liberties & Anr. v. Union of India & Anr.,* (2013) 10 SCC 1).

12. We find some force in the contention of Shri P.P. Rao, learned senior counsel appearing for the respondent No.1 that though secrecy of ballot is an inherent principle in conducting elections, however, the said principle has diminished to some extent in view of the rule of whip as prescribed in Tenth Schedule to the Constitution of India.

13. The issue of marking and writing on ballot papers is governed by the Conduct of Elections Rules, 1961 (hereinafter referred to as `Rules'). Rule 73(2) of the Rules reads as under:

"73. Scrutiny and opening of ballot boxes and the packets of postal ballot papers:

(1) xx xx xx

(2) A ballot paper shall be invalid on which-

(a) the figure '1' is not marked; or

(b) the figure '1' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or

(c) the figure '1' and some other figures are set opposite the name of the same candidate; or

(d) there is any mark or writing by which the elector can be identified.

xx xx xx"

14. In Dr. Anup Singh v. Shri Abdul Ghani & Anr., AIR 1965 SC 815, a Constitution Bench of this Court considered the provisions of Rule 73(2)(d) which provides that a ballot paper shall be invalid if "there is any mark or writing by which the elector can be identified". The Court observed as under:

"10…Thus there are three possible interpretations of the words "by which the elector can be identified" appearing in Rule 73(2)(d), namely (i) any mark or writing which might possibly lead to the identification of the elector, (ii) such mark or writing as can reasonably and probably lead to the identification of the elector, and (iii) the mark or writing should be connected by evidence aliened with an elector and it should be shown that the elector is actually identified by such mark or writing.

11. ….When the legislature provided that the mark or writing should be such that the elector can be identified thereby it was not providing for a mere possibility of identification. On this construction almost every additional mark or writing would fall within the mischief of the provision. If that was the intention the words would have been different,….

12. We are further of opinion that the third construction on which the appellant relies also cannot be accepted. If

the intention of the legislature was that only such votes should be invalidated in which the elector was actually identified because of the mark or writing, the legislature would not have used the words "the mark or writing by which the elector can be identified". These words in our opinion do not mean that there must be an actual identification of the elector by the mark or writing before the vote can be invalidated. If such was the intention of the legislature clause (d) would have read something like "any mark or writing which identifies the elector". But the words used are "any mark or writing by which the elector can be identified", and these words in our opinion mean something more than a mere possibility of identification but do not require actual proof of identification before the vote can be invalidated, though by such proof, when offered, the disability would be attracted."

15. Similarly, in *Era Sezhiyan v. T.R. Balu & Ors.,* AIR 1990 SC 838, this Court after considering Rule 73(2) of the Rules held as under:

"14…Sub-rule (2) of rule 73 of the Election Rules set out earlier that a ballot paper shall be invalid on which there is any figure marked otherwise than with the article supplied for the purpose. Rule 73 is directly applicable to the case of the election in question and as aforesaid it prescribes that if on the ballot paper there is any figure marked otherwise than with the article supplied for the purpose, the ballot paper shall be invalid. Assuming that the voter in this case had expressed his intention clearly by marking the figure I in green ink, he did so in violation of the express provisions of the Rules which have a statutory force and hence no effect can be given to that intention." (Emphasis added)

While considering the case, this Court placed reliance upon its earlier judgment in *Hari Vishnu Kamath v. Syed Ahmad Ishaque & Ors.,* AIR 1955 SC

16. In *Km. Shradha Devi v. Krishna Chandra Pant & Ors.,* AIR 1982 SC 1569, this Court considered the provisions of Rule 73(2)(d) of the Rules and held as under:

> *"A ballot paper shall be invalid on which there is any mark or writing by which the elector can be identified. Section 94 of the Act ensures secrecy of ballot and it cannot be infringed because no witness or other person shall be required to state for whom he has voted at an election. Section 94 was interpreted by this Court in Raghubir Singh Gill (supra), to confer a privilege upon the voter not to be compelled to disclose how and for whom he voted. To ensure free and fair election which is pivotal for setting up a parliamentary democracy, this vital principle was enacted in Section 94 to ensure that a voter would be able to vote uninhibited by any fear or any undesirable consequence of disclosure of how he voted. As a corollary it is provided that if there is any mark or writing on the ballot paper which enables the elector to be identified, the ballot paper would be rejected as invalid. But the mark or writing must be such as would unerringly lead to the identity of the voter."*

17. If all the judgments referred to hereinabove in respect of interpreting the provisions of Rule 73(2)(d) are conjointly considered, we are of the opinion that there must be some casual connection between the mark and the identity of the voter and such writing or marking itself must reasonably give indication of the voter's identity. As to whether such marking or writing in a particular case would disclose the identity of the voter, would depend on the nature of writing or marking on the ballot involved in each case. Therefore, such marking or writing must be such as to draw an inference about the identity of the voter. To that extent, with all humility at our command, we have to say that word "unerringly" used by this Court in *Km. Shradha Devi* (supra) is not in consonance with the law laid down by the Constitution Bench of this Court in *Dr. Anup Singh* (supra).

18. This brings us to the next question involved herein as to whether election petition and recrimination petition have to be tried simultaneously.

In a composite election petition wherein the petitioner claims not only that the election of the returned candidate is void but also that the petitioner or some other person be declared to have been duly elected, Section 97 of the Act comes into play and allows the returned candidate to recriminate and raise counter-pleas in support of his case, "but the pleas of the returned candidate under Section 97 have to be tried after a declaration has been made under Section 100 of the Act." The first part of the enquiry is in regard to the validity of the election of the returned candidate which is to be tried within the narrow limits prescribed by Section 100 (1) (d) (iii) while the latter part of the enquiry governed by Section 101 (a) will have to be tried on a broader basis permitting the returned candidate to lead evidence in support of the pleas taken by him in his recrimination petition. If the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the election petitioner. In such a case an enquiry would be held under Section 100 so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry, declaration is made that the election of the returned candidate is void, then the Tribunal will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed to lead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate. (Vide: *Jabar Singh v. Genda Lal,* AIR 1964 SC 1200; *Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors.,* AIR 1975 SC 2182; and *Bhag Mal v. Ch. Parbhu Ram & Ors.,* AIR 1985 SC 150).

19. The instant case requires to be considered in light of the above settled legal propositions.

In the instant case, as explained he e

706 total votes, out of which 701 votes were polled. At the time of initial counting on 2.4.2009, both the candidates got equal votes as 336 and 29 votes were found invalid. On the request of the appellant, the Returning Officer permitted recounting of the votes and the appellant got 336 votes while the respondent no.1 got 335 votes and 30 votes were found to be invalid. In the election petition, the only grounds had been that 3 votes i.e. Ex.X-1 to X-3 polled in favour of respondent no.1 which had wrongly been rejected and one vote Ex.Y-13 which had been counted in favour of the appellant ought to have been declared invalid.

20. In view of the pleadings in the election petition, the case should have been restricted only to these four votes and even if the recrimination petition is taken into account, there could have been no occasion for the High Court to direct recounting of all the votes and in case certain discrepancies were found out in recounting of votes by the Registrar of the High Court as per the direction of the High Court, it was not permissible for the High Court to take into consideration all such discrepancies and decide the election petition or recrimination petition on the basis thereof. The course adopted by the High Court is impermissible and cannot be taken note of being in contravention with statutory requirements. Therefore, the case has to be restricted only to the four votes in the election petition and the allegations made in the recrimination petition ignoring altogether what had been found out in the recounting of votes as under no circumstance the recounting of votes at that stage was permissible.

21. We have been taken through the judgment of the High Court as well as the record of the election petition including photocopies of the ballot papers in question.

22. Prayer of the election petition reads as under:

a) To declare the election of respondent no.1 to the Legislative Council 18-Nizamabad Local Authority

Constituency, Nizamabad held on 30.3.2009 as illegal and void;

b) To direct recounting and scrutiny of the ballot papers and validate three votes cast in favour of the petitioner;

c) To declare one vote cast in favour of the respondent no.1 as invalid;

d) To set aside the election of the first respondent as the member of the Legislative Council from 18-Nizamabad Local Authority Constituency;

e) To declare the petitioner as elected to the Legislative Council of the State of Andhra Pradesh from 18-Nizamabad Local Authority Constituency in the election held on 30.3.2009;

f) To award costs of the petition.

23. The particulars as per the election petition in respect of the aforesaid facts had been as under:

a) one vote was polled in favour of the petitioner by marking figure '1', but the same was doubted as it looked like '7' and was kept under doubtful votes.

b) One vote which was polled in favour of the petitioner by marking figure '1' was doubted on the ground that it looked like 'dot'.

c) One vote which was polled in favour of the petitioner by marking figure '1' was treated as doubtful vote on the ground that the name of the petitioner, the contesting candidate was written on the ballot paper.

24. On the basis of the pleadings, the following issues were framed:

1. Whether the petitioner has got a prima facie case to an order of scrutiny and recounting of ballot papers as prayed for in the election petition?

2. Whether three (3) votes polled in favour of the petitioner as set out in paras 10 and 11 of the election petition are improperly refused or rejected?

3. Whether one (1) vote improperly received and counted in favour of the returned candidate as set out in para 10 of the election petition?

4. Whether the election of the returned candidate has been materially affected by improper refusal or rejection of three (3) votes polled in favour of the election petitioner and improper reception of one (1) vote in favour of returned candidate as stated in paras 10 and 11 of the election petition?

5. Whether the election of the respondent/returned candidate has to be declared as void?

6. To what relief?

25. It is a settled legal proposition that the instructions contained in the handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers. Such a view stands fortified by various judgments of this Court in *Ram Sukh v. Dinesh Aggarwal,* AIR 2010 SC 1227; and *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil,* AIR 2009 SC 2975. Instruction 16 of the Handbook deals with cases as to when the ballot is not to be rejected. The Returning Officers are bound by the Rules and such instructions in counting the ballot as has been done in this case.

26. The High Court had examined the votes in dispute and came to the following findings:

"Coming to Ex.X-1, the figure '1' is clearly marked by the voter in the panel meant for the petitioner in the ballot paper. Though, it was not in the space which is actually meant for marking figure '1', since it is in the panel (space) provided for the petitioner, it has to be treated as valid. This was also, however, objected to by the first respondent that it looks like '7' and not '1'. But, it would clearly appear that the voter marked the figure '1' and there is a small extension towards left of the said figure on the top. The learned counsel appearing for the first respondent would contend that the intention of the voter is absolutely no relevance since the rules specifically state that the figure '1' has to be put. While discussing the rules and referring to the judicial pronouncements, I have already held that a duty is cast upon the Returning Officer as well as the court to ascertain the intention of the voter. As long as the figure marked resembles '1', it is illegal to reject the ballot mechanically whenever a doubt arises that the figure marked does not accord in all respects with the figure viewed by the Returning Officer or the court. This ballot, however, clearly shows that the figure '1' was specifically and correctly marked and therefore, the Returning Officer rightly validated the said vote in favour of the petitioner.

In Ex.X-2, the voter marked figure '1' in the panel meant for the petitioner. It was objected to by the first respondent that it looks like 'dot'. On careful examination, I found that the voter in fact marked figure '1', but it is short in length and the width appears to be more because of the discharge of more ink from the instrument supplied to the elector by the Returning Officer for the purpose of marking. According to me, this was improperly rejected by the Returning Officer saying that it looks like 'dot', but not one. By carefully examining the ballot paper unhesitatingly, I hold that the voter marked figure '1' and it has to be validated in favour of the petitioner and accordingly, the same is validated for the petitioner.

xxx xxx xxx xxx

In Ex.X-3, a 'tick' mark was put in the column meant for the first respondent in addition to figure '1' which was clearly put in the space meant for the petitioner. This apart, the voter wrote that his vote is for 'Venkata Ram Reddy' (petitioner). By the said writing, it is not possible to identify the voter. From the writing, it is also not possible to draw any inference that there was prior arrangement between the petitioner and the voter to write those words. It is also not possible to presume that the writing furnishes any reasonable or probable information or evidence to find out the identity of the voter. As regards the 'tick' mark since such mark is not contemplated by the rules it has to be ignored. For all these reasons, since the figure '1' was clearly put by the voter, it has to be validated in favour of the petitioner. Accordingly, the same is validated in favour of the petitioner.

xxx xxx xxx xxx

As regards Ex.Y-13, it requires to be noticed that the figure '1' was clearly and specifically put in the column meant for the petitioner. However, the elector in the space provided for the petitioner for marking the figure put his signature apart from marking figure '1'. From the signature also it is not possible to trace out the identity of the voter and therefore, this vote also can be validated in favour of the petitioner and accordingly, it is validated in favour of the petitioner."

27. In view of the above, the High Court concluded the trial of the election petition declaring the respondent elected by margin of two votes as he secured 338 votes, while the appellant secured 336 votes.

28. We have gone through the record of the case including the four disputed ballots i.e. Ex. X-1 to 3 and Ex.Y-13 with the

help of the learned counsel for the parties. We agree with the reasoning given by the High Court with respect to Ex. X-1 and 2. However, Ex.X-3 has to be held to be an invalid ballot because of the ambiguity and the additional marking i.e. "his vote is for Venkata Rama Reddy" on it. Further, though the elector has put the mark '1' in front of the name of the respondent no. 1, however, he has also put a tick mark in front of the name of the appellant. Therefore, it is impossible to make out in whose favour the elector has voted and hence, this ballot is rejected as being invalid.

29. As regards Ex.Y-13, the voter has, in addition to putting the mark '1' in front of the name of the respondent no. 1, put his signature as well. The said signature is legible and distinguishable and keeping in mind that only 701 votes were polled, it would not be difficult to identify the elector and, thus, the ballot is invalid being hit by Rule 73 (2) (d) of the Rules.

30. In view of the above, after modification of the impugned judgment and order, the appellant and the respondent no.1 get equal number of votes i.e. 336 votes each. Therefore, the judgment and order of the High Court insofar as it relates to allowing the election petition is modified to that extent.

31. In such a fact-situation provisions of Section 102 of the Act have to be resorted to, however, as the result of the election stood materially affected, we may first consider the recrimination petition filed by the appellant. In the recrimination petition, the appellant had raised the following issues:

"(a) That one vote marked as '7' was illegally counted in favour of the 1st Respondent herein by the 2nd Respondent in spite of the objections raised by the petitioner at the time of counting and a written application to reject the said vote was filed by the petitioner herein.

(b) The 2nd Respondent has illegally counted one vote in favour of the 1st Respondent tho s

marked on the ballot paper and though it is clearly looking as '9'.

(c) The 2nd Respondent has illegally rejected one vote which is validly polled in favour of the petitioner herein on the ground that the voter has put '2' after the figure '1' in the column allotted to the petitioner. According to law, the 2nd Respondent has to treat that vote as valid and counted in favour of the petitioner herein in whose favour '1' is put on the ballot paper and by ignoring the subsequent figure.

(d) The 2nd Respondent has illegally rejected some other votes validly polled in favour of the petitioner on flimsy and untenable grounds."

32. As regards the ground (d) it is to be noticed that the same is non-descriptive and vague. Any ground raised in a recrimination petition has to be specific and the court cannot be asked to make a roving and fishing enquiry on the mere asking of a party. Thus, ground (d) is not worth consideration.

33. Coming to ground (a), the same relates to Ex.P-19. The appellant has claimed that on the said ballot mark `7' had been put which was treated as mark `1' and counted in favour of the respondent no. 1. On a careful examination of the said exhibit, it is to be held that though the same may appear to be `7' but it is also another form of writing `1' and thus, there was no illegality committed by the Returning Officer in holding the same in favour of the respondent no. 1. Ground (b) relates to Ex.P-16, wherein one long stroke is made to make a mark denoting the number `1'. However, on the upper side of the stroke there is also a small curve connecting the stroke. The appellant has claimed that due to the said curve the figure on the ballot is in fact `9' and, hence, should have been declared invalid.

The contention is noted just to be rejected as such a figure is to be read only as `1' for it is impossible to take such a

technical and impractical view. If all the ballots are started to be scrutinized and examined in such a hyper technical manner then most of the ballots would only stand rejected. Hence, we hold that the mark `1' is made on Ex.P-16 and the same is to be counted in favour of respondent no. 1 as has been done.

34. However, Ex.Y-11 is to be declared as invalid. Not only is there scribbling on the said ballot but the final mark that is made on the ballot is `2' which is in direct conflict with Rule 73(2)(a) of the Rules and hence, the Returning Officer rightly rejected the same.

35. In view of the above, we reach the inescapable conclusion that even after deciding the Recrimination Petition, the appellant and the respondent no.1 have received equal number of votes.

36. In such a fact-situation the decision as to who will be the returned candidate is to be decided by the draw of lots by virtue of the provisions of Section 102 of the Act.

37. In view of the above, in the presence of all the learned counsel for the parties we have drawn the lots in the open Court and by draw of lots, the appellant succeeds.

38. The appeals stand disposed of accordingly in favour of appellant. No costs.

D.G. Appeal disposed of.

BADAL MURMU AND ORS.

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 1502 of 2004)

FEBRUARY 5, 2014

[RANJANA PRAKASH DESAI AND MADAN B. LOKUR, JJ.]

Penal Code, 1860: s.302 r/w s.149 - Murder - Assault with lathis leading to death - Two wives of the victim-deceased present at the place of incident where the deceased was called along with PW-7 by accused-appellants, witnessed the incident - PW-7 managed to escape - Deceased was assaulted with lathis which led to his death - Conviction u/s.302 r/w s.149 by courts below - On appeal, held: The evidence of the prosecution witnesses was truthful and, therefore, rightly relied upon by courts below - However, the evidence on record showed that some of the accused had tangies (sharp cutting weapon) in their hand but they did not use it - All accused were stated to have assaulted the deceased simultaneously with lathis - No individual role was ascribed to any one - Doctor also did not state which injury was fatal - Therefore all the accused cannot be said to be guilty of murder - In peculiar facts, it cannot be held that the accused shared common object to murder the deceased and that in prosecution of that common object they caused his death - It is unusual case where a trivial incident of theft of hen by deceased led to his murder - Accused were poor tribals and have been in jail for 14 years - In the interest of justice, conviction u/s.302 r/w s.149 is set aside and the accused are convicted u/s.304 Part II and the sentence already undergone by them is directed to be treated a sentence imposed on them u/s. 304 Part II IPC.

The prosecution case was that there was inimical relation between the deceased and accused family due to stealing of hen of one appellant-B by the deceased. On the fateful day, the deceased and PW-7 were called for a meeting. When deceased and PW-7 reached the place of meeting, the appellants tied them with a rope against the bamboo pole and tree. The appellants were armed with lathis and tangies (Sharp cutting weapons). They assaulted the deceased with lathis. PW-7 managed to escape. The appellants continued to beat the deceased and as a result he died. The two wives of the deceased who had followed the deceased to the place of meeting saw the incident. The trial court found all the eleven appellants guilty and convicted them under section 148 and section 302 r/w section 149, IPC. The High Court affirmed the same. The instant appeal was filed challenging the order of the High Court.

Disposing of the appeal, the Court

HELD: 1. PW-1, the first wife of deceased narrated the entire incident after describing the previous incident about the stealing of the hen by her husband and the penalty imposed by the Salishman. She stated how PW-7 was tied to a Kull tree and beaten up; how PW-7 fled away and how deceased was beaten to death by using lathis by the appellants after tying him to a bamboo pole. She did not, however, describe the exact role of each of the appellants. She did not state who assaulted where. The evidence of PW-3 was on similar lines. PW-6, the second wife of deceased also corroborated PW-1 so far as the assault on deceased was concerned. PW-7, the injured witness described the events that preceded the incident. He stated that he somehow managed to escape and got himself examined by the doctor. His evidence indicated that out of fear he ran away and did not inform anyone about the incident. The doct

post-mortem of deceased stated that the death was caused due to the injuries described by him and that the injuries could be caused by a blunt object like lathi. The evidence of PW-1, PW-3, PW-6 and PW-7 was truthful and was rightly relied upon. They were rustic witnesses and candidly stated all that they had seen. Pertinently, PW-7 did not hesitate to name his brother as one of the assailants. No doubt, these witnesses were related to deceased, but the tenor of their evidence was such that it was not possible to say that they have falsely involved the appellants. Their evidence had a ring of truth. The prosecution, therefore, proved that the appellants assaulted deceased with lathis which resulted in his death. [para 6] [330-F-G; 331-A-F]

Kirti Mahto & Ors. v. State of Bihar **1994 Supp. (2) SCC 569;** *Molu & Ors. v. State of Haryana* **AIR 1976 SC 2499;** *Munivel v. State of Tamil Nadu* **(2006) 9 SCC 394: 2006 (3) SCR 813 ;** *Alister Anthony Pareira v. State of Maharashtra* **(2012) 2 SCC 648: 2012 (1) SCR 145;** *Kashmiri Lal & Ors. v. State of Punjab* **AIR 1997 SC 393: 1996 (5) Suppl. SCR 335 - relied on.**

2. Appellant-B's hen was stolen by deceased. This dispute was settled. Penalty was paid. Yet, the appellants called deceased to Saheb Hasda's courtyard. Deceased went there with PW-7. They were tied to the trees and beaten up. The attendant circumstances did not indicate that the appellants shared any common object to kill deceased. Probably, they were not happy with the penalty imposed by the Salishman. Therefore, they called him to Saheb Hasda's courtyard and beat him with lathis. If they wanted to kill him, they would have used some sharp cutting weapons. In fact, the evidence on record showed that some of the appellants had tangies in their hand. PW-1 stated that some of them had tangies but they did not use them. Really, if the appellants wanted to kill deceased, the easiest way to achieve their object would

have been to use the tangies and assault him. What may have started as an exercise to teach a lesson to deceased by beating him with lathis, took an ugly turn. In a frenzy, lathi blows were dealt with force. It is true that the doctor noticed fourteen injuries on the deceased. Most of them were bruises and abrasions. All the accused were stated to have assaulted the deceased. It is true that there were also two rib fractures and haemotoma under the scalp. But the doctor had stated that all the injuries led to the death of deceased. It was not, therefore, known as to which was the fatal injury. Moreover, none of the eye-witnesses have stated who caused which injury. No individual role was ascribed to any of the appellants. The eye-witnesses made an omnibus statement that the appellants assaulted the deceased with lathis. It, therefore, cannot said that all the appellants are guilty of murder. In the peculiar facts of this case, therefore, it cannot be held that the appellants shared common object to murder the deceased and in prosecution of that common object they caused his death. [paras 7, 8, 10] [331-G-H; 332-B-F; 333-C; 334-F]

Sukhdev Singh v. State of Punjab **AIR 1992 SC 755;** *Sarman & Ors. v. State of Madhya Pradesh* **1993 Supp. (2) SCC 356 - relied on.**

3. There were certain special features in this case, which distinguished it from other cases. It is an unusual case where a trivial incident led to a murder. The appellants as well as the material witnesses belong to Santhal community. They are tribals. They come from a very poor strata of the society and appear to be untouched by the effect of urbanization. They live in their own world. They are economically so weak that possession of a hen is very important to them. The deceased stole a hen, killed it and made a feast out of it. This angered the community and th[illegible]at

penalized deceased. He was ordered to give a hen to appellant-B and, in addition, he had to give two handies of liquor. Though, there can be no justification for the appellants' actions, their anger and reaction to the theft of hen must be viewed against the background of their economic and social status. Moreover, the appellants are in jail for almost 14 years. Apart from the legal angle, this is a case where justice must be tempered with mercy. In the peculiar circumstances of the case, the appellants is convicted for culpable homicide not amounting to murder and sentencing them for the period already undergone by them by resorting to Section 304 Part II of the IPC to meet the ends of justice. In the circumstances, the conviction of the appellants for offences punishable under Section 302 read with Section 149 of the IPC is quashed and set aside. Instead, they are convicted for culpable homicide not amounting to murder and the sentence already undergone by them is directed to be treated as sentence imposed on them under Section 304 Part II of the IPC. The impugned order is modified to the above extent. [Paras 11, 12] [334-G-H; 335-A-F]

Case Law Reference:

1994 Supp. (2) SCC 569	**Relied on**	**Para 4**
AIR 1976 SC 2499	**Relied on**	**Para 4**
2006 (3) SCR 813	**Relied on**	**Para 5**
2012 (1) SCR 145	**Relied on**	**Para 5**
1996 (5) Suppl. SCR 335	**Relied on**	**Para 5**
AIR 1992 SC 755	**Relied on**	**Para 8**
1993 Supp. (2) SCC 356	**Relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1502 of 2004.

From the Judgment and Order dated 20.01.2003 of the High Court at Calcutta in Criminal Appeal No. 202 of 2000.

Vibha Datta Makhija, Ruchi Agnihotri for the Appellants.

Anip Sachthey, Kabir S. Bose, Shagun Matta, Saakaar Sardana for the Respondents.

The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. There are eleven appellants. All of them were tried by the Additional Sessions Judge, Burdwan for offences punishable under Section 148 and Section 302 read with Section 149 of the IPC. They were convicted for offences punishable under Section 148 and Section 302 read with Section 149 of the IPC and sentenced to undergo imprisonment for life for causing death of one Jhore Soren ("deceased-Jhore Soren"). The appellants' appeal was dismissed by the High Court. Hence, the present appeal.

2. The prosecution story could be shortly stated:

The appellants and the prosecution witnesses belong to Santhal Community of village Mobarakpur. In March, 1989, deceased-Jhore Soren killed the hen of one Bhagbat. This created a furore in Santhal community. A Salish was called and the deceased was asked to give one hen and two handies of country liquor to Bhagbat as a penalty by the Salishman. Deceased-Jhore Soren complied with Salishman's order. On 14/4/1989, when deceased-Jhore Soren and PW-7 Kanka were discussing the same incident, appellant-Bhagbat overheard it and showed his displeasure to PW-7 Kanka. When PW-7 Kanka protested, the appellants Bhagbat, Ragai and Sambhu caused bleeding injuries to him. PW-7 Kanka went to a doctor and got himself examined. On the next day, in the morning, deceased-Jhore Soren and PW-7 Kanka were called to the courtyard of one Saheb Hasda on the pretext that a meeting was to be held over the previous day's incident. When deceased-Jhore Soren and PW-7 Kanka came to the courtyard of Saheb Hasda, they were tied with

bamboo pole and one Kul tree respectively by the appellants. The appellants were armed with lathis, tangies (sharp cutting weapons) etc. They started assaulting deceased-Jhore Soren and PW-7 Kanka with lathis. PW-7 Kanka managed to escape. The appellants continued to beat deceased Jhore Soren. He was beaten to death. Two wives of deceased-Jhore Soren, who had followed him to the courtyard of Saheb Hasda, saw the incident. The women who had assembled there also assaulted the wives, mother and sister of deceased-Jhore Soren. PW-1 Nilmoni, the first wife of deceased-Jhore Soren rushed to Memari Police Station and gave her statement. In her statement, she named all the appellants as persons, who assaulted her husband - deceased-Jhore Soren with lathis. On the basis of her statement, investigation was started and upon completion of the investigation, the appellants came to be charged as aforesaid.

3. The prosecution examined 10 witnesses. The accused denied the prosecution case. Prosecution case found favour with the trial court which convicted and sentenced the appellants as aforesaid. Their conviction and sentence was confirmed by the High Court.

4. Ms. Makhija, learned amicus, who on our request is appearing for the appellants, submitted that the prosecution has failed to prove its case beyond reasonable doubt and, therefore, the appellants deserve to be acquitted. She submitted that, in any case, if this Court comes to a conclusion that the appellants are guilty, then it should hold them guilty of culpable homicide not amounting to murder because there was no intention to kill the deceased. Counsel submitted that the appellants have admittedly used lathis and, therefore, Section 304 Part II of the IPC is clearly attracted to this case. In this connection, counsel relied on *Kirti Mahto & Ors. v. State of Bihar*[1]. Counsel submitted that the injuries are not on the vital part of the deceased's body. They are superficial in nature. This also

1. 1994 Supp. (2) SCC 569.

indicates that there was no intention to kill the deceased. In this connection, counsel relied on *Molu & Ors. v. State of Haryana*[2]. Counsel submitted that the appellants are poor tribals; they are in jail for a considerably long time and, hence, they may be sentenced to the period already undergone by resorting to Section 304 Part II of the IPC.

5. Mr. Anip Sachthey, learned counsel for the State, on the other hand, submitted that the ocular evidence establishes the prosecution case. Counsel submitted that it is true that the appellants used lathis but even if the common object was to inflict injuries, the appellants who were members of the unlawful assembly knew that the murder was likely to be committed in prosecution of common object and since death was caused, every member of the unlawful assembly must be held guilty of murder. In support of this submissions, counsel relied on *Munivel v. State of Tamil Nadu*[3] and *Alister Anthony Pareira v. State of Maharashtra*[4]. Counsel submitted that the appellants persistently assaulted deceased-Jhore Soren and caused grievous injuries to him which resulted in his death. The intention to commit murder is clear and, hence, they are guilty of murder. In this connection, he relied on *Kashmiri Lal & Ors. v. State of Punjab*[5]. Counsel submitted that the appeal be dismissed.

6. PW-1 Nilmoni, the first wife of deceased-Jhore Soren narrated the entire incident after describing the previous incident about the stealing of the hen by her husband and the penalty imposed by the Salishman. She stated how PW-7 Kanka was tied to a Kull tree and beaten up; how PW-7 Kanka fled away and how deceased-Jhore Soren was beaten to death by using lathis by the appellants after tying him to a bamboo pole. She did not, however, describe the exact role of each of the appellants. She did not state who assaulted where. PW-3 Rabi

2. AIR 1976 SC 2499.
3. (2006) 9 SCC 394.
4. (2012) 2 SCC 648.
5. AIR 1997 SC 393.

Soren is the sister of deceased-Jhore Soren. Her evidence is on similar lines. PW-6 Sumi Soren, the second wife of deceased-Jhore Soren also corroborated PW-1 Nilmoni so far as the assault on deceased-Jhore Soren is concerned. PW-7 Kanka, the injured witness described the events that preceded the incident and stated how he and deceased-Jhore Soren were tied to trees; how appellants - Badal, Sambhu, Ragai, Bhagbat and Phangu assaulted deceased-Jhore Soren with lathis; how appellant Sombha was guarding the place with a tangi and how the other appellants encouraged them. He stated that he somehow managed to escape and got himself examined by the doctor. His evidence indicates that out of fear he ran away and did not inform anyone about the incident. PW-9 Dr. Prodip Kumar, who did the post-mortem of deceased-Jhore Soren stated that the death was caused due to the injuries described by him and that the injuries could be caused by a blunt object like lathi. The evidence of PW-1 Nilmoni, PW-3 Rabi Soren, PW-6 Sumi Soren and PW-7 Kanka is truthful and has rightly been relied upon. They are rustic witnesses and have candidly stated all that they had seen. Pertinently, PW-7 Kanka did not hesitate to name his brother as one of the assailants. No doubt, these witnesses are related to deceased-Jhore Soren, but the tenor of their evidence is such that it is not possible to say that they have falsely involved the appellants. Their evidence has a ring of truth. The prosecution has, therefore, proved that the appellants assaulted deceased-Jhore Soren with lathis which resulted in his death.

7. Now the question is which offence was committed by the appellants. The cause of this entire episode is very trivial. Appellant-Bhagbat's hen was stolen by deceased-Jhore Soren. This dispute was settled. Penalty was paid. Yet, the appellants called deceased-Jhore Soren to Saheb Hasda's courtyard. Deceased-Jhore Soren went there with PW-7 Kanka. They were tied to the trees and beaten up. It is argued that these facts show that the appellants shared common object to kill deceased-Jhore Soren and in prosecution of the common

object, they killed deceased-Jhore Soren. In our opinion, the attendant circumstances do not indicate that the appellants shared any common object to kill deceased-Jhore Soren. It appears that they were not happy with the penalty imposed by the Salishman. Therefore, they called him to Saheb Hasda's courtyard and beat him with lathis. If they wanted to kill him, they would have used some sharp cutting weapons. In fact, the evidence on record shows that some of the appellants had tangies in their hand. PW-1 Nilmoni stated that some of them had tangies but they did not use them. Really, if the appellants wanted to kill deceased-Jhore Soren, the easiest way to achieve their object would have been to use the tangies and assault him. It appears to us that what started as an exercise to teach a lesson to deceased-Jhore Soren by beating him with lathis, took an ugly turn. In a frenzy lathi blows were dealt with force. It is true that the doctor noticed fourteen injuries on the deceased. Most of them were bruises and abrasions. It is true that there were also two rib fractures and haemotoma under the scalp. But the doctor has stated that all the injuries led to the death of deceased-Jhore Soren. It is not, therefore, known as to which is the fatal injury. Moreover, none of the eye-witnesses have stated who caused which injury. No individual role is ascribed to any of the appellants. The eye-witnesses have made an omnibus statement that the appellants assaulted the deceased with lathis.

8. In this connection, we may usefully refer to the judgment of this Court in *Sukhdev Singh v. State of Punjab*[6]. In that case, the appellant therein was convicted under Section 302 of the IPC and sentenced to life imprisonment. The question arose as to what was the nature of the offence committed by him. He had given one blow to the deceased. Thereafter, the deceased had fallen down. That blow, according to the prosecution, was sufficient to cause death in the ordinary course of nature. This Court accepted the testimony of PW-3, PW-4 and PW-5 as to the participation of the appellant therein in the crime. But, it

6. AIR 1992 SC 755.

rejected their evidence giving specific overt act to each of the accused because according to the prosecution, the victim was surrounded by all the four accused, each one was armed with weapons and they attacked the deceased simultaneously. This Court observed that it was therefore difficult to say that fatal injury was caused by the appellant therein. This Court observed that the evidence of the witnesses on that aspect has to be considered with a pinch of salt. Under the circumstances, the sentence of the appellant under Section 302 of the IPC was set aside and he was sentenced under Section 304 Part II of the IPC. In this case also all the accused are stated to have assaulted the deceased simultaneously. No individual role is ascribed to anyone. The doctor has not stated which injury was fatal. It is difficult therefore to say that all the appellants are guilty of murder.

9. In *Sarman & Ors. v. State of Madhya Pradesh*[7], there were seventeen injuries on the deceased. The appellants therein were armed with lathis. They were charged for offences punishable under Sections 147 and 302 of the IPC. Some injuries were described as incised wounds. Injury No.15 had resulted in a depressed fracture of parietal bone. Like the present case, the doctor in a general way, stated that the cause of death was "multiple injuries". He specifically stated that injury No.15 individually was sufficient to cause death of the deceased. It must be noted that no such assertion is made by the doctor in this case. The prosecution case, in general, was that all of them were found with lathis. Nobody had stated which of them had caused injury No.15 which unfortunately resulted in the death of the deceased. This Court observed that in these circumstances the question that arises was whether all the accused were responsible for the death of the deceased. This Court noted that if anyone of the appellants had exceeded the common object and acted on his own, it would be his individual act but, unfortunately, no witness had come forward to say which of the accused had caused which injury. This Court noted that

7. 1993 Supp. (2) SCC 356.

in those circumstances, it was difficult to award punishment under Section 302 read with Section 149 of the IPC. This Court noticed that although the post-mortem report stated that all the injuries might have caused the death of the deceased inasmuch as the accused inflicted injuries with lathis and particularly when they were simple, and on non-vital parts, it cannot be said that their object was to kill the deceased. They may merely have knowledge that the blows given were likely to cause death. This Court, in those circumstances, set aside the conviction of the appellants for the offences punishable under section 302 read with Section 149 of the IPC and instead convicted them for offence punishable under Section 304 Part II read with Section 149 of the IPC.

10. As earlier noted by us, in this case none of the eye witnesses have given specific role to any of the appellants. They have not stated which appellants gave which blow and on which part of the deceased's body. They have not stated which injury was caused by which accused. The doctor has not stated which injury was fatal. Undoubtedly, the deceased had suffered two fractures and haemotoma under the scalp, but nobody has said that any particular appellant caused these injuries. It bears repetition to state that though sharp cutting weapons i.e. tangies were available, the appellants did not use them. In the peculiar facts of this case, therefore, it is not possible to hold that the appellants shared common object to murder the deceased and in prosecution of that common object they caused his death. It would not be possible to sustain their conviction for offence punishable under Section 302 read with Section 149 of the IPC. It would be just and proper to resort to Section 304 Part II of the IPC and treat the sentence already undergone by them as sentence for the said offence.

11. Before parting we must note certain special features of this case, which distinguish it from other cases. It is an unusual case where a trivial incident led to a murder. The appellants as well as the material witne[illegible]al

community. They are tribals. They come from a very poor strata of the society and appear to be untouched by the effect of urbanization. They live in their own world. They are economically so weak that possession of a hen is very important to them. The deceased-Jhore Soren stole a hen, killed it and made a feast out of it. This angered the community and the village panchayat penalized deceased- Jhore Soren. He was ordered to give a hen to appellant Bhagbat and, in addition, he had to give two handies of liquor. Though, there can be no justification for the appellants' actions, their anger and reaction to the theft of hen must be viewed against the background of their economic and social status. Moreover, we are informed that the appellants are in jail for almost 14 years. Apart from the legal angle, this, in our view, is a case where justice must be tempered with mercy. In the peculiar circumstances of the case, in our opinion, convicting the appellants for culpable homicide not amounting to murder and sentencing them for the period already undergone by them by resorting to Section 304 Part II of the IPC will meet the ends of justice.

12. In the circumstances, the conviction of the appellants for offences punishable under Section 302 read with Section 149 of the IPC is quashed and set aside. Instead, they are convicted for culpable homicide not amounting to murder and the sentence already undergone by them is directed to be treated as sentence imposed on them under Section 304 Part II of the IPC. The impugned order is modified to the above extent. The appellants are in jail. They are directed to be released forthwith unless they are otherwise required in any other case. The appeal is disposed of.

D.G. Appeal disposed of.

M/S S.V.A. STEEL RE-ROLLING MILLS LTD. ETC. ETC.
v.
STATE OF KERALA & ORS. ETC. ETC.
(Civil Appeal Nos. 10103-10106 of 2010)

FEBRUARY 06, 2014

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

Administrative law: Policy decision - State of Kerala declared a policy to give uninterrupted 100% electricity supply at exempted rate for a period of 5 years to newly set up manufacturing units - Pursuant to the said policy, the appellants set up their manufacturing units in the State - However, there were frequent power cuts which adversely affected these units - Respondent-State passed order whereby it granted extension of period of assured power supply to the new units by number of days during which supply of electricity to them was cut to the extent of 50% or more - Challenged on the ground that whenever there was power cut, even if the cut was 50% or less, the said period should have been added to the period of 5 years, for the reason that for proper functioning of the manufacturing units, uninterrupted 100% supply of electricity is a sine qua non - Held: Framing such policies and doing the needful for its implementation are administrative functions of the State and therefore, normally interference with its policies is not called for - But looking at the peculiar facts of the case, where an assurance was given for uninterrupted supply of electricity, respondent-State ought to have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units - Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise - The benefit extended by the

respondent State is not sufficient - The respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured - Therefore, the respondents are directed to give the said benefit by extending the period of incentive - Doctrine of promissory estoppel - Electricity Act,1910 - s.22B.

The respondent-State in order to encourage and invite businessmen to set up their manufacturing units in the State of Kerala declared a policy to give continuous electricity supply at a particular rate to certain manufacturing units. Pursuant thereto, the respondent-State issued order dated 27.5.1990 whereby it assured the new manufacturing units exemption from power cut for a period of 5 years from the date of commencement of commercial production. Such new units were also given certain exemption from payment of electricity duty for a period of 5 years.

Pursuant to the said policy, the appellants set up their manufacturing units in the respondent-State. On 6.2.1992, further order for exemption to new units for 5 years from payment of enhanced power tariff on certain condition was passed. However, there were frequent power cuts which adversely affected these units. The respondent-State passed order on 26.10.1999, whereby it granted extension of period of assured power supply to the new units who were adversely affected because of power cut. Under the said order it was decided and declared to extend the benefit which had been given under G.O. dated 25.5.1990 and 6.2.1992 to the new units by number of days during which supply of electricity to them had been cut to the extent of 50% or more. The respondent-State also decided to reimburse the Board with the amount of benefit which was given to the new units on account of power cut beyond 50%.

The appellants filed writ petitions on the ground that the benefits assured were not given. The High Court dismissed the writ petitions. The instant appeals were filed challenging the order of the High Court.

Allowing the appeals, the Court

HELD: 1. It is not in dispute that the appellants had set up their new units in the State of Kerala only upon knowing the policy with regard to uninterrupted power supply and that too at the same tariff for a period of 5 years from the date of commercial production. In the instant case, no case was made out by the respondent-State that the appellants had committed any breach or were not entitled to any of the benefits or concessions which had been offered to them by the respondent-State. In the circumstances, the respondent-State was bound to give the benefits which had been assured to the appellants. Though the respondent-State was bound to supply uninterrupted 100% electricity required by the appellants, one cannot lose sight of the fact that at times there would be circumstances which would put the respondent-State and the Board into such a difficulty that they would not be in a position to fulfill the assurance given to the new units. It is not in dispute that the State of Kerala is not generating enough electricity to cater the needs of all its consumers in the State of Kerala. The respondent-State is not having a magic wand which would enable the State to generate more electricity. There might be several factors which might be adversely affecting the respondents in generating sufficient electricity. [paras 24 to 26] [350-D-H; 351-A-B]

2. The respondent-State came out with Government Order dated 26th October, 1999, whereby it had decided that the period when there would be reduction or cut in supply of power to the extent of 50% or more, such

period of power cut would be added to the period of 5 years, during which the appellants and other similarly situated persons were to be given continuous power supply. The respondents could not show justifiable reason for deciding as to why the respondent-State decided to give the benefit of extended period only when the power cut was 50% or more. The cases where the consumer is having a continuous process industry, even power cut below 50% would adversely affect the manufacturing unit. It is a matter of common knowledge that in several industries, the manufacturing process cannot be stopped abruptly. Many a times, restarting of the machines or boilers take lot of time and energy, which results into loss to the manufacturer. The said fact ought to have been considered by the State while taking the said decision. The decision with regard to giving extension of time to such a limited extent is not reasonable and that would have surely affected the new units adversely. [paras 28, 29] [351-C-H]

3. Section 22B of the Electricity Act, 1910 enables the State Government to regulate the supply, distribution and consumption of electricity for the purpose of maintenance and supply of equitable distribution of energy but, provisions of the said section are not much relevant for the reason that in the instant case, the respondent State had given an assurance with regard to uninterrupted supply of electricity and therefore, the respondents ought to have made provision for uninterrupted supply of electricity to the appellants and other similarly situated persons by regulating electricity supply in a proper manner. [Para 30] [351-H; 352-A-C]

4. Framing such policies and doing the needful for its implementation are administrative functions of the respondent-State and therefore, normally this Court would not like to interfere with its policies but looking at

the peculiar facts of the case, where an assurance had been given for uninterrupted supply of electricity, one would presume that the respondent-State must have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units. If for any reason it was not possible to supply electricity as assured, the respondent-State ought to have extended the period of 5 years by the period during which assured electricity was not supplied. By doing so, the respondent-State could have made an effort to fulfill its promise and satisfied the persons who had acted on an assurance given by the State and set up their manufacturing units in the State of Kerala. [para 31] [352-C-F]

5. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise. [Para 32] [352-F-G]

6. In the instant case, the respondent-State was conscious about the fact that there was a problem with regard to supply of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw-material, etc. After considering all these factors, a final decision is taken with regard to setti

For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent-State and might have decided to set up their industries in the respondent-State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependant upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. When the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent-State. [Para 33, 34] [352-H; 353-A-F]

7. If an assurance was given to the appellants and similarly situated persons that they would be given 100% electricity supply for five years, the respondents can not wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular day. A steel industry, for example, would be put to enormous inconvenience and loss if the power supply is not continuous. So as to reactivate or to restart the machines or to start the process afresh, the industry has to spend something more than what it would have spent if the supply or power namely, electricity was uninterrupted. Stoppage of

manufacturing process would mean losses under several heads. The labour employed has to be paid even when the employer does not get work from the labour force. Very often, so as to bring a required temperature for the purpose of carrying on certain processes, more fuel is to be injected so as to attain the condition which was prevailing prior to electricity supply being disconnected. Moreover, there would be several overhead expenses which one has to incur even if there is no production or stoppage of manufacturing process. [Para 35] [353-G-H; 354-A-D]

8. In the instant case, by compensating the aggrieved appellants, no harm would be caused to the State of Kerala except that it will have to compensate the appellants by supplying assured electricity for some extended period at a specified tariff. The respondent-State was not wholly fair when it extended benefit to the appellants only for the period during which electricity supply was reduced to less than 50% on certain days. Therefore, the benefit extended by the respondent State is not sufficient. The respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured under G.O. dated 21.5.1990 and 6.2.1992. Therefore, the respondents are directed to give the said benefit by extending the period of incentive. The respondents are directed to calculate the period during which 100% electricity supply was not given to the appellants and extend the period of incentive accordingly. The calculation shall be made and consequential orders shall be passed within two months from today. [Paras 36 to 39] [354-E-H; 355-B]

State of Haryana & Ors. v. Mahabir Vegetable Oils Pvt. Ltd. **2011 (3) SCC 778: 2011 (4) SCR 944;** *State of Rajasthan & Anr. v. M/s Mahaveer Oil Industries & Ors.* **1999(4) SCC 357: 1999 (2) SCR 798**

Case Law Reference:

2011 (4) SCR 944	**referred to** **Para 23**
1999 (2) SCR 798	**referred to** **Para 23**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10103-10106 of 2010.

From the Judgment and order dated 24.02.2005 of the High Court of Kerala at Ernakulam in W.P. (C) No. 5795, 5877, 5984 of 2004 and CP No. 9816 of 2001.

WITH

C.A. Nos. 10107-10108, 10110-10114, 10116-10121, 10123 of 2010 and C.A. No. 4035 of 2007.

C.A. Sundaram, V. Giri, S. Sukumaran, Anand Sukumaran, Bhupesh Kumar Pathak, K. Rajeev, Meera Mathur, P.V. Dinesh, Romy Chacko, Varun M., C.N. Sree Kumar, Resmitha R. Chandran, Amrita Amoos, Ajit Kumar Pande, Ramesh Babu M.R., for the Appellants.

M.T. George, R. Harikrishnan for the Respondents.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Being aggrieved by the common Judgment dated 24th February, 2005 delivered by the High Court of Kerala at Ernakulam in W.P.(C) No.5795/2004, W.P.(C) No.5877/2004, W.P.(C) No.5984/2004 and O.P. No.9816/2001, the appellants, original petitioners before the High Court have approached this Court by way of these appeals.

2. The facts giving rise to the present appeals, in a nut-shell, are as under:

The appellants are businessmen having their manufacturing units in the State of Kerala and they are manufacturing different

articles with the help of electricity, which is generated/supplied by the Kerala State Electricity Board (hereinafter referred to as 'the Board'). The respondent- Government was desirous of having industrial development in the State of Kerala and therefore, it had framed certain policies so as to encourage and invite businessmen for setting up their manufacturing units in the State of Kerala. Due to shortage of electricity supply in the State of Kerala, interested entrepreneurs were not inclined to set up their units in the State of Kerala. In view of the aforestated circumstances, the State Government had laid down a policy whereby it declared to give continuous electricity supply at a particular rate to certain new manufacturing units.

3. So as to put the aforestated policy in practice, the respondent- State had issued a Government Order dated 21st May, 1990 which read as under:

> "Government have been considering the question of giving some incentives to new industries in the matter of power connection. Taking into consideration the announcements made by the Minister (Finance) in the current year's budget speech and after discussions with all concerned, Government are now pleased to issue the following orders in this context which will have effect from 1-4-1990.
>
> 1. Power connection will be given on completion of any project irrespective of whether a general power cut is in force or not.
>
> 2. New units commencing industrial production will be exempted from power cut for a period of 5 years from the date of commercial production.
>
> 3. Exemption from payment of electricity duty for a period of 5 years from the date of commencement of commercial production will be given to the new units.

4. In future the electricity duty will not be collected from the industries if they are eligible for exemption.

5. Service connection charges will not be levied if no extension is required or if the additional line to be provided is less than 500 meters in length."

The aforestated State Government Order had been adopted by the Board by its Order dated 19th June, 1990.

4. By virtue of the aforestated policy declared under the order dated 21st May, 1990, the respondent-State had assured the manufacturing units to be set up in the State of Kerala that electricity connection would be given to the projects which might be set up and they would be exempted from power cut for a period of 5 years from the date of commencement of commercial production. Such new units were also given certain exemption in relation to payment of electricity duty for a period of five years.

5. It is not in dispute that in pursuance of the aforestated policy the appellants had established their manufacturing units (hereinafter referred to as 'the new units') in the respondent-State. It is also not in dispute that the requisite conditions, which had been imposed upon such new units, had been fully complied with by the appellants and therefore, the appellants were entitled to an uninterrupted electricity supply for a period of 5 years from the date on which they had commenced their commercial production.

6. The respondent-State had thereafter passed a further order on 6th February, 1992, whereby the new units were exempted for 5 years from the payment of enhanced power tariff on certain conditions. According to the appellants, they were also entitled to benefit under the aforestated G.O. dated 6th February, 1992.

7. In spite of the assurance given by the respondent-State to the new units that they would not suffer any power cut,

because of certain difficulties faced by the Board with regard to supply of electricity to new units, there used to be power cuts which adversely affected the new units. In view of the said fact, to alleviate the difficulties of the units set up under the aforestated policy, the respondent-State passed further order on 26th October, 1999, whereby it granted extension of period of assured power supply to the new units, who were adversely affected because of the power cut in certain circumstances. Under the aforestated order, it was decided and declared to extend the benefit which had been given under G.O. dated 25th May, 1990 and 6th February, 1992 to the new units by number of days during which supply of electricity to them had been cut to the extent of 50% or more. The respondent-State also decided to reimburse the Board with the amount of benefit which was given to the new units on account of power cut beyond 50%.

8. In the aforestated admitted facts and circumstances, the respondent-State should have given the benefits which had been assured to the new units but for the reasons beyond control of the State as well as the Board, the benefits assured to the new units could not be given and therefore, along with other industrial units, the present appellants had filed writ petitions before the High Court of Kerala praying that the benefits which had been assured to them should be given and they should not be constrained to pay tariff at the enhanced rate.

9. Thus, according to the appellants, in fact, they did not get real benefit of the policy because their production was adversely affected whenever there was power cut and the five years' period of exemption from power cut was not extended by the Government which was in violation of the promise given to the appellants and other similarly situated new units.

10. All these grievances were ventilated before the High Court by filing different petitions which were ultimately rejected by the High Court by virtue of the impug

11. The learned counsel appearing for the appellants had vehemently submitted that it was unfair on the part of the respondent -State not to adhere to the promise given to the appellants with regard to uninterrupted 100% electricity supply. The appellants had set up their industries in the State of Kerala because of the promise given by the respondent- State that at least for a period of first 5 years from the date of commencement of the commercial production, there would be uninterrupted power supply and there would not be any increase in the tariff and therefore, the respondent-State was bound by the said policy. The principle of promissory estoppel was also invoked by the appellants.

12. The learned counsel had further submitted that if for some reason it was not possible for the respondent- State to give uninterrupted 100% electricity supply to the appellants on a particular day, the said period or the said day should have been added to the period of 5 years for which the respondent-State had promised uninterrupted 100% electricity supply to the new units. According to the learned counsel, though, the period had been extended, but not in a fair and reasonable manner because the days during which there was cut of electricity supply to the extent of 50% or more, were added to the period of 5 years. According to the learned counsel, whenever there was any reduction in power supply, even if the reduction or cut was 50% or less, the said period should have been added to the period of 5 years, for the reason that in case of continuing process industries, for proper functioning of the manufacturing units, uninterrupted 100% supply of electricity is a sine qua non.

13. The learned counsel had shown us some material whereby it was shown that out of first 5 years during which the appellants were to be given benefit, there was electricity cut for 921 days and out of those 921 days there were 214 days when the cut in electricity supply was for more than 50%. It had been further submitted that the period during which even the electricity cut was less than 50%, the new units could not work

at its optimum level, which had resulted into several problems for the appellants.

14. He had further added that the respondent Board had accepted the policy of the State with regard to giving benefit to the new units for uninterrupted power supply on same tariff and therefore, the Board could not have asked for additional tariff during the period of 5 years, as extended by the period during which there was power cut.

15. The learned counsel had also alleged that the respondent- State had given discriminatory treatment to the appellants by not giving uninterrupted 100% electricity supply because the State had given uninterrupted 100% electricity supply to certain other manufacturing units like Malabar Cement and the industries set up within the Export Processing Zone. It had been asserted that if the above stated manufacturing units could be given 100% uninterrupted electricity supply, there was no reason for denying the same benefit to the appellants.

16. So as to substantiate the submission with regard to promissory estoppel, the learned counsel had relied upon certain judgments delivered by this Court.

17. On the other hand, the learned counsel appearing for the respondent -State had submitted that the prayers made by the appellants before the High Court were unjust and therefore, their petitions and other petitions, praying for similar relief had rightly been rejected by the impugned order of the High Court.

18. It had been also submitted that Section 22 B of the Indian Electricity Act, 1910 (hereinafter referred to as 'the Act') enables the respondent-State to impose control on distribution and consumption of energy. Section 22 B of the Act reads as under:

"Sector 22B. (1) Power to control the distribution and consumption of energy:- If the State Government is of opinion that it is necessary or ex[illegible]r

maintaining the supply and securing the equitable distribution of energy, it may by order provide for regulating the supply, distribution, consumption or use thereof."

19. The aforestated provision, according to the learned counsel, enables the respondent-State to regulate the supply, distribution or consumption of electricity and as there was shortage of electricity supply, the respondent-State had to impose some electricity cut, so as to see that least problems were created to the residents and industrial units set up in the respondent-State. The Government authorities had to use their discretion in the matter of supply of electricity. The discretion which the respondent-State used was quite reasonable as it was not possible to give 100% electricity supply to all the consumers of electricity in the State. In the aforestated circumstances, the respondent-State had to regulate the supply by imposing some power cut, and unfortunately it resulted into some difficulties to the appellants.

20. It had been further submitted by the learned counsel that, so as to reduce the difficulties of the appellants, the Government had issued an order whereby the days, during which electricity supply was cut beyond 50%, had been added to the period of 5 years during which the appellants were entitled to the concession declared by the State of Kerala. Thus, sufficient efforts were made to see that the benefits assured to the appellants were provided.

21. It had been further submitted that the appellants cannot expect benefit of extension of period simply because there was negligible cut in the supply for very less period. Therefore, the respondent-State had decided that as and when the cut was 50% or more, the period for which such the cut had been effected would be added to the period of 5 years and the said decision was just and fair.

22. The learned counsel had also submitted that all consumers of electricity, including the appellants were informed

well in advance about the stoppage of electricity supply and thus, all possible efforts were made to see that the appellants and other similarly situated consumers were not put to much hardship.

23. The learned counsel had further submitted that looking at the facts of the case, there would not be any promissory estoppel as submitted by the learned counsel appearing for the appellants. The learned counsel had relied upon the judgments delivered in the case of *State of Haryana & Ors. v. Mahabir Vegetable Oils Pvt. Ltd.,* [2011 (3) SCC 778] and *State of Rajasthan & Anr. v. M/s Mahaveer Oil Industries & Ors.,* [1999(4) SCC 357] to substantiate their case to the effect that there could not be any promissory estoppel in such cases.

24. We had heard the learned counsel at length and perused the impugned judgment and the judgments referred to in the course of hearing and the relevant material placed on record of this Court. It is not in dispute that the appellants had set up their new units in the State of Kerala only upon knowing the policy with regard to uninterrupted power supply and that too at the same tariff for a period of 5 years from the date of commercial production.

25. In the instant case, no case had been made out by the respondent-State that the appellants had committed any breach or were not entitled to any of the benefits or concessions which had been offered to them by the respondent-State. In the circumstances, the respondent-State was bound to give the benefits which had been assured to the appellants.

26. Though the respondent-State was bound to supply uninterrupted 100% electricity required by the appellants, one cannot lose sight of the fact that at times there would be circumstances which would put the respondent-State and the Board into such a difficulty that they would not be in a position to fulfill the assurance given to the new units. It is not in dispute that the State of Kerala is not generatin o

cater the needs of all its consumers in the State of Kerala. The respondent-State is not having a magic wand which would enable the State to generate more electricity. There might be several factors which might be adversely affecting the respondents and as a result thereof, the respondents might not be generating sufficient electricity so as to fulfill the needs of the appellants and other residents of the State.

27. The question, thus, arises as to how the adversely affected persons who had been assured by a promise with regard to continuous supply of electricity for five years can be fairly compensated.

28. It is true that the respondent-State came out with Government Order dated 26th October, 1999, whereby it had decided that the period when there would be reduction or cut in supply of power to the extent of 50% or more, such period of power cut would be added to the period of 5 years, during which the appellants and other similarly situated persons were to be given continuous power supply.

29. The learned counsel appearing for the respondents could not show us any justifiable reason for deciding as to why the respondent-State decided to give the benefit of extended period only when the power cut was 50% or more. It is pertinent to know that the cases where the consumer is having a continuous process industry, even power cut below 50% would adversely affect the manufacturing unit. It is a matter of common knowledge that in several industries, the manufacturing process can not be stopped abruptly. Many a times, restarting of the machines or boilers take lot of time and energy, which results into loss to the manufacturer. The said fact ought to have been considered by the State while taking the aforestated decision. The decision with regard to giving extension of time to such a limited extent is not reasonable and in our opinion, that would have surely affected the new units adversely.

30.It is true that Section 22B of the Act enables the State

Government to regulate the supply, distribution and consumption of electricity for the purpose of maintenance and supply of equitable distribution of energy but in our opinion, provisions of the said section are not much relevant for the reason that in the instant case, the respondent State had given an assurance with regard to uninterrupted supply of electricity and therefore, the respondents ought to have made provision for uninterrupted supply of electricity to the appellants and other similarly situated persons by regulating electricity supply in a proper manner.

31. Framing such policies and doing the needful for its implementation are administrative functions of the respondent-State and therefore, normally this Court would not like to interfere with its policies but looking at the peculiar facts of the case, where an assurance had been given for uninterrupted supply of electricity, one would presume that the respondent-State must have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units. If for any reason it was not possible to supply electricity as assured, the respondent-State ought to have extended the period of 5 years by the period during which assured electricity was not supplied. By doing so, the respondent-State could have made an effort to fulfill its promise and satisfied the persons who had acted on an assurance given by the State and set up their manufacturing units in the State of Kerala.

32. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.

33. In the instant case, the respondent State was conscious about the fact that there was a problem

of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw-material, etc. After considering all these factors, a final decision is taken with regard to setting up of an industry. For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent-State and might have decided to set up their industries in the respondent-State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala.

34. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependant upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. In Steel industry, when the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent-State.

35. If an assurance was given to the appellants and similarly situated persons that they would be given 100% electricity supply for five years, the respondents can not wriggle out of their liability by making a policy to the effect that the benefit by way of incentive would be extended only if the electricity supply was reduced to less than 50% on a particular

day. A steel industry, for example, which cannot function without electricity or power in any other form, would be put to enormous inconvenience and loss if the power supply is not continuous. So as to reactivate or to restart the machines or to start the process afresh, the industry has to spend something more then what it would have spent if the supply or power namely, electricity was uninterrupted. Stoppage of manufacturing process would mean losses under several heads. The labour employed has to be paid even when the employer does not get work from the labour force. Very often, so as to bring a required temperature for the purpose of carrying on certain processes, more fuel is to be injected so as to attain the condition which was prevailing prior to electricity supply being disconnected. Moreover, there would be several overhead expenses which one has to incur even if there is no production or stoppage of manufacturing process.

36. The judgments cited by the counsel appearing for the respondents would not help them for the reason that in the cases referred to, the Government had to change the policy in public interest. In the instant case, by compensating the aggrieved appellants, no harm would be caused to the State of Kerala except that it will have to compensate the appellants by supplying assured electricity for some extended period at a specified tariff.

37. For the aforestated reasons, in our opinion, the respondent-State was not wholly fair when it extended benefit to the appellants only for the period during which electricity supply was reduced to less than 50% on certain days.

38. We, therefore, hold that the benefit extended by the respondent State is not sufficient. The respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured under G.O. dated 21.5.1990 and 6.2.1992. We, therefore, direct the respondents to give the said benefit by extending the period of incentive.

39. We, therefore, allow the appeals by quashing and setting aside the impugned order passed by the High Court and direct the respondents to calculate the period during which 100% electricity supply was not given to the appellants and extend the period of incentive accordingly. The calculation shall be made and consequential orders shall be passed within two months from today. The appeals are allowed with no order as to costs.

D.G. Appeals allowed.

RAJINDER KUMAR

v.

SHRI KULDEEP SINGH & OTHERS

(Civil Appeal No. 1873 of 2014 etc.)

FEBRUARY 07, 2014

[CHANDRAMAULI KR. PRASAD AND KURIAN JOSEPH, JJ.]

DECREE:

Execution of ex-parte decree in a suit for specific performance - Held: Merely because it is an ex parte decree, the same does not cease to have the force of the decree - It is a valid decree for all purposes - Once the decree for specific performance attained finality, the defendants cannot thereafter make weak and lame contentions regarding the executability of the decree - Even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment - If sufficient guidance is not available from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree - No doubt, the court cannot go behind the decree or beyond the decree - But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties - Code of Civil Procedure, 1908 - O.8, r. 10.

SPECIFIC RELIEF ACT, 1963:

s.28 - Application for rescission - Suit for specific performance decreed in 1984 - Execution petition filed in 1990 - Application u/s 28 filed in 1999 - Held: Though execution petition was filed within the time prescribed, the efflux of time assumes importance and seriousness in the

background of escalation of price in real estate resulting in liability of vendors towards unearned increase - Court failed to advert to this aspect -- It is pertinent also to note that the said liability for the vendors arose only on account of delayed execution of decree - Further. vendors did not get an opportunity to make their response to oral submission made by purchaser with regard to deposit of the balance consideration, after passage of around 26 years from the date of decree - As in the case of a decree for specific performance where equity weighs with the court so is the situation in considering an application u/s 28 for rescinding the contract - On such an application, the court may, by order, rescind the contract "as the justice of the case may require" - In the peculiar facts and circumstances of case, the trial court should have passed an equitable order while considering the application for rescission - For doing complete justice to parties, it is a case where purchaser should be directed to pay the land value to vendors as per the circle rate notified for the residential property in Category 'A' colonies prevailing during November 16, 2011 to January 5, 2012 -- Purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to L&DO - Further, directions given in case the plaintiff does not deposit the amount to be paid to the vendors - Equity - Constitution of India, 1950 - Art.142.

Eight legal heirs of the deceased original owner of the suit property, entered into an agreement to sell the said property on 29/30.07.1980 with the respondent for a total sum of Rs.14,00,000/- out of which the latter paid Rs.1,40,000/- as earnest money and possession of one garage in the suit property was handed over to him. The balance amount was to be paid on the execution and registration of the sale deed and delivery of possession. Another legal heir i.e. the son of the deceased son of the original owner, claiming himself as a minor, filed a suit through his maternal grandfather (Suit No. 1428 of 1981) and sought a declaration that the agreement for sale was

illegal as he was not a party to it. The respondent filed a suit (Suit No. 280/1982) on 10.01.1982 for specific performance of the agreement against all the nine legal heirs, before the High Court of Delhi. The suit was decreed ex parte on 30.04.1984 and the appeal was dismissed by order dated 22.03.1985 as time barred. Execution petition was filed on 07.11.1990. One of the judgment debtors filed application No. 110/1991 objecting to the execution of the decree. Another application EA NO. 111/1991 was filed by defendant no. 9 under O. 21, r. 58 of the Code. The single Judge of the High Court, by judgment dated 01.02.2002 dismissed both petitions holding that the decree dated 30.04.1984 was executable. Aggrieved, both the applicants filed appeals before the Division Bench of the High Court. Meanwhile, on 24.04.1999, some of the appellants-defendants filed an application u/s 28 of Specific Relief Act, 1963 for rescission of the agreement, which was dismissed by the single Judge, by order dated 23.02.2000. The Division Bench of the High Court allowed the appeal filed by the then minor-defendant no. 9 holding that the execution against him could not be pursued as there was no decree against him. The other appeals were dismissed. The review petitions were also dismissed.

In the instant appeals, the main contention for the appellants was that the decree dated 30.04.1984 was inexecutable since it was vague and contingent; and that the High Court failed to properly exercise its jurisdiction while deciding the application u/s 28.

Disposing of the appeals, the Court

HELD: 1.1 Specific performance is an equitable relief granted by the courts in specific situations. Plainly speaking, equity means fairness. That the vendors actually intended to sell the property is clear from the fact that they had approached the

permission on 12.11.1981, subject to payment of an amount of Rs.7,17,330/-. The amount was not deposited by the vendors even during the time extended by the L&DO. [para 2 and 13] [363-H; 364-A; 367-B, C]

FRY A Treatise on the Specific Performance of Contracts by The Rt. Hon. Sir Edward Fry, Sixth Edition page 29 **- referred to.**

Concise Oxford English Dictionary, 10th edn. **- referred to.**

1.2 The vendors would not be justified in setting up any defence on executability of the decree facts of the case as they were extremely reluctant to part with the property. Their attempts thereafter have always been, one way or the other, to delay, if not deny, their obligation for conveyance of the property. [para 17] [376-H; 377-C-D]

1.3 No doubt, the decree passed under O. 8, r. 10 of the Code is an ex parte decree. But merely because it is an ex parte decree, the same does not cease to have the force of the decree. It is a valid decree for all purposes. The suit that has been decreed is the suit for specific performance of the agreement. Once the decree for specific performance attained finality, the defendants cannot thereafter turn round and make weak and lame contentions regarding the executability of the decree. [para 20-21] [378-D-E, H; 379-A-B]

1.4 Even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. If sufficient guidance is not available even from the

judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. [para 22] [379-C-D]

Topanmal Chhotamal v. Kundomal Gangaram and Others **AIR 1960 SC 388 - referred to.**

1.5 In the instant case, the decree is executable for all intents and purposes but limited to the shares of the vendors. The claim of defendant no. 9 would depend on the outcome of the pending suit. [para 23] [379-F]

2.1 The purchaser was also not quite serious in pursuing the cause. Though the decree is dated 30.04.1984, the execution petition was filed only after six and a half years, on 07.11.1990. No doubt, it was within the time prescribed by the law of limitation. But the efflux of time assumes importance and seriousness in the background of the escalation of price in real estate. [para 24] [379-G; 380-A-B]

2.2 It is extremely important and crucially relevant to note that the court did not advert to one of the main contentions regarding the escalation in land value by which the vendors had to incur the liability of around four times the balance consideration by way of payment of unearned increase to the L&DO so as to complete their obligation. It is pertinent also to note that the said unconscionable liability for the vendors arose only on account of the delayed execution of the decree. [para 27] [381-C-D]

2.3 It is significant to note that during the pendency of the appeals, the purchaser sought permission of the court to deposit the balance consideration and, on 06.01.2010, the same was granted. He, accordingly, deposited some amounts towards the liability of unearned income also. It appears from the order dated 06.01.2010 in FAO (OS) No. 66 of

submissions were made for the deposit of balance consideration, by the respondent.It is significant to note that the vendors did not get an opportunity to make their response to the oral submission made by the purchaser with regard to deposit of the balance consideration, after passage of around 26 years from the date of decree. [para 28-30] [381-D-E; 382-C]

3.1 Having regard to the facts and circumstances, the High Court has not made an attempt to balance equity. As in the case of a decree for specific performance where equity weighs with the court, so is the situation in considering an application u/s 28 of the Specific Relief Act, 1963 for rescinding the contract. Under s. 28, a vendor is free to apply to the court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the court has ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the court may, by order, rescind the contract "as the justice of the case may require". [para 31] [382-D-F]

3.2 A suit for specific performance does not come to an end on passing of a decree and the court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree. The discretionary power vested in court by s.28 of the Act is intended to apply in such circumstances. [para 31 and 33] [382-F-G; 383-D]

Pollock & Mulla, The Indian Contract and Specific Relief Acts, **14th Edition, Page 2064 - referred to.**

3.3 The decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit. Therefore, the decree can be executed either by the

plaintiff or the defendant. The plaintiff or the defendant is also free to approach the court for appropriate clarification/directions in the event of any ambiguity or supervening factors making the execution of the decree inexecutable. [para 34-35] [383-F-G; 384-A]

Hungerford Investment Trust Limited (In Voluntary Liquidation) v. Haridas Mundhra and Others **1972 (3) SCR 690 = (1972) 3 SCC 684 - referred to.**

3.4 In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Though the suit was decreed in the year 1984 and execution petition filed in 1990, the application for rescission was filed only in the year 1999. [para 37and 41] [386-F-G; 388-F]

4.1 In the peculiar facts and circumstances of the case, the trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, it is a case where the purchaser should be directed to pay the land value to the vendors as per the circle rate notified for the residential property in Category 'A' colonies prevailing during November 16, 2011 to January 5, 2012, at the rate of Rs.2,15,000/- per square meter. The purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to L&DO. He is free to withdraw the amounts deposited by him in the court as per order dated 06.01.2010. It is also ordered that in case the plaintiff does not deposit the amount to be [illegible]s

within three months, the vendors shall deposit in court within two months thereafter the amount calculated as per the circle rate referred to above by way of compensation to be paid to the purchaser, and in which event, they shall stand discharged of their obligations under the contract and the decree. [para 45] [391-F-H; 392-A-C]

Nirmala Anand v. Advent Corporation (P) Ltd. and Others **2002 (2) Suppl. SCR 706 = (2002) 8 SCC 146;** *Satya Jain (Dead) Through Lrs. and Others v. Anis Ahmed Rushdie (Dead) Through Lrs. and Others* **2013 (3) SCR 319 = 2013 (8) SCC 131- referred to.**

Case Law Reference:

AIR 1960 SC 388	**referred to**	**para 22**
1972 (3) SCR 690	**referred to**	**para 32**
2002 (2) Suppl. SCR 706	**referred to**	**para 42**
2013 (3) SCR 319	**referred to**	**para 43**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1873 of 2014.

From the Judgment and order dated 19.02.2010 of the High Court of Delhi at New Delhi in EFA No. 4 of 2002.

WITH

Civil Appeal Nos. 1874, 1875 and 1876-1877 of 2014.

Geeta Luthra, Ashwini K. Matta, Pramod Dayal, Nikunj Dayal, Payal Dayal, Rohit Bhardwaj for the appellant.

P.S. Patwalia, Jayant Bhushan, Ashok K. Mahajan, Naresh Kaushik, Lalita Kaushik, D.N. Goburdhan for the respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. Specific performance is an equitable relief granted by

the courts in specific situations. Plainly speaking, equity means fairness. According to Sir Edward Fry, the Court by a decree of specific performance compels the defaulting party to do that which in conscience he is bound to do, viz., actually and specifically to perform his contract[1]. Conscience means a person's moral sense of right or wrong[2]. Thus, what is morally wrong cannot be equitably right and necessarily what is morally right will be just and proper. This prelude is the keyhole for us to see through the factual and legal position of a three decade long litigation on a specific performance.

FACTS

3. One Nand Lal (deceased) was the perpetual lessee of the Land and Development Officer (hereinafter referred to as 'L&DO') of property bearing Bungalow No. 9, Sunder Nagar, New Delhi measuring 0.179 acres equal to 865 sq. yards equal to 721 sq. metres. His legal heirs are - (1) Banarsi Das; (2) Dhanpat Rai; (3) Din Dayal; and (4) Gaindo Devi (widow of a pre-deceased son Paras Ram) as his legal heirs. Each had a 1/4th share in the suit property. Din Dayal passed away leaving behind, as originally claimed - (5) his widow Sushila Devi; (6) son Mohinder Kumar Gupta; (7) son Surinder Dayal; (8) son Narinder Dayal; and (9) daughter Vijay Laksmi and each of them had 1/24th share each in the suit property.

4. The eight legal heirs of Nand Lal entered into an agreement to sell the aforesaid immovable property on 29/30.07.1980 with Kuldeep Singh-(respondent) for a total sum of Rs.14,00,000/- out of which Kuldeep Singh paid Rs. 1,40,000/- as earnest money and possession of one garage in the suit property was handed over to him. The balance amount of Rs.12,60,000/- was to be paid by the respondent on the execution and registration of the sale deed and delivery of possession.

1. FRY A Treatise on the Specific Performance of Contracts by The Rt. Hon. Sir Edward Fry, Sixth Edition, see Paragraph 62 at page 29

2. Concise Oxford English Dictionary, 10th Editi

5. One Rajinder Kumar (Petitioner in SLP (C) No. 19215/2011) claims that he is son of the late Din Dayal and at the time of agreement to sell, he was a minor. He filed a suit through his maternal grandfather (Suit No. 1428 of 1981) and sought a declaration that the agreement for sale was illegal as he was not a party to it. The suit was dismissed for default on 22.05.1984. After more than 17 years, it was eventually restored on 17.01.2002.

6. The respondent-Kuldeep Singh filed a suit (Suit No. 280/1982) on 10.01.1982 for specific performance of the agreement against the eight legal heirs, impleading also Rajinder Kumar in the said suit as defendant no. 9, on the original side of High Court of Delhi. The suit was decreed ex parte on 30.04.1984. Appeal (RFA (OS) NO. 14/1985) against the above Judgment dated 30.04.1984 was dismissed vide order dated 22.03.1985 as time barred. An application under Order IX Rule 13 of the Code of Civil Procedure, 1908 filed thereafter for setting aside the decree was also dismissed on 15.07.1985. Thus, the decree has attained finality.

7. Kuldeep Singh filed Execution Petition (No. 164/1990) on 07.11.1990. Mohinder Kumar Gupta (petitioner in SLP No. 28302 of 2010), one of the judgment debtors, filed Application No. 110/1991 objecting to the execution of the decree. Another application EA NO. 111/1991 was filed by minor Rajinder Kumar under Order XXI Rule 58 of the Code of Civil Procedure, 1908. Single Judge of the Delhi High Court vide Judgment dated 01.02.2002 dismissed both petitions holding that the decree dated 30.04.1984 is executable. Aggrieved, Mohinder Kumar Gupta filed FAO (OS) No. 66/2002 against the aforesaid judgment dated 01.02.2002 and Rajinder Kumar filed EFA (OS) No. 4/2002 before the Division Bench of the High Court.

8. Meanwhile, on 24.04.1999, some of the appellants filed an application under Section 28 of Specific Relief Act,1963 (IA No. 4274/1999 in Suit No. 280/1982) for rescission of the

agreement. That was dismissed by the Single Judge, High Court of Delhi vide Order dated 23.02.2000. FAO (OS) 110/2000 before the Division Bench of the High Court arises against the order dated 23.02.2000.

9. The Division Bench vide Judgment dated 19.02.2010 dismissed FAO (OS) No. 110 of 2000, FAO (OS) NO. 66 of 2002 but allowed EFA (OS) No. 4/2002 filed by the then minor Rajinder Kumar, holding that the execution against him cannot be pursued as there is no decree against him.

10. The appellants then filed review petitions No. 210/2010 & 328/2010 against Judgment dated 19.02.2010 in FAO (OS) No. 110/2000. The High Court dismissed the Review Petition No. 210/2010 in FAO (OS) No. 110/2000 and Review Petition No. 328 of 2010 in FAO (OS) No. 66 of 2002 on 25.04.2011. Thus, they are before this Court in these appeals.

11. It is the main contention of the appellants that the decree dated 30.04.1984 is inexecutable since it is vague and contingent. It is also contended that the High Court of Delhi failed to properly exercise its jurisdiction while deciding the application for rescinding the contract. There are other ancillary contentions as well.

12. Having heard the learned Senior Counsel appearing for the parties, we feel that mainly two issues arise for consideration:

A. Is the decree executable?

B. Was the application for rescission properly decided?

13. The agreement for sale was executed by the appellants (Defendants 1 to 8) on 30.07.1980. They received part of the consideration, viz., Rs. 1,40,000/- as earnest money. Possession of part of the agreement schedule property, a garage was parted with. The balance

be paid at the time of execution of the sale deed. That deed could have been executed only after obtaining permission from the L&DO, Delhi. As per the agreement, it was for the vendors to obtain that permission from the L&DO on paying the unearned increase. There were certain other obligations as well. That the vendors actually intended to sell the property is clear from the fact that they had approached the L&DO and the L&DO gave permission on 12.11.1981, subject to payment of an amount of Rs.7,17,330/-. The unearned increase came to be such a large amount only because of the delay caused by the purchaser in getting his power of attorney, it is alleged. The amount was not deposited by the vendors even during the time extended by the L&DO.

14. It was in the meanwhile, Rajinder Kumar (petitioner in SLP (Civil) No. 19215 of 2011) claiming to be the minor son of Din Dayal, filed a suit on 15.12.1981 attacking the agreement, claiming his 1/24th share and for other reliefs. Rajinder Kumar aged 7 years at the time of the agreement, filed the suit through his maternal grandfather even though his mother and natural guardian who is signatory to the agreement to sale, was very much alive and available. Smelling a rat, the purchaser-Kuldeep Singh on 10.01.1982 filed OS No. 1428 of 1981 on the original side of the High Court for specific performance. At that time, the suit filed by Rajinder Kumar was pending for plaintiff's evidence. Rajinder Kumar was arrayed as Defendant No. 9 in the suit for specific performance. For some reason or other, the defendants did not file written statement despite several chances. Hence, the suit was decreed as prayed for on 30.04.1984.

15. For the purposes of easy reference, we may extract the decree as such:

"(DECREE IN A SUIT FOR SPECIFIC PERFORMANCE AND AWARD OF DAMAGES)

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Ordinary Original Civil Jurisdiction)

Suit No. 280 of 1982

S. Kuldip Singh son of S. Hara Singh
Resident of 20, Rajindra Park, New
Delhi, Through his General Attorney
S. Harkirat Singh … Plaintiff

Versus

1. Sh. Banarsi Dass,
son of Shri Nand Lal,
R/o M-49, Greater Kailash-I,
New Delhi.
2. Sh. Dhanpat Rai,
son of Shri Nand Lal
resident of E-4, N.D.S.E., Part-I,
New Delhi.
3. Shrimati Gaindo Devi,
widow of Shri Paras Ram,
son of Shri Nand Lal,
Resident of N-21, N.D.S.E., Part-I,
New Delhi.
4. Smt. Sushila Devi,
widow of late Shri Din Dayal,
resident of C-3, House Cooperative Society,
South Extension Part I, New Delhi.
5. Shri Mohinder Kumar Gupta,
son of Shri Din Dayal,

resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

6. Shri Surinder Dayal,
son of Shri Din Dayal,
resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

7. Shri Narinder Dayal
son of Shri Din Dayal,
resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

8. Miss. Vijay Lakshmi
daughter of Shri Din Dayal,
resident of C-3, House Cooperative Society, South Extension Part I, New Delhi.

9. Shri Rajinder Kumar (Minor),
son of Late Shri Din Dayal,
resident of C-3, House Cooperative Society, South Extension Part I, New Delhi-49

through his legal guardian and Maternal Grand father Shri Nand Kishore Mittal,

son of Shri Sagar Mal Mittal,
746, Gali Bhagwan, Kotla Mubarakpur,
New Delhi. …Defendants

Value of the suit for purposes of jurisdiction) Rs. 15,40,000/-
Court fee paid ….. Rs. 17,374.40
Suit filed on ….. 11.2.1982

CLAIM: In the event of Defendant No.9 being held to have no right, title or interest in the property in suit, it is prayed:-

1(A) A decree for specific performance of the agreement to sale dated 29/30.7.80 in respect of entire property No.9, Sunder Nagar, New Delhi be granted in favour of the plaintiff against the Defendants 1 to 8 against the total agreed consideration of Rupees Fourteen Lakhs.

(B) The Defendants 1 to 8 be ordered to deliver the actual, physical, vacant possession of the said entire property Bungalow No.9, Sunder Nagar, New Delhi except one garage, the possession whereof has already been delivered to the plaintiff by Defendants 1 to 8 in terms of the agreement to sale referred to above.

(C) That Defendants 1 to 8 be ordered to deposit Rs.7,17,330/- as the unearned increase in the value of the plot No.9, Sunder Nagar, New Delhi, and failing such payment, the plaintiff be allowed to deposit the said amount in the account of the Defendants1 to 8 out of the unpaid balance of Rs.12,60,000/-.

(D) That Defendants 1 to 8 be ordered to pay Rs.1,40,000/- as and by way of liquidated damages for the breach of contract and the said amount of Rs.1,40,000/- be allowed to be appropriated out of the unpaid balance consideration of Rs. 12,60,000/- due and payable to the said Defendants 1 to 8.

(E) That it may also be ordered that all public dues payable by the Defendants 1 to 8 in respect [sic] of the property in suit be paid by the plaintiff in the account of the said Defendants and the amount so

paid be allowed to be appropriated out of the last mentioned unpaid balance money payable to the Defendants 1 to 8 for conveying the said property to the plaintiff.

(F) That the Defendants 1 to 8 be required to apply to their respective Income-Tax Officers and to obtain the respective Clearance Certificates for the sale of the property in favour of the plaintiff. It may further be ordered that if Defendants 1 to 8 or any of them neglects to apply to their Income-Tax Officers for obtaining the necessary Clearance Certificates for the sale of the said property, then an officer of this Hon'ble Court do make such application on behalf of the concerned Defendants 1 to 8 and all costs of the said applications as also any amounts demanded by the Taxation authorities for issue of the requisite Clearance Certificates be ordered to be deducted out of the said amount of Rs.12,60,000/- and incase of a short fall a decree for the additional amount involved by passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally.

(G) That the Defendants 4 to 8 be required to produce the Estate Duty Clearance Certificate in respect of the conveyance of one quarter undivided right, title and interest in the said property previously belonging to Shri Din Dayal, the deceased husband of Defendant No.4 and father of Defendants 5 to 8. It may also be ordered that in case Defendants 4 to 8 neglect to obtain the Requisite Estate Duty Clearance Certificate, then an Officer of this Hon'ble Court do apply for the grant of the said Estate Duty Clearance Certificates on behalf of Defendants 4 to 8 and all costs of such applications as also the payment of any dues

demanded by the Estate Duty Officer be allowed to be deducted out of the balance consideration money, if any, in the hands of the plaintiff and in the event of the plaintiff being required to pay any amount to the Taxation authorities, then a decree for a like amount be passed in favour of the plaintiff and the Defendants 1 to 8.

(H) That Defendants 1 to 8 be also required to pay all the public dues, lease money, and misuse charges, if any pertaining to Bungalow No.9, Sunder Nagar, New Delhi, and if they fail to do so, then the plaintiff be required to pay all such dues, and a decree for a like amount be passed in favour of the plaintiff against Defendants 1 to 8 jointly and severally.

(I) That the Defendants 1 to 8 be ordered to hand over all the antecedent original title deeds of the property No.9, Sunder Nagar, New Delhi to the plaintiff.

(J) That pending the completion of all the jobs to be undertaken and completed by the Defendants 1 to 8 as detailed above, the plaintiff be allowed to deposit final balance amount if any, payable by the said Defendants 1 to 8 in this Hon'ble Court and the said balance may be ordered to be released to the Defendants 1 to 8 only after they have fully complied with their part of the contract, as decreed by this Hon'ble Court.

II. That in the event of this Hon'ble court deciding that for any reason whatsoever a decree for specific performance is not to be allowed to the plaintiff (which is not expected):-

Then in the alternative:

A decree for the refund of Rs.1,40,000/- alongwith interest

thereon at Rs.1.25 paise percent per month or part of a month from the date of payment viz. 30.7.80 to the date of receipt by the plaintiff be passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally and the said Defendants may further be ordered to pay Rs.11,00,000/- for breach of contract to the plaintiff as and by way of damages, and the same be decreed accordingly.

III.(A) That in the event that this Hon'ble Court holds that Defendant No.9 is the owner of an undivided 1/24th right, title and interest in the said property, then a decree for specific performance of the agreement to sale dated 29/30.7.80 in respect of an undivided 23/24th right, title and interest in the said property No.9, Sunder Nagar, New Delhi belonging to Defendants 1 to 8 be granted in favour of the plaintiff against the Defendants against the payment of the agreed total consideration of Rs.14,00,000/-.

(B) That the Defendants 1 to 8 be ordered to deliver the actual, physical, joint possession of the said entire property to the plaintiff and Defendant No.9 jointly except one garage, the possession whereof has already been delivered to the plaintiff by Defendants 1 to 8 in terms of the agreement to sale referred to above.

(C) That Defendants 1 to 8 be ordered to pay Rs.7,17,330/- to the Land and Development Officer as the unearned increase in the value of the plot No.9, Sunder Nagar, New Delhi, as also the other dues demanded by the said Officer, and in case the Defendants neglect to pay the said amounts then the plaintiff be permitted to pay the above amounts in the account of Defendants 1 to 8 and to deduct the same out of the unpaid balance of

Rs.12,60,000/-.

(D) That Defendants 1 to 8 be ordered to pay Rs.1,40,000/- as and by way of liquidated damages for the breach of contract and the said amount of Rs.1,40,000/- be allowed to be appropriated out of the unpaid balance consideration of Rs.12,60,000/- due and payable to the said Defendants 1 to 8.

(E) That it may also be ordered that all public dues payable by the Defendants 1 to 8 in respect of the property in suit be paid by the plaintiff in the account of the said Defendants 1 to 8 and the amount so paid be allowed to be appropriated out of the last mentioned unpaid balance money payable to the Defendants 1 to 8 for conveying the said property to the plaintiff.

(F) that the Defendants 1 to 8 be required to apply to their respective Income Tax Officers and to obtain Clearance Certificate for the sale of the property in favour of the plaintiff. It may further be ordered that if Defendants 1 to 8 or any of them neglect to apply to their Income Tax Officers for obtaining the necessary Clearance Certificate for sale of the said property, then an officer of this Hon'ble Court do make such applications on behalf of the concerned Defendants 1 to 8 and all costs for the making of the said applications as also any amounts demanded by the Taxation authorities for issue of the requisite Clearance Certificates be ordered to be deducted out of the said amount of Rs.12,60,000/- and in case of a short fall a decree for the additional amount involved be passed in favour of the plaintiff against the Defendants 1 to 8 jointly and severally.

(G) That the Defendants 4 to 8 [illegible] e

the Estate Duty Clearance Certificate in respect of the Conveyance of one-quarter undivided right, title and interest in the said property previously belonging to Shri Din Dayal, the deceased husband of Defendant No.4, and father of Defendants 5 to 8. It may also be ordered that in case Defendants 4 to 8 or any of them, neglect to obtain the requisite Estate Duty Clearance Certificate, then an officer of this Hon'ble Court do apply for the grant of the said Estate Duty Clearance Certificate on behalf of the Defendants 4 to 8 and all costs of such applications as also the payment of any dues demanded by the Estate Duty Officer be allowed to be deducted out of the balance consideration money, if any, in the hands of the plaintiff and in the event of there being a short fall, the plaintiff be required to pay the requisite amount to the Taxation authorities and a decree for a like amount be passed in favour of the plaintiff against the Defendants 1 to 8, jointly and severally.

(H) That the Defendants 1 to 8 be ordered to hand over all the original title deeds of the property No.9, Sunder Nagar, New Delhi to the plaintiff.

(I) That pending the completion of all the jobs to be undertaken and completed by Defendants 1 to 8, the plaintiff be allowed to deposit the final balance amount, if any, payable to the Defendants in this Hon'ble court and the said balance may be ordered to be released to the Defendants 1 to 8 only after they have fully complied with their part of the contract as decreed by this Hon'ble Court.

(J) The costs of the suit may also be awarded, to the plaintiff against the Defendants 1 to 8.

30th day of April 1984

CORAM:

Hon'ble Mr. Justice Yogeshwar Dayal

For the Plaintiff : Mr. S. R. Bhagat, Advocate.

For the Defendants : Mr. G.L. Rawal, Advocate for Deft. No.9.

The suit coming on this day for final disposal before this Court in the presence of counsel for the parties as aforesaid; it is ordered that a decree as prayed by the plaintiff and the same is hereby passed in favour of the plaintiff and against the Defendants 1 to 8 only.

It is lastly ordered that Defendants 1 to 8 herein do pay to the plaintiff herein the cost of the suit incurred by the latter as Rs.18,028.75p (Rs. Eighteen Thousand Twenty Eight and Paise Seventy Five only) as taxed by the Taxing Officer of this court and noted in the margin of this decree.

Given under my hand and the seal of the court this the 30th day of April, 1984.

Sd/
Dy. Registrar"

16. Appeal was dismissed as time barred. A few months thereafter an Application under Order IX Rule 13 of Code of Civil Procedure, 1908 was filed for setting aside the ex parte decree. That too was dismissed. It appears the vendors lost all hope and left things as they were at that stage. It is seen from the pleadings that attempts were also made for an out of court settlement, but in vain.

17. We do not think that the vendors would be justified in setting up any defence on executability of the decree both on law and facts of the case. At the risk of re[illegible]g

to the facts, it can be seen that the vendors had in fact wanted to fructify the agreement for sale. Having received the advance amount of Rs.1,40,000/-, they had parted possession of a part of the property, viz., garage. They had jointly made an application to the L&DO in terms of the agreement, for permission to transfer the property. The L&DO did grant the permission but on condition of deposit of an amount of Rs.7,17,330/- towards the unearned increase, which is more than 50% of the sale consideration. The value of the property had shot up by that time. It is pertinent to note that as per the original agreement, the unearned increase was to be paid by the vendors. On account of the escalation, it appears, their hearts started burning and they were extremely reluctant to part with the property. Their attempts thereafter have always been, one way or the other, to delay, if not deny, their obligation for conveyance of the property.

18. The main contention of the vendors is that that there is no decree in terms of Section 2 (2) of the Code of Civil Procedure, 1908 because there is no formal expression of adjudication and the court has not conclusively determined the rights of the parties. But it has to be seen that the vendors did not contest the suit. They had not even filed a written statement. In that context only, the suit was decreed as prayed for. In the Judgment dated 30.04.1984, the Court has referred to the averments in the plaint. The opening and concluding sentences of the Judgment read as follows:

> "Plaintiff, S. Kuldeep Singh has filed the present suit against Shri Banarsi Dass and 8 others for specific performance of an agreement to sell dated 29/30th July 1980. The agreement relates to plot No.9, Block No.171 in the layout plan of the New Capital of Delhi, now known as Bungalow No.9, Sunder Nagar, New Delhi. …
>
> xxx xxx xxx xxx xxx
>
> However, since the Defendants have failed to file

> written statement, as directed in my order dated 15th February, 1984, I proceed to pronounce the judgment under the provisions of order 8 rule 10 of the Code of Civil Procedure and decree the suit of the plaintiff as prayed for with costs against Defendants 1 to 8 only as there is no relief prayed against Defendant No.9."

19. Having referred to the entire contentions of the plaintiff, the Judgment was pronounced under Order VIII Rule 10 of the Code of Civil Procedure, 1908 since there was no written statement. The Court has taken the position that the defendants had failed to file written statement. Therefore, the Court, in the facts of the case, opted to pronounce the Judgment, under Order VIII Rule 10 of the Code of Civil Procedure, 1908 and draw the decree accordingly.

20. No doubt, the decree passed under Order VIII Rule 10 of the Code of Civil Procedure, 1908 is an ex parte decree. But merely because it is an ex parte decree, the same does not cease to have the force of the decree. It is a valid decree for all purposes.

21. It is also worthwhile to note that the Judgment was pronounced under the pre-amended Rule 10 under Order VIII of the Code of Civil Procedure, 1908 and there was more discretion with the Court regarding pronouncement of the Judgment in the absence of written statement. Still further, it is to be noted that Rule 10 speaks about the requirement of written statement indicating thereby that there are cases where written statement was required to be filed. Written statement is the defense of the defendants. They chose not to file it. Despite the absence of such defense, the court still applied its mind and after referring to the pleadings, pronounced a Judgment allowing the suit for specific performance. Though the Judgment says that the suit is decreed as prayed for and though all the prayers have been incorporated in the decree, it is to be noted that the suit is one for specific performance of the agreement. The suit that has been d… or

specific performance of the agreement. Once the decree for specific performance attained finality, they cannot thereafter turn round and make weak and lame contentions regarding the executability of the decree.

22. If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in *Topanmal Chhotamal v. Kundomal Gangaram and Others*[3] and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the Judgment. If sufficient guidance is not available even from the Judgment, the Court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the Court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed.

23. There is no case that the court does not have jurisdiction to pass the decree. Nor is there any case that the decree is a nullity on account of any jurisdictional error. Hence, the decree is executable for all intents and purposes but limited to the shares of the vendors. The claim of Rajinder Kumar would depend on the outcome of the pending suit.

24. Now we shall deal with the issue regarding the approach of the High Court in dealing with the application for rescission. Apparently, the purchaser-Kuldeep Singh was also

3. ***AIR 1960 Supreme Court 388 - Paragraph 4*****- "At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the Judgment. ..."**

not quite serious in pursuing the cause. Though the decree is dated 30.04.1984, the execution petition was filed only after six and a half years, on 07.11.1990. No doubt, it was within the time prescribed by the law of limitation. But the efflux of time assumes importance and seriousness in the background of the escalation of price in real estate.

25. It is very strange that no serious steps have been taken by the executing court for almost a decade. While so, only on 24.04.1999, respondents 3 to 7 and 13 filed Application - IA No. 4274 of 1999 in the suit for rescinding the agreement for sale. The main ground taken in the Application for rescission of the agreement was that the plaintiff/purchaser failed to deposit the balance consideration of Rs.12,60,000/-. It was also contended that between the date of decree in 1984 and the date of filing the Application for rescission, even the notified rates in land value shot up from Rs.2,000/- per square yard to Rs.13,860/- per square meter and the unearned increase would be around Rs.50,00,000/- and, thus, it would be highly unjust, unconscionable and inequitable to compel the vendors to make the payment of the unearned increase. It was also averred that the vendors were prepared to pay a reasonable compensation to the purchaser. The purchaser-Kuldeep Singh in response to the Application for rescission, stated that the court had not fixed any time for deposit of the balance amount, the balance amount was payable only on the execution and registration of the conveyance deed. He also contended that execution was possible only on permission from the L&DO on payment of unearned increase by the vendors and for which the vendors are at fault in not having taken any serious steps in completing their obligations under the decree; and that the purchaser had always been ready and willing to perform his part of the agreement.

26. By Order dated 23.02.2000, the learned Single Judge dismissed the applications holding that the purchaser was not at fault either in having done something or in not having done something which stood in the way of

decree. On the contrary, it was the vendors who did not perform their duties in the sequence of events prior to and leading to the registration of the sale deed. In short, it was held that the vendors having not performed their obligations under the agreement, they could not approach the court for rescinding the agreement on the ground that the purchaser had not deposited the balance amount.

27. It is extremely important and crucially relevant to note that the court did not advert to one of the main contentions regarding the escalation in land value by which the vendors had to incur the liability of around four times the balance consideration by way of payment of unearned increase to the L&DO so as to complete their obligation. It is pertinent also to note that the said unconscionable liability for the vendors arose only on account of the delayed execution of the decree.

28. It is significant to note that during the pendency of the appeals, the purchaser sought permission of the court to deposit the balance consideration and, on 06.01.2010, the same was granted. He, accordingly, deposited some amounts towards the liability of unearned income also.

29. It appears from the Order dated 06.01.2010 in FAO (OS) No. 66 of 2002 that only oral submissions were made for the deposit of balance consideration, by the respondent-Kuldeep Singh. For the purpose of ready reference, we may extract the Order as such:

> "Learned counsel for Respondent No.1 (Kuldeep Singh) says that the balance consideration in terms of the contract entered into between the parties will be deposited by his client on or before 11th January, 2010. Learned counsel for Respondent No.1 also says that the unearned increase that is required to be calculated by the L and DO has not yet been so calculated but his client is prepared to deposit an amount of Rs. 10 lakhs on account in this regard. This amount will be deposited with the Registrar General of this Court on or before 11th January, 2010.
>
> List for directions on 12th January, 2010.
>
> Arguments have been heard and concluded and judgment is reserved. The matter is listed on 12th January, 2010 only for compliance with regard to the deposit."

30. We have referred to above development to keep in mind one significant and important aspect of the matter that the vendors did not get an opportunity to make their response to the oral submission made by the purchaser with regard to deposit of the balance consideration, after passage of around 26 years after the decree.

31. Having regard to the facts and circumstances which we have discussed above, we are afraid the High Court has not made an attempt to balance equity. As in the case of a decree for specific performance where equity weighs with the court so is the situation in considering an application under Section 28 of the Specific Relief Act, 1963 for rescinding the contract. Under Section 28 of the Specific Relief Act, 1963, a vendor is free to apply to the Court which made decree to have the contract rescinded in case the purchaser has not paid the purchase money or other sum which the Court has ordered him to pay within the period allowed by the decree or such other period as the court may allow. On such an application, the Court may, by order, rescind the contract "as the justice of the case may require". It is now settled law that a suit for specific performance does not come to an end on passing of a decree and the Court which passed the decree retains control over the decree even after the decree has been passed and the decree is sometimes described as the preliminary decree.

32. In *Hungerford Investment Trust Limited (In Voluntary Liquidation) v. Haridas Mundhra and Others*[4], it has been held that:

4. (1972) 3 SCC 684.

"22. It is settled by a long course of decisions of the Indian High Courts that the Court which passes a decree for specific performance retains control over the decree even after the decree has been passed. In *Mahommadalli Sahib v. Abdul Khadir Saheb* (1930) MLJ Vol. 59, p.351 it was held that the Court which passes a decree for specific performance has the power to extend the time fixed in the decree for the reason that Court retains control over the decree, that the contract between the parties is not extinguished by the passing of a decree for specific performance and that the contract subsists notwithstanding the passing of the decree. …"

(Emphasis supplied)

33. The discretionary power vested in court by Section 28 of the Specific Relief Act, 1963 is intended to apply in such circumstances:

"The effect of this provision is to empower the court which passed the decree for specific performance to rescind the contract and set aside the decree which it has passed earlier if the successful plaintiff failed to comply with the terms of the decree by making payment of the purchase money or other sums which the court ordered him to pay. …[5]"

(Emphasis supplied)

34. The decree for specific performance is a decree in favour of both the plaintiff and the defendant in the suit, as held by this Court in *Hungerford Investment Trust Limited* case (supra). Hence, the decree can be executed either by the plaintiff or the defendant.

35. The plaintiff or the defendant is also free to approach

5. **Pollock & Mulla, The Indian Contract and Specific Relief Acts, 14th Edition, Page 2064.**

the court for appropriate clarification/directions in the event of any ambiguity or supervening factors making the execution of the decree inexecutable. To quote Fry (ibid) (please see Pages-546-548):

"1170. It may and not unfrequently does happen that after judgment has been given for the specific performance of a contract, some further relief becomes necessary, in consequence of one or other of the parties making default in the performance of something which ought under the judgment to be performed by him or on his part ; as, for instance, where a vendor refuses or in unable to execute a proper conveyance of the property, or a purchaser to pay the purchase-money. The character of the consequential relief appropriate to any particular case will of course vary according to the nature of the subject-matter of the contract and the position which the applicant occupies in the transaction; but in every case the application must, under the present practice, be made only to the Court by which the judgment was pronounced, and the multiplicity of legal proceedings which sometimes occurred before the fusion of the jurisdictions of the Courts of Chancery and Common Law is now practically impossible.

1171. There are two kinds of relief after judgment for specific performance of which either party to the contract may, in a proper case, avail himself.

1172.(i.) He may obtain (on motion in the action) an order appointing a definite time and place for completion of the contract by payment of the unpaid purchase-money and delivery over of the executed conveyance and title-deeds, or a period within which the judgment is to be obeyed, and, if the other party fails to obey the order, may thereupon at once issue a writ of sequestration against the defaulting party's estate and effects. Furthermore, if the default was in the payment of money, the plaintiff may issue his fi fa. or elegit: if in some act other than c nt

of money, he may move, on notice to the defaulter, for a writ of attachment against him. Indeed, in a case where a person who had agreed to accept a lease would not, though ordered by the Court to do so, execute the lease, it was held that an attachment was the only means to which the Court could resort for enforcing such execution.

1173. (ii.) He may apply to the Court (by motion in the action) for an order rescinding the contract. On an application of this kind, if it appears that the party moved against has positively refused to complete the contract, its immediate rescission may be ordered : otherwise, the order will be for rescission in default of completion within a limited time. And where a deposit has been paid, and there is no condition of the contract determining, expressly or impliedly, what is to be done with it in the event of such a rescission, the Court will decline to order the deposit to be returned to a defaulting purchaser. An order for the defendant to pay the plaintiff's costs, and a stay of further proceedings in the action, except such proceedings as may be necessary for recovery of the costs of the action and the costs of the motion, may also be obtained on this application. A vendor plaintiff is not debarred from moving for an order for rescission by the fact that the judgment at the trial contained a declaration of his vendor's lien, and gave him liberty to apply as to enforcing it.

In some cases the order has expressly excepted from the stay of proceedings any application to the Court to award and assess damages sustained by the plaintiff's by reason or in consequence of the breach of contract. In *Henty v. Schroder* (12 Ch.D.666), however, Jessel M.R. declined to make this exception, consider that the plaintiffs could not at the same time obtain an order to have the contract rescinded and claim damages for the breach of it. If this be so, it would seem that in many cases the Court must fail to give the plaintiff the full measure of relief

requisite for replacing him in the position in which he stood before the contract,-the repayment, for instance, of expenses incurred by him in showing his title."

(Emphasis supplied)

36. Dealing with a situation where deterioration takes place by the conduct, according to Fry (ibid) (please see Page 654):

"1431. If, after the contract and before the purchaser takes, or ought to take, possession, any deterioration take place by the conduct of the vendor or his tenants, he will be accountable for it to the purchaser. "He is not entitled to treat the estate as his own. If he willfully damages or injures it, he is liable to the purchaser ; and more than that, he is liable if he does not take reasonable care of it." And this liability may be enforced by action, even after a conveyance made in ignorance of the facts.

1432. Where a purchaser had paid his money into Court under an order, and was held entitled to compensation for deterioration, which had taken place while the vendors retained possession, he was allowed the amount out of his purchase-money, with interest at 4 per cent., and the costs of an issue to ascertain the amount of damage."

(Emphasis supplied)

37. In the instant case, converse is the position. If the purchaser is entitled to claim compensation for deterioration, a fortiori it must be held that vendor should also be entitled to compensation for accretion in value of the subject matter of the agreement for specific performance, in case the execution thereof is unduly delayed by the purchaser. Section 28 of the Specific Relief Act provides that the court has to pass an order as the justice of the case may require. Justice is not an abstract proposition. It is a concrete reality. The parties on approaching the court must get the feeling that justice has been done in the facts and circumstances of the case, [illegible]c

performance related cases, in terms of equity, equality and fairness.

38. In the facts and circumstances of the case, it is very difficult to balance the equity and balance the rights of both the parties in the background of their conduct. No doubt there was no time fixed in the agreement for payment of the purchase money. That was also contingent on a series of obligations to be performed by the vendor and the duty of the purchaser to pay the purchase money was only thereafter. But if we closely analyze the pleadings and submissions, we can see that the purchaser had made an attempt, though belatedly, for getting the obligations performed even at his expense.

39. The plaintiff purchaser very well knew that the vendors have been delaying the performance of their obligation under the agreement and things were getting complicated. It was open to the plaintiff, in such circumstances, to file an application, rather he ought to have filed an application in court on the original side for appropriate direction with regard to the payment of purchase money and for other procedural formalities. Despite the application filed by the vendor for rescission of the agreement in 1999, for the first time, an oral prayer was made by the purchaser before the court for the deposit of balance of purchase money only in the year 2010. That too was merely an oral submission. Consequently, the defendants never had an opportunity to respond to the same or contest the proposition. Therefore, it is abundantly clear that in the peculiar factual background of this case, the plaintiff purchaser was also at fault in not taking prompt steps.

40. In this context, one more reference to *Hungerford Investment Trust Limited* (supra) would be relevant:

> "25. It was contended on behalf of Mundhra that he was always ready and willing to pay the purchase money, but since the decree did not specify any time for payment of the money, there was no default on his part. In other words, the contention was that since the decree did not specify a time within which the purchase money should be paid and, since an application for fixing the time was made by the appellant and dismissed by the Court, Mundhra cannot be said to have been in default in not paying the purchase money so that the Appellant might apply for rescission of the decree. If a contract does not specify the time for performance, the Law will imply that the parties intended that the obligation under the contract should be performed within a reasonable time. Section 46 of the Contract Act provides that where, by a contract, a promiser is to perform his promise without application by the promise, and no time for performance is specified, the engagement must be performed within a reasonable time and the question "what is reasonable time" is, in each particular case, a question of fact. ..."
>
> (Emphasis supplied)

41. Analyzing the conduct of the vendors-defendants also, one can see that they are equally at fault. In the contract, no time was fixed for payment and, therefore, the purchaser was obliged to pay the purchase money within a reasonable time. Owing to the laches or lapses on the part of the parties in case there is any insurmountable difficulty, hardship or, on account of subsequent development, any inequitable situation had arisen, either party was free to approach the court for appropriate direction. Though the suit was decreed in the year 1984 and execution petition filed in 1990, the application for rescission was filed only in the year 1999.

42. In *Nirmala Anand v. Advent Corporation (P) Ltd. and Others*[6], it has been held by this Court:

> "6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific

6. (2000) 8 SCC 146.

performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

(Emphasis supplied)

In the above case, this Court balanced the equity by directing payment of Rs.6,25,000/- in the place of Rs.25,000/- .

43. In *Satya Jain (Dead) Through Lrs. and Others v. Anis Ahmed Rushdie (Dead) Through Lrs. and Others*[7], it has been held that:

"38. The ultimate question that has now to be considered

7. (2013) 8 SCC 131.

is: whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22-12-1970?

39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi*[8]: and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd.*[9] may be usefully recapitulated.

41. The twin inhibiting factors identified above if are

8. (2007) 10 SCC 231.

9. (2012) 5 SCC 712.

to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court."

(Emphasis supplied)

44. The circle rate of the residential property based on which the unearned increase is calculated by the L&DO, would show a sharp increase during the period. Sunder Nagar comes under Category 'A' colonies. Under the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007, the notified circle rate for Category 'A' colonies from July 2007 was Rs.43,000/- per square meter and from February 8, 2011, it was Rs. 86,000/- per square meter. From November 16, 2011, it was Rs.2,15,000/- per square meter and from January 5, 2012, it is Rs.6,45,000/- per square meter.

45. In the peculiar facts and circumstances of the case, we are of the view that the trial court should have passed an equitable order while considering the application for rescission. Having regard to the fact that the decree was passed in 1984, we feel that it would be unjust and unfair to relegate the parties to the trial court at this distance of time. For doing complete justice to the parties, we are of the view that it is a case where the purchaser should be directed to pay the land value to the vendors as per the circle rate notified for the residential property in Category 'A' colonies prevailing during November 16, 2011 to January 5, 2012, at the rate of Rs.2,15,000/- per square

meter. The purchaser shall also be liable to meet the liability arising by way of unearned increase to be paid to the Land and Development Office. He is free to withdraw the amounts deposited by him in the court as per order dated 06.01.2010. It is also ordered that in case the plaintiff does not deposit the amount to be paid to the vendors within three months from today, the vendors shall deposit in court within two months thereafter the amount calculated as per the circle rate referred to above by way of compensation to be paid to the purchaser, and in which event, they shall stand discharged of their obligations under the contract and the decree. In the event of the purchaser depositing the amount as above, the execution proceedings shall be finalized within another one month. The Court in seisin of the Suit OS No. 1428 of 1981 shall dispose of the same within three months from today.

46. The Appeal filed by Rajinder Kumar [arising out of SLP (C) No. 19215/2011] is dismissed and the other Appeals are partly allowed as above. There is no order as to costs.

R.P. Appeals disposed of.

ABP PVT. LTD. & ANR.
v.
UNION OF INDIA & ORS.
(Writ Petition (Civil) No. 246 of 2011 etc.)

FEBRUARY 07, 2014

[P. SATHASIVAM, CJI, RANJAN GOGOI AND SHIVA KIRTI SINGH, JJ.]

CONSTITUTION OF INDIA, 1950:

Arts. 14, 19(1)(a) and 19(1)(g) - Constitutional validity of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and Amendment Act of 1974 - Held: In Express Newspaper, the Constitution Bench has held the 1955 Act as intra vires the Constitution - The Act being a beneficent legislation intended to regulate conditions of service of working journalists does not have the effect of taking away or abridging the freedom of speech and expression of petitioners-newspapers and does not, therefore, infringe Art. 19(1)(a) of the Constitution - Nor could it be held to be violative of Art. 19(1)(g) of the Constitution in view of the test of reasonableness - Challenge as to the singling out of newspaper industry per se was rejected by the Constitution Bench holding it to be a class by itself - The 1974 amendment Act brought the other employees of newspaper industry (i.e. non-working journalists) into the ambit of the Act and extended the benefits of the Act to them - Thus, the same is also covered as per the reasoning of the Constitution Bench decision - Mere passage of time by itself would not result in invalidation of the Act and its object -- Challenge as to the vires of the Act on the premise of it being ultra vires the Constitution and violative of fundamental rights is wholly unfounded, baseless and completely untenable.

WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955:

ss. 9 and 13-C - Government of India Notification dated 11.11.2011 notifying the recommendations of Justice Majithia Wage Boards - Held: As regards constitution of Wage Boards, merely because a person had been in the employment of the Government, he does not cease to become "independent" for the purposes of being a member of the Committee to recommend the fixing of wages - Allegation of bias against independent members of Wage Boards, being based merely on their past status, is entirely baseless in law and amounts to imputing motives - Administrative law - Legal bias.

ss. 9 and 13 - Composition of Wage Boards - Held: To have common representatives of the employers on the two Wage Boards, four independent members, including the Chairman being common for both the Wage Boards, and separate set of members representing working journalists and members representing non-journalist newspaper employees in no way affects the interest of the employers and the challenge of the petitioners in this regard is unfounded.

s.11(1) r/w s.10(1) - Procedure followed by Wage Boards - Held: Wage Board has special powers to regulate its own procedure -- As long as it follows the principles of natural justice and fairness, its functioning cannot be called into question on the ground of irregularity in the procedure - In the instant case, detailed questionnaires were issued to newspaper establishments, notices inviting representations were published in 125 newspapers -- Wage Boards conducted a series of meetings and gave ample opportunities to the employers to make their point of view known to the Board by written and oral representations -- Court is satisfied that the decision making process stands valid - The petitioners, having eluded to submit the data, cannot be allowed to take advantage of their own [illegible]e

recommendations of Wage Boards - Further, no prejudice is caused to employers by classifying them in eight categories on the basis of gross turn over - There is no irregularity in the procedure adopted by Wage Boards.

s.10(2) and 12 - Recommendations of Wage Boards and its acceptance by Central Government - Held: capacity of newspaper industry to pay is one of the essential circumstances to be taken into consideration while fixing rates of wages under the Act - Comprehensive and detailed study has been carried out by Wage Boards by collecting all relevant materials for the purpose of wage revision - Recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of wage revision in modern era - It cannot be held that the wage structure recommended by Majithia Wage Boards is unreasonable - As regards the issue of wages for News Agencies to be fixed separately and independently, in view of limited jurisdiction to look into this aspect, it would be inapposite for the Court to question the decision of specialized board on merits especially when the Board was constituted for this sole purpose - Besides, it is the prerogative of Central Government to accept or reject the recommendations of Wage Boards - There is no scope for hearing the parties once again by Central Government while accepting or modifying the recommendations, except that modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties - Recommendations of Majithia Wage Boards are valid in law and there is no valid ground for interference under Art.32 of the Constitution.

Implementation of recommendations of Wage Boards - Held: Wages as revised/determined shall be payable from 11.11.2011, when Government of India notified the recommendations of the Majithia Wage Boards, and as directed in the judgment.

The Government of India, constituted two Boards on 24.5.2007, one for the Working Journalists and the other for non-Journalist Newspaper and News Agencies employees u/ss 9 and 13-C of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (the Act). The Chairman and six of the remaining nine members were common to both the Wage Boards. The remaining three members each representing the Working Journalists and non-Journalist Newspaper employees had been nominated by their respective Unions. Justice Gurbax Rai Majithia, a retired Judge of the High Court of Mumbai, took over the charge as Chairman of the two Boards on 04.03.2009. The recommendations submitted by Majithithia Wage Boards, were accepted by the Central Government and notified on 11.11.2011. The petitioners (management of various newspapers) filed the instant writ petitions, challenging and praying for quashing of the notification dated 11.11.2011 on the grounds: (i) improper Constitution of the Wage Boards; (ii) irregularity in the procedure adopted by Wage Boards; and (iii) Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations. Constitutional validity of the Act was also challenged on twin grounds: Firstly, the Act infringed the fundamental rights guaranteed under Arts. 14 and 19 of the Constitution; and secondly, the Act had become obsolete with the passage of time. The petitioners also challenged the vires of the Amendment Act, 1974 on the ground that extending the benefit of the Act to employees other than working journalists was against the object that was sought to be achieved by the original Act since the benefits to other newspaper employees had no rational nexus between the differentia and the object sought to be achieved.

Dismissing the petitions, the C

HELD:

Constitutional validity of the Act:

1.1 In Express Newspaper (P) Ltd.* a Constitution Bench of this Court has held the 1955 Act to be intra vires the Constitution; and the challenge to the Act as being violative of Arts. 19(1) (a), 19(1) (g) and Art. 14 was held unsustainable. It has been held that the impugned Act, judged by its provisions, being a beneficent legislation intended to regulate the conditions of service of the working journalists does not have the effect of taking away or abridging the freedom of speech and expression of the petitioners and does not, therefore, infringe Art. 19(1)(a) of the Constitution. Nor could it be held to be violative of Art. 19(1)(g) of the Constitution in view of the test of reasonableness laid down by this Court. Challenge as to the singling out of the newspaper industry per se was rejected by the Constitution Bench and the newspaper industry was held to be a class by itself. [para 17-19 and 21] [419-F; 422-C, E-H; 423-A-C; 431-F-G]

***Express Newspaper (P) Ltd. vs. Union of India 1959 SCR 12 = AIR 1958 SC 578 -- relied on.**

Express Publications (Madurai) Ltd. vs. Union of India 2004 (2) SCR 1098 = (2004) 11 SCC 526 - referred to.

John Vallamattom vs. Union of India 2003 (1) Suppl. SCR 638 = (2003) 6 SCC 611; Malpe Vishwanath Acharya vs. State of Maharashtra 1997 (6) Suppl. SCR 717 = (1998) 2 SCC 1; and Indian Handicrafts Emporium vs. Union of India 2003 (3) Suppl. SCR 43 = (2003) 7 SCC 589 - cited.

Challenge qua Amendment Act, 1974

1.2 The 1974 amendment Act brought the other employees of the newspaper industry (i.e. non-working

journalists) into the ambit of the Act and extended the benefits of the Act to them. Thus, the same is also covered as per the reasoning of the Constitution Bench decision of this Court. Therefore, the challenge as to the Amendment Act, 1974 stands disallowed. [para 21] [431-G-H]

1.3 The realm of Art. 14 of the Constitution is to be appreciated in the light of the interest of both employers and the employees. This Court is opting for not to interfere for two reasons: firstly, the petitioners cannot espouse the grievance of those employees working in the electronic media for non-inclusion and, more particularly, when those employees are not before this Court. Secondly, the fact that similar benefits are not extended to the employees of other similar industry will not result in invalidation of benefit given to the employees of press industry. Recalling that media industry is still an upcoming sector unlike the press industry, the scope for potential policies in future cannot be overruled. [para 23-24] [432-G; 433-A-C]

1.4 It is true that newspaper industry, with the advent of electronic media, continues to face greater challenges similar to the ones as observed by the Press Commission and noted in the Express Newspaper (P) Ltd. Thus, the contention of the petitioners that though the newspaper industry may be growing, the growth of the electronic media is relatively exponential, in fact, substantiates the very necessity of why a wage board for working journalists and other newspaper employees of the newspaper industry should exist. [para 29] [434-E-F]

1.5 As regards the second ground of challenge, i.e., the Act over the passage of time has outlived its utility, it is cogent opinion of this Court that mere passage of time by itself would not result in the invalidation of the Act and its object. The validity once having been upheld by the Constitution Bench of this Court in [illegible]s

(P) Ltd., the same cannot be again challenged on the ground alleed. [para 25] [433-D-E]

Motor General Traders vs. State of Andhra Pradesh **1984 (1) SCR 594 = (1984) 1 SCC 222 and** *Ratan Arya vs. State of Tamil Nadu* **1986 (2) SCR 596 = (1986) 3 SCC 385 - held inapplicable.**

1.6 This Court is, therefore, of the opinion that the challenge as to the vires of the Act on the premise of it being ultra vires the Constitution and violative of fundamental rights is wholly unfounded, baseless and completely untenable. [para 28] [434-D]

Constitution of the Wage Boards:

2.1 The Wage Boards constituted u/ss 9 and 13C of the Act are required to be comprised of 10 members i.e. one Chairman, three independent members, three representatives for employers and three representatives for employees. As regards the petitioners' main ground of challenge to appointment as Member-Secretary of the Wage Board, of the former Secretary of Ministry of Labour and Employment, Government of India on the ground of his independence, suffice it to say that merely because a person had been in the employment of the Government, he does not cease to become "independent" for the purposes of being a member of the Committee to recommend the fixing of wages. This Court is satisfied that the said official was an independent member of the Board and cannot be considered to be "biased" in any manner. [para 30, 31and 33] [434-G-H; 435-C-D, E-F; 437-C]

State of Andhra Pradesh vs. Narayana Velur Beedi Manufacturing Factory **1973 (3) SCR 755 = (1973) 4 SCC 178 -- relied on.**

2.2 The petitioners' allegations against another member, who was an experienced journalist and had

been associated with various journalistic institutions in his long journalistic career, are only vague and general allegations and no specific allegation that he acted in a manner that was biased against the employers has been leveled by the petitioners. It is well-settled that mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. [para 34-35] [437-D, E-F]

Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant **2000 (4) Suppl. SCR 248 = (2001) 1 SCC 182; and** *State of Punjab vs. V.K. Khanna* **2000 (5) Suppl. SCR 200 = (2001) 2 SCC 330 - referred to.**

2.3 The petitioners' allegation of bias against independent members of the Wage Boards, being based merely on their past status, is entirely baseless in law and amounts to imputing motives. Further, the petitioners have nowhere established or even averred that the independent members are guilty of legal bias. [para 37] [438-E]

Perspective Publications vs. State of Maharashtra **(1969) 2 SCR 779 relied on.**

2.4 Besides, the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi which had declined to grant interim relief. The said order attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners having participated in the proceedings and acquiesced themselves with the proceedings of the Board, they cannot be allowed to challenge the same at this stage after the recommendations by the Wage Boards had been notified by the Central Government. [para 38] [438-G-H; 439-A-B]

2.5 On perusal of the materials available, this Court is satisfied that the Wage Boards have functioned in a fully balanced manner. [para 38] [43

2.6 With regard to the petitioners contention that two separate Wage Boards ought to have been constituted instead of a common wage board, it is significant to note that the Financial Memorandum accompanying the Working Journalists (Conditions of Service) and Miscellaneous Provisions (Amendment) Bill, 1974 specifically states that "the intention is to constitute Wage Boards under s. 9 and proposed s. 13C as far as possible at the same time and to have a common Chairman and a common Secretariat for both the Boards", and accordingly, Palekar Tribunal (1980), Bachawat Wage Board (1989) and Manisana Wage Board (2000) constituted after 1974 amendment were all common Boards/Tribunal for both working journalists and non-journalists. Though the members representing the employers were common, they were not incapacitated in any manner. They had two votes as they represented the employers in both the Boards. To have common representatives of the employers on the two Wage Boards is expected to be favorable to the employers as they can make a fair assessment of the requirements of the working journalists and non-journalist newspaper employees of the newspaper industry as a whole. [para 40-41] [439-E-H; 440-B]

2.7 However, as the two Wage Boards have separate entities meant for working journalists and non-journalist newspaper employees, there cannot be common representatives who can protect the interest and represent working journalists as well as non-journalist newspaper employees. Therefore, members representing working journalists were nominated to the Wage Board for the working journalists. Similarly, members representing non-journalist newspaper employees were nominated to the Wage Board for non-journalist newspaper employees. For administrative convenience, four independent members, including the Chairman were common for both the Wage

Boards. In the cogent view of this Court, this arrangement in no way affects the interest of the employers and the challenge of the petitioners in this regard is unfounded. [para 41] [440-C-E]

Procedure followed by Majithia Wage Boards:

3.1 Under s. 11(1) of the Act, Wage Board has special powers to regulate its own procedure. It is not obligatory for the Wage Board to follow the exact procedure of the earlier Wage Boards and as such there is no requirement in law to follow a strictly laid down procedure in its functioning. Besides, as long as it follows the principles of natural justice and fairness, its functioning cannot be called into question on the ground of irregularity in the procedure. [para 43] [441-D-E]

3.2 A detailed questionnaire was issued to newspaper establishments on 24.07.2007. Several attempts were made by the Wage Boards to get the relevant information from the employers but many of the petitioners did not give financial data; they abstained from attending the Board's proceedings. Regular follow up with the employers was made and series of letters were issued to collect financial information. Apart from the questionnaire, notices inviting representation as per s. 10(1) of the Act were published in 125 newspapers. Further, on 05.07.2010, summons were issued to around one hundred and forty stake holders and they were given final chance to submit the information. In addition to this, a two page simplified questionnaire was also issued on 02.03.2010. Thus, the procedure adopted by the Wage Boards did, in fact, give ample opportunities to the stakeholders to submit representations and financial data. However, many of the petitioners have never bothered to attend the proceedings of the Wage Board and did not submit financial data. It was only upon much effort and repeated requests that th of

66 establishments could be collected and out of this, the data of only 40 establishments was found useful by the Wage Board. Besides, these 40 establishments are representatives of the different class of newspaper establishments that are carrying on business in the country and in addition detailed submissions by representative groups such as the Indian Newspaper Society (INS) were also considered. Thus, it can certainly be construed that these representative bodies presented an overview of the whole newspaper industry, apart from the information collected from the individual establishments. [para 44-46 and 48] [441-F; 442-A, B-D, F-H; 443-A; 445-D-E]

3.3 It is evident that the Wage Boards conducted a series of meetings and gave ample opportunities to the employers. The employers were given opportunity of both written and oral representations to make their point of view known to the Board and consequently, this Court is satisfied that the decision making process stands valid. The petitioners, having eluded to submit the data, cannot be allowed to take advantage of their own wrong and impugn the recommendations of the Wage Boards. Further, no prejudice is caused to employers by classifying them in eight categories on the basis of gross turnover. [para 50 and 51] [449-B-C, F; 450-B]

3.4 After having exhaustively gone through the record of proceedings and various written communications, this Court is fully satisfied that the Wage Boards proceedings have been conducted and carried out in a legitimate approach and no decision of the Wage Board is perceived to having been taken unilaterally or arbitrarily. Rather all decisions have been reached in a coherent manner in the presence of all the members of Wage Board after having processed various statistics and there is no irregularity in the procedure

adopted by the Wage Boards. [para 53]

Majithia Wage Boards did not overlook the relevant aspects nor did it consider extraneous factors while drafting the recommendations: [450-H; 451-A-C]

4.1 In Express Newspaper (P) Ltd, this Court has held that the capacity of the newspaper industry to pay is one of the essential circumstances to be taken into consideration while fixing rates of wages under the Act. Consequently, s. 10(2) of the Act was inserted which gives the statutory recognition to the requirement of taking into consideration the capacity of the employer to pay. [para 55] [451-E, G]

4.2 Chapter XIV, titled Capacity to pay of the Newspaper industry (A Financial Assessment) of the Justice Majithia Report, elaborately discusses on the aspect of capacity to pay. After perusing the relevant documents, this Court is satisfied that comprehensive and detailed study has been carried out by the Wage Board by collecting all the relevant material information for the purpose of the wage revision. The recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of the wage revision in the modern era. It cannot be held that the wage structure recommended by the Majithia Wage Board is unreasonable. [para 56 and 59] [451-G-H; 453-E-F]

5.1 As regards the issue of wages for News Agencies to be fixed separately and independently, suffice it to say that this Court has a limited jurisdiction to look into this aspect. Interference is allowed to a limited extent to examine the question as to whether the Wage Board has considered the capacity of the News Agencies to pay. It would be inapposite for this Court to question the decision of the specialized board

when the Board was constituted for this sole purpose. [para 60 and 62] [453-H; 454-C-D]

5.2 Regarding variable pay recommended by the Majithia Wage Board, it categorized "basic pay" and "variable pay" separately. The concept of "variable pay" is not newly introduced. The Wage Boards have followed well-settled norms while making recommendations about variable pay. Further, the explanation to s. 2(eee) which defines "wages", specifically includes within the term "wages" "new allowances", if any, of any description fixed from time to time. Therefore, the Wage Board was well within its jurisdiction to recommend payment of 'variable pay'. The concept of 'variable pay' contained in the recommendations of the Sixth Central Pay Commission has been incorporated into the Wage Board recommendations only to ensure that the wages of the newspaper employees are at par with those employees working in other Government sectors. Such incorporation was made by the Majithia Wage Board after careful consideration, in order to ensure equitable treatment to employees of newspaper establishments, and it was well within its rights to do so. [para 63-65] [454-E; 455-C-D, F-G]

5.3 As regards the Wage Board recommendations to grant of 100% neutralization of dearness allowance and categorization of HRA and Transport Allowance into X, Y and Z category regions, this Court is satisfied that the Wage Boards followed certain well laid down principles and norms while making recommendations. [para 67] [456-B-C, D]

5.4 Section 12 of the Act deals with the powers of Central Government to enforce recommendations of the Wage Board. It is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards. There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except

that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that the Government has not accepted a few recommendations will not automatically affect the validity of the entire report. [para 69-70] [456-H; 457-A; 458-A-C]

6. This Court holds that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Art. 32 of the Constitution. The wages as revised/determined shall be payable from 11.11.2011, when the Government of India notified the recommendations of the Majithia Wage Boards, and as directed in the judgment. [para 71 and 73] [458-D-E, F]

Case Law Reference:

1959 SCR 12	**relied on**	**para 14**
2003 (1) Suppl. SCR 638	**cited**	**para 15**
1997 (6) Suppl. SCR 717	**cited**	**para 15**
2003 (3) Suppl. SCR 43	**cited**	**para 15**
2004 (2) SCR 1098	**referred to**	**para 20**
1984 (1) SCR 594	**held inapplicable**	**Para 25**
1986 (2) SCR 596	**held inapplicable**	**Para 25**
1973 (3) SCR 755	**relied on**	**para 32**
2000 (4) Suppl. SCR 248	**referred to**	**Para 35**
2000 (5) Suppl. SCR 200	**relied on**	**para 37**
(1969) 2 SCR 779	**relied on**	**para 37**

CIVIL ORIGINAL JURISDICTION : UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA.

Writ Petition (Civil) No. 246 of 201

WITH

W.P. (Civil) No. 382, 384, 386, 408, 510, 538, 514, 546 of 2011, 87 of 2012, 264, 315 of 2012 817 of 2013.

Contempt Petition (Civil) No. 252 of 2012 in W.P. (C) No. 538 of 2011.

Mohan Prasaran, S.G., Anil B. Divan, K.K. Venugopal, Aman Lekhi, P.P. Rao, S.S. Ramdas, Bijendra Chahar and Colin Gonzalves, Jayant Kumar Mehta, Ms. Neelima Tripathi, Sukant Vikram, G.V.S. Jagannadha Rao, Anuj Kapoor, Gopal Jain, R.N. Karanjawala, Manik Karanjawala, Nandini Gore, Aditi Bhatt, Neha Khandelwal, Avijit Deb, Kaushik Laik, Tahira Karanjawala (for Karanjawala & Co.), Akil Sibal, Trishala Kulkarni, Debmalya Banerjee, Dilpreet Singh, Kartik Bhatnagar, Jatin Mongia, Rohit Bhatt (for Karanjawala & Co.), K. Datta, Manish Srivastava, Atul Singh, Ashish Verma, Rahul Malhotra, Abhay Kumar, Diggaj Pathak, Parijat Kishore, Shanta Kumar V. Mahale, Pradeep Sawkar, Harish S.R. Hebbar, Rajesh Mahale, Ajay Choudhary, Ankit R.Kothari, Ajay Singh, Sunil Dogra, Aditya Verma, S. Lakshmi, Rohit Bhat, Hari Shankar K., Nachiket Joshi, Anil Shrivastav, Manoj Goel, Shuvodeep Roy, Birender Kr. Mishra, Shyam Lal, Abhinav Singh, Alok K. Prasad, Poonam Atey, Vishwanath Bahuguna, P.I. Jose, Gopal Jain, Anuj Dhir, Ranjit Raut, Kaushik Laik, Bina Gupta, B.K. Pal, E.C. Agrawala, D.L. Chidanand, Sukhbeer Kaur Bajwa, Ashwin Kumar D.S., Aditi Anil Dani, Yasir Rauf, Shreekant N. Terdal, Juno Rahman, Jyoti Mendiratta, Parmanand Pandey, E. Gopal, Raj Kisor Choudhary, Pamarty Venkataramana, Ajay Kumar Jain, Pranav Ranjan, Praneet Ranjan, Hari Shankar K., B.K. Pal, Thampan Thomas, N.M. Varghese, Tessy Varghese, K.V. Mohan for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. These writ petitions, under Article 32 of the Constitution of India, have been filed by the petitioners (management of various newspapers) praying for a declaration that the Working Journalists and Other Newspaper Employees (Conditions of Service) and

Miscellaneous Provisions Act, 1955 (in short 'the Act') is ultra vires as it infringes the fundamental rights guaranteed under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India. The petitioners further prayed for quashing of the notification dated 11.11.2011 issued by the Central Government accepting the recommendations made by Justice Majithia Wage Boards for Working Journalists and Non-Journalist Newspaper and News Agency Employees.

Factual Background:

2. It is pertinent to give a vivid background of the case before we advent to decide the issue at hand. Way back in 1955, the Government of India enacted the impugned Act to regulate the conditions of service of Working Journalists and in 1974 via amendment for other Newspaper Employees employed in newspaper establishments. For the purpose of fixing or revising the rates of wages of employees in newspaper establishments, the Central Government is empowered under Sections 9 and 13C of the Act to constitute two Wage Boards, viz., one for the working journalists and other for non-journalist newspaper employees respectively. Likewise, the Act also specifies that the Central Government shall, as and when necessary, constitute these Wage Boards. The composition of the Wage Boards is specified, as mentioned below:-

(a) Three persons representing employers in relation to Newspaper Establishments;

(b) Three persons representing working journalists for Wage Board under Section 9 and three persons representing non-journalist Newspaper Employees for Wage Board under Section 13C of the Act;

(c) Four independent persons, one of whom shall be a person who is, or has been a Judge of the High Court or the Supreme Court, and who shall be appointed by the Government as the Chairman thereof.

3. It is relevant to note that since 1955, six Wage Boards have been constituted for working journalists and four Wage Boards for non-journalist newspaper en[illegible]x

or revise the rates of wages. The relevant details of the preceding Wage Boards are as under:-

(i) Divatia Wage Board

Date of Appointment	Date of Acceptance	Challenge
02.05.1956	10.05.1957	In *Express Newspaper (P) Ltd. vs. Union of India* 1959 SCR 12 the decision of the Divatia Wage Board as well as the constitutional validity of the Act was challenged before this Court. This Court set aside the decision of the Wage Board dt. 30.04.1957 on the ground that it did not take into account the capacity of the industry to pay. As a result of this decision, an ordinance dated 14.06.1958 was promulgated which provided for the establishment of a Special Committee for making recommendations to the Central Government in regard to the rates of wages to be fixed for working journalists. Later, in September 1958, the Working Journalists (Fixation of Rates of Wages) Act, 1958 was passed by the Parliament.

(ii) Shinde Wage Board

Date of Appointment	Date of Acceptance	Challenge
12.11.1963/	27.10.1967	In *Press Trust of India vs. Union of India & Ors.* (1974) 4 SCC 638, this Court struck down the recommendations of the second Wage Board insofar as PTI was concerned as unreasonable and far in excess of what the employees themselves were demanding and beyond the financial capacity of the establishment and hence violative of the fundamental rights guaranteed under Part III of the Constitution.

(iii) Palekar Wage Board

Date of Appointment	Date of Acceptance	Challenge
11.06.1975/ 06.02.1976	26.12.1980	The constitution of Wage Board was challenged on 20.07.1981 on the ground of lack of independence. In December 1977, the employers' representatives wrote to the Central Government that they were withdrawing from the Wage Board as desired by the organizations. The government made several efforts to resolve the dead lock. On 28.08.1978, Writ Petitions were filed by the

		Indian and Eastern Newspaper Society and Others in the High Court at Bombay challenging the constitution of the Wage Boards. In order to find a solution, the President promulgated on 31.01.1979 the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment), Ordinance 1979. This ordinance provided for the constitution of a Tribunal consisting of a person who is/ or has been a Judge of the High Court or Supreme Court in place of each such Board and the abolition of such Boards upon the constitution of such Tribunals and for the continuance of the interim wages notified by the Government after taking into account the recommendations of such Boards.

(iv) Bachawat Wage Board

Date of Appointment	Date of Acceptance	Challenge
17.07.1985	31.08.1989	The award was challenged in *Indian Express Newspapers (Pvt.) Ltd. and Ors. vs. Union of India & Ors.* 1995 Supp (4) SCC 758.

(v) Manisana Wage Board

Date of Appointment	Date of Acceptance	Challenge
09.09.1994	5.12.2000/ 15.12.2000 by Notification	This Wage Board's award was challenged in Karnataka and Delhi High Court. The Court while deciding the challenge struck down the award on the ground that the proviso to Section 12(2) was not followed. However, despite the Manisana Award being struck down it was implemented by all the newspaper establishments.

(vi) Narayana Kurup Wage Board - Majithia Wage Board from 04.03.2009

Date of Appointment	Date of Acceptance	Challenge
24.05.2007	31.12.2010	With a slight modification, the government notified it on 11.11.2011. Its report is accepted and impugned in these proceedings on various asserted grounds.

Constitution of Justice Majithia Wage Boards

4. The Government constituted two Boards on 24.05.2007, one for the Working Journalists and the other for Non-Journalist Newspaper Employees under Sections 9 and 13C of the Act under the Chairmanship of Dr. Justice Narayana Kurup. The Chairman and six of the remaining e

common to both the Wage Boards. The remaining three members each representing the Working Journalists and Non-Journalist Newspaper Employees had been nominated by their respective Unions. The Wage Boards were given three years' duration to submit their Reports to the Central Government.

5. However, due to sudden change of events, Dr. Justice K. Narayana Kurup, the Chairman of the aforesaid Wage Boards submitted his resignation effective from 31.07.2008 after completing more than one year's tenure. Subsequently, Justice Gurbax Rai Majithia, a retired judge of the High Court of Mumbai was appointed as the common Chairman of the two Wage Boards for Working Journalists and other Newspaper Employees who took over the charge on 04.03.2009. Another significant change in the composition of the Wage Boards occurred due to sudden demise of Shri Madan Phadnis representing the All India Newspaper Employees Federation, who was a member of the Wage Board for Non-Journalist Newspaper Employees. In his place, Shri M.C. Narasimhan, as nominated by the same Federation, was substituted as member of the Board for Non-Journalist Newspaper Employees. Since then, the composition of the two Wage Boards has been as under:-

Wage Board for Working Journalists

1.	Justice Gurbax Rai Majithia, retired Judge of the High Court of Bombay at Mumbai	Chairman
2.	Shri K.M. Sahni, Former Secretary, Ministry of Labour and Employment	Independent Member
3.	Shri B.P. Singh	Independent Member
4.	Shri P.N. Prasanna Kumar	Independent Member
5.	Shri Naresh Mohan, representing	Representing

	Indian Newspaper Society	Employers
6.	Shri Gurinder Singh, representing All India Small and Medium Newspapers	Representing Employers
7.	Shri Prataprai, Tarachand Shah, representing Indian language Newspaper Association	Representing Employers
8.	Shri K. Vikram Rao, President, Indian Federation of Working Journalists	Representing Working Journalists
9.	Dr. Nand Kishore Trikha, President, National Union of Journalists (India)	Representing Working Journalists
10.	Shri Suresh Akhouri, President, Indian Journalists Union	Representing Working Journalists

Wage Board for Non-Journalist Newspaper Employees

1.	Justice Gurbax Rai Majithia, retired Judge of the High Court of Bombay at Mumbai	Chairman
2.	Shri K.M. Sahni, Former Secretary, Ministry of Labour and Employment	Independent Member
3.	Shri B.P. Singh	Independent Member
4.	Shri P.N. Prasanna Kumar	Independent Member
5.	Shri Naresh Mohan, representing Indian Newspaper Society	Representing Employers
6.	Shri Gurinder Singh, representing All India Small and Medium Newspap	Representing

7.	Shri Prataprai, Tarachand Shah, representing Indian language Newspaper Association	Representing Employers
8.	Shri M.C. Narasimhan, Vice President, All India Newspaper Employees Federation	Representing Non-Journalist Newspaper Employees
9.	Shri Uma Shankar Mishra, Vice President, National Federation of Newspaper Employees	Representing Non-Journalist Newspaper Employees
10.	Shri M.S. Yadav, General Secretary, Confederation of Newspapers and News Agencies Employees' Organizations.	Representing Non-Journalist Newspaper Employees

6. Owing to the unexpected change of the members constituting the Wage Boards, they could not finalize and submit their reports within the prescribed period of three years as originally notified i.e., by 23.05.2010. As such, their term was then extended up to 31.12.2010. It is this recommendation submitted by the Wage Boards, which was subsequently accepted by the Central Government and notified on 11.11.2011 that is impugned in the given proceedings.

Discussion

7. In succinct, the petitioners herein, challenged the recommendations of the Wage Boards and the notification dated 11.11.2011 mainly on the following grounds:-

(i) Constitutional validity of the Act and the Amendment Act, 1974.

(ii) Improper Constitution of the Wage Boards

(iii) Irregularity in the procedure adopted by Majithia Wage Boards.

(iv) Majithia Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations

We shall examine and deliberate distinctively on each contested point surfaced by the petitioners herein in the succeeding paragraphs.

8. Heard Mr. Anil B. Divan, Mr. K.K. Venugopal, Mr. P.P. Rao, Mr. Aman Lekhi, Mr. S.S. Ramdas, Mr. Brijender Chahar, learned senior counsel for the petitioners, Mr. Gopal Jain, Mr. Akhil Sibal, Mr. Nachiket Joshi, Mr. Anil Shrivastav, Ms. Bina Gupta, Mr. Manoj Goel, Mr. E.C. Agrawala, learned counsel for the petitioners, Mr. Mohan Parasaran, learned Solicitor General for the official respondents, Mr. Colin Gonsalves, learned senior counsel and Mr. Parmanand Pandey and Mr. Thampan Thomas, learned counsel for other respondents - journalists/ non-journalists.

Constitutional validity of the Act and Amendment Act, 1974

9. At the outset, almost all the learned counsel for the petitioners, challenged the vires of the Act on twin grounds. Firstly, the Act infringes the guaranteed fundamental rights under Articles 14 and 19 of the Constitution. Secondly, the Act has become obsolete with the passage of time.

10. It is submitted by learned counsel for the petitioners that misplaced classification and singling out of a specific business industry being the Newspaper Industry is violative of

Article 14 since the Act only regulates the print media and not electronic media. Also, in the era of globalization and liberalization, to shackle one part of the industry with regulations is unreasonable, unfair and arbitrary and, therefore, violative of Articles 19(1)(a) and 19(1)(g).

11. Learned senior counsel for the petitioners besides objecting to the constitutionality of the Wage Boards also placed heavy reliance on the fact that in other industries such as cotton, sugar, tea, coffee, rubber, cement, jute, all the Wage Boards have been abolished over a period of time (sugar being the last in 1989). They further emphasized on the fact that the National Commission on Labour in 2002 also unequivocally recommended that there was no need for a Wage Board to be constituted for any industry.

12. Likewise, it is the stand of the petitioners that due to significant socio-economic changes having taken place in the Indian economy after de-regulation and privatization, the necessity for Wage Boards has eclipsed. In order to establish this, learned counsel referred to the object and purpose of the Act i.e. to ameliorate the conditions of service. According to learned senior counsel, this purpose has been achieved today as journalists are paid a fair wage and also given a compensation package. Resultantly, the requirement for controlling and regulating the conditions of service of newspaper employees that was prevalent in earlier phase (1955 onwards) is no longer required.

13. Precisely, learned counsel for the petitioners stressed on the ensuing four points to substantiate their claim that there is a complete change in the scenario since 1955 when the Press Commission was constituted to go into the conditions of employment of working journalists:

(a) The journalists are an essential and vital part of a newspaper establishment. As an outcome, newspaper establishments require skills,

qualification and expertise to ensure the best content as this is necessary for attracting, retaining and increasing viewership which, in turn, requires the full support of journalists.

(b) Through bilateral negotiations and discussions, the petitioners have entered into contracts with a vast majority of journalists and offered them wages, salaries and compensation package to retain top class talent.

(c) The newspaper industry itself has undergone a sea change - people 'sleep with the news' (due to the advent of news channels on television). Further, printing technology has changed as a consequence and the newspapers now offer a better quality product. Manpower management has been strengthened to attract the best talent.

(d) There is greater competition from the internet, digital media in news channels and from foreign newspapers, therefore, there is already an obligation on the print media to retain the best talent by providing fine working conditions.

In brief, it was contended that in the present times of economic liberalization, the Act has become obsolete. As a result, Wage Boards have lost their utility and purpose for which they were set up and the 1955 Act have become outdated and have outlived its utility especially with the advent of the electronic media and other avenues.

14. Moreover, learned senior counsel submitted that the track record and report of the Wage Board is another pointer to this effect. Most of the decisions of the Wage Board have been quashed. The recommendations of the first Wage Board were set aside by this Court in *Express Newspaper (P) Ltd. vs. Union of India* 1959 SCR 12 and t a

Wage Board (Vth Wage Board) was also set aside by the Karnataka High Court and the Delhi High Court on effective grounds. In view of the above assertions and taking into account the ground realities, the petitioners prayed that they must be given a free hand and should not be burdened with an outdated and antiquated statute. Henceforth, they pleaded for abolishment of the Wage Boards and to declare the Act unconstitutional.

15. In support of the above proposition, learned counsel for the petitioners also relied on the decisions of this Court in *John Vallamattom vs. Union of India* (2003) 6 SCC 611, *Malpe Vishwanath Acharya vs. State of Maharashtra* (1998) 2 SCC 1 and *Indian Handicrafts Emporium vs. Union of India* (2003) 7 SCC 589.

16. Mr. Mohan Parasaran, learned Solicitor General and Mr. Colin Gonsalves, learned senior counsel effectively responded to all the contentions raised by the petitioners, by relying on Constitution Bench decisions of this Court and prayed for rejection of their arguments.

17. This is not the first time when the aspect as to the Constitutional Validity of the Act as being ultra vires the Constitution and violative of fundamental rights is being encountered by this Court. It has already been expressly decided by a Constitution Bench of this Court in Express Newspaper (P) Ltd. vs. Union of India AIR 1958 SC 578 and has been held to be intra vires the Constitution. The relevant portions of the said judgment are extracted hereunder:

Challenge qua Article 19(1)(a):

> "153. In the present case it is obvious that the only justification for the enactment of the impugned Act is that it imposes reasonable restrictions in the interests of a section of the general public viz. the working journalists and other persons employed in the newspaper establishments.

> It does not fall within any of the categories specified in Article 19(2) viz.
>
> "In the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."
>
> Article 19(2) being thus out of the question, the only point that falls to be determined by us is whether the provisions of the impugned Act in any way take away or abridge the petitioners, fundamental right of freedom of speech and expression.
>
> 154. It was contended before us by the learned Attorney-General that it was only legislation directly dealing with the right mentioned in Article 19(1)(a) that was protected by it. If the legislation was not a direct legislation on the subject, Article 19(1)(a) would have no application, the test being not the effect or result of legislation but its subject-matter…"
>
> *** *** ***
>
> "160. …It could therefore hardly be urged that the possible effect of the impact of these measures in conceivable cases would vitiate the legislation as such. All the consequences which have been visualized in this behalf by the petitioners viz. the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid; the imposition of penalty on the petitioner's right to choose the instruments for exercising the freedom or compelling them to seek alternative media etc, would be remote and depend upon various factors which may or may not come into play. Unless th[illegible]or

inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation as having that effect and operation. A possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the legislature while enacting a measure of this type for the benefit of the workmen concerned.

161. Even though the impugned Act enacts measures for the benefit of the working journalists who are employed in newspaper establishments, the working journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression, and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of press. The impugned Act can therefore be legitimately characterized as a measure which affects the press, and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a) it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners.

162. The gravamen of the complaint of the petitioners against the impugned Act, however, has been the appointment of the Wage Board for fixation of rates of wages for the working journalists and it is contended that apart from creating a class of privileged workers with benefits and rights which were not conferred upon other employees of industrial establishments, the act has left the fixation of rates of wages to an agency invested with arbitrary and uncanalised powers to impose an indeterminate burden on the wage structure of the press,

to impose such employer-employee relations as in its discretion it thinks fit and to impose such burden and relations for such time as it thinks proper. This contention will be more appropriately dealt with while considering the alleged infringement of the fundamental right enshrined in Article 19(1)(g). Suffice it to say that so far as Article 19(1)(a) is concerned this contention also has a remote bearing on the same and need not be discussed here at any particular length."

Challenge qua Article 19(1)(g)

"209. This attack of the petitioners on the constitutionality of the impugned Act under Article 19(1)(g) viz. that it violates the petitioners' fundamental right to carry on business, therefore fails except in regard to Section 5(1)(a)(iii) thereof which being clearly severable from the rest of the provisions, can be struck down as unconstitutional without invalidating the other parts of the impugned Act."

18. In succinct, the Constitution Bench of this Court in the aforesaid case held that the impugned Act, judged by its provisions, was not such a law but was a beneficent legislation intended to regulate the conditions of service of the working journalists and the consequences that were adverted to in that case could not be the direct and inevitable result of it. It also expressed the view that although there could be no doubt that liberty of the press was an essential part of the freedom of speech and expression guaranteed under Article 19(1)(a) and if the law were to single out the press to lay prohibitive burdens, it would fall outside the protection afforded by Article 19(2), the impugned Act which directly affected the press fall outside the categories of protection mentioned in Article 19(2) had not the effect of taking away or abridging the freedom of speech and expression of the petitioners and did not, therefore, infringe Article 19(1)(a) of the Constitution. Nor could it be held to be violative of Article 19(1)(g) of the Constit

of reasonableness laid down by this Court.

19. Alternative challenge to the constitutionality of the Act was on the basis that selecting working journalists for giving favored treatment is violative of Article 14 as it is not a reasonable classification as permissible in the aforesaid Article. The Constitution Bench dealt with this aspect in the following terms:

Challenge qua Article 14

"210. Re: Art 14.- The question as formulated is that the impugned Act selected the working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and leave which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947. The following propositions are advanced:

1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947 and Act 1 of 1955 the impugned Act subjects the Press industry employers to discriminatory treatment.

2. Such discrimination lies in

(a) singling out newspaper employees for differential treatment;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists;

(d) not prescribing the major criterion of capacity to

pay to be taken into consideration;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of audi alteram partem;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others;

(g) making the decision binding only on the employers and not on the employees, and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, insofar as it removes the newspaper employers vis-à-vis working journalists from the general operation of the Industrial Disputes Act, 1947 and Act 1 of 1955.

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212. We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the Report may also be quoted in this context:

"It is essential to realize in this connection that the work of a journalist demands a high degree of general education and some kind of specialized training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide public opinion and to criticize the wrong done by any individual or organization however high placed. They thus form an essential adjunct to democracy. The profession must, th y

men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expect from them a general omniscience and a capacity to express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar to this profession. Journalists have to work at very high pressure and as most of the papers come out in the morning, the journalists are required to work late in the night and round the clock. The edition must go to press by a particular time and all the news that breaks before that hour has got to find its place in that edition. Journalism thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no security exists in other professions but circumstances may arise in connection with profession of journalism which may lead to unemployment in this profession, which would not necessarily have that result in other professions. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result and in some cases has resulted in a wholesale change of the staff on the editorial side. These

circumstances, which are peculiar to journalism must be borne in mind in framing any scheme for improvement of the conditions of working journalists." (para 512).

213. These were the considerations which weighed with the Press Commission in recommending the working journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

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215. ...The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Article 14. The only thing which is prohibited under this article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the regulation of their hours of work and the fixation of the rates of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a Wage Board for the purpose could be similarly de... o

industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a Wage Board for this purpose was one of the established modes of achieving that object. If, therefore, such a machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf…

216. … Even considering the Act as a measure of social welfare legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists."

20. The above position has been reiterated by this Court

in the form of observations in *Express Publications (Madurai) Ltd. vs. Union of India* (2004) 11 SCC 526. The relevant portion of the said judgment is extracted hereunder:

"29…The observations in the judgment were pressed into service in support of the contention that freedom of speech and expression would be adversely affected by continuing the definition of "excluded employee" in respect of the newspaper industry which has been singled out for harsh treatment. As can be seen from above, observations have been made in a different context. In any case, the decision, far from supporting the contention of the petitioners, in fact, to an extent lends support to the benefit that was given to the employees of the newspaper industry in the year 1956 as a result of the impugned provision. It has to be remembered that in spreading information, the employees of newspaper industry play a dominant role and considering the employees of newspaper industry as a "class", this benefit was extended almost at the same time when the Working Journalists Act was enacted. Thus, there can be no question of any adverse effect on the freedom of press. The financial burden on the employer, on facts as herein, cannot be said to be a "harsh treatment". The contention that now the petitioners are unable to bear the financial burden which they have been bearing for the last over forty-five years is wholly irrelevant. It is for the petitioners to manage their affairs if they intend to continue with their activity as newspaper establishment.

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31. This Court noticed that the journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and hav[illegible]n

the freedom of press. The impugned Act can, therefore, be legitimately characterised as a measure which affects the press and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a), it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners. The question of violation of right of freedom of speech and expression as guaranteed under Article 19(1)(a) in the present case on account of additional burden as a result of the impugned provision does not arise.

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34. In the light of the aforesaid principles, in Express Newspaper the Court considered whether the Act impugned therein violated the fundamental right guaranteed under Article 14. It was observed that in framing the Scheme, various circumstances peculiar to the press had to be taken into consideration. These considerations weighed with the Press Commission in recommending special treatment for working journalists in the matter of amelioration of their conditions of service. The position as prevailing in other countries was also noticed. In a nutshell, the working journalists were held as a group by themselves and could be classified as such. If the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service, there was nothing discriminatory about it. They could be singled out for preferential treatment. It was opined that classification of this type could not come within the ban of Article 14. Considering the position in regard to the alleged discrimination between press industry employers on one hand and the other industrial employers on the other, it was

said that even considering the Act as a measure of social welfare legislation, the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be achieved. Both the conditions of permissible classification were fulfilled. The classification was held to be based on an intelligible differentia which had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists. The attack on constitutionality of the Act based on Article 14 was negatived.

35. Though challenge in the aforesaid case was to special treatment to working journalists but what is to be seen is, that the press industry was held to be a class by itself. The definition of "newspaper employee" takes into its fold all the employees who are employed to do any work in, or in relation to, any newspaper establishment. The decision in Express Newspaper case amply answers the main contention about the press industry having been singled out, against the petitioners. This decision also holds that to provide social welfare legislation and grant benefit, a beginning had to be made somewhere without embarking on similar legislation in relation to other industries. The fact that even after about half a century similar benefit has not been extended to the employees of any other industry, will not result in invalidation of benefit given to employees of press industry. It is not for us to decide when, if at all, to extend the benefit to others. In view of the aforesaid, we are unable to

that the impugned provision is violative of Article 14 on the ground that it singles out newspaper industry by excluding income test only in regard to the said industry.

36. Apart from the fact that it may not be always possible to grant to everyone all benefits in one go at the same time, it seems that the impugned provision and the enacting of the Working Journalists Act was part of a package deal and that probably is the reason for other newspaper establishments not challenging it and the petitioners also challenging it only after lapse of so many years. Further, Sections 2(i), 4 and Schedule I of the Provident Fund Act show how gradually the scope of the Act has been expanded by the Central Government and the Act and Scheme made applicable to various branches of industries. From whatever angle we may examine, the attack on the constitutional validity based on Article 14 cannot be accepted."

Challenge qua Amendment Act, 1974

21. The petitioners herein have also challenged the vires of the Amendment Act, 1974 on the ground that extending the benefit of the Act to employees other than working journalists is against the object that was sought to be achieved by the original Act since the benefits to other newspaper employees has no rational nexus between the differentia and the object sought to be achieved. In this regard, as already discussed, challenge as to the singling out of the newspaper industry per se was rejected by the Constitution Bench in *Express Newspaper (P) Ltd.* (supra) and the newspaper industry was held to be a class by itself. All that the 1974 amendment did was to only bring the other employees of the newspaper industry (i.e. non-working journalists) into the ambit of the Act and extend the benefits of the Act to them. Thus, the same is also covered as per the reasoning of the Constitution Bench decision of this Court. Therefore, the challenge as to the Amendment Act, 1974 stands disallowed.

22. Although, the aspect of violation of Article 14 was intricately decided by the Constitution Bench, it is the stand of the petitioners herein that while there may have been some justification for dealing only with newspaper establishments in 1955, however, with the revolution in information technology, there is no justification for confining regulation only to print media as in the existing scenario persons engaged in the same avocation (journalism) would be subject to different restrictions and would be unreasonably hampered in the social and industrial relations with each other. Further, it is submitted by the petitioners that the classification between journalists in newspaper establishments and others does not bear any relationship with the object. Therefore, the continuation of such a provision would create a disadvantaged class i.e. newspaper establishments without there being a rational basis for the same and consequently affecting both the incentive and capacity to achieve the object for which classification is made. After the very lapse of a long period from the date of enactment of the Act and the connected change of circumstances during this period has made the law discriminatory as it is now arbitrarily confined to a selected group out of a large number of other persons similarly situated. Henceforth, it is the stand of the petitioners that the grab of constitutionality that the Act may have possessed earlier has worn out and its constitutionality is open to a successful challenge.

23. While this argument may be as appealing as it sounds, yet we are not inclined to interfere on this point of challenge in order to maintain the equity among parties. It is important that this Court appreciates the realm of Article 14 of the Constitution in the light of the interest of both employers and the employees and not in one-sided manner. The argument of the petitioners that it is violative of Article 14 is one version of the story i.e. employers grievance, whereas this Court must look into the perspective of employees also while determining the issue at hand.

24. For the ensuing two reasons, this Court is opting for not to interfere on this alleged ground of challenge. Firstly, the petitioners cannot espouse the grievance of those employees working in the electronic media for non-inclusion and, more particularly, when those employees are not before this Court. Secondly, the fact that similar benefits are not extended to the employees of other similar industry will not result in invalidation of benefit given to the employees of press industry. Recalling that media industry is still an upcoming sector unlike the press industry, which is as ancient as our independence itself, the scope for potential policies in future cannot be overruled. In view of the same, this ground of challenge is rejected.

25. As regards the second ground of challenge, i.e., the Act over the passage of time has outlived its utility and the object that was sought to be achieved originally has become obsolete especially in view of the fact that Wage Boards for other industries have been abolished, it is our cogent opinion that mere passage of time by itself would not result in the invalidation of the Act and its object. The validity once having been upheld by a Constitution Bench of this Court in *Express Newspapers (P) Ltd.* (supra), the same cannot be now challenged saying that it has outlived its object and purpose and has been worn out by the passage of time. The principles laid down in *Motor General Traders vs. State of Andhra Pradesh* (1984) 1 SCC 222 and *Ratan Arya vs. State of Tamil Nadu* (1986) 3 SCC 385 are squarely inapplicable as has been held in the context of identical factual scenario.

26. When this Court was considering the case of a newspaper establishment qua para 82 of the Employees' Provident Funds Scheme in *Express Publications (Madurai) Ltd.* (supra), the said judgment also puts the challenge as to the vires of the Act like the one made by the petitioners in the present case, but beyond pale of any doubt, it consciously reiterates the spirit of law laid down in *Express Newspaper (P) Ltd.* (supra).

27. The petitioners relied on the Report of the Second National Commission of Labour to contend that the Act has become archaic. In this regard, it is relevant to note that the aforementioned Report is not relevant, as the Government has not accepted the said Report insofar as the Statutory Wage Boards are concerned. Thus, any observation in the said Report as to the non-requirement of Wage Boards generally, cannot be the basis for not complying with the statutory obligations under the Act. Insofar as the 2002 National Commission of Labour Report is concerned, as stated above, the same has not been accepted by the Government of India, in respect of the functioning of the Act.

28. In the light of the aforesaid discussion, we are of the opinion that the challenge as to the vires of the Act on the premise of it being ultra vires the Constitution and violative of fundamental rights is wholly unfounded, baseless and completely untenable.

29. It is true that newspaper industry, with the advent of electronic media, continues to face greater challenges similar to the ones as observed by the Press Commission as noted in the *Express Newspaper (P) Ltd.* (supra) enumerated hereinabove. Thus, the contention of the petitioners that though the newspaper industry may be growing, the growth of the electronic media is relatively exponential, in fact, substantiates the very necessity of why a wage board for working journalists and other newspaper employees of the newspaper industry should exist.

Improper Constitution of the Wage Boards

30. As reiterated hitherto, the Wage Boards constituted under Sections 9 and 13C of the Act are required to be comprised of 10 members i.e. one Chairman, three independent members, three representatives for employers and three representatives for employees. On behalf of the petitioners herein (newspaper managem d

that there was a defect in the constitution of the Wage Boards as Mr. K.M. Sahani and Mr. Prasanna Kumar were not independent members thus, it fatally vitiates the constitution and proceedings of the Majithia Wage Boards. On the other hand, it was pointed out by learned Solicitor General for the Union of India and the employees that the constitution of the Wage Boards have been undertaken strictly in accordance with the Act and the "Independent Members", so required, under Sections 9(c) and 13C(c) of the Act have been appointed in accordance with the law. Let us examine this point of strife based on the factual matrix.

31. The petitioners' main ground of challenge to Mr. K.M. Sahni's independence is that since at the relevant time he was a former Secretary of Ministry of Labour and Employment, Government of India and during his tenure the decision to constitute the Wage Board was taken and, thus, he cannot be expected to be an independent and free from bias. It is seen from the materials placed on record by the Union of India that in order to operationalize the Boards, Shri K.M. Sahni, who had superannuated as Secretary to Government of India on 31.12.2006 was appointed as Member-Secretary on 24.01.2007 for a period of three years or till the duration of the Wage Board, whichever is earlier. Merely because a person was in the employment of the Government, he does not cease to become "independent" for the purposes of being an independent member of the Committee to recommend the fixing of wages.

32. Similar fact underlying this issue has been the subject-matter of this Court in *State of Andhra Pradesh vs. Narayana Velur Beedi Manufacturing Factory* (1973) 4 SCC 178, and it is only necessary to set out the summary thereof given by A.N. Grover, J.:

> "9. In our judgment the view which has prevailed with the majority of the High Courts must be sustained. The committee or the advisory board can only tender advice

> which is not binding on the Government while fixing the minimum wages or revising the same as the case may be. Of course, the Government is expected, particularly in the present democratic set-up, to take that advice seriously into consideration and act on it but it is not bound to do so. The language of Section 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from the category of independent persons. Those words have essentially been employed in contradistinction to representatives of employer and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service or employ of the Government were meant to be excluded and they cannot be regarded as independent persons vis-à-vis the representatives of the employers and employees. Apart from this the presence of high government officials who may have actual working knowledge about the problems of employers and employees can afford a good deal of guidance and assistance in formulating the advice which is to be tendered under Section 9 to the appropriate Government. It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be government officials or government servants will not divest them of the character of independent persons. We are not impressed with the reasoning adopted that a government official will have a bias, or that he may favour the policy which the appropriate Government may be inclined to ac[illegible]e

is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view."

33. Consequently, merely because Shri K.M. Sahni was a part of the Government that took the decision to set up the Wage Boards, does not automatically follow that he ceased to be an "independent" member of the Wage Boards. We are satisfied that Shri K.M. Sahni is an independent member of the Board and cannot be considered to be "biased" in any manner.

34. The petitioners also allege that Mr. P.N. Prasanna Kumar, as an experienced journalist and having been associated with various journalistic institutions in his long journalistic career, cannot be considered to be an "independent" member and, therefore, was biased in favour of the employees. Learned Solicitor General has rightly pointed out that only vague and general allegations have been alleged against him and no specific allegations that he acted in a manner that was biased against the employers has been levied by the petitioners.

35. It is well-settled that mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. Reference may be made to *Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant* (2001) 1 SCC 182 in the following words:

"10. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (Stroud's Judicial Dictionary, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence

available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice."

36. This Court, in *State of Punjab vs. V.K. Khanna* (2001) 2 SCC 330, has held as follows:

"8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise."

37. The contention of the petitioners alleging bias against independent members of the Wage Boards, being based merely on their past status, is entirely baseless in law and amounts to imputing motives. Further, the petitioners have nowhere established or even averred that the independent members are guilty of legal bias as expressed in *Perspective Publications vs. State of Maharashtra* (1969) 2 SCR 779, that is, making their recommendations on the basis of wholly extraneous considerations or personal or pecuniary benefit.

38. On perusal of the materials available, we are satisfied that the Wage Boards have functioned in a fully balanced manner. Besides, it is a fact that the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi, admittedly, the High Court had declined to grant interim relief. The said order declining/refusing to grant interim relief attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners have participated in the proceedings and acquiesced e

proceedings of the Board. In view of the fact that they have participated in the proceedings without seriously having challenged the constitution as well as the composition, the petitioners cannot now be allowed to challenge the same at this stage. More so, it is also pertinent to take note of the fact that the petitioners herein opted for challenging the independence of the nominated independent members only after the recommendations by the Wage Boards were notified by the Central Government.

39. Hence, the attack of the petitioners on the independence of the appointed independent members by saying that they were not sufficiently neutral, impartial or unbiased towards the petitioners herein, is incorrect in the light of factual matrix and cannot be raised at this point of time when they willfully conceded to the proceedings. Consequently, we are not inclined to accept this ground of challenge.

40. Apart from the challenge to the independence of the members, the petitioners also contended that two separate Wage Boards ought to have been constituted instead of a common wage board. It is relevant to point out that ever since the 1974 amendment only a common wage board was being constituted. The Financial Memorandum accompanying the Working Journalists (Conditions of Service) and Miscellaneous Provisions (Amendment) Bill, 1974 specifically states that "the intention is to constitute Wage Boards under the said Section 9 and proposed Section 13C as far as possible at the same time and to have a common Chairman and a common Secretariat for both the Boards". Further, it is brought to our notice that the Palekar Tribunal (1980), Bachawat Wage Board (1989) and Manisana Wage Board (2000) constituted after 1974 amendment were all common Boards/Tribunal for both working journalists and non-journalists. Though the members representing employers were common, they were not incapacitated in any manner as is being contended by the petitioners. They were having two votes as they were representing the employers in both the Boards.

41. In addition, the representatives from the employers' side are common in both the Wage Boards as all types of newspaper employees, either working journalists or non-journalists found to be working under common employers. Having common representatives of the employers on the two Wage Boards are expected to be favorable to the employers as they can make a fair assessment of the requirements of the working journalists and non-journalist newspaper employees of the newspaper industry as a whole. However, as the two Wage Boards have separate entities meant for working journalists and non-journalist newspaper employees, there cannot be common representatives who can protect the interest and represent working journalists as well as non-journalist newspaper employees. Therefore, members representing working journalists were nominated to the Wage Board for the working journalists. Similarly, members representing non-journalist newspaper employees were nominated to the Wage Boards for non-journalist newspaper employees. As aforesaid, for administrative convenience, four independent members, including the Chairman were common for both the Wage Boards. In our cogent view, this arrangement in no way affects the interest of the employers and the challenge of the petitioners in this regard is unfounded.

Irregularity in the procedure followed by Majithia Wage Boards

42. Learned counsel for the petitioners pointed out to a series of factual aspects to demonstrate that there existed irregularity in the decision making process by the Majithia Wage Board which was attacked as ultra vires the Act and contrary to procedure adopted by the predecessor Wage Boards. In succinct, the stand of the petitioners is that Majithia Wage Board Report was prepared in a hasty manner and subsequently, the recommendations have been accepted by the Central Government without proper hearing or affording opportunity to all the stakeholders. Whereas the respondent - Union of India clearly contended otherw at

the impugned Wage Boards throughout adopted a fair procedure, which stands the test of natural justice. Besides, it is the stand of the respondents that the representatives of the management were not cooperating but were merely attending the Wage Board proceedings, therefore, the Chairman was not getting adequate aid and help from the representatives of the newspaper owners.

43. Broadly, the petitioners' foremost contention is that the Wage Boards have not functioned in accordance with the law inasmuch as no questionnaire was issued to elicit information to determine the capacity to pay and that principles of natural justice were not followed in conducting the proceedings and for arriving at the recommendations, which was the accustomed procedure of previous Wage Boards. At the outset, it is relevant to point out that under Section 11(1) of the Act, Wage Board has special powers to regulate its own procedure. It is not obligatory for the Wage Boards to follow the exact procedure of the earlier Wage Boards and as such there is no requirement in law to follow a strictly laid down procedure in its functioning. Besides, as long as it follows the principles of natural justice and fairness, its functioning cannot be called into question on the ground of irregularity in the procedure. Now, let us examine the submissions of the petitioners in this light.

44. It is brought to our notice that detailed questionnaire was issued on 24.07.2007. The petitioners in their opening arguments contended that no questionnaire was issued. However, the Union of India placed voluminous documents to demonstrate that a detailed questionnaire was in fact issued on 24.07.2007 and that this questionnaire was commented upon and it was corrected also and further respondents also received replies pursuant to the same. The petitioners in their rejoinder have attempted to make a feeble argument that the said questionnaire was issued by the secretariat and not by the Wage Boards, which is fit to be rejected.

45. It is also brought to our notice that several attempts

were made by the Wage Boards to get the relevant information from the employers but many of the petitioners had not given financial data and abstained from attending the Board's proceedings. Records produced show that the questionnaire was sent to all the subscribers listed in the directory of newspaper establishments published by INS for the year 2008-09 and the list supplied by the PTI for sending financial information from 2000-01 to 2009-10. Regular follow up with the employers was made and series of letters were issued to collect financial information. Apart from the questionnaire, notices inviting representation as per Section 10(1) of the Act were published in 125 newspapers. Further, on 05.07.2010, summons were issued to around one hundred and forty stake holders and they were given final chance to submit the information within fifteen days of the summons. In addition to this, a two page simplified questionnaire was also issued on 02.03.2010.

46. Consequently, the allegation that only 40 establishments have been used as parameters which is under-representative of the industry is incorrect. In fact, as has been detailed in the Report, the data from newspaper establishments was not forthcoming (vide pages 100-101 of Majithia Wage Board Report). With all these efforts, financial information could be collected from only sixty-six establishments and after scrutiny, it was found that financial information received from only forty establishments was useful in developing an overall view of the financial status of the newspaper industry. Therefore, it was only upon much effort and repeated requests that the data in respect of 40 establishments could be collected by the Wage Board. Besides, these 40 establishments are representatives of the different class of newspaper establishments that are carrying on business in the country and in addition detailed submissions by representative groups such as the Indian Newspaper Society (INS) were also considered. Thus, it can certainly be construed that these representative bodies presented an overview of the whole ,

apart from the information being collected from the individual establishments.

47. From the records, we furnish the following chronology of events:

"Letter dated 28.12.2007 by Mr. Naresh Mohan containing "Comments on Draft Questionnaire"

Letters dated 14.01.2008 and 18.01.2008 requesting for extension of time for submission of response to questionnaire

Letter dated 14.02.2008 extending time limit for submission of response to questionnaire till 30.06.2008

Response of Hitavada Shramik Sangh, Nagpur dated 23.06.2008 to the questionnaire

Response of the Times of India and Allied Publications' Employees' Union to the questionnaire

Letters by various Employees' Union requesting for extension of time for submission of response to questionnaire

Letter dated 14.11.2008 addressed to all the members of the Wage Boards seeking their views on extending the last date for submission of completed questionnaire up to 28.02.2009

Letter dated 04.12.2008 by Mr. Naresh Mohan expressing no objection for extending the last date for submission of completed questionnaire up to 28.02.2009

Letters dated 17.12.2008, 18.12.2008, 19.12.2008 addressed to the members of the Wage Board, stakeholders informing extension of last date for submission of completed questionnaire up to 28.02.2009

Letters dated 19.03.2009, 08.06.2009, 09.06.2009

addressed to the members of the Wage Board, stakeholders informing extension of last date for submission of completed questionnaire up to 30.06.2009

Letter dated 03.07.2009 addressed to the Wage Board members to prevail upon their constituents to submit their response to the questionnaire

Response of Lokmat Shramik Sanghatana, Nagpur dated 04.02.2009 to the questionnaire

Response of the Tribune Employees Union, Chandigarh dated 25.07.2009 to the questionnaire

Response of National Union of Journalists (India) dated 31.08.2009 to the questionnaire

Letter dated 01.09.2009 by Chairman, Wage Boards requesting the members of the Wage Boards to prevail upon their constituents to submit their response to the questionnaire

Response of the Press Trust of India Ltd. dated 29.09.2009 to the submissions dated 30.06.2009 made by Federation of PTI Employees' Union and to the questionnaire

Letter dated 12.05.2010 forwarding copies of responses to the questionnaire received by the Wage Boards to all the members.

The notice dated 16.11.2007 issued under Sections 10(1) and 13D of the Act was published in 125 newspapers

Considering the requests and representations received from various stakeholders, the time period for making representation in terms of Sections 10(1) and 13D of the Act was extended till 30.06.2008

The time period for making representation in terms of Sections 10(1) and 13D of the Act[illegible]d

till 31.10.2008

The time period for making representation in terms of Sections 10(1) and 13D of the Act extended till 28.02.2009

The time period for making representation in terms of Sections 10(1) and 13D of the Act was extended till 30.06.2009

The time period for making representation in terms of Sections 10(1) and 13D of the Act was extended till 06.08.2009

Notice dated 09.07.2010 was given to all the stakeholders for final hearing before the Wage Boards on 26.07.2010 to 01.08.2010"

48. In addition to the aforesaid chronology of events, a perusal of Chapter 3 of the Majithia Wage Board recommendations will clearly indicate that the procedure adopted by the Wage Boards did, in fact, give ample opportunities to the stakeholders to give representations and financial data, etc. so that the same may be considered by the Wage Boards for making their recommendations. However, many of the petitioners have never bothered to attend the proceedings of the Wage Board and submitted financial data.

49. The details of the meetings and oral hearings conducted by the Wage Boards (culled out from the Wage Board proceedings) are as follows:

"30.06.2007	First meeting of the wage boards was held.
02-04.08.2007	Second meeting of the wage boards was held.
16.11.2007	Notice under Sections 10(1) and 13D of the Act was issued to all newspaper establishments, working journalists, non-journalists newspaper and news agency

	employees to make representation in writing within eight weeks from the date of notice stating the rates of wages which, in the opinion of the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to them.
08.01.2008	Government made a reference to Wage Board for fixing interim rate of wages in terms of Section 13A of the 1955 Act.
12 & 13.06.2008	Third meeting of the Wage Boards held to discuss interim rates of wages
28.06.2008	Fourth meeting of the Wage Boards was held to consider the issue of interim rates of wages to the employees of the newspaper industry and gave its recommendation fixing the interim rate of wages @30% of the basic pay w.e.f. 08.01.2008
03.10.2008	Cabinet approved the proposal to grant interim rates of wages at the rate of 30% of the basic wage to newspaper employees w.e.f. 8th January, 2008.
24.10.2008	S.O. 2524(E) and S.O. 2525(E) notification on interim rates of wages published in the Gazette of India extraordinary.
5-6.05.2009	Fifth meeting of Wage Boards
31.07.2009	Sixth meeting of Wage Boards
07.09.2009	Seventh meeting of Wage Boards Oral hearings
	6-10.10.2009 - Oral hearing in Jammu & Kashmir
	26-27.10.2009 - Oral h

8-9.11.2009 - Oral hearing at Patna

14.11.2009 Eighth meeting of Wage Boards
Oral hearings

11-12.11.2009 - Oral hearing at Lucknow

23-24.11.2009 - Oral hearing at Ahmedabad

8-9.12.2009 - Oral hearing at Hyderabad

11-13.12.2009 - Oral hearing at Chennai

18.12.2009 Ninth meeting of Wage Boards
Oral hearings

29-30.12.2009 - Oral hearing at Bangalore

23.02.2010 Tenth meeting of Wage Boards

02.03.2010 In view of the fact that very few responses were received to the detailed questionnaire circulated by the Wage Board, it was decided that a simplified questionnaire requiring information about annual turnover, cost, etc. will be circulated to various newspaper establishments registered with PTI and INS. Accordingly, the simplified questionnaire was sent to various news establishments.

Oral hearings

13-14.03.2010 - Oral hearing at Jaipur

27-28.03.2010 - Oral hearing at Bhopal

8-10.04.2010 - Oral hearing at Mumbai and Pune

27-28.04.2010 - Oral hearing at Bhubaneshwar

07.05.2010 Eleventh meeting of Wage Boards

30.06.2010 Twelfth meeting of Wage Boards
Oral hearings

12-13.07.2010 - Oral hearing at Kolkata

20-21.07.2010 - Oral hearing at Guwahati

26.07.2010 to 01.08.2010 - Oral hearing at Delhi

17-19.08.2010 - Oral hearing at Delhi

06.09.2010 - Oral hearing at Delhi

05.07.2010 Summons dated 05.07.2010 issued under Section 11(3)(b) and Section 11(8) of the Industrial Disputes Act, 1947 read with Section 3 of the 1955 Act.

21.09.2010 Thirteenth meeting of Wage Boards

22.09.2010 Fourteenth meeting of Wage Boards

07.12.2010 Draft report was circulated to all the members of the Wage Board for their comments and views

20-24.12.2010 Meeting of the Wage Board to discuss the draft report

30.12.2010 Notes of dissent were submitted by

1. Shri K.M. Sahni

2. Shri N.K. Trikha, Shri Vikram Rao, Shri Suresh Akhouri (Representatives of working journalists)

3. Shri Uma Shankar Mishra, Shri M.S. Yadav, Shri M.C. Narasimhan (Representatives of non-journalists)

4. Shri Prasanna Kumar

31.12.2010 Final Report submitted

50. The petitioners' main ground of challenge vis-à-vis the procedure adopted by the impugned Wage Boards is that they were not given reasonable time to reflect on the issues. However, we have carefully examined all the proceedings of the Wage Boards and we are satisfied that the Wage Boards conducted a series of meetings and gave ample opportunities to the employers. The employers were given opportunity of both written and oral representations to make their point of view known to the Board and consequently the decision making process stands valid. In this respect, we are of the view that the petitioners cannot be allowed to take advantage of their own wrong and impugn the recommendations of the Wage Boards as not being based on their data when they eluded to submit the said data in the first place.

51. In respect of the petitioners' argument that the 'Classification' of newspaper establishments and newspaper agencies adopted by the Wage Boards is arbitrary and not supported by the majority, it is brought to our notice that a perusal of the resolution adopted on 21.12.2010 shows that representatives of employees agreed for 11 classifications and representatives of employers opposed the said pattern of classification. Later, the classification of the newspaper establishments was made into eight classes on the basis of Gross Turnover:

Class	Gross Revenue
I	Rs. 1000 crore and above
II	Rs. 500 crore and above but less than Rs. 1000 crore
III	Rs. 100 crore and above but less than Rs. 500 crore
IV	Rs. 50 crore and above but less than Rs. 100 crore
V	Rs. 10 crore and above but less than Rs. 50 crore

VI	Rs. 5 crore and above but less than Rs. 10 crore
VII	Rs. 1 crore and above but less than Rs. 5 crore
VIII	Less than Rs. 1 crore

Therefore, if at all anybody is aggrieved by the recommendation of the Wage Board to adopt eight classifications, it is the employees and not the employers. Further, no prejudice is caused to the employers and they cannot make this as a ground to challenge the report.

52. The petitioners also contended by relying upon two resolutions passed by the Wage Board that the Wage Board was not allowed to function independently and was treated with contempt by the Secretariat of the Wage Board and the officials of the Wage Board. One of the resolutions relied upon by the petitioners dealt with an issue pertaining to raising of exorbitant travel bill. It is brought to our notice that it was in this context that the Chairman and Members of the Wage Board expressed their concern that issues pertaining to the Wage Board should not be directly dealt with by the Ministry and it has to be referred to the Ministry by the Secretariat after obtaining the permission of the Chairman. The other resolution/minutes record the proceedings of the meeting with the Minister for Labour and Employment. These two resolutions cannot be relied upon to contend that the Board was not allowed to function independently and was treated with contempt. These two resolutions have no bearing on the ultimate recommendations made by the Board and, thus, cannot be relied upon by the petitioners to impugn the recommendations themselves.

53. Numerous such incidental contentions vis-à-vis procedure adopted by the Wage Boards were alleged which, in our considered view, is not of such grave nature that it calls for withdrawing the recommendations of Wage Boards. In this light, after having exhaustively gone through the record of proceedings and various written communications, we are fully satisfied that the Wage Boards pr[illegible]n

conducted and carried out in a legitimate approach and no decision of the Wage Board is perceived to having been taken unilaterally or arbitrarily. Rather all decisions were reached in a coherent manner in the presence of all the Wage Board members after having processed various statistics and we find no irregularity in the procedure adopted by the impugned Wage Boards.

Majithia Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations

54. It is the view of the petitioners that the recommendation of Justice Majithia Wage Boards is defective and faulty and deserves to be rejected at the outset as it overlooked the relevant aspects and considered extraneous factors while drafting the impugned report. The first ground on which the report is alleged to be defective is that the members of the Wage Board failed to consider the crucial element of capacity to pay of the individual newspaper establishments as it wrongly premised its analysis of the capacity to pay of 'gross revenue' while approving the impugned report.

55. In *Express Newspaper (P) Ltd* case (Supra), this Court held that the capacity of the newspaper industry to pay is one of the essential circumstances to be taken into consideration while fixing rates of wages under the Act. In that case, the decision of the Wage Board was set aside on the ground that it failed to consider the capacity of the industry to pay the revised rates of wages. Consequently, Section 10(2) of the Act was inserted which gives the statutory recognition to the requirement of taking into consideration the capacity of the employer to pay.

56. Chapter XIV, titled Capacity to pay of the Newspaper industry (A Financial Assessment) of the Justice Majithia Report, elaborately discusses on the aspect of capacity to pay. However, it is the stand of the petitioners that although the

Report purportedly examines the capacity to pay, such evaluation is directly contrary to the principles and accepted material factors which the Report itself identifies as governing a legally sound consideration of the capacity to pay. The relevant portion of the report in pages 101 to 102 is as under:-

> "The gross revenue of newspaper establishments comprises revenue through advertisements, circulation and other sources relating to newspaper activities and miscellaneous income accrued from investments, interests, rent etc. The gross revenue can be taken as one of the indicators to judge the health of the newspaper establishments. Strictly speaking several discounted factors are required to be taken in to consideration from the gross revenues to make actual assessments of the capacity of the newspaper establishments. But in absence of such parameters, it was decided to rely broadly on gross revenue."

57. The petitioners major point of reliance is surfaced on the observation in the report which acknowledges that there are other factors along with gross revenue which need to be considered for determining the capacity to pay of the establishments which the report did not ultimately consider thus it will be appropriate to reject the report.

58. On the other hand, it is the stand of the Union of India that in the absence of availability of such parameters for the assessment of capacity to pay of the newspaper establishments, it is judicially accepted methodology to determine the same on the basis of gross revenue and relied on the observations in *Indian Express Newspapers (Pvt.) Ltd.* (supra):-

> "16…In view of the amended definition of the "newspaper establishment" under Section 2(d) which came into operation retrospectively from the inception of the Act and the Explanation added to Section 10(4), and in view further of the fact that in clubbing the unit

together, the Board cannot be said to have acted contrary to the law laid down by this Court in Express Newspapers case, the classification of the newspaper establishments on all-India basis for the purpose of fixation of wages is not bad in law. Hence it is not violative of the petitioners' rights under Articles 19(1)(a) and 19(1)(g) of the Constitution. Financial capacity of an all-India newspaper establishment has to be considered on the basis of the gross revenue and the financial capacity of all the units taken together. Hence, it cannot be said that the petitioner-companies as all-India newspaper establishments are not viable whatever the financial incapacity of their individual units. After amendment of Section 2(d) retrospectively read with the addition of the Explanation to Section 10(4), the old provisions can no longer be pressed into service to contend against the grouping of the units of the all-India establishments, into one class."

59. After perusing the relevant documents, we are satisfied that comprehensive and detailed study has been carried out by the Wage Board by collecting all the relevant material information for the purpose of the Wage Revision. The recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of the Wage Revision in the modern era. It cannot be held that the wage structure recommended by the Majithia Wage Board is unreasonable.

60. The other issue in regard to which there was elaborate submission is the issue pertaining to recommendations of the Wage Board in regard to news agencies. It is the stand of the petitioners that even though this Court had expressly held that news agencies, including PTI, stood on a separate footing from newspapers inter alia because they did not have any advertisement revenue and, hence, the wages will have to be fixed separately and independently for the news agencies, the impugned Wage Boards failed to take note of the said relevant aspect.

61. Learned counsel for the respondent contended by stating that capacity to pay of news agencies was determined on the basis of the capacity to earn of the news agencies in every Wage Board. It was further submitted that the burden of revised wages was met by the news agencies on every occasion by revising the subscription rate. Thereby submitting that the recommendation vis-à-vis the news agencies was a reasoned one.

62. This Court has a limited jurisdiction to look into this aspect. The interference is allowed to a limited extent to examine the question as to whether the Wage Board has considered the capacity to pay of the News Agencies. It would be inapposite for this Court to question the decision of the specialized board on merits especially when the Board was constituted for this sole purpose.

63. The second point of contention of petitioners is of introducing new concepts such as 'variable pay' in an arbitrary manner. Regarding variable pay recommended by the Majithia Wage Board, learned counsel for the petitioners submitted that there is no basis for providing payment of variable pay and equally there is no basis for providing variable pay as a percentage of basic pay which makes the payment of variable pay open-ended. According to them, the recommendation in this regard is totally unreasonable, irrational and places an extra and unnecessary burden on the newspaper establishments. Consequently, it was asserted that there is complete non-application of mind to insert the so-called variable pay concept (similar to Grade Pay of Sixth Pay Commission) in the Majithia Wage Board's recommendation, even though the basic conditions, objectives and anomalies are absent.

64. However, the stand of the respondents is that there is gradation of variable pay and allowances according to the size of the establishments wherein smaller establishments are required to pay at a lower rate compared to larger establishments. It may be pointed out [illegible] a

Wage Board, which is the predecessor to the Majithia Board, did recommend a similar dispensation though it did not specifically call it variable pay. Manisana Wage Board recommended a certain percentage of basic pay for the newspaper employees, which is similar to variable pay in the Majithia Wage Board recommendations. While such dispensation was included in the basic pay in the Manisana Wage Board instead of being shown separately, the Majithia Wage Board categorized "basic pay" and "variable pay" separately. Accordingly, the concept of "variable pay" is not newly introduced, though the terminology may have differed in Manisana and Majithia Wage Boards. The Wage Boards have followed well-settled norms while making recommendations about variable pay. Further, the explanation to Section 2(eee) which defines "wages" specifically includes within the term "wages" "new allowances", if any, of any description fixed from time to time. Therefore, the Wage Board was well within its jurisdiction to recommend payment of 'variable pay'.

65. There was also a submission on behalf of the petitioners that Majithia Wage Board has simply copied the recommendations of the Sixth Central Pay Commission, which is not correct. We have carefully scrutinized all the details. It is clear that the recommendations of the Sixth Central Pay Commission have not been blindly imported/relied upon by the Majithia Wage Board. The concept of 'variable pay' contained in the recommendations of the Sixth Central Pay Commission has been incorporated into the Wage Board recommendations only to ensure that the wages of the newspaper employees are at par with those employees working in other Government sectors. Such incorporation was made by the Majithia Wage Board after careful consideration, in order to ensure equitable treatment to employees of newspaper establishments, and it was well within its rights to do so.

66. It is further seen that the Wage Board has recommended grant of 100% neutralization of dearness allowance. Fifth Pay Commission granted the same in 1996.

Since then, public sector undertakings, banks and even the private sector are all granting 100% neutralization of dearness allowance. The reference to decisions prior to 1995 is irrelevant.

67. Lastly, the contention of the petitioners that the Wage Boards have not taken into account regional variations in submitting their recommendations is also not correct. It is clear from the report that the Wage Boards have categorized the HRA and Transport Allowance into X, Y and Z category regions, which reflects that the cost on accommodation and transport in different regions in the country was considered. Furthermore, there is gradation of variable pay and allowances according to the size of the establishments wherein smaller establishments are required to pay those at a lower rate compared to larger establishments. Hence, we are satisfied that the Wage Boards followed certain well laid down principles and norms while making recommendations.

68. It is true that the Wage Boards have made some general suggestions for effective implementation of Wage Awards which is given separately in Chapter 21 of the Report of the Majithia Wage Boards of Working Journalists and Non-Journalists Newspaper and News Agency Employees. It is brought to our notice that the Government has not accepted all these suggestions including those pertaining to retirement age, pension, paternity leave, etc. as these are beyond the main objective for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time bound promotion. Similarly, the establishments have also been categorized on the basis of their turnover, thus, taking into consideration the capacity of various establishments to pay.

69. It is useful to refer Section 12 of the Act which deals with the powers of Central Gove

recommendations of the Wage Board. It reads as under:

"12 - Powers of Central Government to enforce recommendations of the Wage Board

(1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,--

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:

Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or

(b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order."

70. Thus, it is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards. There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that in the present case, the Government has not accepted a few recommendations will not automatically affect the validity of the entire report. Further, the Government has not accepted all those suggestions including those pertaining to retirement age, etc. as these are beyond the mandate for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time bound promotion.

71. Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India.

72. Consequently, all the writ petitions are dismissed with no order as to costs.

73. In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards.

74. In view of the disposal of the writ petitions, the contempt petition is closed.

R.P.

LINGARAM KODOPI

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 357 of 2014)

FEBRUARY 07, 2014

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

BAIL:

Bail - Appellants accused of likely to work as conduit for paying huge amount to Naxalites by a company - Refused bail by trial court and High Court - Allegation of false implication -- Held: On the basis of orders of the Court, both appellants are on interim bail with the condition that they would not enter the State -- Other two accused, namely, General Manager and contractor of the company, have already been granted bail -- Charges are yet to be framed - One of the appellant has medical problems -- She has also to look after her children who are of tender age -- Other appellant is a young man of 24 years and he claims to be genuinely attempting to establish himself as a good citizen in the society -- There are certain circumstances, pleaded by appellants, and if ultimately established, there may be a possibility of proving the innocence of appellants -- Taking into consideration all these circumstances and going by the past history, appellants are enlarged on bail during the pendency of trial on the conditions enumerated in the judgment.

The appellants, related as nephew and aunt, were arrested by the State police and a case was registered against them for offences punishable u/ss 121, 124(1) and 120B, IPC, s. 8 (1) (2) (3) of the Chhattisgarh Jansuraksha Adhiniyam and ss. 10 and 13 of the Unlawful Activities Act, on the ground that on 8.9.2011, the police received

secret information that the appellants were likely to work as conduit for paying huge amount to Naxalties, which was to be paid by a Company through the co-accused, namely, its contractor and the General Manager. Both the co-accused were, however, released on bail, but the bail applications of the appellants were rejected by the trial court as well as the High Court.

In the instant appeals, it was contended for the appellants that though the appellants were accused of collecting money for naxalites, in the entire charge-sheet and the evidence there was no material to establish any link of the appellants with naxalites. It was submitted that they were falsely implicated in past in several cases which all culminated in their acquittal and when writ petitions were filed stating their false implication and attempt of State Police to force the appellant in Crl. A. 357 of 2014 to become a Special Police Officer, they incurred wrath of police. It was further submitted that the appellant in Crl. A. 357 of 2014 became a journalist and the other appellant was a teacher in a Government School and there was no other in the family to look after her children as her husband had died. It was further submitted that she suffered serious injuries during interrogation and her health was deteriorating.

The appellants were granted interim bail by order dated 12.11.2013 with the condition that they would not enter the State.

Disposing of the appeals, the Court

HELD: On the basis of the orders dated 12.11.2013, both the appellants are on interim bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to be framed. The appellant in Crl. A. No. 358 of 2014 ha[illegible]s.

She has lost her husband and has to look after her children who are of tender age. The other appellant is a young man of 24 years and he claims to be genuinely attempting to establish himself as a good citizen in the society. There are certain circumstances, pleaded by the appellants, and if ultimately established, there may be a possibility of proving the innocence of the appellants. Taking into consideration all these circumstances and going by the past history, the appellants shall be enlarged on bail during the pendency of trial on furnishing personal securities in the sum of Rs. 50,000/- with two sureties each of the like amount, to the satisfaction of the trial court, with the conditions as enumerated in the judgment. [para 14-15] [468-E-H; 469-A]

CRIMINAL APPELLATE JURISDICTION : Criminal apeal No. 357 of 2014

From the judgement and order dated 08.07.2013 of the High Court of Chhattisgarh at Bilaspur in MCRC No. 2806 of 2013.

WITH

Criminal Appeal No. 358 of 2014.

Colin Gonsalves, Prashant Bhushan, Ramesh K. Mishra, Govid Jee, Aniy Shukhla, Jyoti Mendiratta for the appellant.

V.A. Mohta, Aniruddha P. Mayee, Advocate for the respondent.

The Judgment of the Court was delivered by

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

2. Both these appeals arise out of common order dated 8.7.2013 passed by the High Court of Chhattisgarh, whereby applications for bail preferred by these two appellants were rejected.

3. Appellants are related to each other. The appellant Lingaram Kodopi is the nephew of the appellant Soni Sori (Lingaram's father and Soni Sori's husband were the real brothers). Both these appellants have been implicated under Sections 121, 124(1) and 120B of the Indian Penal Code as well as Section 8 (1) (2) (3) of the Chhattisgarh Jansuraksha Adhiniyam and Sections 10 & 13 of the Unlawful Activities of the Act. For the alleged offence under the aforesaid provisions crime No. 26/2011 with Police Station Kuakonda district Dantewada, Chhattisgarh is registered against them alongwith certain other persons. Both have been arrested in connection with the aforesaid case.

4. In nut-shell the prosecution case is that on 8.9.2011, the concerned police received secret information that these appellants are likely to work as conduit for paying huge amount to the Naxalties, which was to be paid by Essar Company through co-accused B.K. Lala, a contractor of the said company, whose plant was operating in the naxal affected areas. The concerned police conducted a raid when these two appellants were in the process of receiving the amount of Rs. 15 lakhs from B.K. Lala at village Palnar weekly market at 1.00 p.m. on 9.9.2011. When the police party reached, a pandemonium took place and taking advantage thereof Soni Sori successfully escaped. However, Lingaram Kodopi and co-accused B.K. Lala were arrested from the spot. The appellant Soni Sori was also arrested afterwards on 12.10.2011 in Delhi.

5. As per the prosecution, in the present case different aspects of naxal movements had appeared wherein these naxalites receiving huge amount of money from Corporate groups to further their activities of waging war against the country. Shri B.K. Lala, Accused No. 1 in this case is a contractor of Essar Company who was supposed to pay money to these naxalites. Both the appellants were made conduits to receive money from B.K. Lala so that they could hand it over to the concerned naxalite persons. Ap[illegible]d

the two appellants, one DVCS Verma who is the General Manager of Essar Company has also been implicated in the said case.

6. These two other accused persons, viz. Shri B.K. Lala as well as Shri DVCS Verma were also arrested. However, both have since been enlarged on bail, Shri B.K. Lala who was arrested on 9.9.2011 was granted statutory bail on 4.2.2012, on the ground that charge-sheet was not filed until after 90 days from the date of registration of FIR. Shri DVCS Verma was granted bail on 3.1.2012. These two appellants however were denied bail by the Trial Court and, as mentioned above, even the High Court has rejected their bail applications. From the perusal of the order of the High Court it becomes clear that the High Court has mainly been influenced by the serious nature of crime allegedly committed by these appellants. The High Court also took note of the statements of certain witnesses which were recorded during investigation and went through the case diary. As per the High Court since direct evidence was available against these accused persons showing their complicity, there was a prima facie evidence against the appellants to the effect that they were found to be working as conduit between Essar Company through B.K. Lala and the naxalites.

7. In support of plea for bail on behalf of Soni Sori, Mr. Colin Gonsalves, learned Senior Counsel made detailed submissions, with lot of emphasis that the appellants were falsely implicated in this case because of previous animosity with the police authorities, of which they had become the victims over a period of time without any fault of theirs. It was argued that though the appellants were accused of collecting money for naxalites, in the entire charge-sheet and the evidence collected, there was no material which could show any link of these appellants with the naxalites. Mr. Gonsalves referred to the details of the case which was foisted against him by the police on previous occasions and in all these cases she was

acquitted by the courts. According to him, the appellant Soni Sori had shown courage in filing Writ Petition (Crl.) No. 206 of 2011 in the High Court of Chhattisgarh which had become the cause of anguish for Chhattisgarh police. In that Writ Petition she stated that she was tribal woman from Village Sameli in Dantewada district of Chhattisgarh. Her nephew Mr. Lingaram Kodopi on 31.8.2009 was kidnapped by the Chhattisgarh police and forced to become a Special Police Officer (SPO). She, therefore, through the brother of Lingaram, organized and filed a Writ Petition (habeas corpus) No. 5469 of 2009 before the Chhattisgarh High Court as a result of which Mr. Lingaram was released from custody. He thereafter became a journalist and participated in several TV programmes on the massacres and killings taking place in Chhattisgarh and he also took photographs of the houses of the tribals that were burnt by the Chhattisgarh police and these photographs were printed in magazines. As a consequence she incurred the wrath of police who started filing series of false cases against the appellant Soni Sori. Details of these cases are given in Para 8 of the 'Synopsis' to the Special Leave Petition.

8. Mr. Gonsalves further submitted that in September, 2011, Tehelka Magazine did a sting operation of the conversation which took place between the appellant and constable Mankar of the Kirandul police station, in which constable Mankar admitted in a phone conversation that the appellant, Soni Sori and her nephew Lingaram Kodopi were being framed in the Essar case, and that Lingaram Kodopi was picked up from the house and not from the bazaar. The appellants have filed the copy of the CD with transcription and excerpts of the conversation are reproduced in the SLP paper book as well. On that basis his submission was that this sting operation was enough to show that the appellants were framed falsely in the entire case.

9. To buttress this submission of false implication, Mr. Gonsalves also pointed out that the ap[illegible]o

was a teacher in a Government School had in fact been attending the school which was clear from the attendance register filed as Annexure P-1 to the SLP. Mr. Gonsalves also highlighted the atrocity committed on her by the police during her custody, particularly on 8.10.2011. He also submitted that because of the torture she suffered at the hands of police during interrogation on that day, her health deteriorated and she had to be admitted into the Dantewada district hospital at 9.30 a.m. on 10.10.2011. When she was taken to the Court on that day at 1.45 p.m. she was not even in a position to stand and walk. The police informed the Magistrate by falsely stating that she had suffered a fall in the bathroom. From the court she was taken to Jagdalpur Jail from where she was taken to Maharani hospital from Jagdalpur and admitted there at 8.00 p.m. On 12.10.2011 she was referred to Bhim Rao Ambedkar Medical College, Raipur.

10. Mr. Gonsalves also referred to the proceedings in Writ Petition (Crl.) No. 206 of 2011 pending in this Court wherein the aforesaid worsening health condition of Soni Sori was explained and on 20.10.2011 this Court directed that she be taken to Kolkata and admitted in Nil Ratan Sarkar Medical College and Hospital, Kolkata. The Court also observed, while giving this direction, that the injuries sustained by her do not prima facie appear to be simple as had been projected by the Chhattisgarh Police. After the examination of Soni Sori by the aforesaid hospital in Kolkata and receiving the report from the said hospital, on 2.5.2012 this Court directed the Director of All India Institute of Medical Sciences (AIIMS) to constitute a Board of Directors, which would include the Head of the Department of Gynaecology, Endocrinology and the Cardiac Department, to examine Ms. Soni Sori, as to her physical condition and, thereafter, to recommend the treatment to be undergone in AIIMS itself. At AIIMS she was treated for "vulval excoriations and scabies" and thereafter transferred to Raipur Central Prison and then to Jagdalpur Central Prison.

11. Mr. Gonsalves also argued that even other family members of Soni Sori have been tortured by the police. According to him, when Soni Sori was in custody her husband Anil Futane was arrested in July, 2010 and he suffered a paralytic stroke while in custody as a result of torture. There are in all four cases in which he was charged for maoist. His last acquittal order came on 1.5.2013 and thereafter he died in mysterious circumstances on 1.8.2013. He thus, submitted that after the death of her husband there was nobody in the family to look after her children whose condition had become miserable in the absence of any adult person to take care of them.

12. Mr. Prashant Bhushan, learned Counsel appearing for Lingaram Kodopi, in addition, highlighted the circumstances under which his client became the target of Chhattisgarh Police which had forced him to become a Special Police Officer (SPO). This was the reason for Soni Sori to file Writ Petition (Crl.) 206 of 2011. Mr. Bhushan also sought to narrate in detail the same kind of witch hunting, resorted to by the police qua Lingaram, filing series of false cases against him as well and he was acquitted in all these cases.

13. Mr. V.A. Mohta, learned Senior Counsel appearing for the State submitted that by well reasoned order, the High Court had rejected the bail application of the appellants herein. He further submitted that as per the prosecution cases, on previous date confidential information was received from the IB that the appellants are going to receive money from B.K. Lala on 10.9.2011. B.K. Lala as well as Lingaram were nabbed on the spot whereas Soni Sori escaped. He also submitted that the main reason for acquittal of these appellants in other cases was that the witnesses do not come to Court for deposition as they fear threat to their own life. Though he did not deny that the bail was already granted to B.K. Lala and DVCS Verma, he however, submitted that if because of not handling the cases properly they were granted bail, same [illegible]e

extended to the appellants.

14. Since in the present appeals, we are only concerned with the issue of grant of bail to the appellants pending trial, it may not be necessary to deal with the arguments of the Counsel for the parties on either side, in detail, for obvious reasons. We would like to refer to the orders dated 12.11.2013 passed for these proceedings whereby interim bail was granted to both the appellants. Relevant portions of the said order reads as follows:

> "It has been stated by the learned Counsel for the petitioners that the petitioner-Lingaram Kodopi - in Special Leave Petition (Criminal) No. 7898 of 2013 has been in custody since 9th September, 2011 and the petitioner - Soni Sori in Special Leave Petition (Criminal) No. 7913 of 2013 has been in custody since 4th October, 2011. Since it is going to take some time before a responsible officer can be present in Court in assisting the examination of the record, we are of the opinion that it would be unjust to continue the incarceration of the petitioners during the pendency of the applications for bail. We are also mindful of the fact that Soni Sori, petitioner in Special Leave Petition (Criminal)No. 7913 of 2013 has been acquitted in five earlier cases. Similarly, petitioner Lingaram Kodopi in Special Leave Petition (Criminal) No. 7898 of 2013 was also acquitted in the earlier matter. It has also been stated that B.K. Lala, co-accused has also been granted bail on 4th February, 2012. In these circumstances, we are of the opinion that it would be appropriate to direct that the petitioners be released on interim bail during the pendency of the bail applications. However, keeping in view the submissions made by Mr. V.A. Mohta, learned Senior Counsel appearing for the State of Chhattisgarh, it would be in the interests of justice to direct that the petitioners shall not enter the State of Chhattisgarh during the period in which they are granted interim bail. It is ordered accordingly.

> At this stage, it has been brought to out notice by Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioner in Special Leave Petition (Criminal) No. 7913 of 2013 and Mr. Prashant Bhushan, learned Counsel appearing for the petitioner in Special Leave Petition (Criminal) No. 7898 of 2013 that the petitioners have not met their families for a long time and it would be only humane if they are permitted to meet their families before they travel to Delhi.
>
> In view of the above, we direct the concerned Senior Superintendent of Police to depute some responsible police officers to escort the petitioners to their respective villages so that they can meet their families for a period of 24 hours. On the following day, the petitioners shall be escorted to Delhi. They shall be permitted to reside in any locality of their choice in Delhi. Once the petitioners reach Delhi, they are directed to report to the in-charge of the local Police Station once a week. They shall report to the in-charge of the local Police Station every Sunday at 11.00 a.m."

15. On the basis of the aforesaid orders, both the appellants are on bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to be framed. Soni Sori is having medical problems as well. There are certain circumstances, pleaded by the appellants, and if ultimately established, there may be a possibility of proving the innocence of the appellants. Soni Sori has lost her husband and has to look after her children who are of tender ages. Lingaram Kodopi, who is a young man of 24 years, claims to be genuinely attempting to establish himself as a good citizen in the society. Taking into consideration all these circumstances cumulatively and going by the past history, as demonstrated by both the Counsel for the appellants, we are of the opinion that the appellants dese

bail during the pendency of trial on furnishing personal securities in the sum of Rs. 50,000/- with two sureties each of the like amount, to the satisfaction of the Trial Court.

16. At the same time, we agree with Mr. Mohta that there should be some stringent conditions for grant of bail to the appellants. Accordingly, we order that it would be subject to the condition that the appellants shall report to the concerned police station once a week i.e. at 10.30 a.m. on every Monday to show their presence. They would be permitted to take along their lawyer. Further, they shall appear before the Trial Court on each and every date of hearing and shall not seek exemption except when on a particular date they are unable to appear because of the reasons beyond their control, like illness etc. They shall also inform the Court about their place of stay/ residence and disclose to the Court as to when there is a change of residence. Further, they shall not leave the station or travel abroad without the prior permission of the trial court.

17. These appeals are disposed of in the aforesaid terms.

R.P. Appeals disposed of.

DR. PURSHOTAM KUMAR KAUNDAL
v.
STATE OF H.P. AND OTHERS
(Civil Appeal No.1956 of 2014)

FEBRUARY 11, 2014

[RANJANA PRAKASH DESAI AND MADAN B. LOKUR, JJ.]

HIMACHAL PRADESH MEDICAL EDUCATION SERVICE RULES, 1999:

r.2(n) - Promotion to the post of Assistant Professor in Pharmacology - Respondent no.5 possessing M.D. in Pharmacology from the Maharishi Dayanand University - Consideration of case of respondent no.5 for promotion - Challenged on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by the MCI - Held: There is nothing to suggest that recognition of the post graduation degree must be by the MCI - As per the Service Rules wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules - r.2(n) defines a post graduate qualification as meaning a qualification as specified in Appendix C-I and II - Appendix C-II contains a list of post graduate qualifications - Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein - Except the post graduation degrees specified therein the Service Rules merely required a recognized post graduate degree for meeting the eligibility criteria - Thus, respondent no.5 was entitled to be considered for promotion and if found suitable, entitled to all consequential benefits - Service law - Promotion.

Respondent no.5 had obtained a post graduation degree in Pharmacology from the Maharishi Dayanand University, Rohtak on 31st December, 1991. When his

case came up for consideration for promotion before the Departmental Promotion Committee on 28th August, 2001, he was not considered apparently on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by the Medical Council of India. This decision was based on a letter dated 8th July, 2001 issued by the Deputy Secretary in the MCI to the Director of Medical Education and Research, Himachal Pradesh.

Respondent no.5 challenged the failure of the Departmental Promotion Committee to consider him for promotion. A Single Judge of the High Court rejected the writ petition filed by respondent no.5 on the ground that Section 11(1) of the Medical Council Act, 1956 provides that only those medical qualifications granted by any university or medical institution in India which are included in the First Schedule to the Act shall be recognized medical qualifications for the purposes of the Act and since an M.D. in Pharmacology from the Maharishi Dayanand University was not included in the First Schedule to the Act, respondent no.5 was not eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. The Single Judge also referred to Section 2(h) of the Act which defines a recognised medical qualification as meaning any of the medical qualifications included in the schedules of the Act. It was held that the qualification obtained by respondent no.5 from the Maharishi Dayanand University did not fall under any schedule to the Act. Aggrieved, respondent no.5 preferred LPA. The Division Bench of the High Court allowed the LPA and directed the Department to hold a review departmental promotion committee for the post of Assistant Professor within a period of eight weeks. It also held that respondent no.5 would be entitled to all consequential benefits in case he is found suitable by the review departmental promotion committee. The Division Bench of the High Court was of

the view that the eligibility criteria only required a recognized post graduation degree and did not require a post graduation degree recognized by the MCI. The degree obtained by respondent no.5 was a recognized post graduation degree inasmuch as it was conferred by a recognized statutory university. The Division Bench of the High Court also noted that in a later departmental promotion committee held on or about 25th November, 2012 respondent no.5 was found eligible for being considered for promotion to the post of Assistant Professor and was in fact so promoted, while holding the same qualifications.

The question for consideration in the instant appeal was whether respondent No.5 was not eligible for being considered for promotion to the post of Assistant Professor in accordance with the Himachal Pradesh Medical Education Service Rules, 1999.

Dismissing the appeal, the Court

HELD: 1. No fault can be found with the view taken by the High Court in the letters patent appeal filed by respondent no.5. The Service Rules mainly concern themselves with a recognized post graduation degree. There is nothing to suggest that recognition of the post graduation degree must be by the MCI. Perusal of the Service Rules showed that wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules. Rule 2(n) of the Himachal Pradesh Medical Education Service Rules, 1999 defines a post graduate qualification as meaning a qualification as specified in Appendix C-I and II. Appendix C-II contains a list of post graduate qualifications. Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein. The chart showed that except the post graduation degrees specified therein the Service Rules merely require a reco[illegible]e

degree for meeting the eligibility criteria. [Paras 11, 12, 13] [476-E-G; 479-A]

2. The plea of the appellant cannot be accepted that if the appeal is dismissed, rights that have accrued or vested in his client, including his seniority over respondent no.5 will be disturbed and this is not permissible. In view of the fact that respondent no.5 was wrongly not considered for promotion to the post of Assistant Professor in Pharmacology, he deserves to be now considered and if found suitable, entitled to all consequential benefits. [Para 14] [479-B-C]

CIVIL APPELLATE JURISDICTON : Civil Appeal No. 1956 of 2014.

From the judgment and order dated 19.10.2011 of the High Court of H.P. at Shimla in LPA No. 176 of 2010.

Ravi Bakshi, Yash Pal Dhingra for the appellant.

Pragati Neekhra, Syed Mehdi Imam, Gaurav Shrama, Amit Kumar for the Respondents, Caveator-in-Person.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Leave granted.

2. The only question for consideration is whether respondent No.5 Dr. D.D. Gupta was eligible for being considered for promotion to the post of Assistant Professor in accordance with the Himachal Pradesh Medical Education Service Rules, 1999. In our opinion, the question should be answered in the affirmative and against the appellant Dr. Purshotam Kumar Kaundal.

3. The eligibility criteria for promotion to the post of Assistant Professor, as laid down in the Service Rules is as follows:-

"By promotion from amongst the lecturers who possess three years regular service or regular combined with

continuous ad hoc (rendered upto 31.3.1998) service, if any, in the grade in the concerned specialty failing which by appointment (by selection from amongst the members of H.P. Civil Medical Service (General Wing) having recognized post-graduation degree or its equivalent qualification in the concerned specialty and possess at least three years teaching experience as Lecturer/ Registrar/Demonstrator/Tutor/Sr. Resident/Chief Resident in the concerned specialty after doing post-graduation in the concerned specialty failing which by direct recruitment."

4. Dr. Gupta had obtained a post graduation degree in Pharmacology from the Maharishi Dayanand University, Rohtak on 31st December, 1991. He believed that he met the eligibility criterion as per the Service Rules and ought to have been considered for promotion to the post of Assistant Professor.

5. However, when his case came up for consideration for promotion before the Departmental Promotion Committee on 28th August, 2001 he was not considered apparently on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by the Medical Council of India (for short the MCI). We were told that this decision was based on a letter dated 8th July, 2001 issued by the Deputy Secretary in the MCI to the Director of Medical Education and Research, Himachal Pradesh in which it is stated as follows :-

"Kindly refer to your letter No. HFW (DME) H(1)A-20/99, dated 1.9.2001, this is to inform you that MD (Pharmacology) qualification granted by Maharishi Dayanand University in respect of students being trained at Pt B.D. Sharma Postgraduate Institute of Medical Science is not recognized by the Council for purposes of IMC Act, 1956."

6. Dr. Gupta challenged the failure of the Departmental Promotion Committee to consider him for promotion by filing an original application before the State A l.

The original application was transferred to the High Court of Himachal Pradesh and registered as CWP (T) No.7948 of 2008.

7. By a judgment and order dated 9th August, 2010 a learned Single Judge of the High Court rejected the writ petition filed by Dr. Gupta. The learned Single Judge held that Section 11(1) of the Indian Medical Council Act, 1956 (for short the Act) provides that only those medical qualifications granted by any university or medical institution in India which are included in the First Schedule to the Act shall be recognized medical qualifications for the purposes of the Act. The learned Single Judge held that since an M.D. in Pharmacology from the Maharishi Dayanand University was not included in the First Schedule to the Act, Dr. Gupta was not eligible for being considered for promotion to the post of Assistant Professor in Pharmacology. It was also held that since Maharishi Dayanand University did not apply for recognition of the qualification to the Central Government in terms of Section 11(2) of the Act, Dr. Gupta was also not entitled to the benefit of that sub-section of Section 11 of the Act. The learned Single Judge also referred to Section 2(h) of the Act which defines a recognised medical qualification as meaning any of the medical qualifications included in the schedules of the Act. It was held that the qualification obtained by Dr. Gupta from the Maharishi Dayanand University did not fall under any schedule to the Act. Accordingly, the writ petition was dismissed by the learned Single Judge.

8. Feeling aggrieved, Dr. Gupta preferred LPA No.176 of 2010 in the High Court. By its judgment and order dated 19th October, 2011 the High Court agreed with Dr. Gupta and allowed the letters patent appeal and set aside the judgment and order of the learned Single Judge. The official respondents were directed by the High Court to hold a review departmental promotion committee for the post of Assistant Professor within a period of eight weeks. It was also held that Dr. Gupta would

be entitled to all consequential benefits in case he is found suitable by the review departmental promotion committee for appointment to the post of Assistant Professor in 2001.

9. The High Court was of the view that the eligibility criteria only required a recognized post graduation degree. It did not require a post graduation degree recognized by the MCI. The degree obtained by Dr. Gupta was a recognized post graduation degree inasmuch as it was conferred by a recognized statutory university. Therefore, Dr. Gupta was eligible for being considered for promotion to the post of Assistant Professor in Pharmacology.

10. The High Court also noted that in a later departmental promotion committee held on or about 25th November, 2012 Dr. Gupta was found eligible for being considered for promotion to the post of Assistant Professor and was in fact so promoted, while holding the same qualifications.

11. We are of the opinion that no fault can be found with the view taken by the High Court in the letters patent appeal filed by Dr. Gupta. The Service Rules mainly concern themselves with a recognized post graduation degree. There is nothing to suggest that recognition of the post graduation degree must be by the MCI. On the contrary, we have gone through the Service Rules and find that wherever recognition by the MCI is postulated, there is a specific reference to it in the Service Rules.

12. Rule 2(n) of the Service Rules defines a post graduate qualification as meaning a qualification as specified in Appendix C-I and II. We are concerned with Appendix C-II which contains a list of post graduate qualifications. Some of the post graduation degrees that require recognition by the MCI are specifically mentioned therein. These are as follows:

Sl. No.	Subject	Part A	Part B
23.	Cardiology	D.M. Cardiology 2/3 years course as recognized by M.C.I. after M.D.Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Cardiology.	-
24.	Gastro-Entrology	D.M.Gastro-enterology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Gastro-enterology.	–
25.	Theoracic Surgery	M.Ch.C.T.S. 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. C.T.S.	–
26.	Urology	M.Ch. Urology 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Urology	–
31.	Nephrology	D.M. Nephrology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Nephrology	–
32.	Neo-Natology	D.M. Neo-Natology 2/3 years course as recognized by M.C.I. after M.D. Medicine, or M.B.B.S. and 5 years direct course leading to D.M. Neo-Natology.	–
33.	Paediatric Surgery	M.Ch.Paediatric Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Paediatric Surgery.	–
34.	Neuro-Surgery	M.Ch.Neuro Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Neuro Surgery.	–
35.	Plastic Surgery	M.Ch.Plastic Surgery 2/3 years course as recognized by M.C.I. after M.S. Surgery, or M.B.B.S. and 5 years direct course leading to M.Ch. Plastic Surgery.	–
36.	Surgical Gastro -Enterology	M.Ch.Surgical Gastro-enterology 2/3 years course as recognized by M.C.I. after M.S. Surgery or M.B.B.S. and 5 years direct course leading to M.Ch. Gastro-Enterol	

13. It is quite clear from a perusal of the above chart that except the post graduation degrees specified therein the Service Rules merely require a recognized post graduate degree for meeting the eligibility criteria.

14. Learned counsel for Dr. Kaundal submitted that if the appeal is dismissed, rights that have accrued or vested in his client, including his seniority over Dr. Gupta, will be disturbed and this is not permissible. The submission is stated only to be rejected. In view of the fact that Dr. Gupta was wrongly not considered for promotion to the post of Assistant Professor in Pharmacology, he deserves to be now considered and if found suitable, entitled to all consequential benefits. In this context, we may note that the State of Himachal Pradesh has not challenged the decision of the High Court directing reconsideration.

15. It was also contended that the post graduation degree obtained by Dr. Gupta was subsequently recognized by the MCI by a Notification issued in 2004 and that the Notification would not have retrospective effect so as to make Dr. Gupta eligible for consideration for promotion. It is not necessary for us to deal with this contention since we have held that Dr. Gupta's post graduation degree did not require any recognition by the MCI.

16. Finally, it was contended that if Dr. Gupta is promoted it would be contrary to the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998. This submission was not made by Dr. Kaundal at any point of time and was only raised in passing by his learned counsel in his rejoinder submissions. We are not inclined to entertain this submission at this stage.

17. We find no merit in this appeal and it is accordingly dismissed.

D.G. Appeal dismissed.

DR. SUHAS H. POPHALE

v.

ORIENTAL INSURANCE CO. LTD. AND ITS ESTATE OFFICER

(Civil Appeal No. 1970 of 2014)

FEBRUARY 11, 2014

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

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971:

ss.15 and 2(e) r/w s.2(d) - "Public premises" - Eviction of unauthorized occupants - Appellant in occupation of suit property belonging to predecessor-in-title of first respondent, Oriental Insurance Co. Ltd. - Held: In Ashoka Marketing Ltd., it has been held that Rent Control Act and Public Premises Act operated in two different areas -- The provisions of the two enactments will have to be read harmoniously to permit the operation and co-existence of both of them to the extent it can be done - In the instant case, appellant was protected as a 'deemed tenant' u/s 15A of Bombay Rent Act, prior to the merger of the erstwhile insurance company with first respondent-Government Company and continued to be protected as tenant u/s 7(15)(a)(ii) of Maharashtra Rent Control Act -- He could be removed only in accordance with the procedure available under Bombay Rent Act or Maharashtra Rent Act - Leave and licence - Maharashtra Rent Control Act, 1999 - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - s. 15-A.

s.2(e) - "Public premises" - Eviction of unauthorized occupants - Appellant in occupation of suit property prior to their being acquired under the Act - Held: - The appellant's status as a deemed tenant was accepted under the State enactment and, therefore, he could not be said to be in

"unauthorised occupation" -- His right granted by the State enactment cannot be destroyed by giving any retrospective application to provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication -- In fact premises occupied by him would not come within the ambit of Public Premises Act, until they belonged to first respondent , i.e until 1.1.1974 -- If first respondent wanted to evict the appellant, remedy was to resort to the procedure available under Bombay Rent Act or its successor Maharashtra Rent Act, by approaching the forum thereunder, and not by resorting to the provisions of Public Premises Act.

s.2(e) - "Public premises" - Eviction of unauthorized occupants - Held: In Ashoka Marketing, it has been observed that Public Premises Act is enacted to deal with mischief of 'rampant unauthorised occupation' of public premises - Clause 2(1) of guidelines dated 30.5.2002 emphasises that the Act was meant to evict (a) totally unauthorised occupants of the public premises or subletees, or (b) employees who have ceased to be in their service, and were ineligible to occupy the premises -- "Guidelines to Prevent Arbitrary use of Powers to Evict Genuine Tenants from Public Premises Under the Control of Public Sector Undertakings / Financial Institutions (dated 30-5-2002, published in the Gazette of India dated 8-6-2002).

Application of the Act - Held: For any premises to become public premises, the relevant date will be 16.9.1958 or the date on which the premises become public premises as belonging to or taken on lease by Corporation/ Companies like the first respondent, whichever is later -- All those persons falling within the definition of 'tenant' occupying the premises prior thereto will not come under the ambit of Public Premises Act and cannot, therefore, be said to be persons in "unauthorised occupation" -- Whatever rights such prior tenants, members of their families or heirs of such tenants or

deemed tenants or all of those who fall within the definition of 'tenant' under the Bombay Rent Act have, are continued under Maharashtra Rent Act -- If possession of premises in their occupation is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Act -- Maharashtra Rent Control Act, 1999.

A leave and licence agreement in respect of the suit premises belonging to Indian Mercantile Insurance Company Ltd., the predecessor-in-title of the first respondent-Oriental Insurance Co. Ltd., was executed by the original tenant on 20.12.1972 in favour of the appellant . It was the case of the appellant that Indian Mercantile Insurance Company started accepting rent directly from him. The Company merged on 1.1.1974 into the first respondent-Oriental Insurance Co. Ltd., a Government Company, which addressed a notice dated 12.7.1980 to the original tenant terminating his tenancy with respect to the suit premises, and then filed a suit for eviction against him and the appellant in the Small Causes Court, under the provisions of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('Bombay Rent Act'). The appellant sent a letter dated 22.11.1984 to the first respondent requesting them to regularize his tenancy as a statutory tenant. The first respondent, however, preferred Case No.10 and 10A of 1992 before the second respondent - Estate Officer, under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('Public Premises Act') to evict the original tenant and the appellant, and also to recover the damages. The first respondent withdrew on 22.2.1994 the suit filed in the Small Causes Court. The second respondent passed an order on 28.5.1993 directing eviction of the original tenant and the appellant, and also for recovery of damages. The appellant filed an appeal u/s 9 of the Public Premises Act before the City Civil Court, which set aside the order of damages, and remanded the ma

respondent to reconsider that aspect, but upheld the order of eviction. The appellant filed a writ petition before the High Court mainly contending that his occupation of the suit premises was protected under the newly added s. 15A of the Bombay Rent Act with effect from 1.2.1973, i.e. prior to the first respondent acquiring the title over the property from 1.1.1974 and, as such, he could not be evicted by invoking the provisions of Public Premises Act, by treating him as an unauthorised occupant. The High Court relying upon the judgment in Ashoka Marketing Ltd. held that the provisions of the Bombay Rent Act were not applicable to the suit premises, and the said premises were covered under the Public Premises Act, and dismissed the writ petition.

The question for consideration in the instant appeal was: whether the rights of an occupant/licensee/tenant protected under a State Rent Control Act (Bombay Rent Act, 1947 and its successor Maharashtra Rent Control Act, 1999, in the instant case) could be adversely affected by application of the Public Premises Act, 1971.

Allowing the appeal, the Court

HELD: 1.1 The relationship between the erstwhile insurance company as the landlord and the appellant as the occupant, at all material times was governed under the Bombay Rent Act. The legislature thought it necessary to protect the licensees also in certain situations. Therefore, the Act was amended, and s. 15A was inserted therein to protect the licensees who were in occupation on 1.2.1973. [para 9] [496-C-E]

1.2 The General Insurance Business (Nationalisation) Act, 1972 was passed on 20.9.1972. Section 16 of this Act contemplated the merger of the private insurance companies into certain other insurance companies. Indian Mercantile Insurance Company Ltd., original

owner in the instant case, merged into the first respondent-Oriental Insurance Company Ltd. w.e.f. 1.1.1974. In view of the merger of the erstwhile insurance company into the first respondent, (of which not less than 51 per cent share holding was that of the Central Government), the Public Premises Act became applicable to its premises. [Para 10 and 12] [497-F; 498-B; 500-F]

Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India **1988 (1) Suppl. SCR 493 =1988 (4) SCC 324, and** *Smt. Saiyada Mossarrat Vs. Hindustan Steel Ltd.* **1988 (3) Suppl. SCR 690 = 1989 (1) SCC 272 - cited.**

1.3 In Ashoka Marketing Ltd., this Court has observed that the Rent Control Act and the Public Premises Act operate in two different areas, and the properties 'belonging to' the Central Government, Government Companies or Corporations would be excluded from the application of the Rent Control Act. [para 23] [509-F-G]

Ashoka Marketing Ltd. Vs. Punjab National Bank **1990 (3) SCR 649 = 1990 (4) SCC 406 - referred to.**

2.1 Section 19 of the Public Premises Act, 1971 repeals the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. Section 1(3) of the 1971 Act lays down that it shall be deemed to have come into force on the 16th day of September, 1958 except ss. 11, 19 and 20 which shall come into force at once (i.e. from 23.8.1971). A conjoint reading of s. 1(3) and s. 2(e) defining 'public premises' will be that although the provisions with respect to eviction under the Act of 1971 are deemed to have come into force from 16.9.1958, they will apply to the premises concerned only from the date when they become public premises. [para 26] [512-G-H; 513-A-C]

Rashtriya Mill Mazdoor Sangh, Nagpur vs. Model Mills, Nagpur and Anr. **1985 SCR 751 = All**

Bhuri Nath and Ors. vs. State of J&K and Ors. **1997 (1) SCR 138 = AIR 1997 SC 1711 - relied on.**

M. Mohd vs. Union of India **AIR 1982 Bombay 443;** *Mahomed Amir Ahmad Khan vs. Municipal Board of Sitapur,* **AIR 1965 SC 1923 -- distinguished**

'History of Insurance of India' published by Insurance Regulatory and Development Authority' (IRDA) on its official website on 12.07.2007 under Ref: IRDA/GEN/06/2007 **- referred to.**

2.2 The Public Premises Act, provides a speedy remedy to recover the premises from unauthorised occupants. At the same time, it must also be noted that the appellant is seeking protection u/s 15A of the Bombay Rent Act, which has a non-obstante clause. The provisions of the two enactments will have to be read harmoniously to permit the operation and co-existence of both of them to the extent it can be done. Therefore, the term 'belonging to' as occurring in the definition of public premises in s. 2(e) will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the Government Company at the relevant time. In the facts of the case, the appellant had the status of a deemed tenant under the Bombay Rent Act, 1947 w.e.f. 1.2.1973, i.e., prior to the premises 'belonging to a Government Company' and becoming public premises, i. e. 1.1.1974. If at all he had to be evicted, it was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act. [Para 30] [518-D, G; 519-A-D]

3.1 It has been laid down by this Court time and again that if there are rights created in favour of any person,

whether they are property rights or rights arising from a transaction in the nature of a contract, and, particularly, if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect, as prima facie every legislation is prospective. In the instant case, the appellant was undoubtedly protected as a 'deemed tenant' u/s 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' u/s 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those occupants who were deemed tenants under the Bombay Rent Act, continued to have their protection under the Maharashtra Rent Control Act, 1999, notwithstanding s. 15 of the Public Premises Act, which creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. The Public Premises Act will apply only to those who come in such occupation after the date of the premises becoming public premises. [para 31 and 45] [519-H; 520-A-D; 530-C, E]

Janardan Reddy vs. The State **1950 SCR 940 = AIR 1951 SC 124;** *Garkiapati Veeraya vs. N. Subbiah Choudhry,* **in 1957 SCR 488 = AIR 1957 SC 540;** *Mahadeolal Kanodia vs. The Administrator General of West Bengal* **1960 SCR 578 = AIR 1960 SC 936;** *K.S. Paripoornan vs. State of Kerala,* **AIR 1995 SC 1012; and** *Gajraj Singh vs. State Transport Appellate Tribunal* **1996 (6) Suppl. SCR 172 = AIR 1997 SC 412 - relied on.**

Amireddi Raja Gopala Rao vs. Amireddi Sitharamamma, **1965 SCR 122 = AIR 1965 SC 1970;** *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad vs. Induprasad Devshanker Bhatt,* **1969 SCR 714 = AIR 1969 SC 778;** *Ex-Capt., K.C. Arora vs. State of Haryana* **1984 (3) SCR 623 = 1984 (3) SCC 281; and** *Arjan Singh vs. State of Punjab* **1969 SCR 347 = AIR 1970 SC 703 - referred to.**

3.2 For any premises to become public premises, the relevant date will be 16.9.1958 or the date on which the premises become public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the General Insurance Companies like the first respondent, whichever is later. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot, therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Act. If possession of premises in their occupation is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Act. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act will apply. [para 44] [529-F-H; 530-A-B]

3.3 The appellant's status as a deemed tenant was accepted under the State enactment and, therefore, he could not be said to be in "unauthorised occupation". His right granted by the State enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within

the ambit of the Public Premises Act, until they belonged to respondent No. 1, i.e until 1.1.1974. The corollary is that if respondent No. 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act. [para 39] [524-H; 525-A-C]

Banatwala and Co. vs. LIC **2011 (14) SCR 533 = 2011 (13) SCC 446;** *Jain Ink Manufacturing Company v. L.I.C* **1981 (1) SCR 498 = (1980) 4 SCC 435 - referred to.**

Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, **1986 (3) SCR 866 - cited.**

4.1 In Ashoka Marketing, the Constitution Bench has observed that the Public Premises Act is enacted to deal with mischief of 'rampant unauthorised occupation' of public premises. It is significant to note that there has been a criticism of the use of the powers under the Public Premises Act, and the manner in which they are used in an arbitrary way to evict the genuine tenants from the public premises causing serious hardships to them. The Central Government has therefore, issued the guidelines by Resolution No. 21012/1/2000-Pol.1, dated 30-5-2002, to prevent such arbitrary use of these powers. It is emphasized in Clause 2(i) of the guidelines that the Act was meant to evict: (a) totally unauthorised occupants of the public premises or subletees, or (b) employees who have ceased to be in their service, and were ineligible to occupy the premises. Clause 2 (iii) indicates that for resuming possession in certain situations, where the tenants are protected under the State Rent Control Act prior to the Public Premises Act becoming applicable, the public authorities will have to move under the Rent Control Acts on the grounds which are available to the private landlords. The powers a[illegible]r

specified reasons, and are expected to be used only in justified circumstances and not otherwise. [para 40-43] [525-D-H; 527-G; 528-B, C-D; 529-C]

New Insurance Assurance Company vs. Nusli Neville Wadia **2007 (13) SCR 598 = 2008 (3) SCC 279 - referred to.**

4.2 As far as the eviction of unauthorised occupants from public premises is concerned, it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the premises concerned become public premises. Thus, there are two categories of occupants of the public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the appellant, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Therefore, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by

approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings. [para 48] [532-C-H; 533-A]

Pradip Chandra Parija vs. Pramod Chandra, **2001 (5) Suppl. SCR 460= 2002 (1) SCC 1;** *Sundarjas Kanyalal Bhatija vs. Collector, Thane, Maharashtra and Ors.* **1989 (3) SCR 405 =1989 (3) SCC 396 - cited.**

4.3 Since the issue of retrospective application of the Public Premises Act, to tenancies entered into before 16.9.1958, or before the property in question becoming a public premises, was neither canvassed nor considered by the Constitution Bench in Ashoka Marketing, the decision does not, in any way, prevent this Court from clarifying the law regarding the same. [para 51] [535-D-E]

State of Haryana vs. Ranbir @ Rana, **2006 (3) SCR 864 = (2006) 5 SCC 167; and** *Commissioner of Income Tax vs. M/s. Sun Engineering Works (P.) Ltd.* **1992 (1) Suppl. SCR 732 = AIR1993 SC 43 - referred to.**

4.4 The impugned judgment and order dated 7.6.2010 rendered by the High Court is set aside. The writ petition shall stand allowed, and the judgment and order dated 17.1.1996 passed by the City Civil Court, Mumbai, as well as the eviction order dated 28.5.1993 passed by respondent No. 2 against the appellant will stand set aside. The proceedings for eviction from premises, and for recovery of rent and damages initiated by the first respondent against the appellant under the Public Premises Act, 1971, are held to be bad in law, and shall therefore stand dismissed. However, it is made clear that in case the respondents intend to take any steps for that purpose, it will be open to them to resort to the remedy available under the Maharashtra Rent Control Act, 1999. [para 52] [536-E-G]

Case Law Reference:

1990 (3) SCR 649	**referred to**	**para 7**
1988 (1) Suppl. SCR 493	**referred to**	**para 19**
1988 (3) Suppl. SCR 690	**referred to**	**para 19**
1986 (3) SCR 866	**cited**	**para 25**
AIR 1982 Bombay 443	**distinguished**	**para 28**
AIR 1965 SC 1923	**distinguished**	**para 28**
1985 SCR 751	**relied on**	**para 29**
1997 (1) SCR 138	**relied on**	**para 29**
1950 SCR 940	**relied on**	**para 31**
1957 SCR 488	**relied on**	**para 32**
1960 SCR 578	**relied on**	**para 33**
1965 SCR 122	**referred to**	**para 34**
1969 SCR 714	**referred to**	**para 34**
1969 SCR 347	**referred to**	**para 35**
1984 (3) SCR 623	**referred to**	**para 36**
AIR 1995 SC 1012	**relied on**	**para 37**
1996 (6) Suppl. SCR 172	**relied on**	**para 38**
2007 (13) SCR 598	**referred to**	**para 43**
2011 (14) SCR 533	**referred to**	**para 46**
1981 (1) SCR 498	**referred to**	**para 47**
2001 (5) Suppl. SCR 460	**cited**	**para 49**
1989 (3) SCR 405	**cited**	**para 49**

2006 (3) SCR 864	**referred to**	**para 51**
1992 (1) Suppl. SCR 732	**referred to**	**para 51**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1970 of 2014.

From the judgment and order dated 07.06.2010 of the High Court of Bombay in WP No. 2473 of 1996.

R.F. Nariman, Gaurav Goel, Manasi Kumar, Manu Aggarwal (for E.C. Agrawala) for the Appellant.

Harin P. Raval, Pramod Dayal, Nikunj Dayal, Payal Dayal, S.M. Suri, P.S. Johar, Divya Anand for the Respondents.

The Judgment of the Court was delivered by

H.L. GOKHALE J. 1. Leave granted.

2. This appeal by special leave raises the question as to whether the rights of an occupant/licensee/ tenant protected under a State Rent Control Act (Bombay Rent Act, 1947 and its successor the Maharashtra Rent Control Act, 1999, in the instant case), could be adversely affected by application of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('Public Premises Act' for short)? This question arises in the context of the eviction order dated 28.5.1993 passed by the respondent No. 2, Estate Officer of the first respondent, invoking the provisions of the Public Premises Act with respect to the premises occupied by the appellant since 20.12.1972. The eviction order has been upheld by the Bombay High Court in its impugned judgment dated 7.6.2010, rejecting the Writ Petition No.2473 of 1996 filed by the appellant herein.

The facts leading to this appeal are this wise:-

3. One Mr. Eric Voller was a tenant of the Indian Mercantile Insurance Company Ltd. (hereinafter referred to as the erstwhile Insurance Co.), the predeces st

respondent in respect of the premises being Flat No.3, Second Floor, Indian Mercantile Mansion (formerly known as Waterloo Mansion), Wodehouse Road, Opposite Regal Cinema, Colaba, Mumbai. This Mr. Voller executed a leave and licence agreement in respect of these premises on 20.12.1972 in favour of the appellant initially for a period of two years, and put him in exclusive possession thereof. Mr. Voller, thereafter migrated to Canada with his family. The appellant is a practicing physician. The erstwhile insurance company did not object to the appellant coming into exclusive possession of the said premises. In fact, it is the case of the appellant that when Mr. Voller sought the transfer of the tenancy to the appellant, the General Manager of the said insurance company, by his reply dated 16.1.1973, accepted the appellant as the tenant, though for residential purposes only. The said erstwhile insurance company, thereafter, started accepting the rent directly from the appellant. It is also the case of the appellant that on 14.3.1973, he wrote to the said General Manager seeking a permission for a change of user i.e. to use the premises for his clinic. It is also his case that on 18.4.1973, the General Manager wrote back to him that the erstwhile insurance company had no objection to the change of user, provided the Municipal Corporation of Greater Mumbai gave no objection.

4. The erstwhile insurance company subsequently merged on 1.1.1974 into the first respondent company which is a Government Company. The management of the erstwhile insurance company had however been taken over by the Central Government with effect from 13.5.1971, pending its nationalisation and that of other private insurance companies. The first respondent, thereafter, addressed a notice dated 12.7.1980 to Mr. E. Voller terminating his tenancy with respect to the said premises, and then filed a suit for eviction against Mr. E. Voller and the appellant being R.A.E. Suit No.1176/3742 of 1981 in the Court of Small Causes at Mumbai, under the provisions of the then applicable Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('Bombay Rent Act'

for short). Initially the suit came to be dismissed for default, but an application was made under Order 9 Rule 9 of Code of Civil Procedure to set aside the said order. The application was allowed, and the suit remained pending.

5. The appellant then sent a letter dated 22.11.1984 to the first respondent requesting them to regularize his tenancy as a statutory tenant. The first respondent, however, served the appellant notices under Section 4 and 7 of the Public Premises Act, to show cause as to why he should not be evicted from the concerned premises, and to pay damages as specified therein for unauthorised occupation as claimed. The first respondent followed it by preferring Case No.10 and 10A of 1992 before the respondent No. 2 Estate Officer under the Public Premises Act, to evict Mr. E. Voller and the appellant, and also to recover the damages. After initiating these proceedings, the first respondent withdrew on 22.2.1994 the suit filed in the Court of Small Causes. It is, however, relevant to note that in paragraph No. 4 of their case before the Estate Officer, the first respondent specifically accepted that Mr. E. Voller had sublet or given on leave and licence basis or otherwise transferred his interest in the said flat to the appellant in or about 1972, though without any authority from the respondent No. 1. The first respondent alleged that the appellant had carried out structural changes. The appellant denied the allegation. He claimed that he had effected some essential minor repairs for maintenance of the premises since the first respondent was neglecting to attend the same. The appellant filed a reply pointing out that he had been accepted as a tenant by the predecessor of the first respondent by their earlier referred letter dated 16.1.1973. The first respondent, however, responded on 5.1.1993 stating that they did not have any record of the erstwhile insurance company prior to 1975. The second respondent thereafter passed an order on 28.5.1993 directing eviction of Mr. E. Voller and the appellant, and also for recovery of damages at the rate of Rs.6750 per month from 1.9.1980.

6. Being aggrieved by the said order, the appellant filed an appeal before the City Civil Court at Mumbai under Section 9 of the Public Premises Act, which appeal was numbered as Misc. Appeal No.79/93. The City Civil Court set aside the order of damages, and remanded the matter to the second respondent to reconsider that aspect, but upheld the order of eviction by its judgment and order dated 17.1.1996. The appellant thereupon filed a writ petition bearing No.2473/1996 before the High Court on 15.4.1996 to challenge that part of the appellate order which upheld the order of eviction. The High Court dismissed the Writ Petition, by the impugned judgment and order dated 7.6.2010, with costs.

7. The principal contention raised by the appellant right from the stage of the proceedings before the respondent No. 2, and even before the High Court, was that his occupation of the concerned premises was protected under the newly added S 15A of the Bombay Rent Act with effect from 1.2.1973, i.e. prior to the first respondent acquiring the title over the property from 1.1.1974. Therefore, he could not be evicted by invoking the provisions of Public Premises Act, and by treating him as an unauthorised occupant under that act. The impugned order of the High Court rejected the said submission holding that the provisions of the Bombay Rent Act were not applicable to the premises concerned, and the said premises were covered under the Public Premises Act. The High Court principally relied upon the judgment of a Constitution Bench of this Court in *Ashoka Marketing Ltd. Vs. Punjab National Bank* reported in 1990 (4) SCC 406. As per the view taken by the High Court, this judgment rejects the contention that the provisions of the Public Premises Act cannot be applied to the premises which fall within the ambit of a State Rent Control Act. The High Court held that the Public Premises Act became applicable to the concerned premises from 13.5.1971 itself i.e. the appointed date under the General Insurance (Emergency Provisions) Act, 1971 wherefrom the management of the erstwhile insurance company was taken over by the Central Government, and not

from the date of merger i.e. 1.1.1974. It is this judgment which is under challenge in the present appeal.

8. Mr. Rohinton F. Nariman, learned senior counsel has appeared for the appellant and Mr. Harin P. Raval, learned senior counsel has appeared for the respondents.

The principal issue involved in the matter:-

9. To begin with, it has to be noted that the relationship between the erstwhile insurance company as the landlord and the appellant as the occupant, at all material times was governed under the Bombay Rent Act. Like all other rent control enactments, this Act has been passed as a welfare measure, amongst other reasons to protect the tenants against unjustified increases above the standard rent, to permit eviction of the tenants only when a case is made out under the specified grounds, and to provide for a forum and procedure for adjudication of the disputes between the landlords and the tenants. The legislature of Maharashtra thought it necessary to protect the licensees also in certain situations. Therefore, this act was amended, and a section was inserted therein bearing Section No.15A to protect the licensees who were in occupation on 1.2.1973. This Section reads as follows:-

"15A. Certain licensees in occupation on 1st February 1973 to become tenants

(1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract where any person is on the 1st day of February 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation.

(2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."

We may note that S 15(1) prohibits sub-letting of premises.

10. As far as the insurance business in India is concerned, prior to independence, it was owned and operated by private entities. The governing law for insurance in India was, and still is the Insurance Act, 1938. Post-independence, the Industrial Policy Resolution of 1956 stated that the Life Insurance industry in India was to be nationalised. Therefore, the Life Insurance Corporation Act of 1956 was passed creating the Life Insurance Corporation (LIC), as a statutory corporation, and transferring the assets of all the private life insurance companies in India to LIC. Sometimes around 1970-71, it was felt that the general insurance industry was also in need of nationalisation. Therefore, first the General Insurance (Emergency Provisions) Act, 1971 was passed by the Parliament which provided for the taking over of the management of general insurance business. Though the Act received the assent of the President on 17.6.1971, it was deemed to have come into force on 13.5.1971 from which date the Central Government assumed the management of General Insurance Business as an initial step towards the nationalisation. Thereafter, the General Insurance Business (Nationalisation) Act, 1972 was passed on 20.9.1972. Section 16 of this Act contemplated the merger of the private insurance companies into certain other insurance companies. Consequently, these private insurance companies merged into four insurance companies viz.,

(a) The National Insurance Company Ltd.,

(b) The New India Assurance Company Ltd.,

(c) The Oriental Insurance Company Ltd., and

(d) The United India Insurance Company Ltd.

These four companies are fully owned subsidiaries of the General Insurance Corporation of India which is a Government Company registered under Companies Act, 1956, but incorporated as mandated under Section 9 of the above referred Nationalisation Act. The Central Government holds not less than 51 per cent of the paid up share capital of the General Insurance Corporation. The above referred Indian Mercantile Insurance Company Ltd. merged into the first respondent-Oriental Insurance Company Ltd. w.e.f. 1.1.1974.

11. There is one more important development which is required to be noted. The Public Premises Act, 1971 (40 of 1971) came to be passed in the meanwhile. As per its preamble, it is "an act to provide for eviction of unauthorised occupants from public premises and for certain incidental matters" such as removal of unauthorised construction, recovery of arrears of rent etc. It came into force on 23.8.1971, but Section 1(3) thereof states that it shall be deemed to have come into force on 16.9.1958, except Section 11 (on offences and penalty) and Sections 19 and 20 (on repeal and validation). This is because from 16.9.1958, its predecessor Act viz. The Public Premises (Eviction of Unauthorised Occupants) Act (32 of 1958) was in force for similar purposes, and which was repealed by the above referred Section 19 of the 1971 Act. As provided under Section 2 (e) (2) (i) of this Act, the definition of 'Public Premises', amongst others, covers the premises belonging to or taken on lease by or on behalf of any company in which not less than fifty one per cent of the paid up share capital was held by the Central Government. The definition of public premises under Section 2(e) of this Act reads as follows:-

"2. Definitions…..

[(e) "public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on b al

Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any Corporation [not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority] established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-

section (6) of Section 80 of that Act;

[(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board consitituted under the Cantonments Act, 1924 (2 of 1924); and]

(3) in relation to the [National Capital Territory of Delhi],-

(i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, [and]

[(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;]"

12. The consequence of this development was that in view of the merger of the erstwhile insurance company into the first respondent, (of which not less than 51 per cent share holding was that of the Central Government,) the Public Premises Act became applicable to its premises. It is the contention of the appellant that although the Act is otherwise deemed to have come into force from 16.9.1958, as far as the present premises are concerned, the Act became applicable to them from 1.1.1974 when the erstwhile insurance company merged into the first respondent. Then only it could be said that the premises 'belonged' to a Government Company. However, since the appellant's occupation of the said premises was protected by Section 15A of the Bombay Rent Act which Section had become enforceable prior thereto from

be said to be in 'unauthorised occupation' and, therefore, could not be evicted by invoking the provisions of the Public Premises Act. On the other hand, the contention of the respondents is that the Public Premises Act became applicable to the concerned premises from 13.5.1971 itself, when the management of the erstwhile insurance company was taken over by the Central Government, and the rejection of the writ petition by the High Court on that ground was justified. The principal issue involved in this matter is thus about the applicability of the Public Premises Act to the premises occupied by the appellant.

Submissions of the rival counsel:-

13. Learned Senior Counsel for the appellant, Mr. Nariman submitted that the finding of the High Court that the Public Premises Act applies to these premises from 13.5.1971 was an erroneous one. That was the date on which the Central Government assumed the management of the erstwhile private insurance company. The erstwhile insurance company continued to exist until it merged in the appellant-company w.e.f. 1.1.1974. In the circumstances, although the Public Premises Act came into force on 23.8.1971 (with deemed date of coming into force being 16.9.1958), and although the appointed date for assuming management was 13.5.1971, the premises could be said to have 'belonged' to the first respondent as per the definition under Section 2(E)(2)(i) of the Act, only from 1.1.1974, when the merger took place. Prior thereto the Bombay Rent Act had been amended and the licensees in occupation, were declared as deemed tenants, by virtue of Section 15A of the said Act. The appellant has been in continuous occupation of the said premises as a licensee from 20.12.1972. On 1.2.1973 his status got elevated to that of a 'deemed tenant' which was prior to the respondent No. 1 becoming owner of the building from 1.1.1974. The submission of Mr. Nariman was that the appellant had a vested right under the statute passed by the State Legislature protecting the licensees, and since the Public Premises Act became

applicable from 1.1.1974, the rights of the tenants and also those of the licensees protected under the State Act prior to 1.1.1974, could not be taken away by the application of the Public Premises Act which can apply only prospectively. In his submission the eviction proceedings under the Public Premises Act against the appellant were therefore, null and void. The only remedy available for the first respondent for evicting the appellant would be under the Bombay Rent Act or under the Maharashtra Rent Control Act, 1999 which has replaced the said Act with effect from 31.3.2000. We may note at this stage that Mr. Nariman made a statement that the appellant is making out a case on the basis of his legal rights as a protected licencee, and not on the basis of the earlier mentioned correspondence between the appellant and the erstwhile insurance company.

14. Learned senior counsel for the respondents Mr. Raval, on the other hand, submitted that once the management of the erstwhile insurance company was taken over, the Public Premises Act became applicable. Therefore, it was fully permissible for the first respondent to initiate the proceedings to evict the appellant from the public premises. In his view, the legal position, in this behalf, has been settled by the judgment of the Constitution Bench in the above referred Ashoka Marketing case, and the view taken by the High Court with respect to the date of applicability of the Public Premises Act was in consonance with the said judgment.

15. As against that, it is the submission of the Mr. Nariman that the judgment in Ashoka Marketing (supra) has to be understood in its context, and that it did not lay down any such wide proposition as Mr. Raval was canvassing. He pointed out that the judgment in Ashoka Marketing (supra) was with respect to the overriding effect of the Public Premises Act vis-à-vis the Delhi Rent Control Act, which are both Acts passed by the Parliament, and where the premises fall within the ambit of both the enactments. In the instant case, we a[illegible]e

Act passed by the Parliament, and another by a State Legislature. That apart, in his submission, the Public Premises Act must firstly apply to the concerned premises, and in his submission the concerned premises did not fall within the ambit of that act. That being so, in any case, the rights of the tenants who were protected under the State Act prior to passing of this Act, could not be said to have been extinguished by virtue of coming into force of the Public Premises Act.

Consideration of the submissions

The Judgment in the case of Ashoka Marketing

16. Inasmuch as, the judgment in the case of *Ashoka Marketing* (supra) is crucial for determining the issue in controversy, it would be relevant to refer to the said decision in detail. When we analyse the judgment in *Ashoka Marketing* (supra), we have to first see as to what was the subject matter of the controversy before this Court in Ashoka Marketing? It was with respect to the eviction of the occupants from the premises owned by Punjab National Bank and Allahabad Bank which are both nationalised banks, and by Life Insurance Corporation, which is a Statutory Corporation. In paragraph 1 of this judgment of the Constitution Bench, the question framed by the Court for its consideration was as follows:-

> *"whether a person who was inducted as a tenant in premises, which are public premises for the purpose of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Public Premises Act'), and whose tenancy has expired or has been terminated, can be evicted from the said premises as being a person in unauthorised occupation of the premises under the provisions of the Public Premises Act and whether such a person can invoke the protection of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Rent Control Act'). In short, the question is, whether the provisions of the Public Premises Act*

> *would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments."*

(emphasis supplied)

17. We may refer to the definition of "unauthorised occupation" as provided under Section 2(g) of the Public Premises Act at this stage. It reads as follows:-

> ***"2. Definitions….***
>
> *(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."*

As can be seen from this definition, it consists of two parts. In paragraph 30 of the above judgment also, this Court noted that the definition of 'unauthorized occupation' in Section 2(g) of the Public Premises Act, was in two parts. The first part of this definition deals with persons who are in occupation of the Public Premises 'without authority for such occupation', and the second part deals with those in occupation of public premises, whose authority to occupy the premises 'has expired or has been determined for any reason whatsoever'. As stated in paragraph 1 of the judgment, the Constitution Bench was concerned with the second part of the definition. As far as these two parts are concerned, the Court observed in paragraph 30 as follows:-

> *"30. The definition of the expression 'unauthorised occupation' contained in Section 2(g) of the Public*

Premises Act is in two parts. In the first part the said expression has been defined to mean the occupation by any person of the public premises without authority for such occupation. It implies occupation by a person who has entered into occupation of any public premises without lawful authority as well as occupation which was permissive at the inception but has ceased to be so. The second part of the definition is inclusive in nature and it expressly covers continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. This part covers a case where a person had entered into occupation legally under valid authority but who continues in occupation after the authority under which he was put in occupation has expired or has been determined. The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

18. Thereafter, the Court dealt with the issue of conflict between the two enactments and whether the Public Premises Act, would override the Delhi Rent Control Act. As this Court noted in paragraph 49 of the said judgment, both these statutes have been enacted by the same legislature, i.e. Parliament, in exercise of the legislative powers in respect of the matters enumerated in the Concurrent List. With respect to the rent control legislations enacted by the State Legislatures, this Court observed in paragraph 46 as follows:-

"46. As regards rent control legislation enacted by the State Legislature the position is well settled that such legislation falls within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution (See. Indu Bhushan Bose Vs. Rama Sundari Devi[1], V. Dhanpal Chettiar case[2]; Jai Singh Jairam Tyagi Vs. Mamanchand Ratilal Agarwal[3] and Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India[4]."

1. (1969) 2 SCC 289 : (1970) 1 SCR 443, 2. (1979) 4 SCC 214 : (1980) 1 SCR 334

3. (1980) 3 SCC 162 : (1980) 3 SCR 224, 4. (1988) 4 SCC 324

19. As far as Public Premises Act is concerned, paragraph 48 of this judgment, referred to the earlier judgments in *Accountant and Secretarial Services Pvt. Ltd. Vs. Union of India* reported in 1988 (4) SCC 324, and *Smt. Saiyada Mossarrat Vs. Hindustan Steel Ltd.* reported in 1989 (1) SCC 272. In *Accountant and Secretarial Service Pvt. Ltd.* (supra), this Court had held that the Public Premises Act is also referable to Entries 6, 7 and 13 of the Concurrent List. At the end of paragraph 48, of Ashoka Marketing this Court held:-

".....There is no inconsistency between the decisions of this Court in Accountant and Secretarial Services Pvt. Ltd. and Smt. Saiyada Mossarrat case in as much as in both the decisions it is held that the Public Premises Act insofar as it deals with a lessee or licensee of premises other than premises belonging to the Central Government has been enacted in exercise of the legislative powers in respect of matters enumerated in the Concurrent List. We are in agreement with this view."

20. Thereafter, on the question as to whether the Public Premises Act overrides the Delhi Rent Control Act, this Court observed as follows at the end of para

"In our opinion the question as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature."

In this context, the Court noted that the two principles which are to be applied are (i) later laws abrogate earlier contrary laws, and (ii) a general provision does not derogate from a special one. In paragraph 54, the Court noted that Public Premises Act is a later enactment having been enacted on 23.8.1971, whereas the Delhi Rent Control Act, was enacted on 31.12.1958. Thereafter the Court observed in paragraph 55 as follows:-

"55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be

followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act."

(emphasis supplied)

21. In paragraph 62, this Court noted the objects and reasons of the Delhi Rent Control Act, which are as follows:-

62. ….(a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;

(b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investments in house construction; and

(c) to give tenants a larger measure of protection against eviction……..

22. In paragraph 63, this Court noted the statement of objects and reasons of the Public Premises Act, which are as follows:-

"63……"The court decisions, referred to above, have created serious difficulties for the government inasmuch as the proceedings taken by the various Estate Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void.... It has become impossible for government to take expeditious action even in flagrant cases of unauthorised occupation of public premises and recovery of rent or damages for such unauthorised occupation. It is, therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying with the provisions of the Constitution and the judicial pronouncements, referred to above."

Thereafter, the Court observed:-

"63…….This shows that the Public Premises Act, has been enacted to deal with the mischief of rampant unauthorized occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorized occupation……."

(emphasis supplied)

23. In paragraph 64, this Court then noted that the Rent Control Act and the Public Premises Act operated in two different areas, and the properties 'belonging to' the Central Government, Government Companies or Corporations would be excluded from the application of the Rent Control Act. The Court observed to the following effect:-

"64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public

Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial interest or corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government……."

(emphasis supplied)

Thereafter, the Court observed:-

".....The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest……"

(emphasis supplied)

24. Paragraph 66 of the judgment makes it clear that this Court was concerned with a contractual tenancy and ruled out a dual procedure for eviction. In that context it observed as follows:-

"66…….This would mean that in order to evict a person who is continuing in occupation after the expiration or termination of his contractual tenancy in accordance with law, two proceedings will have to be initiated. First, there will be proceedings under Rent Control Act before the Rent

Controller followed by appeal before the Rent Control Tribunal and revision before the High Court. After these proceedings have ended they would be followed by proceedings under the Public Premises Act, before the Estate Officer and the Appellate Authority. In other words, persons in occupation of public premises would receive greater protection than tenants in premises owned by private persons. It could not be the intention of Parliament to confer this dual benefit on persons in occupation of public premises."

It is relevant to note that, it is in this context that the Court rendered its decision in Ashoka Marketing, and upheld the orders of eviction under Public Premises Act.

25. It was submitted by Mr. Nariman, that as can be seen from above, the Court was concerned with the second part of the definition of "unauthorised occupation" under Section 2(g) of the Public Premises Act, which is concerning expiry or determination of the authority to occupy. He submitted that the 'determination of tenancy' is referable to Section 111 of the Transfer of Property Act, and similarly the concept of expiry of the authority to occupy. Paragraph 30 quoted above specifically refers to the Transfer of Property Act. He submitted that the latter part of this definition was indicating a reference to contractual tenancy, and in this behalf referred to the above referred paragraph 66 which also speaks about the contractual tenancy. His submission was that since the first part of the definition under Section 2(g) referred to a person who is occupying the premises without any authority, it would exclude a person who is occupying the premises under the authority of law. In his submission, since the appellant was a deemed tenant under the state law, such a statutory tenant will have to be considered as protected by authority of law and cannot be called a person in "unauthorised occupation". He referred to the judgment of this Court in *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram* reported in 1986 (3) SCR 866, which

held that the amendment brought about by section 15A was an attempt to protect very large number of legitimate persons in occupation. The judgment also made a distinction in the position of a statutory tenant as against that of a contractual tenant. In that judgment it is held that a statutory tenant is entitled to create a licence, whereas a contractual tenant can create a sub-lease. However, the proposition canvassed by Mr. Nariman would mean that a licensee protected by statute will not be in an unauthorised occupation, but a contractual tenant could be, since, his authority to occupy can be determined, and he would be in an unauthorised occupation thereafter. Thus, a protected licensee would be placed on a pedestal higher than that of a principal contractual tenant. In our view, this judgment does not state so, nor can it lead us to accept any such proposition as it would mean accepting an incongruous situation.

From what date would the Public Premises Act apply to the concerned premises?

26. The question that is required to be examined, however, is whether the tenants as well as licencees, who are protected under the State Law, could be called unauthorised occupants by applying the Public Premises Act to their premises as 'belonging' to a Government Company, and if so from what date. As we have noted earlier, to initiate the eviction proceedings under this statute, the premises concerned have to be public premises as defined under Section 2(e) of the Act. Besides, as far as the present premises are concerned, it is necessary that they must belong to a Government Company. The definition of public premises will, therefore, have to be looked into, and it will have to be examined as to from what date the premises can be said to be belonging to a Government Company. Section 19 of the Public Premises Act, 1971 repeals the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. While repealing this predecessor Act, Section 1(3) of the 1971 Act lays down

to have come into force on the 16th day of September, 1958 except sections 11, 19 and 20 which shall come into force at once (i.e. from 23.8.1971). Section 11 deals with offences and penalties. Section 19 is the repealing Section as stated above, and Section 20 is the section on validation of any judgment, decree or order of any competent court which might have been passed under Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The conjoint reading of Section 1(3) and Section 2(e) defining Public Premises will be that although the provisions with respect to eviction under the Act of 1971 are deemed to have come into force from 16.9.1958, they will apply to the concerned premises only from the date when they become public premises.

27. Thus, in the case of a company under the Companies Act, 1956 as in the present case, it is necessary that the premises must belong to or must be taken on lease by a company which has not less than 51 per cent paid up share capital held by the Central Government. The submission of the respondents is that the date on which the management of the erstwhile Insurance Company was taken over i.e. 13.5.1971 would be the relevant date, and from that date the premises would be said to have become public premises. It was submitted that after coming into force of the said Act, it was not open to the erstwhile company to transfer or otherwise dispose of any assets or create any charge, hypothecation, lease or any encumbrance thereto without the previous approval of the persons specified by the Central Government. It was contended that as a result, the provisions of Bombay Rent Act will have to be held as not applicable to the said premises from such date i.e. 13th May, 1971.

28. The submission of the respondent was accepted by the High Court by relying upon an earlier judgment of a Division Bench of the Bombay High Court in the case of *M. Mohd vs. Union of India* reported in AIR 1982 Bombay 443. In para 22 thereof, the High Court held as follows:-

> "…..There is no doubt that the expression "belonging to" does not mean the same thing as "owned by". The two expressions have two different connotations. The expression "belonging to" will take within its sweep not only ownership but also rights lesser than that of ownership."

It is relevant to note that the appellants therein were government employees occupying premises allotted to them as service premises. The premises were situated in privately owned buildings, and taken on lease by the Government. The appellants had retired from their services, but were not vacating the premises, and hence eviction orders were passed against them under the Public Premises Act. The premises were admittedly taken on lease, and were therefore premises belonging to the Central Government. At the end of paragraph 21 of its judgment, the High Court in terms held as follows, "Once the factum of lease is established, which has been done in the present case, the authorities under the act get jurisdiction to inquire under the act." The submission of the appellants therein was that the premises could not be said to be belonging to the respondents, and therefore, not public premises. It is in this context that the High Court held that the expression 'belonging to' will take within its sweep rights lesser than that of ownership. The observations quoted above will have to be read in that context. It is however, relevant to note what the Division Bench has thereafter added:-

> *"It must be remembered in this connection that the expressions used in the statute are to be interpreted and given meaning in the context in which they are used."*

It is material to note that it was not a case like the present one, where the occupant has claimed protection under the State Rent Control Law available to him prior to the Public Premises Act becoming applicable. The High Court had relied upon a judgment of this Court in *Mahomed Amir Ahmad Khan vs. Municipal Board of Sitapur* reported in

wherein this Court has observed:-

> *"Though the word "belonging" no doubt is capable of denoting as absolute title, is nevertheless not confined to connoting that sense."*

This was a matter wherein the appellant was alleged to have disputed the title of the respondent landlord by contending that the premises were belonging to the appellant. The Court noted that all that he meant by using the word 'belonging' was that he was a lessee, and nothing more. It was in this sense that this Court observed as above while allowing his appeal.

29. In the present matter we are concerned with the question, whether the respondents could resort to the provisions of the Public Premises Act at a time when the merger of the erstwhile insurance company into the first respondent was not complete. The question is whether taking over of the management of the erstwhile company can confer upon the respondent No. 1 the authority to claim that the premises belong to it to initiate eviction proceedings under the Public Premises Act, to the detriment of an occupant who is claiming protection under a welfare enactment passed by the State Legislature. At this juncture we may profitably refer to the judgment of this Court concerning another welfare enactment in *Rashtriya Mill Mazdoor Sangh, Nagpur Vs. Model Mills, Nagpur and Anr.* reported in AIR 1984 SC 1813. The issue before the Court was whether upon the appointment of an authorised controller under Section 18A of the Industries (Development and Regulation) Act, 1951 (IDR Act short) in respect of an industrial undertaking, when it is run by him under the authority of a Department of the Central Government, the employees of the undertaking would get excluded from the application of the Payment of Bonus Act, 1965, in view of the provision contained in Section 32(iv) of the Bonus Act. The court made a distinction between the concept of taking over of management and taking over of ownership. Inasmuch as the taking over of the management did not result into the Central Government becoming the owner of the textile

mills, the right of the workmen to receive bonus was not extinguished. The Court held as follows:

> "10. Thus the significant consequence that ensues on the issue of a notified order appointing authorised controller is to divert the management from the present managers and to vest it in the authorised controller. Undoubtedly, the heading of Chapter III-A appears to be slightly misleading when it says that the Central Government on the issue of a notified order assumes direct management of the industrial undertaking, in effect on the issuance of a notified order, only the management of the industrial undertaking undergoes a change. This change of management does not tantamount to either acquisition of the industrial undertaking or a take over of its ownership because if that was to be the intended effect of change of management, the Act would have been subjected to challenge of Article 31 and 19 (1) (f) of the Constitution. One can say confidently that was not intended to be the effect of appointment of an authorised controller. The industrial undertaking continues to be governed by the Companies Act or the Partnership Act or the relevant provisions of law applicable to a proprietary concern. The only change is the removal of managers and appointment of another manager and to safeguard his position restriction on the rights of shareholders or partners or original proprietor. This is the net effect of the appointment of an authorised controller by a notified order."
>
> (emphasis supplied)

A similar approach was adopted by the Court in *Bhuri Nath and Ors. Vs. State of J&K and Ors.* reported in AIR 1997 SC 1711. Here the issue before the Court was with respect to the constitutionality of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 (XVI of 1988) which was made to provide better management, administration and governance of Shri Mata Vaishno Devi Shrine, its enc[illegible]s,

and sum total of the properties, movable and immovable, attached or appurtenant to the Shrine. While addressing an argument with respect to the violation of Article 31 of the Constitution, the Court observed in para 29 as follows:

> *"29. .....The right to superintendence of management, administration and governance of the Shrine is not the property which the State acquires. It carries with it no beneficial enjoyment of the property to the State. The Act merely regulates the management, administration and governance of the Shrine. It is not an extinguishment of the right. The appellants-Baridarans were rendering pooja, a customary right which was abolished and vested in the Board. The management, administration and governance of the Shrine always remained with the Dharamarth Trust from whom the Board has taken over the same for proper administration, management and governance. In other words, the effect of the enactment of the Act is that the affairs of the functioning of the Shrine merely have got transferred from Dharmarth Trust to the Board. The Act merely regulates in that behalf; incidentally, the right to collect offerings enjoyed by the Baridarans by rendering service of pooja has been put to an end under the Act. The State, resultantly, has not acquired that right onto itself. ....."*
>
> (emphasis supplied)

30. As far as the present matter is concerned it is required to be noted that the Principal Agencies floated by the promoters of the erstwhile private Insurance Companies were controlling their business. In the 'History of Insurance of India' published by Insurance Regulatory and Development Authority' (IRDA) on its official website on 12.07.2007 under Ref: IRDA/GEN/06/2007 it is stated as follows:

> *"The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number or insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business."*

Thus, as far as the erstwhile Insurance Company in the present case is concerned, as an initial step, its management was taken over by the Central Government w.e.f. 13.5.1971, and it was entrusted with the custodian appointed by the Central Government. It would definitely entail a right in the custodian to take necessary steps to safeguard the property of the erstwhile insurance company. But it was a transitory arrangement. The properties of the erstwhile insurance companies did not belong to the Government Companies or the Government at that stage. The Public Premises Act, undoubtedly provides a speedy remedy to recover the premises from the unauthorised occupants. At the same time, we have also to note that in the instant case the occupant is claiming a substantive right under a welfare provision of the State Rent Control Act, which gave him a protected status in view of the amendment to that Act. The question is whether this authority of management bestowed on the Government Company can take in its sweep the right to proceed against such protected tenants under the Public Premises Act, by contending that the premises belonged to the Government Company at that stage itself, and that the State Rent Control Act no longer protected them. Considering that the Rent Control Act is a welfare enactment, and a further protective provision has been made therein, can it be permitted to be rendered otiose and made inapplicable to premises specifically sought to be covered thereunder, and defeated by resorting to the provisions of the Public Premises Act? In the present case, it must also be noted that the appellant is seeking a protection under Section 15A of the Bombay Rent Act, which has a non-obstante clause. The respondent No. 1 is undoubtedly not without a remedy, and it can proceed to evict an unauthorised occupant under the Rent Control Act, if an occasion arises. It can certainly res e

managerial right fructifies into a right of ownership. However by enforcing a speedier remedy, a welfare provision cannot be rendered nugatory. The provisions of the two enactments will have to be read harmoniously to permit the operation and co-existence of both of them to the extent it can be done. Therefore, the term 'belonging to' as occurring in the definition of Public Premises in Section 2(e) will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the Government Company at the relevant time. In the facts of this case what we find is that the appellant had the status of a deemed tenant under the Bombay Rent Act, 1947 prior to the concerned premises 'belonging to a Government Company' and becoming public premises. If at all he had to be evicted, it was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act.

Can the Public Premises Act be given retrospective effect?

31. There is another aspect of the matter. Mr. Raval, learned senior counsel for the respondents has contended that the appellant's submission that he was protected under the Bombay Rent Act, and that protection has been continued under the Maharashtra Rent Control Act, 1999, is not available before the Estate Officer. The question, therefore, comes to our mind as to what happens to the rights of the appellant made available to him under the State Act at a time when the erstwhile company had not merged in the first respondent Government Company? Can it be said that he was occupying the premises without the authority for such occupation? Can it be said that with the application of the Public Premises Act to the premises occupied by the appellant, those rights get extinguished? It has been laid down by this Court time and again that if there are rights created in favour of any person, whether

they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in *Janardan Reddy Vs. The State* reported in AIR 1951 SC 124). In the instant case, the appellant was undoubtedly protected as a 'deemed tenant' under Section 15A of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' under Section 7(15)(a)(ii) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

32. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in *Garkiapati Veeraya Vs. N. Subbiah Choudhry* reported in AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Co d

from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

33. Similarly, in *Mahadeolal Kanodia Vs. The Administrator General of West Bengal* reported in AIR 1960 SC 936, this Court was concerned with the retrospectivity of law passed by the West Bengal legislature concerning the rights of tenants and in paragraph 8 of the judgment the Court held that:-

> *"8. The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication……"*

34. In *Amireddi Raja Gopala Rao Vs. Amireddi Sitharamamma* reported in AIR 1965 SC 1970, a Constitution bench was concerned with the issue as to whether the rights of maintenance of illegitimate sons of a sudra as available under the Mitakshara School of Hindu Law was affected by introduction of Sections 4, 21 and 22 of the Hindu Adoption and Maintenance Act, 1956. The Court held that they were not, and observed in paragraph 7 as follows:-

> "A statue has to be interpreted, if possible so as to respect vested rights, and if the words are open to another construction, such a construction should never be adopted."

The same has been the view taken by a bench of three Judges of this Court in *J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad Vs. Induprasad Devshanker Bhatt* reported in AIR 1969 SC 778 in the context of a provision of the Income

Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could re-open the assessment under Section 297(2) (d) (ii) and 148 of the Income Tax Act, 1961, although the right to re-open was barred by that time under the earlier Income Tax Act, 1922. This Court held that the same was impermissible and observed in paragraph 5 as follows:-

> *"5…… The reason is that such a construction of Section 297 (2) (d) (ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time."*

35. In *Arjan Singh Vs. State of Punjab* reported in AIR 1970 SC 703, this court was concerned with the issue of date of application of Section 32KK added into the Pepsu Tenancy and Agricultural Lands Act, 1955. This Court held in paragraph 4 thereof as follows:-

> *"4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended."*

36. In *Ex-Capt., K.C. Arora Vs. State of Haryana* reported in 1984 (3) SCC 281, this Court was concerned with a service matter and with the issue as to whether

law could take away the vested rights with retrospective effect. The Court held that such an amendment would be invalid if it is violative of the present acquired or accrued fundamental rights of the affected persons.

37. In the case of *K.S. Paripoornan Vs. State of Kerala* reported in AIR 1995 SC 1012, a Constitution Bench of this Court was concerned with the retrospective effect of Section 23(1A) introduced in the Land Acquisition Act. While dealing with this provision, this Court has observed as follows:-

> *"44. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing*

> *obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See: Halsbury's Laws of England, 4th Edn. Vol. 44, paras 921, 922, 925 and 926)."*

38. In the case of *Gajraj Singh Vs. State Transport Appellate Tribunal* reported in AIR 1997 SC 412, the Court was concerned with the provisions of Motor Vehicle Act and repealing of some of its provisions. In para 30 referring to Southerland on Statutory Construction (3rd Edition) Vol.I, the Court quoted the following observations:-

> *"30……Effect on vested rights*
>
> *Under common law principles of construction and interpretation the repeal of a statute or the abrogation of a common law principle operates to divest all the rights accruing under the repealed statute or the abrogated common law, and to halt all proceedings not concluded prior to the repeal. However, a right which has become vested is not dependent upon the common law or the statute under which it was acquired for its assertion, but has an independent existence. Consequently, the repeal of the statute or the abrogation of the common law from which it originated does not efface a vested right, but it remains enforceable without regard to the repeal.*
>
> *In order to become vested, the right must be a contract right, a property right, or a right arising from a transaction in the nature of a contract which has become perfected to the degree that the continued existence of the statute cannot further enhance its acquisition……."*

39. Having noted the aforesaid observations, it is very clear that in the facts of the present case, the appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said t d

occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the respondent No. 1, i.e until 1.1.1974. The corollary is that if the respondent No. 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act.

When are the provisions of Public Premises Act to be resorted to?

40. In the context of the present controversy, we must refer to one more aspect. As we have noted earlier in paragraph 63 of Ashoka Marketing, the Constitution Bench has referred to the objects and reasons behind the Public Premises Act wherein it is stated that it has become impossible for the Government to take expeditious action even in 'flagrant cases of unauthorised occupation' of public premises. The Court has thereafter observed in that very paragraph that the Public Premises Act is enacted to deal with mischief of 'rampant unauthorised occupation' of public premises.

41. It is relevant to note that there has been a criticism of the use of the powers under the Public Premises Act, and the manner in which they are used in an arbitrary way to evict the genuine tenants from the public premises causing serious hardships to them. The Central Government itself has therefore, issued the guidelines to prevent such arbitrary use of these powers. These guidelines were issued vide Resolution No. 21012/1/2000-Pol.1, dated 30th May, 2002, published in the Gazette of India, Part I, Sec.1 dated 8th June, 2002. They read as follows:-

"GUIDELINES TO PREVENT ARBITRARY USE OF POWERS TO EVICT GENUINE TENANTS FROM PUBLIC PREMISES UNDER THE CONTROL OF PUBLIC SECTOR UNDERTAKINGS / FINANCIAL INSTITUTIONS

1. The question of notification of guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/ financial institutions has been under consideration of the Government for some time past.

2. To prevent arbitrary use of powers to evict genuine tenants from public premises and to limit the use of powers by the Estate Officers appointed under section 3 of the PP(E) Act, 1971, it has been decided by Government to lay down the following guidelines:

(i) The provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [(P.P.(E) Act, 1971] should be used primarily to evict totally unauthorised occupants of the premises of public authorities or subletees, or employees who have ceased to be in their service and thus ineligible for occupation of the premises.

(ii) The provisions of the P.P. (E) Act, 1971 should not be resorted to either with a commercial motive or to secure vacant possession of the premises in order to accommodate their own employees, where the premises were in occupation of the original tenants to whom the premises were let either by the public authorities or the persons from whom the premises were acquired.

(iii) A person in occupation of any premises should not be treated or declared to be an unauthorised occupant merely on service of notice of termination of tenancy, but the fact of unauthorized occupation shall be decided by following the due procedure of law. Furt[illegible]al

agreement shall not be wound up by taking advantage of the provisions of the P.P.(E) Act, 1971. At the same time, it will be open to the public authority to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State or to move under genuine grounds under the Rent Control Act for resuming possession. In other words, the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants.

(iv) It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings.

(v) All the public Undertakings should immediately review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw eviction proceedings against genuine tenants on grounds otherwise than as provided under these guidelines. The provisions under the P.P. (E) Act, 1971 should be used henceforth only in accordance with these guidelines.

3. These orders take immediate effect."

42. Thus as can be seen from these guidelines, it is emphasized in Clause 2(i) thereof, that the Act was meant to evict (a) totally unauthorised occupants of the public premises or subletees, or (b) employees who have ceased to be in their service, and were ineligible to occupy the premises. In Clause 2(ii), it is emphasized that the provisions should not be resorted to (a) either with a commercial motive, or (b) to secure vacant possession of the premises in order to accommodate their own

employees, where the premises were in occupation of the original tenants to whom the premises were let out (i) either by the public authorities, or (ii) by persons from whom the premises were acquired, indicating thereby the predecessors of the public authorities. Clause 2 (iii) of these guidelines is very important. It states on the one hand that it will be open for the public authority to secure periodic revision of rent in terms of the provision of the Rent Control Act in each state, and to move under genuine grounds under the Rent control Act for resuming possession. This Clause on the other hand states that the public authorities would have rights similar to private landlords under the Rent Control Act in dealing with genuine legal tenants. This clause in a way indicates that for resuming possession in certain situations, where the tenants are protected under the State Rent Control Act prior to the Public Premises Act becoming applicable, the public authorities will have to move under the Rent Control Acts on the grounds which are available to the private landlords. Clause 2(iv) seeks to prevent imputations or abuse of discretionary powers in this behalf by stating that there should be no room for allegation that evictions were selectively resorted for the purpose of securing an unwarranted increase in rent or change in tenancy to benefit particular individuals or institutions. It, therefore, states that the release of premises or change of tenancy should be decided at the level of Board of Directors of Public Sector Undertakings. Clause 2(v) goes further ahead and instructs all public undertakings that they should review all pending cases before the Estate Officer or Courts with reference to these guidelines, and withdraw the proceedings against genuine tenants on grounds otherwise than as provided under the guidelines.

43. The instructions contained in this Resolution are undoubtedly guidelines, and are advisory in character and do not confer any rights on the tenants as held in para 23 of *New Insurance Assurance Company Vs. Nusli Neville Wadia* reported in 2008 (3) SCC 279. At the same time, the intention behind the guidelines cannot be ig c

Undertakings which are expected to follow the same. When it comes to the interpretation of the provisions of the statute, the guidelines have been referred herein for the limited purpose of indicating the intention in making the statutory provision, since the guidelines are issued to effectuate the statutory provision. The guidelines do throw some light on the intention behind the statute. The guidelines are issued with good intention to stop arbitrary use of the powers under the Public Premises Act. The powers are given to act for specified reasons, and are expected to be used only in justified circumstances and not otherwise.

The overall consequence

44. In *Ashoka Marketing* (supra), this Court was concerned with the premises of two Nationalised Banks and the Life Insurance Corporation. As far as Life Insurance Corporation is concerned, the life insurance business was nationalised under the Life Insurance Corporation Act, 1956. Therefore, as far as the premises of LIC are concerned, they will come under the ambit of the Public Premises Act from 16.9.1958, i.e the date from which the Act is brought into force. As far as Nationalised Banks are concerned, their nationalization is governed by The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and therefore, the application of Public Premises Act to the premises of the Nationalised Banks will be from the particular date in the year 1970 or thereafter. For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the concerned premises become the public premises as belonging to or taken on lease by LIC or the Nationalised Banks or the concerned General Insurance Companies like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants

or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Control Act, 1999. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.

45. It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between the respondent No. 1, the other General Insurance Companies, LIC, Nationalised Banks and such other Government Companies or Corporations, on the one hand and their occupants/licencees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. Thus, there is no occasion to have a dual procedure which is ruled out in paragraph 66 of Ashoka Marketing. We must remember that the occupants of these properties were earlier tenants of the erstwhile Insurance Companies which were the private landlords. They have not chosen to be the tenants of the Government Companies. Their status as occupants of the Public Insurance Companies has been thrust up*on them by the Public Premises Act.*

46. This Court has noted in *Banatwala and Co. Vs. LIC* reported in 2011 (13) SCC 446 that the Public Premises Act, 1971 is concerned with eviction of unauthorised occupants and recovery of arrears of rent or damages for such unauthorised occupation, and incidental matters specified under the act. As far as the Maharashtra Rent Control Act is concerned, this Court noted in paragraph 25 of that judgment that as per the preamble of the said Act, it is an Act relating to fi

control of rent, (ii) repairs of certain premises, (iii) eviction, (iv) encouraging the construction of new houses by assuring fair return of investment by the landlord, and (v) matters connected with the purposes mentioned above. In that matter, the Court was concerned with the issue of fixation of standard rent and restoration and maintenance of essential supplies and services by the landlord. It was held that these two subjects were not covered under the Public Premises Act, and infact were covered under the Maharashtra Rent Control Act. Operative para 99(c) of the judgment therefore specifically held as follows:-

> *"99 (c) The provisions of the Maharashtra Rent control Act, 1999 shall govern the relationship between the public undertakings and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act, 1971."*

47. A judgment of a bench of three Judges of this Court in *M/s Jain Ink Manufacturing Company v. L.I.C* reported in (1980) 4 SCC 435 was relied upon by Mr. Raval. In this matter also a plea was raised on behalf of the appellant tenant for being covered under the Delhi Rent Control Act, 1958 which came to be repelled. Mr. Raval stressed upon the observations in Para 5 of the judgment to the effect that Section 2(g) merely requires occupation of any public premises to initiate the action. Mr. Nariman on the other hand pointed out that in the earlier part of the very paragraph the Court had observed, although after referring to the provision of Punjab Public Premises and Land (Eviction and Rent Recovery), Act 1959 that if the entry into possession had taken place prior to the passing of the act, then obviously the occupant would not be an unauthorized occupant. That apart, Mr. Nariman submitted that the judgment was essentially on the second part of Section 2(g) defining 'unauthorised occupation'. It is, however, material to note that in that case the premises were owned by LIC from 19.7.1958,

i.e. prior to the Delhi Rent Control Act becoming applicable from 9.2.1959. Besides, the issue of protection under a welfare legislation being available to the tenant prior to the premises becoming public premises, and the issue of retrospectivity was not under consideration before the Court. The observations of the Court in that matter will have to be understood in that context.

48. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance Companies like the respondent no.1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Contro

protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

49. Learned senior counsel for the respondents Mr. Raval submitted that the judgment of the Constitution Bench in *Ashoka Marketing* had clarified the legal position with respect to the relationship between the Public Premises Act and the Rent Control Act. However, as noted above, the issue concerning retrospective application of the Public Premises Act was not placed for the consideration of the Court, and naturally it has not been gone into it. It was submitted by Mr. Raval that for maintenance of judicial discipline this bench ought to refer the issue involved in the present matter to a bench of three Judges, and thereafter that bench should refer it to a bench of five Judges. He relied upon the judgment of this Court in the case of *Pradip Chandra Parija Vs. Pramod Chandra* reported in 2002 (1) SCC 1 in this behalf. He also referred to a judgment of this Court in *Sundarjas Kanyalal Bhatija Vs. Collector, Thane, Maharashtra and Ors.* reported in 1989 (3) SCC 396 and particularly paragraph 18 thereof for that purpose. What is however, material to note is that this paragraph also permits discretion to be exercised when there is no declared position in law. The Bombay Rent Act exempted from its application only the premises belonging to the government or a local authority. The premises belonging to the Government Companies or Statutory Corporations were however covered under the Bombay Rent Act. This position was altered from 16.9.1958 when the Public Premises (Eviction of Unauthorised Occupation) Act, 1958 came in force which applied thereafter to the Government Companies and Statutory Corporations, and that position has been reiterated under the Public Premises Act of 1971 which replaced the 1958 Act. Under these Acts of 1958 and 1971, the Premises belonging to the Government Companies or Statutory Corporations are declared to be Public Premises. Thus, the Parliament took away these premises from

the coverage of the Bombay Rent Act under Article 254(1) of the Constitution of India. This was, however, in the matter of the subjects covered under the Public Premises Act, viz. eviction of unauthorised occupants and recovery of arrears of rent etc. as stated above. Thereafter, if the State Legislature wanted to cover these subjects viz. a viz. the premises of the Government Companies and Public Corporations under the Maharashtra Rent Control Act, 1999, it had to specifically state that notwithstanding anything in the Public Premises Act of 1971, the Government Companies and Public Corporations would be covered under the Maharashtra Rent Control Act, 1999. If that was so done, and if the President was to give assent to such a legislation, then the Government Companies and Public Corporation would have continued to be covered under the Maharashtra Rent Control Act, 1999 in view of the provision of Article 254(2). That has not happened. Thus, the Government Companies and Public Corporations are taken out of the coverage of the Bombay Rent Act, and they are covered under Public Premises Act, 1971, though from the date specified therein i.e. 16.9.1958. After that date, the Government Companies and Public Corporations will be entitled to claim the application of the Public Premises Act, 1971 (and not of the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999), but from the date on which premises belong to these companies or corporations and with respect to the subjects specified under the Public Premises Act. In that also the public companies and corporations are expected to follow the earlier mentioned guidelines.

50. We have not for a moment taken any position different from the propositions in Ashoka Marketing. We are infact in agreement therewith, and we are not accepting the submission of Mr. Nariman, that only contractual tenancies were sought to be covered under that judgment, and not statutory tenancies. Tenancies of both kinds will be covered by that judgment, and they will be covered under the Public Premises Act for the subjects specified therein. The only iss[illegible]m

which date. That aspect was not canvassed at all before the Constitution Bench, and that is the only aspect which is being clarified by this judgment. We are only clarifying that the application of the Public Premises Act will be only from 16.9.1958, or from such later date when concerned premises become Public Premises on the concerned landlord becoming a Government Company or Public Corporation. When the law laid down by the different Benches of this Court including by the Constitution Benches on retrospectivity is so clear, and so are the provisions of the Public Premises Act, there is no occasion for this Court to take any other view. When this judgment is only clarifying and advancing the proposition laid down in Ashoka Marketing, there is no reason for us to accept the objections raised by Mr. Raval, that the issues raised in this matter should not be decided by this bench but ought to be referred to a larger bench.

51. In this context we may note that since the issue of retrospective application of the Public Premises Act, to tenancies entered into before 16.9.1958, or before the property in question becoming a public premises, was neither canvassed nor considered by the bench in *Ashoka Marketing* (supra), the decision does not, in any way, prevent this Bench from clarifying the law regarding the same. This follows from the judgment of the Supreme Court in *State of Haryana Vs. Ranbir @ Rana* reported in (2006) 5 SCC 167 wherein it was held that a decision, it is well-settled, is an authority for what it decides and not what can logically be deduced therefrom. The following observations of this court from paragraph 39 of *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.* reported in AIR1993 SC 43 are also pertinent:

> *"The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and*

> *while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.*

(emphasis supplied)

It is clear from a reading of the very first paragraph of Ashoka Marketing that the question before it was 'whether the provisions of the Public Premises Act would override the provisions of the Rent Control Act in relation to premises which fall within the ambit of both the enactments.' The Court answered this in the affirmative, and we respectfully agree with the same. However, *Ashoka Marketing* (supra) can not be said to be an authority on the retrospective application of the Public Premises Act, or where the premises fall within the ambit of only one act, as that issue was not before the Court.

52. For the reasons stated above, we allow this appeal and set-aside the impugned judgment and order dated 7.6.2010 rendered by the High Court of Bombay in Writ Petition No. 2473 of 1996. The said Writ Petition shall stand allowed, and the judgment and order dated 17.1.1996 passed by the City Civil Court, Mumbai, as well as the eviction order dated 28.5.1993 passed by the respondent No. 2 against the appellant will stand set aside. The proceedings for eviction from premises, and for recovery of rent and damages initiated by the first respondent against the appellant under the Public Premises Act, 1971, are held to be bad in law, and shall therefore stand dismissed. We however, make it clear, that in case the respondents intend to take any steps for that purpose, it will be open to them to resort to the remedy available under the Maharashtra Rent Control Act, 1999, provided they make out a case therefor. The parties will bear their own costs.

R.P.

RENU & ORS.

v.

DISTRICT & SESSIONS JUDGE, TIS HAZARI & ANR.

(Civil Appeal No. 979 of 2014)

FEBRUARY 12, 2014

[DR. B.S. CHAUHAN, J. CHELAMESWAR AND M.Y. EQBAL, JJ.]

CONSTITUTION OF INDIA, 1950:

Art. 32 - Writ of quo warranto - Appointment to public office - Held: Before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not -- For issuance of writ of quo warranto, the court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it.

Arts. 14 and 16 - Public employment - Held: Transparency in public employment is an important requirement -- Advertisement must specify the number of posts available for selection and recruitment -- The qualifications and other eligibility criteria for such posts and schedule of recruitment process should be published with certainty and clarity as also the rules/procedure under which the selection is likely to be undertaken -- Any appointment even on temporary or ad hoc basis without inviting applications is in violation of Arts. 14 and 16 and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of employer to invite applications from all eligible candidates from open market.

Arts. 229 and 235 r/w Arts. 14 and 16 - Appointments of staff in High Courts and courts subordinate thereto - Held: Appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Art. 14 r/w Art. 16 and under no circumstance any appointment which is illegal should be saved -- Employment whether of Class IV, Class III, Class II or any other class in High Courts or courts subordinate to it, fall, within the definition of "public employment" - Such an employment, therefore, has to be made under rules and orders of competent authority - Power of appointment granted to the Chief Justice under Art. 229 (1) is subject to Art. 16 (1), which guarantees equality of opportunity for all citizens in matters relating to employment - As a safeguard, the Constitution has also recognized that in the internal administration of High Court, no other power, except the Chief Justice should have domain - In order to enable a judicial intervention, it would require only a very strong and convincing reason to show that this power has been abused.

Art.229 - Appointment to posts in High Court and courts subordinate thereto - Held: High Court is a constitutional and an autonomous authority subordinate to none - Therefore, nobody can undermine the constitutional authority of High Court and, as such, Supreme Court can only advise the High Court that if its rules are not in consonance with the philosophy of the Constitution, the same may be modified and no appointment in contravention thereof should be made - It is necessary that there is strict compliance with appropriate Rules and the employer is bound to adhere to the norms of Arts. 14 and 16 before making any recruitment - In order to control the menace of adhocism methodology to make appointments in High Courts and courts subordinate thereto suggested and directions given in this regard -- High Courts may also examine the desirability of centralized selection of candidates for subordinate courts, and to formulate the rules to carry out the purpose - Constitutional law - Independence of judiciary.

In the instant appeal arising out of a dispute regarding continuity of employees appointed on Class IV posts in courts subordinate to Delhi High Court, on ad hoc basis for 89 days and the term extended from time to time, the Court took cognizance of perpetual complaints regarding irregularities and illegalities in recruitment of staff in subordinate courts throughout the country and in order to ensure the feasibility of centralizing these recruitments, issued notice to Registrar Generals of all the High Courts to file response mainly on two points: (i) why the recruitment be not centralized; and (ii) why the relevant rules dealing with service conditions of the entire staff be not amended to make them as transferable posts. All the States and High Courts submitted their response and all of them were duly represented in the Court.

Disposing of the appeal, the Court

HELD: 1.1 The procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. [para 15] [555-B-E]

The University of Mysore & Anr. v. C.D. Govinda Rao & Anr., **1964 SCR 575 = AIR 1965 SC 491;** *Shri Kumar Padma Prasad v. Union of India & Ors.,* **AIR 1992 (2) SCR 109 = 1992 SC 1213;** *B.R. Kapur v. State of Tamil Nadu & Anr.,* **2001 (3) Suppl. SCR 191 = AIR 2001 SC 3435;** *The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana & Anr.,* **2002 (1) Suppl. SCR 87 = AIR 2002 SC 2513;** *Arun Singh v. State of Bihar & Ors.,* **2006 (2) SCR 1058 = AIR 2006 SC 1413;** *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.,* **2010 (10) SCR 561 = AIR 2010 SC 3515; and** *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors.,* **(2014) 1 SCC 161- relied on.**

1.2 Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others. The decisions of this Court have prescribed the limitations while making appointment against public posts in terms of Arts. 14 and 16 of the Constitution. What has been deprecated by this Court time and again is "backdoor appointments or appointment de hors the rules". [para 16-17] [555-G-H; 556-A-C]

State of U.P. & Ors. v. U.P. State Law Officers Association & Ors. **1994 (1) SCR 348 = AIR 1994 &**

Ors. v. State of Haryana & Ors. **1990 (1) SCR 535 = AIR 1990 SC 1176 - relied on.**

1.3 Art. 14 of the Constitution provides for equality of opportunity. Any appointment made in violation of mandate of Arts. 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained. [para 7-8] [550-C, F-G]

I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu **2007 (1) SCR 706 = AIR 2007 SC 861;** *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors.* **1992 (1) SCR 565 = AIR 1992 SC 789;** *State of Haryana & Ors. v. Piara Singh & Ors. etc. etc.* **1992 (3) SCR 826 = AIR 1992 SC 2130;** *Prabhat Kumar Sharma & Ors. v. State of U.P. & Ors.,* **1996 (3) Suppl. SCR 424 = AIR 1996 SC 2638;** *J.A.S. Inter College, Khurja, U.P. & Ors. v. State of U.P. & Ors.,* **1996 (3) Suppl. SCR 96 = AIR 1996 SC 3420;** *M.P. Housing Board & Anr. v. Manoj Shrivastava* **2006 (2) SCR 537 = AIR 2006 SC 3499;** *M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey* **2006 (2) SCR 648 = (2006) 2 SCC 716; and** *State of Madhya Pradesh & Ors. v. Ku. Sandhya Tomar & Anr.* **2012 (11) SCR 839 = JT 2013 (9) SC 139 - relied on.**

1.4 Any appointment even on temporary or ad hoc basis without inviting application is in violation of Arts. 14 and 16 and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the Employment Exchange does not meet the requirement of the said Articles. The principles to be adopted in the matter of public appointments have been formulated by this Court in Nanuram Yadav's case. [para 9 and 12] [551-D-E; 552-G]

M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors. **2007 (10) SCR 307 = (2007) 8 SCC 264;** *Secretary,*

State of Karnataka & Ors. v. Umadevi & Ors. **2006 (3) SCR 953 = AIR 2006 SC 1806;** *Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors.* **1996 (5) Suppl. SCR 73 = (1996) 6 SCC 216;** *Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.* **1997 (5) Suppl. SCR 604 = AIR 1998 SC 331; and** *Kishore K. Pati v. Distt. Inspector of Schools, Midnapur & Ors.,* **(2000) 9 SCC 405;** *Suresh Kumar & Ors. v. State of Haryana & Ors.,* **(2003) 10 SCC 276,** *Union Public Service Commission v. Girish Jayanti Lal Vaghela & Ors.* **2006 (1) SCR 1006 = AIR 2006 SC 1165;** *Union of India & Ors. v. N. Hargopal & Ors.* **1987 (2) SCR 911 =AIR 1987 SC 1227;** *State of Orissa & Anr. v. Mamata Mohanty* **2011 (2) SCR 704 = (2011) 3 SCC 436 - relied on.**

1.5 Appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Art. 14 read with Art. 16 of the Constitution of India, 1950 and under no circumstance any appointment which is illegal should be saved. [para 4] [549-A-B]

1.6 In making the appointments or regulating the other service conditions of the staff of the High Court, the Chief Justice exercises an administrative power with constitutional backing. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the Judiciary, which is one of the vital organs of State Government and whose authority is to be maintained. The discretion exercised by the Chief Justice cannot be open to challenge, except on well known grounds, that is to say, when the exercise of discretion is discriminatory or mala fide, or the like(s). Thus, the power of appointment granted to the Chief Justice under Art. 229 (1) is subject to Art. 16 (1), which guarantees equality of opportunity for all citizens in matters relating to employment. 'Op[illegible]n

this Article means chance of employment and what it guaranteed is that this opportunity of employment would be equally available to all. [para 19-20] [557-E-H]

1.7 Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the Subordinate Courts. This control, extends to all functionaries attached to the Subordinate Courts including the ministerial staff and servants in the establishment of the Subordinate Courts. Such control is exclusive in nature, comprehensive in extent and effective in operation. [para 22] [558-C-D, G]

The State of West Bengal & Anr. v. Nripendra Nath Bagchi **1966 SCR 771 = AIR 1966 SC 447;** *Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr.* **1974 (2) SCR 282 = AIR 1974 SC 710;** *Yoginath D. Bagde v. State of Maharashtra & Anr.,* **1999 (2) Suppl. SCR 490 = AIR 1999 SCC 3734;** *Subedar Singh & Ors. v. District Judge, Mirzapur & Anr.,* **AIR 2001 SC 201;** *High Court of Judicature for Rajasthan v. P.P. Singh & Anr.,* **2003 (1) SCR 593 = AIR 2003 SC 1029; and** *Registrar General, High Court of Judicature at Madras v. R. Perachi & Ors.* **2011 (12) SCR 661 = AIR 2012 SC 232;** *M. Gurumoorthy v. The Accountant General, Assam and Nagaland & Ors.* **1971 (0) Suppl. SCR 420 = AIR 1971 SC 1850;** *H.C. Puttaswamy & Ors. v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors.* **1990 (2) Suppl. SCR 552 = AIR 1991 SC 295;** *State of Assam v. Bhubhan Chandra Datta & Anr.,* **1975 (3) SCR 854 = AIR 1975 SC 889;** *Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors.* **AIR 2005 SC 2103 - relied on.**

1.8 Employment whether of Class IV, Class III, Class II or any other class in the High Court or courts subordinate to it fall within the definition of "public employment". Such an employment, therefore, has to be made under rules and under orders of the competent authority. Appointments should be made giving

adherence to the provisions of Arts. 14 and 16 of the Constitution and/or such Rules as made by the legislature. Appointment cannot be made without advertisement in the newspapers inviting applications for the posts as that would lead to lack of transparency and violation of the provisions of Art. 16 of the Constitution. The Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of the Constitution. [para 26, 27, 29 and 30] [561-F; 562-C, G; 563-B-C]

Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court **1955 SCR 1331 = AIR 1956 SC 285; and** *Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors.,* **1979 (1) SCR 26 =AIR 1979 SC 193;** *State of West Bengal & Ors. v. Debasish Mukherjee & Ors.* **2011 (13) SCR 1077 = AIR 2011 SC 3667;** *State of U.P.& Ors. v. C.L. Agrawal & Anr.* **1997 (1) Suppl. SCR 1 = AIR 1997 SC 2431- referred to.**

1.9 The date of retirement of every employee is well known in advance and therefore, the number of vacancies likely to occur in near future in a particular cadre is always known to the employer. Therefore, the exercise to fill up the vacancies at the earliest must start in advance to ensure that the selected person may join immediately after availability of the post, and there may be no occasion to appoint any person on ad-hoc basis for the reason that the problem of inducting the daily labourers who are ensured of a regular appointment subsequently has to be avoided and a fair procedure must be adopted giving equal opportunity to everyone. [para 31] [563-F-G]

2. The High Court is a constitutional and an autonomous authority subordinate to none. Therefore, nobody can undermine the constitutional authority of the High Court and, therefore, the purpo e

is only to advise the High Court that if its rules are not in consonance with the philosophy of the Constitution the same may be modified and no appointment in contravention thereof should be made. It is necessary that there is strict compliance with appropriate Rules and the employer is bound to adhere to the norms of Arts. 14 and 16 of the Constitution before making any recruitment. In order to control the menace of ad hocism, methodology to fill the vacancies in High Courts and courts subordinate thereto suggested and directions given in this regard. The High Courts may also examine the desirability of centralized selection of candidates for subordinate courts, and to formulate the rules to carry out the purpose. [para 34-35] [564-E-G; 565-G-H; 566-A, C]

Case Law Reference:

2007 (1) SCR 706	**relied on**	**Para 7**
1992 (1) SCR 565	**relied on**	**Para 8**
1992 (3) SCR 826	**relied on**	**Para 8**
1996 (3) Suppl. SCR 424	**relied on**	**Para 8**
1996 (3) Suppl. SCR 96	**relied on**	**Para 8**
2006 (2) SCR 537	**relied on**	**Para 8**
2006 (2) SCR 648	**relied on**	**Para 8**
2012 (11) SCR 839	**relied on**	**Para 8**
1996 (5) Suppl. SCR 73	**relied on**	**para 9**
1987 (2) SCR 911	**relied on**	**Para 9**
1997 (5) Suppl. SCR 604	**relied on**	**para 9**
(2000) 9 SCC 405	**relied on**	**para 9**
(2003) 10 SCC 276	**relied on**	**para 10**

2006 (1) SCR 1006	**relied on**	**para 11**
2007 (10) SCR 307	**relied on**	**para 12**
2006 (3) SCR 953	**relied on**	**para 13**
2011 (2) SCR 704	**relied on**	**para 14**
1964 SCR 575	**relied on**	**para 15**
1992 (2) SCR 109	**relied on**	**para 15**
2001 (3) Suppl. SCR 191	**relied on**	**para 15**
2002 (1) Suppl. SCR 87	**relied on**	**para 15**
2006 (2) SCR 1058	**relied on**	**para 15**
2010 (10) SCR 561	**relied on**	**para 15**
(2014) 1 SCC 161	**relied on**	**para 15**
1994 (1) SCR 348	**relied on**	**Para 17**
1990 (1) SCR 535	**relied on**	**para 18**
1966 SCR 771	**relied on**	**Para 22**
1974 (2) SCR 282	**relied on**	**Para 22**
1999 (2) Suppl. SCR 490	**relied on**	**Para 22**
AIR 2001 SC 201	**relied on**	**Para 22**
2003 (1) SCR 593	**relied on**	**Para 22**
2011 (12) SCR 661	**relied on**	**Para 22**
1971 Suppl. SCR 420	**relied on**	**Para 23**
1990 (2) Suppl. SCR 552	**relied on**	**Para 25**
1975 (3) SCR 854	**relied on**	**Para 25**
AIR 2005 SC 2103	**relied on**	**Para 26**
1955 SCR 1331	**referr**	

1979 (1) SCR 26	**referred to**	**para 27**
2011 (13) SCR 1077	**referred to**	**para 28**
1997 (1) Suppl. SCR 1	**referred to**	**para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 979 of 2014.

From the judgment and order dated 05.09.2011 of the High Court of Delhi at N. Delhi in LPA No. 726 of 2011.

A. Mariarputham, A.G., P.P. Malhotra, ASG, P.S. Narasimha (AC), Brijender Chahar, K. Radhakrishnan, Arvind Kumar Sharma, Saurabh Mishra, Manita Varma (for D.S. Mahra), Anil Katiyar, B. Balaji, R. Rakesh Sharma, S. Anand Sathiyaseelan, A. Selvin Raja, Sibo Shankar Mishra, Sridhar Potaraju, Gaichanpou Gangmei, Arjun Singh, Annam D.N. Rao, Neelam Jain, A. Venkatesh, Sudipto Sircar, Vaishali R, V.N. Raghupathy, Aruna Mathur, Yusuf (for Arputham, Aruna & Co.), Ambhoj Kumar Sinha, Ashok Mathur, C.D. Singh, Sunny Choudhary, Shareya, Sharmila Upadhyay, T.G. Narayanan Nair, K.N. Madhusoodhanan, G.S. Chatterjee, Ashok K. Srivastava, Aniruddha P. Mayee, Charudatta Mahindrakar, P.I. Jose, Alok K. Prasad, Vishwanath Bahuguna for the appearing parties.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. The matter initially related to the appointment of Class IV employees in the courts subordinate to Delhi High Court as the dispute arose about the continuity of the employees appointed on ad-hoc basis for 89 days which stood extended for the same period after same interval from time to time. The matter reached the Delhi High Court and ultimately before this Court. This court vide order dated 10.5.2012 took up the matter in a larger perspective taking cognizance of perpetual complaints regarding irregularities and illegalities in the recruitments of staff in the subordinate courts throughout the country and in order to ensure

the feasibility of centralising these recruitments and to make them transparent and transferable. This Court suo motu issued notice to Registrar Generals of all the High Courts and to the States for filing their response mainly on two points viz. (i) why the recruitment be not centralized; and (ii) why the relevant rules dealing with service conditions of the entire staff be not amended to make them as transferable posts. All the States and High Courts have submitted their response and all of them are duly represented in the court.

2. This Court had appointed Shri P.S. Narasimha, learned senior counsel as Amicus Curiae to assist the court. The matter was heard on 28.1.2014 and deliberations took place at length wherein all the learned counsel appearing for the States as well as for the High Courts suggested that the matter should be dealt with in a larger perspective i.e. also for appointments of employees in the High Court and courts subordinate to the High Court which must include Class IV posts also. A large number of instances have been pointed out on the basis of the information received under the Right to Information Act, 2005 of cases not only of irregularity but of favouritism also in making such appointments. It has been suggested by the learned counsel appearing in the matter that this court has a duty not only to check illegality, irregularity, corruption, nepotism and favouritism in judicial institutions, but also to provide guidelines to prevent the menace of back-door entries of employees who subsequently are ordered to be regularised.

3. It was in view of the above that this Court vide its earlier orders had asked learned counsel appearing for the States as well as the High Courts to examine the records of their respective States/Courts and report as to whether a proper and fair procedure had been adopted for evaluating the candidates. A mixed response was received from different counsel on these issues.

4. In view of the aforesaid submissions, we do not think it

necessary to peruse the record in order to gauge the amount of irregularities or illegalities. Our basic concern is that the appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Article 14 read with Article 16 of the Constitution of India, 1950 (hereinafter referred to as the `Constitution') and under no circumstance any appointment which is illegal should be saved for the reason that the grievance of the people at large is that complete darkness in the light house has to be removed. The judiciary which raises a finger towards actions of every other wing of the society cannot afford to have this kind of accusations against itself.

5. Rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13(2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. The object of such a provision is to ensure that instruments emanating from any source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights. Thus, the main objective of Article 13 is to secure the paramountcy of the Constitution especially with regard to fundamental rights.

6. The aforesaid provision is in consonance with the legal principle of "Rule of Law" and they remind us of the famous words of the English jurist, Henry de Bracton - "The King is under no man but under God and the Law". No one is above law. The dictum - "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The Constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it.

The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for

each and every authority and therefore, no one, howsoever high he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations.

7. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.

In *I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu,* AIR 2007 SC 861, the doctrine of basic features has been explained by this Court as under:

> *"The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III."*

8. As Article 14 is an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in *Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors.,* AIR 1992 SC 789; *State of Haryana & Ors. v. Piara Singh & Ors. etc.etc.,* AIR 1992 SC 2130; *Prabhat Kumar Sharma & Ors. v. State of U.P. & Ors.,* AIR 1996 SC 2638; *J.A.S. Inter College, Khurja, U.P. & Ors. v. State of U.P. & Ors.,* AIR 1996 SC 3420; *M.P. Housing Board & Anr. v. Manoj Shriv*

3499*; M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey,* (2006) 2 SCC 716; and *State of Madhya Pradesh & Ors. v. Ku. Sandhya Tomar & Anr.,* JT 2013 (9) SC 139.

9. In *Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors.,* (1996) 6 SCC 216, a larger Bench of this Court reconsidered its earlier judgment in *Union of India & Ors. v. N. Hargopal & Ors.,* AIR 1987 SC 1227, wherein it had been held that insistence of requisition through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the Employment Exchange does not meet the requirement of the said Articles of the Constitution. The Court further observed:

> *"In addition, the appropriate department…..should call for the names by publication in the newspapers having wider circulation and also display on their office notice …and employment news bulletins; and then consider the case of all candidates who have applied. If this procedure is adopted, fair play would be sub served. The equality of opportunity in the matter of employment would be available to all eligible candidates."*
>
> (Emphasis added)

(See also: *Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.,* AIR 1998 SC 331; and *Kishore K. Pati v. Distt. Inspector of Schools, Midnapur & Ors.,* (2000) 9 SCC 405).

10. In *Suresh Kumar & Ors. v. State of Haryana & Ors.,* (2003) 10 SCC 276, this Court upheld the judgment of the Punjab & Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

11. In *Union Public Service Commission v. Girish Jayanti Lal Vaghela & Ors.,* AIR 2006 SC 1165, this Court held:

> *".....The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made……. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution...."* (Emphasis added)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in *M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors.,* (2007) 8 SCC 264 as under:

> "(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications

from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

(2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back-door should go through that door.

(5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

13. A similar view has been reiterated by the Constitution Bench of this Court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.,* AIR 2006 SC 1806, observing that any appointment made in violation of the Statutory Rules as also in violation of Articles 14 and 16 of the Constitution would be

a nullity. "Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment". The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14. In *State of Orissa & Anr. v. Mamata Mohanty,* (2011) 3 SCC 436, this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates; thereby the right of equal opportunity is effectuated. The Court held as under:-

"Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any

independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: *The University of Mysore & Anr. v. C.D. Govinda Rao & Anr.,* AIR 1965 SC 491; *Shri Kumar Padma Prasad v. Union of India & Ors.,* AIR 1992 SC 1213; *B.R. Kapur v. State of Tamil Nadu & Anr.,* AIR 2001 SC 3435; *The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana & Anr.,* AIR 2002 SC 2513; *Arun Singh v. State of Bihar & Ors.,* AIR 2006 SC 1413; *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.,* AIR 2010 SC 3515; and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors.,* (2014) 1 SCC 161).

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and

clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

17. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is "backdoor appointments or appointment de hors the rules".

In *State of U.P. & Ors. v. U.P. State Law Officers Association & Ors.,* AIR 1994 SC 1654, this Court while dealing with the back-door entries in public appointment observed as under:

> *"The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on the considerations other than merit. In the absence of guidelines, the appointment may be made purely on personal or political consideration and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back-door have to go by the same door….From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."*

(Emphasis added)

18. In *Som Raj & Ors. v. State of Haryana & Ors.,* AIR 1990 SC 1176, this Court held as under:

"The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority."

19. In making the appointments or regulating the other service conditions of the staff of the High Court, the Chief Justice exercises an administrative power with constitutional backing. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the Judiciary, which is one of the vital organs of a Government and whose authority is to be maintained. The discretion exercised by the Chief Justice cannot be open to challenge, except on well known grounds, that is to say, when the exercise of discretion is discriminatory or mala fide, or the like(s).

20. Even under the Constitution, the power of appointment granted to the Chief Justice under Article 229 (1) is subject to Article 16 (1), which guarantees equality of opportunity for all citizens in matters relating to employment. 'Opportunity' as used in this Article means chance of employment and what it guaranteed is that this opportunity of employment would be equally available to all.

21. As a safeguard, the Constitution has also recognized that in the internal administration of the High Court, no other power, except the Chief Justice should have domain. In order to enable a judicial intervention, it would require only a very strong and convincing argument to show that this power has been abused. If an authority has exercised his discretion in good faith and not in violation of any law, such exercise of discretion should not be interfered with by the courts merely on the ground that it could have been exercised differently or even that the courts would have exercised it differently had the matter been brought before it in the first instance or in that perspective.

22. Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the Subordinate Courts. This control, undoubtedly, extends to all functionaries attached to the Subordinate Courts including the ministerial staff and servants in the establishment of the Subordinate Courts. If the administrative control cannot be exercised over the administrative and ministerial staff, i.e. if the High Court would be denuded of its powers of control over the other administrative functionaries and ministerial staff of the District Court and Subordinate Courts other than Judicial Officers, then the purpose of superintendence provided therein would stand frustrated and such an interpretation would be wholly destructive to the harmonious, efficient and effective working of the Subordinate Courts. The Courts are institutions or organism where all the limbs complete the whole system of Courts and when the Constitutional provision is of such wide amplitude to cover both the Courts and persons belonging to the Judicial Office, there would be no reason to exclude the other limbs of the Courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. Such control is exclusive in nature, comprehensive in extent and effective in operation. (Vide: *The State of West Bengal & Anr. v. Nripendra Nath Bagchi,* AIR 1966 SC 447; *Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr.,* AIR 1974 SC 710; *Yoginath L... of*

Maharashtra & Anr., AIR 1999 SCC 3734; *Subedar Singh & Ors. v. District Judge, Mirzapur & Anr.,* AIR 2001 SC 201; *High Court of Judicature for Rajasthan v. P.P. Singh & Anr.,* AIR 2003 SC 1029; and *Registrar General, High Court of Judicature at Madras v. R. Perachi & Ors.,* AIR 2012 SC 232).

23. In *M. Gurumoorthy v. The Accountant General, Assam and Nagaland & Ors.,* AIR 1971 SC 1850, the Constitution Bench of this Court held:

> *"The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article……Thus, Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service."*

24. In this Case, this Court spelt out the powers of the Chief Justice of the High Court in the matters of appointment of staff of the High Court, but this Court did not lay down in any way that the Chief Justice can exercise such powers in contravention of the provisions of Articles 14 and 16 of the Constitution while making appointments in the establishment of the High Court.

25. In *H.C. Puttaswamy & Ors. v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors.,* AIR 1991 SC 295, while dealing with a similar situation and interpreting the provisions of Article 229 (2) of the Constitution and Karnataka State Civil Services (Recruitment to Ministerial Posts) Rules, 1966, this Court held the appointments made by the Chief Justice of the High Court without advertising the vacancies as invalid being violative of Articles 14 and 16(1) of

the Constitution. The Court came to the said conclusion as the appointments were made without following the procedure prescribed in the Rules. The Court further observed:

> *"While the administration of the Courts has perhaps, never been without its critics, the method of recruitment followed by the Chief Justice appears to be without parallel…..……The methodology adopted by the Chief Justice was manifestly wrong and it was doubtless deviation from the course of law which the High Court has to protect and preserve.*
>
> *The judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. It is the vehicle for the protection of a set of values which are integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take account of the totality of the judges behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute in our opinion, a substantial part of the mosaic which represents the ordinary man's perception of what the Courts are and how the Judges go about their work. The Chief Justice is the prime force in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or officer of the Court as may be directed by the Chief Justice. The object of this Article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint supporting staff with [illegible]er*

them is vested in the Chief Justice. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law; not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others, must necessarily maintain a higher standards of ethical and intellectual rectitude. The public expectations do not seem to be less exacting."

(Emphasis added)

(See also: *State of Assam v. Bhubhan Chandra Datta & Anr.,* AIR 1975 SC 889).

26. In *Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors.,* AIR 2005 SC 2103, this Court did not accept the contention that appointment could be made to Class-IV post in Subordinate Courts under the Civil Court Rules without advertisement in the newspapers inviting applications for the posts as that would lead to lack of transparency and violation of the provisions of Article 16 of the Constitution. The Court terminated the services of such appointees who had worked even for 15 years observing that the Court otherwise "would be guilty of condoning a gross irregularity in their initial appointment."

27. To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following

the principles of natural justice/Rules etc., for as per Section 16 of General Clauses Act, 1897 power to appoint includes power to remove/suspend/dismiss. (Vide: *Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court,* 1956 SC 285; and *Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors.,* AIR 1979 SC 193).

But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of our Constitution.

28. In *State of West Bengal & Ors. v. Debasish Mukherjee & Ors.,* AIR 2011 SC 3667, this Court again dealt with the provisions of Article 229 of the Constitution and held that the Chief Justice cannot grant any relief to the employee of the High Court in an irrational or arbitrary manner unless the Rules provide for such exceptional relief. The order of the Chief Justice must make reference to the existence of such exceptional circumstances and the order must make it so clear that there had been an application of mind to those exceptional circumstances and such orders passed by the Chief Justice are justiciable. While deciding the matter, the court placed reliance on its earlier judgment of the Constitution Bench in *State of U.P.& Ors. v. C.L. Agrawal & Anr.,* AIR 1997 SC 2431.

29. Thus, in view of the above, the law can be summarised to the effect that the powers under Article 229 (2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such Rules as made by the legislature.

30. In today's system, daily labourers and casual labourers have been conveniently introduced w y

attempts to regularise them at a subsequent stage. Therefore, most of the times the issue raised is about the procedure adopted for making appointments indicating an improper exercise of discretion even when the rules specify a particular mode to be adopted. There can be no doubt that the employment whether of Class IV, Class III, Class II or any other class in the High Court or courts subordinate to it fall within the definition of "public employment". Such an employment, therefore, has to be made under rules and under orders of the competent authority.

31. In a democratic set up like ours, which is governed by rule of law, the supremacy of law is to be acknowledged and absence of arbitrariness has been consistently described as essence of rule of law. Thus, the powers have to be canalised and not unbridled so as to breach the basic structure of the Constitution. Equality of opportunity in matters of employment being the constitutional mandate has always been observed. The unquestionable authority is always subject to the authority of the Constitution. The higher the dignitary, the more objectivity is expected to be observed. We do not say that powers should be curtailed. What we want to say is that the power can be exercised only to the width of the constitutional and legal limits. The date of retirement of every employee is well known in advance and therefore, the number of vacancies likely to occur in near future in a particular cadre is always known to the employer. Therefore, the exercise to fill up the vacancies at the earliest must start in advance to ensure that the selected person may join immediately after availability of the post, and hence, there may be no occasion to appoint any person on ad-hoc basis for the reason that the problem of inducting the daily labourers who are ensured of a regular appointment subsequently has to be avoided and a fair procedure must be adopted giving equal opportunity to everyone.

32. It has been rightly said:

"Perfection consists not in doing extraordinary things, but in doing ordinary things extraordinary well."

33. We had the advantage of the response given by the High Courts and the State. Some of the States like Jharkhand, Kerala, Madhya Pradesh, Orissa, Sikkim and Uttrakhand have pointed out in their respective affidavits that the recruitment of most of the posts are made by centralised selection and some of those posts are transferable. Some States like Jharkhand have pointed out that there is a centralised recruitment of all the posts but division wise and are transferable within the division. Some of the States like Punjab & Haryana and Uttar Pradesh have pointed out that they have already drafted the rules providing for centralised recruitment. The State of Himachal Pradesh and the High Court thereof have shown inclination towards the centralised recruitment. In the State of Madhya Pradesh, though rules do not provide for centralised recruitment but it is so done under the administrative order of the Chief Justice of the High Court. Other States and the High Courts have also made suggestions that it is the need of the hour to provide for centralised recruitment.

34. We would like to make it clear that the High Court is a constitutional and an autonomous authority subordinate to none. Therefore, nobody can undermine the constitutional authority of the High Court, and therefore the purpose to hear this case is only to advise the High Court that if its rules are not in consonance with the philosophy of our Constitution and the same may be modified and no appointment in contravention thereof should be made. It is necessary that there is strict compliance with appropriate Rules and the employer is bound to adhere to the norms of Articles 14 & 16 of the Constitution before making any recruitment.

35. In view of the above, the appeal stands disposed of with the following directions:

i) All High Courts are reques e

statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it.

iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab-initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any.

iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to

carry out that purpose either for the State or on Zonal or Divisional basis.

v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad-hocism.

36. Before parting with the case, we record our deep appreciation to Shri P.S. Narasimha, learned senior counsel for rendering invaluable assistance to the court as Amicus Curiae.

Copy of the judgment be sent to the Registrar General/ Registrar (Administration) of all the High Courts by this Registry directly and the said officer is requested to place the same before the Hon'ble Chief Justice for information and appropriate action.

R.P. Appeal disposed of.

BASTIRAM
v.
STATE OF RAJASTHAN
(Criminal Appeal No. 758 of 2004)

FEBRUARY 13, 2014

[RANJANA PRAKASH DESAI AND MADAN B. LOKUR, JJ.]

Penal Code, 1860: s.302 r/w s.34; s.307 r/w s.34 - Murder - Appellants armed with pistols attacked the complainant party resulting in death of 3 persons and injury to one - Conviction by courts below - On appeal, held: plea of appellant-BR that he was not guilty as he was not present when the incident took place and was in another city not acceptable as evidence showed that he was present when the incident occurred and as stated by the eye witnesses participated in the crime - Regarding other appellants, there was overwhelming evidence given by the eye witnesses about the use of firearms by all - The evidence of the eye witnesses in regard to these appellants was consistent and there was no reason to differ with the concurrent findings arrived at by trial court as well as High Court - The appellants cannot take advantage of the death of one member of their party or injuries caused to other members of their group in the clash - Both the courts below were right in holding that the appellants were armed with pistols and that they had fired at the victims with the intention of killing them.

Evidence: Medical evidence - Evidentiary value of - Held: There is no doubt that ocular evidence should be accepted unless it is completely negated by the medical evidence - The expression "medical evidence" compendiously refers to the facts stated by the doctor either in the injury report or in the post mortem report or during his oral testimony and the

opinion expressed by the doctor on the basis of the facts stated - Whether the injury caused the death of the person is the opinion of the doctor - On the same set of facts, two doctors may have different opinion - Therefore, the opinion of a particular doctor is not final or sacrosanct - An opinion given by a doctor, based on the facts recorded on an examination of a victim of a crime, could be rejected by relying on cogent and trustworthy eye witness testimony.

The prosecution case was the SHO received information that PW-4 and his brother accused-RP were involved in a fight, several persons joined in and used fire arms, lathis, barchis and other weapons in the fight, and two persons had died in the incident. At the place of incident, PW-4 stated to the SHO that relation between his brother PW-1 and accused-RP were not cordial and on that day between 6.30 p.m. and 6.45 p.m., PW-4 was sitting with PW-3. At that time his two sons, RN and M went to the house of accused-RP. On way, they were attacked by the four appellants. The four appellants were armed with pistols. The other accused who also participated in the attack were armed with either barchi or jayee or sela. PW-4 stated that his sons were surrounded by all the accused. Thereafter other two sons of PW-4, RL and PW-10 rushed to the place of incident.

Appellant-B fired at deceased-M; appellant-BR fired at RL; appellant-R fired at injured PW-10 and appellant-ML. RL in his dying declaration stated that appellant-BR had fired at RN who died at the spot; appellant-BR also fired at M and appellant-ML fired at him. RL had also stated that appellant-B had fired at two persons.

One of the member of the accused party also died on the spot. Criminal case was initiated against PW-4 and others, however, they were acquitted on granting benefit of doubt. The trial court noted that the dying declaration

was at variance with the parcha bayan of PW-4, however, it was evidence for the presence of the appellants at the place of incident. The trial court convicted the appellants under Section 302 r/w Section 34, IPC and also under Section 307 r/w Section 34, IPC. On appeal, the High Court held that appellant-BR had caused a firearm injury leading to the death of RL; appellant-B had also caused a firearm injury leading to the death of M; appellant-ML had caused a firearm injury on the thigh of RN and appellant-RN had caused a firearm injury on RR. The High Court was of the view that even though the medical evidence showed that RN had not received a firearm injury, the ocular evidence to the contrary was to be preferred since that was reliable. The High Court upheld the conviction of the appellants.

The appellants filed instant appeals. Appellant-BR contended that he was not involved in the incident as he was not present at the place of incident during the relevant time and was in Bikaner; and to that effect during the investigation, a fact finding report was tendered by DW-12 to the Superintendent of Police that the involvement of appellant BR was not established but this was not considered either by the trial court or by the High Court.

Dismissing the appeals, the Court

HELD:

Presence of appellant BR:

1.1. The Trial Judge partially rejected RL's dying declaration because it was too much at variance with the eye witness account and it was doubtful whether he was fit to make a statement. The dying declaration was accepted only for the purpose that it confirmed the presence of the appellants including appellant BR at the place of

occurrence. There was no perversity in this conclusion of the lower courts. [Para 27] [580-H; 581-A-B]

1.2. The fact finding report is only another piece of evidence and it has to be read along with the statement of the defence witnesses which clearly brought out, and this was not doubted, that appellant BR had in fact gone to Bikaner on that day for some official work. [Para 29] [581-D-E]

1.3. On the basis of the statements made by the defence witnesses it was not possible to accurately state when appellant BR left Bikaner, but he was certainly there till about 5.00 or 5.15 p.m. if not a little later. Information about the incident at Nokha was received in Police Station Nokha at about 7.15 p.m. meaning thereby that the incident had taken place a short while before that. As per the parcha bayan given by PW-4 the incident took place between 6.30 and 6.45 p.m. There was, therefore, a window of about one hour and thirty or forty-five minutes between the time of appellant BR's departure from Bikaner and his arrival at Nokha. It was, therefore, quite possible, given the flexibility of time and a lack of exactitude that appellant-BR was present when the incident took place and as testified by the eye witnesses. The trial court rejected the evidence of the defence witnesses with regard to the absence of appellant-BR on three grounds: Firstly, there was no occasion for him to remain in Bikaner after office hours, that is, after 5.00 p.m. Secondly, the trial court also noted some discrepancies in the evidence of the defence witnesses with regard to the timings given by the various defence witnesses. These were minor discrepancies and, as rightly noted by the trial court, no person keeps an eye on the clock or notes the time of meeting, therefore, some flexibility in the timings has to be given. Thirdly, since appellant-BR was the President of the Patwar Sangh and the defence witnesses were either Patwaris or re[illegible]e

Department, he could have influenced them on account of being a leader. This may be a real possibility considering the fact that though appellant-BR was named in the parcha bayan as one of those armed with a pistol and who caused the death of RL, he was in fact arrested about two and a half years later. Cumulatively considered, the reasons given by the trial court for rejecting the testimony of the eye witnesses were adequate. In any event, s the cogent and consistent eye witness testimony relating to the presence of appellant-BR cannot be simply discarded on the basis of possible guesswork by the defence witnesses about the timings of the meetings that appellant-BR had in Bikaner. In this regard, the conduct of appellant-BR was also significant. He produced a copy of his travelling allowance bill and daily diary which showed that he left Bikaner at about 7.30 p.m. The trial court noted that both these documents were prepared after the incident and in the daily diary (Exhibit D-52) it was recorded that appellant-BR met DW-9 in connection with a party and left Bikaner at about 7.30 p.m. and arrived at Nokha at 9.30 p.m. None of the defence witnesses supported the case of appellant-BR that he left Bikaner at 7.30 p.m. It is quite clear that appellant-BR manufactured this evidence with a view to cover his tracks when there was no need for him to do so, assuming his witnesses were speaking the truth. Under the circumstances, on a consideration of the evidence on record, there is no doubt that appellant-BR was present when the incident occurred and, as stated by the eye witnesses, participated in it. There is no reason to upset the concurrent finding of fact in this regard by the trial court and the High Court. [paras 30-33] [581-F-H; 582-A-H; 583-A-D]

Suraj Pal v. State of U.P. **1994 Supp (1) SCC 528 - referred to.**

Other appellants:

2. There was also overwhelming evidence given by the eye witnesses about the use of firearms by appellant-RN, appellant-ML and appellant-B. The evidence of the eye witnesses in regard to these appellants was consistent and there was no reason to differ with the concurrent findings arrived at by the trial court as well as the High Court. The appellants cannot take advantage of the death of one member of complainant party or injuries caused to other members of their group in the clash. [paras 34, 35] [583-E-F; 584-A]

Gunshot injury on deceased-RN:

3.1. There is no doubt that ocular evidence should be accepted unless it is completely negated by the medical evidence. The expression "medical evidence" compendiously refers to the facts stated by the doctor either in the injury report or in the post mortem report or during his oral testimony plus the opinion expressed by the doctor on the basis of the facts stated. For example, an injury on the skull or the leg is a fact recorded by the doctor. Whether the injury caused the death of the person is the opinion of the doctor. On the same set of facts, two doctors may have different opinion. Therefore, the opinion of a particular doctor is not final or sacrosanct. An opinion given by a doctor, based on the facts recorded on an examination of a victim of a crime, could be rejected by relying on cogent and trustworthy eye witness testimony. [Paras 37, 38, 41] [584-D-F; 585-A; 586-F]

Gangabhavani v. Rajapati Venkat Reddy **AIR 2013 SC 3681;** *State of Haryana v. Bhagirath* **(1999) 5 SCC 96 : 1999 (3) SCR 529;** *Kapildeo Mandal v. State of Bihar* **(2008) 16 SCC 99 : 2007 (12) SCR 668;** *Dayal Singh v. State of Uttaranchal* **(2012) 8 SCC 263 : 2012 (10) SCR 157;** *Mange v. State of Haryana* **(1979) 4 SCC 349**

3.2. Insofar as the injury to RN was concerned, the doctor (PW-18) stated that he had conducted the post mortem examination on the dead body. He described the injuries on the body and in his cross-examination categorically stated as a matter of fact that "This is correct to suggest that there was no firearm injury on the body of RN". In the face of this categorical factual assertion, and absence of any cogent evidence to the contrary, the conclusion arrived at by the trial court and the High Court that deceased RN suffered a gunshot injury cannot be accepted. The ocular evidence undoubtedly showed that RN was fired at by appellant-ML, but in view of the unchallenged testimony of the doctor it is quite clear that the gunshot did not hit deceased RN and the cause of his death was due to the cumulative effect of the various injuries suffered by him. However, this has no impact on concurrent findings of courts below that the appellants had the common intention of causing the death of RL, RN, M and RR. That RR survived the injuries was fortuitous. Both the courts were right in holding that the appellants were armed with pistols and that they had fired at their victims with the intention of killing them. [paras 42, 43] [587-B-G]

Case Law Reference:

1994 Supp (1) SCC 528	**Referred to**	**Para 23**
AIR 2013 SC 3681	**Relied on**	**Para 37**
1999 (3) SCR 529	**Relied on**	**Para 38**
2007 (12) SCR 668	**Relied on**	**Para 39**
2012 (10) SCR 157	**Relied on**	**Para 40**
(1979) 4 SCC 349	**Relied on**	**Para 41**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 758 of 2004.

From the Judgment and order dated 09.09.2003 of the High Court of Rajasthan at Jodhpur in Criminal Appeal No. 798 of 2001.

WITH

Criminal Appeal No. 403 of 2014 and 759 of 2004.

Uday U. Lalit, Ambhoj Kumar Sinha, V.J. Francis, Hari Kumar, Anupam Mishra for the Appellant.

S.S. Shamshery, AAG, Milind Kumar, Sandhya Goswami for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Leave granted in S.L.P. (Crl.) No.5240 of 2004.

2. The question for our consideration is whether there is any evidence that would warrant setting aside the conviction of the appellants by the Trial Court and affirmed by the High Court. In our opinion, the answer is in the negative and we uphold the conviction of the appellants for an offence punishable under Section 302 of the Indian Penal Code read with Section 34 thereof.

The facts:

3. On 20th May, 1995 at about 7.15 p.m. Tara Chand, Station House Officer in Police Station Nokha, District Bikaner in Rajasthan received a cryptic telephonic message. The message was from an unknown person and was to the effect that in Ward No.2 in village Nokha, Ram Pratap and Sohan Lal (PW-4) who are real brothers were involved in a fight. Several others had joined in and firearms, lathis, barchis and other weapons were used in the fight. It was also informed that two persons had died in the incident.

4. Tara Chand reduced the information in writing in a roznamcha and then reached the place of occurrence along with some other police officers.

5. At the place of occurrence, Sohan Lal gave a parcha bayan to Tara Chand at about 8.30 p.m. Sohan Lal stated that his brother Genaram (PW-1) had installed a dharam kanta or a weighbridge on Roda Road and about five years later Ram Pratap also installed a weighbridge on the same road. As a result of the installation of the second weighbridge, the relationship between Genaram and Ram Pratap was not cordial.

6. Sohan Lal further stated that sometime between 6.30 p.m. and 6.45 p.m., he and Om Prakash (PW-3 - son of Genaram) were sitting in a temple near his (Sohan Lal's) house. At that time his two sons, namely, Ram Narain (hereafter referred to as deceased Ram Narain) and Mohanlal (hereafter referred to as deceased Mohanlal) came out of his house and went towards Ram Pratap's house. When they were near his house, they were attacked by the four appellants, that is, Bastiram, Mohan Lal, Ramnarayan and Banwari. These four appellants were armed with pistols. Also participating in the attack were Mangilal, Ramjus, Hariram, Ram Pratap, Bhagwanaram and Maniram who were armed with either a barchi or a jayee or a sela.

7. Sohan Lal further stated that his two sons, deceased Ram Narain and deceased Mohanlal, were surrounded by the ten persons aforesaid who made a hue and cry that they should be killed. Thereupon Om Prakash and Sohan Lal's two other sons, namely, Rameshwarlal (hereafter referred to as deceased Rameshwarlal) and Rajaram (PW-10) rushed towards the site.

8. It was further stated by Sohan Lal that appellant Banwari fired at deceased Mohanlal; appellant Bastiram fired at deceased Rameshwarlal; appellant Ramnarayan fired at injured

Rajaram and appellant Mohan Lal fired at deceased Ram Narain.

9. Sohan Lal also stated that deceased Mohanlal died on the spot while injured Rajaram, Ram Narain and Rameshwarlal were taken to a hospital. Ram Narain and Rameshwarlal later succumbed to their injuries.

10. Before his death on 22nd May, 1995 deceased Rameshwarlal gave a dying declaration on 21st May, 1995. In his dying declaration deceased Rameshwarlal stated that appellant Bastiram had fired at deceased Ram Narain who died on the spot. He stated that appellant Bastiram also fired at deceased Mohanlal and appellant Mohan Lal fired at him (deceased Rameshwarlal). Deceased Rameshwarlal also stated that appellant Banwari fired at Maniram and that his brother Goverdhan also arrived at the scene and Maniram Patwari fired at him. The dying declaration is clearly at variance with the parcha bayan of Sohan Lal.

11. That Maniram (from Ram Pratap's group) died on the spot is not in dispute. In this regard, we were given a copy of the judgment and order dated 7th September, 2001 in Sessions Case No. 21 of 2001 wherein the State had accused Sohan Lal and members of his group of having murdered Maniram and causing injuries to others. In the decision, Sohan Lal and all the members of his group were acquitted by giving them the benefit of doubt. That decision seems to have attained finality.

Decision of the Trial Court:

12. On these broad facts the four appellants and the other five persons from Ram Pratap's group were tried for various offences under the Indian Penal Code. The Additional Sessions Judge (Fast Track) Bikaner delivered his judgment in Sessions Case No.24/2001 on 7th September, 2001 in which he held the appellants guilty, inter alia, of an offe[illegible]r

Section 302 read with Section 34 of the IPC and sentenced them to imprisonment for life and fine. They were also convicted of an offence punishable under Section 307 read with Section 34 of the IPC and sentenced to rigorous imprisonment for five years and fine. The remaining accused were acquitted.

13. The Trial Court found that there were four eye witnesses to the occurrence, namely, Om Prakash (PW-3), Sohan Lal (PW-4), Jagdish (PW-9) and Rajaram (PW-10). This was not questioned before the High Court and was not disputed before us also.

14. The Trial Judge held that appellant Banwari had caused a firearm injury to deceased Mohanlal resulting in his death; appellant Ramnarayan had caused a firearm injury to Rajaram and appellant Bastiram had caused a firearm injury to deceased Rameshwarlal resulting in his death. It was found that amongst other injuries, deceased Ram Narain had received a gun fire injury on his thigh. It was held that the gun fire injury was inflicted by appellant Mohan Lal. The Trial Judge noted that the post-mortem report of deceased Ram Narain revealed that there was no firearm injury on his body, but he preferred to rely on the eye witness evidence rather than on the medical report.

15. The Trial Judge did not place any reliance on the dying declaration given by deceased Rameshwarlal, since it did not bear a certificate of fitness given by the doctor at the time of its recording. The Trial Judge noted that the contents of the dying declaration were at variance with the contents of the parcha bayan given by Sohan Lal and that there were some discrepancies in the dying declaration which could, therefore, not be depended upon for its truthfulness. However, the Trial Judge noted that the dying declaration was evidence for the presence of the appellants at the place of occurrence.

16. The appellants produced their defence evidence.

Appellant Bastiram produced evidence to the effect that on the fateful day, he had gone to Bikaner in his capacity as Patwari in Nokha village at about 11 a.m. He reached Bikaner at about 1 p.m. and met several people not only in connection with his official work but also in connection with a State level conference of Patwar Sangh to be held on 8-9 June, 1995 at Alwar. He left Bikaner at about 7.30 p.m. and returned to Nokha at about 9.30 p.m. As such, he was not present when the incident took place. Some of the persons whom appellant Bastiram met at Bikaner were produced as defence witnesses including Phoola Ram (DW-1) who stated that after meeting him, appellant Bastiram left for the house of Gopal Krishan at about 5.45 p.m; Mangi Lal (DW-2) stated that appellant Bastiram was with him and at about 5.30 p.m. he went away with Phoola Ram. Gopal Krishan (DW-3) stated that appellant Bastiram had come to his house at about 6 p.m. on 20th May, 1995 and left at about 6.30 p.m. Inder Chand (DW-7) stated that between 5.30 and 6 p.m. appellant Bastiram met Hanuman Singh, Sub Divisional Magistrate, South Bikaner. Hanuman Singh (DW-9) stated that appellant Bastiram had come to his chamber with Inder Chand at about 5.15 or 5.30 p.m. in regard to organizing a farewell party on his (Hanuman Singh's) transfer. Jagdish (DW-10) is the son of Gopal Krishan and he stated that appellant Bastiram had come to his father's house at about 6 p.m. on 20th May, 1995 and he stayed there for about half an hour. Jagdish also stated that he had gone to see off appellant Bastiram at Ambedkar Circle.

17. Rajender Kumar Sharma appeared in the witness box as DW-11. He was working as Civil Judge (Junior Division) and Judicial Magistrate at Bikaner. He stated that he had recorded the dying declaration of deceased Rameshwarlal on 21st May, 1995. He also stated that before recording the dying declaration a Fitness Certificate was obtained from the doctor on duty which is mentioned at 'E' to 'F' in the dying declaration. In his cross-examination this witness stated that deceased

Rameshwarlal was fit to make a statement.

18. Umesh Joshi (DW-12) was working as Additional Superintendent of Police, CID (CB) in Jaipur. He had conducted investigations in the case and had sent a Factual Report to the Superintendent of Police of CID (CB) Rajasthan, Jaipur in which he opined that the involvement of appellant Bastiram in the occurrence had not been established.

19. Similarly, appellant Mohan Lal also produced defence witnesses to prove that he was not at the place of occurrence on the fateful day. The evidence led by both these appellants was considered by the Trial Judge but rejected.

Decision of the High Court:

20. Feeling aggrieved by their conviction and sentence, the appellants preferred Criminal Appeal No.798 of 2001 in the Rajasthan High Court while the State of Rajasthan preferred Criminal Appeal No.528 of 2002 against the acquittal of the other five accused.

21. By a judgment and order dated 9th September, 2003 the High Court upheld the conviction of the four appellants and dismissed the appeal filed by the State of Rajasthan against the acquittal of the remaining five accused persons.[1]

22. The High Court confirmed the conclusions of the Trial Judge. It was held that appellant Bastiram had caused a firearm injury leading to the death of Rameshwarlal; appellant Banwari had also caused a firearm injury leading to the death of Mohanlal; appellant Mohan Lal had caused a firearm injury on the thigh of deceased Ram Narain and appellant Ramnarayan had caused a firearm injury on Rajaram.

23. The High Court was of the view that even though the

1. The decision of the High Court is reported as MANU/RH/0542/2003.

medical evidence showed that deceased Ram Narain had not received a firearm injury, the ocular evidence to the contrary was to be preferred since that was reliable. Reliance was placed on *Suraj Pal v. State of U.P.*[2] Alternatively, it was held that even if deceased Ram Narain had not received any gunshot injury, the fact is that appellant Mohan Lal was armed with a pistol and it could safely be concluded that he shared a common intention with the other accused persons thereby attracting Section 34 of the IPC for the purposes of confirming his conviction for an offence punishable under Section 302 of the IPC.

24. The four appellants filed three appeals in this Court being Criminal Appeal No.758 of 2004, Criminal Appeal No.759 of 2004 and Criminal Appeal arising out of S.L.P. (Crl.) No. 5240 of 2004.

Presence of appellant Bastiram:

25. Insofar as the appeal filed by appellant Bastiram is concerned, the principal submission before us was to the effect that there is a reasonable doubt whether he was at all involved in the incident. Several factors were brought to our notice in this regard.

26. Firstly, it was submitted that the evidence given by the four eye witnesses suggests that appellant Bastiram shot deceased Rameshwarlal. However, in his dying declaration deceased Rameshwarlal does not say that he was shot by appellant Bastiram. According to the dying declaration, deceased Ram Narain was shot by appellant Bastiram and he (deceased Rameshwarlal) received a gunshot injury from appellant Mohan Lal.

27. The Trial Judge partially rejected deceased Rameshwarlal's dying declaration because it was too much at

2. 1994 Supp (1) SC 528.

variance with the eye witness account and it was doubtful whether he was fit to make a statement. The dying declaration was accepted only for the purpose that it confirmed the presence of the appellants including appellant Bastiram at the place of occurrence. We do not see any perversity in this conclusion of the Trial Judge, confirmed by the High Court.

28. Secondly, it was submitted that during the investigation, a fact finding report was tendered by Umesh Joshi (DW-12) to the Superintendent of Police of CID (CB) Rajasthan, Jaipur and it was marked as Exhibit 'D-51'.The report concludes that the involvement of appellant Bastiram in the incident was not proved. It was submitted that this exhibit was not considered either by the Trial Court or by the High Court while convicting appellant Bastiram.

29. The fact finding report is only another piece of evidence and it has to be read along with the statement of the defence witnesses which clearly brings out, and this has not been doubted, that appellant Bastiram had in fact gone to Bikaner on that day for some official work. The only question was about the approximate time when he left Bikaner to return to Nokha.

30. On the basis of the statements made by the defence witnesses it is not possible to accurately state when appellant Bastiram left Bikaner, but he was certainly there till about 5.00 or 5.15 p.m. if not a little later. Information about the incident at Nokha was received by Tara Chand in Police Station Nokha at about 7.15 p.m. meaning thereby that the incident had taken place a short while before that. As per the parcha bayan given by Sohan Lal the incident took place between 6.30 and 6.45 p.m. There is therefore a window of about one hour and thirty or forty-five minutes between the time of appellant Bastiram's departure from Bikaner and his arrival at Nokha. It is, therefore, quite possible, given the flexibility of time and a lack of exactitude that appellant Bastiram was present when the

incident took place and as testified by the eye witnesses.

31. The Trial Court rejected the evidence of the defence witnesses with regard to the absence of appellant Bastiram on three grounds: Firstly, there was no occasion for him to remain in Bikaner after office hours, that is, after 5.00 p.m. This may not be a good enough reason per se for rejecting the testimony of the defence witnesses. But a reasonable conclusion can be drawn on the basis of the material on record that appellant Bastiram was in Bikaner till about 5.00 or 5.15 p.m. but this is of no consequence. Secondly, the Trial Court also noted some discrepancies in the evidence of the defence witnesses with regard to the timings given by the various defence witnesses. These are minor discrepancies and, as rightly noted by the Trial Court, no person keeps an eye on the clock or notes the time of meeting. It is for this reason that some flexibility in the timings must be given. Thirdly, since appellant Bastiram was the President of the Patwar Sangh at Nokha and the defence witnesses were either Patwaris or related to the Revenue Department, appellant Bastiram could have influenced them on account of being a leader. This may be a real possibility considering the fact that though appellant Bastiram was named in the parcha bayan as one of those armed with a pistol and who caused the death of deceased Rameshwarlal, he was in fact arrested about two and a half years later on 21st January, 1998. Cumulatively considered, the reasons given by the Trial Judge for rejecting the testimony of the defence witnesses are adequate.

32. In any event, what is perhaps more important is the cogent and consistent eye witness testimony relating to the presence of appellant Bastiram. This cannot be simply discarded on the basis of possible guesswork by the defence witnesses about the timings of the meetings that appellant Bastiram had in Bikaner. In this regard, the conduct of appellant Bastiram is also significant. He produced a copy of his travelling

allowance bill and daily diary which showed that he left Bikaner at about 7.30 p.m. The Trial Judge noted that both these documents were prepared after the incident and in the daily diary (Exhibit D-52) it is recorded that appellant Bastiram met Hanuman Singh (DW-9) in connection with a party and left Bikaner at about 7.30 p.m. and arrived at Nokha at 9.30 p.m. None of the defence witnesses support the case of appellant Bastiram that he left Bikaner at 7.30 p.m. It is quite clear that appellant Bastiram manufactured this evidence with a view to cover his tracks when there was no need for him to do so, assuming his witnesses were speaking the truth.

33. Under the circumstances, on a consideration of the evidence on record there is no doubt that appellant Bastiram was present when the incident occurred and, as stated by the eye witnesses, participated in it. We see no reason to upset the concurrent finding of fact in this regard by the Trial Court and the High Court.

Other appellants:

34. There is also overwhelming evidence given by the eye witnesses about the use of firearms by appellant Ramnarayan, appellant Mohan Lal and appellant Banwari. The evidence of the eye witnesses in regard to these appellants is consistent and we see no reason to differ with the concurrent findings arrived at by the Trial Court as well as the High Court. Little was said by learned counsel disputing their involvement.

35. It was submitted that Maniram, one of the persons belonging to Ram Pratap's group was also killed in the incident and there is no explanation for the cause of his death. It was submitted that it is necessary for the prosecution to explain any injuries sustained by the accused party. Nothing further need be said on this in view of the benefit of doubt, as mentioned above, given to Sohan Lal's group in Sessions Case No. 21 of 2001. Under the circumstances, we are of the opinion that

the appellants cannot take advantage of the death of Maniram or injuries caused to other members of their group in the clash.

Gunshot injury on deceased Ram Narain:

36. Finally, it was submitted that according to the post mortem report and the evidence given by the doctor no firearm injury was found on the body of deceased Ram Narain. However, the ocular testimony is to the effect that deceased Ram Narain was shot at by appellant Mohan Lal injuring him and thereby causing his death. It was submitted that the Trial Judge and the High Court erroneously gave primacy to the ocular evidence disregarding the medical evidence.

37. The question before us, therefore, is whether the "medical evidence" should be believed or whether the testimony of the eye witnesses should be preferred. There is no doubt that ocular evidence should be accepted unless it is completely negated by the medical evidence.[3] This principle has more recently been accepted in *Gangabhavani v. Rajapati Venkat Reddy*[4].

38. The expression "medical evidence" compendiously refers to the facts stated by the doctor either in the injury report or in the post mortem report or during his oral testimony plus the opinion expressed by the doctor on the basis of the facts stated. For example, an injury on the skull or the leg is a fact recorded by the doctor. Whether the injury caused the death of the person is the opinion of the doctor. As noted in *State of Haryana v. Bhagirath*[5] on the same set of facts, two doctors may have a different opinion. Therefore, the opinion of a

3. *Abdul Sayeed v. State of M.P.,* (2010) 10 SCC 259 following *State of Haryana v. Bhagirath,* (1999) 5 SCC 96 and *Solanki Chimanbhai Ukabhai v. State of Gujarat,* (1983) 2 SCC 174.
4. AIR 2013 SC 3681.
5. (1999) 5 SCC 96.

particular doctor is not final or sacrosanct.

39. What about the facts recorded by a doctor - are they sacrosanct? In *Kapildeo Mandal v. State of Bihar*[6] the facts found by the doctor were preferred over the eye witness testimony. The ocular evidence was to the effect that the deceased suffered firearm injuries. However, the doctor conducting the post mortem examination stated that he did not find any indication of any firearm injury on the person of the deceased. No pellets, bullets or any cartridge were found in any of the wounds. Accepting the "medical evidence" on facts, it was observed that,

> "[T]he medical evidence is to the effect that there were no firearm injuries on the body of the deceased, whereas the eyewitnesses' version is that the appellant-accused were carrying firearms and the injuries were caused by the firearms. In such a situation and circumstance, the medical evidence will assume importance while appreciating the evidence led by the prosecution by the court and will have priority over the ocular version and can be used to repel the testimony of the eyewitnesses as it goes to the root of the matter having an effect to repel conclusively the eyewitnesses' version to be true."

40. Similarly, a fact stated by a doctor in a post mortem report could be rejected by a Court relying on eye witness testimony, though this would be quite infrequent. In *Dayal Singh v. State of Uttaranchal*[7] the post mortem report and the oral testimony of the doctor who conducted that examination was that no internal or external injuries were found on the body of the deceased. This Court rejected the "medical evidence" and upheld the view of the Trial Court (and the High Court) that the testimony of the eye witnesses supported by other evidence would prevail over the post mortem report and testimony of the

6. (2008) 16 SCC 99.

7. (2012) 8 SCC 263.

doctor. It was held,

> [T]he trial court has rightly ignored the deliberate lapses of the investigating officer as well as the post-mortem report prepared by Dr C.N. Tewari. The consistent statement of the eyewitnesses which were fully supported and corroborated by other witnesses, and the investigation of the crime, including recovery of lathis, inquest report, recovery of the pagri of one of the accused from the place of occurrence, immediate lodging of FIR and the deceased succumbing to his injuries within a very short time, establish the case of the prosecution beyond reasonable doubt. These lapses on the part of PW 3 [doctor] and PW 6 [investigating officer] are a deliberate attempt on their part to prepare reports and documents in a designedly defective manner which would have prejudiced the case of the prosecution and resulted in the acquittal of the accused, but for the correct approach of the trial court to do justice and ensure that the guilty did not go scot-free. The evidence of the eyewitness which was reliable and worthy of credence has justifiably been relied upon by the court."

41. An opinion given by a doctor, based on the facts recorded on an examination of a victim of a crime, could be rejected by relying on cogent and trustworthy eye witness testimony. In *Mange v. State of Haryana*[8] an eye witness to a rape stated that the offence was committed on a particular day and at a particular time. However, the lady doctor who examined the victim was of the opinion that the offence was committed two days earlier. This Court did not accept the opinion and preferred to rely on the eye witness account holding, inter alia, that

> "It is difficult for any medical expert to give the exact duration of time when the rape was committed. More particularly when we have the ev[illegible]e

witness] as to the time and date of the occurrence, the medical evidence can hardly be relied upon to falsify the evidence of the eyewitness because the medical evidence is guided by various factors based on guess and certain calculations."

42. This being the position, insofar as the injury to deceased Ram Narain is concerned, Dr. D.K. Purohit (PW-18) stated that he had conducted the post mortem examination on the dead body. He described the injuries on the body and in his cross-examination categorically stated as a matter of fact that "This is correct to suggest that there was no firearm injury on the body of Ram Narain". In the face of this categorical factual assertion, and absent any cogent evidence to the contrary, we cannot accept the conclusion arrived at by the Trial Court and the High Court that deceased Ram Narain suffered a gunshot injury. The ocular evidence undoubtedly shows that deceased Ram Narain was fired at by appellant Mohan Lal, but in view of the unchallenged testimony of the doctor it is quite clear that the gunshot did not hit deceased Ram Narain and the cause of his death was due to the cumulative effect of the various injuries suffered by him.

43. However, this has no impact on our final conclusion since we are in the agreement with the Trial Court and the High Court that the appellants had the common intention of causing the death of deceased Rameshwarlal, deceased Ram Narain, deceased Mohanlal and injured Rajaram. That Rajaram survived the injuries is fortuitous. We are also in agreement with both the Courts that the appellants were armed with pistols and that they had fired at their victims with the intention of killing them. We have not been shown anything that would suggest the contrary.

Conclusion:

44. We uphold the concurrent findings of the Trial Court and the High Court and confirm the conviction and sentence on the appellants. There is no merit in these appeals and they are accordingly dismissed.

D.G. Appeals dismissed.