PAWAN KUMAR & ANR. ETC.
v.
M/S HARKISHAN DASS MOHAN LAL & ORS.
(Civil Appeal No. 5906 of 2008)

JANUARY 29, 2014

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

MOTOR VEHICLES ACT, 1988:

Fatal accident - Collusion between a truck and a jeep -- Claim petition in respect of victims traveling in jeep - High Court apportioning the liability of driver/owner of truck at 70% and that of driver/owner of jeep at 30% -- Held: Since the victims were third parties, High Court was not correct in apportioning the liability for the accident between drivers/ owners of the two vehicles -- Drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to claimants to enforce the award against both or any of them -- Order of High Court modified accordingly.

Motor accident - Compensation - Principles of composite and contributory negligence - Explained.

A jeep owned by respondent No.1 and driven by respondent No.2 met with an accident with a truck resulting into death of two passengers of the jeep and serious injuries to third one. As the truck involved in the accident had fled from the spot, the driver/owner and insurer of the said truck could not be impleaded in any of the claim petitions filed by the claimants. The High Court held that both the truck as well as the jeep were responsible for the accident and apportioned the liability of the driver/owner of the truck at 70% and that of the driver/owner of the jeep at 30%.

In the instant appeal filed by the claimants, it was contended for the appellants that since the victims were third parties traveling in the jeep, the correct principle to determine the liability was that of composite negligence, and the High Court committed an error in invoking the principle of contributory negligence and in apportioning the liability between the drivers/owners of the two vehicles.

Allowing the appeal, the Court

HELD: 1.1 The distinction between the composite and the contributory negligence is clear. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. "Composite negligence" refers to the negligence on the part of two or more wrong doers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. [para 6-7] [6-C; 7-C-G]

T.O. Anthony Vs. Karvarnan & Ors. **2008 (2) SCR 291 = (2008) 3 SCC 748 - relied on.**

Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998) **- referred to.**

Andhra Pradesh State Road Transport Corporation & Anr. Vs. K. Hemlatha & Ors. **2008 (8) SCR 1201 = (2008) 6 SCC 767 - cited.**

1.2 In the instant case, neither the driver/owner nor the insurer has filed any appeal n

against the findings of the High Court that both the vehicles were responsible for the accident. The High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles. [para 8] [8-F-H]

1.3 This Court, therefore, holds that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court is modified accordingly. [para 9] [9-A-B]

Case Law Reference:

2008 (2) SCR 291	**relied on**	**para 4**
2008 (8) SCR 1201	**cited**	**para 4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5906 of 2008.

From the Judgment and Order dated 05.07.2006 of the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 407 of 1995.

Rishi Malhotra, Prem Malhotra for the Appellants.

Dr. Kailash Chand, B.K. Satija for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The appellants were the claimants in the proceedings instituted for award of compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). They are aggrieved by the decision of the High Court of Punjab & Haryana at Chandigarh in F.A.O. Nos. 695, 407 and 408 of 1995 dated 05.07.2006 by which, though their claim for compensation has been upheld, the liability to pay the same has been apportioned between the drivers/owners of the two vehicles involved in the motor accident. The appellants contend

that as they were third parties to the claim, the High Court ought to have made the drivers/owners of the vehicles jointly and severally liable to pay compensation in view of their composite negligence instead of apportioning their liability by invoking the principle of contributory negligence.

2. The brief facts that will be required to be noticed may now be set out:

Deceased Yogesh (12 years) and Parshotam D. Gupta and injured Salochna were travelling in Jeep No.PB-03-6848 from Sirsa, Haryana to Vaishno Devi on 19.06.1993. The jeep which is owned by the respondent No.1 and driven by the respondent No.2 met with an accident with a truck coming from the opposite direction as a result of which Parshotam D. Gupta and Yogesh died on the spot whereas Salochna received serious injuries. Claim petitions were filed by the parents of Yogesh and the legal heirs of deceased Parshotam Dass including Salochna who is his wife. The injured Salochna also filed a separate claim petition in respect of the injuries sustained by her in the same accident. As the truck involved in the accident had fled from the spot, the driver/owner and insurer of the said truck could not be impleaded in any of the claim petitions filed by the claimants.

The Motor Accident Claims Tribunal (for short "the Tribunal) by its award dated 07.11.1994 held that the truck alone was responsible for the accident and in the absence of the driver/owner or the insurer of the said vehicle, no compensation can be awarded to any of the claimants. Aggrieved, the matter was carried in appeal. The High Court by its order dated 05.07.2006 held that both the truck as well as the jeep, in which the deceased and the injured were travelling, were responsible for the accident. The High Court further held that the liability of the driver/owner of the truck should be estimated at 70% and that of the driver/owner of the jeep at 30%. Accordingly, the High Court held that in respect of the death of Yogesh,

compensation of Rs.2,00,000/- would be the just and fair compensation payable to the legal heirs. 30% thereof i.e. Rs.60,000/- was held to be payable by the driver/owner/insurer of the jeep. In respect of deceased Parshotam, the High Court held that the amount of compensation payable would be Rs.5,76,000/- and accordingly made the respondent Nos.1, 2 and 3 (insurer) liable to pay 30% of the said compensation which comes to Rs.1,72,800/-. Insofar as the injuries sustained by Salochna is concerned, the High Court computed the amount of compensation payable at Rs.2,00,000/- and made the respondent Nos. 1, 2 and 3 liable for compensation to the extent of 30% of the said amount i.e. Rs.60,000/-. Aggrieved by the said order, the appellants/claimants have filed the present appeal.

3. We have heard the learned counsels for the parties.

4. Learned counsel for the appellants has contended that though the High Court has rightly held both the vehicles to be responsible for the accident it has committed a glaring error in invoking the principle of contributory negligence in the present case and in apportioning the liability between the drivers/owners of the two vehicles. Relying on the decision of this Court in *T.O. Anthony Vs. Karvarnan & Ors.*[1] which has been followed in a subsequent decision in *Andhra Pradesh State Road Transport Corporation & Anr. Vs. K. Hemlatha & Ors.*[2], learned counsel has urged that in a case where the claimant is a third party (other than the driver/owner of the vehicles involved in the accident) the correct principle for determination of the liability is that of composite negligence which would make the drivers/owners of the two vehicles jointly and severally liable. The principle of contributory negligence so as to apportion the liability between the drivers/owners would be relevant only if the claim for compensation is by one of the drivers himself or by his legal heirs, as the case may be. It is, therefore, contended that the

1. (2008) 3 SCC 748.
2. (2008) 6 SCC 767.

apportionment made by the High Court is against the settled principles of law laid down by this Court.

5. Learned counsel appearing for the respondent No.1 has argued that even if the view taken by the High Court that both the vehicles were responsible for the accident is to be accepted, the liability of the joint tortfeasors has to be apportioned which has been so done by the High Court. It is also submitted that in the absence of any specific material the apportionment of compensation, as determined by the High Court, ought not to be disturbed.

6. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:-

"WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractiv[illegible]w

of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.

.....

The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous. ……."

7. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in *T.O. Anthony* (supra) followed in *K. Hemlatha & Ors.* (supra). Paras 6 and 7 of *T.O. Anthony* (supra) which are relevant may be extracted hereinbelow:

"6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and

partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

8. In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles.

9. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 05.07.2006 is modified to the extent indicated above and the appeal is allowed.

R.P. Appeal allowed.

OCCUPATIONAL HEALTH AND SAFETY ASSOCIATION
v.
UNION OF INDIA AND OTHERS
(Writ Petition (Civil) No. 79 of 2005)

JANUARY 31, 2014

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

CONSTITUTION OF INDIA, 1950:

Art. 21 r/w Arts. 39, 41 and 42 - Right to health - Workers working in Coal Fired Thermal Power Plants(CFTPPs) - Exposed to serious health hazards and occupational health disorders - Held: Right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Art. 39, Arts. 41 and 42 -- Those Articles include protection of health and strength of workers and just and humane conditions of work -- When workers are engaged in such hazardous and risky jobs, then responsibility and duty on State is double-fold -- Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. -- Necessity for constant supervision and the drive to mitigate harmful effects on workers is of extreme importance -- CFTPPs are spread over various States in the country - It would be appropriate for respective High Courts to examine whether CFTPPs are complying with safety standards and the rules and regulations and the issues projected in the judgment relating to the health of the employees working in various CFTPPs within their jurisdiction - The matter is, therefore, relegated to High Courts to examine the issues with the assistance of State Governments after calling for necessary Reports from the CFTPPs situated in their respective States.

The Petitioner, a non-profit occupational health and

safety organization, filed the instant writ petition in order to seek, inter alia, directions of the Court to frame guidelines with respect to occupational safety and health regulations to be maintained by various Coal Fired Thermal Power Plants (CFTPPs) for their workers throughout the country. The petitioner highlighted serious diseases the workers working in thermal plants were suffering for over a period of years. The Report produced by the petitioner would indicate that half of the workers had lung function abnormalities, pulmonary function test abnormalities, senor neuro loss, skin diseases, asthama, and so on. The Court in its interim order on 30.1.2008 noted 9 main suggestions put forward before it. It was pointed out that suggestions no.1 to 7 were accepted by the Central Government as they were broadly covered in various existing enactments and consequently pro-occupational action would be taken for effective implementation of the relevant laws, in particular, areas covered by those suggestions. As regards suggestion nos. 8 and 9 it was stated that Central Government would examine their implementation. The Court had also directed the Ministry of Labour to take steps to see that those suggestions and relevant provisions of the various Labour Acts are properly implemented to protect the welfare of the employees.

Disposing of the petition, the Court

HELD: 1.1 Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Art. 21 of the Constitution of India. For eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Art. 39, Arts. 41 and 42 of the Constitution. Those Articles include protection of

health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potential harmful substances. Necessity for constant supervision and the drive to mitigate the harmful effects on the workers is of extreme importance. [para 10] [18-G-H; 19-A-C]

Consumer Education & Research Centre and others v. Union of India and others **1995 (1) SCR 626 = (1995) 3 SCC 42-relied on.**

1.2 Since the Central Government has already accepted suggestions no.1 to 7, suggestions no.8 and 9, need to be addressed. The National Institute of Occupational Health (NIOH) in its report in 2011 has already made its recommendations with respect to the suggestions made by this Court in its order dated 30.1. 2008. The issue calls for serious attention. CFTPPs are spread over various States in the country. It would not be practicable for this Court to examine whether CFTPPs are complying with safety standards and the rules and regulations relating to the health of their employees. These aspects could be better examined by the respective High Courts in whose jurisdiction these power plants are situated. The High Courts should examine whether there is adequate and effective health delivery system in place, whether there is [illegible]f

occupational health status of the workers and whether any effective medical treatment is meted out to them. [para 10,11, 16 and 17] [19-E-F; 24-E-G]

1.3 Therefore, it is appropriate to relegate the matter to the respective High Courts to examine these issues with the assistance of the State Governments after calling for necessary Reports from the CFTPPs situated in their respective States. It is made clear that the Report of NIOH titled "Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011 is not at all comprehensive in certain aspects and the respective High Courts can examine the issues projected in this Judgment independently after calling for the reports about the CFTPPs' functioning in their respective States. The Registrar Generals of the High Courts should place this Judgment before the Chief Justices of the respective States so as to initiate suo moto proceedings in the larger interest of the workers working in CFTPPs in the respective States. [para 7,18-19] [24-H; 25-A; 26-A, B-C]

Case Law Reference:

1995 (1) SCR 626 relied on para 9

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

Writ Petition (Civil) No. 79 of 2005.

Colin Gonsalves, Divya Jyoti, Jyoti Mendiratta for the Petitioner.

P.P. Malhotra, ASG, Kiran Bhardwaj, N.K. Kaushal, Gaurav Sharma, Sushma Suri, Anil Katiyar, V.K. Verma for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. The Petitioner, a non-profit occupational health and safety organization, registered under the Societies Registration Act, 1860, has invoked the extra-ordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking the following reliefs :-

a. To issue a writ of mandamus or any other appropriate writ, order, or direction directing the Respondents to frame guidelines with respect to occupational safety and health regulations to be maintained by various industries;

b. To issue a writ of mandamus or any other appropriate writ, order or direction directing respondents to appoint and constitute a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations;

c. To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to pay compensation to the workers who are victims of occupational health disorders and to frame a scheme of compensation for workers in cases of occupational health disorders;

d. To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to notify the recommendations as contained in paragraph 35 of the Petition as guidelines to be followed by thermal power plant.

2. The Petitioner represents about 130 Coal Fired Thermal Power Plants (CFTPPs) in India spread over different States in the country, but no proper occupational health services with adequate facilities for health delivery system or guidelines with respect to occupational safety are in [illegible]t,

Boilers Act, Employees' State Insurance Act, Compensation Act, the Water (Prevention and Control of Pollution) Act, the Air (Prevention and Control of Pollution) Act, Environmental Protection Act, etc. are in place, but the lack of proper health delivery system, evaluation of occupational health status of workers, their safety and protection cause serious occupational health hazards.

3. The Petitioner herein filed I.A. No.1 of 2005 and 2 of 2007 and highlighted the serious diseases, the workers working in thermal plants are suffering from over a period of years. The Report produced by the Petitioner would indicate that half of the workers have lung function abnormalities, pulmonary function test abnormalities, senor neuro loss, skin diseases, asthama, and so on. This Court noticing the same, passed an interim order on 30.1.2008, after taking note of the various suggestions made at the Bar to reduce the occupational hazards of the employees working in various thermal power stations in the country. Following are the main suggestions put forward before this Court :

1. Comprehensive medical checkup of all workers in all coal fired thermal power stations by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months. Then to be done on yearly basis.

2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.

3. Services of the workmen not to be terminated during illness and to be treated as if on duty.

4. Compensation to be paid to workmen suffering from any occupational disease, aliment or accident in accordance with the provisions of the Workmen's Compensation Act, 1923.

5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation to be recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.

7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations.

4. Mr. P.P. Malhotra, learned Additional Solicitor General, submitted that the suggestions no.1 to 7 have been accepted by the Central Government stating that they are broadly covered in various existing enactments and consequently pro-occupational action would be taken for effective implementation of the relevant laws, in particular, areas covered by those suggestions. After recording the above submissions, this Court had also directed the Ministry of Labour to take steps to see that those suggestions and relevant provisions of the various Labour Acts are properly implemented to protect the welfare of the employees. Learned ASG also submitted before the Court that the Central Government would examine whether the remaining two suggestions i.e. suggest[illegible]d

be implemented and, if so, to what extent.

5. The Writ Petition again came up for hearing before this Court on 6.9.2010 and this Court passed the following order:

> "Vide order dated January 30, 2008, Respondent No.1 had agreed to Guideline Nos.1 to 7.
>
> However, time was taken to consider Guidelines Nos.8 and 9, which primarily dealt with the appointment of Committee of Experts by NIOH. The constitution of that Committee is also spelt out in Guideline No.9. Today, when the matter came up for hearing before this Court, learned Solicitor General stated that the Committee of Experts has been duly constituted by NIOH and it will submit its status report on the next occasion.
>
> The writ petition shall stand over for eight weeks."

6. The Government of India later placed a Report of the Committee prepared by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011.

7. Shri Colin Gonsalves, learned senior counsel, referring to the above-mentioned Report, submitted that the Union of India as also the Committee have misunderstood the scope of the suggestion nos.8 and 9. Learned senior counsel submitted that not much importance was given to the serious health problems being faced by the workers who are working in the thermal power plants and the treatment they require as well as the payment of wages and compensation to those workers who are suffering from serious illness. Learned senior counsel pointed out that some urgent steps should be taken to ensure the health and safety of the workers, through comprehensive and timely medical examinations, follow-up treatment as well as to provide compensation for the serious occupational diseases they are suffering from. Even these vital aspects,

according to the learned senior counsel, have been completely overlooked by the Committee.

8. Learned ASG submitted that the Report of the NIOH is comprehensive and all relevant aspects have been taken care of and that there are several laws to protect the health and safety of the workers who are working in the various thermal power stations in the country. Learned ASG also submitted that the Committee has recommended the need of occupational health services with adequate facilities for health delivery system and that all power generating authorities must have well defined sector-specific occupational health safety and environmental management framework. Learned ASG also submitted that the Report would be implemented in its true letter and spirit.

9. This Court in *Consumer Education & Research Centre and others v. Union of India and others* (1995) 3 SCC 42, has held that the right to health and medical care to protect one's health and vigour, while in service or post-retirement, is a fundamental right of a worker under Article 21 read with Articles 39(e), 41, 43, 48-A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The Court held that the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents should not be at the cost of health and vigour of the workman.

10. Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of

Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potential harmful substances. Necessity for constant supervision and to the drive to mitigate the harmful effects on the workers is of extreme importance.

11. India is one of the largest coal producing countries in the world and it has numerous CFTPPs requiring nearly 440 million tons of coal per year. We have about 130 CFTPPs in India. The thermal power plants generate about two-third of the electricity consumed in India, while 54.3% of the energy demand is met by coal fired power generation. The NIOH in its Report in 2011 has already made its recommendations with respect to the suggestions made by this Court in its order dated 30.1.2008. Since the Central Government has already accepted suggestions no.1 to 7, at the moment we are concerned with suggestions no.8 and 9, which we reiterate as follows :-

> "8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.
>
> 9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations."

12. The Report in para 4.1.2 has referred to various health hazards and the same is reproduced hereinbelow :-

"4.1.2 General

- Use of Hazardous Material for Insulation: Certain materials such as asbestos, glass wool etc. are used for insulation. These materials are highly dangerous to human health, if inhaled or if contacted with the eye/skin surface. While handling such materials, the PPE should be provided to the workers as well as proper disposal of waste asbestos and glass wool should be ensured. Nowadays, safer substitutes, such as p-aramid, polyvinyl alcohol (PVA), cellulose, polyacrylonitrile, glass fibres, graphite are available, the use of which may be explored.

- Compliance with the provisions of the Environment (Protection) Act and its amendments from time to time applicable for the power plants with respect to emission and discharge, ash utilization and hazardous waste management should be ensured to protect the ambient environment as well as maintain safe and healthy working conditions for the workers.

- The generated fly ash need to be utilized as per the CPCB annual implementation report on fly ash utilization (2009-10) that 100% utilization to be achieved by the power plants, within 5 years from the date of notification (refer to Table 17, page 48). For new CFTPPs, the fly ash utilization needs to be regulated as per the schedule given in Table 17.

- It is desirable that the coal handling facilities are mechanized and automated to the extent possible.

- Occupational health services should be provided for wide range benefit to the workers. Broadly, it should contain the facilities for occupational health delivery system with trained manpower and infrastructure including investigational facilities, environmental assessment, evaluation of occupational health status and first aid training of the workers on regular basis. These services should be independent and separate from hospital services (curative service) but should function in liaison with the curative service.

- Periodic awareness programmes regarding the health and safety with active involvement of the workers should be organized, covering each individual with the minimum annual average duration of 8 hours per worker. Regular community level awareness programmes may be organized in the vicinity of the plant for the family members of the workers.

- Periodic medical examination (PME), as required under the Factories Act should be undertaken. However, the investigations performed under the PME should be relevant to the job exposures. Since coal/ash handling workers are prone to dust exposure related diseases, due attention is required to those workers. In case of need, the frequency of PME may be scheduled, based on observation of the health check-up information. Providing PPE and re-locating of job for those workers may also be considered.

- As per recommendations of the Factories Act, the workers need to be examined radiologically (chest X-ray) on yearly basis. However, in order to avoid unnecessary exposure of the human body to the radiation, the regular yearly chest X-ray is not

recommended, unless urgent and essential. Considering the latency period of development of pneumoconiosis, it is recommended to undergo chest X-ray every two years for initial 10 years and based on the progression, re-scheduling may be adopted. After 10 years it should be done on yearly basis or earlier depending on the development and/or progression of the disease.

- Health records should be maintained in easily retrievable manner, preferably in electronic form. The provision should be made to recall the worker, as and when his or her check up is due. Pre-placement medical examination and proper documentation of records should be mandatory.

- A comprehensive document on environment, health and safety specific to coal based thermal power projects should be framed. It should cover the legal provisions, management system, best practices, safe operating procedures, etc. for various areas of thermal power plants. This will serve as a reference document for effective implementation of the provisions.

- All CFTPPs should have environmental and occupational health and safety management systems in place, which are auditable by third party, approved by the Govt of India (Ministry of Power). Participatory management regarding health and safety at plant level may be ensured.

- The occupier of the CFTPP shall be responsible for the compliance of provisions of the Factories' Act for casual/contractual labour on health and safety issues. In case of women workers, the provisions of the Factories' Act, as applicable, shall be given attention.

13. Para 3.1.2 of the Report specifically refers to the occupational health and safety issues of workers in CFTPPs. The Report also refers to the hazards associated with (a) dust, (b) heat, (c) noise, (d) vibration, (e) radiation, and (f) disposal of waste. After dealing with those health hazards, the Committee has stated that the hazards associated with inhalation of coal dust might result in development of dust related morbidity in the form of pneumoconiosis (coal workers pneumoconiosis, silicosis) and non-pneumoconiotic persistent respiratory morbidities, such as chronic bronchitis, emphysema, asthma, etc. Further, it also pointed out that whenever asbestos fibres are used for insulation and other purposes, the possibility of asbestosis among workers due to inhalation of asbestos fibres cannot be ruled out. The Report also says that other morbidities because of exposure to fly ash, including metallic constituents such as lead, arsenic, and mercury might also be present. Due to exposure to other chemicals used in different operations of CFTPP, the Report says, may also be responsible to adversely affect human health.

14. Report further says that occupational exposure to high heat in different thermal power plants may also cause heat related disorders, like heat exhaustion. Noise and vibration exposures in higher doses than the permissible limits may result in noise-induced hearing loss, raised blood pressure, regional vascular disorders, musculo-skeletal disorders, human error, productivity loss, accidents and injuries. Radiation hazards particularly from the generated fly ash and its used products have also been indicated of possible health risks. Different chemicals that are often being used in CFTPPs, such as chlorine, ammonia, fuel oil, and released in the working and community environment may be responsible for wide range of acute as well as chronic health impairments. Since large quantities of coal, other fuels and chemicals are stored and used in CFTPPs, the risks of fire and explosion are high, unless special care is taken in handling the materials. It may cause

fire and explosion. Further, it may also be pointed out that in various work operations for manual materials handling, the workers are subjected to high degree of physical stress, with potential risks of musculo-skeletal disorders and injuries.

15. In para 3.1.5 the Report suggests certain protective measures for health and safety and also steps to be taken for emergency preparedness on spot/off-spot emergency plans and also the measures to be adopted for social welfare.

16. We may notice, the recommendations made are to be welcomed, but how far they are put into practice and what preventive actions are taken to protect the workers from the serious health-hazards associated with the work in CFTPPs calls for serious attention. Many workers employed in various CFTPPs are reported to be suffering from serious diseases referred to earlier. What are the steps taken by CFTPPs and the Union of India and the statutory authorities to protect them from serious health hazards and also the medical treatment extended to them, including compensation etc. calls for detailed examination.

17. We notice that CFTPPs are spread over various States in the country like Uttar Pradesh, Chhattisgarh, Maharashtra, Andhra Pradesh, and so on, and it would not be practicable for this Court to examine whether CFTPPs are complying with safety standards and the rules and regulations relating to the health of the employees working in various CFTPPs throughout the country. We feel that these aspects could be better examined by the respective High Courts in whose jurisdiction these power plants are situated. The High Court should examine whether there is adequate and effective health delivery system in place and whether there is any evaluation of occupational health status of the workers. The High Court should also examine whether any effective medical treatment is meted out to them.

18. We, therefore, feel that it is ap it

to the various High Courts to examine these issues with the assistance of the State Governments after calling for necessary Reports from the CFTPPs situated in their respective States. For the said purpose, we are sending a copy of this Judgment to the Chief Secretaries of the respective States as well as Registrar Generals of the High Courts of the following States :

(a) Uttar Pradesh

(b) Chhattisgarh

(c) Maharashtra

(d) Andhra Pradesh

(e) West Bengal

(f) Madhya Pradesh

(g) Bihar

(h) Orissa

(i) Haryana

(j) Rajasthan

(k) Punjab

(l) Delhi/NCT Delhi

(m) Gujarat

(n) Karnataka

(o) Kerala

(p) Tamil Nadu

(q) Jharkhand

(r) Assam

19. Report of National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011 may also be made available by the Secretary General of the Supreme Court to the Registrar Generals of the High Courts of the aforesaid States. We make it clear that the Report is not at all comprehensive in certain aspects and the respective High Courts can examine the issues projected in this Judgment independently after calling for the reports about the CFTPPs functioning in their respective States. The Registrar Generals of High Courts of the aforesaid States should place this Judgment before the Chief Justices of the respective States so as to initiate suo moto proceedings in the larger interest of the workers working in CFTPPs in the respective States.

20. The Writ Petition is accordingly disposed of.

R.P. Writ Petition disposed of.

SUDHIR VASUDEVA, CHAIRMAN & MD. ONGC & ORS.
v.
M. GEORGE RAVISHEKARAN & ORS.
(Civil Appeal No. 1816 of 2014)

FEBRUARY 4, 2014

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

CONTEMPT OF COURT:

Contempt petition - Scope of - High Court in contempt jurisdiction directing creation of supernumerary posts - Held: Courts must not travel beyond the four corners of the order which is alleged to have been flouted nor should it enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged - No order or direction supplemental to what has been already expressed should be issued by the court while exercising jurisdiction in the domain of the contempt law -- Courts must act with utmost restraint before compelling the executive to create additional posts - In the instant case, the impugned direction of High Court for creation of supernumerary posts of Marine Assistant Radio Operator amounts to supplementing the initial order passed in the writ petition -- The issue is one of jurisdiction and not of justification - Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction does not require consideration in the instant case - An alternative direction had been issued by High Court in writ petition and appellants have complied with the same - They cannot be, therefore, understood to have acted in willful disobedience of the said order -- Order passed in contempt petition as well as impugned order passed in contempt appeal are set aside.

The respondents were engaged as Radio Operators

on contract basis in the Oil and Natural Gas Corporation Ltd. (Corporation). By a notification dated 08.09.1994 issued u/s 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, employment of contract labour in various works in the Corporation, including the work of Radio Operators was prohibited. Writ petitions were filed seeking a direction to the Corporation to treat the contract Radio Operators at par with the regular Marine Assistant Radio Operators. The stand of the Corporation, inter alia, was that with the advancement of technology there was no necessity for the service of Radio Operators. Ultimately, by order dated 2.8.2006 in W.P. No. 21518 of 2000, the single Judge of the High Court directed the Corporation to absorb the respondent-workers as Marine Assistant Radio Operator and, if there were no such posts, to give them the scale of pay as applicable to the Marine Assistant Radio Operators. The appeals of the Corporation were dismissed by the Division Bench of the High Court as also by the Supreme Court. Alleging non-implementation and disobedience of the order dated 2.8.2006 passed in W.P. No. 21518 of 2000 as affirmed by the orders in appeals, a contempt petition was filed before the High Court wherein the impugned direction for creation of supernumerary posts of Marine Assistant Radio Operator was made by the order dated 19.1.2012. The said order was affirmed by a Division Bench of the High Court by the impugned order.

Allowing the appeal, the Court

HELD: 1.1 The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacr s

to exercise the same with the greatest of care and caution. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the court. [para 15] [39-E-H; 40-A-C]

Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others **2002 (3) SCR 913 = (2002) 5 SCC 352,** *V.M.Manohar Prasad vs. N. Ratnam Raju and Another* **(2004) 13 SCC 610,** *Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others and Union of India and Others vs. Subedar Devassy PV* **2008 (3) SCR 1137 = (2006) 1 SCC 613 - relied on**

Air India Statutory Corporation and Others Vs. United Labour Union and Others **1996 (9) Suppl. SCR 579 = (1997) 9 SCC 377;** *Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors.* **2001 (2) Suppl. SCR 343 = (2001) 7 SCC 1 - cited.**

1.2 In the instant case, the direction of the High Court for creation of supernumerary posts of Marine Assistant Radio Operator in contempt jurisdiction cannot be countenanced. Not only the courts must act with utmost

restraint before compelling the executive to create additional posts, the impugned direction virtually amounts to supplementing the directions contained in the order of the High Court dated 02.8.2006. The alterative direction i.e. to grant parity of pay could very well have been occasioned by the stand taken by the Corporation with regard to the necessity of keeping in existence the cadre itself in view of the operational needs of the Corporation. [para 16] [40-E-G]

1.3 The issue is one of jurisdiction and not of justification. Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction is an aspect that does not require consideration in the instant case. Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 02.08.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in willful disobedience of the said order of the High Court. The second direction having been complied with by the appellants, the order dated 02.08.2006 passed in W.P. No. 21518 of 2000 stands duly implemented. Consequently, the order dated 19.01.2012 passed in the contempt petition as well as the impugned order dated 11.07.2012 passed in contempt appeal are set aside. [para 16] [41-C-F]

Case Law Reference:

1996 (9) Suppl. SCR 579	**cited**	**para 4**
2001 (2) Suppl. SCR 343	**cited**	**para 4**
2002 (3) SCR 913	**relied on**	**para 15**
(2004) 13 SCC 610	**relied on**	**para 15**
2008 (3) SCR 1137	**relied on**	**para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1816 of 2014.

From the Judgment and Order dated 11.07.2012 of the High Court of Madras in Contempt Appeal No. 2 of 2012.

Goolam E. Vahanvati. A.G., P.P. Rao, Krishnamurthy, V.N. Koura, Paramjeet Benipal, Aruna Mathur, Yusuf (for Arputham, Aruna & Co.), Santosh Krishnan, Deeptakirti Verma, V. Prabhakar, R. Chandrachud, Jyoti Prashar for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. Aggrieved by a direction of the Madras High Court in exercise of its contempt jurisdiction to create supernumerary posts, this appeal has been filed by the respondents in the contempt proceeding.

3. Shorn off unnecessary details the core facts that would need a recital are enumerated hereinbelow.

The respondents in the present appeal were engaged as Radio Operators on contract basis in the Oil and Natural Gas Corporation Ltd. (hereinafter referred to as "the Corporation"), a Public Sector Undertaking, inter alia, engaged in on-shore and off-shore oil and natural gas exploration. By a notification dated 08.09.1994 issued under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 employment of contract labour in various works in the Corporation, including the work of Radio Operators, was prohibited. A Writ Petition bearing No. 15211 of 1991 seeking a direction to the Corporation to treat the contract Radio Operators at par with the regular Marine Assistant Radio Operators was pending before the High Court at that point of time. Subsequently, the union representing 56 number of contract employees engaged as Radio Operators instituted another Writ Petition i.e. W.P. No. 1178 of 1996 seeking the same relief.

4. In *Air India Statutory Corporation and Others Vs. United Labour Union and Others*[1] this Court took the view that upon abolition of contract labour the persons engaged on contract basis became the employees of the principal employer and hence entitled to regularization under the principal employer. The said view has been subsequently dissented from, though prospectively, in *Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors.*[2]. Following the decision of this Court in *Air India Statutory Corporation and Others* (supra) the writ petitions were allowed by a learned Single Judge of the Madras High Court by Order dated 29.01.1997. The Letters Patent Appeal filed by the Corporation against the said order was dismissed. The matter was carried to this Court in S.L.P. (Civil) No.20951 of 1997 which was disposed on 12.1.1998 with the following operative direction.

> "Mr. V.R. Reddy, learned Additional Solicitor General appearing on behalf of the petitioner states that those of the 56 workmen who are found to be qualified in terms of the appropriate regulations, as in force at the relevant time, shall be absorbed as contemplated by the judgment in *Air India Statutory Corporation & Ors. vs. United Labour Union & Ors.* 1997 (7) SCC 377. In view of this statement the SLP does not survive and is disposed of."

5. Following the aforesaid order of this Court in the special leave petition the respondents herein were absorbed as "Junior Helpers" with effect from 29.1.1997 by an order dated 2.4.1998. Their pay was fixed at the bottom of the basic pay of Class IV employees of the Corporation. It may be noticed, at this stage, that the respondents being employees of the Southern Region of the Corporation were posted at Karaikal and Rajamundry stations.

1. (1997) 9 SCC 377.
2. (2001) 7 SCC 1.

6. It appears that thereafter a Committee was constituted by the Ministry of Petroleum & Natural Gas which recommended that the Corporation is bound to absorb all the contract Radio Operators who had the requisite qualification in the post of Marine Assistant Radio Operators with effect from 8.9.1994 and in the pay scale applicable to the said post as on 8.9.1994.

7. As the aforesaid recommendation of the Committee was not being given effect to, the present respondents instituted another proceeding before the High Court i.e. Writ Petition No. 21518 of 2000 seeking a direction for their absorption as Marine Assistant Radio Operators with effect from 8.9.1994. Specifically, it must be taken note of that in the aforesaid writ proceeding the Corporation had, inter alia, contended that there was no requirement of Marine Assistant Radio Operators in the Southern Region Business Centre (SRBC) or other regions of the Corporation as there were no adequate off-shore operations. It was also contended that on account of the upgraded technology available, there is also no necessity for the service of a Radio Operator as with the advancement of technology the users themselves were in a position to operate the system without the assistance of an operator.

8. By order dated 2.8.2006 the writ petition was disposed of with the following findings and operative directions:

> "32. Therefore, considering the entire facts and circumstances of the case in the light of the report of the committee, recommendation made by the Ministry of Petroleum and Natural Gas and the judgment of the Supreme Court in Air India Statutory Corporation case, cited supra, I am of the considered view that the absorption of the petitioners by the respondent corporation as Junior Helpers with the pay of Rs.2,282/- old basic bottom of Class IV cadre was not fair and proper and certainly not in strict compliance of the undertaking given by the respondent corporation before the Supreme Court. On the other hand, I am of the considered view that the petitioners are entitled to be absorbed as Marine Assistant Radio Operators.
>
> 33. In the result, the writ petition is allowed as prayed for. The respondents are directed to absorb the petitioners as Marine Assistant Radio Operators with effect from 8.9.1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6-1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits. If for any reason, there is no cadre of Marine Assistant Radio Operator or there are no sufficient posts are available in the cadre of Marine Assistant Radio Operators to accommodate all the petitioners, the respondents are directed to give "pay protection" to the petitioners and sanction them the scale of pay as applicable to the Marine Assistant Radio Operators as recommended by the Ministry of Petroleum and Natural Gas."

9. The aforesaid order dated 2.8.2006 was challenged by the Corporation in Writ Appeal No. 1290 of 2006 which was dismissed on 19.12.2006 with a direction to the Corporation to implement the order of the learned Single Judge dated 2.8.2006 within a period of four weeks from the date of receipt of a copy of the order. Two other writ petitions i.e. W.P. Nos. 27500 of 2006 and 27529 of 2006 seeking similar relief(s) were also allowed by a separate order of the learned Single Judge dated 4.4.2007. The aforesaid orders were challenged before this Court in Civil Appeal Nos. 765 of 2008 and 766-767 of 2008 which were heard alongwith Transfer Petition (C) No. 889 of 2007 which was filed by similarly situated persons. By order dated 30.10.2009 all the civil appeals and the transfer petition were dismissed by this Court with the following directions :

"We have heard the learned senior counsel appearing on behalf of the parties.

Learned counsel appearing for the parties have taken us to various documents and pleadings. On consideration of the totality of the facts and circumstances of this case, in our opinion, no case has been made out for our interference under our extraordinary jurisdiction under Article 136 of the Constitution of India. These appeals are accordingly dismissed.

However, as prayed for by the learned senior counsel appearing on behalf of the appellants, we direct the appellant Oil & Natural Gas Corporation to implement the orders within three months.

Transfer Petition (Civil) No. 889 of 2007

In view of our order passed in the Civil Appeals above-mentioned, no orders are necessary in the transfer petition. The transfer petition is disposed of."

10. Alleging non-implementation and disobedience of the order dated 2.8.2006 passed in W.P. No. 21518 of 2000 as affirmed by order dated 19.12.2006 in Writ Appeal No. 1290 of 2006 and order dated 30.10.2009 passed in Civil Appeal No.765 of 2008, Contempt Petition (C) No. 161 of 2010 was filed before the High Court wherein the impugned direction for creation of supernumerary posts of Marine Assistant Radio Operator was made by the order dated 19.1.2012. The said order has been affirmed by a Division Bench of the High Court by the impugned order dated 11.7.2002. Aggrieved, the present appeal has been filed.

11. At this stage, it may be necessary to take note of two other Contempt Petition Nos. 141 of 2010 and 343 of 2010 which had been instituted in the High Court against the similar order dated 4.4.2007 passed in Writ Petition Nos. 27500 and

27529 of 2006 which order had also been affirmed by this Court in the connected civil appeals i.e. Civil Appeal Nos.766-767 of 2008, as already noticed. Regard must also be had to Contempt Petition (C) No. 130 of 2010 filed before this Court by similarly situated persons in respect of the order dated 30.10.2009 passed in Transfer Petition (C) No. 889 of 2007.

12. Insofar as Contempt Petition (C) Nos. 141 and 343 of 2010 are concerned, the same has been dismissed by the High Court by its order dated 31.8.2010 holding that no case of commission of contempt is made out. Contempt Petition No. 130 of 2010 before this Court was ordered to be closed in view of the averments made in an affidavit dated 9.3.2011 filed on behalf of the Corporation. Paras 6 and 7 of the said affidavit would require to be taken note of and are being extracted below.

"6. I say that since there is no vacant post in the cadre of Assistant Marine Radio Operator in the Southern Region (to which region the Respondents in Civil Appeal Nos. 765-767 of 2008 before this Hon'ble Court belonged and to which region the Petitioners in the present Contempt Petition belong) and, no vacancy in the post of Assistant Marine Radio Operator in the Southern Region has arisen after the order and judgment dated 2.8.2006 of the Ld. Single Judge in Writ Petition No. 21518 of 2000, the respondents in the said Appeal could not be accommodated in the post of Assistant Marine Radio Operator. Consequently, until such vacancies arise and, in accordance with the direction issued by the Ld. Single Judge of the High Court (and upheld by this Hon'ble Court), Respondent No. 1took the following steps :

(i) deployed the respondents in Civil Appeal No. 765/ 2008, who formed a separate protected class, as Supernumerary Helpers in the scale of pay applicable to Assistant Marine Radio Operators so that they are not rendered i

(ii) gave "pay protection" to the said respondents for the pay drawn by Assistant Marine Radio Operator from the date of their absorption, i.e. 08.09.1994.

(iii) paid them the difference between the "protected pay" and the pay previously drawn by them as Junior Helpers from the date of their absorption on 08.09.1994.

7. I say that even as on date there is no vacancy in the post of Assistant Marine Radio Operator (Southern Region). However, since the Petitioners herein have sought to be treated at par with the Respondents in Civil Appeal No. 765 of 2008, Respondent No. 1 is prepared to, in order to give a quietus to the matter extend to the Petitioners the same treatment and benefits aforesaid extended to the Respondents in Civil Appeal No. 765 of 2008 with effect from the date of their absorption i.e. with effect from 18.2.1998, as has been prayed for by the Petitioners in the Writ Petition filed by them in the High Court of Judicature of Andhra Pradesh."

13. The question that arises in the present appeal, in the backdrop of the facts noted above, is whether the appellants who are the officers of the Corporation and had complied with the alternative direction contained in the order dated 2.8.2006 passed in Writ Petition (C) No. 21518 of 2000 would still be liable for commission of contempt and the only way in which the appellants can purge themselves of the contempt allegedly committed is by creation of supernumerary posts of Marine Assistant Radio Operators. An answer to the above question centres around the contours of the power of the Court while exercising its contempt jurisdiction.

14. We have heard Shri Goolam E. Vahanvati, learned Attorney General for the appellants and Shri P.P. Rao, learned senior counsel for the respondents.

15. The learned Attorney General has urged that the question of the very necessity of having/continuing the posts of Marine Assistant Radio Operators in the Corporation was a live issue in Writ Petition No. 21518 of 2000 as the Corporation had contended that the work requirement of the Corporation did not justify the continuation of the post in the cadre of Marine Assistant Radio Operators, particularly, in the SRCB where the Corporation was not engaged in any off- shore operation. It is urged that in the light of the stand taken by the Corporation, the option/alternative direction of granting parity of pay to the respondents was issued. It is not in dispute that the Corporation had complied with the said direction. In a situation where the operational requirements of the Corporation did not justify the retention of the posts of Marine Assistant Radio Operators any further, its officers cannot be faulted for not creating supernumerary posts of Marine Assistant Radio Operators and instead creating posts of Junior Helpers to accommodate the respondents and thereafter giving them protection/parity of pay in terms of the option granted by the High Court. The learned Attorney has further submitted that there being no direction for creation of posts of Marine Assistant Radio Operators in the order dated 2.8.2006 it was beyond the power of the learned Judge, hearing the Contempt Petition, to issue such a direction. The said error, being apparent, ought to have been corrected in the appeal filed before the High Court. The order of the Division Bench dated 11.7.2012 impugned in the present appeal is, therefore, open to interference in the present appeal.

14. On the other hand Shri P.P. Rao, learned senior counsel appearing for the respondents has contended that an obligation to create supernumerary posts of Marine Assistant Radio Operator is mandated by the very terms of the Order dated 02.08.2006 passed in Writ Petition No. 21518 of 2000. Shri Rao has contended that when supernumerary posts of Junior Helpers have been created and parity of pay with the higher post has been granted it is difficult to conceive why supernumerary posts of Marine Assistant [illegible]e

not created in order to fully comply with the Order of the High Court. It is also pointed out that it is evident from the provisions of the relevant Regulations governing the service conditions of the respondents i.e. Oil and Natural Gas Corporation Ltd. i.e. Modified Recruitment and Promotion Regulations, 1980, that had the respondents been absorbed as Marine Assistant Radio Operators they would have earned promotions under the Regulations which avenues stand closed due to their absorption in the post of Junior Helper. Shri Rao has also referred to the correspondence exchanged between the Corporation and the Ministry of Petroleum and Natural Gas, Government of India, which is available on record, to show that there existed/exists a cadre of Marine Assistant Radio Operator and the strength of the cadre depends on the necessity of the operations of the Corporation. The cadre strength is flexible depending on the job requirement, it is urged. Shri Rao, therefore, has contended that the action taken by the appellants in purported compliance of the Court's Order dated 02.08.2006 would still make them liable for contempt which can be purged only by creation of posts of Marine Assistant Radio Operator, as directed by the High Court.

15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are

explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, *Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others*[3], *V.M.Manohar Prasad vs. N. Ratnam Raju and Another*[4], *Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others*[5] and *Union of India and Others vs. Subedar Devassy PV*[6].

16. Applying the above settled principles to the case before us, it is clear that the direction of the High Court for creation of supernumerary posts of Marine Assistant Radio Operator cannot be countenanced. Not only the Courts must act with utmost restraint before compelling the executive to create additional posts, the impugned direction virtually amounts to supplementing the directions contained in the order of the High Court dated 02.8.2006. The alterative direction i.e. to grant parity of pay could very well have been occasioned by the stand taken by the Corporation with regard to the necessity of keeping in existence the cadre itself in view of the operational needs of the Corporation. If despite the specific stand taken by the Corporation in this regard the High Court was of the view that

3. (2002) 5 SCC 352.
4. (2004) 13 SCC 610.
5. (2008) 5 SCC 339.
6. (2006) 1 SCC 613.

the respondents should be absorbed as Marine Assistant Radio Operator nothing prevented the High Court from issuing a specific direction to create supernumerary posts of Marine Assistant Radio Operator. The same was not done. If that be so, the direction to create supernumerary posts at the stage of exercise of the contempt jurisdiction has to be understood to be an addition to the initial order passed in the Writ Petition. The argument that such a direction is implicit in the order dated 02.08.2006 is self defeating. Neither, is such a course of action open to balance the equities, i.e. not to foreclose the promotional avenues of the petitioners, as vehemently urged by Shri Rao. The issue is one of jurisdiction and not of justification. Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction is an aspect that does not concern us in the present case. Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 02.08.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in willful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants, we are of the view that the order dated 02.08.2006 passed in W.P. No. 21518 of 2000 stands duly implemented. Consequently, we set aside the Order dated 19.01.2012 passed in Contempt Petition No. 161 of 2010, as well as the impugned order dated 11.07.2012 passed in Contempt Appeal No.2 of 2012 and allow the present appeal.

R.P. Appeal allowed.

M/S BAND BOX PRIVATE LIMITED

v.

ESTATE OFFICER, PUNJAB & SIND BANK AND ANR.

(Civil Appeal No. 2878 of 2014)

FEBRUARY 25, 2014

[H.L. GOKHALE AND KURIAN JOSEPH, JJ]

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

Eviction of unauthorized occupants - Appellant in occupation of property in question since 26.3.1952 - Respondent-Bank becoming owner of it on 13.12.1978 - Notice u/s 106 of TP Act by Bank followed by proceedings to evict the appellant - Plea of appellant that it was protected under Delhi Rent Control Act - Order of eviction by Estate Officer of Bank - Confirmed by District Judge as well as single Judge and Division Bench of High Court - Held: Orders passed by Division Bench as well as by single Judge of High Court, District Judge, and Estate Officer are set aside -- Eviction proceedings initiated against appellant will stand set aside - However, appellant shall continue to pay Rs.1,80,000/- per month as rent as per order dated 6.8.2012, in place of the recorded rent of Rs.183 per month, for a period of 12 years with an annual increase of 10% as directed in the order - It is made clear that after 12 years, it will be open to respondents to take steps under Public Premises Act, if required - Transfer of Property Act, 1882 - s.106.

Ashoka Marketing Limited and another vs. Punjab National Bank and others **1990 (3) SCR 649 = (1990) 4 SCC 406;** *Dr. Suhas H. Pophale vs.Oriental Insurance Co. Limited* **2014 (2) SCALE 223;** *M/s Jain Ink Manufacturing Company vs. L.I.C.* **1981 (1) SCR 498 = (1980) 4 SCC 435,** *Kaiser-I-Hind Pvt. Limited andanother vs. National textile Corporation*

(Maharashtra North) Limited and others **2002 (2) Suppl. SCR 555 = (2002) 8 SCC 182 - referred to.**

Case Law Reference:

1990 (3) SCR 649	**referred to**	**para 5**
2014 (2) SCALE 223	**referred to**	**para 6**
1981 (1) SCR 498	**referred to**	**para 8**
2002 (2) Suppl. SCR 555	**referred to**	**para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2878 of 2014.

From the Judgment and Order dated 13.07.2012 of the High Court of Delhi at New Delhi in LPA No. 250 of 2012.

Harin P. Raval, Nikhil Goel, Marsook Bafaki, Naveen Goel for the Appellant.

Vikas Singh, Suruchii Aggarwal, Deepeika Kalia, Kapish Seth for the Respondents.

The following Order of the Court was delivered by

O R D E R

1. Leave granted.

2. We have heard Mr. Harin P. Raval, learned senior counsel in support of this appeal and Mr. Vikas Singh, learned senior counsel appearing for the respondents.

3. This appeal seeks to challenge the judgment and order dated 13.07.2012 passed by a Division Bench of the Delhi High Court in L.P.A. No.250/2012, whereby the Division Bench confirmed the order passed by the learned Single Judge as well as the orders passed by the District Judge and the Estate Officer. The appellant has been directed to be evicted under

these orders from the concerned premises situated at 18/90, Connaught Circus,New Delhi-110001.

4. The case of the appellant is that the appellant has been occupying these premises right from 26th March, 1952 and the respondent-Bank became owner of this property only on 31.12.1978. There were some initial notices issued to the appellant to vacate the premises, but ultimately it is the notice dated 15.11.1999 with which we are concerned in the present matter. It was the notice issued by invoking the provisions of Section 106 of the Transfer of Property Act. This was followed by the proceeding to evict the appellant which has led to the eviction order passed by the Estate Officer, and which has been confirmed, as stated above, all throughout.

5. Mr. Raval submits that the appellant had raised the point of not being covered under the Public Premises Act, 1971 at all stages. He has drawn our attention to the order passed by the Estate Officer, wherein it has been recorded that the appellant canvassed that the appellant's tenancy continued under the protection of Delhi Rent Control Act, and the respondents were not capable of terminating the tenancy by mere service of the notice. That submission was specifically rejected by the Estate Officer by relying upon the judgment of this Court in *Ashoka Marketing Limited and another vs. Punjab National Bank and others* reported in (1990) 4 SCC 406.

6. Mr. Raval submits that the said plea was reiterated before the District Judge, and it is reflected in paragraph 5 of the order of the District Judge. Thereafter, this plea has been raised before the learned Single Judge, and also in the Special leave petition before this Court. Mr. Raval has drawn the attention of this Court to the judgment in the case of *Dr. Suhas H. Pophale vs. Oriental Insurance Co. Limited* reported in 2014 (2) SCALE 223. In this judgment, to which one of us (H.L. Gokhale, J.) was a party, this Court has held that the Public Premises Act cannot be applied to the premises where the occupants have come in possession

application of the Act, i.e., prior to 16th September, 1958. In the circumstances, Mr. Raval submits that all these orders should be set aside, the appeal should be allowed and the eviction proceedings should be dismissed.

7. On the other hand, it was submitted by Mr. Vikas Singh, learned senior counsel appearing for the respondent-Bank that the appellant had raised at an intermediate stage the plea of not being covered under the Public Premises Act, and had subsequently dropped that plea. They had then relied upon guidelines and, therefore, the plea, which is sought to be raised at a second stage, cannot be allowed to be raised now on the ground of res judicata, as well as constructive res judicata. As far as this objection of Mr. Vikas Singh is concerned, inasmuch as the plea raised by Mr. Raval is based on a legal submission, we would not like the appellant to be denied the opportunity of raising the legal plea and, therefore, we do not accept this submission.

8. There are two other submissions raised by Mr. Vikas Singh. Firstly, he drew our attention to the fact that in Ashoka Marketing Limited (supra), there were two properties involved, namely, one that was of Ashoka Marketing Limited and the second was of M/s Sahu Jain Services Limited. Both the parties were occupying the premises concerned since 1.7.1958, i.e., prior to the date when the Public Premises Act became applicable, and in spite of that their submissions have been rejected by the Constitution Bench. This being the position, in his submission, the view taken by a Bench of two Judges in the case of *Dr. Suhas H Pophale*(supra) is erroneous. We have noted this submission of Mr. Vikas Singh. In paragraph 47 of the judgment in the case of Dr. Suhas H. Pophale, this Court has referred to the judgment in the case of M/s Jain Ink Manufacturing Company vs. L.I.C. reported in (1980) 4 SCC 435, and has observed that 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 in *M/s Jain Ink Manufacturing Company* (supra). The same holds good for the judgment rendered in *Ashoka Marketing Limited* (supra), and that being so, since those aspects were not gone into in the judgment of *Ashoka Marketing Limited* (supra), this Court has examined them in the case of *Dr. Suhas H. Pophale* (supra). This Court has specifically observed in paragraph 50 thereof that for a moment this Court was not taking any different position from the propositions in *Ashoka Marketing Limited* (supra). In fact, what was done was to clarify that the Public Premises Act will apply only in certain circumstances. That being so, this submission of Mr. Vikas Singh cannot be accepted.

9. He then referred us to a judgment of another Constitution Bench in the case of *Kaiser-I-Hind Pvt. Limited and another vs. National textile Corporation (Maharashtra North) Limited and others* (2002) 8 SCC 182, and particularly paragraphs 40, 42 and 65 thereof. Paragraph 40 of this judgment reads as follows:

> "40. Once the PP Eviction Act is enacted, then the Bombay Rent Act would not prevail qua the repugnancy between it and the PP Eviction Act. To the extent of repugnancy, the State law would be void under Article 254(1) and the law made by Parliament would prevail. Admittedly, the duration of the Bombay Rent Act was extended up to 31.3.1973 by Maharashtra Act 12 of 1970. The result would be from the date of the coming into force of the PP Eviction Act, the Bombay Rent Act qua the properties of the Government and government companies would be inoperative. For this purpose, language of Article 254(1) is unambiguous and specifically provides that if any provision of law made by the legislature of the State is repugnant to the provision of law made by Parliament, then the law made by Parliament whether passed before or after the law made by the legislatu[illegible]d

prevail. It also makes it clear that the law made by the legislature of the State, to the extent of repugnancy, would be void."

10. As seen from paragraph 40, quoted above, the judgment clearly says that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises Eviction Act. That aspect has not been contradicted in *Dr. Suhas H. Pophale's* case (supra). It also relies upon the judgment in *Ashoka Marketing Limited* (supra) which says that the Public Premises Act as well as the State Rent Control Laws are both referable to entries in concurrent list and they operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time frame. The judgment in *Dr. Suhas Pophale's* case accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrear of rent, but, not prior to 16.9.1958 when the Public Premises Act became applicable. Paragraphs 42 and 65 which are relied upon also do not deal with the aspect of retrospectivity and being protected under the welfare legislation. That being so, it is not possible to accept this submission of Mr. Vikas Singh.

11. For the reasons stated above, we allow this appeal and set aside the order passed by the Division Bench as well as by the Single Judge, by the District Judge, and the Estate Officer. The eviction proceedings initiated against the appellant will stand set aside.

12. Although, this appeal has been allowed in favour of the appellant, Mr. Vikas Singh has pointed out that when this appeal came up for consideration at an earlier stage, this Court had passed an order on 6.8.2012, that the appellant shall pay a sum of Rs.1,80,000/- per month as rent. Mr. Raval has taken instructions, and has very fairly stated that the appellant is aggreable to continue to pay this amount, though otherwise the recorded rent is only Rs.183/- per month. The appellant has

been paying this amount, as per the order passed by this Court on 6.8.2012 and shall continue to pay that amount, hereinafter by way of rent. Mr. Raval has however sought that the appellant shall pay this rent regularly, but it should get some protection, inasmuch as he is agreeing to pay this substantial higher amount. Mr. Vikas Singh has taken instructions and he states that the appellant will be allowed to continue in the premises, at least, for a period of 12 (twelve) years, provided the appellant pays the monthly rent regularly, with a rider that at the end of every financial year, the respondent-Bank will have the right to revise the rent by an increase of ten per cent. Mr. Raval agrees to the suggestion of Mr. Vikas Singh. Therefore, the next revision of rent will be from 1.4.2015. We record this understanding between the parties and though this appeal is allowed, the appellant will pay the rent of Rs.1,80,000/- per month till the end of 31.3.2015, whereafter the Bank will be entitled to revise the rent by ten per cent every year. In the event of any default in paying the monthly rent, the respondent-Bank will be entitled to take the appropriate proceedings. The 12 years period will be counted from 1.4.2013. We make it further clear that after the expiry of twelve years, it will be open to the respondents to take steps under the Public Premises Act, 1971, if required.

R.P. Appeal allowed.

BALDEV SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No. 503 of 2014)

FEBRUARY 26, 2014

[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]

Prevention of Corruption Act, 1988: s.13(2) - Demand of bribe for allocation of canal water - Money paid in the house of the accused - Conviction and rigorous imprisonment for 3 years by courts below - Held: The evidence established that the complainant had handed over to the appellant a sum of Rs.1000/- which was subsequently recovered from beneath the files - Formality of tallying the numbers on the currency notes was complied with, including the washing of the appellant's hands in Sodium Carbonate solution, leading to his unassailable implication - Courts below rightly noted that the complainant would have had no occasion to go to the house of the appellant unless he had been specifically called; and it was improbable for the complainant to be called to the home and not to the office, unless there was some ulterior motive, such as claim and receipt of the subject bribe - Appellant failed to show any contradiction or inconsistency in the statement of the complainant - Conviction upheld - However, in the peculiar circumstances of the case, that the appellant was 62 years of age, and already retired and, therefore, cannot indulge in corrupt practices, the sentence is reduced to two years Rigorous Imprisonment, but the fine is increased to Rs.10,000/- - Sentence/Sentencing.

The prosecution case was that the appellant made a demand of Rs.2000 from the complainant for granting an earlier and separate allocation of canal water for irrigation of his land. The deal was settled at Rs.1000. The trap was laid and the complainant paid the said amount

to the appellant in his house as demanded by him. The appellant was caught with the money. The courts below found the appellant guilty for committing offence under Section 13(2) of the Prevention of Corruption Act, 1988. The instant appeal was filed challenging the conviction.

Disposing of the appeal, the Court

HELD: The evidence established that the complainant had handed over to the appellant a sum of Rs.1000/- which was subsequently recovered from beneath the files. The formality of tallying the numbers on the currency notes was complied with, including the washing of the appellant's hands in Sodium Carbonate solution, leading to his unassailable implication. The courts below disbelieved the appellant's version, inter alia, that the currency notes were kept under the files by the complainant on his own volition without any demand being made in that regard by the appellant. The courts below also rightly noted that the complainant would have had no occasion to go to the house of the appellant unless he had been specifically called; and it was improbable for the complainant to be called to the home and not to the office, unless there was some ulterior motive, such as claim and receipt of the subject bribe. The complainant's turn to receive water would not have occurred before 1.10.2000, whereas, in fact, water was received much in advance of the previous practice on 28.6.2000. The appellant has not succeeded in showing any contradiction or inconsistency in the statement of the complainant. Culpability or innocence is always regulated by the evidence that is brought on record. In the peculiar circumstances of the case, that the appellant is 62 years of age, and has already retired and has been sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.5000/- and in default thereof, to further undergo Rigorous Imprisonment for a period of six mo[illegible]n

perspective the age of the appellant and that he is no longer in service and, therefore, cannot indulge in corrupt practices, the sentence is reduced to two years Rigorous Imprisonment, but the fine is increased to Rs.10,000/-, and on failure to pay the said amount, to further undergo Rigorous Imprisonment for an enhanced period of nine months. [Paras 4 to 6] [52-G-H; 53-A-D; 54-D, E-G]

Banarsi Dass vs State of Haryana **(2010) 4 SCC 450: 2010 (4) SCR 383;** *C.M. Girish Babu vs CBI , Cochin, High Court of Kerala,* **(2009) 3 SCC 779: 2009 (2) SCR 1021;** *A. Subair vs State of Kerala* **(2009) 6 SCC 587;** *M.K. Harshan vs State of Kerala* **(1996) 11 SCC 720 - Held inapplicable.**

Case Law Reference:

2010 (4) SCR 383	**Held inapplicable**	**Para 5**
2009 (2) SCR 1021	**Held inapplicable**	**Para 5**
(2009) 6 SCC 587	**Held inapplicable**	**Para 5**
(1996) 11 SCC 720	**Held inapplicable**	**Para 5**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 503 of 2014.

From the Judgment & Order dated 08.07.2013 of the High Court of Punjab & Haryana at Chandigarh in CRA No. 1526 of 2003

Govind Goel, Sanjoy Kr. Yadav, Ankit Goel (for Dr. Kailash Chand) for the Appellant.

Jayant K. Sud, AAG, Ujas Kumar, Jasleen Chahal (for Kuldeep Singh) for the Respondent.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted.

2. The Appellant has filed the present Special Leave Petition (now Appeal) in an endeavour to set aside the concurrent findings of the Courts below with regard to his conviction and sentence under Section 13(2) of the Prevention

of Corruption Act, 1988 (hereinafter 'the P.C. Act'). The Special Judge had convicted the Appellant, which came to be sustained by the High Court in terms of its impugned judgment dated 8.7.2013. Accordingly, the Courts below have concurrently found the Appellant guilty, and sentenced him to undergo Rigorous Imprisonment for a period of three years and to payment of a fine of Rs.5000/-, and in default thereof, to further undergo Rigorous Imprisonment for a period of six months.

3. According to the Prosecution, a complaint was received from Nishan Singh, an agriculturist who along with his family owned farm land in village Golewala, which, however, was at two separate places, but was being irrigated at the same time. Since this was obviously fraught with inconvenience, the Complainant wanted to have an earlier and separate allocation of canal water for the said two parcels of land. It was in regard to this request that the Appellant had demanded Rs.2000/- from the Complainant, and the matter was eventually "settled" at Rs.1000/-. The Complainant paid the said amount to the Appellant in his house, as demanded by him, but after alerting the Vigilance Authorities. These currency notes aggregating to Rs.1000/- were applied with Phenolphthalein Powder and were handed over to the Appellant in the presence of official/shadow witness, Jaskaran Singh, who was examined as PW4. Two other official witnesses also constituted the raid party.

4. We have perused the order of the Special Judge dated 11.8.2003, as well as the impugned order of the High Court dated 8.7.2013, both of which have gone into the minute details of the case, which exercise we do not consider necessary to replicate. Suffice it to say that the evidence establishes that the Complainant had handed over to the Appellant a sum of Rs.1000/- which was subsequently recovered from beneath the files. The formality of tallying the numbers on the currency notes was complied with, including the washing of the Appellant's hands in Sodium Carbonate solution, leading to his unassailable implication. The Courts below have disbelieved the Appellant's version, inter alia, that the currency notes had

been kept under the files by the Complainant on his own volition without any demand being made in that regard by the Appellant. The Courts below have also rightly noted that the Complainant would have had no occasion to go to the house of the Appellant unless he had been specifically called; and it was improbable for the Complainant to be called to the home and not to the office, unless there was some ulterior motive, such as claim and receipt of the subject bribe. It also appears that the Complainant's turn to receive water would not have occurred before 1.10.2000, whereas, in fact, water was received much in advance of the previous practice on 28.6.2000. The Appellant has not succeeded in showing any contradiction or inconsistency in the statement of the Complainant, who appeared as PW3 In this conspectus, we find no error in the impugned Judgment, which in turn affirms the Order of the Special Judge.

5. We are also not persuaded by the submissions of the learned Counsel for the Appellant that the decision of this Court in *Banarsi Dass vs State of Haryana* (2010) 4 SCC 450, is of any succour to him. The prosecution in that case failed to establish that the accused had demanded illegal gratification and contrary to what has been proved in the case in hand, the recovered money was found lying on the table, apparently on the unilateral volition of the complainant. Similarly, *C.M. Girish Babu vs CBI , Cochin, High Court of Kerala,* (2009) 3 SCC 779, is also of no assistance to the Appellant because the Court had concluded that the sum of Rs.1500/- was accepted by the Accused in that case believing it to be repayment of a loan taken from him by PW2, and it further held that prosecution failed to establish any demand of bribe/illegal gratification made by the Accused to the PW10, as PW10 did not support the story of the prosecution. This Court found the evidence of PW2 about the demand of bribe amount by the accused as inadmissible since the same was hearsay. A. Subair vs State of Kerala (2009) 6 SCC 587, has enunciated that the prosecution is required to prove that the accused in this genre

of cases had demanded and accepted illegal gratification. In A. Subair, the complainant was not examined rendering the factum of demand unproved. Interestingly, the entire case was based solely on the evidence of PW10, whose evidence was found to be lacking in quality, and , therefore, unreliable. In contrast, both the constituents of demand and acceptance stand proved beyond reasonable doubt in the case in hand. As early as in M.K. Harshan vs State of Kerala (1996) 11 SCC 720, this Court has opined that to bring home charges of bribery, the twin concomitants of 'demand' and 'acceptance' must be substantiated. In the afore-noted case, owing to conflicting versions and suspicious feature in the story of prosecution, the version of the Accused that the money was put in the drawer in his office without his knowledge was found probable. The Appellant Accused, therefore, was given benefit of doubt and thereby acquitted. It seems to us to be irrefutable that culpability or innocence is always regulated by the evidence that has been brought on record, therefore, multiplying previous decisions of this Court will be of no advantage to the Appellant. Discussing each of them will lead to making this judgment avoidably prolix.

6. In the particular circumstances of the case, we have noted that the Appellant is 62 years of age, and has already retired. As already mentioned, he has been sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.5000/- and in default thereof, to further undergo Rigorous Imprisonment for a period of six months. Keeping in perspective the age of the Appellant and that he is no longer in service and, therefore, cannot indulge in corrupt practices, we are inclined to reduce the sentence to two years Rigorous Imprisonment, but increase the fine to Rs.10,000/-, and on failure to pay the said amount, to further undergo Rigorous Imprisonment for an enhanced period of nine months.

7. The appeal is disposed of in the above terms.

D.G. Appeal disposed of.

JHAPTU RAM

v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 1223 of 2012)

FEBRUARY 26, 2014

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

Penal Code, 1860: s.302 - Murder - Altercation between the appellant and his son - Intervention by the deceased-victim and his mother staying next door - Gun shot fire by appellant at the deceased resulting in his death - Conviction u/s.302 by trial court, upheld by High Court - On appeal, held: Undoubtedly, it was a case wherein the deceased and his mother were called to intervene and pacify the matter - An altercation took place between the appellant and the deceased - No evidence to show that there was any prior intention of the appellant to kill the deceased - As per the medical and ocular evidence, there was only one gun shot fired by the appellant which proved to be fatal for deceased - More so, prosecution failed to marshal any evidence to show that the gun was in the hand of the appellant when the deceased entered his house - In such peculiar facts and circumstances of the case, conviction u/s.302 is set aside and appellant is convicted u/s.304 Part-I and awarded sentence of ten years.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1223 of 2014.

From the Judgment and Order dated 04.12.2009 of the High Court of Himachal Pradesh, Shimla in Criminal Appeal No. 104 of 2007.

T.V.S. Raghavendra Sreyas, Urmila Sirur for the Appellant.

Ajay Marwah, Pragati Neekhra for the Respondent.

The following Order of the Court was delivered

O R D E R

1. This criminal appeal has been preferred against the impugned judgment and order dated 4.12.2009 passed by the High Court of HImachal Pradesh at Shimla dismissing the Criminal Appeal No. 104 of 2007 and affirming the judgment and order of Fast Track Court, Mandi (H.P.) in Session Trial Nos. 32 of 2004 and 80 of 2005 by which and whereunder, the appellant stood convicted under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as the `IPC') and has been awarded life sentence alongwith a fine of Rs. 10,000/-, in default of payment of fine, to further undergo one year imprisonment.

2. Facts and circumstances giving rise to this appeal are as follows:

A. As per the prosecution, an altercation took place between the appellant and his son on 14.6.2004 at about 9.00 P.M. The daughter of the appellant named Shukari Devi called Devinder Kumar (deceased) and his mother Bhagti Devi (PW.1), who were the next door neighbour. Devinder Kumar (deceased) and Bhagti Devi (PW.1) reached the house of the appellant and some altercation took place between the appellant and the deceased. The accused fired at him and after receiving a gun shot injury, he fell down and died. The incident was witnessed by Bhagti Devi (PW.1) and Dina Nath (PW.3), son of accused/appellant. After hearing the noise of the gun shot other neighbours also reached the spot. An FIR was lodged at Police Station: Joginder Nagar on 15.6.2005 under Section 302 IPC and the appellant was arrested.

B. After investigation of the case, a chargesheet was filed and as the appellant denied his involvement, the trial commenced. After conclusion of the tri[illegible]n

the evidence of PW.1 and PW.3, the trial court convicted the appellant and sentenced as referred to hereinabove.

C. Aggrieved, the appellant preferred appeal before the High Court which has been dismissed vide impugned judgment and order dated 4.12.2009.

Hence, this appeal.

3. Shri T.V.S. Raghavendra Sreyas, learned counsel appearing on behalf of Ms. Urmila Sirur, learned Amicus Curiae, has submitted that the prosecution has not led any evidence to show that the offence committed by the appellant was pre-mediated. Nor it has been established by leading an evidence that after picking an altercation with the deceased, the appellant gone into the house and brought a gun. In this respect, there is no evidence on record and it is a case wherein the appellant could be convicted under Section 304 Part-I IPC.

4. Per contra, Shri Ajay Marwah, learned counsel appearing on behalf of the State, has opposed the appeal contending that as the court below has concurrently held that it is a case of simple murder, therefore conviction under Section 302 IPC to be upheld and it is not a case where the conviction may be converted into Section 304 Part-I IPC and sentence may be reduced.

5. We have considered the matter, undoubtedly, it was a case wherein the deceased and his mother Bhagti Devi (PW.1) had been called to intervene and pacify the matter. It is also clear from the evidence on record that an altercation took place between the appellant and the deceased. There is no iota of evidence to show that there was any prior intention of the appellant to kill the deceased. As per the medical and ocular evidence, there was only gun shot fired by the appellant which proved to be fatal for deceased. More so, the prosecution failed to marshal any evidence to show that the gun was in his hand when the deceased entered his house. In such peculiar

facts and circumstances of the case, we agree with the submissions advanced by Shri Sreyas, learned counsel for the appellant.

6. In these facts and circumstances of the case, we are of the considered view that the appeal deserves to be allowed partly. Hence, the conviction of the appellant is set aside under Section 302 IPC and is convicted under Section 304 Part-I IPC and award sentence of ten years. However, the amount of fine remains intact. With these observations, the appeal stands disposed of.

D.G. Appeal disposed of.

DALJIT SINGH GUJRAL & ORS.

v.

JAGJIT SINGH ARORA & ORS.

(Criminal Appeal Nos. 506-508 of 2014)

FEBRUARY 27, 2014

[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN, JJ.]

JUDGMENTS:

Application for correction of judgment - Scope of - Petition u/s 482 CrPC for quashing proceedings of a complaint case relating to medical negligence - Single Judge of High Court framing issue on the premise that patient died due to wrong treatment and medical negligence - Petition dismissed - Subsequently, on an application by complainant single Judge issuing orders to correct the words "dead" and "death" in the judgment as "the brink of death" - Held: It cannot be said that single Judge was merely correcting an accidental omission or typographical error - By correcting the judgment, the very foundation and the issue formulated, lost its sanctity - Single Judge cannot correct an issue which has been framed and answered - First issue framed is with regard to the "wrong treatment and consequential death of a patient" and it was that issue which was answered - Record does not contain any statement that the wife of complainant is no more - The entire thought process of single Judge centered round on an incorrect premise that, due to gross negligence on the part of appellants, wife of complainant died - Further single Judge has expressed the opinion so expressively in the judgment that it practically forecloses all defences available to parties, who are supposed to face trial - Judgment as well as the subsequent order would stand set aside - High Court directed to hear petition u/s 482 CrPC afresh- Code of Criminal Procedure, 1973 - s.482.

In a petition filed u/s 482 CrPC seeking to quash the proceedings for offences punishable u/ss 420/467/ 468/ 471/326/120-B IPC and s.15 of the Indian Medical Council Act arising out of a complaint of medical negligence, the single Judge of the High Court framed the issue on the premise that the patient died due to wrong treatment and medical negligence, and dismissed the petition. The complainant filed a petition for correction of certain omission/typographical errors in the judgment. The single Judge passed an order directing the Registry to make the correction, inter alia, that word "died" be read as "was brought to brink of death" and words 'dead' and 'death' be read as "the brink of death"

Allowing the appeals, the Court

HELD: 1.1 It cannot be said that the single Judge was merely correcting an accidental omission or typographical error. By correcting the judgment, the very foundation and the issue formulated, broken down and fell on the ground and the issue framed by the single Judge, lost its sanctity. The single Judge cannot correct an issue which has been framed and answered. The first issue framed is with regard to the "wrong treatment and consequential death of a patient" and it was that issue which was answered. Therefore, the application preferred by the respondents cannot be treated as an application for correcting accidental omission or typographical error, that too without notice to the appellants. This is a case of medical negligence. The record does not contain any statement that the wife of respondent No. 1 is no more. The entire thought process of the single Judge centered round on an incorrect premise that, due to the gross negligence on the part of the appellants, the wife of respondent No. 1 died. [para 12-13] [68-C-F, G-H]

1.2 Further the single Judge has opined so expressively in the judgment that it p s

all the defences available to the parties, who are supposed to face the trial. The single Judge, though ultimately indicated that the view is only a prima facie view, but a reading of the entire judgment, would show otherwise.The judgment cannot be sustained on any ground. Consequently, the judgment dated 16.11.2012 as well as the subsequent order 11.2.2013 passed in the application of respondent no. 1, would stand set aside. The High Court is directed to rehear the petition u/s 482 CrPC afresh. [para 14] [69-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 506-508 of 2014.

From the Judgment and Order dated 16.11.2012 and 11.02.2013 of the High Court of Punjab and Haryana at Chandigarh in Crl. Misc. No. M-25733 of 2011 and Crl. Misc. No. 7776 of 2013 in Crl . Misc. No. M-25733 of 2011 respectively.

P.S. Patwalia, Ashok K. Mahajan for the Appellants.

Jagjit Singh Arora (Respondent-In-Person).

The Judgment of the Court was delivered by

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

2. We are of the considered view, after hearing the senior counsel appearing for the Appellant and the party-in-person, that the judgment is vitiated by an error apparent on the face of the record, which goes to the very root of the matter in a case relating to medical negligence.

3. The Appellants herein approached the High Court of Punjab & Haryana under Section 482 of the Criminal Procedure Code (for short "Cr.P.C.") for quashing complaint Case No.7506/09/11 dated 9.6.2008 and the summoning order 26.7.2011 passed by the Court of Judicial Magistrate

(First Class), Chandigarh.

4. The Appellants herein are in the management of a hospital named, INSCOL Multispecialty Hospital, Chandigarh. On 1.8.2005, the wife of Respondent No.1, by name, Inderjeet Arora, approached Dr. Jayant Banerjee and, on his advice, she was referred to the above-mentioned hospital. She was admitted in the ICU by Dr. Jayant Banerjee and was attended by doctors of the hospital. Later, she was discharged from the hospital on 2.8.2005 on the request of son of Respondent No.1. On a total hospital bill of Rs.1,01,858/- a sum of Rs.30,000/- was paid and, for rest of the amount, a cheque was issued by Respondent No.1, husband of the patient. On 9.8.2005, the cheque was presented by the bankers of the hospital, but the same was dishonoured, which fact was brought to the notice of Respondent No.1 by the hospital authorities. Thereafter, the cheque was presented twice on 12.11.2005 as well as on 16.11.2005 but, on both occasions, the cheque was dishonoured. Later, a legal notice under Section 138 of the Negotiable Instruments Act, 1881, was issued to Respondent No.1 claiming the cheque amount. According to the Appellants, this annoyed Respondent No.1 and a complaint was filed against the doctors of the hospital before the Punjab Medical Council. The Medical Board met on 3.10.2006 and, after examining the complaint as well as the comments of the doctors, passed an order on the same date exonerating Dr. Jayant Banerjee holding that proper procedure was followed and there was no gross negligence on the part of the hospital authorities or the Doctors. Respondent No.1, after a lapse of two years, on 9.6.2008, filed a complaint under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, UT Chandigarh for registration of FIR against the Appellants for the commission of offence under various sections, including Section 15(2)(3) of the Indian Medical Council Act, 1956. The learned Judicial Magistrate, First Class, Chandigarh, on 13.6.2008 sent the complaint for registration as it was under Section 156(3) Cr.P.C. The said order was challenged by

filing Crl. Misc. Petition No.17013 of 2008 before the Punjab & Haryana High Court. The High Court vide its order dated 19.2.2009 quashed the FIR by granting liberty to Respondent No.1 to approach the Judicial Magistrate, First Class, Chandigarh. Before the Judicial Magistrate, First Class, Chandigarh, Respondent No.1 submitted that he did not want to press the complaint under Section 156(3) Cr.P.C., but requested that the complaint be treated as under Section 202 Cr.P.C. The learned Magistrate, entertaining the said request, passed the order dated 26.7.2011 and summoned the Appellants to face the trial for the offences punishable under Section 420/467/468/471/ 326/120-B IPC and under Section 15 of the Indian Medical Council Act.

5. Aggrieved by the summoning order, as already stated, the Appellants preferred Crl. Misc. No.M-25733 of 2011 before the High Court for quashing the complaint Case No.7506/09/ 11. The High Court vide impugned order, dismissed the Crl. Misc. Petition. Later, Respondent No.1 filed an application being Crl. Misc. No.7776 of 2013 in Crl. Misc. No.M-25733 of 2011, requesting the Court to carry out the correction of the judgment praying that the word "death" or "died" be stated to be read as "brink of death". Review Petition was allowed by the High Court vide its order dated 11.2.2013, without notice to the appellants. Those orders, as already indicated, are under challenge in these appeals.

6. We heard Shri P.S. Patwalia, learned senior counsel for the Appellants, as well as Shri Jagjit Singh Arora, who appeared in person. Shri Patwalia submitted that the judgment as well as the order in the review petition is vitiated by serious error on the face of the record and liable to be set aside and the High Court be directed to rehear the matter in accordance with law. Respondent No.1, the party- in-person, on the other hand, submitted, on facts as well as on law, that the judgment and the order in the review petition are unassailable and, therefore, the matter could be examined by this Court on merits.

7. We have gone through the main judgment and the order passed in the review petition in their entirety. The learned Single Judge of the High Court while deciding the case formulated two questions , which read as follows :-

> "1. Whether the Managing Director and the Director, being administrators of the Hospital can be made criminally liable and prosecuted under the provisions of the Indian Penal Code and for having appointed unqualified doctor which resulted into wrong treatment and consequential death of a patient and can they claim immunity from prosecution for the offences in which they have been summoned in the present complaint?
>
> (emphasis supplied)
>
> 2. Whether the offences of cheating, tampering with the documents and causing grievous hurt are made out in conspiracy with each other?

8. On the first point, after going through the facts in detail and after hearing the parties, the learned Single Judge concluded as follows :

> "In the present case, Petitioner Nos.1 and 2 being Managing Director and Director are directly criminally liable and their liability stems from failure to use reasonable care in the maintenance of safe and adequate facilities and equipment i.e. ventilator which was not available at the time when the patient was in need. Needless to say, it is the duty of the petitioner No.1 and 2 to select and retain only competent physician/doctor and medical supporting staff. But in this case, they had retained petitioner no.3 who is an unqualified doctor. It is the duty of the petitioner nos.1 and 2 to oversee all persons who practice medicine within its faculty and also owe duty to ensure quality of health care servi[illegible]e,

there is a glaring failure on the part of petitioner nos.1 and 2 to retain competent and qualified doctors and equipping the facility. In the present case, the standard of negligence, breach of duty, causation and damage is no different than in any other case of forming negligence. Hence, for that reason, petitioners are directly liable for the injury caused to the patient because the doctor in question was not having State Medical Council licence to practice medicine as per the Medical Council of India Act, 1961 and Medical Council of India Rules under which Medical Council of India certifies the doctors/physicians and regulate competency and professional standards. There is a clear failure on the part of petitioner nos.1 and 2 to evaluate the qualification of petitioner no.3 who has been inefficient to adequately determine his competency. Since there has been breach of duty by petitioner nos.1 and 2, they are prima facie responsible for injury resulting from that breach/ incompetence as well as in forging the documents. There is a clear failure to check the credentials and employment history of petitioner no.3."

On the second question, after referring to the various statements made by Dr. Sudhir Saxena and the evidence of complainant (CW9) and also referring to the invoices CW-9/2 and CW-9/12, the learned Single Judge concluded as follows:

"This prima facie proves forgery and cheating on the part of the petitioners. The documentary evidence prima facie proves that Dr. N.P. Singh never visited the hospital and the record of the hospital has been manipulated to save themselves. There is a clear conspiracy between the petitioners and Dr. Jayant Banerjee for fleecing money. The principles of law laid down in *Jacob Mathew* (supra) and *Kusum Sharma* (supra) are not applicable in the present case.

In view of the above discussion, this Court does not find any illegality or perversity in the impugned summoning

order. It is well settled law that while summoning an accused, the trial Court is not required to give detailed reasons, only prima facie application of mind is a necessity. In the present case, the learned trial Court has passed a reasoned order for summoning the petitioners."

9. We notice that on reaching those conclusions, as already indicated, the very first issue framed by the learned Single Judge was that the patient died due to wrong treatment and medical negligence. Learned Single Judge was examining prima facie the issue of medical negligence which resulted in the death of the patient. The entire approach of the learned Single Judge while entering a finding on the two questions framed was that due to medical negligence, the patient died. The said fact is reflected in the whole gamut of the judgment. In one portion of the judgment, the learned Single Judge has stated as follows :

"The condition of Mrs. Arora extremely deteriorated and she had to remain hospitalized in ICU of Fortis Hospital for about 2 months and thereafter, she was shifted to PGI, Chandigarh, where she remained admitted for one month. Ultimately, she died."

Later, the learned Single Judge also opined as follows :-

"The hospital authorities had employed unqualified doctors in ICU which resulted into death of Mrs. Arora in spite of best efforts for shifting to other hospital, like Fortis and PGI. Initial wrong treatment in the INSCOL Hospital where the unqualified doctors were employed resulted into death of respondent no.1's wife which certainly amounts to an offence under the provisions of the Indian Penal Code."

10. We, therefore, notice that the entire reasoning of the learned Single Judge was centered round the fact that he was dealing with a medical negligence case in which the patient died. In fact, the very question framed b s

to the death of the patient. The learned Single Judge, as already indicated, finally dismissed the petition filed by the Appellants on 16.11.2012.

11. The Respondents herein then preferred Crl. Misc. Application No.7776 of 2013 praying for correcting some omission/typographical error in the judgment. The learned Single Judge entertained that application and expressed the view that no notice need be sent to the non- applicants/ appellants since the application is only for the correction of accidental omission/typographical errors crept in the judgment dated 16.11.2012. The learned Single Judge opined that the Court has the inherent power to correct the typographical/clerical mistake brought to the notice of the Court. The learned Single Judge, therefore, passed the following order on 11.2.2013 :

> "Registry is directed to make following corrections and put up a note at the end of the judgment in the shape of corrigendum so that the same may be read as part of the judgment dated 16.11.2012:
>
> "1. The word "died" at page No.3 be read as "was brought to brink of death."
>
> 2. The word "death" be read as "condition to brink of death" at page nos.3, 7 and 16 and where the word "dead" or "death" appears in the judgment, it should be as "the brink of death".
>
> 3. "Grewal" be read as "Gujral" at page no.5.
>
> 4. "rectified" be read as "ratified" at page no.6.
>
> 5. "Medical Council" be read as "Chandigarh Police" at page No.10.
>
> 6. "Section 14(2)" be read as "Section 15(2a)" at page no.11.

> 7. "and mind of" be read as "behind" at page no.12 and 22.
>
> 8. "nervous centre" be read as "nerve centre" at page no.13.
>
> 9. "Faculty" be read as "Facility" on Page No.19,
>
> 10. "Dr. N.P. Singh" be read as "Dr. Sudhir Saxena" at page 24."

12. We do not agree that the learned Single Judge was merely correcting an accidental omission or typographical error. By correcting the judgment, the very foundation and the issue formulated, broken down and fell on the ground and the issue framed by the learned Single Judge, lost its sanctity. The learned Single Judge cannot correct an issue which has been framed and answered. As already indicated, the first issue framed is with regard to the "wrong treatment and consequential death of a patient" and it was that issue which was answered, then we fail to see how the application preferred by the Respondents for review can be treated as an application for correcting accidental omission or typographical error, that too without notice to the appellants herein.

13. We are dealing with the case of medical negligence and we wonder whether this case borders on judicial negligence or the negligence of the parties to point out that the issue was wrongly framed. Pleadings of the parties nowhere state that the patient is dead. Learned Single Judge, it is seen, has framed two issues, after perusing the records and after hearing the arguments of the learned counsel for the parties. When we peruse the records, as already stated, we do not find any statement that the wife of Respondent No. 1 is no more. The entire thought process of the Judge centered round on an incorrect premise that, due to the gross negligence on the part of the appellants, the wife of Respondent No. 1 died.

14. We may also further indicate that the learned Single Judge has expressed the opinion so expressively in the judgment which practically forecloses all the defences available to the parties, who are supposed to face the trial. The learned Single Judge, though ultimately indicated that the view is only a prima facie view, but a reading of the entire judgment, it would show otherwise. Judgment cannot be sustained on any ground. Consequently, the judgment dated 16.11.2012 as well as the subsequent order 11.2.2013 passed in the review petition, would stand set aside. The High Court is directed to rehear Crl. Misc. Petition No.M-25733 of 2011 afresh.

15. The Appeals are, accordingly, allowed.

R.P. Appeals allowed.

CHETRAM

v.

STATE OF UTTARAKHAND

(Criminal Appeal No. 543 of 2014)

MARCH 04, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

PENAL CODE, 1860:

s.302 r/w s.34 - Murder - Two accused - One of them stabbed the victim resulting into his death - Conviction by courts below of both - Plea of appellant that no role was attributed to him in the crime - Held: No role was assigned to appellant in FIR or in statement u/s 161 by solitary eye-witness - His testimony before court stating that appellant caught hold of victim is an improvement over his statement in FIR and u/s 161 CrPC - This creates a suspicion about overt act attributed to appellant - His involvement in the incident remains doubtful - Accordingly, appellant is entitled to benefit of doubt and, as such, acquitted.

The appellant along with another was prosecuted for the murder of the brother of PW-1. In the written report, PW-1 stated that when the deceased was selling guavas on the roadside, A-1 and A-2/appellant reached there. A-1 stabbed the deceased and thereafter both of them fled away. PW-3 and PW-4 saw both the accused fleeing from the scene. The trial court convicted and sentenced both the accused u/s 302/34 IPC. The High Court affirmed the conviction and sentence.

In the instant appeal, it was contended for the appellant that as the deposition of sole eye-witness, PW-1, in court was an improvement upon the information recorded in FIR and his statement made u/s 161 CrPC

wherein he attributed no role to appellant, his conviction was liable to be set aside.

Allowing the appeal, the Court

HELD: 1.1 PW2 and PW3 have not seen the occurrence but have witnessed accused persons fleeing away after the occurrence. Therefore, the solitary eye-witness to the occurrence is PW1 and his testimony in court is an improvement on the version given by him in the FIR in which he has not attributed any overt act to accused No.2 in the attack made on the deceased during the occurrence. Further, no role was assigned to accused no. 2 by PW1 in his statement given u/s 161 Cr.P.C. before the Investigation Officer. For the first time in his deposition before the court he has come out with the version that accused No.2 caught hold of the deceased while the attack was made by accused No.1 on him during the occurrence. Thus, there is a lurking suspicion so far as the overt act of accused No.2 is concerned. It is difficult to place any reliance on the testimony of PW1 as regards the involvement of the appellant in the incident. [para 11] [75-G-H; 76-A-C]

Anil Prakash Shukla vs. Arvind Shukla **2007 (5) SCR 1053 = (2007) 9 SCC 513;** *Idrish Bhai Daudbhai vs. State of Gujarat* **2005 (1) SCR 885 = (2005) 3 SCC 277; and** *Baital Singh v. State of U.P.* **(1990 Crl. L.J. 2091) - relied on.**

1.2 Though the prosecution, by adducing medical evidence, has established that the deceased died of homicidal violence, the involvement of the appellant in the said incident remains doubtful and the benefit of doubt has to be given to him in the circumstances. Accordingly, the conviction and sentence imposed on the appellant-accused No.2 are set aside and he is acquitted of the charge. [para 13-14] [76-E-F]

Case Law Reference:

2007 (5) SCR 1053	**relied on**	**para 11**
2005 (1) SCR 885	**relied on**	**para 11**
1990 Crl. L.J. 2091	**relied on**	**para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 543 of 2014.

From the Judgment and Order dated 09.07.2013 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 176 of 2010.

Kamini Jaiswal, Shilpi Dey, Krishna Tiwari for the Appellant.

Abhishek Atrey, Babita Tyagi for the Respondent.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

2. This appeal is preferred against the judgment of the High Court of Uttarakhand at Nainital in Criminal Appeal No.176 of 2010.

3. The present appellant was appellant No.2 in Criminal Appeal No. 176 of 2010 and he along with appellant No.1 therein Ganga Ram, was tried in Sessions Trial No.1 of 2008 on the file of Sessions Judge, Pauri Garhwal for the alleged offence under Section 302 read with Section 34 IPC and they were found guilty of the charge and convicted and sentenced each to undergo imprisonment for life and to pay a fine of Rs.50,000/- each and in default to undergo imprisonment for 5 years. Aggrieved by the conviction and sentence both the accused preferred appeal in Criminal Appeal No.176 of 2010 and the High Court by judgment dated 9.7.2013 dismissed the appeal. Challenging the conviction and sentence appellant/ accused No.2 Chetram has preferred the present appeal.

4. The case of the prosecution in b

Dharam Singh and deceased Udairaj are sons of PW5 Sohan Singh. Accused No.1 Ganga Ram is the son of Rampal, the brother of PW5 Sohan Singh. Accused No.2 Chetram is brother-in-law of Ganga Ram. Accused No.2 Chetram had come to the house of Accused No.1 Ganga Ram about 10 days prior to the occurrence. PW5 Sohan Singh's family was not in talking terms with the family of accused No.1 Ganga Ram. On 4.9.2007 Dharam Singh and his brother Udairaj who are residents of Meerapur Modiwala village had gone to New Colony, Kalagarh and Udairaj was selling guavas on the side of road near the motor-cycle mechanic shop and PW1 Dharam Singh was selling guavas on other side of the road near the bank. In the afternoon at 1.30 p.m. both the accused came there and while accused No.2 Chetram caught hold of Udairaj, accused No.1 Ganga Ram stabbed him with knife. On seeing this PW1 Dharam Singh ran towards them and both the accused fled away. PW2 Danwari Lal and PW3 Balwant saw the accused persons fleeing away from the occurrence place. Blood was oozing out from the injury on the left thigh of Udairaj and PW1 Dharam Singh took him to the hospital but Udairaj died on the way. PW1 Dharam Singh lodged the complaint in writing at 2.20 p.m. in FIR Ka-1 in Police Station Kalagarh. On the said complaint chickreport Ex.Ka-18 was prepared registering the case under Section 302 IPC. Ex. Ka-7 is the relevant entry in genral diary. Inquest was conducted in the presence of Panchayatdars - and Ex. Ka-11 Inquest Report was prepared and the body was sent for post-mortem. Blood soaked earth and sample earth were taken from the occurrence place under Ex.Ka-17 and Ex.P-8 is the spot map.

5. PW4 Dr. J.C. Dhyani conducted autopsy on the body of Udai Raj at 3.00 p.m. on 5.9.2007 and found the following ante-mortem injuries:

> "(1) an elliptical shaped incised wound of the size 8 cm length x 4 cm width at 3 cm depth over middle part of front of left thigh, about 15 cm above left knee, the wound is reddish in colour, clotted blood present underling soft tissues, muscles and great vascular blood vessels are injured.
>
> (2) Another incised wound, elliptical shaped, of size 5 cm length x 1 cm width over back of the left elbow, the wound is superficial deep only."

He expressed opinion that death has occurred on account of shock and hemorrhage due to excessive bleeding as a result of ante-mortem injury No.1 and issued Ex.Ka-4 post-mortem certificate.

6. The investigation officer seized blood stained trouser of deceased Udairaj under Ex.Ka-3 and sent the other articles for examination at the forensic laboratory. He also recovered the knife on 16.10.2007 under recovery Memo Ex. Ka-5. He completed the investigation and filed Ex.Ka-10 charge-sheet against both the accused.

7. In order to prove the case prosecution examined PW1 to PW9 and marked the documents. No witness was examined on the side of the defence. The accused were questioned under Section 313 Cr. P.C. and their answers were recorded. The trial court found both the accused guilty of the charge and sentenced them as narrated above. Both the accused preferred appeal and the High Court dismissed the appeal by confirming the conviction and sentence imposed on them. Challenging the conviction and sentence appellant No.2/accused No.2 Chetram alone has preferred this appeal.

8. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant, would take us to the First Information Report as also the deposition of the complainant as PW-1, pointing out the improvements and inconsistencies contained therein. The learned counsel would contend that the complainant in his complaint as well as in his statement given before the Investigation Officer has not assigned any role to accused No.2 Chetram in the attack made on the deceased during the occurrence, whereas at the trial he has deposed that accused No.2 Chetram caught hold of Udairaj while accused No.1 Ganga Ram inflicted stab injuries [illegible]e

can be placed on the testimony of the said witness as regards the involvement of the appellant herein in the occurrence. Per contra the learned counsel appearing on behalf of the respondent would contend that though discrepancy exist in the testimony of the complainant vis-a-vis the FIR, there is no reason to discard the evidence of the eye-witness who has proved the prosecution case as against the appellant.

9. The occurrence took place at about 1.30 p.m. on 4.9.2007 and the FIR came to be lodged at 2.20 p.m. on the same day. The distance between the occurrence place and the Police Station is said to be half a kilometer. The complainant PW1 Dharam Singh is the brother of deceased Udairaj and he alone has witnessed the occurrence. In his complaint FIR Ex.Ka-1 he has stated as follows:

> "On 4.9.2007, we were selling Guavas on hand-carts in New Colony, Kalagarh. At that time Ganga Ram son of Rampal resident of Meerapur Modi who is son of my uncle (chacha) and one Chet Ram singh son of Ram Charan Singh who is resident of Kalaratan Pur, Pakwada, Police Station Moradabad, both of them had come to the Kalagarh market and Gangaram had stabbed my brother Udairaj with knife at 1.30 p.m. in the afternoon at New Colony Market, Kalagarh, and thereafter, they had fled away."

10. In the above complaint no role was assigned to accused No.2 Chetram in the attack made on Udairaj during the occurrence. During investigation PW-1 Dharam Singh was examined by investigation officer and in that statement also PW1 Dharam Singh has not stated that accused No.2 Chetram caught hold of his brother Udairaj during the occurrence. In fact during cross examination PW1 Dharam Singh has admitted the same.

11. During trial, in his testimony as PW1, Dharam Chand has stated that when he and Udairaj were selling guavas on the road side, he saw both the accused surrounding his brother Udairaj and accused No.2 Chetram had got hold of Udairaj and

accused No.1 Ganga Ram inflicted stab injuries on Udairaj with knife and when he ran towards them both the accused fled away. PW2 Banwari Lal and PW3 Balwant have not seen the occurrence but have witnessed accused persons fleeing away after the occurrence. Hence the solitary eye-witness to the occurrence is PW1 Dharam Singh and his testimony in court is an improvement on the version given by him in the FIR in which he has not attributed any overt act to accused No.2 Chetram in the attack made on Udairaj during the occurrence. Further, no role was assigned to accused No.2 Chetram by Dharam Singh in his statement given under Section 161 Cr.P.C. before the Investigation Officer. For the first time in his deposition before the court he has come out with the version that accused No.2 Chetram caught hold of Udairaj while the attack was made by accused No.1 Ganga Ram on him during the occurrence. We have a lurking suspicion in our mind so far as the overt act of accused No.2 Chetram is concerned. It is difficult to place any reliance on the testimony of PW1 Dharam Singh as regards the involvement of the appellant herein in the incident.

12. The fact situation bears great similarity to that in *Anil Prakash Shukla vs. Arvind Shukla* (2007) 9 SCC 513; *Idrish Bhai Daudbhai vs. State of Gujarat* (2005) 3 SCC 277; and *Baital Singh v. State of U.P.* (1990 Crl. L.J. 2091).

13. Though the prosecution has established that Udairaj died of homicidal violence by adducing medical evidence the involvement of the appellant Chetram in the said incident remains doubtful and the benefit of doubt has to be given to him in the circumstances stated above.

14. In the result this appeal is allowed and the conviction and sentence imposed on the appellant Chetram/accused No.2 are set aside and he is acquitted of the charge. He is directed to be released from the custody forthwith unless required otherwise.

R.P. Appeal allowed.

REGISTRAR GENERAL, HIGH COURT OF MADRAS
v.
R. GANDHI & ORS.
(Special Leave Petition (C) Nos. 892-893/2014)

(MARCH 5, 2014)

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

CONSTITUTION OF INDIA, 1950: Article 217 - Appointment of High Court Judge - Writ petition seeking direction to Union of India and Supreme Court Collegiums to return the list of 12 persons comprising of ten Advocates and two District Judges for consideration by the collegiums of Supreme Court for appointment as Judges of the Madras High Court on the ground of non-suitability - Maintainability of - Held: The writ petitioners took a premature step by filing writ petitions seeking a direction to Union of India to return the list sent by the collegium of the Madras High Court without further waiting its consideration by the Supreme Court collegium - The fact-situation is that even after the President of India accepts the recommendations and warrants of appointment are issued, the Court is competent to quash the warrant - In such a situation, the writ petitioners or the members of the Bar could approach the Chief Justice of India; or the Law Minister - But instead of resorting to such a procedure, the writ petitioners had adopted an unwarranted short-cut knowing it fully well that on the ground of the suitability, the writ petitions were not maintainable.

JUDICIARY: Judicial Appointments - Guiding factors - Discussed.

JUDICIAL REVIEW: Judicial Appointments - Held: Judicial review is permissible only on assessment of eligibility and not on suitability.

The collegium of the Madras High Court consisting of the Chief Justice and two senior most Judges recommended a list of 12 persons comprising of ten advocates and two District Judges for consideration by the collegium of Supreme Court for appointment as Judges of the Madras High Court. The said list was forwarded to the Ministry of Law and Justice, Government of India, the Supreme Court of India as well as to the Government of Tamil Nadu as required under the law.

The respondent filed a writ petition before the Madras High Court seeking a direction to the Union of India and the Supreme Court collegium to return the said list as the recommendations therein were not suitable as per the assessment of the respondent and other members of the Bar for elevation. The Division Bench of the Madras High Court entertained the writ petition and passed the orders dated 8.1.2014 and 9.1.2014. In the first order, an interim direction was issued directing the Ministry of Law and Justice, Government of India to maintain the status quo, while the order dated 9.1.2014 restrained the Government of Tamil Nadu from making any recommendation in this regard and further to maintain the status quo till 21.1.2014. The Madras High Court through Registrar General filed the instant special leave petition. The Supreme Court on 13.01.2014 noted the submission that one of the Sitting Judge of Madras High Court entered into the court room wherein the writ petition was being heard and made certain suggestions to the Bench hearing the matter and as a result there was commotion in the court room and no conducive atmosphere to proceed further with the matter. The Supreme Court restrained the High Court to proceed further with the matter and vacated the interim order passed by the High Court to maintain status quo regarding the process of the recommendations for the reason that it was merely a recom

said recommendation has to be filtered at various levels.

Disposing of the special leave petitions, the Court

HELD: 1. The question of an effective representation on the Bench and the qualitative assessment of elevations are not only to be governed by the magnitude of the practice of a lawyer or only his social or legal background. These are factors to be considered alongwith the other qualities of intellect and character including integrity, patience, temper and resilience. The wisdom and legal learning of a particular individual coming from a particular social background may have leanings and individual judges are not un-afflicted by their notions of social, economic and political philosophy, but such matters fall within the realm of suitability to be considered by the collegium making recommendations or accepting the same for appointment as a Judge. The issue of a broad representation has also to be looked into from the point of view that it is necessary to ensure that a more representative Bench does not become a less able Bench. Appointments cannot be exclusively made from any isolated group nor should it be pre-dominated by representing a narrow group. Diversity therefore in judicial appointments to pick up the best legally trained minds coupled with a qualitative personality, are the guiding factors that deserve to be observed uninfluenced by mere considerations of individual opinions. It is for this reason that collective consultative process has been held to be an inbuilt mechanism against any arbitrariness. [Paras 11, 12] [88-G-H; 89-A-E]

2. The conduct of a Sitting Judge who entered in the court room was unexpected, uncharitable and ungenerous, and to say the least it was indecorous. In ordinary life such incidents are not reviewed with benevolence or generosity but in view of a larger constitutional issue of the justiciability of the cause it is

held to be not necessary to respond to such unusual circumstances. Additionally, the Judge was not made a party to the proceedings by the Division Bench of the High Court before it nor the oral prayer to that effect is accepted by this court. The exceptional personal conduct of the Judge does not require any judicial response for investigating the unusual circumstances and scrutinising the same as it is not necessary to decide the issue at hand which can be otherwise disposed off in the manner as indicated. The Judge may have found himself caught in a conflict of class or caste structure and it appeared that matured patience might have given way to injure rules of protocol. Such aspects may require a more serious judicial assessment if required in future and therefore this question is left entirely open. [Paras 13 and 14] [89-F-H; 90-A-D]

Supreme Court Advocates-on-Record Assn. v. Union of India **(1993) 4 SCC 441: 1993 (2) Suppl. SCR 659 ;** *Special Reference No.1 of* **1998 7 SCC 739; 1998 (2) Suppl. SCR 400;** *Mahesh Chandra Gupta v. Union of India* **(2009) 8 SCC 273: 2009 (10) SCR 921;** *C. Ravichandran Iyer v. Justice AM. Bhattacharjee & Ors.* **(1995) 5 SCC 457: 1995 (3) Suppl. SCR 319 - relied on.**

3. It is apparent that judicial review is permissible only on assessment of eligibility and not on suitability. It is not a case where the writ petitioners could not wait till the maturity of the cause i.e. decision of the collegium of this Court. They took a premature step by filing writ petitions seeking a direction to Union of India to return the list sent by the collegium of the Madras High Court without further waiting its consideration by the Supreme Court collegium. Even after the President of India accepts the recommendations and warrants of appointment are issued, the Court is competent to quash the warrant. In such a fact-situation, the writ petitio[illegible]s

of the Bar could approach the Chief Justice of India; or the Law Minister, but instead of resorting to such a procedure, the writ petitioners had adopted an unwarranted short cut knowing it fully well that on the ground of the suitability, the writ petitions were not maintainable. [Paras 20, 21] [95-E-G; 96-B-C]

Shri Kumar Padma Prasad v. Union of India & Ors. **AIR 1992 SC 1213: 1992 (2) SCR 109 ;** *B.R. Kapur v. State of Tamil Nadu & Anr.* **AIR 2001 SC 3435: 2001 (3) Suppl. SCR 191 - relied on.**

Case Law Reference:

1993 (2) Suppl. SCR 659	**Relied on**	**Para 1**
1998 (2) Suppl. SCR 400	**Relied on**	**Para 1**
2009 (10) SCR 921	**Relied on**	**Para 3**
1995 (3) Suppl. SCR 319	**Relied on**	**Para 17**
1992 (2) SCR 109	**Relied on**	**Para 20**
2001 (3) Suppl. SCR 191	**Relied on**	**Para 20**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) Nos. 892-893 of 2014.

From the Judgment and Order dated 08.01.2014 of the High Court of Madras in MP No. 1/2014, WP No. 375/2014 dated 09/01/2014 in MP No. 1/2014, WP No. 375/2014.

WITH

T.C. (C) No. 31 of 2014.

T.C. (C) No. 29 & 30 of 2014.

Mohan Parasaran, SG, G.E. Vahanvati, AG, L. Nageswara Rao, R.K. Khanna, ASGs P.H. Parekh, K.S. Mahadevan, Krishna Kumar R.S., Rajesh Kumar, Prabhakaran, Ram

Sankar, Aanada Selvam, Mayil Samy, Ravindra Keshavrao Adsure, G. Ramakrishna Prasad, Mohd. Wasay Khan, Suyodhan Byrapaneni, Filza Moonis, Bharat J. Joshi, Priya Hingorani, D.L. Chidananda, B.V. Balaram Das, N. Meyyappan, Gurkirat Kaur, Seema Rao, B. Balaji, R. Rakesh Sharma, A. Selvinraja, G. Balaji, Mahalakshmi Pavani, D. Durga Devi, Shjarath Chandran, Avinash Wadhwani, Sarath Tokas, Chandra Prakash, Aishwarya Bhati, Piyush Kanti Roy, Gp. Capt Karan Singh Bhati for the appearing parties.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. The issue of selection and elevation to the office of a High Court Judge has engaged the attention of this Court. The issue of such selection reflecting transparency, objectivity and constitutional sustainability has engaged the attention of this Court since this cause came to be espoused and dealt with by a nine-Judge Bench of this Court in *Supreme Court Advocates-on-Record Assn. v. Union of India,* (1993) 4 SCC 441, more particularly known as Second Judges case.

The said decision also became a subject matter of a Presidential Reference being **Special Reference No.1 of 1998** that was answered again by a nine-Judge Bench reported in (1998) 7 SCC 739.

2. One of the issues involved in both these decisions has been issue of judicial review of appointments as a High Court Judge or a Supreme Court Judge. The **Second Judges** case (supra) answered it in paragraphs 480 to 482 of the aforesaid decision and the **Special Reference** also answered the same emphasising the limited scope of judicial review and restrained the justiciability of such recommendations and appointment of Judges.

3. More recently, the issue with regard to the elevation of a High Court Judge on a recommend n

came to be scrutinised in a challenge raised before the Allahabad High Court that came to be finally decided by this Court in *Mahesh Chandra Gupta v. Union of India* (2009) 8 SCC 273. It was again held therein following the aforesaid decisions that suitability of a recommendee and the consultation are not subject to judicial review but the issue of lack of eligibility or an effective consultation can be scrutinised for which a writ of quo warranto would lie.

4. In the aforesaid backdrop, the present petitions came to be entertained questioning the orders of the Madras High Court dated 8.1.2014 and 9.1.2014 by which and whereunder the Madras High Court entertained writ petitions and passed interim orders to maintain status quo regarding the process of recommendation of 12 aspirants to the aforesaid office after the Chief Justice of the Madras High Court had forwarded the said recommendations to the Supreme Court collegium for consideration. The restraint order also directed the various constitutional authorities including the State Government and the Union Government to act accordingly as the prayer made in the petitions was to return back the recommendations on the allegation that the recommendations were not in conformity with an effective consultative process and that they were otherwise for reasons disclosed unacceptable.

5. This Court vide order dated 13.1.2014 entertained the Special Leave Petitions (Civil) Nos. 892-893 of 2014 filed by the Madras High Court against the orders passed by the Madras High Court on 8.1.2014 and 9.1.2014 in Writ Petition No. 375 of 2014, restraining the High Court to proceed with the hearing of the said writ petition and issued suo motu show cause as to why the said writ petition be not transferred for hearing to this court. It appears that in the meanwhile, Writ Petition No. 1082/2014 titled *S. Doraisamy v. The Registrar General, Supreme Court of India & Ors.* and Writ Petition No. 1119/2014 titled *P. Rathinam v. Union of India & Ors.,* dealing with the same subject matter had also been filed before the

Madras High Court. The Madras High Court preferred transfer petitions to transfer the said two writ petitions to this court for hearing alongwith transferred case arising out of WP (C) No. 375/2014.

Permission to file TP (C) arising out of D.No.3826/2014 is granted. We allow the transfer petitions and all the three aforesaid writ petitions stand transferred to this Court.

Thus, in view thereof, the Special Leave Petitions (C) Nos. 892-893/2014 have become insignificant and stand disposed of accordingly.

6. The facts and circumstances giving rise to these cases are that:

A. The collegium of the Madras High Court consisting of the Hon'ble Chief Justice and two senior most Judges vide Resolution dated 12.12.2013 recommended a list of 12 persons comprising of ten advocates and two District Judges for consideration by the collegium of Supreme Court for appointment as Judges of the Madras High Court. The said list was forwarded to the Ministry of Law and Justice, Government of India, the Supreme Court of India as well as to the Government of Tamil Nadu on 14.12.2013 as required under the law.

B. The writ petitioner, Mr. R. Gandhi, Senior Advocate, filed Writ Petition No. 375 of 2014 before the Madras High Court seeking a direction to the Union of India and the Supreme Court collegium to return the said list as the recommendees therein were not suitable as per the assessment of the writ petitioner and other members of the Bar for elevation. More so, the collegium of the High Court did not recommend the name of the eligible advocates belonging to different castes. The Hon'ble Chief Justice and first senior most Judge did not hail originally from Tamil Nadu so they were unable to understand and appreciate the complex social struct[illegible]il

Nadu.

C. The Division Bench of the Madras High Court entertained the writ petition and passed the orders dated 8.1.2014 and 9.1.2014. According to the first order, an interim direction was issued directing the Ministry of Law and Justice, Government of India to maintain the status quo, while the order dated 9.1.2014 restrained the Government of Tamil Nadu from making any recommendation in this regard and further to maintain the status quo till 21.1.2014.

D. Aggrieved, the Madras High Court through Registrar General preferred Special Leave Petition (C) Nos. 892-893 of 2014, wherein after hearing the learned Attorney General, appearing for the petitioner - High Court, this Court on 13.1.2014 passed the following order:

"Mr. G.E. Vahanvati, learned Attorney General appearing on behalf of the petitioner has submitted that the Madras High Court in the impugned judgments itself, has taken note of the judgment of this Court in Mahesh Chandra Gupta vs. Union of India, 2009 (8) SCC 273, wherein it has been quoted that judicial review is not permissible on the ground of suitability of the candidate whose name has been recommended, therefore, the High Court ought not to have entertained the petition.

Secondly, it has been submitted that one of the Hon'ble Judge has entered into the Court and made certain suggestions to the Bench hearing the case and there had been commotion in the Court, therefore, there is no conducive atmosphere where the matter should be permitted to be continued with the said High Court.

In view of the above, issue notice to the respondents returnable in two weeks as to why this case should not be transferred to this Court and heard by a Bench of minimum three judges. In addition to the

normal mode of service, dasti service, is permitted.

Meanwhile, the High Court is restrained to proceed further with the matter in W.P.No.375/2014 and the interim order passed by the High Court to maintain status quo regarding the process of the recommendations stands vacated for the reason that it was merely a recommendation and the said recommendation has to be filtered at various levels and it will take a long time.

List after two weeks."

E. When the matter came up for hearing on 18.2.2014, Shri Prabhakaran, learned senior counsel appearing on behalf of the writ petitioner made a statement that the Supreme Court collegium had returned the entire list to the Madras High Court for reconsideration, the matter rendered infructuous. The Court passed the order dismissing the Writ Petition as having become infructuous. However, since two other writ petitions had already been filed in the Madras High Court with respect to the same subject matter, the High Court filed the transfer petitions. Some of the learned counsel appearing in these cases suggested that the matter required to be heard on merit. As the order passed earlier had not been signed, the matter was adjourned to be listed for hearing on 25.2.2014.

7. When the matter came on Board on 25.2.2014, the learned Attorney General and other Advocates appearing in these cases insisted that matters must be heard at least to decide the issue of maintainability otherwise in future, it would be impossible to complete the process of appointment of Judges in the High Court, particularly when sitting Judges of the High Court also have started appearing before the Bench hearing the case in support of the contentions of the writ petitioners.

8. Shri Prabhakaran, learned senior counsel, has submitted that the advocates - recommende

for appointment as a Judge of the Madras High Court; and the collegium failed to consider the various other eligible and suitable advocates practicing before the Madras High Court having different social backgrounds. In a democratic set-up, it is the sharing of the power and all citizens of this country irrespective of any caste or creed, who are eligible and suitable for the post, have a right to be considered for appointment. The collegium has a "duty" to consider the eligible and suitable Advocates belonging to all sections of the society to ensure wider representation. It may have a larger social dimensions if certain segments of society are not adequately represented on the Bench. The ethos of pluralistic democracy or diverse unequal India should be humane, tolerant and reminiscent, yet balancing the contemporary realities which in the case are agitated on the lines of caste and their inclusion in mainstream of public life. The spirit of equality pervades the provisions of the Constitution, as the main aim of the founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevail and equality of status and opportunity are made available to all. However, Shri Prabhakaran, learned Senior counsel still insisted that writ petitions be dismissed as having become infructuous because of the subsequent developments as referred to hereinabove.

9. Shri G.E. Vahanvati, learned Attorney General of India and Shri Mohan Parasaran, learned Solicitor General of India, have contended that judicial review on assessing the suitability is not provided for as it is restricted only to the eligibility. As there is no challenge to the fact that there had been a proper consultation by the Hon'ble Chief Justice of Madras High Court alongwith his other Judges members of the collegium, such judicial review is uncalled for. The writ petition is not maintainable and the High Court has committed an error not only in entertaining the writ petition but also granting the interim relief. The writ petitioner has neither applied for issuance of Writ of Quo Warranto nor Writ of Certiorari, nor could there be any question of filing any writ petition as only the recommendations

for consideration of certain names have been made. The allegation that none of the recommendees has any work in court, was not correct as the incomes shown by some of them have been quite substantial indicating roaring practice. The perpetuation of casteism continues social tyranny of ages. The chart filed by the writ petitioner of those recommendees also made it clear that they represented all the social backgrounds equitably since upper caste, minority and other social affiliations have been duly represented. No advocate has a right to be considered for being appointed as a judge. More so, there can be no reservation for a community in selection of a judge. Even in service jurisprudence, reservation cannot be claimed at the cost of compromise to efficiency of administration. Therefore, the petition is liable to be dismissed.

10. Shri L.N. Rao, learned Additional Solicitor General appearing for the Supreme Court, has submitted that the Supreme Court collegium vide Resolution dated 13.2.2014 has returned the whole list of advocates as well as of the judicial officers, with intimation to the Hon'ble Chief Minister and the Governor of State of Tamil Nadu with an observation that the new Chief Justice of Madras High Court as and when appointed, would re-look into the matter and send recommendations in consultation with two senior most colleagues after taking into consideration all the relevant facts. Thus, in view of the subsequent developments nothing survives to be decided.

11. The learned Attorney General tried to persuade us to decide the other relevant issues also. However, in view of the aforesaid view that judicial review does not lie on assessment of suitability of a recommendee, we are not inclined to deal with it. But it is needless to emphasise that the question of an effective representation on the Bench and the qualitative assessment of elevations are not only to be governed by the magnitude of the practice of a lawyer or only his social or legal background. These are factors to be co

other qualities of intellect and character including integrity, patience, temper and resilience. The wisdom and legal learning of a particular individual coming from a particular social background may have leanings and individual judges are not un-afflicted by their notions of social, economic and political philosophy, but such matters fall within the realm of suitability to be considered by the collegium making recommendations or accepting the same for appointment as a Judge. The issue of a broad representation has also to be looked into from the point of view that it is necessary to ensure that a more representative Bench does not become a less able Bench.

12. Appointments cannot be exclusively made from any isolated group nor should it be pre-dominated by representing a narrow group. Diversity therefore in judicial appointments to pick up the best legally trained minds coupled with a qualitative personality, are the guiding factors that deserve to be observed uninfluenced by mere considerations of individual opinions. It is for this reason that collective consultative process as enunciated in the aforesaid decisions has been held to be an inbuilt mechanism against any arbitrariness.

13. The proceedings before the Division Bench of the Madras High Court that passed the interim orders were noticed by us while vacating the same, and the conduct of a sitting Judge raised a negative murmur about the maintenance of propriety in judicial proceedings. The sudden unfamiliar incident made us fume inwardly on this raw unconventional protest that was unexpected, uncharitable and ungenerous, and to say the least it was indecorous. In ordinary life such incidents are not reviewed with benevolence or generosity, but here we are concerned with a larger constitutional issue of the justiciability of the cause. We have already indicated that the cause and its contents were beyond the pale of scrutiny in the light of the decisions of this Court noted by us and therefore it is not necessary to respond to the above-mentioned unusual circumstances.

14. Additionally, we find that the learned Judge was not made a party to the proceedings by the Division Bench of the High Court before it nor have we accepted the oral prayer to that effect. The exceptional personal conduct of the learned Judge does not require any judicial response for investigating the unusual circumstances and scrutinising the same as it is not necessary to decide the issue at hand which can be otherwise disposed off in the manner as indicated herein. The learned Judge may have found himself caught in a conflict of class or caste structure and it appears that matured patience might have given way to injure rules of protocol, but that is not the issue that has to be answered by us. Such aspects may require a more serious judicial assessment if required in future and therefore this question is left entirely open.

15. It is said that immense dignity is expected, and weaknesses or personal notions should not be exposed so as to affect judicial proceedings. Judges cannot be governed, nor their decisions should be affected, only by the obvious, as proceedings in a court are conducted by taking judicial notice of such facts that may be necessary to decide an issue. It is for this reason, that the paramount principle of impartiality that is to be available in the character of a Judge has been humbly expounded by none other than Justice Felix Frankfurter in the following words:

> "A good Judge needs to have three qualities, each of which is disinterestedness." (of Law and Life and other things that Matter edited by Philip B. Kurland, 1965 Pg.75)

With the above observations and dignified reluctance touching disapproval, we leave this matter for any future milestone to be covered appropriately.

16. Three applications have been filed for impleadment, however, this Court allowed those applicants only to intervene and make their submissions on legal issues without impleading any of them.

In view thereof, Shri P.H. Parekh, learned senior counsel and President of Supreme Court Bar Association duly assisted by Ms. Aishwarya Bhati, Ms. Mahalakshmi Pavani and Shri Chander Prakash, learned counsel, have also advanced their arguments, on various issues, inter-alia, maintainability of the writ petitions.

17. Be that as it may, facts and circumstances of these cases warrant examination of the issue of maintainability at the threshold.

In *Mahesh Chandra Gupta* (supra), this Court observed:

"39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of suitability. Similarly, the process of consultation falls in the realm of suitability…….

41. The appointment of a Judge is an executive function of the President. Article 217(1) prescribes the constitutional requirement of "consultation". Fitness of a person to be appointed a Judge of the High Court is evaluated in the consultation process….

43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the

procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441 and Special Reference No. 1 of 1998, Re (1998) 7 SCC 739..

In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.

73. The concept of plurality of Judges in the formation of the opinion of the Chief Justice of India is one of inbuilt checks against the likelihood of arbitrariness or bias. At this stage, we reiterate that "lack of eligibility" as also "lack of effective consultation" would certainly fall in the realm of judicial review. However, when we are earmarking a joint venture process as a participatory consultative process, the primary aim of which is to reach an agreed decision, one cannot term the Supreme Court Collegium as superior to High Court Collegium. The Supreme Court Collegium does not sit in appeal over the recommendation of the High Court Collegium. Each Collegium constitutes a participant in the participatory consultative process. The concept of primacy and plurality is in effect

of the Chief Justice of India formed collectively. The discharge of the assigned role by each functionary helps to transcend the concept of primacy between them.

74…..These are the norms, apart from modalities, laid down in Supreme Court Advocates-on-Record Assn. (supra) and also in the judgment in Special Reference No. 1 of 1998, Re. Consequently, judicial review lies only in two cases, namely, "lack of eligibility" and "lack of effective consultation". It will not lie on the content of consultation.

(Emphasis added)

(See also: *C. Ravichandran Iyer v. Justice AM. Bhattacharjee & Ors.,* (1995) 5 SCC 457).

18. In *Supreme Court Advocates-on-Record Assn.* (supra), this Court observed:

"450….. The indication is, that in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight; the selection should be made as a result of a participatory consultative process in which the executive should have power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose……

467….The opinion of the judiciary 'symbolised by the view of the Chief Justice of India', is to be obtained by consultation with the Chief Justice of India; and it is this opinion which has primacy.

468. The rule of law envisages the area of discretion to be the minimum, requiring only the application of known principles or guidelines to ensure non-arbitrariness, but to that limited extent, discretion is a pragmatic need. Conferring discretion upon high functionaries and,

whenever feasible, introducing the element of plurality by requiring a collective decision, are further checks against arbitrariness.

482……It is, therefore, necessary to spell out clearly the limited scope of judicial review in such matters, to avoid similar situations in future. Except on the ground of want of consultation with the named constitutional functionaries or lack of any condition of eligibility in the case of an appointment, or of a transfer being made without the recommendation of the Chief Justice of India, these matters are not justiciable on any other ground, including that of bias, which in any case is excluded by the element of plurality in the process of decision-making.

SUMMARY OF THE CONCLUSIONS

486. A brief general summary of the conclusions stated earlier in detail is given for convenience, as under:

....

….

(3) In the event of conflicting opinions by the constitutional functionaries, the opinion of the judiciary 'symbolised by the view of the Chief Justice of India', and formed in the manner indicated, has primacy.

(4) No appointment of any Judge to the Supreme Court or any High Court can be made, unless it is in conformity with the opinion of the Chief Justice of India." (emphasis supplied)

19. In **Special Reference No. 1 of 1998** (supra), this Court held:

"32. Judicial review in the case o[illegible]a

recommended appointment, to the Supreme Court or a High Court is, therefore, available if the recommendation concerned is not a decision of the Chief Justice of India and his seniormost colleagues, which is constitutionally requisite. They number four in the case of a recommendation for appointment to the Supreme Court and two in the case of a recommendation for appointment to a High Court. Judicial review is also available if, in making the decision, the views of the seniormost Supreme Court Judge who comes from the High Court of the proposed appointee to the Supreme Court have not been taken into account. Similarly, if in connection with an appointment or a recommended appointment to a High Court, the views of the Chief Justice and senior Judges of the High Court, as aforestated, and of Supreme Court Judges knowledgeable about that High Court have not been sought or considered by the Chief Justice of India and his two seniormost puisne Judges, judicial review is available. Judicial review is also available when the appointee is found to lack eligibility."

(emphasis supplied)

20. Thus, it is apparent that judicial review is permissible only on assessment of eligibility and not on suitability. It is not a case where the writ petitioners could not wait till the maturity of the cause i.e. decision of the collegium of this Court. They took a premature step by filing writ petitions seeking a direction to Union of India to return the list sent by the collegium of the Madras High Court without further waiting its consideration by the Supreme Court collegium. Even after the President of India accepts the recommendations and warrants of appointment are issued, the Court is competent to quash the warrant as has been done in this case of *Shri Kumar Padma Prasad v. Union of India & Ors.,* AIR 1992 SC 1213 wherein the recommendee was found not possessing eligibility for the elevation to the High Court as per Article 217(2). This case goes to show that that

even when the President, has appointed a person to a constitutional office, the qualification of that person to hold that office can be examined in quo warranto proceedings and the appointment can be quashed. (See also: *B.R. Kapur v. State of Tamil Nadu & Anr.,* AIR 2001 SC 3435).

21. In such a fact-situation, the writ petitioners or the members of the Bar could approach Hon'ble the Chief Justice of India; or the Hon'ble Law Minister, but instead of resorting to such a procedure, the writ petitioners had adopted an unwarranted short cut knowing it fully well that on the ground of the suitability, the writ petitions were not maintainable.

We appreciate the fair stand taken by Shri Prabhakaran, learned senior counsel before this Court that suitability cannot be a subject matter of judicial review.

22. In view of the above, the transferred cases stand disposed of. The Writ Petition Nos. 375, 1082 and 1119 of 2014 and all matters relating to this case instituted before the Madras High Court are disposed of accordingly.

D.G. SLPs Disposed of.

PHOOL CHANDRA & ANR.
v.
STATE OF U.P.
(Crl. M.P. No. 25683 of 2013)
IN
(Special Leave Petition (Crl.) No. 2448 of 2014)

MARCH 10, 2014

[DR. B.S. CHAUHAN, J. CHELAMESWAR, JJ.]

Constitution of India, 1950: Article 136 - Special leave petition - Maintainability of - In the instant case, petitioners were convicted by trial court - Appeal before High Court - Bail granted by High Court - Application by petitioner for early hearing of appeal wherein order passed to put up the case before appropriate Bench - SLP against the order of the High Court - Held: The power u/Article 136 is to be invoked not in a routine manner but in very exceptional circumstances when a question of law of general public importance arises or impugned decision shocks the conscience of the court - This overriding and exceptional power vested in Supreme Court has to be exercised sparingly and only in furtherance of the cause of justice - Under the constitutional scheme, ordinarily the last court in the country in ordinary cases is meant to be the High Court - The Supreme Court as the Apex Court in the country is meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to a party - It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters - There is an urgent need to put a check on such frivolous litigation - Bar to realise that great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be

made unbearable - The petition was filed by the petitioners and accepted to do so by the Advocate-on-Record without any sense of responsibility - If the court has directed to list the application before another Bench, none of the petitioners' right got violated - The court expressed displeasure for the attitude and course adopted by the petitioners and the Advocate-on-Record - SLP dismissed - Administration of justice.

Subedar v. The State of UP, **AIR 1971 SC 125: 1971 (1) SCR 826;** *Arunachalam v. P.S.R. Setharathnam & Anr.,* **AIR 1979 SC 1284: 1979 (3) SCR 482;** *Pritam Singh v. The State,* **AIR 1950 SC 169;** The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd, Delhi etc., **AIR 1950 SC 188;** *Manish Goel v. Rohini Goel,* **AIR 2010 SC 932: 2010 (2) SCR 239;** *Mathai @ Joby v. George & Anr.,* **(2010) 4 SCC 358: 2010 (3) SCR 533;** *Varinderpal Singh v. Hon'ble Justice M.R. Sharma & Ors.,* **1986 Supp SCC 719;** *Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.,* **(2011) 8 SCC 249;** *Gurgaon Gramin Bank v. Khazani & Anr.,* **AIR 2012 SC 2881;** *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.,* **AIR 1975 SC 1331: 1975 (3) SCR 619;** *Kadra Pahadiya & Ors. v. State of Bihar,* **AIR 1997 SC 3750 : 1997 (3) SCR 32- relied on.**

Case Law Reference:

1971 (1) SCR 826	**relied on**	**Para 7**
1979 (3) SCR 482	**relied on**	**Para 7**
AIR 1950 SC 169	**relied on**	**Para 8**
AIR 1950 SC 188	**relied on**	**Para 9**
2010 (2) SCR 239	**relied on**	**Para 10**
2010 (3) SCR 533	**relied on**	**Para 12**
1986 Supp SCC 719	**relied on**	**Para 12**
(2011) 8 SCC 249	**relied on**	

AIR 2012 SC 2881	**relied on**	**Para 12**
1975 (3) SCR 619	**relied on**	**Para 13**
1997 (3) SCR 32	**relied on**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) No. 2448 of 2014.

From the Judgment and Order dated 14.05.2013 of the High Court of Judicature at Allahabad in Criminal Appeal No. 4309 of 2012.

Ajit Kumar Pande for the Petitioners.

The following order of the Court was delivered

O R D ER

1. This petition has been filed against the order dated 14.5.2013 passed by High Court of Judicature at Allahabad while dealing with the application for early hearing in Criminal Appeal No. 4309 of 2012.

2. The petitioners stood convicted for the offences punishable under Sections 363/366/506 of Indian Penal Code, 1860, (hereinafter referred to as the `IPC') in Sessions Trial No. 879 of 2010 (State of U.P. v. Phool Chandra & Anr.) arising out of Case Crime No. 28 of 2009, Police Station Utraon, District Allahabad in which FIR was lodged on 8.2.2009 by one Bhola Nath alleging that his daughter Kumari Manita aged 14 years, student of class 10th had gone to school on 6.2.2009 but did not return. He also expressed suspicion that his neighbour Sharda Prasad Gupta might be involved in the incident. In pursuance of the aforesaid complaint, investigation ensued and the victim Manita was recovered by the police on 12.2.2009. After completing the investigation, the chargesheet was filed against the petitioners and some other persons under the aforesaid Sections of the IPC and after conclusion of the trial, vide judgment and order dated 8.10.2012, the petitioners

stood convicted under Sections 363/366/506 IPC and rigorous imprisonment for a period of 7, 8 and 3 years respectively, had been imposed alongwith fines and further sentence in case of default in making payment. Some of the co-accused who also faced the trial were acquitted.

3. Aggrieved, the petitioners preferred Criminal Appeal No. 4309 of 2012 before the High Court and vide order dated 20.11.2012 they had been enlarged on bail.

4. The petitioners moved an application for early hearing of the Criminal Appeal wherein the Court was pleased to pass the following order:

"The case is released.

Put up this case before appropriate Bench."

Hence this petition.

5. This matter was heard on 17.12.2013, however, Shri Pardeep Kumar Yadav who argued the case, could not satisfy the court regarding the maintainability of the petition against the impugned order. Thus, we requested him to call the Advocate-on-Record in the second round. Shri Ajit Kumar Pande, learned Advocate-on-Record, appeared, argued and thereafter sought time as he could not satisfy the court regarding the maintainability of the petition, nor he could explain what was the grave urgency for seeking early hearing of the criminal appeal when the petitioners had been enlarged on bail, and particularly, when many people are waiting in the jail and their cases are not being heard by the Allahabad High Court for 20-30 years. He sought time to satisfy the court regarding its maintainability and, hence, the matter had been adjourned several times.

6. This petition has been filed with a delay of 108 days. Though, during this period, had the petitioners made any attempt, their application for early hea

heard by the appropriate Bench of Allahabad High Court, however, no effort was made.

7. It is a settled principle of law that the power under Article 136 of the Constitution of India, 1950 (hereinafter referred to as `Constitution') is to be invoked not in a routine manner but in very exceptional circumstances when a question of law of general public importance arises or a decision sought to be impugned before this Court shocks the conscience of the court. This overriding and exceptional power vested in this Court has to be exercised sparingly and only in furtherance of the cause of justice. (Vide: *Subedar v. The State of UP,* AIR 1971 SC 125; and *Arunachalam v. P.S.R. Setharathnam & Anr.,* AIR 1979 SC 1284).

8. The Constitution Bench of this Court in Pritam Singh v. The State, AIR 1950 SC 169 cautioned that the wide discretionary power vested in this Court should be exercised sparingly and in exceptional cases only when special circumstances are shown to exist.

9. Another Constitution Bench in *The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd, Delhi etc.,* AIR 1950 SC 188, reiterated the caution couching it in a different phraseology and said that this Court would not, under Article 136 of the Constitution, constitute itself into a Tribunal or Court just settling disputes and reduce itself into a mere Court of error. The power under Article 136 of the Constitution is an extraordinary power to be exercised in rare and exceptional cases and on well-known principles.

10. In *Manish Goel v. Rohini Goel,* AIR 2010 SC 932, this Court while dealing with a similar case held as under:

> "Article 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal

> in the territory of India. Undoubtedly, under Article 136 in the widest possible terms, a plenary jurisdiction exercisable on assuming appellate jurisdiction has been conferred upon this Court. However, it is an extra-ordinary jurisdiction vested by the Constitution in the Court with implicit trust and faith and thus, extraordinary care and caution has to be observed while exercising this jurisdiction. There is no vested right of a party to approach this Court for the exercise of such a vast discretion, however, such a course can be resorted to when this court feels that it is so warranted to eradicate injustice. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The power has to be exercised with great care and due consideration but while exercising the power, the order should be passed taking into consideration all binding precedents otherwise such an order would create problems in the future. The object of keeping such a wide power with this Court has been to see that injustice is not perpetuated or perpetrated by decisions of courts below. More so, there should be a question of law of general public importance or a decision which shocks the conscience of the court are some of the prime requisites for grant of special leave. Thus, unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity warranting review of the decision appealed against, such exercise should not be done."

11. In *Mathai @ Joby v. George & Anr.,* (2010) 4 SCC 358, this Court while dealing with a similar case observed that now-a-days it has become a practice of filing SLPs against all kinds of orders of the High Court or other authorities without realising the scope of Article 136. Hence, the court felt it incumbent on it to reiterate that Article 136 was never meant to be an ordinary forum of appeal at all like Section 96 or even Section 100 of the Code of Civil Proce e

constitutional scheme, ordinarily the last court in the country in ordinary cases was meant to be the High Court. The Supreme Court as the Apex Court in the country was meant to deal with important issues like constitutional questions, questions of law of general importance or where grave injustice has been done to a party. If the Supreme Court entertains all and sundry kinds of cases it will soon be flooded with a huge amount of backlog and will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done, for which it was really meant under the Constitutional Scheme. After all, the Supreme Court has limited time at its disposal and it cannot be expected to hear every kind of dispute. The court expressed its sympathy with the judges as they struggle with an unbearable burden. The judges spend late nights trying to read briefs for a Monday or a Friday. When each of the 13 Benches have to dispose off about 60 cases in a day, the functioning of the Supreme Court of India is a far cry from what should be desiderate for disposal of cases in a calm and detached atmosphere.

All these are aberrations in the functioning of the Apex Court of any country. Of-lately, there has been an increase in the trend of litigants rushing to the courts, including this court, for all kinds of trivial and silly matters which results in wastage of public money and time. A closer scrutiny of all such matters would disclose that there was not even a remote justification for filing the case. It is a pity that the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely

against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.

12. It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned counsel who act in an irresponsible manner. (Vide: *Varinderpal Singh v. Hon'ble Justice M.R. Sharma & Ors.,* 1986 Supp SCC 719; *Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.,* (2011) 8 SCC 249; and *Gurgaon Gramin Bank v. Khazani & Anr.,* AIR 2012 SC 2881)

13. Many a times this Court has expressed its anguish and unhappiness about the time of the Court being wasted for petty matters. (See: *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.,* AIR 1975 SC 1331; and *Kadra Pahadiya & Ors. v. State of Bihar,* AIR 1997 SC 3750).

14. In view of the above, we are of the considered opinion that this petition has been filed by the petitioners and accepted to do so by the Advocate-on-Record without any sense of responsibility. If the Hon'ble Judge has directed to list the application before another Bench, we fail to understand as which of the petitioners' right got violated. There could have been some reasonable cause for the Hon'ble Judge to pass such an order.

We have no words to express our displeasure for the attitude and course adopted by the petitioners and the Advocate-on-Record. The special leave petition is dismissed.

D.G. S.L.P. dismissed.

JACINTA DE SILVA
v.
ROSARINHO COSTA & ORS.
(Civil Appeal No. 4002 of 2014)

MARCH 25, 2014

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

Code of Civil Procedure, 1908: Suit for eviction filed before the Mamlatdar on the ground that defendant no.2 was in illegal occupation of the house owned by plaintiffs-respondent no.1 and 2 - Said suit dismissed for default - Fresh suit filed by respondent no.1 and 2 for declaration that they are owners of the house - Decreed - Execution proceedings - Heirs of judgment debtor objected to the execution proceedings - Executing court rejected execution application holding that trial court had no jurisdiction to try the suit - High Court set aside the said order and also rejected the argument that the suit was barred by res judicata as the case filed before the Mamlatdar by respondent no.1 and 2 was dismissed - Held: High Court duly took note of the fact that no plea with regard to the jurisdiction of the civil court was taken by defendant No.1 in the written statement - On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property - High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto - High Court held that the issues tried by trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act - High Court further held that the lis was with regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights - In these circumstances, High Court correctly held that the trial court had jurisdiction to entertain

the suit - There was no question of application of the principle of res judicata in the given facts - Trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so - Res judicata.

The plaintiffs-respondents no. 1 and 2 claimed to be the owner of the property which comprised of mundkarial house. They filed suit for eviction in the court of Mamlatdar against the original defendant no. 2 on the ground that the suit property was in occupation of original defendant no. 1 after death of her husband and she had ceased to occupy the suit property and the suit house was in illegal occupation of original defendant no. 2. The original defendant no. 1 challenged the jurisdiction of the Mamlatdar to try the matter on the ground that her husband was the owner of the house. The said proceedings before the Mamlatdar were dismissed for default and the rights of the parties remained to be adjudicated. Respondent no. 1 and 2 then filed a suit against original defendant no. 1 and 2 for declaration that they were owners of the suit house and for eviction of defendant no. 2 and possession of suit house. The suit was decreed in favour of respondent no. 1 and 2 declaring them to be owners of the suit house and further ordering eviction of defendant no. 2. No appeal was filed against the eviction decree and the decree became final. An execution application was instituted seeking eviction of defendant No.2 from the suit house. The heirs of defendant No.1 comprising the appellant objected to the said proceedings contending that the suit was misconceived and the decree passed by the civil court was a nullity. The executing court after considering such objection of the judgment-debtor rejected the said execution application. The High Court held that the objections which were filed before the executing court by the judgment-debtor, was nothing but an attempt to stall and defeat the execution proceedi

that the said mundkarial house was occupied by defendant No.2 without the consent and/or permission of the respondent Nos. 1 and 2. The High Court also rejected the argument on behalf of defendant no.1 that since the suit was not maintainable as the case filed before the Mamlatdar by respondent no.1 and 2 was dismissed, therefore, the suit was barred by res judicata. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

HELD: 1. The High Court duly took note of the fact that no plea with regard to the jurisdiction of the civil court was taken by defendant No.1 in the written statement. On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property. It was further submitted that husband of defendant no.1 was never a mundkar of the plaintiffs and he was the owner of the said house. The High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto. In this factual matrix, the High Court held that the issues tried by the trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act. The High Court further held that the lis was with regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights. In these circumstances, the High Court correctly held that the trial court had jurisdiction to entertain the suit. There was no question of application of the principle of res judicata in the given facts. The trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so and the trial court had jurisdiction to entertain the suit. Therefore, the executing court was totally wrong in holding that the civil court lacked inherent jurisdiction. The reasons given by the High Court in the

matter cannot be interfered with in the given facts. [Paras 8, 9 and 10] [111-F-H; 112-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4002 of 2014.

From the Judgment and Order dated 17.11.2009 of the High Court of Bombay at Panaji in W.P. No. 483 of 2003.

M.N. Krishnamani, Bhavanishankar V. Gadnis, V. Santhana Lakshmi, A. Venayagam Balan for the Appellant.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal has been filed by the appellant challenging the order passed by the High Court wherein the High Court was pleased to set aside the order passed by the Executing Court in connection with an execution application. The Executing Court held that the decree passed by the Civil Court was without any jurisdiction and thereby it is a nullity and accordingly dismissed the said execution proceedings.

3. The facts revealed in this case are that respondent Nos.1 and 2 are the owners of the property known as "Madel" situated at Curtorim, Salcete, Goa, which was allotted to them by a Deed of Partition registered before the Notary Public. In the property exists a residential house and a mundkarial house (suit house bearing No. 1124). The said mundkarial house was in occupation of one Jose Francisco D'Silva (hereinafter referred to as 'Jose') prior to 1977 as a Mundkar of respondent Nos.1 and 2 and after the death of said Jose in October, 1977, the original defendant No.1 - Mrs. Filomena - who is the wife of said Jose, succeeded him. It appears that in the year 1980, respondent Nos.1 and 2 found that respondent No.7 (Shri Naik, being original defendant No.2) was residing illegally and without authority in the suit house. Respondent Nos.1 and 2 further learnt that the original defendant No.1 [illegible]d

started residing with her daughter at Verna. Respondent Nos.1 and 2, therefore, by a letter dated 12th August, 1980, called upon original defendant No.2 (Shri Naik) therein to vacate the said house and hand over possession to the respondent Nos. 1 and 2.

4. On failure of original defendant No.2 to hand over possession, respondent Nos.1 and 2, on 30th September, 1980 filed an application bearing No.27/80 for eviction of the Mundkar in the Court of the Mamlatdar, Margao, Salcete, on the ground that Mrs. Filomena Rodrigues, i.e., original defendant No.1, has ceased to occupy the mundkarial house for more than one year. The respondent Nos. 1 and 2 received a notice from the Advocate of the original defendant No.1 dated 25th October, 1980, calling upon them not to interfere with the property of defendant No.1, claiming that she is the owner of the mundkarial house. In the said proceedings before the Mamlatdar initiated by respondent Nos. 1 and 2 for eviction of the Mundkar, defendant No.1 challenged the jurisdiction of the Mamlatdar to try the matter on the ground that her husband was the owner of the house. It appears that the said proceedings before the Mamlatdar were dismissed for default and, thus, the rights of the parties remained to be adjudicated.

5. On 19th March, 1981 the plaintiffs, being respondent Nos.1 and 2 herein, filed a suit in the Court of Civil Judge, Junior Division, Salcete, being Regular Civil Suit No.127/81/F against defendant No.1 (Mrs. Filomena) and defendant No.2 (Shri Naik), inter alia, for the following reliefs :

(i) Declaration that plaintiffs are owners of the suit house presently occupied by defendant No.2; and

(ii) Eviction of defendant No.2 and possession of the suit house.

6. It is admitted by respondent Nos.1 and 2 in the plaint that the property comprised of a mundkarial house which

existed in the North-Eastern corner of the plaintiffs'/respondents' property. It is further stated that one Anna Mariana was the Mundkar of the plaintiffs and had been residing in the dwelling house on being permitted by the plaintiffs' ancestors. Said Anna Mariana was a Mundkar of the plaintiffs prior to Jose. Admittedly, defendant No.1 (Mrs. Filomena) denied the plaintiffs' ownership of the said suit house and claimed that she is the owner of the same in the Mundkar's case which was pending before the Mamlatdar of Salcete. The said suit was contested by defendant No.1 by filing written statement and it is further to be noted that defendant No.1 claimed title by prescription as well as by way of adverse possession. In these circumstances, the trial court framed the following issues:

(a) whether the plaintiffs are the owners in possession of the property known as "Madel" and also an old mundkarial house in North-East corner of the plaintiff's property and that the same house was occupied by one Jose Francis D'Silva as Mundkar of the plaintiffs?

(b) whether the widow of the said Jose Francisco D'Silva had been residing with her married daughter at Verna and neither the defendant nor their children occupied the mundkarial house?

7. On 31st August, 2000, the suit was decreed in favour of the plaintiffs (respondent Nos.1 and 2) declaring that the plaintiffs are the owners of the suit house which is occupied by defendant No.2 and further defendant No.2 was ordered to be evicted from the suit house. Incidentally, it is to be noted that defendant No.2 did not file any written statement before the trial court. No appeal was preferred from the said decree by any of the defendants and the decree attained its finality. In the circumstances, an execution application was instituted seeking eviction of defendant No.2 from the suit house. The heirs of defendant No.1 comprising the appellant also, objected to the said proceedings contending that the suit was misconceived and the decree passed by the Civil Co[illegible]e

executing court after considering such objection of the judgment-debtor on 11th February, 2003 rejected the said execution application.

8. Being aggrieved by the said order passed by the executing court, respondent Nos.1 and 2 filed a petition before the High Court. After considering the facts and the submissions made on behalf of the parties, the High Court held that the objections which were filed before the executing court by the judgment-debtor, was nothing but an attempt to stall and defeat the execution proceedings and further held that the said mundkarial house in the North-Eastern corner of the property was occupied by defendant No.2 without the consent and/or permission of the plaintiffs (respondent Nos. 1 and 2). The said house has been abandoned since the occupation of defendant No.2 was illegal and unauthorised. Defendant No.1 tried to rely upon the entries made in the Matriz Records and further contended that the said entry in the record had no bearing with regard to the ownership rights of the defendants, on the contrary, the plaintiffs relied upon the Certificate of Land Registration. Arguments were also put forwarded on behalf of said defendant No.1/judgment-debtor that since the suit was not maintainable as the case filed before the Mamlatdar by the plaintiffs/ respondent Nos.1 and 2 was dismissed, therefore, the suit was barred by res judicata. The High Court duly took note of the fact that no plea with regard to the jurisdiction of the Civil Court was taken by defendant No.1 in the written statement. On the contrary, it was the specific case of defendant No.1 that the said house was not a mundkarial house and was not the plaintiffs' property. It was further submitted that Jose was never a mundkar of the plaintiffs and he was the owner of the said house. The High Court duly noticed that the trial court while deciding the issues framed, duly considered the facts which were incidental thereto. In this factual matrix, the High Court held that the issues tried by the trial court cannot be said to be within the jurisdiction of the authorities under the Mundkar Act. The High Court further held that the lis as can be seen, was with

regard to the ownership of the suit house since defendant No.1 could not pursue her claim for ownership of any mundkarial rights. In these circumstances, the High Court correctly held that the trial court had jurisdiction to entertain the suit. We have noticed that there is no question of application of the principle of res judicata in the given facts.

9. In view of the factual matrix, it is absolutely clear that the trial court passed the said decree rightly and it cannot be said to be lacking inherent jurisdiction to do so and we hold that the trial court had jurisdiction to entertain the suit. Therefore, the executing court was totally wrong in holding that the civil court lacked inherent jurisdiction.

10. Accordingly, we hold that the reasons given by the High Court in the matter cannot be interfered with in the given facts. We affirm the reasoning given by the High Court. We find no merits in this appeal. Accordingly, we dismiss this appeal.

D.G. Appeal dismissed.

JUSTICE SUNANDA BHANDARE FOUNDATION

v.

U.O.I. & ANR.

(Writ Petition (Civil) No. 116 of 1998)

MARCH 26, 2014

[R.M. LODHA, SUDHANSU JYOTI MUKHOPADHAYA AND DIPAK MISRA JJ.]

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

Differently abled persons - Writ petition with regard to visually disabled persons - Seeking reservations of 1% of identified teaching posts in Universities and Colleges in terms of the Act - Held:The beneficial provisions of the Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy -- All those upon whom obligation has been cast under the Act have to effectively implement it -- Role of governments in such a matter has to be proactive -- Differently abled citizens must be accorded best and special attention -- This is true equality and effective conferment of equal opportunity - Pursuant to interim orders, UGC has acted in compliance of the Act -- Central Government, State Governments and Union Territories are directed to implement provisions of the Act immediately and positively by the end of 2014 in all respects including with regard to visually disabled persons.

The petitioner filed Writ Petition (Civil) No. 116 of 1998, seeking, inter alia implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the '1995 Act'), and reservation of 1% of the identified teaching posts in the faculties and college of various Universities for usually

disabled persons in terms of s. 33 of the 1995 Act. Initially, Union of India through its Secretary, Ministry of Welfare and University Grants Commission (U.G.C.) through its Chairperson were impleaded as party respondents. The Court further ordered impleadment of the States, the Union Territories, the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India and the Commissioners for Persons with Disabilities of various States and Union Territories to be impleaded as party respondents. Pursuant to the interim orders passed by the Court, U.G.C. was stated to have acted in compliance of the 1995 Act. On 19.07.2006, the Court directed the Union of India and the State Governments to file their responses in the form of affidavits. Some of the States filed their responses.

Disposing of the petitions, the Court

HELD:

More than 18 years have passed since the 1995 Act came to be passed and yet there are problems in its implementation. The 1995 Act has to be implemented in the letter and spirit. The beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, the States, the Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. Differently abled citizens must be accorded best and special attention. This is true equality and effective conferment of equal opportunity. This Court, accordingly, directs the Central Government, the State Governments and the Union Territories to implement the provisions of the 1995 Act

immediately and positively by the end of 2014 in all respects including with regard to visually disabled persons. [para 10, 11, 14 and 15] [118-H; 119-A-D, D-G; 120-B]

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

Writ Petition (Civil) No. 116 of 1998.

WITH

W.P. (C) No. 115 of 1998.

W.P. (C) No. 430 of 2000.

C.A. Nos. 6442 and 6443 of 1998.

Suryanarayana Singh, Addl. AAG, S.S. Shamshery, A.A.G., Ambar Qamaruddin, C.K. Sucharita, Aniruddha P. Mayee, Prashant Kumar, Rajiv Mehta, B. Balaji, Susmita Lal, Anuvrat Sharma, Sanjay R. Hegde, Anil Kumar Tandale, Sapam Biswajit Meitei, Khwairakpam Nobin Singh, T.V. George, Pragati Neekhra, Leena Singh, Ranjan Mukherjee, Gulshan Bajwa, Anil Shrivastav, P.V. Yogeswaran, Gopal Singh, P.N. Gupta, K.V. Mohan, Rachana Srivastava, Sunil Fernandes, P.N. Ramalingam, Abhijit Sengupta, Kamlendra Mishra, R. Sathish, Satish Vig, Praveen Swarup, Jagjit Singh Chhabra, V.N. Raghupathy, Balaji Srinivasan, Bansuri Swaraj, Nirnimesh Dube, Hemantika Wahi, Sunita Sharma, B.P. Singh, D.S. Mahra, Arun K. Sinha, Sushma Suri, Ashok Mathur, Ranbir Singh Yadav, C.D. Singh, Sanjay Visen, Abhishek Chaudhary, Anil Katiyar, M.A. Krishna Moorthy, Corporate Law Group, Niranjana Singh, Rajeev Sharma, Dharmendra Kumar Sinha, D. Bharathi Reddy, Shibashish Misra, V.G. Pragasam, Balasubramaniam, K.V. Jagdishvaran, G. Indira, A. Subhashini, G. Prakash, Sumita Hazarika, Arun Mathur, Ashok S. Pillai, G.N. Reddy, Debojit, M. Bala Shivudu, Shreekant N. Terdal, Suchitra Atul Chitale, P. Parmeshwaran, T.V. Ratnam, Anil K. Jha, Gopal Prasad, V.D. Khanna, K. Enatoli Sema, Sbudhada

Deshpande, Amit Kumar, Anip Sachthey, Mohit Paul, Sandeep Singh, Harshvardhan Singh Rathore, Amit Sharma for the appearing Parties.

Petitioner-In-Person (for WP (C) No. 430 of 2000).

The Judgment of the Court was delivered by

R.M. LODHA, J.

Writ Petition (Civil) No. 116 of 1998

1. In this Writ Petition filed by the petitioner - a charitable trust, the prayers made are (i) for implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, '1995 Act'), (ii) direction for the reservation of 1% of the identified teaching posts in the faculties and college of various Universities in terms of Section 33 of the 1995 Act, and (iii) for declaration that denial of appointment to the visually disabled persons in the faculties and college of various Universities in the identified posts is violative of their fundamental rights guaranteed under Articles 14 and 15 read with Article 41 of the Constitution of India.

2. Initially, two respondents, namely, (one) Union of India through its Secretary, Ministry of Welfare and (two) University Grants Commission (U.G.C.) through its Chairperson were impleaded as party respondents.

3. On 07.10.1998, the Court ordered impleadment of the States and so also the Union Territories and, accordingly, respondent Nos. 3 to 34 were impleaded as party respondents.

4. On 13.09.2001, the Court directed the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India to be impleaded as party respondent and consequently it has been impleaded as respondent No. 35.

5. Then on 18.02.2009, the Court directed Commissioners for Persons with Disabilities of various States and Union Territories to be impleaded as

and consequently respondent Nos. 36 to 70 have been impleaded who are Commissioners for Persons with Disabilities in different States and Union Territories.

6. Certain interim orders have been passed by this Court from time to time.

7. Insofar as U.G.C. (respondent No. 2) is concerned, the Court was informed on 19.03.2002 through counter affidavit that U.G.C. has acted in compliance of the 1995 Act. In paras 3, 6, 7 and 8 of the counter affidavit filed on behalf of the Chief Commissioner for Persons with Disabilities, it was stated :

"3. It is humbly submitted that in pursuance of Section 32 of the Persons with Disabilities Act (Equal Opportunities Protection of Rights and Full participation) Act, 1995, the appropriate government (Government of India) has updated the list of identified posts. This list has been issued vide Extraordinary Gazette Notification No. 178 dated 30.6.2001. In this list, the posts of University/College/ School Teacher for the blind and low-vision have been listed at Sl. No. 24-27 on page No. 592.

6. The Chief Commissioner for Person with Disabilities has taken cognizance of the arrangements provided by the University Grants Commission for persons with disabilities by way of extending 5% relaxation in cut off marks, appearing in the NET for Junior Research Fellowship and Lectuership. Thus, the arrangement extended by UGC is in consonance with the policy stand taken by Govt. of India in so far as relaxation in minimum standard is concerned. Relaxation in standards has been favoured only when the candidates belonging to reserved categories are not available on the basis of the general standard to fill all the vacancies reserved for them.

7. The relaxation extended to SC & ST candidates as per Maintenance of Standard 1998 of the Universities,

provides for a 5% relaxation from 55 % to 50% in the marks obtained at Master's Degree. Since reservation for the disabled is called horizontal reservation which cuts across all vertical categories such as SC, ST, OBC & General. Therefore, all such blind/low-vision persons who belonged to SC, ST vertical category would automatically enjoy the benefit of 5 % relaxation at the minimum qualifying marks obtained at Master's Degree level. Thus, only the blind and low vision belonging to OBC & General categories are deprived of the relaxation of 5 % marks at masters' level.

8. The blind/low-vision and other visually disabled persons belonging to SC & ST category are in any case enjoying the benefit of 5% relaxation in marks obtained at the master's level for appearing in the NET examination conducted by the UGC. By extending the same relaxation to particularly blind/low-vision and in general all disabled at par with SC & ST disabled would bring parity amongst all persons with disabilities irrespective of their vertical categories."

8. Thus, insofar as U.G.C. is concerned, this Court in the order 19.03.2002 observed that nothing survives for consideration and the matter is disposed of as against U.G.C.

9. On 19.07.2006, the Court directed the Union of India and the State Governments to file their responses in the form of affidavits within a period of four weeks, failing which it was observed that the Court may be compelled to direct personal appearance of the Chief Secretaries of the concerned States though the Court would like to avoid in making such a direction. Some of the States have filed their responses and some have not.

10. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of s e

policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.

11. More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable.

12. Ms. Sunita Sharma, learned counsel for the Union of India, informs us that insofar as Union of India is concerned, it has implemented the provisions of the 1995 Act and the reservation of 1% of the identified teaching posts in the faculties and college of various Universities in terms of Section 33 of the 1995 Act has been done.

13. In our view, the 1995 Act has to be implemented in the letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far.

14. We, accordingly, direct the Central Government, State Governments and Union Territories to implement the provisions of the 1995 Act immediately and positively by the end of 2014.

15. The Secretary, Ministry of Welfare, Government of India, the Chief Secretaries of the States, the Administrators

of Union Territories, the Chief Commissioner of the Union of India and the Commissioners of the State Governments and Union Territories shall ensure implementation of the 1995 Act in all respects including with regard to visually disabled persons within the above time.

16. Writ Petition is disposed of in the above terms.

Writ Petition (Civil) No. 115 of 1998, Writ Petition (Civil) No. 430 of 2000, Civil Appeal No. 6442 of 1998 and Civil Appeal No. 6443 of 1998

Writ Petitions and Appeals are disposed of in terms of the judgment passed today in Writ Petition (Civil) No. 116 of 1998.

2. No costs.

3. Interlocutory Applications for intervention and impleadment filed in Civil Appeal No. 6442 of 1998, in view of the above, do not survive and they stand disposed of as such.

R.P. Petitions disposed of.

WESTERN ELECTRICITY SUPPLY CO. OF ORISSA LTD & ORS.

v.

M/S BABA BAIJANATH ROLLER AND FLOUR MILL P. LTD.

(Civil Appeal No. 4023 of 2014)

MARCH 26, 2014

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

Electricity Act, 1910: s.26 - Applicability of, in case of tampering of meter - Held: s.26 is applicable only when there is any difference or a dispute in connection with correctness of a meter - In that case, upon being applied by either party, the matter has to be decided by an Electrical Inspector and if in the opinion of the Inspector the meter is found to be defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months - But if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of s.26 of the Act - In the instant case, the respondent never asked or applied for checking of the meter by the Electrical Inspector on the ground of defective meter - Therefore, the ingredients of s.26(6) were not followed by the respondent to meet the necessity of checking the meter in question in accordance with the said provision - The inspection was made in the presence of the representative of the respondent who was a Manager of the said company and in his presence the meter was checked up and was found to be tampered with - Electricity supply company was right in raising penal charges and penal bill on the respondent on the ground of unauthorised consumption by way of tampering the metering equipment.

The appellant conducted inspection at the premises

of the respondent and noted meter tampering and accordingly raised bill imposing penal charges and issued notice of disconnection in default of payment of penal charges. The respondent did not make payment and the electricity supply was disconnected. Aggrieved, the respondent filed a writ petition. The High Court held that the representation filed by the respondent was never considered before the imposition of penalty, far less giving an opportunity of hearing. Accordingly, the High Court held that this action of the appellant was in clear violation of the principles of natural justice and set aside the penalty charges. The inspection report was also quashed on the ground that such inspection was never done in the presence of the authorised persons of the respondent. In these circumstances, the High Court further directed the appellant to refund the amount so paid within three months. Hence the instant appeal.

Allowing the appeals, the Court

HELD: 1. Section 26 of the Electricity Act, 1910 is relevant only when there is any difference or a dispute in connection with correctness of a meter. In that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector has to estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act. In the instant case, the respondent never asked or applied for checking of the meter by the Electrical Inspector on the ground of defective meter. Therefore, the ingredients of Section 26(6) were not followed by the respondent to meet the necessity of checking the meter in question in

said provision. [Para 11] [136-D-H]

2. The inspection was made in the presence of the representative of the respondent who was a Manager of the said company and in his presence the meter was checked up and was found to be tampered with. The plea of duress or coercion in signing the inspection report was raised by the respondent but in reality no allegation was made by the respondent before an appropriate authority excepting such bald allegations were made before the writ court without any basis or evidence. Therefore that fact has no bearing in deciding this matter. The said fact cannot be ignored while dealing with the matter concerning tampering of meter. The said aspect escaped the attention of the High Court and therefore, the High Court failed to appreciate the facts in their proper perspective. Therefore, on this ground, the High Court has misconstrued the facts and the provisions of law in dealing with the matter. The provision of law which deals with tampering of metering equipments, i.e. clauses 56, 64 and 105 of the Code have not been considered by the High Court and the High Court has failed to construe such provisions and erred in deciding the matter ignoring the said provisions. The High Court accepted the position submitted on behalf of the respondent/writ-petitioner that it was a case of defective meter and there was no question of any tampering with the meter in question. The High Court has failed to appreciate that the inspection was made and the fact of tampering of meter would appear from the inspection report and such inspection report was signed on behalf of the respondent/writ-petitioner. Therefore, the High Court ignoring the said fact, came to the conclusion without giving any reason, that the inspection report was bad and has erred in setting aside such inspection report. Hence, such findings of the High Court cannot be sustained. Therefore, the High Court was also wrong in not

considering the rights of the appellant to raise penal charges on the respondent on the ground of unauthorised consumption by way of tampering the meter or metering equipment and has a right to raise penal bill in accordance with the provisions of Code. On this ground the High Court has erred in allowing the writ petition in favour of the respondent, quashing the penal charges and further the direction given to refund the amount. [Para 12 and 13] [137-A-H; 138-A-B]

Madhya Pradesh Electricity Board & Ors. v. Smt. Basantibai **1988 (1) SCC 23;** *Sub-Divisional Officer (P), UHBVNL v. Dharam Pal* **2006 (12) SCC 222: 2006 (8) Suppl. SCR 1175 - relied on.**

Belwal Spinning Mills Ltd. v. U.P. State Electricity Board **1997 (6) SCC 740: 1997 (2) Suppl. SCR 197 - referred to.**

Case Law Reference:

1997 (2) Suppl. SCR 197	**Referred to**	**Para 8**
1988 (1) SCC 23	**Relied on**	**Para 8**
2006 (8) Suppl. SCR 1175	**Relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4023 of 2014.

From the Judgment and Order dated 03.08.2010 of the High Court of Orisa at Cuttack in WPC No. 4072 of 2002.

WITH

Civil Appeal No. 4024 of 2014.

Suresh Chandra Tripathy for the Appellants.

Sibo Sankar Mishra, M.K. Pandey, Adbhut Pathak for the Respondent.

The Judgment of the Court was de

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against an order dated August 3, 2010 passed by the High Court of Orissa allowing the writ petition filed by the respondent, quashing the bill issued by the appellant for a sum of 5,10,930/- as well the notice of disconnection dated October 5, 2010.

3. The respondent-writ petitioner is a registered company, inter alia, carrying on its business under the name and style of M/s. Baba Baijnath Roller and Flour Mill Pvt. Ltd., having installed a Mill in the district of Jharsuguda and is the consumer of the appellant herein.

4. The facts of the case, briefly, are as follows:

4.1 The respondent alleged in the writ petition that on an inspection conducted by the appellant on September 9, 2002 at the premises of the respondent, the appellant intimated that at the time of inspection it was found that H.T. Meter, T.P Box's inner door and meter terminal cover quick seals, plastic seals and paper seals were tampered. In addition, L.T.T.P Box inner door quick seals, plastic seals and paper seals were found tampered. The B-Phase P.T wire was found cut as such the meter was not getting B-Phase potential.

4.2 It was further brought to the notice of the respondent by the appellant that the interference with the metering arrangement was made by the respondent in order to prevent the meter from recording actual consumption which attracts Regulation 64 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 (hereinafter referred to as "the Code"). Accordingly, the penal charges as per rules were intimated and raised on the respondent on September 30, 2002. The appellant further called upon the respondent to submit its representation, if any, within seven days. It was intimated that in default of payment of such charges within seven days from the date of receipt of the penal bill, the

power supply to the premises will be disconnected without any further notice. The penal bill was raised on the respondent/writ petitioner for a sum of 5,10,930/-. On October 5, 2002 the electricity supply was disconnected since the respondent failed to make the payment.

4.3 In these circumstances, a writ petition was filed by the respondent challenging the action on the part of the appellant before the High Court. The respondent-writ petitioner made out a case that the bill used to be received by the writ petitioner was around 80,000/- per month and according to the writ petitioner/respondent, the meter was defective and recording excessive consumption.

4.4 The writ petitioner/respondent challenged the action on the part of the appellant that when the inspection was made, at that point of time the officers of the appellant made a demand for illegal gratification since refused by the Manager of the respondent-company, the officers of the appellant raised such allegations and further the Manager was forced to sign several papers under duress and coercion.

4.5 It was urged before the High Court on behalf of the respondent-company on the ground (i) that the penal bill had been issued in violation of the principles of natural justice; (ii) that the inspection was made without giving a notice and in the absence of the representative of the firm; (iii) that the allegation of tampering with seals cannot be sustained as there was no allegation that the outer seal of T.P. box was broken or tampered with; and (iv) that the penal bill could not have been raised since the meter was defective and was not recording proper consumption. By filing a counter affidavit, the appellant herein duly contested the writ petition and stated that an alternative remedy was available to the respondent under the Code. It was further submitted that in the instant case, there is no question of alleging that the meter is defective. It is a clear case of theft of electricity by the consumer and Section 26 of

the Indian Electricity Act, 1910 (hereinafter referred to as "the Act of 1910") has no application. It is submitted that Section 26(6) of the Act of 1910 is attracted only when a meter is defective and is incapable of recording the correct consumption of electricity. It was further contended on behalf of the appellant before the High Court that inspection of the meter was done in the presence of the representative of the writ-petitioner/ respondent.

4.6 The High Court after hearing the parties held that in case of violation of principles of natural justice even if alternative remedy is available, a writ court can interfere for redressal of grievance of the petitioner. The High Court further held that the representation filed by the writ petitioner was never considered before the imposition of penalty, far less giving an opportunity of hearing to the writ petitioner. Accordingly, the High Court held that this action of the appellant is in clear violation of the principles of natural justice. In these circumstances, the High Court set aside the penalty charges imposed by the appellant on the writ petitioner/respondent. The inspection report was also quashed on the ground that such inspection was never done in the presence of the authorised persons of the writ petitioner. The High Court further held that since the penalty is untenable, the appellant was not entitled to levy delayed payment surcharge on the penal charges treating it as old arrears or current arrears. In these circumstances, the High Court further directed to refund the amount so paid within three months.

4.7 Being aggrieved, this appeal has been filed by the appellant.

5. Learned counsel appearing on behalf of the appellant contended before us that the High Court has erred in holding that the matter should come within the purview of Section 26(6) of the Act of 1910. He submitted that the High Court ignoring the judicial pronouncements on this question undermined the authority of the licensee (appellant) to impose penalty as a

consequence on a consumer even if the consumer has committed theft of electricity. By this process, the provisions of the statutory Code have been made nugatory. The meter could be subjected to tampering in various ways. The methods as detected on inspection by the officers of the appellant are more than sufficient to conclude that the meter was tampered with and did not record the actual consumption of energy consumed by the writ petitioner/respondent. He further contended that the theft of electricity is governed by the Code and not under the provisions of the Act of 1910.

6. The relevant provisions of the Act of 1910 as well as the Code, in particular Clauses 54, 56, 64, 105, 110 and 115, were duly placed before us. It will be proper for us to reproduce those hereunder:

> **"Section 26 - Meters.** - (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:
>
> Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.
>
> (2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.
>
> (3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, [illegible]y

through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer, and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, but he may by giving not less than forty-eight hours' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the

supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided also that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.-A meter shall be deem it

registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

"CHAPTER - IV

METERS

54. Initial power supply shall not be given without a correct meter. Meters will be installed at the point of supply or at a suitable place as the engineer may decide. The same shall be fixed preferably in the basement or ground floor in multi-storied buildings where it will be easily accessible for reading and inspection at any time. The consumer shall run his wiring from such point of supply and shall be responsible for the safety of the meter or metering equipment on his premises from theft, damage or interference.

x x x

56. The meters and associated equipment shall be properly sealed by the engineer and consumer's acknowledgement obtained. The seals, nameplates, distinguishing numbers or marks affixed on the said equipment or apparatus shall not be interfered with, broken, removed or erased by the consumer. The meter, metering equipment, etc. shall on no account be handled or removed by any one except under the authority of the engineer. The engineer can do so in the presence of the consumer or his representative. An acknowledgement shall be taken from the consumer or his representative when seal is broken.

x x x

64. If a meter or metering equipment has been found to have been tampered or there is resistance by the consumer to the replacement of obsolete or defective meters by the engineer, the engineer may disconnect the supply after giving seven clear days show cause notice and opportunity to the consumer to submit his representation.

x x x

Penal Charges --

105. (1) On detection of unauthorised use in any manner by a consumer, the load connected in excess of the authorised load shall be treated as unauthorised load. The quantum of unauthorised consumption shall be determined in the same ratio as the unauthorised load stands to the authorised load.

(2) The period of unauthorised use shall be determined by the engineer as one year prior to the date of detection or from the date of initial supply if the initial date of supply is less than one year from the date of detection. If the consumer provides evidence to the contrary, the period may be varied according to such evidence. The engineer may levy penal charges in addition to the normal charges for aforesaid period of unauthorised use. Where addition of the unauthorised installation or sale or diversion would result in a reclassification according to this Code, the whole of the power drawn shall be deemed to have been drawn in the reclassified category. The consumer shall also be required to execute a fresh agreement under the reclassified category.

(3) The penal energy charges for unauthorised use of power shall be two times the cha e

particular category of consumer.

(4) The penal demand charges for unauthorised use of power in cases covered under two part tariff shall be calculated on un-authorised connected load expressed in KVA multiplied by two times the rate of demand charges applicable.

x x x

CHAPTER - XII

CONSUMER PROTECTION

110. (1) A consumer aggrieved by any action or lack of action by the engineer under this Code may file a representation within one year of such action or lack of action to the designated authority of the licensee, above the rank of engineer who shall pass final orders on such a representation within thirty days of receipt of the representation.

(2) A consumer aggrieved by the decision or lack of decision of the designated authority of the licensee may file a representation within forty five days to the chief executive officer of the licensee who shall pass final orders on such a representation within forty five days of receipt of the representation.

(3) In respect of orders or lack of orders of the chief executive officer of the licensee on matters provided under Section 33 of the Act, the consumer may make a reference to the Commission under Section 37(1) of the Act.

x x x

Overriding effect --

115. (1) The provisions of this Code shall override the provisions of OSEB (General Condition of Supply) Regulation, 1995.

(2) Nothing contained in this Code shall have effect, in so far as it is inconsistent with the provisions of Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and Rules framed thereunder as amended by the Act."

7. Therefore, it would be evident from Section 26(6) which carves out an exception, that where there is an allegation of "fraud", the same provision is not attracted. He further contended that invariably a plea is being taken by the consumer found to have committed theft of electricity that his meter was defective. In the instant case, in accordance with Section 26(4), an inspection was conducted in the presence of the representative of the respondent. If the meter is found to be defective on such inspection and if the respondent was desirous of availing the benefit of Section 26(6), it is the duty of the consumer under the said Section to move an application before the Electrical Inspector for getting the meter tested.

8. It was submitted that the Orissa Electricity Regulatory Commission (for short "OERC") by virtue of Section 54 of the Orissa Electricity Reforms Act, 1995 has framed a Code on different issues including the manner in which theft of energy is to be determined. They are statutory in character. Accordingly, he submitted that the High Court has erred in dealing with the matter without taking into account the clauses of the Code which are framed to deal with the theft of electricity. Factually also, the High Court was incorrect in recording that the inspection was conducted in the absence of the consumer. It is further submitted that the decision relied on by the High Court is totally inapplicable in the facts and circumstances of this case since *Belwal Spinning Mills Ltd. v. U.P. State Electricity Board*[1] did not deal with the Code of 1998 framed

1. 1997 (6) SCC 740.

by the Orissa Electricity Regulatory Commission and the distinguishable feature of the said decision is that the said decision made it clear that when there is an allegation of fraud or tampering of meter, Section 26(6) of the Act of 1910 has no application. Learned counsel further relied upon the decision in *Madhya Pradesh Electricity Board & Ors. v. Smt. Basantibai*[2] and drew our attention to paragraph 9 of the said decision and contended that Section 26(6) of the Act of 1910 has no application where there is a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is totally outside the ambit of Section 26(6) of the said Act. It is further contended that after the inspection was conducted in the presence of the representative of the consumer, details of the illegalities found on such inspection were shared with the respondent consumer, resulting in receipt of a vague reply from the consumer and was processed to raise a demand by way of a penal bill. Therefore, according to him, the requirement under the law was followed before issuance of the said penal bill. He further pointed out that on being aggrieved by such decision, the writ petitioner/respondent could have followed the statutory remedy as envisaged under Section 110 of the Code. It is further stated that the High Court did not even give any reason for the direction to refund the delayed payment surcharge.

9. In these circumstances, it is submitted that the order of the High Court cannot be sustained under the provisions of law. The penal bill was quashed only on the ground that the unit of the respondent was closed. Such fact is immaterial and irrelevant in respect of demand of a penal bill. The approach of the High Court is patently erroneous.

10. Per contra, it is submitted on behalf of the respondent that the argument of the appellant could have succeeded if the appellant could prove that the respondent had indulged in theft of electricity. It is pointed out that on October 10, 2002, the High

2. 1988 (1) SCC 23.

Court directed the respondent to deposit 30,000/- without prejudice and for restoration of power supply since the electricity was disconnected on October 5, 2002. The power supply was restored on deposit of 10,000/- and subsequently, the respondent further deposited a sum of 20,000/- in terms of the direction. It is submitted that in spite of the interim order passed by the High Court directing stay of realisation of the penal bill, the appellants went on charging delayed payment surcharge on the penal charges in monthly bills raised subsequently on the respondent. It is submitted that the meter had actually inherent defects as only the inner seal was broken but the outer seal was intact. It is true that the matter was not referred to Electrical Inspector. It is further stated that in case of a dispute between the Central Act and the State Act, Central Act will prevail upon the State Act.

11. We have noticed the facts in this case. We have also considered the Sections of the Act of 1910 and it appears to us that Section 26 is relevant only when there is any difference or a dispute arises in connection with correctness of a meter, in that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act in such a matter. In the instance case, we have asked the learned counsel appearing for the respondent whether following Section 26(6), the respondent ever asked or applied for checking of the meter by the Electrical Inspector on the ground of defective meter. The answer was in the negative. Therefore, it shows that the ingredients of Section 26(6) were not followed by the respondent to meet the necessity of checking the meter in question in accordance with the said provision.

12. We have further noticed that the inspection was made in the presence of the representative of the respondent who is a Manager of the said company and in his presence the meter was checked up and was found to be tampered with. We have also noticed that the plea of duress or coercion in signing the inspection report was raised by the respondent but in reality no allegation was made by the respondent before an appropriate authority excepting such bald allegations have been made before the writ court without any basis or evidence. Therefore that fact cannot have any bearings in deciding this matter. We cannot brush aside the said fact from the mind while dealing with the matter concerning tampering of meter. It appears to us that the said aspect has escaped the attention of the High Court and therefore, in our opinion, the High Court failed to appreciate the facts in their proper perspective. Therefore, on this ground, we find that the High Court has misconstrued the facts and the provisions of law in dealing with the matter. The provision of law which deals with tampering of metering equipments, i.e. clauses 56, 64 and 105 of the Code have not been considered by the High Court and in our opinion the High Court has failed to construe such provisions and erred in deciding the matter ignoring the said provisions. The High Court accepted the position submitted on behalf of the respondent/writ-petitioner that it was a case of defective meter and there is no question of any tampering with the meter in question. The High Court has failed to appreciate that the inspection was made and the fact of tampering of meter would appear from the inspection report and such inspection report was signed on behalf of the respondent/writ-petitioner. Therefore, the High Court ignoring the said fact, came to the conclusion without giving any reason, that the inspection report is bad and has erred in setting aside such inspection report. Hence, such findings of the High Court cannot be sustained.

13. Therefore, in our opinion, the High Court was also wrong in not considering the rights of the appellant to raise penal charges on the respondent on the ground of unauthorised

consumption by way of tampering the meter or metering equipment and has a right to raise penal bill in accordance with the provisions of Code. On this ground the High Court has erred in allowing the writ petition in favour of the respondent, quashing the penal charges and further the direction given to refund the amount. The said order is without any reason and cannot be sustained in the eyes of law. Hence, the same is set aside.

14. We have also noticed in *Madhya Pradesh Electricity Board & Ors. v. Smt. Basantibai* (supra), this Court held:

> "9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-section (6) of Section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of Section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, that can be decided by the Electrical Inspector under the provisions of the said Act."

In *Sub-Divisional Officer (P), UHBVNL v. Dharam Pal*[3], it appears to us that in case of tampering, there is no scope for reference to Electrical Inspector. It was held :

> "9. In *State of W.B. v. Rupa Ice Factory (P) Ltd.* [2004 (10) SCC 635], it was observed as follows: (SCC p. 637, para 5)
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> "5. As regards the second claim, namely, the claim for the period from December 1993 to December 1995, the finding of the High Court is that the Vigilance Squad had found that Respondent 1 had tapped the electric energy directly from the transformer to the LT distribution board bypassing the meter circuit. If that is so, we do not know as to why the High Court would go on to advert to Section 26 of the Electricity Act and direct reference to the Electrical Inspector for decision under Section 26(6). In two decisions of this Court in *M.P Electricity Board v. Basantibai* [1988 (1) SCC 23] and *J.M.D. Alloys Ltd. v. Bihar SEB* [2003 (5) SCC 226] it has been held that in cases of tampering or theft or pilferage of electricity, the demand raised falls outside the scope of Section 26 of the Electricity Act. If that is so, neither the limitation period mentioned in Section 26 of the Electricity Act nor the procedure for raising demand for electricity consumed would arise at all. In this view of the matter, that part of the order of the Division Bench of the High Court, directing that there should be a reference to the Electrical Inspector, shall stand set aside. In other respects the order of the High Court shall remain undisturbed. The appeal is allowed accordingly."

15. In these circumstances, in our opinion, the High Court was wrong in bringing the matter within the scope of the provision of Section 26(6) of the said Act, and further the High Court was totally wrong in appreciation of facts even on the

3. 2006 (12) SCC 222.

question of inspection and stated that no representative was present at that point of time. On the contrary, admittedly the Manager of the respondent at the time of the inspection was present.

16. In these circumstances, the appeals are allowed, the writ petitions filed by the respondent/writ-petitioner are dismissed and the order passed by the High Court is set aside.

D.G. Appeals allowed.

HARYANA STATE AGRICULTURAL MARKETING BOARD

v.

BISHAMBER DAYAL GOYAL AND ORS.

(Civil Appeal No. 3122 of 2006)

MARCH 26, 2014

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

Consumer Protection Act, 1986: Deficiency of services.

Agricultural Marketing Board allotting sites to the respondents for doing business of grain on payment of 25% of price of plots - Failure of Board to notify the Mandi as market Area and develop and provide basic amenities in the said locality - Respondent also stopped the payment of balance instalments - Complaint by respondent before the Consumer Forum - Held: Maintainable - Appellant-board as service provider is obligated to facilitate the utilisation and enjoyment of plots as intended by the allottees - Inaction on the part of Board in providing requisite facilities for more than a decade clearly established deficiency of services as respondents were prevented from carrying out the grain business - In such circumstances, levy of penal charges on respondent would be grossly unfair - However, the respondents were also incorrect in refusing to pay the instalments and violating the terms of the instalment letter - Adequate relief was granted even to respondents by the District forum and State Commission by awarding interest @ 12% p.a on entire deposited amount.

The Area of New grain Mandi, Adampur was notified as market area by notification dated 16.11.1971. In 1980, the State Government notified a sub market yard of New Grain Market, Adampur. The said area was transferred to

the appellant board on 24.01.1986.

The appellant made allotment of the plots to the respondents on deposit of 25% of price of the plots. In the allotment letter dated 25.07.1991, the method of payment and consequences of non-payment were laid down. The respondents failed to make the balance payment. The appellant-board issued a demand notice on the respondents. The respondents did not make the payment and instead filed a complaint before the District Forum alleging deficiency of service on part of appellant-board on the ground of failure of notifying the Adampur Mandi as Market Area and failure to develop and provide basic amenities in the said locality. The District Forum held that it is admitted that due to the omission on part of the appellant, no business could be done in the Mandi and the boundary walls which were essential for the business, were not provided, the complainants/ respondents were deprived of doing the grain business for which the plots were purchased and as the area was not notified as a sub-yard, there was a grave deficiency of service. The Forum awarded the respondents interest at 12% per annum on the entire deposited amount after two years from the date of issuance of allotment letters to the respondents till the development and notification of the area in question was not done. The respondents were directed to deposit the remaining balance amount and the appellant-Board was directed not to levy any charge, penalty or interest on the same. The State Commission and National Commission upheld the order of the District Forum. The instant appeal was filed challenging the order of the National Commission.

Dismissing the appeal, the Court

HELD: 1. The Statutory Boards and Development Authorities which are allotting sites with the promise of development, are amenable to [illegible]f

consumer forum in case of deficiency of services. [Para 6] [150-H; 151-A]

2. Though in the instant case providing of amenities is not a condition precedent as per the terms of the allotment letters, however, the allotments were made when the plots were in the development stage on the condition that they be used only for auction and trading of grains, therefore, the present auction is different from a free public auction or an auction on "as is where is basis". In such a scenario the appellant board as service provider is obligated to facilitate the utilization and enjoyment of the plots as intended by the allottees and set out in the allotment letter. [Para 7] [151-F-G; 152-A]

U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors. **(2009) 4 SCC 460;** *Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.* **(2007) 10 SCC 481: 2007 (8) SCR 270;** *Narne Construction (P) Ltd. v. Union of India* **(2012) 5 SCC 359: 2012 (4) SCR 574;** *Lucknow Development Authority v. M.K. Gupta* **(1994) 1 SCC 243: 1993 (3) Suppl. SCR 615 - relied on.**

3. The inaction on the part of the appellant in providing the requisite facilities for more than a decade clearly established deficiency of services as the respondents were prevented from carrying out the grain business. However, the respondents were also incorrect in refusing to pay the instalments and violating the terms of the instalment letter. Thus, considering the surrounding circumstances wherein the appellant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents would be grossly unfair. In these circumstances, no grounds have been made out by the appellant to interfere with the order passed by the

National Commission. Adequate relief has been granted even to the respondents/complainants by awarding interest @ 12 per cent per annum on the entire deposited amounts. [Paras 8 and 9] [154-G-H; 155-A-D]

Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. & Ors. **(2006) 4 SCC 109: 2006 (2) SCR 768;** *Haryana State Agricultural Marketing Board v. Raj Pal* **(2011) 13 SCC 504 - relied on.**

Case Law Reference:

(2009) 4 SCC 460	**Relied on**	**Para 6**
2007 (8) SCR 270	**Relied on**	**Para 6**
2012 (4) SCR 574	**Relied on**	**Para 6**
1993 (3) Suppl. SCR 615	**Relied on**	**Para 6**
2006 (2) SCR 768	**Relied on**	**Para 7**
(2011) 13 SCC 504	**Relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3122 of 2006.

From the Judgment and order dated 13.04.2005 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition Nos. 534, 535, 536 and 537 of 2005.

Luv K. Singh, Krishanu Adhikary, Sushil K SIngh, Rekha Pandey for the Appellant.

Parmanand Gaur, N.S. Dalal, J.B. Mudgil, R.K. Gupta, Bankey Bihari Sharma for the Respondent.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. The present appeal has been filed assailing the order dated April 13, 2005 passed

by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission") in Revision Petition Nos. 534-537 of 2005, affirming the order dated November 10, 2004 passed by the State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as "the State Commission"), which further confirmed the order dated September 20, 2001 passed by the District Forum.

2. The facts of the case briefly are as follows :

a) By a notification dated November 16, 1971, the Haryana State Government under Section 7 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the said Act'), notified the area of New Grain Mandi, Adampur as Market Area. Subsequently, in the year 1974, the areas/limits were further extended by five kilometers. In 1980, the State Government notified a sub-market yard of New Grain Mandi, Adampur. The Colonization Department of the State by a letter dated January 24, 1986, transferred the said area to the Haryana State Agricultural Marketing Board, the appellant herein.

b) The respondents herein were allotted plots by the appellant, being plot Nos. 17, 7, 16 and 14 upon depositing the 25% of the price of the said plots. The method of payment and the consequences for non-payment of any instalment would appear from the allotment letter dated July 25, 1991. Admittedly, the respondents did not pay the instalments in terms of the allotment letters. The grounds mentioned by the respondents for non-payment of such instalments were the failure on the part of the appellant to provide basic amenities such as sewerage, electricity, roads etc. at the said Adampur Mandi Area.

c) On non-payment of the instalments, the appellant called upon the respondents to make the balance payments, being 75% of the cost with interest and penalty charges as prescribed in the said allotment letter. The respondents did not pay the

same and filed a complaint before the District Forum alleging deficiency of services, failure to notify the Adampur Mandi as Market Area and failure to develop and provide basic amenities in the said locality. The appellant opposed the complaint on the ground that the respondents failed to make the payments of the instalments and further that one of the complainants was not dealing with the sale and purchase of agricultural produce by himself and instead had sublet the shop to someone else.

d) The District Forum appointed a Senior Member of the Forum as the Local Commissioner to inspect the said area and to file a report. The Local Commissioner filed a report stating that the area was developed with civic amenities and platforms were constructed in front of the shops. However, it is admitted that the complainant is not in a position to run the business in the market area as the same has not been notified by a notification and/or order declaring it as a sub-yard for the purpose of running the business. The District Forum held by order dated March 4, 1998 that the notification dated October 31, 1980 is not applicable since the land was auctioned in 1991 and further, the same was not in the ownership of the appellant and no business was transacted by the complainant at the Adampur Mandi. The District Forum held that since no notification was issued declaring the said area as sub-yard, it amounts to deficiency of service and the appellant was directed to withdraw the demand notice and further directed not to charge any interest on the instalments. The appellant filed first appeal before the State Commission, being First Appeal No.362 of 1998. The State Commissioner by order dated March 3, 1998 remanded the matter to the District Forum holding that the appointment of Local Commissioner, Shri Arya, being a member of the District Forum vitiated the proceedings.

e) Thereafter, the District Forum took up the matter and appointed an Advocate - Mr. G.L. Balhara - as the Local Commissioner, to make an inspection and to file a report. The appellant herein on April 20, 2000, once

notices to the respondents demanding the payments. The main contention of the respondents being the complainants was that although the area was not notified by the appellant-Board as a market area, they were unable to conduct any grain business in the shops for which they had purchased the said plots; and further alleged that no basic amenities, i.e., sewerage, roads, parao, electricity etc. had been provided by the Board, and that there were no boundary walls and gates of the market area which were a necessity in such Mandi; furthermore, there were heaps of debris lying around the shops. In these circumstances, the plots allotted were redundant.

f) The appellants contended that the complainants are not consumers and there is no deficiency of service. The respondents failed to construct the booths in two years' time even after getting the licences. Furthermore, the respondents are not dealing with the agricultural produce instead they have sublet the plots in question to other persons. According to the appellants, the amenities of sewerage, water supply and electricity were provided and construction of a platform was also done by them. An Additional Mandi was established, according to the appellant, by the Colonization Department and subsequently transferred to them in 1986. The Colonization Department, in 1980, duly notified the same. The District Forum after perusing the report dated April 25, 2000 filed by the Local Commissioner - Mr. Balhara, Advocate -- held that it is admitted by both the parties that the Additional Mandi has no boundary walls and gates and that there has been no notification by the appellant-Board, further no auction has been made by the respondents and the debris are lying around the shops. In these circumstances, the District Forum by order dated September 20, 2001 held that it is admitted that due to the omission of the appellant, no business could be done in the Mandi and the boundary walls which are essential for the business, were not provided. It is further held that the notification dated October 31, 1980 has no manner of application since the land was transferred to the appellant in 1986 and the shops were

auctioned in 1981. The District Forum further held that due to the omission of the appellant, the complainants/respondents herein were deprived of doing the grain business for which the plots were purchased and in the absence of the notification of the area as a sub-yard, the District Forum held that there was a grave deficiency of service. The Forum awarded the respondents interest at 12% per annum on the entire deposited amount after two years from the date of issuance of allotment letters to the respondents till the development and notification of the area in question is not done. The respondents were directed to deposit the remaining balance amount and the appellant-Board was directed not to levy any charge, penalty or interest on the same. However, the Forum refused to allow the compensation as prayed by the respondents and directed the appellants to develop the area within a month.

g) Being aggrieved, the appellant went in appeal before the State Commission. Cross-appeals were also filed by the respondents before the State Commission, seeking enhancement of the rate of interest from 12% to 18% per annum and further sought compensation. On November 10, 2004, both the appeals were dismissed. The State Commission upheld the order of the District Forum holding that the report of the Local Commissioner did not raise any objection with regard thereto nor placed any notification before the District Forum. In these circumstances, the appellant herein filed a revision petition before the National Commission resulting in dismissal, hence, the matter has come up in appeal before us.

3. It is the case of the appellant that all the three fora below have erred in fact and in law by omitting to take into consideration the fact that the payment of instalments towards the cost by the respondents was unconditional. It was further contended that it was not subject to fulfilment of any condition on the part of the appellant as a pre-requisite. Moreover, all the three fora lost sight of the fact that under Section 8 of the Act, after creation of a sub-market yard by no[illegible]n

7(2) of the said Act, no person could be allowed to trade in agricultural produce without licence and they had to apply for the same under Section 9 of the said Act, and further to obtain a licence under Section 10 of the said Act.

4. It is not in dispute that the respondents duly applied for licence under Section 9 and which was granted under Section 10 permitting them to trade in agricultural produce in the sub-market yard from their allotted shops under Section 8, which was possible only when there was a notification under Section 7(2) to invoke notifying the sub-market yard, according to the appellant, the same was notified by a Notification dated October 31, 1980 passed by the predecessor-in-interest of the appellant and the same is still subsisting and remained in force after the transfer of the area to the appellant in 1986. Therefore, according to the learned counsel appearing in support of this appeal, all the fora failed to take any note thereof. It was further pointed out that there was no question of any deficiency in service. According to the learned counsel, the area of Adampur Mandi was developed in the year 1992 by the Haryana Public Health Department by providing all basic amenities like sewerage, drainage, electricity, roads etc. in the said area. It was further pointed out that the report of the Local Commissioner would show that all the developmental works except construction of the boundary walls have been carried out by the appellant-Board. It was further submitted that the sanctioning of the business licence under Section 10 of the said Act pre-supposes that the State Government notified the said area as a market area. It is further contended that the respondents are using the plots allotted to them without paying the instalments as ought to have been done by them.

5. Per contra, it is submitted by Mr. N.S. Dalal, learned counsel for the respondents, that no developed infrastructure has been provided by the appellant and the first two courts below have come to the conclusion on the basis of the facts placed before them. Since there is a concurrent finding on such

facts, it is submitted that this appeal should be dismissed. Learned counsel further submitted that the Local Commissioner - Mr. Balhara - in the presence of both the parties carried out the local inspection and the report of the said Commissioner would show that the facts mentioned therein have been approved by both the parties. It was pointed out that the Local Commissioner had mentioned that no infrastructure has been provided, there is no platform, no boundary walls and heaps of debris are lying there, meaning thereby the purpose for which the Mandi was created could not be carried out or used or even started or accomplished. In the absence of basic infrastructure and amenities to run a grain market the purpose for which the shops were allotted, is totally frustrated. The report of the Local Commissioner was not challenged by the appellant at any point of time. It was further pointed out that the appellant never relied on the said notification before the District Forum or before the State Commission nor even before the National Commission. Therefore, the grounds tried to be raised by the learned counsel for the appellant cannot have any bearing on the matter. It is further contended that the District Forum as well as the State Commission have recorded how there could have been notification by the appellant when the land itself came to the appellant in the year 1986. Therefore, there cannot be any reason to believe that the notification was issued earlier under the ownership of the appellant. It is further stated that no explanation has been given by the appellant about the conduct of non-developing the area in question by them. On the contrary, the respondents relied on the doctrine of legitimate expectations to have a proper area to continue with their business.

6. The appellant-Board has contended before us that the respondents are not consumers but we must keep it on record that the Board never challenged the jurisdiction of the consumer forum. We would reiterate that the statutory Boards and Development Authorities which are allotting sites with the promise of development, are amenab[illegible]of

consumer forum in case of deficiency of services as has already been decided in *U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.*[1]; *Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.*[2]. This Court in *Narne Construction (P) Ltd. v. Union of India*[3] referred to its earlier decision in *Lucknow Development Authority v. M.K. Gupta*[4] and duly discussed the wide connotation of the terms "consumer" and "service" under the consumer protection laws and reiterated the observation of this Court in *Lucknow Development Authority v. M.K. Gupta* (supra) which is provided hereunder :

> "5. In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed: (LDA case, SCC pp. 256-57, para 6):
>
> "…when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and the other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act…."

7. Though in the present case providing of amenities is not a condition precedent as per the terms of the allotment letters. However, the allotments were made when the plots were in the development stage on the condition that they be used only for auction and trading of grains, therefore, the present auction is different from a free public auction or an auction on "as is where is basis". In such a scenario the appellant board as service provider is obligated to facilitate the utilization and enjoyment

1. (2009) 4 SCC 460.
2. (2007) 10 SCC 481.
3. (2012) 5 SCC 359.
4. (1994) 1 SCC 243.

of the plots as intended by the allottees and set out in the allotment letter. In *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd.& Ors.*[5], wherein the allottees refused to pay instalments towards the cost of the allotted plots, this Court while deciding the same held (at para 38) as under:

> "We make it clear that though it was not a condition precedent but there is a obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by allottees"

In the aforementioned case, the Court remitted many of the cases back to the High Court for limited adjudication of facts to determine where the basic facilities have not been provided and held that though the allottees were incorrect unilateral action of not paying the instalments yet penal interest and penalty will be levied as per the facts of each case. Thus, the allottees were entitled to proportionate relief. In *Haryana State Agricultural Marketing Board v. Raj Pal*[6], wherein the appellant was involved and the certain allottees refused to pay instalments towards the allotted plots in the new grain market at Karnal-Pehowa Road at Nighdu in the Karnal District, citing lack of amenities provided by the Board, the Court while dismissing the case of the Board referred to the following decisions in *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. and Ors.* (supra) and *UT Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.* (supra) as under :

> "13. In *Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd.,* this Court held: (SCC p. 128, para 38)
>
> *"38. … We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary*

5. (2006) 4 SCC 109.
6. (2011) 13 SCC 504.

facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where kutcha road, drainage, sewerage, drinking water facilities have been provided, no relief shall be granted but in case any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and interest for delay in payment of equated installment or ground rent or part thereof under Rule 12(3-A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will not be open on the part of the allottees to deny payment of interest and penalty. So far as payment of installment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty and penal interest in concerned, that shall depend on the facts of each case to be examined by the High Court. The High Court shall examine each individual case and consider grant of proportionate relief."

14. Referring to the said decision, this Court in *UT Chandigarh Admn. v. Amarjeet Singh* observed as follows: (SCC pp. 682-83, para 46)

"46. As noticed above, in Shantikunj, the auction was of the year 1989. The lessee had approached the High Court in its writ jurisdiction in the year 1999 seeking amenities. Even in 2006 when this Court heard the matter, it was alleged that the amenities had not been provided. It is in those peculiar facts that this Court obviously thought it fit to give some reliefs with reference to penal interest wherever amenities had not been provided at all even after 17 years. In fact, this Court made it clear while remanding to the High Court that wherever facilities/amenities had been provided before the date of the judgment (28-2-2006), the lessees will not be entitled to any reliefs and where the facilities/amenities had not been granted even in 2006, the High Court may consider giving some relief by proportionate reduction in [the] penal interest. This direction was apparently on the assumption that in case of penalty, the court can grant relief in writ jurisdictions."

In *Haryana State Agricultural Marketing Board v. Raj Pal* (supra), the Court upheld the principles as laid down in *Shantikunj* Case (supra) and *Amarjeet Singh* Case (supra) and held that allottees cannot postpone the payment of instalments on the grounds that some of the amenities were not provided and the Court setting aside the penal and compound interest levied by the Board and in consonance with the Allotment Rules of 1997, levied only simple interest.

8. In the present case, the inaction on the part of the appellant in providing the requisite facilities for more than a decade clearly establishes deficiency of services as the respondents were prevented from carrying out the grain business. However, the respondents were also incorrect in refusing to pay the instalments and vio[illegible]e

instalment letter. Thus, considering the surrounding circumstances wherein the appellant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, we are of the opinion that in the present situation, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents will be grossly unfair.

9. In these circumstances, we do not find that any grounds have been made out by the appellant to interfere with the order passed by the National Commission. We have minutely examined the order passed by the District Forum as well as the State Commission, and we have noticed that adequate relief has been granted even to the respondents/complainants by awarding interest @ 12 per cent per annum on the entire deposited amounts. Hence, we do not find any merit in the appeal and the same is accordingly dismissed. There shall, however, be no order as to costs.

D.G. Appeal dismissed.

UNION OF INDIA AND ORS.
v.
ROBERT ZOMAWIA STREET
(Civil Appeal No. 4041 of 2014)

MARCH 27, 2014

[CHANDRAMAULI KR. PRASAD AND PINAKI CHANDRA GHOSE,JJ]

CANTONMENTS:

Old grant -- Suit land comprising bungalow situated in cantonment area -- Plaintiff in possession of suit property through a will - General Land Register(GLR) entries showing suit land being managed as Class B-3 land - Held: Entries made in GLR are conclusive evidence of title - In the instant case, entries made in GLR show that suit land is an old grant and is managed by plaintiff as B3 land - Class B3 is such land which is held by any private person subject to the conditions that Central Government has proprietary rights over it -- Plaintiff has not been able to establish his title over suit land - He held the land, but being an old grant, Central Government has the right of its resumption and, therefore, it cannot be said that plaintiff possesses the land as owner - Trial court rightly dismissed plaintiff's suit - Military Land Manual - Chapter II- r.3 - Maxim, 'nemo dat quid non habet'.

LAND LAWS:

'Old Grant' -- Connotation of -- Held: The tenures under which permission is given to civilians to occupy Government land in the cantonment for construction of bungalows on the condition of a right of resumption, if required, are known as old grant tenures.

WORDS AND PHRASES:

Word 'held'- Connotation of.

In a suit for permanent injunction restraining the defendants i.e. Union of India and Military Authorities, from interfering with plaintiff's possession and title over suit property i.e. land admeasuring 4.261 acres comprising a bungalow within the cantonment area, the plaintiff claimed ownership of the suit property through a will. The stand of the defendants was that the Government of India was the owner of the suit land and had granted it free of rent to predecessors-in-interest of the plaintiff in the year 1880 as old grant; that the land was classified as B-3 land in GLR entries as "held by a private person". The trial court dismissed the suit. The first appeal of the plaintiff was also dismissed. However, the High Court, in the second appeal filed by the plaintiff set aside the findings recorded by both the courts below and decreed the suit.

Allowing the appeal, the court

HELD: 1.1 It is settled legal position that the entries made in the General Land Register maintained under the Cantonment Land Manual are conclusive evidence of title. Chapter II of the Military Land Manual, inter alia, provides for classification and transfer of land, standard table of rent and management. Rule 3 of Chapter II of the Military Land Manual, casts duty on the Military Estate Officer to prepare in prescribed form a General Land Register of all lands in the Cantonment. In the Instant case, the entries with regard to suit land made in the GLR show that it is an old grant and that it is managed by the plaintiff as B3 land. Class B3 is such land which is held by any private person subject to the conditions that the Central Government has proprietary rights over it. Evidently, the plaintiff held the land, but the word "held"

does not necessarily mean to own with legal title. Being an old grant, Central Government has the right of its resumption and, therefore, it cannot be said that plaintiff possesses the land as owner. [para 10,11 and 13] [166-G; 167-D-E; 168-E-H]

Union of India v. Ibrahim Uddin, **2012 (8) SCR 35 = (2012) 8 SCC 148;** *Chief Executive Officer v. Surendra Kumar Vakil* **1999 (2) SCR 118 = (1999) 3 SCC 555; and** *Union of India v. Kamla Verma* **(2010) 13 SCC 511 -- relied on.**

1.2 The tenures under which permission is given to civilians to occupy Government land in the cantonment for construction of bungalows on the condition of a right of resumption, if required, are known as old grant tenures. It is governed by regulation contained in Order No. 179 of 1836 which is self contained and provides for the manner of grant and resumption of land in cantonment area. In respect of old grant tenure, the Government retains the right of resumption. The GLR in unequivocal terms describes the nature of holder's right as "old grant". Thus, the plaintiff has not been able to establish his title over the suit land and, therefore, the plaintiff deserves to be non-suited on this ground alone. [para 14] [169-A-D]

1.3 It cannot be accepted that since actual grant was not produced, the case pleaded by the defendants that the plaintiff held the land as old grant was not proved. The GLR maintained under the Cantonment Land Administration Rules supports the defendants' case that the plaintiff held the land on old grant basis. The plaintiff, on the other hand, has not produced any document to show the title of his predecessor-in-interest. The maxim, 'nemo dat quid non habet', which means no one gives what he does not possess, aptly applies in the case. Thus, the successor will not have b... t

his predecessor had. Besides relying on the admission made by the plaintiff's predecessor-in-interest, the defendants have produced the GLR, which clearly shows that the land in dispute is covered under old grant. The classification of the land as B3 land also points towards the same conclusion. Thus, the High Court committed grave error in decreeing the plaintiff's suit. The judgment and decree of the High Court is set aside and the plaintiff's suit dismissed. [para 14, 15 and 17] [169-E-G; 170-C, E]

Bhudan Singh v. Nabi Bux, **1970 (2) SCR 10 = (1969) 2 SCC 481;** *State of U.P. v. Sarjoo Devi,* **1978 (1) SCR 181 = (1977) 4 SCC 2;** *State of A.P. v. Mohd. Ashrafuddin,* **1982 (3) SCR 482 = (1982) 2 SCC 1;** *Hari Ram v. Babu Gokul Prasad,* **1991 Supp (2) SCC 608 and** *A.G. Varadarajulu v. State of T.N.,* **1998 (2) SCR 390 = (1998) 4 SCC 231 - cited.**

Case Law Reference:

2012 (8) SCR 35	**relied on**	**para 7**
1970 (2) SCR 10	**cited**	**para 9**
1978 (1) SCR 181	**cited**	**para 9**
1982 (3) SCR 482	**cited**	**para 9**
1991 Supp (2) SCC 608	**cited**	**para 9**
1998 (2) SCR 390	**cited**	**para 9**
1999 (2) SCR 118	**relied on**	**para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4041 of 2014.

From the Judgment and Order dated 16.12.2011 of the High Court of Gauhati at Assam in SA No. 1 of 2010.

Mohan Parasaran, SG, Balasubramanian R., Ritu Bhardwaj (for B.V. Balaram Das) for the Appellants.

K.K. Venugopal, V.K. Jindal, Raghenth Basant, Rohit Bhati, Hardeep Singh, Liz Mathew, Sandeep Jindal for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD 1. Defendants are the petitioners before us and they are aggrieved by the judgment and decree dated 16th of December, 2011 of the High Court of Guwahati in Second Appeal No. 1 of 2010, reversing the judgment and decree of affirmance and granting permanent injunction restraining the Defendants-petitioners from interfering with the possession and title of the Plaintiff-Respondent over Bungalow No. 18, hereinafter referred to as "the suit land".

2. According to the Plaintiff, the suit land comprises Bungalow No. 18, lying on a plot measuring 4.261 acres within the Shillong Military Cantonment area. Plaintiff claims to be the absolute owner thereof on the basis of a Will dated 6th of December, 1980 executed by Late St. John Perry. The probate of the Will was granted by the District Judge, Shillong by an order dated 26th of June, 1987 and, according to the plaintiff, it had become final as no appeal was preferred against the said order. On the basis of the aforesaid order, the Plaintiff approached Defendant No. 2, D.E.O., Guwahati Circle for mutation of the suit land in his name in the General Land Register (for short "GLR"). Plaintiff was asked to fill up a pro-forma declaration form, inter alia, admitting the proprietary rights of the Government of India over the property and their right to resume the same as a condition for mutation. This was refused by the plaintiff. It is further case of the Plaintiff that soon thereafter, on 12th of December, 1986, a notice was served on him by the Ministry of Defence, intimating him of their decision to resume the suit land and asking him to deliver the possession to Defendant No. 2 within a month. The Plaintiff was thereafter served with a show cause notice dated 23rd of March, 1993 by Defendant No. 3, the Station Commander, Eastern Headquarter, Shillong, informing [illegible]e

of Officers had determined the compensation payable to him at Rs. 1,72,094/- on account of resumption of the suit land and to file reply by 19th of April, 1993, failing which it would be assumed that he had no objection to the order of resumption. This determination of compensation payable, according to the Plaintiff, was done without giving him an opportunity of hearing. It is in these circumstances that Plaintiff instituted Title suit No. 5(H) of 1993 before the learned Assistant District Judge, Shillong for a declaration that the order of resumption dated 23rd of March, 1993 is illegal, invalid, without jurisdiction and not binding on him and for permanent injunction, prohibiting the Defendants from interfering with the possession of the Plaintiff in any manner.

3. On the other hand, the case of the Defendants is that the suit land was settled with the British Government in 1863 under the Bengal Army Regulation, upon which the Cantonment was established. The suit land was originally granted free of rent to Mr. G.H. James in the year 1880 as "old grants". Mr. James transferred the suit land to Mr. L.H. Musgrave in 1932, who further transferred it by way of a Will to Mrs. G.M. De La Nonger in 1939. On the death of Mrs. G.M. De La Nonger, the suit land was transferred to St. John Perry vide Will dated 29th of May, 1980. The Plaintiff came to occupy the suit land pursuant to a Will executed by Late St. John Perry, bequeathing the said land to the Plaintiff. It is the case of the Defendants that since the land held under old grants is resumable, the occupancy holder is required to admit the title of the Government at the time of mutation. It is in these circumstances that St.John Perry had executed an admission deed dated 13th of May, 1982, duly stamped and registered in the office of Sub-registrar, Shillong, bearing Serial No. 3046, admitting the title of the Government over the suit land and their right of resumption. Similar admission deeds had been executed by the predecessors-in-interest of St.John Perry and hence the holder of the suit land only had occupancy rights in the property as a grantee. The Defendants disputed the title of the Plaintiff

over the suit land, barring the authorized structures, which vested in him by virtue of the probate granted to the Will of Late St.John Perry. It is further case of the Defendants that the suit land was required for bona fide defence use and, hence, a resumption order dated 23rd of March, 1993 was served on the Plaintiff. The amount of compensation for the authorised structures was re-examined at the prevalent market rate and computed at Rs. 1,72,094/-. The Plaintiff was also offered an alternative site for accommodation.

4. The trial Court on the basis of the pleadings of the parties framed several issues including the issue as to whether the suit land is covered by an old grant and can it be legally resumed by the defendants. The trial court on appreciation of the evidence and pleading came to the conclusion that the suit land forms part of an old grant and can be legally resumed and the plaintiff has no right over that; except for the value of the authorised structure. The appeal preferred by the plaintiff against the aforesaid judgment and decree had failed and the lower appellate court while dismissing the appeal has affirmed the aforesaid finding. However, the High Court in the second appeal preferred by the plaintiff set aside those findings and decreed the plaintiff's suit and while doing so observed as follows:

> "19. ….. In my opinion, the law relating to cantonment area cannot obviate the requirement of registering a deed of conveyance. No other evidence is produced by the respondent authorities to prove that the suit land is under the old grant term with the right of resumption at their pleasure. There can be no presumption of ownership in favour of the respondent authorities. The appellant has created a high degree of probability that he is the owner of the suit land and the onus to prove that he is not the owner has now shifted to the respondent authorities. Apart from relying on such admissions, they have not been able to show any entry in the GLR or any

to indicate that the suit land is under the old grant with the right to resumption. Having miserably failed to discharge such onus, I am constrained to hold that the appellant is able to prove his title to the suit land. The courts below put the onus of proving title to the suit land wrongly upon the appellant, which has raised substantial question of law. The concurrent findings of the courts below are consequently perverse, cannot be sustained in law and are liable to be interfered with in this second appeal."

5. Aggrieved by the same, the Defendants have preferred the present special leave petition.

6. Leave granted.

7. Mr. Mohan Parasaran, learned Solicitor General appearing on behalf of the Defendants-appellants submits that entries made in the GLR maintained under Cantonment Land Administration Rules is conclusive evidence of title. In support of his contention, Mr. Parasaran places reliance on a judgment of this court in *Union of India v. Ibrahim Uddin,* (2012) 8 SCC 148 and our attention has been drawn to the following paragraph:

"83. The General Land Register and other documents maintained by the Cantonment Board under the Cantonment Act, 1924 and the Rules made thereunder are public documents and the certified copies of the same are admissible in evidence in view of the provisions of Section 65 read with Section 74 of the Evidence Act. It is settled legal position that the entries made in the General Land Register maintained under the Cantonment Land Administration Rules is conclusive evidence of title."

(underlining ours)

8. Yet another decision to which our attention has been drawn is *Union of India v. Kamla Verma* (2010) 13 SCC 511.

In the said case, it has been held as follows:

"15. Even in the instant case, the land in question, was originally permitted to be used by a civilian on "old grant" basis and the said fact is reflected in the lease deed executed by late Shri Roop Krishan Seth. Moreover, even in the sale deed executed in favour of the respondent, it has been stated that the vendor was an "occupancy-holder of the land and trees of the aforesaid premises and owner of superstructure of the bungalow…". It is also pertinent to note that even in the land register the Government of India has been shown as a "landlord" and Shri Mohan Krishan Seth has been shown to be having occupancy right and his nature of right is shown to be of "old grant". These facts had been duly incorporated in the counter-affidavit filed by the present appellants before the High Court."

9. Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the Plaintiff-respondent, however, points out that the suit land has been classified as B3 land in the GLR. According to him, Rule 6 of the Cantonment Land Administration Rules, classifies B3 land as "held by any private person". It is his contention that the word "held" means "to own with legal title" and, hence, the plaintiff cannot be said to be a tenant of the suit land. In support thereof our attention has been drawn to the meaning of the expression "hold" in Black's Law Dictionary (Eighth Edition). According to this dictionary the term "hold" means "to possess by a lawful title". To drive home his point, he has also referred to a large number of dictionaries and decisions of this Court, viz. *Bhudan Singh v. Nabi Bux,* (1969) 2 SCC 481, *State of U.P. v. Sarjoo Devi,* (1977) 4 SCC 2, *State of A.P. v. Mohd. Ashrafuddin,* (1982) 2 SCC 1 and *Hari Ram v. Babu Gokul Prasad,* 1991 Supp (2) SCC 608. All these cases and dictionaries have been referred to by this Court in *A.G. Varadarajulu v. State of T.N.,* (1998) 4 SCC 231 and, therefore, we are not inclined to burden this judgment by all those authorities. However, we con[illegible]o

reproduce the following paragraphs from *A.G. Varadarajulu* (supra):

> "26. The word "hold" or "held" in the context of land has come up for consideration in several cases before this Court. In *State of U.P. v. Sarjoo Devi,* (1977) 4 SCC 2, while dealing with the said word in Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, as follows: (SCC p. 8, paras 8 and 10)
>
> > "The word 'held' occurring in the above definition which is a past participle of the word 'hold' is of wide import. In the Unabridged Edition of The Random House Dictionary of the English Language, the word 'hold' has been inter alia stated to mean 'to have the ownership or use of; keep as one's own'.
> >
> > * * *
>
> In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance the word 'held' means to possess by 'legal title'. Relying upon this connotation, this Court in *Bhudan Singh v. Nabi Bux,* (1969) 2 SCC 481, interpreted the word 'held' in Section 9 of U.P. Zamindari Abolition and Land Reforms Act, 1950 as meaning possession by legal title."
>
> (emphasis supplied)
>
> Again in *State of A.P. v. Mohd. Ashrafuddin,* (1982) 2 SCC 1, it was held as follows: (SCC p. 4, para 8)
>
> > "According to Oxford Dictionary 'held' means: to possess; to be the owner or holder or tenant of; keep possession of; occupy. Thus, 'held' connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term 'held' only in the sense of possession."

> The word "holds" was again interpreted in Hari Ram v. Babu Gokul Prasad, (1991) Supp.2 SCC 608, where it occurs in Section 185(1) of the Madhya Pradesh Land Revenue Code, 1959. It was observed: (SCC p. 611, para 5)
>
> > "The word 'holds' is not a word of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning. According to Oxford English Dictionary, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title."
>
> 27. We are, therefore, of the view that the word "held" in Section 3(42) is used in the sense that the female must be in possession of the land as owner or with some element of title on 15-2-1970, the date of commencement of the Act."

10. We have given our thoughtful consideration to the rival submissions and plea of Mr. Parasaran that entries made in the GLR are the conclusive proof of title commend us and the decisions relied on clearly support his contention. In the case of *Ibrahim Uddin* (supra), relying on the decision of *Kamla Verma* (supra) and *Chief Executive Officer v. Surendra Kumar Vakil,* (1999) 3 SCC 555, this Court has observed that "it is settled legal position that the entries made in the General Land Register maintained under the Cantonment Land Manual Rules are conclusive evidence of title". We respectfully concur with this view. In this background, it is apt to reproduce the relevant details mentioned in the GLR in respect of the property in question:

1.	Survey No.	65
5.	Area	4.261 Ac.
6.	Description	Bungalow No. 18
7.	Class	B3
8.	By whom managed	MEO
9.	Land Lord	Govt of India
10.	Holder of Occupancy Right	Lawrence Hugh Musgrove
11.	Nature of Holder Rights with description	Old Grant

11. Chapter II of the Military Land Manual inter alia, provides for classification and transfer of land, standard table of rent and management. Rule 3 of Chapter II of the Military Land Manual, hereinafter referred to as 'the Manual', casts duty on the Military Estate Officer to prepare in prescribed form a General Land Register of all lands in the Cantonment. Rule 4 provides for classification of land, including Class B land, which reads as follows:

> "(c) Class "B" land, that is land which, though not actively occupied by the Army nor reserved against building, yet must be retained in the cantonment by the Government of India, because the cantonment is primarily a place of residence for troops and it is the duty of the Government of India, in the interest of troops and of civil population which is essential to the welfare of the troops, both to provide them with amenities such as postal, telegraphic and railway communications, rest houses, bungalows, shops, places of amusement, open spaces, agricultural produce and so forth; and also to keep in their hands a sufficient area to meet all possible future requirements that may arise in the course of the efficient discharge of their duties in respect of Army administration."

12. Another rule which is relevant is Rule 6 which provides for division of Class B land in sub-classes. The same reads as follows:

> "6.Class "B" Land - Class "B" land shall be divided by the Central Government, or such other authority as they may empower in this behalf, into the following sub-classes, namely:-
>
> xxx xxx xxx
>
> (iii) Class "B3" Land, which is held by any private person under the provisions of these rules, or which is held or may be presumed to be held under the provisions of the Cantonment Code of 1899 or 1912, or under any executive orders previously in force, subject to conditions under which the Central Government reserve, or have reserved, to themselves the proprietary rights in the soil; and
>
> xxx xxx xxx"

13. The entries made in the GLR show that it is an old grant and that it is managed by the plaintiff as B3 land. Class B3 is such land which is held by any private person subject to the conditions that the Central Government has proprietary rights over it. True it is that the plaintiff held the land but the word "held" does not necessarily mean to own with legal title. It is not a word of art and its meaning has to be understood in the context it has been used. In a given context the word "held" may connote both ownership as also possession, but it will not carry the same meaning in all context and circumstances. In the case in hand, the plaintiff held the land but being an old grant the Central Government has the right of its resumption and, therefore, it cannot be said that the plaintiff possesses the land as owner. In view of what we have observed above, the meaning of the word "held" in various dictionaries and e[illegible]d in the several decisions of this Court r[illegible]o

way advance the case of the plaintiff.

14. The tenures under which permission is given to civilians to occupy Government land in the cantonment for construction of bungalows on the condition of a right of resumption, if required, is known as old grant tenures. It is governed by regulation contained in Order No. 179 of 1836 which is self contained and provides for the manner of grant and resumption of land in cantonment area. In respect of old grant tenure, the Government retains the right of resumption. The GLR in unequivocal terms deseribes the nature of holder's right as "old grant". Thus, the plaintiff has not been able to establish his title over the suit land in question and, therefore, the plaintiff deserves to be non-suited on this ground alone. However, in deference to Mr. Venugopal, we must answer an ancillary submission projected before us. He points out that, according to the defendants themselves, the land was given as old grant to the predecessor-in-interest of the plaintiff but the said grant has not been produced and in the absence of any explanation by the defendants for its non-production, adverse inference has to be drawn. According to him, once such inference is drawn, the plaintiff's suit deserves to be decreed and was, therefore, rightly decreed by the High Court. This submission of Mr. Venugopal does not appeal to us. It is not possible to accept the contention that since actual grant was not produced, the case pleaded by the defendants that the plaintiff held the land as old grant was not proved. The GLR maintained under the Cantonment Land Administration Rules supports the defendants' contention that the plaintiff held the land on old grant basis. The plaintiff, on the other hand, has not produced any document to show the title of his predecessor-in-interest. Nemo dat quid non habet is the maxim which means no one gives what he does not possess, aptly applies in the case. It needs no emphasis that the successor will not have better title than what his predecessor had. Hence, we reject this submission of Mr. Venugopal.

15. The High Court while decreeing the suit has observed that plaintiff has created a high degree of probability that he is the owner of the land and in such circumstance, the onus to prove that he is not the owner shifted on the defendants. It went on to observe that apart from relying on the admission made by the plaintiff's predecessor-in-interest, defendants have not been able to show any entry in the GLR to indicate that suit land is under the old grant. In our opinion, the whole approach of the High court in this regard is absolutely erroneous. Besides relying on the admission, the defendants have produced the GLR, which clearly shows that the land in dispute is covered under old grant. The classification of the land as B3 land also points towards the same conclusion. Thus, the High Court committed grave error in decreeing the plaintiff's suit.

16. To put the record straight, the learned Solicitor General has raised various other points to assail the impugned judgment and decree, but as this appeal is to succeed in the light of the view, which we have taken above, we are not inclined to either incorporate or answer the same in this judgment.

17. In the result, we allow this appeal, set aside the judgment and decree of the High Court and dismiss the plaintiff's suit but without any order as to cost in present appeal.

R.P. Appeal allowed.

VIJAY DHANUKA ETC.
v.
NAJIMA MAMTAJ ETC.
(Criminal Appeal Nos. 678-681 of 2014)

MARCH 27, 2014

[CHANDRAMAULI KR. PRASAD AND PINAKI CHANDRA GHOSE, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.202 r/w.s.2(g) and s. 200 - "Inquiry" in a case where accused is residing outside territorial jurisdiction of Judicial Magistrate - Nature and purpose of -Held: In such a case, before issuing summons to accused, inquiry u/s 202 is mandatory - In the instant case, Magistrate examined complainant on solemn affirmation and two witnesses and only thereafter directed issuance of process -This exercise by Magistrate for purpose of deciding whether or not there is sufficient ground for proceeding against accused is an inquiry u/s 202 - There is no error in impugned order of High Court rejecting the petitions of accused challenging the order of Judicial Magistrate directing issuance of process.

WORDS AND PHRASES:

Word 'shall' as occurring in s. 202 Cr.P.C. - Connotation of.

In a complaint filed regarding commission of offences punishable u/ss. 323,380 and 506 read with s.34 IPC, the Additional Chief Judicial Magistrate, after taking cognizance, transferred the complaint to the Court of Judicial Magistrate, who examined the complainant and her two witnesses u/s 200 Cr.P.C. On a subsequent date, the Judicial Magistrate ordered issuance of summons

against the appellants for the offences stated in the complaint. The appellants challenged the order before the High Court u/s 482 Cr.P.C. contending that the accused persons being residents of an area beyond the territorial jurisdiction of the Judicial Magistrate, an inquiry within the meaning of u/s 202 Cr.P.C. was necessary. The High Court rejected the petitions.

Dismissing the appeals, the Court

HELD: 1.1 In the instant case, on receipt of the complaint, the Additional Chief judicial Magistrate in exercise of the power u/s 192 of the Code of Criminal Procedure, 1973, after taking cognizance of the offence, made over the case for inquiry and disposal to the transferee Magistrate. Therefore, transfer of the case to transferee Magistrate for inquiry and disposal is perfectly in tune with the provisions of the Code. [para 8] [177-A-C]

1.2 Section 202, Cr.P.C, inter alia, contemplates postponement of the issue of the process by the Magistrate "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" was inserted by s.19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The intention of the legislature is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Therefore, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, the inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territori[illegible]e

Magistrate. [para 11 -12] [179-H; 180-A-C, H; 181-A-B]

Udai Shankar Awasthi v. State of Uttar Pradesh **2013 (3) SCR 935 = (2013) 2 SCC 435 - relied on.**

1.3 The word "inquiry" has been defined u/s 2(g), Cr.P.C. It is evident from the provision, that every inquiry other than a trial conducted by the Magistrate or court is an inquiry. No specific mode or manner of inquiry is provided u/s 202 of the Code. In the inquiry envisaged u/s 202, Cr.P.C. the witnesses are examined; whereas u/s 200, Cr.P.C. examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged u/s 202. [para 13-14] [181-H; 182-B-D]

Case Law Reference:

2013 (3) SCR 935 relied on para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 678-681 of 2014.

From the Judgment and Order dated 19.02.2013 of the High Court of Calcutta in CRR No. 508, 509, 510 and 511 of 2013.

Jaideep Gupta, Rakesh Sinha, S. Sengupta, Brajesh Kumar for the Appellants.

Nidhi for the Respondents.

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Petitioners have been summoned in a complaint case for commission of offence under Section 323, 380 and 506 read with Section 34 of the

Indian Penal Code, hereinafter referred to as "the IPC". Respondent No. 1 filed a complaint in the Court of Additional Chief Judicial Magistrate at Jangipur, Murshidabad on 1st of October, 2011, who after taking cognizance of the same, transferred the complaint to the Court of Judicial Magistrate, Jangipur, Murshidabad for inquiry and disposal.

2. According to the allegation in the complaint petition, accused no.1 Rajdip Dey is sub-broker of Karvy Stock Broking Limited; whereas other accused persons are its officials posted at Kolkata and Hyderabad. The complainant alleged to be its investor and claimed to have purchased shares from Karvi Stock Broking Ltd. through the sub-broker, accused No. 1. According to the complaint, a dispute arose over trading of shares between the complainant and the accused persons and to settle the on-going dispute, the accused persons offered a proposal to the complainant who consented to it and accordingly, on 11th of September, 2011, accused persons visited at her residence at Raghunathganj Darbeshpara to have a discussion with the complainant and her husband. According to the allegation, the discussion did not yield any result and the accused persons started shouting at them. Some of the accused persons, according to the allegation, took out a pistol from their bag and put the same over the heads of the complainant and her husband. It is alleged that they assaulted the complainant and her husband with fists and slaps and also abused them and coerced the complainant to sign some papers and snatched away the suitcase containing some papers. The aforesaid complaint was filed on 1st of October, 2011 in the Court of Additional Chief Judicial Magistrate, Jangipur, Murshidabad. The learned Magistrate took cognizance of the offence and transferred the case to the Court of another Magistrate for inquiry and disposal. On receipt of the record, the transferee Magistrate adjourned the case to 31st of October, 2011. On the said date, the complainant and her witnesses were present. The complainant was examined on solemn affirmation and the two witne[illegible]l

Haque and Masud Ali were also examined. Order dated 31st of October, 2011 shows that they were examined under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code"). The transferee Magistrate, thereafter, adjourned the case for orders and on the adjourned date, i.e. 15th of November, 2011, he directed for issuance of summons against the accused persons for offence under Section 323, 380 and 506 read with Section 34 of the IPC. It is relevant here to state that in the complaint, the residence of the accused has been shown at a place beyond the territorial jurisdiction of the Magistrate.

3. Petitioners challenged the order issuing process in four separate applications filed under Section 482 of the Code before the High Court, inter alia, contending that the accused persons being residents of an area outside the territorial jurisdiction of the learned Magistrate who had issued summons, an inquiry within the meaning of Section 202 of the Code was necessary. It was also contended that only after inquiry under Section 202 of the Code, the learned Magistrate was required to come to the conclusion as to whether sufficient grounds exist for proceeding against the accused persons. Said submission did not find favour with the High Court and by common order dated 19th of February, 2013, it rejected all the applications. It is against this common order that the petitioners have filed these special leave petitions.

4. Leave granted.

5. Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the appellants submits that the accused persons admittedly were residing at a place beyond the area in which the learned Magistrate exercised his jurisdiction, hence, an inquiry under Section 202 of the Code was sine qua non. He submits that in the present case, the learned Magistrate has not held inquiry as envisaged under Section 202 of the Code.

6. Ms. Nidhi, learned counsel representing respondent

no.1, however, submits that, in fact, the learned Magistrate before issuing the process has held an inquiry contemplated under the law and the order issuing process cannot be faulted on the ground that no inquiry was held. In view of the rival submissions, we deem it expedient to examine the scheme of the Code.

7. In the present case, we are concerned with an order passed in a complaint case. Section 190 of the Code provides for cognizance of offences by Magistrates and the same reads as follows:

> **"190. Cognizance of offences by Magistrates.-**(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section(2), may take cognizance of any offence-
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section(1) of such offences as are within his competence to inquire into or try."

8. Section 190 of the Code finds place in Chapter XIV and from its plain reading, it is evident that the competent Magistrate, inter alia, may take cognizance of any offence, subject to the provisions of Chapter XIV, upon receiving a complaint of facts which constitute an offence. Section 192 of the Code empowers any Chief Judicial Magistrate to transfer the case for inquiry after taking cogni[illegible]t

Magistrate subordinate to him. In the present case, on receipt of the complaint, the learned Additional Chief Judicial Magistrate in exercise of the power under Section 192 of the Code, after taking cognizance of the offence, had made over the case for inquiry and disposal to the transferee Magistrate. Section 12(2) of the Code confers on Additional Chief Judicial Magistrate the same powers as that of a Chief Judicial Magistrate. Hence, transfer of the case by the Additional Chief Judicial Magistrate after taking cognizance of the case to transferee Magistrate for inquiry and disposal is perfectly in tune with the provisions of the Code. The transferee Magistrate, thereafter, examined the complainant and her witnesses and only thereafter issued the process.

9. Section 200 of the Code, inter alia, provides for examination of the complainant on oath and the witnesses present, if any. Same reads as follows:

> **"200. Examination of complainant.** - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
>
> (a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or
>
> (b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate under section 192:
>
> Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

10. Under Section 200 of the Code, on presentation of the complaint by an individual, other than public servant in certain contingency, the Magistrate is required to examine the complainant on solemn affirmation and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, if any, various options are available to him. If he is satisfied that the allegations made in the complaint and statements of the complainant on oath and the witnesses constitute an offence, he may direct for issuance of process as contemplated under Section 204 of the Code. In case, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to dismiss the complaint under Section 203 of the Code. If on examination of the allegations made in the complaint and the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to postpone the issue of process and either inquire the case himself or direct the investigation to be made by a police officer or by any other person as he thinks fit. This option is also available after the examination of the complainant only. However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:

> **"202. Postponement of issue of process.-**(1) Any Magistrate, on receipt of a comp[illegible]f

which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present, if any, have been examined on oath under Section 200.

(2) In an inquiry under sub-section(1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section(1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

(underlining ours)

11. Section 202 of the Code, inter alia, contemplates

postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

12. The use of the expression 'shall' prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent inn

harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. In view of the decision of this Court in the case of *Udai Shankar Awasthi v. State of Uttar Pradesh,* (2013) 2 SCC 435, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment:

> "40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."
>
> (underlining ours)

13. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:

> "2. xxx xxx xxx
>
> (g)"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
>
> xxx xxx xxx"

14. It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.

15. In view of what we have observed above, we do not find any error in the order impugned.

16. In the result, we do not find any merit in the appeals and the same are dismissed accordingly.

R.P. Appeals dismissed.

P.C. MISHRA
v.
STATE (C.B.I.) & ANR.
(Criminal Appeal No. 1310 of 2010)

MARCH 27, 2014.

[K.S. RADHAKRISHNAN AND VIKRAMAJIT SEN JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 306 r/w s. 460 (g) - Power of Magistrate to grant pardon to accomplice during investigation before submission of charge-sheet - Held: During investigation, both, Special Judge as well as the Magistrate acting u/s 306, have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of crime - In a case, where Magistrate has exercised his jurisdiction u/s 306 even after appointment of a Special Judge under PC Act and has passed an order granting pardon, the same is only a curable irregularity, in terms of s. 460 (g) Cr.P.C., which will not vitiate the proceedings, provided the order is passed in good faith - However, after committal of the case, pardon granted by Magistrate is not a curable irregularity - In the instant case, there is no error in Special Judge directing the Magistrate to pass appropriate orders on the application of CBI in granting pardon to second respondent so as to facilitate the investigation - Code of Criminal Procedure, 1898 - s. 337.

The instant appeal arose out of the order dated 2.11.1996 passed by the Metropolitan Magistrate granting pardon to the second respondent in a case u/s 7 of the Prevention of Corruption Act, 1988 (PC Act) against him and the main accused, namely, the appellant. The said order attained finality. Later, charges were framed u/ss 7 and 13(1)(d) read with s. 13(2) of the PC Act against the appellant by order dated 8.2.2000. During the trial in the

Court of Special Judge when evidence had been concluded as against the appellant and the second respondent had been examined as PW9 by the prosecution and cross-examined by the appellant, the latter moved an application under the proviso to s. 234 Cr.P.C. before the Special Judge on 24.7.2008, questioning the pardon granted to second respondent by the Metropolitan Magistrate on 2.11.1996. The Special Judge rejected the application. The High Court dismissed the appellant's revision petition.

In the instant appeal, the issue that arose for consideration before the Court was the correctness of the order passed by the Magistrate in granting pardon, exercising powers u/s 306 Cr.P.C. during the course of investigation of the case and before the submission of the charge-sheet before the Special Judge.

Dismissing the appeal, the Court

HELD: 1.1 The power to grant pardon enjoined u/s 306 Cr.P.C. is a substantial power and the reasons for tendering pardon must be recorded. It is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. [para 11] [193-F-G]

Kanta Prashad v. Delhi Administration **1958 SCR 1218 = AIR 1958 SC 350 and** *State of U.P. v. Kailash Nath Agarwal and others* **1973 (3) SCR 728 = (1973) 1 SCC 751 -- relied on.**

A. Devendran v. State of Tamil Nadu **1997 (4) Suppl. SCR 591 = (1997) 11 SCC 720 - referred to.**

1.2 During investigation, both t[illegible]s

well as the Magistrate acting u/s 306 Cr.P.C. have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of the crime. But, after the committal of the case, the pardon granted by the Magistrate is not a curable irregularity. [para 14] [195-E-F]

Bangaru Laxman v. State (through CBI) and another **2011 (13) SCR 268 = (2012) 1 SCC 500 - referred to.**

1.3 In a case, where the Magistrate has exercised his jurisdiction u/s 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, in terms of s. 460 (g) Cr.P.C., which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. [para 15 - 16] [195-H; 196-D-E]

1.4 In the circumstances, there is no error in Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to second respondent so as to facilitate the investigation. [para 17] [196-F]

A.R. Antulay v. Ramdas Sriniwas Nayak and another **1984 (2) SCR 914 = (1984) 2 SCC 500;** *Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another* **2005 (5) Suppl. SCR 83 = (2005) 12 SCC 709 and** *Harshad S. Mehta and others v. State of Maharashtra* **2001 (2) Suppl. SCR 577 = (2001) 8 SCC 257 - cited**

Case Law Reference:

2011 (13) SCR 268	**referred to**	**para 7**
1984 (2) SCR 914	**cited**	**para 7**

2005 (5) Suppl. SCR 83	**cited**	**para 7**
2001 (2) Suppl. SCR 577	**cited**	**para 7**
1997 (4) Suppl. SCR 591	**referred to**	**para 10**
1958 SCR 1218	**relied on**	**para 11**
1973 (3) SCR 728	**relied on**	**para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1310 of 2010.

From the Judgment and Order dated 06.11.2008 of the High Court of Delhi at New Delhi in Criminal M.C. No. 3514 of 2008.

Appellant-in-person.

Rajiv Nanda, C.K. Sharma, B.V. Balaram Das, V. Mohana for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. We are, in this appeal, concerned with the question whether the pardon granted by the Metropolitan Magistrate, Tis Hazari, Delhi, under Section 306 Cr.P.C. to the second Respondent, against whom R.C. No.15(A) 96 DLI dated 29.2.1996 under Section 7 of the Prevention of Corruption Act, 1988 was registered by the Central Bureau of Investigation, is legally sustainable.

2. The Central Bureau of Investigation (CBI) registered R.C. No.15(A) 96 DLI dated 29.2.1996 under Section 7 of the Prevention of Corruption Act, 1988 (for short "PC Act") on receipt of a written complaint on 29.2.1996 from Gulshan Sikri, proprietor of M/s Filtrex India, Nangal Raya, New Delhi, against P.C. Mishra, the then Assistant Commissioner of Sales Tax (Appeals), Appellant herein, for demanding Rs.4,000/- as bribe for settling the appeal filed against the order of Sales Tax Officer.

3. CBI, on 1.3.1996, laid a trap and the accused, PC Mishra, and his Reader Ravi Bhatt, second Respondent herein, were caught red-handed while demanding and accepting the bribe from the complainant. Both the accused persons were arrested by the CBI on 1.3.1996 and, during the course of investigation, an application was filed by the co-accused Ravi Bhatt before the Special Judge, CBI, for recording his confessional statement under Section 164 Cr.P.C., which was marked by Special Judge to the Chief Metropolitan Magistrate, who assigned the same to the Metropolitan Magistrate and the statement of second Respondent under Section 164 Cr.P.C. was recorded on 7.8.1996. During the course of investigation, the witnesses had been examined and records scrutinized and it transpired that the co-accused Ravi Bhatt had accepted the bribe money for and on behalf of the Appellant. The CBI, on investigation, noticed that the second Respondent was not a leading accused in the case and it was considered necessary to take him as an approver to prove the various missing links in the chain of circumstantial evidence, which was otherwise not available to the investigating agency. Consequently, the CBI on 24.10.1996 filed an application under Section 306 Cr.P.C. before the Special Judge, Tis Hazari, Delhi for grant of pardon to the second Respondent, Ravi Bhatt. The Special Judge marked that application to the learned Chief Metropolitan Magistrate for the said purpose, who, in turn, marked the same to the Metropolitan Magistrate.

4. The Metropolitan Magistrate examined the application of the CBI and passed an order dated 2.11.1996, in exercise of powers conferred under Section 306 Cr.P.C., holding that it was a fit case where pardon should be granted to the second accused to enable the prosecution to unveil all circumstances of the case and to unearth the truth, stating the following reasons :

> "Accused Sh. Ravi Bhatt is a privy to the offence. He is not the principal/leading accused in this case. It is not mentioned in the written complaint of the complainant that accused Sh. Ravi Bhatt demanded Rs.4000/- from him. The role played by him, however, is minimal. Considering that the matter relates to corruption in the Government Department and no direct independent evidence is available, I think it appropriate to obtain evidence of the accused, Sh. Ravi Bhatt in order to prove the various missing links in the chain of the circumstantial evidence which are not otherwise available to the investigating agency. The offence mentioned in the FIR is triable exclusively by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952)."

5. The above mentioned order was not challenged and has attained finality. Later, charges were framed under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act against the Appellant vide order dated 8.2.2000 after getting sanction. Trial proceeded in the Court of Special Judge and evidence was concluded as against the Appellant. Second Respondent, Ravi Bhatt, was examined as PW9 by the prosecution and was also cross-examined by the Appellant.

6. The Appellant moved an application under the proviso to Section 234 Cr.P.C. for the first time, before the Special Judge on 24.7.2008, questioning the pardon granted to second Respondent by the learned Metropolitan Magistrate on 2.11.1996 in exercise of powers conferred under Section 306 Cr.P.C. It was contended that the pardon could have been granted only by the Special Judge under Section 5(2) of the PC Act and not by the Metropolitan Magistrate, being not a designated Court under the PC Act. It was also contended that the Magistrate did not have any power to grant pardon. The Special Judge rejected the application vide order dated 31.10.2008 holding that the Metropolitan Magistrate had the power to grant pardon during investigation under Section 306 Cr.P.C. and even if the Magistrate was

to tender a pardon and the order was passed in good faith, then such an order is protected under Section 460 Cr.P.C. Aggrieved by the same, the Appellant filed Criminal Revision being Crl. M.C. No.3514 of 2008 before the High Court of Delhi, which was dismissed by the High Court vide its order dated 6.11.2008, against which this appeal has been preferred.

7. Shri P.C. Mishra, the Appellant, appeared in person and submitted that the learned Metropolitan Magistrate has committed a grave error in granting pardon to the second Respondent, that too, without hearing him. Shri Mishra submitted that the order passed by the learned Metropolitan Magistrate on 2.11.1996 is without jurisdiction, since no power is conferred on him to grant pardon to second Respondent as the matter is already seized before the Special Judge appointed under Section 3 of the PC Act. It was pointed out that Section 5(2) of the PC Act deals with all matters pertaining to offences under the Prevention of Corruption Act, starting from registration of FIR to passing of final judgment. Consequently, it was only Special Judge, who could have granted pardon to the second Respondent and not the Metropolitan Magistrate. Shri Mishra also placed considerable reliance on the Constitution Bench judgment of this Court in *A.R. Antulay v. Ramdas Sriniwas Nayak and another* (1984) 2 SCC 500 and various other decisions in support of his contention. Further, it was pointed out that the Special Act lays down some procedure under which the Special Judge has to function and no other procedure, apart from what has been prescribed by the PC Act, could be followed. In support of his contention reliance was placed on the judgment of this Court in *Dilawar Singh v. Parvinder Singh alias Iqbal Singh and another* (2005) 12 SCC 709 to emphasise the power of the Special Judge under Section 5(2) of the PC Act. Reliance was also placed on the judgment of this Court in *Harshad S. Mehta and others v. State of Maharashtra* (2001) 8 SCC 257 and *Bangaru Laxman v. State (through CBI) and another* (2012) 1 SCC 500. It was also pointed out that since the issue with regard to the jurisdiction

could be raised at any point of time, the contention of the Respondents that the order of 1996 was challenged only in the year 2008 cannot be sustained. Further, it was also pointed out that the learned Metropolitan Magistrate had granted pardon under Section 306 Cr.P.C. without issuing notice to the Appellant which has caused serious prejudice to him.

8. Shri Rajiv Nanda, learned counsel appearing for the CBI, submitted that the application for pardon could be moved by the prosecution at the stage of investigation, till its culmination and in the instant case the application for pardon was moved by the prosecution at the stage of investigation and that too after recording the statement of Ravi Bhatt under Section 164 Cr.P.C. Learned Metropolitan Magistrate, it was pointed out, has exercised his jurisdiction to grant pardon under Section 306 Cr.P.C. at the investigation stage. The Special Judge, in the instant case, had directed the Chief Metropolitan Magistrate or the Metropolitan Magistrate to deal with the application for pardon, since the case was at the investigation stage. In any view, it was submitted, even if there was some irregularity in the order passed by the Metropolitan Magistrate, that irregularity was a curable irregularity in view of Section 460(g) Cr.P.C.

9. Ms. V. Mohana, learned Amicus Curiae addressed elaborate arguments on the scope of Sections 306 and 460 Cr.P.C. as well as the powers of the Special Judge under Section 5(2) of the PC Act. Learned Amicus Curiae pointed out that power of the Magistrate during investigation to grant pardon is not taken away or deprived by the provisions of the PC Act. In any view, the order passed by the Metropolitan Magistrate is protected under Section 460(g) Cr.P.C. since the Magistrate had acted bona fide and in good faith. Learned Amicus Curiae also submitted, assuming that the Special Judge under the PC Act also has power to grant pardon during investigation, that will not take away the inherent powers on the Magistrate during investigation to grant pardon while exercising powers under Section 306 Cr.P.C. Le e

further submitted that the order granting pardon was passed as early as on 2.11.1996, which was revisable and, since no revision had been filed, the order had attained finality and hence the same could not have been challenged by the Appellant at the fag end of the trial, in which, it was pointed out, he had been convicted by the Special Judge vide his judgment dated 24.5.2010.

10. We are, in this appeal, concerned with the correctness or otherwise of the order passed by the Magistrate in granting pardon exercising powers under Section 306 Cr.P.C. during the course of investigation of the case and before the submission of the charge-sheet before the Special Judge. The CBI, as already stated, had filed an application for grant of pardon before the Special Judge at a stage when investigation was going on and the Special Judge, in its wisdom, thought it appropriate that the application be dealt with by the Chief Metropolitan Magistrate, since investigation was not over and charge-sheet was not submitted before him. The Chief Metropolitan Magistrate, however, assigned the matter to the Metropolitan Magistrate. Situation would have been different if the investigation was over, charge-sheet had been submitted and the charges were framed against the accused. In our view, at the stage of investigation, the power conferred on the Magistrate under Section 306 Cr.P.C. (Section 337 of Cr.P.C. 1898 Old Code) has not been taken away, even if the offence can ultimately be tried by a Special Judge. Section 306 Cr.P.C. is applicable in a case where the order of committal has not been passed, while Section 307 Cr.P.C. is applicable after the committal of the case before the judgment is pronounced. This Court in *A. Devendran v. State of Tamil Nadu* (1997) 11 SCC 720 opined that after committal of the case, the power to grant pardon vests in the Court to which the case has been committed and the pardon granted by the Chief Judicial Magistrate is not a curable irregularity. For easy reference, we refer to Section 306 Cr.P.C., which reads as follows :

306. Tender of pardon to accomplice.

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true dis- closure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) This section applies to-

(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952);

(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub- section (1)-

(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has, accepted a tender of pardon made under sub- section (1) and has been examined under sub- section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,-

(a) commit it for trial-

(i) to the Court of Session if the, offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."

11. Power to grant pardon enjoined under Section 306 Cr.P.C. is a substantial power and the reasons for tendering pardon must be recorded. It is for the prosecution to ask that a particular accused, out of several, may be granted pardon, if it thinks that it is necessary in the interest of successful prosecution of other offenders or else the conviction of those offenders would not be easy. This Court in *State of U.P. v. Kailash Nath Agarwal and others* (1973) 1 SCC 751 recognised the power of the District Magistrate to grant pardon at the investigation stage. This Court in *Kanta Prashad v. Delhi Administration* AIR 1958 SC 350 had the occasion to examine the scope of Section 337 and 338 of the old Code (Cr.P.C. 1898) vis-à-vis the powers of a Special Court constituted under

the Criminal Law (Amendment) Act, 1952. This Court held that, reading the proviso to Section 337 and provisions of Section 338 together, the District Magistrate is empowered to tender a pardon even after a commitment, if the Court so directs. It was also held that under Section 8(2) of the Criminal Law (Amendment) Act, 1952, the Special Judge has also been granted power to tender pardon. The conferment of this power on the Special Judge in no way deprives the District Magistrate of his power to grant a pardon under Section 337 of the Code. It was held if at the time when the District Magistrate tenders the pardon, the case was not before the Special Judge, then there is no illegality committed by the District Magistrate.

12. The scope of above-mentioned provisions again came up for consideration before this Court in *Kailash Nath Agarwal* (supra), wherein this Court after referring to its earlier judgment in *Kanta Prashad* (supra) held as follows:-

"It will be noted from this decision that emphasis is laid on the fact that the proviso to Section 337 contemplates concurrent jurisdiction in the District Magistrate and in the Magistrate making an inquiry or holding the trial to tender pardon. It is also emphasised that the conferment of the power to grant pardon on the Special Judge does not deprive the District Magistrate of his power to grant pardon under Section 337."

13. In *Bangaru Laxman* (supra), this Court has stated that the power of Special Judge to grant pardon is an unfettered power and held that, while trying the offences, the Special Judge has dual power of a Special Judge as well as that of a Magistrate. This Court, while interpreting Section 5, then went on to say as follows :-

40. Thus, on a harmonious reading of Section 5(2) of the PC Act with the provisions of Section 306, specially Section 306(2)(a) of the Code and Section 26 of the PC Act, this Court is of the opinion t[illegible]e

under the PC Act, while trying offences, has the dual power of the Sessions Judge as well as that of a Magistrate. Such a Special Judge conducts the proceedings under the court both prior to the filing of charge-sheet as well as after the filing of charge-sheet, for holding the trial.

41. ……. Since this Court has already held that the Special Court is clothed with the magisterial power of remand, thus in the absence of a contrary provision, this Court cannot hold that power to grant pardon at the stage of investigation can be denied to the Special Court.

42. In view of the discussion made above, this Court is of the opinion that the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of judicial discretion of the Special Judge before whom such a prayer is made, as in the instant case by the prosecution."

14. *Bangaru Laxman* (supra), therefore, emphasizes the concurrent jurisdiction of the Special Judge as well as the Chief Judicial Magistrate or Metropolitan Magistrate to grant pardon during investigation, but does not say that the Metropolitan Magistrate has no power under Section 306 Cr.P.C. to grant pardon during the investigation i.e. before filing of charge-sheet before the Special Judge. During investigation, in our view, both the Special Judge as well as the Magistrate acting under Section 306 Cr.P.C. have concurrent jurisdiction to entertain application of pardon, which facilitates proper investigation of the crime. But, as already indicated, after the committal of the case, the pardon granted by the Magistrate is not a curable irregularity.

15. We may, in this regard, refer to Section 460 Cr.P.C. which refers to nine kinds of crurable irregularities, provided they are caused erroneously and in good faith. Irregularity caused while granting pardon is dealt with in Section 460(g) Cr.P.C. The relevant part of that Section reads as follows :-

"460. Irregularities which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely:-

(g) to tender a pardon under section 306;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered."

Section 461 Cr.P.C. speaks of irregularities which vitiate proceedings.

16. We have already held, both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon under Section 306 Cr.P.C. while the investigation is going on. But, in a case, where the Magistrate has exercised his jurisdiction under Section 306 Cr.P.C. even after the appointment of a Special Judge under the PC Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge himself has referred the application to Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. In such circumstances, we find no error in Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to second Respondent so as to facilitate the investigation.

17. Appeal lacks merit and the same is dismissed.

R.P. Appeal dismissed.

SAFAI KARAMCHARI ANDOLAN & ORS.
v.
UNION OF INDIA & ORS.
(Writ Petition (Civil) No. 583 of 2003)

MARCH 27, 2014

[P. SATHASIVAM, CJI, RANJAN GOGOI AND N.V. RAMANA, JJ.]

PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013: Object of - Discussed.

CONSTITUTION OF INDIA, 1950: Articles 14, 17, 21 and 47 - Non-implementation of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 - PIL - Grievance of petitioner that manual scavenging continues unabated and dry latrines continue to exist notwithstanding the fact that 1993 Act was in force for nearly two decades - Writ petition inter alia, seeking for enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47; complete eradication of Dry Latrines; and for declaring the practice of manual scavenging and the operation of Dry Latrines violative of the Constitution and the 1993 Act - Held: Due to effective intervention and directions of the Supreme Court, the Government brought Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 for abolition of this evil and for welfare of manual scavengers - In view of various provisions of 2013 Act and in the light of various orders passed by Supreme Court from time to time, various directions passed for rehabilitation of the manual scavengers and for welfare of their family and children - All the State Governments and the Union Territories directed to fully implement the same and take appropriate action for non-implementation as well as

violation of the provisions contained in the 2013 Act - Inasmuch as the Act 2013 occupies the entire field, no further monitoring required by the Supreme Court - However, duty cast on all the States and the Union Territories to fully implement and to take action against the violators - In future, persons aggrieved to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction - Writ petition disposed of - Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 - Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 - ss.2(1)(d), (e) and (g).

INTERNATIONAL CONVENTIONS AND COVENANTS: Binding effect of - Held: The provisions of the International Covenants, which have been ratified by India, are binding to the extent that they are not inconsistent with the provisions of the domestic law.

The instant writ petition was filed as a Public Interest Litigation under Article 32 of the Constitution of India praying for issuance of a writ of mandamus to the respondent-Union of India, State Governments and Union Territories to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 inter alia, seeking for enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India. The relief sought by the petitioner was complete eradication of Dry Latrines; to declare continuance of the practice of manual scavenging and the operation of Dry Latrines violative of Articles 14, 17, 21 and 23 of the Constitution and the 1993 Act; to direct the respondents to adopt and implement the Act and to formulate detailed plans, on time bound basis, for complete eradication of practice of manual scavenging and rehabilitation of persons engaged in such practice; to direc

State Governments to issue necessary directives to various Municipal Corporations, Municipalities and Nagar Panchayats (all local bodies) to strictly implement the provisions of the Act and initiate prosecution against the violators; and to file periodical Compliance Reports pursuant to various directions issued by the Supreme Court.

Disposing of the writ petition, the Court

HELD: 1. The practice of untouchability in general and of manual scavenging in particular was deprecated in no uncertain terms by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constitution of India. Accordingly, in Chapter III of the Constitution, Article 17 abolished untouchability. Article 17 of the Constitution was initially implemented through the enactment of the Protection of Civil Rights Act, 1955 (formerly known as the Untouchability (Offences) Act, 1955). Section 7A of the said Act provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability which is punishable with imprisonment. While these constitutional and statutory provisions were path breaking in themselves, they were found to be inadequate in addressing the continuation of the obnoxious practice of manual scavenging across the country, a practice squarely rooted in the concept of the caste-system and untouchability. [Paras 5, 6] [209-F-G; 210-B-D]

2. Apart from the provisions of the Constitution, there are various international conventions and covenants to which India is a party, which prescribe the inhuman practice of manual scavenging. These are the Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) and the Convention for Elimination of all Forms of Discrimination

Against Women (CEDAW). These provisions of the International Covenants, which have been ratified by India, are binding to the extent that they are not inconsistent with the provisions of the domestic law. [Para 7] [210-D-E; 212-A-B]

3. From 2003 till date, this writ petition was treated as a continuing mandamus. Several orders have been passed by this Court having far reaching implications. The petitioners have brought to focus the non-adoption of the Act by various States which led to ratification of the Act by State Assemblies (including the Delhi Assembly which ratified the Act as late as in 2010). The Union Government, State Governments as well as the petitioners have filed affidavits from time to time as per the directions of this Court and also as to the compliance of those orders. This Court has, on several occasions, directed the Union and State Governments to take steps towards the monitoring and implementation of the Act. Various orders have gradually pushed the State Governments to ratify the law and appoint Executive Authorities under the Act. Under the directions of this Court, the States are obligated by law to collect data and monitor the implementation of the Act. [Paras 8, 9] [212-B-E]

4. Due to mounting pressure of this Court, in March, 2013, the Central Government announced a 'Survey of Manual Scavengers'. The survey, however, was confined only to 3546 statutory towns and did not extend to rural areas. Even with this limited mandate, as per the information with Petitioner No. 1, the survey has shown remarkably little progress. State records in the "Progress Report of Survey of Manual Scavengers and their Dependents" dated 27.02.2014 show that they have only been able to identify a miniscule proportion of the number of people actually engaged in manual scavenging. For instance, the petitioners, with thei

have managed to identify 1098 persons in manual scavenging in the State of Bihar. The Progress Report dated 27.02.2014 claims to have identified only 136. In the State of Rajasthan, the petitioners have identified 816 manual scavengers whereas the Progress Report of the State dated 27.02.2014 has identified only 46. The said data collected by the petitioners makes it abundantly clear that the practice of manual scavenging continues unabated. Dry latrines continue to exist notwithstanding the fact that the 1993 Act was in force for nearly two decades. States have acted in denial of the 1993 Act and the constitutional mandate to abolish untouchability. [Paras 10, 11] [212-F-H; 213-A-C]

5. For over a decade, this Court issued various directions and sought for compliance from all the States and Union Territories. Due to effective intervention and directions of this Court, the Government of India brought an Act called "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" for abolition of this evil and for the welfare of manual scavengers. The Act got the assent of the President on 18.09.2013. The enactment of the said Act, in no way, neither dilutes the constitutional mandate of Article 17 nor does it condone the inaction on the part of Union and State Governments under the 1993 Act. What the 2013 Act does in addition is to expressly acknowledge Article 17 and Article 21 rights of the persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excreta on railway tracks. The Act has been enacted to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families, and for matters connected therewith or incidental thereto. Chapter I of the Act inter alia provides for the definitions of "hazardous cleaning", "insanitary latrine" and "manual scavenger" as contained in Sections 2(1)(d), (e) and (g) thereof

respectively. Chapter II of the Act contains provisions for Identification of Insanitary latrines. Chapter III of the Act contains provisions for prohibition of insanitary latrines and employment and engagement as manual scavenger. Sections 8 and 9 of the Act provide for penal provisions. Chapter IV of the Act contains provisions with respect to identification of manual scavengers in Urban and Rural Areas and also provides for their rehabilitation. Chapter V of the Act provides for the implementing mechanism. Chapter VII of the Act provides for the establishment of Vigilance and Monitoring Committees. Chapter VIII of the Act contains miscellaneous provisions. Section 33 of the Act provides for duty of local authorities and other agencies to use modern technology for cleaning of sewers, etc. Section 36 of the Act provides that the appropriate Government shall, by notification, makes rules for carrying out the provisions of the Act within a period not exceeding three months. Section 37 of the Act provides that the Central Government shall, by notification, publish model rules for the guidance and use of the State Governments. [paras 12, 13] [213-C-F, G-H; 214-A-B, H; 215-A; 217-B, F; 219-B-C; 220-G; 223-C-D]

6. In view of various provisions of the 2013 Act and also in the light of various orders of this Court, the following directions were passed:- The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act, in the following manner, namely:- (a) such initial, one time, cash assistance, as may be prescribed; (b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be; (c) they shall be allotted a residential plot and financial assistance for house construction, or a ready-built house with financial assistance, subject to eligibility an e

manual scavenger as per the provisions of the relevant scheme; (d) at least one member of their family, shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period; (e) at least one adult member of their family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme; (f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf. (ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:- (a) Sewer deaths - entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased. (b) Railways - should take time bound strategy to end manual scavenging on the tracks. (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law. (d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes. (iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them. (iv) Rehabilitation must be based on the principles of justice and transformation. [para 14] [223-E-H; 224-A-H; 225-A-C]

7. In the light of various provisions of the Act and the Rules in addition to various directions issued by this Court, all the State Governments and the Union Territories are directed to fully implement the same and take appropriate action for non-implementation as well as

violation of the provisions contained in the 2013 Act. Inasmuch as the Act 2013 occupies the entire field, no further monitoring is required by this Court. However, the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction. [para 15] [225-D-F]

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

Writ Petition (Civil) No. 583 of 2003.

WITH

Contempt Petition (C) No. 132 of 2012 in W.P. (C) No. 583 of 2003.

A. Mariarputham, AG, Paras Kuhad, R.K. Khanna, ASGs, Dinesh Dwivedi, J.S. Attri, Ranjit Kumar, Rahul Verma, Manjit Singh, Ajay Bansal, Saurabh Shyam, Shamshery, Krishna Sarma, AAGs, Nikhil Nayyar, Ambuj Agrawal, Akanksha, Dhanajay Baijal, Jatinder Kumar Bhatia, Mukesh Verma, Anuvrat Sharma, Jitin Chaturvedi, Vikas Bansal, M.N. Dasa, Sushma Suri, Sunita Sharma, D.S. Mahra, Rajeev Kumar Bansal, Mohan Prasad Gupta, S.K. Bajwa, Keshav Thakur, B. Krishna Prasad, S.N. Terdal, C.D. Singh, Sakshi Kakkar, Darpan Bhuyan, Vivekta Singh, Nupur Chaudhary, Tarjit Singh, Kamal Mohan Gupta, Vinay Kuhar, Devendra Singh, Dheeraj Gupta, Pardaman Singh, Kuldip Singh, Gaurav Yadav, Sunil Fernandes, Astha Varma, Insha Mir, Raghav Chadha, Asha G. Nair, Abhishek Kumar Pandey, Bharat Sood, Amit Sharma, Milind Kumar, Gopal Singh, Ritu Raj Biswas, Chandan Kumar, K. Enatoli Sema, Amit Kumar Singh, Aruna Mathur, Yusuf, Arputham Aruna & Co., K.N. Madhusoodhana, Pragyan Sharma, Heshu K., R. Sathish, G.N. Reddy, B. Debojit, M. Bala Shivudu, Suryanarayana Singh, Pragati Neekhra, Hemantika Wahi, Preeti Bhardwaj, Lagnesh Mishra A.

Parikshit, Anil Shrivastav, Rituraj Biswas, Gopal Prasad, Sunil S., V.G. Pragasam, S.J. Aristotle, Praburamasubramanian, Balasubramanian, K.V. Jagdishvaran, G. Indira, Pawan Shree Agrawal, Aniruddha P. Mayee, Anip Sachthey, Ashok Kumar Singh, Sapam Biswajit Meitei, Khwairakpam Nobin Singh, Shanthanu Singh, Riku Sarma, Navnit Kumar, Corporate Law Group, Rachana Joshi Issar, Ambreen Rasool, M.J. Paul, A. Subhashini, Anil Katiyar, Avijit Bhattacharjee, Bharat Sangal, C.N. Sree Kumar, Devendra Singh, G. Prakash, H.S. Parihar, K.J. John, K.K. Gupta, Ranjan Mukherjee, Ravindra Kumar, K.K. Mani, M.C. Dhingra, Madhu Sikri, Manoj Swarup & Co., Naresh K. Sharma, Parijat Sinha, P. Narasimhan, Pradeep Misra, Prem Sunder Jha, R.N. Keshwani, Shrish Kumar Mishra, T.V. Ratnam, C.M. Chopra, Anil Nag, R. Ayyam Perumal, K.R. Sasiprabhu, Shakil Ahmed Syed, S. Rajappa, B.K. Stija, Ramesh Babu M.R., Ghanshyam Joshi, Tarun Johri, Varinder Kumar Sharma, Rajan Narain, Dr. Kailash Chand, Rajesh Srivastava, S. Chandra Shekhar, Mohanprasad Meharia, Ajay Sharma, T. Mahipal, Sumita Hazarika, Amit Kumar, Ravindra Keshavrao Adsure, Susmita Lal, Abhisth Kumar, Praneet Ranjan, Shibashish Misra, Ansar Ahmad Chaudhary, Rauf Rahim, T.V. George, Praveen Chaturvedi, Ajay Pal, R. Gopalakrishnan, Bina Madhavan, Abhishek Choudhary, Arvind Kumar Sharma for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. The above writ petition has been filed by the petitioners as a Public Interest Litigation under Article 32 of the Constitution of India praying for issuance of a writ of mandamus to the respondent-Union of India, State Governments and Union Territories to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (in short 'the Act'), inter alia, seeking for enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India.

2. Brief facts:

(i) The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal is a practice that is still prevalent in many parts of the country. While the surveys conducted by some of the petitioner- organizations estimate that there are over 12 lakh manual scavengers undertaking the degrading human practice in the country, the official statistics issued by the Ministry of Social Justice and Empowerment for the year 2002-2003 puts the figure of identified manual scavengers at 6,76,009. Of these, over 95% are Dalits (persons belonging to the scheduled castes), who are compelled to undertake this denigrating task under the garb of "traditional occupation". The manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.

(ii) The sub-Committee of the Task Force constituted by the Planning Commission in 1989 estimated that there were 72.05 lakhs dry latrines in the country. These dry latrines have not only continued to exist till date in several States but have increased to 96 lakhs and are still being cleaned manually by scavengers belonging to the Scheduled Castes.

(iii) National Scheduled Castes and Scheduled Tribes Finance and Development Corporation was set up in February, 1989 as a Government company to provide financial assistance to all the Scheduled Castes and Scheduled Tribes including Safai Karamcharis for their economic development.

(iv) The Government of India formulated a Scheme known as 'Low Cost Sanitation for Liberation of Scavengers' which is a centrally sponsored Scheme being implemented in 1989-90 for elimination of manual scavenging by converting existing dry latrines into low cost water pour flush or

construction of new sanitary latrines.

(v) With a view to eliminate manual scavenging, a Scheme known as 'National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents' was launched in March 1992 for identification, liberation and rehabilitation of scavengers and their dependents by providing alternative employment after giving the requisite training.

(vi) Based on earlier experience and keeping in view the recommendations of the National Seminar on Rural Sanitation held in September 1992, a new strategy was adopted by the Government of India in March 1993. The emphasis was now on providing sanitary latrines including the construction of individual sanitary latrines for selected houses below the poverty line with subsidy of 80% of the unit cost of Rs.2,500/-.

(vii) In the year 1993, the Parliament enacted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and it received the assent of the President on 5th June, 1993. The long title of the Act describes it as an Act to provide for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines and for matters connected therewith or incidental thereto.

(viii) The Act, which was enacted in June 1993, remained inoperative for about 3½ years. It was finally brought into force in the year 1997. In the first instance, the Act applied to the States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all the Union Territories. It was expected that the remaining States would adopt the Act subsequently by passing appropriate resolution under Article 252 of the Constitution. However, as noted by the National Commission for Safai Karamcharis-a statutory body, set up under the National Commission for Safai Karamcharis Act, 1993, in its 3rd and 4th Reports (combined) submitted to the

Parliament, noted that the 1993 Act was not being implemented effectively and further noted that the estimated number of dry latrines in the country is 96 lakhs and the estimated number of manual scavengers identified is 5,77,228. It further noted that manual scavengers were being employed in the military engineering works, the army, public sector undertakings, Indian Railways etc.

(ix) In 2003, a report was submitted by the Comptroller and Auditor General (CAG) which evaluated the 'National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents'. The conclusion of the report was that this Scheme "has failed to achieve its objectives even after 10 years of implementation involving investment of more than Rs. 600 crores". It further pointed out that although funds were available for implementation of the Scheme, much of it were unspent or underutilized. The Committees set up for monitoring the Scheme were non-functional. It further noted that there was "lack of correspondence between 'liberation' and 'rehabilitation' and that "there was no evidence to suggest if those liberated were in fact rehabilitated". It concluded that "the most serious lapse in the conceptualization and operationalization of the Scheme was its failure to employ the law that prohibited the occupation…the law was rarely used".

(x) In December, 2003 the Safai Karamchari Andolan along with six other civil society organizations as well as seven individuals belonging to the community of manual scavengers filed the present writ petition under Article 32 of the Constitution on the ground that the continuation of the practice of manual scavenging as well as of dry latrines is illegal and unconstitutional since it violates the fundamental rights guaranteed under Articles 14, 17, 21 and 23 of the Constitution of India and the 1993 Act.

3. We have heard the arguments advanced by learned counsel for the parties and perused the records

Relief sought for:

4. The petitioners have approached this Court by way of writ petition in 2003, inter alia, seeking:

(i) to ensure complete eradication of Dry Latrines;

(ii) to declare continuance of the practice of manual scavenging and the operation of Dry Latrines violative of Articles 14, 17, 21 and 23 of the Constitution and the 1993 Act;

(iii) to direct the respondents to adopt and implement the Act and to formulate detailed plans, on time bound basis, for complete eradication of practice of manual scavenging and rehabilitation of persons engaged in such practice;

(iv) to direct Union of India and State Governments to issue necessary directives to various Municipal Corporations, Municipalities and Nagar Panchayats (all local bodies) to strictly implement the provisions of the Act and initiate prosecution against the violators; and

(v) to file periodical Compliance Reports pursuant to various directions issued by this Court.

Discussion:

5. The practice of untouchability in general and of manual scavenging in particular was deprecated in no uncertain terms by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constitution of India. Accordingly, in Chapter III of the Constitution, Article 17 abolished untouchability which states as follows:

"Abolition of Untouchability: "Untouchability" is abolished and its practice in any form is forbidden. The enforcement

of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law."

6. Article 17 of the Constitution was initially implemented through the enactment of the Protection of Civil Rights Act, 1955 (formerly known as the Untouchability (Offences) Act, 1955). Section 7A of the said Act provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability which is punishable with imprisonment. While these constitutional and statutory provisions were path breaking in themselves, they were found to be inadequate in addressing the continuation of the obnoxious practice of manual scavenging across the country, a practice squarely rooted in the concept of the caste-system and untouchability.

7. Apart from the provisions of the Constitution, there are various international conventions and covenants to which India is a party, which prescribe the inhuman practice of manual scavenging. These are the Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) and the Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). The relevant provisions of the UDHR, CERD and CEDAW are hereunder:

"Article 1 of UDHR

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.

Article 2(1) of UDHR

Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

status.

Article 23(3) of UDHR

Everyone who works has a right to just and favourable remuneration enduring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection."

"Article 5(a) of CEDAW

States Parties shall take all appropriate measures

a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article 2 of CERD

Article 2(1)(c)

States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and to his end:

(c) each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating on perpetuating racial discrimination wherever it exists;

(d) each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group

or organization."

The above provisions of the International Covenants, which have been ratified by India, are binding to the extent that they are not inconsistent with the provisions of the domestic law.

8. From 2003 till date, this writ petition was treated as a continuing mandamus. Several orders have been passed by this Court having far reaching implications. The petitioners have brought to focus the non-adoption of the Act by various States which led to ratification of the Act by State Assemblies (including the Delhi Assembly which ratified the Act as late as in 2010). The Union Government, State Governments as well as the petitioners have filed affidavits from time to time as per the directions of this Court and also as to the compliance of those orders.

9. This Court has, on several occasions, directed the Union and State Governments to take steps towards the monitoring and implementation of the Act. Various orders have gradually pushed the State Governments to ratify the law and appoint Executive Authorities under the Act. Under the directions of this Court, the States are obligated by law to collect data and monitor the implementation of the Act.

10. Due to mounting pressure of this Court, in March, 2013, the Central Government announced a 'Survey of Manual Scavengers'. The survey, however, was confined only to 3546 statutory towns and did not extend to rural areas. Even with this limited mandate, as per the information with Petitioner No. 1, the survey has shown remarkably little progress. State records in the "Progress Report of Survey of Manual Scavengers and their Dependents" dated 27.02.2014 show that they have only been able to identify a miniscule proportion of the number of people actually engaged in manual scavenging. For instance, the petitioners, with their limited resources, have managed to identify 1098 persons in manual scavenging in the State of Bihar. The Progress Report dated 27.0 e

identified only 136. In the State of Rajasthan, the petitioners have identified 816 manual scavengers whereas the Progress Report of the State dated 27.02.2014 has identified only 46.

11. The aforesaid data collected by the petitioners makes it abundantly clear that the practice of manual scavenging continues unabated. Dry latrines continue to exist notwithstanding the fact that the 1993 Act was in force for nearly two decades. States have acted in denial of the 1993 Act and the constitutional mandate to abolish untouchability.

12. For over a decade, this Court issued various directions and sought for compliance from all the States and Union Territories. Due to effective intervention and directions of this Court, the Government of India brought an Act called "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" for abolition of this evil and for the welfare of manual scavengers. The Act got the assent of the President on 18.09.2013. The enactment of the aforesaid Act, in no way, neither dilutes the constitutional mandate of Article 17 nor does it condone the inaction on the part of Union and State Governments under the 1993 Act. What the 2013 Act does in addition is to expressly acknowledge Article 17 and Article 21 rights of the persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excreta on railway tracks.

13. Learned Additional Solicitor General has brought to our notice various salient features of the Act which are as under:-

(i) The above-said Act has been enacted to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families, and for matters connected therewith or incidental thereto.

(ii) Chapter I of the Act inter alia provides for the

definitions of "hazardous cleaning", "insanitary latrine" and "manual scavenger" as contained in Sections 2(1)(d), (e) and (g) thereof respectively.

(iii) Chapter II of the Act contains provisions for Identification of Insanitary latrines. Section 4(1) of the Act reads as under:

"4 - Local authorities to survey insanitary latrines and provide sanitary community latrines

(1) Every local authority shall,--

(a) carry out a survey of insanitary latrines existing within its jurisdiction, and publish a list of such insanitary latrines, in such manner as may be prescribed, within a period of two months from the date of commencement of this Act;

(b) give a notice to the occupier, within fifteen days from the date of publication of the list under clause (a), to either demolish the insanitary latrine or convert it into a sanitary latrine, within a period of six months from the date of commencement of this Act:

Provided that the local authority may for sufficient reasons to be recorded in writing extend the said period not exceeding three months;

(c) construct, within a period not exceeding nine months from the date of commencement of this Act, such number of sanitary community latrines as it considers necessary, in the areas where insanitary latrines have been found."

(iv) Chapter III of the Act contains provisions for prohibition of insanitary latr[illegible]t

and engagement as manual scavenger. Sections 5, 6 and 7 of the Act read as under:

"5 - Prohibition of insanitary latrines and employment and engagement of manual scavenger

(1) Notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993(46 of 1993), no person, local authority or any agency shall, after the date of commencement of this Act,--

(a) construct an insanitary latrine; or

(b) engage or employ, either directly or indirectly, a manual scavenger, and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging.

(2) Every insanitary latrine existing on the date of commencement of this Act, shall either be demolished or be converted into a sanitary latrine, by the occupier at his own cost, before the expiry of the period so specified in clause (b) of sub-section (1) of section 4:

Provided that where there are several occupiers in relation to an insanitary latrine, the liability to demolish or convert it shall lie with,--

(a) the owner of the premises, in case one of the occupiers happens to be the owner; and

(b) all the occupiers, jointly and severally, in all other cases:

Provided that the State Government may give assistance for conversion of insanitary latrines into sanitary latrines to occupiers from such categories of persons and on such scale, as it may, by notification, specify:

Provided further that non-receipt of State assistance shall

not be a valid ground to maintain or use an insanitary latrine, beyond the said period of nine months.

(3) If any occupier fails to demolish an insanitary latrine or convert it into a sanitary latrine within the period specified in sub-section (2), the local authority having jurisdiction over the area in which such insanitary latrine is situated, shall, after giving notice of not less than twenty one days to the occupier, either convert such latrine into a sanitary latrine, or demolish such insanitary latrine, and shall be entitled to recover the cost of such conversion or, as the case may be, of demolition, from such occupier in such manner as may be prescribed.

6 - Contract, agreement, etc., to be void

(1) Any contract, agreement or other instrument entered into or executed before the date of commencement of this Act, engaging or employing a person for the purpose of manual scavenging shall, on the date of commencement of this Act, be terminated and such contract, agreement or other instrument shall be void and inoperative and no compensation shall be payable therefor.

(2) Notwithstanding anything contained in sub-section (1), no person employed or engaged as a manual scavenger on a full-time basis shall be retrenched by his employer, but shall be retained, subject to his willingness, in employment on at least the same emoluments, and shall be assigned work other than manual scavenging.

7 - Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks

No person, local authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the date of commencement of

this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank."

(v) Sections 8 and 9 of the Act provide for penal provisions which read as under:

8 - Penalty for contravention of section 5 or section 6

Whoever contravenes the provisions of section 5 or section 6 shall for the first contravention be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees or with both, and for any subsequent contravention with imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.

9 - Penalty for contravention of section 7

Whoever contravenes the provisions of section 7 shall for the first contravention be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and for any subsequent contravention with imprisonment which may extend to five years or with fine which may extend to five lakh rupees, or with both.

(vi) Chapter IV of the Act contains provisions with respect to identification of manual scavengers in Urban and Rural Areas and also provides for their rehabilitation. Section 13 of the Act reads as under;

"13 - Rehabilitation of persons identified as manual scavengers by a Municipality

(1) Any person included in the final list of manual scavengers published in pursuance of sub-section (6) of section 11 or added thereto in pursuance of sub-section (3) of section 12, shall be rehabilitated in the following

manner, namely:--

(a) he shall be given, within one month,--

(i) a photo identity card, containing, inter alia, details of all members of his family dependent on him, and

(ii) such initial, one time, cash assistance, as may be prescribed;

(b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;

(d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;

(e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;

(f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District Magistrate and to officers of the concerned Municipality."

(vii) Chapter V of the Act provides for the implementing mechanism. Sections 17 to 20 read as under:

17 - Responsibility of local authorities to ensure elimination of insanitary latrines

Notwithstanding anything contained in any other law for the time being in force, it shall be the responsibility of every local authority to ensure, through awareness campaign or in such other manner that after the expiry of a period of nine months, from the date of commencement of this Act,--

(i) no insanitary latrine is constructed, maintained or used within its jurisdiction; and

(ii) in case of contravention of clause (i), action is taken against the occupier under sub-section (3) of section 5.

18 - Authorities who may be specified for implementing provisions of this Act

The appropriate Government may confer such powers and impose such duties on local authority and District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out, and a local authority and the District Magistrate may, specify the subordinate officers, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed, and the local limits within which such powers or duties shall be carried out by the officer or officers so

specified.

19 - Duty of District Magistrate and authorised officers

The District Magistrate and the authority authorised under section 18 or any other subordinate officers specified by them under that section shall ensure that, after the expiry of such period as specified for the purpose of this Act,--

(a) no person is engaged or employed as manual scavenger within their jurisdiction;

(b) no one constructs, maintains, uses or makes available for use, an insanitary latrine;

(c) manual scavengers identified under this Act are rehabilitated in accordance with section 13, or as the case may be, section 16;

(d) persons contravening the provisions of section 5 or section 6 or section 7 are investigated and prosecuted under the provisions of this Act; and

(e) all provisions of this Act applicable within his jurisdiction are duly complied with.

20 - Appointment of inspectors and their powers

(1) The appropriate Government may, by notification, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act..."

(viii) Chapter VII of the Act provides for the establishment of Vigilance and Monitoring Committees in the following terms:

"24 - Vigilance Committees

(1) Every State Government shall, by notification, constitute a Vigilance Committee for each district and each Sub-Division.

(2) Each Vigilance Committee constituted for a district shall consist of the following members, namely:--

(a) the District Magistrate--Chairperson, ex officio;…

25 - Functions of Vigilance Committee

The functions of Vigilance Committee shall be--

(a) to advise the District Magistrate or, as the case may be, the Sub-Divisional Magistrate, on the action which needs to be taken, to ensure that the provisions of this Act or of any rule made thereunder are properly implemented;

(b) to oversee the economic and social rehabilitation of manual scavengers;

(c) to co-ordinate the functions of all concerned agencies with a view to channelise adequate credit for the rehabilitation of manual scavengers;

(d) to monitor the registration of offences under this Act and their investigation and prosecution.

26 - State Monitoring Committee

(1) Every State Government shall, by notification, constitute a State Monitoring Committee, consisting of the following members, namely:--

(a) the Chief Minister of State or a Minister nominated by him--Chairperson, ex officio;…

27 - Functions of the State Monitoring Committee

The functions of the State Monitoring Committee shall be-

(a) to monitor and advise the State Government and local authorities for effective implementation of this Act;

(b) to co-ordinate the functions of all concerned agencies;

(c) to look into any other matter incidental thereto or connected therewith for implementation of this Act.

*** *** ***

29 - Central Monitoring Committee

(1) The Central Government shall, by notification, constitute a Central Monitoring Committee in accordance with the provisions of this section.

(2) The Central Monitoring Committee shall consist of the following members, namely:--

(a) The Union Minister for Social Justice and Empowerment--Chairperson, ex officio;…

30 - Functions of the Central Monitoring Committee

The functions of the Central Monitoring Committee shall be,--

(a) to monitor and advise the Central Government and State Government for effective implementation of this Act and related laws and programmes;…

31 - Functions of National Commission for Safai Karamcharis

(1) The National Commission for Safai Karamcharis shall perform the following functions, namely:--

(a) to monitor the implementation of this Act;

(b) to enquire into complaints regarding contravention of the provisions of this Act, and to co… e

concerned authorities with recommendations requiring further action; and

(c) to advise the Central and the State Governments for effective implementation of the provisions of this Act.

(d) to take suo motu notice of matter relating to non-implementation of this Act."

(ix) Chapter VIII of the Act contains miscellaneous provisions. Section 33 of the Act provides for duty of local authorities and other agencies to use modern technology for cleaning of sewers, etc. Section 36 of the Act provides that the appropriate Government shall, by notification, makes rules for carrying out the provisions of the Act within a period not exceeding three months. Section 37 of the Act provides that the Central Government shall, by notification, publish model rules for the guidance and use of the State Governments.

14. We have already noted various provisions of the 2013 Act and also in the light of various orders of this Court, we issue the following directions:-

(i) The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act, in the following manner, namely:-

(a) such initial, one time, cash assistance, as may be prescribed;

(b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) they shall be allotted a residential plot and

financial assistance for house construction, or a ready-built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme;

(d) at least one member of their family, shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period;

(e) at least one adult member of their family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme;

(f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:-

(a) Sewer deaths - entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.

(b) Railways - should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should

not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

(iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.

(iv) Rehabilitation must be based on the principles of justice and transformation.

15. In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. Inasmuch as the Act 2013 occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.

16. With the above direction, the writ petition is disposed of. No order is required in the contempt petition.

D.G. Writ Petition disposed of.

A MADAN LAL

v.

HIGH COURT OF JAMMU & KASHMIR & ORS.

(Civil Appeal Nos.1393-1394 of 2002)

MARCH 28, 2014

[SURINDER SINGH NIJJAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ].

PUBLIC INTEREST LITIGATION:

Appeals before Supreme Court - Arising out of writ petitions filed before High Court - Challenging selection and appointment to post of District and Sessions Judge - Held: Appellants have stated that they have no grievance against any of the selected candidates in the particular selection - Therefore, if at all, their grievances are to be considered relating to ascertainment of quota for direct recruit posts, it would only amount to Public Interest Litigation which cannot be permitted in the instant appeals - As per the guidelines and decisions of Supreme Court, in service matters Public Interest Litigation is not maintainable - Jammu and Kashmir Higher Judicial Service Rules, 1983.

The instant appeal arose out of the writ petitions filed before the High Court. The challenge on various grounds related to selection and appointment to the post of District and Sessions Judge borne on the cadre of the service constituted in terms of the Jammu and Kashmir Higher Judicial Service Rules, 1983. The High Court, by the impugned judgment, answered all the points raised in seriatim.

Dismissing the appeals, the Court

HELD:

The appellants have stated that they have no grievance against any of the selected candidates in the particular selection. Therefore, if at all, the appellants' grievances are to be considered, relating to ascertainment of quota for direct recruit posts in the instant appeals, it would only amount to a consideration by way of a Public Interest Litigation which cannot be permitted to be made, more so, when the appellants have chosen not to challenge the selection of any one of the candidates by way of direct recruitment or any of the promotees. The instant appeals cannot be entertained since as per the guidelines of this Court as well as based on the earlier decisions of this Court, it has been held that in service matters Public Interest Litigation is not maintainable. [para 7, 9 and 10] [236-B-C, G; 233-D]

Hari Bansh Lal vs. Sahodar Prasad Mahto **- 2010 (10) SCR 561 = (2010) 9 SCC 655 - relied on.**

Case Law Reference:

2010 (10) SCR 561 relied on para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1393-1394 of 2002.

From the Judgment and Order dated 31.01.2000 of the High Court of Jammu and Kashmir at Jammu in SWP Nos. 333 of 1999 and O.W.P. No. 1641 of 1999.

WITH

Civil Appeal No. 1395 of 2002.

Subhash Chander Mansotra, Jagpal Sharma Appellants-in-person.

Tara Chandra Sharma, Neelam Sharma, Purnima Bhat, Dinesh Kumar Garg, Ashok Mathur for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. These Appeals are directed against a common Judgment of the High Court of Jammu and Kashmir dated 31.01.2000 rendered in S.W.P. No.333 of 1999 and O.W.P. No.1641 of 1999 and other connected writ petitions. The Appellants herein were Petitioners in S.W.P. No.333 of 1999 and S.W.P. No.260 of 1999. In the Writ Petition(s) the challenge was to the selection and appointment to the post of District and Sessions Judge borne on the cadre of the service constituted under the Rules, namely, "The Jammu and Kashmir Higher Judicial Service Rules, 1983" (hereinafter referred to as "Rules, 1983"). The recruitment and appointment to the said cadre under the aforesaid Rules is from two sources, namely, 75% by way of promotion of in service candidates and 25% by direct recruitment. The challenge in the Writ Petition(s) related to the selection and appointment of candidates under the direct quota pursuant to the modified Notification No.16 of 1997 dated 05.09.1997. The earlier notification was Notification No.50 of 1995 dated 01.08.1995. As per the modified notification, four posts were advertised out of which two were for general category and one each for reserved categories of Schedule Caste and resident of Backward Area. The High Court conducted the written examination and declared the list of successful candidates. Candidates were called for viva-voce test on 27.02.1999. They were interviewed by the Committee constituted by the High Court.

2. Mr. S.C. Mansotra, who appeared before us as appellant-in-person, in fact, appeared before the High Court and raised as many as six contentions, namely, that the post of District and Sessions Judge being a constitutional post and consequently, it cannot be classified or placed along with the highest service of the administration/bureaucratic service and the mention of the post in the rule was unconstitutional which provides for 50% reservation to differen[illegible]n

the society. Then it was contended that the selection was not made in accordance with the procedure prescribed as contained in Rules 4 to 9 of 1983 Rules. In that, it was contended that sub-rule (2) of Rule 5 was not complied with. It was also contended that the process of selection was not properly carried out as mandated by Rule 7. The contention was that there was no Selection Committee constituted by the Chief Justice. It was contended that the High Court was not justified in filling-up the posts by candidates belonging to reserved categories. It was then contended that the proviso to Rule 4 was unconstitutional inasmuch as recruitment of 25% quota would be restricted to permanent cadre strength. It was then contended that the determination of seniority between the direct recruits and promotees should be based on the date of appointment in the cadre.

3. The High Court by the impugned judgment answered all the points raised in seriatim. As far as the argument that the post of District and Sessions Judge is a Constitutional post, the High Court has rightly held that except making a bald averment Appellants could not substantiate the said contention. Consequently, the Division Bench held that the mention of the said post in Rule 9 of 1994 Rules did not violate any provision of law so far as it related to provision made for reservation. As far as violation of Rule 5(2) of 1983 Rules was concerned, the High Court has noted that the requirement of holding a medical test under the said sub-rule was only directory and not mandatory and, therefore, the holding of the said test after the viva-voce test did not in any way affect the selection made. As far as the contention based on Rule 7 that no Selection Committee was nominated by the Chief Justice, the High Court after referring to the proceedings relating to the selection found that the Chief Justice constituted a Committee for conducting the interview of the candidates, who passed the written test, and that in any event the criteria for qualifying the examination by prescribing the percentage of minimum marks to be secured were all approved by the Full Court and in the circumstances

as the selection was broad-based on that ground there was no scope to interfere with the selection.

4. As far as the arguments to the effect that the policy of reservation adopted by the High Court by a Full Court Resolution was not approved by the Governor and, therefore, the application of reservation was invalid, the Division Bench held that the Petitioner himself did not oppose the reservation in the service and when the same was made by a Resolution of the Full Court and in the light of SRO-126 of 1994 it was applicable to every service of the State and the High Court. So holding, the said submission was also rejected.

5. The Division Bench, however, broadly accepted the submission as against the proviso to Rule 4 under SRO-157 of 1995. The submission was that the prescription of 25% quota for direct recruitment to be restricted against the permanent vacancies may not be correct. The Division Bench held that determining the respective quota both permanent and temporary posts are required to be taken note of and to that extent there was some justification in the submission of the Petitioners before it.

6. The last of the submission relates to determination of seniority between direct recruits and promotees. As far as the said contention was concerned, the Division Bench in the case on hand held that the seniority shall be governed by the date of appointment in the cadre which would be in tune with a plain reading of Rule 17. It held that if a promotee had already been appointed and if that was not done as per the quota, necessary relaxation can be given. In that respect, the Division Bench took into consideration Rule 4(2) which makes it apparent that in case suitable candidates were not available for recruitment to the posts reserved for that category can be filled-up by promotion.

7. Having perused the above judgment impugned in these Appeals and having noted the ans s

submissions made on behalf of the Petitioners before the High Court, we do not find any good ground to interfere with the judgment impugned. In fact, to our query to the Appellants before us, it was fairly submitted that they have no grievance against any of the selected candidates in that particular selection. Therefore, if at all the Appellants grievances are to be considered, relating to ascertainment of quota for direct recruit posts in these Appeals it would only amount to a consideration by way of a Public Interest Litigation which cannot be permitted to be made, more so, when the Appellants have chosen not to challenge the selection of any one of the candidates by way of direct recruitment or any of the promotees.

8. In this respect, it would be appropriate to refer to the compilation of guidelines to be followed for entertaining letters/ petitions received in this Court as Public Interest Litigation based on Full Court decision dated 1.12.1988 with subsequent modifications based on Orders dated 19.08.1993 and 29.08.2003 of the then Hon'ble Chief Justice of India. Under the said guidelines, it has been specifically stipulated as under:

> "Cases falling under the following categories will not be entertained as Public Interest Litigation and these may be returned to the petitioners or filed in the PIL Cell, as the case may be:
>
> 1. xxxx xxxx xxxx
>
> 2. Service matter and those pertaining to Pension and Gratuity."

9. That apart time and again this Court repeatedly held that in service matters Public Interest Litigation is not maintainable. We can profitably refer to a recent decision reported in *Hari Bansh Lal vs. Sahodar Prasad Mahto* - (2010) 9 SCC 655. Paragraphs 14 and 15 are relevant which are as under:

"14. In *Ashok Kumar Pandey v. State of W.B.* this Court

held thus: (SCC pp. 358-59, para 16)

> "16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, *B.* *of*

India, Dattaraj Nathuji Thaware v. State of Maharashtra and *Gurpal Singh v. State of Punjab.*

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.

10. As we have found that the challenge made to the selection was not justified on merits and also on the ground that the Appellants had no grievance against any of the selected candidates, these Appeals fail. That apart, as the Appellants had no grievance as against the selected candidates and the challenge is the Writ Petition as well as in these Appeals are as a pro bono publico, these Appeals cannot be entertained since as per the guidelines of this Court as well as based on the earlier decisions of this Court wherein it was held that Public Interest Litigation in service matters cannot be entertained. Therefore, on all the above grounds the Appeals fail and the same are dismissed. No costs.

R.P. Appeals dismissed.

SANGHIAN PANDIAN RAJKUMAR

v.

CENTRAL BUREAU OF INVESTIGATION & ANR.

(Criminal Appeal No. 698 of 2014)

MARCH 28, 2014

[P. SATHASIVAM, CJI, RANJAN GOGOI AND N.V. RAMANA, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s. 439 - Bail - Factors to be considered before granting bail - Culled out - Appellants an IPS and an S.I. of Police in Anti Terrorist Squad stated to have been involved in killing of three persons - Held: In the light of the details, allegations in charge-sheet filed before court, the facts that many of the co-accused have been granted bail by trial court/High Court and Supreme Court, that both appellants are in custody for nearly 7 years pending trial, that it would not be possible for Special Court to conclude the trial within a reasonable period and that the case has been transferred out of the State, the Court is satisfied that both the appellants have made out a case for bail - They shall be released on bail on the conditions mentioned in the judgment.

The appellants, A-2 an IPS and A-6, a Sub Inspector of Police in Anti Terrorist Squad, along with others were stated to have been involved in murders of three persons. The appellants were arrested on 24.4.2007 and 1.7.2007 and since then they were in custody. Their bail applications were dismissed by the High Court.

Disposing of the appeals, the Court

HELD: 1.1 At the foremost, the court granting bail should exercise its discretion in a judicious manner and

not as a matter of course. In *Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav this Court has held that amongst other circumstances of the case, the following factors are required to be considered by the court before granting bail:**

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

In the instant case, this Court has perused the role attributed to the appellants in the charge-sheet filed in court as well as other materials and also taken note of judicial custody for nearly seven years pending trial. [para 11-12] [240-B-C; D-F; 241-A]

Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another* **(2004) 7 SCC 528 - relied on.

1.2 As regards the delay, it is not in dispute that in respect of abduction and killing of two persons, after prolonged hearings, the trial was transferred to Mumbai, that is, out of Gujarat on the orders of this Court. Thereafter, in respect of killing of the third person, again, on the orders of this Court, the case was transferred to Mumbai to be heard along with the trial relating to killing of earlier two persons. Taking note of these aspects including various orders of this Court, it cannot be claimed that the investigating agency was responsible for the delay. [para 13] [241-B-D]

1.3 The appellants are in custody nearly for a period of seven years pending trial. So far, the charges have not

been framed. It has been pointed out that there is no chance of completion of trial in the near future due to voluminous documents and more than 600 witnesses. Further, the relevant records/documents are still pending in the original court at Gujarat as well as in the custody of Registrar General of the High Court. They are yet to be transferred to the transferee court. It is also evident that voluminous documents are to be translated from Gujarati to Marathi. There is no concrete information about the probable duration for completion of the said work. In such circumstances, the completion of trial cannot even be presumed in a reasonable period. [para 14] [241-F-G; 242-B-C]

1.4 It has been pointed out that some persons arrayed as accused have been granted either regular bail or anticipatory bail. Some of the accused were granted bail by the trial court while others by the High Court and by this Court. It has also been brought to the notice of this Court that the appellant (A-6), was released on bail by this Court on three occasions for short periods and he never misused the privilege granted to him by the Court. [para15,16 and 20] [242-D; 243-G-H; 244-G-H]

1.5 In view of the facts and circumstances, this Court is satisfied that both the appellants have made out a case for bail. They are ordered to be released on bail on the conditions mentioned in the judgment. [para 24-25] [245-G-H; 246-G-H]

Case Law Reference:

(2004) 7 SCC 528 relied on para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 698 of 2014.

From the Judgment and Order dated 20.11.2013 of the High Court of Judicature at Bombay in Criminal Bail Application No. 2002 of 2013.

WITH

Criminal Appeal No. 699 of 2014.

Indira Jaising, ASG, U.U. Lalit, Krishnan Venugopal, Tushar Mehta, Jayesh V. Bhairavia, Devang Vyas, Bharat Sood, Ritesh Prakash Yadav, Varun Punia, R.C. Kohli, Sushil Karanjkar, Charudatta Mahinderkar, Praveena Gautam, Ezaz Khan, Maheen Pradhan, Rajat Khattry, Anandita Pujari, Subramonium Prasad, Hemantika Wahi, Preeti Bhardwaj for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Leave granted in both the appeals.

2. These appeals are directed against the orders dated 20.11.2013 and 10.07.2013 passed by the High Court of Judicature at Bombay in Criminal Bail Application Nos. 2002 and 1713 of 2012 respectively, whereby the High Court dismissed the bail applications of both the appellants pending trial.

3. The appellant - Sanghian Pandian Rajkumar (Accused No. 2), an IPS Officer, is one of the accused persons in Special Case No. 5 of 2010 (RC BS1/S/2010/0004-Mumbai dated 01.02.2010), who was charge-sheeted, inter alia, for the offences punishable under Section 120B read with Sections 302, 364, 365, 368, 193, 197, 342, 420, 384, 201 and 34 of the Indian Penal Code, 1860 (in short 'the IPC') and Sections 25(1B)(a) and 27 of the Arms Act, 1959 and he was arrested on 24.04.2007 and since then is in custody.

4. The other appellant - Balkrishan Rajendraprasad Chaubey (Accused No. 6), who was working as a sub-Inspector of Police in the Anti Terrorist Squad (ATS), Ahmedabad, at the relevant time, is also one of the accused persons in the same case arising out of R.C. No. BS1/S/2010/0004 dated

01.02.2010 registered with the CBI SCB, Mumbai and was charge-sheeted for the offences punishable under Section 120B read with Sections 365, 368, 302 and 201 of the IPC and he was arrested on 01.07.2007 and since then is in custody.

5. Inasmuch as we are concerned only with the grant of bail pending trial, there is no need to analyse all the factual details except their involvement in the commission of offence, as alleged by the prosecution. In the cases on hand, as per the prosecution story, three murders were allegedly committed inter alia by senior police officers like the appellants - Sanghian Pandian Rajkumar (A-2) and Balkrishan Rajendraprasad Chaubey (A-6), whose duty was otherwise to maintain law and order and to prevent the commission of offence.

6. Heard Mr. U.U. Lalit, learned senior counsel, Mr. Sushil Karanjkar, learned counsel for the appellants (A-2 and A-6) respectively and Ms. Indira Jaising, learned Additional Solicitor General for the respondent-CBI.

Submissions:

7. Mr. U.U. Lalit, learned senior counsel for the appellant, by taking us through the allegations against A-2 in the charge-sheet filed in the Special Court, submitted that there is no direct evidence linking the present appellant with the commission of offence as alleged by the prosecution and the investigation carried out by the CBI suffers from serious infirmities. He further pointed out that the materials shown to support the prosecution charges against the appellant (A-2) are characterized with various defects such as lack of spontaneity, invaryness, untrustworthiness, hear-say witnesses, inherently impossible or improbable facts and humanly abnormal conducts apart from the infirmities in the charges which are yet to be framed by the Court. He further pointed out that A-2 is in judicial custody without trial for almost seven years and continued incarceration will amount to violation of Article 21 of the Constitution of India. He also pointed out that inasmuch as e

this Court granted bail to similarly placed co-accused, the present appellant is also to be released on the ground of parity. Finally, he stressed on the fact that there are hundreds of witnesses to be examined and voluminous documents exhibited in the charge-sheet, it would not be possible to complete the trial in the near future.

8. Though Mr. Sushil Karanjkar, learned counsel for the appellant - Balkrishan Rajendraprasad Chaubey (A-6) adopted the arguments made by Mr. U.U. Lalit, learned senior counsel, he also submitted that A-6, being a sub-Inspector, was present in the company of certain officers and there is no allegation against him having fired at the deceased. He also pointed out that even if the Court accepts the prosecution story that he was present at the place of firing along with the other police officers, there is no specific role attributed to him. In addition to the same, he also pointed out that the appellant (A-6) is in judicial custody without trial for almost seven years.

9. On the other hand, Ms. Indira Jaising, learned Additional Solicitor General, by taking us through the relevant materials referred to in the charge-sheet and presented in the court, submitted that inasmuch as both the appellants were police officers, there is every likelihood of influencing the witnesses. Learned ASG also submitted that inasmuch as there is a direct link in the abduction and killing of Sohrabuddin, Kausarbi and Tulsiram Prajapati, no case is made out for grant of bail at this juncture. She further submitted that by transfer of case records from the trial court as well as from the High Court of Gujarat to the transferee Court at Mumbai, viz., the Special Court, CBI and after translation of the same, the trial is likely to be concluded within a reasonable time. She also pointed out that the grant of bail/anticipatory bail to certain other accused is not a ground for release of these appellants at this stage. Accordingly, she prayed for dismissal of both the appeals.

10. We have considered the rival contentions and perused all the relevant materials including the charges levelled against

the appellants.

Discussion:

11. Before considering the claim of the parties and materials relied upon for and against the grant of bail, it is necessary to highlight the law relating to grant of bail in non-bailable offences. At the foremost, the court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though, for grant of bail, detailed examination of evidence and elaborate discussion on merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie conclusion why bail was being granted, particularly, when the accused is charged of having committed a serious offence. In Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another, (2004) 7 SCC 528, this Court, while considering Sections 437 and 439 of the Code of Criminal Procedure, 1973, (in short 'the Code') held that, amongst other circumstances of the case, the following factors are required to be considered by the court before granting bail:

> "(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
>
> (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
>
> (c) Prima facie satisfaction of the court in support of the charge."

12. Keeping the above principles in mind, let us discuss the stand of both the sides. As observed in the earlier part of our judgment, considering the limited issue involved, there is no need to elaborately analyse, assess, the acceptability or otherwise of the prosecution version, charges levelled, witnesses examined and documents exhibited at this juncture. However, in the light of the submissions made by both the sides,

we have carefully perused the role attributed to these appellants in the charge sheet filed in the Court as well as other materials and also taken note of judicial custody for nearly seven years pending trial and the rival contentions.

13. Coming to the delay, it is not in dispute that in respect of abduction and killing of Sohrabuddin and Kausarbi, after prolonged hearings, the trial was transferred to Mumbai, that is, out of Gujarat on the orders of this Court. Thereafter, in respect of killing of Tulsiram Prajapati, again, on the orders of this Court dated 08.04.2013, the same was transferred to Mumbai to be heard along with the trial relating to killing of Sohrabuddin and Kausarbi. Taking note of these aspects including various orders of this Court, it cannot be claimed that the investigating agency was responsible for the delay.

14. Mr. U.U. Lalit, learned senior counsel for Sanghian Pandian Rajkumar (A-2) asserted that not even a single person implicated him in the commission of offences as alleged by the prosecution. On going through the allegations pertaining to A-2 in the charge-sheet and the arguments of Mr. Lalit, learned senior counsel as well as Ms. Indira Jaising, learned ASG, we are not inclined to express any specific opinion at this stage. However, there is no dispute that A-2 was arrested on 24.04.2007 and A-6 was arrested on 01.07.2007 and both of them are in custody since then. In other words, they are in custody nearly for a period of seven years pending trial. Though the prosecution has filed the charges, admittedly, so far, the same have not been framed by the Court. Both the counsel for the appellants pointed out that there is no chance of completion of trial in the near future due to voluminous documents and more than 600 witnesses. We have already pointed out that the charges have not been framed even after seven years. Per contra, Learned ASG submitted that inasmuch as both the appellants are police officers, there is every likelihood of influencing the witnesses. She also pointed out that by giving appropriate direction for transfer of records from Gujarat to the

transferee Court, i.e., special Court CBI at Mumbai, Maharashtra and after completion of the translation work, a direction may be issued to the special court for early completion of the trial. We also considered the above objection. It is clear from the statement of Learned ASG that the relevant records/ documents are still pending in the original court at Gujarat as well as in the custody of Registrar General, High Court. They are yet to be transferred to the transferee court. It is also evident that voluminous documents are to be translated from Gujarati to Marathi. There is no concrete information about the probable duration for completion of the said work. In such circumstances, the completion of trial cannot even be presumed in a reasonable period.

15. Coming to parity, it is pointed out that some persons arrayed as accused have been granted either regular bail or anticipatory bail. In order to appreciate the above argument, we culled out the following details from the impugned order of the High Court:

"(A) Regular Bail

(a) Ajay Parmar (accused No. 10), by the High Court of Gujarat, in Criminal Miscellaneous Application No. 5703/ 2012, by common order dated 30/07/2012

(b) Santram Sharma (accused No. 11), by the Gujarat High Court, in Criminal Miscellaneous Application No. 5703/ 2012, by common order dated 30/07/2012.

(c) N.K. Amin (accused No. 12), by Bombay High Court in Criminal Bail Application No. 1770/2012.

(d) N.V. Chauhan (accused No. 13), by Hon'ble Supreme Court in SLP (Crl.) No. 1627/2011, by order dated 19/10/ 2012.

(e) V.A. Rathod (accused No. 14) by Hon'ble Supreme Court, in SLP (Crl.) No. 8318/2011 [illegible]/

2012.

(f) Amitbhai Shah (accused No. 16), by Gujarat High Court, in Criminal Miscellaneous Application No. 1770/2012, which order has been confirmed by the Apex Court, by rejecting the SLP (Crl.) filed by CBI for cancellation of said bail.

(B) Anticipatory bail:

(a) Ajay Patel (accused No. 17), by Gujarat High court, which order came to be continued by way of interim order passed by the Apex Court.

(b) Yashpal Chudasama (accused No. 18), by Gujarat High Court, which order came to be continued by way of interim order passed by the Apex Court.

(c) Vimal Pattani (accused No. 20) by Special Judge, CBI, Greater Mumbai (Sessions) on 05/07/2013 in Anticipatory bail Application No. 773/2013.

(d) Gulabchand H. Kataria (accused No. 21), by Special Judge, CBI, Greater Mumbai (Sessions) on 05/07/2013 in Anticipatory Bail Application No. 788/2013.

(e) Narasinhulu Balasubramaniam (accused No. 22) by Special Judge, CBI, Greater Mumbai (Sessions), on 05/07/2013 in Anticipatory Bail Application No. 781/2013.

(f) Ghattamaneni Srinivasa Rao (accused No. 23), by Special Judge, CBI, Greater Mumbai, on 05/07/2013, in Anticipatory bail Application No. 781/2013."

16. A perusal of the reason(s) for grant of bail or anticipatory bail shows that some of the accused were granted bail by the trial court and some by the High Court and by this Court. Apart from pointing out various orders, learned counsel for the appellants has brought to our notice the order passed

by this Court in *Naresh Vishnu Chauhan vs. State of Gujarat & Anr.* in SLP (Crl.) No. 1627 of 2011 wherein Naresh Vishnu Chauhan, who was one of the co-accused, at the relevant time posted as sub-Inspector of Police and was attached to the Anti-Terrorist Squad, Ahmedabad. In spite of the fact that the counsel for the State has pointed out that the case against the said person (A-13) is not only confined to Section 201 IPC but also includes Section 302 read with Section 120B IPC, this Court, taking note of the fact that he was in jail for over five years and three months, directed to release him on bail forthwith.

17. Likewise, another co-accused, viz., Vijay Arjunbhai Rathod, who was in custody in connection with the encounter case and whose name was included in the list of the accused, was released on bail by this Court, by order dated 02.03.2012, in *Vijay Arjunbhai Rathod vs. CBI & Anr.* SLP (Crl.) No. 8318 of 2011.

18. In addition to the same, another co-accused, by name, Amitbhai Shah (A-16) was granted bail by the High Court. This Court, by order dated 27.09.2012, in Criminal Appeal No. 1503 of 2012 - Central Bureau of Investigation vs. Amitbhai Anil Chandra Shah and Another refused to interfere with the said order.

19. It is also brought to our notice that another co-accused Dr. N.K. Amin (A-12) was also granted bail by the High Court of Bombay. According to the CBI, the said accused was a part of what is called as 'Stage 3' conspiracy. According to the CBI, he was sitting in the jeep in which the dead body of Kausarbi was kept. No doubt, he was granted bail due to his ailments.

20. In the case of Balkrishan Rajendraprasad Chaubey (A-6), the appellant herein, this Court, by order dated 06.08.2012 in SLP (Crl.) No. 5166 of 2012, granted him interim bail for a period of one month. Even before that, earlier, on two occasions, he was released on bail for short periods and he never misused the privilege granted to

21. We need not go into the reasonings of grant of anticipatory bail to some of the accused since no serious allegations have been levelled against them.

22. In the light of the details, allegations in the charge-sheet filed before the court, many of the co-accused were granted bail by the trial court/High Court and this Court and of the fact that both the appellants are in custody for nearly 7 years pending trial and also in view of the fact that it would not be possible for the special Court to conclude the trial within a reasonable period as claimed by learned ASG, we inclined to consider their claim for bail.

23. In the light of the statement made by learned ASG, we direct that all the materials pertaining to these cases which are lying in the original Court at Gujarat as well as the records relating to the same under the custody of the High Court of Gujarat, if any, be transferred to the Special Court, CBI, Mumbai within a period of one month from the date of receipt of copy of this order. After receipt of all the required materials, the Special Court, CBI at Mumbai have to get the relevant documents alone translated within a period of three months thereafter. The Special Court, CBI at Mumbai is directed to take the assistance of the Registrars of the High Courts of Bombay and Gujarat for completion of the translation work as fixed. By this order, we also direct the Registrars of the Bombay and Gujarat High Courts to render all assistance to the Special Judge, CBI Mumbai for early completion of the translation work within the time stipulated by this Court. After receipt of the required material and completion of translation work, we direct the special Judge to take all endeavor for early completion of the trial.

24. In the light of what is stated above, we are satisfied that both the appellants have made out a case for bail on executing a bond with two solvent sureties, each in a sum of Rs 1 lakh to the satisfaction of the Special Judge, CBI, Mumbai on the following conditions:

(i) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the court or to any other authority.

(ii) The appellants shall remain present before the court on the dates fixed for hearing of the case, for any reason due to unavoidable circumstances for remaining absent they have to give intimation to the court and also to the officer concerned of the CBI and make a proper application for permission to be present through counsel.

(iii) The appellants shall surrender their passports, if any, if not already surrendered and if they are not holder of the same, that fact should be supported by an affidavit.

(iv) In case they have already surrendered the passport before the Special Judge, CBI, that fact should be supported by an affidavit.

(v) On such release, both of them (A-2 & A-6) have to stay at Mumbai and report at 11.00 a.m. on alternate working days before the Special Judge, CBI Mumbai.

(vi) Liberty is given to the CBI to make an appropriate application for modification/recalling the present order passed by us, if the appellants violate any of the conditions imposed by this Court.

25. Under these circumstances, the appellants are ordered to be released on bail subject to the conditions mentioned hereinabove to the satisfaction of the court concerned. With the above directions, the appeals are disposed of.

R.P.

BHULE RAM
v.
UNION OF INDIA & ANR.
(Civil Appeal No. 6251 of 2010)

MARCH 28, 2014

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

LAND ACQUISITION ACT, 1894:

s. 23 - Acquisition of large tract of land - Compensation - Belting method - Held: Market value of land acquired is to be assessed keeping in mind the limitation prescribed u/s 23, which mandates that the market value of the land is to be assessed at the time of notification u/s 4 -- Therefore, value which has to be assessed is the value to the owner who parts with his property and not the value to the new owner who takes it over -- Fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller - Where huge tract of land has been acquired, belting system may be applied

ss. 9 and 23 - Acquisition of land - Claim for higher compensation - Held: Burden of proof lies on land owner to prove inadequacy of market value fixed for land acquired - In the instant case, appellant has not put on record as to what was his claim u/s 9 and the award was made relying upon some other award - Before High Court, appellant relied upon solely another judgment relating to land of same village and High Court awarded compensation as per demand of appellant - Reference court had already held appellant's land as non-comparable with other lands - There is no reason to interfere.

The appellant filed the instant appeal claiming compensation at the rate of Rs. 10, 00,000/- per acre for

his land acquired under the Land Acquisition Act, 1894. The award u/s 11 of the Act was made on 6.6.1994 assessing the market value of the land of the appellant @ Rs.4, 65,000/- per acre. The reference court enhanced the compensation assessing the market value of the land @ Rs.5, 99,850/- per acre with other statutory benefits. On appeal, the High Court further enhanced the compensation assessing the market value of the land @ Rs.6, 51,000/- per acre placing reliance on other judgments.

Dismissing the appeal, the Court

HELD: 1.1 The law can be summarised to the effect that the market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances u/s 23 of the Land Acquisition Act, 1894. Section 23 mandates that the market value of the land is to be assessed at the time of notification under Section 4 of the Act. Therefore, value which has to be assessed is the value to the owner who parts with his property and not the value to the new owner who takes it over. Fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller. A guess work, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration geographical situation/location of the land alongwith the advantages/ disadvantages i.e. distance from Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which the court is not under a legal obliga

market value merely as per the prayer of the claimant. [para 7 and 15] [254-C, E-G; 257-F-H; 258-A]

Raja Vyricheria Narayana Gajapatraju Bahadur Garu v. Revenue Divisional Officer, Vizianagaram, **AIR 1939 PC 98; and** *Adusumilli Gopalkrishna v. Spl Deputy Collector (Land Acquisition),* **AIR 1980 SC 1870;** *Viluben Jhalejar Contractor v. State of Gujarat,* **2005 (3) SCR 542 = AIR 2005 SC 2214;** *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer & Ors.,* **2011 (1) SCR 600 = AIR 2011 SC 781;** *Bilkis & Ors. v. State of Maharashtra & Ors.,* **2011 (4) SCR 733 = (2011) 12 SCC 646 and** *Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Special Land Acquisition Officer & Ors.,* **AIR 2012 SC 2709 - relied on.**

Thakur Kamta Prasad Singh v. State of Bihar, **1976 (3) SCR 585 = AIR 1976 SC 2219;** *Special Land Acquisition Officer v. Karigowda & Ors.,* **2010 (5) SCR 164 = AIR 2010 SC 2322; and** *Charan Das & etc. etc. v. H.P. Housing & Urban Development Authority & Ors. etc.,* **2009 (14) SCR 163 = (2010) 13 SCC 398);** *Trishala Jain & Anr. v. State of Uttaranchal & Anr.,* **2011 (8) SCR 520 = AIR 2011 SC 2458 - referred to.**

1.2 There may be a case where a huge tract of land is acquired. In such a fact-situation every claimant cannot claim the same rate of compensation. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. [para 15] [258-B-C]

Andhra Pradesh Industrial Infrastructure Corporation Limited v. G. Mohan Reddy & Ors. **(2010) 15 SCC 412;** *Ashrafi & Ors. v. State of Haryana & Ors.,* **AIR 2013 SC 3654,** *Sher Singh etc. etc. v. State of Haryana & Ors.,* **1991 (1) SCR 1 = AIR 1991 SC 2048) and** *Executive Engineer (Electrical), Karnataka Power Transmission Corporation Ltd. v. Assistant Commissioner & Land Acquisition Officer, Gadag & Ors.,* **(2010) 15 SCC 60 - relied on.**

1.3 It is the duty of the claimant to produce the relevant evidence for determining the market value while filing his claim u/s 9 of the Act or at least before the reference court. The burden of proof lies on the land owner and in case he does not lead any evidence in support of his claim to prove the inadequacy of market value fixed for the land acquired, the court cannot help him. [para 6 and 14] [254-A-B; 257-C-D]

Ramanlal Deochand Shah v. State of Maharashtra & Anr., **AIR 2013 SC 3452;** *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. & Ors.,* **1994 (1) SCR 368 = (1994) 4 SCC 595; and** *Land Acquisition Officer & Sub-Collector, Gadwal v. Sreelatha Bhoopal (Smt) & Anr.,* **1997 (3) SCR 875 = (1997) 9 SCC 628) - relied on.**

1.4 The appellant has not put on record as to what was his claim u/s 9 of the Act before the Land Acquisition Collector. The award had been made relying upon some other awards. Before the High Court, the appellant relied solely upon the judgment dated 10.4.2008 passed in an appeal relating to the land of the same village. It is evident that the High Court awarded the compensation as per the demand of the appellant himself. Before this Court, the appellant has raised the same issues which have already been rejected by the reference court pointing out the distance of the appellant's land from the road and non-suitability of comparing with other lands. There is no cogent reason to interfere, as the reference court has clearly held that the appellant's land so acquired is at a distance of 6 Kms. from the road, while other lands relied upon by the appellant before this Court are adjacent to the road, and are surrounded by hospitals and residential and commercially developed areas. [Para 16-20] [258-E; 260-D, G-H; 261-A-B]

Case Law Reference:

AIR 1939 PC 98	**relied on**	**para 7**
AIR 1980 SC 1870	**relied on**	**para 7**
1976 (3) SCR 585	**referred to**	**para 8**
2010 (5) SCR 164	**referred to**	**para 8**
2009 (14) SCR 163	**referred to**	**para 8**
2011 (8) SCR 520	**referred to**	**para 9**
2005 (3) SCR 542	**relied on**	**para 10**
2011 (1) SCR 600	**relied on**	**para 10**
2011 (4) SCR 733	**relied on**	**para 10**
AIR 2012 SC 2709	**relied on**	**para 10**
(2010) 15 SCC 412	**relied on**	**para 11**
AIR 2013 SC 3654	**relied on**	**para 12**
1991 (1) SCR 1	**relied on**	**para 12**
(2010) 15 SCC 60	**relied on**	**para 13**
AIR 2013 SC 3452	**relied on**	**para 14**
1994 (1) SCR 368	**relied on**	**para 14**
1997 (3) SCR 875	**relied on**	**para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6251 of 2010.

From the Judgment and Order dated 08.12.2009 of the High Court of Delhi at New Delhi in L.A. Appeal No. 154 of 2007.

Priya Hingorani, Hingorani & Associates, Shobha, Indar Singh, Jyoti Rana, Prasanna Mohan, Satpal Singh for the Appellant.

Puneet Taneja, Shweta Shalini, Dr. Kailash Chand, Rachna Srivastava, Utkarsh Sharma, Pratiksha Chaturvedi for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been filed against the judgment and order dated 8.12.2009 passed by the High Court of Delhi at New Delhi in Land Acquisition Appeal No. 154 of 2007 by which the High Court has assessed the market value of the land @Rs.6,51,000/- per acre modifying the award under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') under which the land had been assessed @Rs.5,99,850/- per acre. The appellant claimed that his land ought to have been assessed @Rs.10,00,000/- per acre.

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

A. Land comprised in Khasra Nos. 752(4-16), 753(4-16), 765(4-16), in all 24 bighas, in which the appellant had 1/3rd share and Khasra Nos. 757 (6-15), 758(4-17) and 761(4-16), in all 16 bighas 8 biswas (full share), situated in revenue village Aali, Delhi, stood notified under Section 4 of the Act for the purpose of construction of Ash Pond at Badarpur Thermal Power Station on 16.10.1992 alongwith a huge tract of land belonging to other persons in different villages.

B. In respect of the said land, a declaration under Section 6 of the Act was made on 23.3.1993. The award under Section 11 of the Act was made on 6.6.1994 assessing the market value of the land of the appellant @Rs.4,65,000/- per acre.

C. Aggrieved, the appellant preferred a reference under Section 18 of the Act and the Reference Court made the award dated 10.1.2007 assessing the market value of the land @Rs.5,99,850/- per acre with other statutory benefits

D. Appellant preferred appeal under Section 54 of the Act before the High Court claiming further enhancement contending that his land ought to have been assessed @Rs.10,00,000/- per acre. The High Court disposed of the appeal vide impugned judgment and order dated 8.12.2009 assessing the market value of the land @Rs.6,51,000/- per acre placing reliance on other judgments in appeal before the High Court.

Hence, this appeal.

3. Ms. Shobha, learned counsel appearing for the appellant and Ms. Priya Hingorani, learned counsel appearing in other connected appeals have raised serious issues that the land ought to have been assessed at the rate on which the land covered by the same notification under Section 4 of the Act in the neighouring village have been assessed. Therefore, the appeal deserves to be allowed.

4. Appeal is opposed by Mr. Puneet Taneja and Ms. Rachna Srivastava, learned counsel appearing for the respondents submitting that the market value of the land of the appellant cannot be assessed on the basis of compensation paid in the adjacent village for the reason that the land is not similar in any circumstance, either in quality or geographical situation/location, and thus, there is nothing on record on the basis of which it can be held that the appellant is entitled for the same compensation which had been given to other claimants in different villages. Thus, the appeal is liable to be dismissed.

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

6. The scheme of the Act is that every man's interest is to be valued rebus sic stantibus, just as it occurs at the time of the notification under Section 4(1). Thus, the assessing authority must take into consideration various factors for determining the market value, but exclude the advantages due

to the carrying out of the purpose of acquisition and remote potentialities. It is the duty of the claimant that he must produce the relevant evidence for determining the market value while filing his claim under Section 9 of the Act atleast before the trial court or before the reference court for the reason that the appellate court may not permit the party to adduce additional evidence in appeal.

7. The market value of the land is to be assessed as per Section 23 of the Act. Valuation of immoveable property is not an exact science, nor it can be determined like algebraic problem, as it abounds in uncertainties and no strait-jacket formula can be laid down for arriving at exact market value of the land. There is always a room for conjecture, and thus the court must act reluctantly to venture too far in this direction. The factors such as the nature and position of the land to be acquired, adaptability and advantages, the purpose for which the land can be used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape of the land, the rise or depression in the value of the land in the locality consequent to the acquisition etc., are relevant factors to be considered. Section 23 mandates that the market value of the land is to be assessed at the time of notification under Section 4 of the Act. Therefore, value which has to be assessed is the value to the owner who parts with his property and not the value to the new owner who takes it over. Fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller. Though the Act does not provide for "just terms" or "just compensation", but the market value is to be assessed taking into consideration the use to which it is being put on acquisition and whether the land has unusual or unique features or potentialities. (Vide: *Raja Vyricheria Narayana Gajapatraju Bahadur Garu v. Revenue Divisional Officer, Vizianagaram,* AIR 1939 PC 98; and *Adusumilli Gopalkrishna v. Spl Deputy Collector (Land Acquisition),* AIR 1980 SC 1870).

8. The concept of guess work is not unknown to various fields of law as it applies in the cases relating to insurance, taxation, compensation under the Motor Vehicles Act, 1988 as well as under the Labour Laws. The court has a discretion applying the guess work to the facts of the given case but it is not unfettered and has to be reasonable having connection to the facts on record adduced by the parties by way of evidence. The court further held as under:

> *"'Guess' as understood in its common parlance is an estimate without any specific information while "calculations" are always made with reference to specific data. "Guesstimate" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time "guess" cannot be treated synonymous to "conjecture". "Guess" by itself may be a statement or result based on unknown factors while "conjecture" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. "Guesstimate" is with higher certainty than mere "guess" or a "conjecture" per se."*

(See also: *Thakur Kamta Prasad Singh v. State of Bihar,* AIR 1976 SC 2219; *Special Land Acquisition Officer v. Karigowda & Ors.,* AIR 2010 SC 2322; and *Charan Das & etc. etc. v. H.P. Housing & Urban Development Authority & Ors. etc.,* (2010) 13 SCC 398).

9. In *Trishala Jain & Anr. v. State of Uttaranchal & Anr.,* AIR 2011 SC 2458, this Court held that in case the parties do not lead any evidence on record it is difficult for the court to award compensation merely on the basis of imagination/ conjectures, etc. The Act provides for compensation for acquisition of land and deprivation of the property which is reasonable and just. The court must avoid relying on a sham transaction which lacks bona fide and which had been executed for the purpose of raising the land price just before the acquisition to get more compensation for the reason that

fraudulent move or design should not be considered as a proof in such cases though such a conclusion can be inferred from the facts and circumstances of the case.

10. The market value of the land should be determined taking into consideration the existing geographical situation of the land, existing use of the land, already available advantages, like proximity to National or State Highway or road and/or notionally or intentionally renowned tourist destination or developed area, and market value of other land situated in the same locality or adjacent or very near to acquired land and also the size of such a land. (Vide: *Viluben Jhalejar Contractor v. State of Gujarat,* AIR 2005 SC 2214; *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer & Ors.,* AIR 2011 SC 781; *Bilkis & Ors. v. State of Maharashtra & Ors.,* (2011) 12 SCC 646 and *Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Special Land Acquisition Officer & Ors.,* AIR 2012 SC 2709).

11. Where huge tract of land had been acquired and the same is not continuous, the court has always emphasised on applying the principle of belting system for the reason that where different lands with different survey numbers belonging to different owners and having different locations, cannot be considered to be a compact block. Land having frontage on the highway would definitely have better value than lands farther away from highway. (Vide: *Andhra Pradesh Industrial Infrastructure Corporation Limited v. G. Mohan Reddy & Ors.,* (2010) 15 SCC 412).

12. In *Ashrafi & Ors. v. State of Haryana & Ors.,* AIR 2013 SC 3654, this Court emphasised on belting system and observed that while determining the market value of the land, the court must be satisfied that the land under exemplar is a similar land.

(See also: *Sher Singh etc. etc. v. State of Harvana & Ors.,* AIR 1991 SC 2048).

13. In *Executive Engineer (Electrical), Karnataka Power Transmission Corporation Ltd. v. Assistant Commissioner & Land Acquisition Officer, Gadag & Ors.,* (2010) 15 SCC 60, this Court held that in towns and urban areas, distance of half kilometer to one kilometer makes considerable difference in price of the land. Therefore, the court has to determine the market value on the basis of the material produced before it keeping in mind that some of the lands were more advantageously situated.

14. In *Ramanlal Deochand Shah v. State of Maharashtra & Anr.,* AIR 2013 SC 3452, this Court held that the burden of proof lies on the land owner and in case he does not lead any evidence in support of his claim to prove the inadequance of market value fixed of the land acquired, the court cannot help him.

(See also: *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. & Ors.,* (1994) 4 SCC 595; and *Land Acquisition Officer & Sub-Collector, Gadwal v. Sreelatha Bhoopal (Smt) & Anr.,* (1997) 9 SCC 628).

15. In view of the above, the law can be summarised to the effect that the market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances under Section 23 of the Act. A guess work, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land alongwith the advantages/ disadvantages i.e. distance from the National or State Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which the court is not under a legal

obligation to determine the market value merely as per the prayer of the claimant.

There may be a case where a huge tract of land is acquired which runs though continuous, but to the whole revenue estate of a village or to various revenue villages or even in two or more states. Someone's land may be adjacent to the main road, others' land may be far away, there may be persons having land abounding the main road but the frontage may be varied. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. In such a fact-situation every claimant cannot claim the same rate of compensation.

16. The instant appeal is required to be examined in light of the aforesaid settled legal propositions.

The appellant has not put on record as what was his claim under Section 9 of the Act before the Land Acquisition Collector. The award had been made relying upon some other awards. In his application for reference under Section 18 of the Act, the appellant has inter-alia taken the following grounds:

> "(iii) That the land acquisition is very closed and surrounded by the developed and posh colonies and industrial area such as Tughlakabad, Railway Station, Sarita Vihar, Badarpur Town and other colonies …..
>
> (iv) That the Revenue Estate of Aali is surrounded by adjacent villages such as Badarpur, Madanpur Tekhand and Tughlakabad.
>
> (iii) That the land of village Aali is better situated and has more potential value village Jaitpur as the land of village Aali is near to Delhi and main Mathura Road.

(iv) That the Land Acquisition Collector should have assessed the market value of the land in question on the basis of the judgment of the courts of surrounding villages as Tughlakabad, Tekhand, Badarpur, Madanpur Khadar. Several awards of the Collector or courts are based on the sale transactions of each other being same area and same potential value."

17. The Reference Court while determining the market value of the land recorded the following findings:

"Since the instances of sale in land in village Aali relied by respondents and referred by LAC in the Award are available the sale prices of the land in village Jasola, Tughlakabad and Badarpur is not required to be looked into. Further it has not been proved on record in case the potentiality and quality of land in village Jasola and Tughlakabad is the same as that of village Aali and as such the sale deeds pertaining to aforesaid villages cannot be relied upon to assess the market value in village Aali. It has further come on record in other cases pertaining to same award the village Madanpur Khadar is located between village Jasola and Aali and distance between two villages is about 3 Kms. Further Mathura Road is stated to be about 6 Kms. from the acquired land. Even village Tughlakabad and Badarpur are more beneficially located than village Aali. For the foregoing reasons, the rate of land in village Jasola, Badarpur and Tughlakabad cannot be compared to assess the rate of land in village Aali and Ex.P7, 8, 9 and 10 are not relevant.

It may also be observed that the acquired land on the date of notification under Section 4 was being utilized for agricultural purposes and no electrical and municipal connection for water was available. Even the purpose of acquisition in adjacent land, falling in village Jaitpur was

for construction of ash pond and as such there could not have been any substantial appreciation of prices, as no building activities could have taken place. In view of above, the land in village Aali cannot be compared with villages Jasola and Tughlakabad."

(Emphasis added)

The Court further held that the three sale deeds referred to by the Land Acquisition Collector in his award could not provide a proper guideline for determining the market value of the land acquired as they relate to land so sought to be acquired where value is less than land free from encumbrance.

18. Before the High Court, learned counsel for the appellant relied solely upon the judgment dated 10.4.2008 passed in appeal preferred by Bishamber Dayal & Ors. from the same village as is evident from the impugned judgment. The relevant part thereof reads as under:

"Counsel for the appellant submits that the present case is covered by a judgment dated 10.4.2008 passed in an appeal registered as LAA 399/2007 entitled *Bishamber Dayal & Ors. v. UOI & Anr.,* wherein the compensation payable to the land owners in respect of the same village under the same award was enhanced from Rs.5,99,850/- per acre to Rs.6,51,000/- per acre with proportionate statutory benefits including interest on the amount of additional compensation and solatium on the lines of the decision of the Supreme Court in the case of *Sunder v. Union of India* reported as 93 (2001) DLT 569."

19. Thus, it is evident that the High Court in the instant case awarded the compensation as per the demand of the appellant himself. There is nothing on record to show that any other argument had been advanced at his behest.

20. Before us, what is being argued are the same issues which have already been rejected by [illegible]rt

pointing out the distance of the appellant's land from the Mathura Road and non-suitability of comparing with other lands. We do not see any cogent reason to interfere as the Reference Court has clearly held that the appellant's land so acquired had been at a distance of 6 Kms. from the Mathura Road, while other lands relied upon by the appellant before us are adjacent to Mathura Road, and thus the lands are surrounded by hospitals and residential and commercially developed areas.

21. Land of the appellant is situated in revenue estate Aali and appellant claims compensation at the rate which has been awarded in revenue estate Jaitpur. No site plan has been produced showing the distance between the land in Jaitpur and the appellant's land, nor any other evidence is shown to compare the lands and to determine as to whether the award in respect of the land in Jaitpur could be used as an exemplar as only on a comparison would it be possible to arrive at a conclusion that both the lands are similarly situated in all respects.

22. In view of the above, we do not think that the judgments in RFA No.416 of 1986 dated 6.10.1986, *Ram Chander & Ors. v. Union of India* in respect of the land situated in Jasola; and in *Hari Chand v. Union of India,* 91 (2001) DLT 602 in respect of the land situated in Tughlakabad have any relevance in the present appeal.

In view of the above, we do not find any merit in this appeal. It lacks merit and is accordingly dismissed.

R.P. Appeal dismissed.

RAJA RAM & ORS.
v.
UNION OF INDIA & ANR.
(Civil Appeal No. 4620 of 2009 etc.)

MARCH 28, 2014

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

Land Acquisition Act, 1894:

s.23 - Compensation - Claim for enhancement of compensation - Held: In view of the judgment in C.A. No. 6251 of 2010, the prayer is declined.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4620 of 2009.

From the Judgment and Order dated 30.11.2007 of the High Court of Delhi in Land Acquisition Appeal No. 92 of 2007.

WITH

Civil Appeal Nos. 4622, 4624 and 4623 of 2009.

SLP (Civil) Nos. 18981, 18982, 18983 and 18984 of 2008.

Priya Hingorani, Hingorani & Associates, Shobha, Indar Singh, Jyoti Rana, Prasanna Mohan, Satpal Singh for the Appellants.

Puneet Taneja, Shweta Shalini, Dr. Kailash Chand, Rachna Srivastava, Utkarsh Sharma, Pratiksha Chaturvedi for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.

In view of the judgment in Civil Appeal No.6251 of 2010, the abovesaid appeals and special leave petitions are accordingly dismissed.

R.P. Appeals & SLPs dismissed.

IN RE: GANG RAPE ON ORDERS OF COMMUNITY PANCHAYAT

SUO MOTU WRIT PETITION (CRIMINAL) NO. 24 OF 2014

MARCH 28, 2014

[P. SATHASIVAM, CJI, SHARAD ARVIND BOBDE AND N.V. RAMANA, JJ.]

CRIME AGAINST WOMEN:

Gang rape of 20 year old woman in a village of West Bengal on the orders of the Community Panchayat as a punishment for having relationship with a man from a different community - Suo motu action by Supreme Court - Held: Violence against women is a recurring crime across the globe and India is no exception in this regard - The case at hand is the epitome of aggression against a woman and it is shocking that even with rapid modernization such crime persists in Indian society - The State Police Machinery could have prevented the said occurrence - The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage - Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens - Considering the facts and circumstances of the case, the victim given a compensation of Rs. 5 lakhs for rehabilitation by the State - State is directed to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000 - Compensation - Constitution of India, 1950 - Article 21.

Duty of court and police - Held: The courts and the police officials are required to be vigilant in upholding the rights of the victims of crime as the effective implementation of provisions of Code of Criminal Procedure lies in their hands - Police Officer must visit a village on every alternate days to

instill a sense of security and confidence amongst the citizens of the society and to check the depredations of criminal elements.

Rape victim - Duty of State - Compensation - Held: No amount of compensation can be adequate nor can it be of any respite for the victim but since such offence take place due to failure on part of State in protecting a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation.

PENAL CODE, 1860:

ss.326A, 376, 376A, 376B, 376C, 376D, 376E - Held: The offences under these provisions are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law - India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination - However, women of all classes are still suffering from discrimination even in this contemporary society - Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner - Thus, the State machinery should work in harmony with each other to safeguard the rights of women in our country - Registration of FIR is mandatory u/s.154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same - Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated u/s.357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered u/ss.326A, 376, 376A, 376B, 376C, 376D or s.376E - Code of Criminal Procedure, 1973 - s.154 - Crime against women - International Treaties.

CODE OF CRIMINAL PROCEDURE, 1973:

s.357A - Held: In 2009, a new s.357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, s.357 ruled the field which was not mandatory in nature and only the offender was directed to pay compensation to the victim under that section - Under the new s.357A, the onus is on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case - However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case - According to s.357B, the compensation payable by the State Government u/s.357A shall be in addition to the payment of fine to the victim u/s.326A or s.376D of the IPC.

Suo motu action was taken in the instant case by the Supreme Court based on the news item relating to gang rape of 20 year old woman in a village of West Bengal on the orders of the Community Panchayat as a punishment for having relationship with a man from a different community. On the orders of the Supreme Court, the District Judge along with Chief Judicial Magistrate inspected the place of occurrence and submitted a report. The court then directed the Chief Secretary to submit detailed report regarding the steps taken by the police against the persons concerned as the report of the Magistrate lacked such information. The issues for consideration in the suo motu writ petitions were concerning the investigation; prevention of recurring of such crimes; and victim compensation.

Disposing of the suo motu petition, the Court

HELD: 1. Violence against women is a recurring crime across the globe and India is no exception in this regard. The case at hand is the epitome of aggression

against a woman and it is shocking that even with rapid modernization such crime persists in Indian society. Keeping in view this dreadful increase in crime against women, the Code of Criminal Procedure has been specifically amended by recent amendment dated 03.02.2013 in order to advance the safeguards for women in such circumstances. [Para 8] [274-A-C]

2. The courts and the police officials are required to be vigilant in upholding these rights of the victims of crime as the effective implementation of these provisions lies in their hands. In fact, the recurrence of such crimes has been taken note of by this Court in few instances and seriously condemned in the ensuing manner. [Para 9] [277-C-D]

Lata Singh vs. State of U.P. and Ors. **(2006) 5 SCC 475: 2006 (3) Suppl. SCR 350;** *Arumugam Servai vs. State of Tamilnadu* **(2011) 6 SCC 405: 2011 (5) SCR 488 - relied on.**

Shakti Vahini vs. Union of India and Ors. **W.P. (C) No. 231 of 2010 - referred to.**

3. The State Police Machinery could have prevented the said occurrence. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens. [Para 14] [281-B-C]

4. In a report by the Commission of Inquiry, headed by a former Judge of the Delhi High Court, it was seen (although in the context of the NCR) that police officers seldom visit villages; it was suggested that a Police Officer must visit a village on every alternate days to "instill a sense of security and confidence amongst the citizens of the society and to check the depredations of

criminal elements." [Para 15] [281-D-E]

5. As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitization of the Police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women. [Para 16] [281-E-G]

6. Victim Compensation:

No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace. In 2009, a new Section 357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. [Para 17 and 18] [281-G-H; 282-A-D]

State of Rajasthan vs. Sanyam, L

262: 2011 (10) SCR 662; *Bodhisattwa Gautam vs. Miss Subhra Chakraborty* **(1996) 1 SCC 490: 1995 (6) Suppl. SCR 731;** *P. Rathinam vs. State of Gujarat* **(1994) SCC (Crl) 116;** *Railway Board vs. Chandrima Das* **(2000) 2 SCC 465: 2000 (1) SCR 480;** *Satya Pal Anand vs. State of M.P.* **SLP (Crl.) No. 5019/2012** *State vs. Md. Moinul Haque and Ors.* **(2001) 21 BLD 465 - relied on.**

7. The obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case. [Para 22] [283-D-E]

8. The report of the Chief Secretary indicated the steps taken by the State Government including the compensation awarded. Nevertheless, considering the facts and circumstances of this case, the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. Respondent No. 1 (State of West Bengal through Chief Secretary) is directed to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000. Besides, there is some reservation regarding the benefits being given in the name of mother of the victim, when the victim herself is a major (i.e. aged about 20 years). Thus, it would be appropriate and beneficial to the victim if the compensation and other benefits are directly given to her. According to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC. Also, no details have been given as to the measures taken for security and safety of the victim and her family. Merely providing interim measure for their stay may protect them for the time being but long term rehabilitation is needed as they are all material witnesses and likely to be socially

ostracized. Consequently, the Circle Officer of the area is directed to inspect the victim's place on day-to-day basis. [Para 23, 24 and 25] [285-B-G]

9. The crimes, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, the State machinery should work in harmony with each other to safeguard the rights of women in our country. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same. Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC. [Para 26 and 27] [285-H; 286-A-E]

Lalita Kumari vs. Govt. of U.P & Ors. **2013 (13) SCALE 559 - relied on.**

Case Law Reference:

2006 (3) Suppl. SCR 350	**Relied on**	**Para 10**
2011 (5) SCR 488	**Relied on**	**Para 11**
1995 (6) Suppl. SCR 731	**Relied on**	**Para 12**

(1994) SCC (Crl) 116	**Relied on**	**Para 20**
2000 (1) SCR 480	**Relied on**	**Para 20**
(2001) 21 BLD 465	**Relied on**	**Para 21**
2013 (13) SCALE 559	**Relied on**	**Para 26**

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

Suo Motu Writ Petition (Criminal) No. 24 of 2014.

By Court's Motion.

Sidharth Luthra ASG (AC).

Anip Sachthey, Kabir S. Bose, Shagun Matta for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. This Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, P.S. Labpur, District Birbhum, State of West Bengal on the intervening night of 20/21.01.2014 on the orders of community panchayat as punishment for having relationship with a man from a different community, by order dated 24.01.2014, took suo motu action and directed the District Judge, Birbhum District, West Bengal to inspect the place of occurrence and submit a report to this Court within a period of one week from that date.

2. Pursuant to the direction dated 24.01.2014, the District Judge, Birbhum District, West Bengal along with the Chief Judicial Magistrate inspected the place in question and submitted a Report to this Court. However, this Court, on 31.01.2014, after noticing that there was no information in the Report as to the steps taken by the police against the persons concerned, directed the Chief Secretary, West Bengal to submit a detailed report in this regard within a period of two weeks. On the same day, Mr. Sidharth Luthra, learned

Additional Solicitor General was requested to assist the Court as amicus in the matter.

3. Pursuant to the aforesaid direction, the Chief Secretary submitted a detailed report dated 10.02.2014 and the copies of the same were provided to the parties. On 14.02.2014, this Court directed the State to place on record the First Information Report (FIR), Case Diaries, Result of the investigation/Police Report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'the Code'), statements recorded under Section 161 of the Code, Forensic Opinion, Report of vaginal swab/ other medical tests etc., conducted on the victim on the next date of hearing.

4. After having gathered all the requisite material, on 13.03.2014, we heard learned amicus as well as Mr. Anip Sachthey, learned counsel for the State of West Bengal extensively and reserved the matter.

Discussion:

5. Mr. Sidharth Luthra, learned amicus having perused and scrutinized all the materials on record in his submissions had highlighted three aspects viz. (i) issues concerning the investigation; (ii) prevention of recurring of such crimes; and (iii) Victim compensation; and invited this Court to consider the same.

Issues concerning the investigation:

6. Certain relevant issues pertaining to investigation were raised by learned amicus. Primarily, Mr. Luthra stated that although the FIR has been scribed by one Anirban Mondal, a resident of Labpur, Birbhum District, West Bengal, there is no basis as to how Anirban Mondal came to the Police Station and there is also no justification for his presence there. Further, he stressed on the point that Section 154 of the Code requires such FIR to be recorded by a woman police officer or a woman officer and, in addition, as per the latest amendment dated 03.02.2013, a woman officer should r s

under Section 161 of the Code. While highlighting the relevant provisions, he also submitted that there was no occasion for Deputy Superintendent of Police to re-record the statements on 26.01.2014, 27.01.2014 and 29.01.2014 and that too in gist which would lead to possible contradictions being derived during cross-examinations. He also drew our attention to the statement of the victim under Section 164 of the Code. He pointed out that mobile details have not been obtained. He also brought to our notice that if the Salishi (meeting) is relatable to a village, then the presence of persons of neighbouring villages i.e., Bikramur and Rajarampur is not explained. Moreover, he submitted that there is variance in the version of the FIR and the Report of the Judicial Officer as to the holding of the meeting (Salishi) on the point whether it was held in the night of 20.01.2014 as per the FIR or the next morning as per the Judicial Officer's report, which is one of the pertinent issues to be looked into. He also submitted that the offence of extortion under Section 385 of the Indian Penal Code, 1860 (in short 'the IPC') and related offences have not been invoked. Similarly, offence of criminal intimidation under Section 506 IPC and grievous hurt under Section 325 IPC have not been invoked. Furthermore, Sections 354A and 354B ought to have been considered by the investigating agency. He further pointed out the discrepancy in the name of accused Ram Soren mentioned in the FIR and in the Report of the Judicial Officer which refers to Bhayek Soren which needs to be explained. He also submitted that the electronic documents (e-mail) need to be duly certified under Section 65A of the Indian Evidence Act, 1872. Finally, he pointed out that the aspect as to whether there was a larger conspiracy must also be seen.

7. Mr. Anip Sachthey, learned counsel for the State assured this Court that the deficiency, if any, in the investigation, as suggested by learned amicus, would be looked into and rectified. The above statement is hereby recorded.

Prevention of recurring of such crimes:

8. Violence against women is a recurring crime across the globe and India is no exception in this regard. The case at hand is the epitome of aggression against a woman and it is shocking that even with rapid modernization such crime persists in our society. Keeping in view this dreadful increase in crime against women, the Code of Criminal Procedure has been specifically amended by recent amendment dated 03.02.2013 in order to advance the safeguards for women in such circumstances which are as under:-

"154. Information in cognizable cases.-

(1) x x x

Provided that if the information is given by the woman against whom an offence under Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, **by a woman police officer or any woman officer:**

Provided further that:--

(a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(2) x x x

(3) x x x"

"161.-Examination of witnesses by police:-

(1) x x x

(2) x x x

(3) x x x

Provided further that the statement of a woman against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code is alleged to have been committed or attempted **shall be recorded, by a woman police officer or any woman officer."**

"164.-Recording of confessions and statements.-

5A In cases punishable under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-Section (1) or sub-Section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, or Section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-Section (5), as soon as the commission of the offence is brought to the notice of the police:"

"164 A. Medical examination of the victim of rape.- (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical

practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:--

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman; (v) general mental condition of the woman; and (vi) other material particulars in reasonable detail,

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to

section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation--For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53."

9. The courts and the police officialss are required to be vigilant in upholding these rights of the victims of crime as the effective implementation of these provisions lies in their hands. In fact, the recurrence of such crimes has been taken note of by this Court in few instances and seriously condemned in the ensuing manner.

10. In *Lata Singh vs. State of U.P. and Ors.,* (2006) 5 SCC 475, this Court, in paras 17 and 18, held as under:

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of

violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

18. We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

11. In *Arumugam Servai vs. State of Tamilnadu,* (2011) 6 SCC 405, this Court, in paras 12 and 13, observed as under:-

"12. We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feuc r,

these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection."

12. Likewise, the Law Commission of India, in its 242nd Report on Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition) had suggested that:

"11.1 In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or panchayats with sagotra, inter-caste or inter-religious marriages, which are otherwise lawful, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage / intended marriage and the conduct of the young couple. The members gathering for such purpose, i.e., for condemning the marriage with a view to take necessary consequential action, are to be treated as members of unlawful assembly for which a mandatory minimum

punishment has been prescribed.

11.2 So also the acts of endangerment of liberty including social boycott, harassment, etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise are also made punishable with mandatory minimum sentence.

11.3 A presumption that a person participating in an unlawful assembly shall be presumed to have also intended to commit or abet the commission of offences under the proposed Bill is provided for in Section 6.

11.4 Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage.

11.5 The provisions of this proposed Bill are without prejudice to the provisions of Indian Penal Code. Care has been taken, as far as possible, to see that there is no overlapping with the provisions of the general penal law. In other words, the criminal acts other than those specifically falling under the proposed Bill are punishable under the general penal law.

11.6 The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable.

11.7 Accordingly, the Prohibition of Interference with the Freedom of Matrimonial Alliances Bill 20 has been prepared in order to effectively check the existing social malady."

13. It is further pertinent to mention that the issue relating to the role of Khap Panchayats is pending before this Court in *Shakti Vahini vs. Union of India and Others* in W.P. (C) No. 231 of 2010.

14. Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a 'yes'. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens.

15. In a report by the Commission of Inquiry, headed by a former Judge of the Delhi High Court Justice Usha Mehra (Retd.), (at pg. 86), it was seen (although in the context of the NCR) that police officers seldom visit villages; it was suggested that a Police Officer must visit a village on every alternate days to "instill a sense of security and confidence amongst the citizens of the society and to check the depredations of criminal elements."

16. As a long-term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socio-economic condition of women, sensitization of the Police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women.

Victim Compensation:

17. No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the

victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

18. In 2009, a new Section 357A was introduced in the Code which casts a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government whereas, previously, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. Under the new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case. However, no rigid formula can be evolved as to have a uniform amount, it should vary in facts and circumstances of each case. In the case of *State of Rajasthan vs. Sanyam, Lodha,* (2011) 13 SCC 262, this Court held that the failure to grant uniform ex-gratia relief is not arbitrary or unconstitutional. It was held that the quantum may depend on facts of each case.

19. Learned amicus also advocated for awarding interim compensation to the victim by relying upon judicial precedents. The concept of the payment of interim compensation has been recognized by this Court in *Bodhisattwa Gautam vs. Miss Subhra Chakraborty,* (1996) 1 SCC 490. It referred to Delhi Domestic Working Women's Forum vs. Union of India and others to reiterate the centrality of compensation as a remedial measure in case of rape victims. It was observed as under:-

> "If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme."

20. This Court, in *P. Rathinam vs. State of Gujarat,* (1994) SCC (Crl) 1163, which pertained to rape of a tribal woman in police custody awarded an interim

50,000/- to be paid by the State Government. Likewise, this Court, in *Railway Board vs. Chandrima Das,* (2000) 2 SCC 465, upheld the High Court's direction to pay Rs. 10 lacs as compensation to the victim, who was a Bangladeshi National. Further, this Court in SLP (Crl.) No. 5019/2012 titled as *Satya Pal Anand vs. State of M.P.,* vide order dated 05.08.2013, enhanced the interim relief granted by the State Government from Rs. 2 lacs to 10 lacs each to two girl victims.

21. The Supreme Court of Bangladesh in *The State vs. Md. Moinul Haque and Ors.* (2001) 21 BLD 465 has interestingly observed that "victims of rape should be compensated by giving them half of the property of the rapist(s) as compensation in order to rehabilitate them in the society." If not adopting this liberal reasoning, we should at least be in a position to provide substantial compensation to the victims.

22. Nevertheless, the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case. Mr. Anip Sachthey, learned counsel for the State submitted a report by Mr. Sanjay Mitra, Chief Secretary, dated 11.03.2014 on the rehabilitation measures rendered to the victim. The report is as follows:-

"GOVERNMENT OF WEST BENGAL

HOME DEPARTMENT

Report on the Rehabilitation Measures

Reference: Suo Motu Writ Petition No. 24 of 2014

Subject: PS Labpur, District Birbhum, West Bengal Case No. 14/2014 dated 22.01.2014 under section 376D/341/506 IPC.

In compliance with the order passed by the Hon'ble Supreme Court during the hearing of the aforesaid case

on 4th March, 2014, the undersigned has reviewed the progress of rehabilitation measures taken by the State Government agencies. The progress in the matter is placed hereunder for kind perusal.

1. A Government Order has been issued sanctioning an amount of Rs.50,000/- to the victim under the Victim Compensation Scheme of the State Government. It is assured that the amount will be drawn and disbursed to the victim within a week.
2. Adequate legal aid has been provided to the victim.
3. 'Patta' in respect of allotment of a plot of land under 'Nijo Griha Nijo Bhumi Scheme' of the State Government has been issued in favour of the mother of the victim.
4. Construction of residential house out of the fund under the scheme 'Amar Thikana' in favour of the mother of victim has been completed.
5. Widow pension for the months of January, February and March, 2014 has been disbursed to the mother of the victim.
6. Installation of a tube well near the residential house of the mother of the victim has been completed.
7. Construction of sanitary latrine under TSC Fund has been completed.
8. The victim has been enrolled under the Social Security Scheme for Construction Worker.
9. Antyodaya Anna Yojna Card has been issued in favour of the victim and her mother.
10. Relief and Government relief articles have been provided to the victim and her family.

The State Government ha e

administrative action to provide necessary assistance to the victim which would help her in rehabilitation and reintegration.

(Sanjay Mitra)
Chief Secretary"

23. The report of the Chief Secretary indicates the steps taken by the State Government including the compensation awarded. Nevertheless, considering the facts and circumstances of this case, we are of the view that the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. We, accordingly, direct the Respondent No. 1 (State of West Bengal through Chief Secretary) to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000, within one month from today. Besides, we also have some reservation regarding the benefits being given in the name of mother of the victim, when the victim herself is a major (i.e. aged about 20 years). Thus, in our considered view, it would be appropriate and beneficial to the victim if the compensation and other benefits are directly given to her and accordingly we order so.

24. Further, we also wish to clarify that according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

25. Also, no details have been given as to the measures taken for security and safety of the victim and her family. Merely providing interim measure for their stay may protect them for the time being but long term rehabilitation is needed as they are all material witnesses and likely to be socially ostracized. Consequently, we direct the Circle Officer of the area to inspect the victim's place on day-to-day basis.

Conclusion:

26. The crimes, as noted above, are not only in

contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country. As per the law enunciated in *Lalita Kumari vs. Govt. of U.P & Ors.* 2013 (13) SCALE 559, registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and the Police officers are duty bound to register the same.

27. Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC.

28. We appreciate the able assistance rendered by Mr. Sidharth Luthra, learned ASG, who is appointed as amicus curiae to represent the cause of the victim in the present case.

29. With the above directions, we dispose of the suo motu petition.

D.G. Suo Motu Petition disposed of.