M/S PURBANCHAL CABLES & CONDUCTORS PVT. LTD.

v.

ASSAM STATE ELECTRICITY BOARD & ANOTHER

(Civil Appeal No. 2348 of 2003 etc.)

JULY 10, 2012

[H.L. DATTU AND ANIL R. DAVE, JJ.]

INTEREST ON DELAYED PAYMENT TO SMALL SCALE AND ANCILLIARY INDUSTRIAL UNDERTAKINGS ACT, 1973:

Suit for interest on delayed payment - Held: Is maintainable - Supplier may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act.

Prospective operation of the Act - Held: The Act is a substantive law, as vested right of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer - Any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute - In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect - The Act, though enacted on 2.4.1993, by a legal fiction is deemed to have come into effect from the date of promulgation of the Ordinance, i.e. 23.9.1992 - Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act, i.e. 23.9.1992 and not any time prior - Interpretation of Statutes - Precedent.

PRECEDENT:

Reconsideration of a decision - Held: Judicial discipline demands that a decision of a Division Bench of two Judges should be followed by another Division Bench of two Judges - No case has been made out for reconsideration of the decision of the Court in Assam Small Scale Industries - Doctrine of stare decisis.

In the instant appeals arising out of the claim of the appellants-suppliers for interest in terms of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (the Act), the questions for consideration before the Court were: (1) "whether a suit for interest alone is maintainable under the provisions of the Act" and (2) "whether the suppliers can get the benefit of the provisions of the Act even if the contract of supply was executed prior to the commencement of the Act, whereas the supplies are made after the commencement of the Act."

Dismissing the appeals, the Court

HELD: 1. Since a Division Bench of this Court in *Modern Industries'* case* has already approved the dictum of the Full Bench of the High Court with regard to the maintainability of a suit only for interest, that question is no longer res integra. Therefore, the suppliers may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act. [para 12] [923-H; 924-A]

Modern Industries v. Steel Authority of India Limited* **2010 (4) SCR 560 = (2010) 5 SCC 44 - relied on

2.1 The fundamental rule of construction is the same for all statutes whether fiscal or otherwise. The underlying principle is that the meaning and intention of a

statute must be collected from the plain and unambiguous expression used therein rather from any notion. To arrive at the real meaning, it is always necessary to get an exact conception, scope and object of the whole Act. [para 22] [929-B-C]

Zile Singh v. State of Haryana **2004 (5) Suppl. SCR 272 = (2004) 8 SCC 1 - relied on**

2.2 The remedy sought to be applied by the Act is made clear in the Statement of Objects and Reasons, in which, it is stated that due to the delayed payments by buyers to the small scale industries, their working capital was being affected, causing great harm to the small scale industries in general. The Act was passed by Parliament to impose a heavy interest on the buyers who delayed the payments of the small scale industries, in order to deter the buyers from delaying the payments after accepting the supplies made by the suppliers. Keeping in view the said object, the Act was enacted by Parliament. Before such enactment, the supplier whose payment was delayed by the buyer prior to the commencement of the Act, could file a suit for payment of the principal amount along with the interest. The supplier, thus, had the vested right to claim the principal amount along with interest thereon in case of a delay in payment by the buyer and it was the discretion of the court to award such interest. The court has the discretion to award interest along with the principal amount and the same is clear from the use of the word 'may' in all the three provisions, namely s.34 of the CPC, s. 61 of the Sale of Goods Act, 1930 and s. 3 of the Interest Act, 1978. [para 24-26] [929-F-H; 930-C-D, F-G]

2.3 With the commencement of the Act, a new vested right exists with the supplier, that being, if there is delay in payment after the acceptance of the goods by the buyer, the supplier can file a suit for claiming interest at

a higher rate, as prescribed by the Act. This position has been approved by this Court in the case of *Modern Industries*. Thus, if there is a delayed payment by the buyer, then a right to claim a higher rate of interest as prescribed by the Act accrues to the supplier. A statute creating vested rights is a substantive statute. There is no doubt about the fact that the Act is a substantive law as vested right of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure. [para 27, 29 and 39] [931-A-D; 932-B; 938-H; 939-A-B]

Bibi Sayeeda Vs. State of Bihar **1996 (1) Suppl. SCR 799 = (1996) 9 SCC 516;** *Executive Engineer, Dhenkanal Minor Irrigation Division Vs. N.C. Budharaj* **- 2001 (1) SCR 264 = (2001) 2 SCC 721;** *Thirumalai Chemicals Limited Vs. Union of India* **2011 (4) SCR 838 = (2011) 6 SCC 739;** *Shyam Sunder Vs. Ram Kumar* **2001 (1) Suppl. SCR 115 = (2001) 8 SCC 24 - relied on**

Katikara Chintamani Dora Vs. Guntreddi Annamanaidu **1974 (2) SCR 655 = (1974) 1 SCC 567; and** *Govind Das Vs. ITO* **1976 (3) SCR 44 = (1976) 1 SCC 906;** *Jose Da Costa Vs. Bascora Sadasiva Sinai Narcornium* **(1976) 2 SCC 917;** *K. Kapen Chako Vs. Provident Investment Co. (P) Ltd* **1977 (1) SCR 1026 = (1977) 1 SCC 593;** *Dahiben Vs. Vasanji Kevalbhai* **1995 (3) SCR 234 = 1995 Supp. (2) SCC 295;** *Zile Singh Vs. State of Haryana* **2004 (5) Suppl. SCR 272 = (2004) 8 SCC 1;** *State of Punjab Vs. Bhajan Kaur* - **(2008) 12 SCC 112 - referred to.**

Black's Law Dictionary (6th Edn.) - referred to.

2.4 In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. The Act, though enacted on 2nd April 1993, by a legal fiction is deemed to have come into effect from the date of promulgation of the Ordinance, i.e. 23rd September 1992. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act, i.e. 23.9.1992 and not any time prior. [para 8 and 40] [918-D-E; 939-B-D]

2.5 On a careful perusal of the judgment of this Court in *Assam Small Scale Industries,* even the question regarding the applicability of the Act to contracts concluded prior to coming into force of the Act is no longer res integra. In the said case the Court has held that the Act will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. [para 40-41] [939-E; 940-C]**

***Assam Small Scale Industries Development Corpn. Ltd. Vs. J.D. Pharmaceuticals* **2005 (4) Suppl. SCR 232 = (2005) 13 SCC 19;** *Shakti Tubes Ltd. Vs. State of Bihar* **2009 (10) SCR 739 = (2009) 7 SCC 673;** *Rampur Fertilizers Limited v. Vigyan Chemical Industries* **2009 (2) SCR 650 = (2009) 12 SCC 324; and** *Modern Industries v. Steel Authority of India Limited* **2010 (4) SCR 560 = (2010) 5 SCC 44 - relied on.**

2.6 It cannot be said that this Court in *Assam Small Scale Industries Development Corporation's* case did not specifically consider and decide the issue of whether the Act would apply to the contracts executed prior to the commencement of the Act but the supplies being made after the commencement of the Act. In that case, the

question of retrospective operation of the Act or whether past contracts were governed by the Act, was argued. Further, in the case of *Shakti Tubes Ltd.,* this issue was canvassed due to which, this Court referred to the precedent in the case of *Assam Small Scale Industries*. This Court, in *Shakti Tubes Ltd.* expressly rejected the argument that the Act should be given retrospective effect because it was a beneficial legislation. In the case of *Rampur Fertilizers Limited,* this Court again examined the entire scheme of the Act before following the dicta of this Court in the case of *Assam Small Scale Industries*. Even in *Modern Industries*, this Court did not differ from the dicta of this Court in *Assam Small Scale Industries* and *Shakti Tubes*. [para 43, 51-54] [942-A-B; 947-D-G, 948-G-H; 951-C-D]

3.1 Judicial discipline demands that a decision of a Division Bench of two Judges should be followed by another Division Bench of two Judges and this has been stated time and again by this Court. [para 62] [955-E]

Waman Rao Vs. Union of India **1981 (2) SCR 1 = (1981) 2 SCC 362; and** *Union of India Vs. Paras Laminates (P) Ltd.* **- 1990 (3) SCR 789 = (1990) 4 SCC 453 - relied on**

Union of India Vs. Raghubir Singh **1989 (3) SCR 316 =(1989) 2 SCC 754;** *Krishena Kumar Vs. Union of India* **1990 (3) SCR 352 = (1990) 4 SCC 207;** *Mishri Lal Vs. Dhirendra Nath* **1999 (2) SCR 453 = (1999) 4 SCC 11;** *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra,* **2004 (6) Suppl. SCR 1054 = (2005) 2 SCC 673;** *Shanker Raju Vs. Union of India* **2011 (2) SCR 1 = (2011) 2 SCC 132;** *Fida Hussain Vs. Moradabad Development Authority* **2011 (9) SCR 290 = (2011) 12 SCC 615 - referred to.**

3.2 No case has been made out for reconsideration of the decision of this Court in *Assam Small Scale Industries*. In fact, a plea for reconsideration of the same

was rejected by a Division Bench of this Court in *Shakti Tubes*. It cannot be said that the provisions of the Act were not considered in its entirety. In fact, the entire scheme of the Act has been considered in the case of *Rampur Fertilizers* and specific issue under consideration was answered. In light of the dictum of this Court in *Ambika Prasad Mishra* and the factum that no case has been made out for reconsideration, there is no reason much less good reason to doubt the correctness of the decision in *Assam Small Scale Industries* or *Shakti Tubes,* and it would be against the spirit of the doctrine of stare decisis to take any view in divergence with same. [para 66 and 68] [958-C-D, F-H; 959-A]

Keshav Mills Co. Ltd. Vs. CIT **(1965) 2 SCR 908- relied on**

Ambika Prasad Mishra Vs. State of U.P. **1980 (3) SCR 1159 = (1980) 3 SCC 719 - referred to**

4. As regards the plea that the extension of date of supply order, from time to time by the Board, amounts to a novation of contract or supply order in terms of s. 62 of the Indian Contract Act and, therefore, the new contract or supply order would be governed by the Act, suffice it to say that the ground or issue of novation of contract is a mixed question of fact and law and it is being raised, for the first time, at the time of hearing of the case which cannot be permitted to be raised. The said fact of novation or alteration of contract is required to be urged evidentially and scrutinised by the courts below. In absence of such factual findings, it is not possible to decide such a mixed question of law and facts. In *Shakti Tubes Ltd.,* the issue of novation of contract was raised before this Court for the first time at the time of hearing. This Court declined to entertain such ground as being a mixed question of law and fact. This Court further observed that even on the merits of the case the escalation of price, reduction of the quantity of the supply

order and extension of date of supply does not amount to novation or alteration in the supply order. [para 69] [959-B-E]

Assam State Electricity Board and Another v. M/s Trusses and Towers (P) Ltd. **(F.A. NO. 109/95) 2001 (2) GLT 121;** *Purbanchal cables & conductors pvt. Ltd. .vs. Assam state electricity board & anr* **2012(6) JT 327;** *Consolidated Engineering Enterprises v. Municipal Secretary, Irrigation Department,* **2008 (5) SCR 1108 = (2008) 7 SCC 169;** *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker,* **1995 (2) Suppl. SCR 1 = (1995) 5 SCC 5;** *Rampur Fertilizers Limited v. Vigyan Chemical Industries* **2009 (2) SCR 650 = (2009) 12 SCC 324;** *Municipal Corporation, Delhi Vs. Gurnam Kaur* **1988 (2) Suppl. SCR 929 = (1989) 1 SCC 101;** *State of U.P. Vs. Synthetics and Chemicals Ltd.* **(1991) 4 SCC 139;** *Arnit Das Vs. State of Bihar* **2000 (1) Suppl. SCR 69 = (2000) 5 SCC 488,** *Tika Ram Vs. State of Uttar Pradesh* **(2009) 10 SCC 689;** *CIT Vs. Saheli Leasing and Industries Limited* **2010 (6) SCR 747 = (2010) 6 SCC 384 - cited.**

Case Law Reference:

2001 (2) GLT 121	**cited**	**para 3**
2010 (4) SCR 560	**relied on**	**para 11**
2012 (6) JT 327	**cited**	**para 18**
2008 (5) SCR 1108	**cited**	**para 18**
1995 (2) Suppl. SCR 1	**cited**	**para 19**
2009 (2) SCR 650	**cited**	**para 20**
2004 (5) Suppl. SCR 272	**relied on**	**para 23**
1996 (1) Suppl. SCR 799	**relied on**	**para 28**
2001 (1) SCR 264	**relied on**	**para 29**
2011 (4) SCR 838	**relied on**	**para 30**

2001 (1) Suppl. SCR 115	**relied on**	**para31**
1974 (2) SCR 655	**referred to**	**para 32**
1976 (3) SCR 44	**referred to**	**para 33**
1976 (2) SCC 917	**referred to**	**para 34**
1977 (1) SCR 1026	**referred to**	**para 35**
1995 (3) SCR 234	**referred to**	**para 36**
2004 (5) Suppl. SCR 272	**referred to**	**para 37**
2008 (12) SCC 112	**referred to**	**para 38**
2005 (4) Suppl. SCR 232	**relied on**	**para 41**
2009 (10) SCR 739	**relied on**	**para 42**
1988 (2) Suppl. SCR 929	**cited**	**para 47**
(1991) 4 SCC 139	**cited**	**para 48**
2000 (1) Suppl. SCR 69	**cited**	**para 49**
(2009) 10 SCC 689	**cited**	**para 50**
1981 (2) SCR 1	**relied on**	**para 55**
1989 (3) SCR 316	**referred to**	**para 56**
1990 (3) SCR 352	**referred to**	**para 57**
1999 (2) SCR 453	**referred to**	**para 58**
2004 (6) Suppl. SCR 1054	**referred to**	**para 59**
2011 (2) SCR 1	**referred to**	**para 60**
2011 (9) SCR 290	**referred to**	**para 61**
1990 (3) SCR 789	**relied on**	**para 63**
2010 (6) SCR 747	**cited**	**para 64**
(1965) 2 SCR 908	**relied on**	**para 65**

1980 (3) SCR 1159	**relied on**	**para 67**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2348 of 2003 etc.

From the Judgment & Order dated 18.08.2001 of the Gauhati High Court (The High Court of Assam: Nagaland: Meghalaya: Manipur: Tripura: Mizoram: and Arunachal Pradesh) in R.F.A. No. 80 of 2000.

WITH

C.A. No. 2351 of 2003.

Rakesh Dwivedi, Vijay Hansaria, Sunil Gupta, Ritesh Agrawal, Rima, Ranjan Mukherjee, Rajiv Mehta, Sneha Kalita (for Sunil Kumar Jain), Rajiv K. Garg, Ashish Garg, Himanshu Shekhar, Avijit Roy, Vartika Sahay Walia (for Corporate Law Group), Ambhoj Kumar Sinha, Devashish Bharukka for the appearing parties.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Since the issues in these appeals are common, they are disposed of by this common judgment and order.

Factual background of the two appeals

2. The facts in brief needs to be stated for answering the issues raised. They are: In the case of Purbanchal Cables (C.A. No. 2348 of 2003), the supplier is the manufacturer of Aluminium Conductors Steel Reinforced (for short “ACSR”) for various specifications. The respondent-Board had placed orders for supply of ACSR of different specifications in three (3) quarterly phases, i.e. in June 1992, September 1992 and December 1992 with the appellant vide supply order dated 31.3.1992. In pursuance to the said supply order, the supplier had initially made delivery of goods with respect to three bills on

16.09.1992, but did not receive payment from the respondent. Subsequently, the supplier had made another delivery of goods with respect to nine other bills in between 25.09.1992 and 30.03.1993. These supplies were made after the expiry of the time stipulated in the agreement/supply order, but after obtaining specific extension of time by the buyer. The supplier had completed the entire supply by 12.10.1993 and received the payment for such supplies from the respondent in the month of September and October, 1993. In pursuance to such supplies, the supplier has raised the demand for interest on delayed payment made by the respondent, vide its letters dated 14.12.1992 and 3.12.1993, however, the same was not acceded to by the buyer.

3. The supplier had instituted a Money Suit No.109 of 1996 before Assistant District Judge No.1, Kamrup for the payment of interest to the tune of Rs. 24,57,927.28/-, on delayed payment of principal amount by the respondent, under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short 'the Act'). The said suit was decreed by the Civil Judge (Senior Division) No. 1, Kamrup vide his order dated 27.01.2000 in favour of the supplier, who granted the compound interest @ 18.25% per annum plus interest of 5% above the said rate of interest with monthly rest till realization. Being aggrieved by the said order, the respondent had filed a Regular First Appeal No. 80 of 2000 before the High Court of Gauhati. The Division Bench of the High Court has allowed the appeal and dismissed the suit vide its judgment and order dated 18.8.2001 on the ground that suit is not maintainable as no amount was due on the date of institution of the suit and thereby followed its earlier view rendered by the Division Bench of the High Court in *Assam State Electricity Board and Another v. M/s Trusses and Towers (P) Ltd.* (F.A. NO. 109/95), 2001 (2) GLT 121, whereby and whereunder a Division Bench of the High Court had held that a suit for interest simpliciter was not maintainable when the principal amount was received without any demur and that the

Act did not revive the claims that were already settled. The High Court has also, inter alia, directed the appellant to refund the amount of ` 10 lakhs, paid by the respondents pursuant to the Court's direction at the time of admission of the appeal to the respondent within a period of two months and failure to pay within such period would entail interest at the rate of 12% per annum. Aggrieved by this decision of the High Court, the supplier has preferred this appeal.

4. In the case of Shanti Conductors (C.A. No. 2351 of 2003), the Board had placed two supply orders for the manufacture and supply of KM ACSR Penther Conductors, and the supplier completed the supplies in eight parts between 22.03.93 and 04.10.93. In March 1997, about three and a half years of making the supplies, and after the receipt of the entire amount, the supplier filed a suit for interest on delayed payment by the Board in terms of the provisions of the Act, in Money Suit No. 21/1997 before the Court of the Civil Judge (Sr. Divn.) No. 1, Guahati. The same was disputed by the Board in the written statement filed in the suit. However, the suit filed by the supplier was decreed and the Learned Assistant District Judge awarded a sum of `51,60,507.42 by way of interest for the delayed payment. Being aggrieved by the said order, the Board preferred a Regular First Appeal (F.A. No. 66 of 2000) before the Guahati High Court. The Division Bench hearing the appeal of the Board in the case of Shanti Conductors doubted the correctness of the view taken by the Division Bench in the case of Trusses and Towers, and referred the matter to the Full Bench to determine whether a suit is maintainable only for interest and whether the provisions of the Act is applicable to contracts concluded prior to its commencement, where the delayed payment is made after its commencement.

5. The Full Bench of the High Court after considering the provisions of the Act, concluded that the findings of the Division Bench in the case of Trusses & Towers that once a principal amount is received without any protest, then no further claim

for interest can be made; is not the correct legal position in law. In other words, the Full Bench came to the conclusion that a suit for only interest was also maintainable. Further, the Full Bench also held that the Act is applicable to any contracts entered into prior to the commencement of the Act, and a higher rate of interest could be charged in terms of the provisions of the Act, however, the same was to be done after 23.09.1992, i.e. after the Act came into force. The matter was then remitted back to the Division Bench to decide the other issues in accordance with law and in the light of the observations made therein. Aggrieved by the decision of the Full Bench, the Board is before us in Civil Appeal No.2351 of 2003.

6. The issues that are required to be answered by us in these appeals are whether a suit for interest alone is maintainable under the provisions of the Act, and whether the Act would be applicable to contracts that have been concluded prior to the commencement of the Act. In other words, we are required to examine whether the Act would apply to those contracts which were entered prior to the commencement of the Act but supplies were effected after the Act came into force.

The Scheme of the Act:

7. The Statement of Objects and Reasons read as under:

"A policy statement on small scale industries was made by the Government in Parliament. It was stated at that time that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units.

2. Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertakings. Industries in this sector have also been demanding that adequate measures by taken in this regard. The Small Scale Industries Board, which is an apex advisory body on polices relating to small scale

industrial units with representatives from all the States, governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. The buyers, if required under law to pay interest, would refrain from withholding payment to small scale and ancillary industrial undertakings.

3. An Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992, was, therefore, promulgated by the President on 23rd September, 1992."

8. The long title of the Act reads as "An Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." The Act though enacted on 2nd April 1993, by a legal fiction is deemed to have come into effect from the date of promulgation of the Ordinance, i.e. 23rd September 1992. The provisions of the Act largely deal with the liability of the buyer to make payment for supplies, determination of the date from which and the rate at which interest is payable to the supplier from the buyer, liability of the buyer to pay compound interest, recovery of the amount due to the supplier from the buyer, and other provisions relating to appeal, etc.

9. Section 2(b) of the Act defines the meaning of the expression 'appointed day' to mean the day following immediately after the expiry of the payment period of thirty days from the date of payment, acceptance of any goods or any services by a buyer from a supplier. Section 3 of the Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the appeal date or where there is no agreement, before the appointed day.

Section 4 provides for the award of interest where the price has not been paid within time. Section 5 provides for the liability of the buyer to pay compound interest. Section 6 of the Act gives a right to the buyer to file a civil suit. Section 10 of the Act gives overriding effect to any other law which are inconsistent with the provisions of the Act.

On the question of maintainability of a suit for interest

10. Shri Rakesh Dwivedi and Shri Sunil Gupta, learned Senior Counsel appear for the suppliers and Shri Vijay Hansaria, learned Senior Counsel appears for the buyer – Assam State Electricity Board (hereinafter referred to as 'the Board').

11. The learned Senior Counsel appearing for the suppliers has brought to our notice that the first question that has been raised for our consideration has been answered by this Court in favour of the suppliers, in the case of *Modern Industries v. Steel Authority of India Limited,* (2010) 5 SCC 44, in which this Court has held:

> "40. In *Assam SEB v. Shanti Conductors (P) Ltd.* inter alia the question that fell for consideration before the Full Bench of the Gauhati High Court was as to whether the suit for recovery of a mere interest under the 1993 Act is maintainable. The argument on behalf of the appellant therein was that no suit merely for the recovery of the interest under the 1993 Act is maintainable under the provisions of Section 6. It was contended that both principal sum and the interest on delayed payment simultaneously must coexist for maintaining a suit under Section 6 of the 1993 Act.
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> 41. The Full Bench held that the suit is maintainable for recovery of the outstanding principal amount, if any, along with the interest on delayed payments as calculated under

Sections 4 and 5 of the 1993 Act. It said: (Assam SEB case, Gau LR pp. 559-60, para 12)

> "12. … The opening words of Section 6(1) 'the amount due from the buyer, together with the amount of interest….' can only mean that the principal sum due from the buyer as well as or along with the amount of interest calculated under the provisions of the Act, are recoverable. The word 'together' here would mean 'as well as' or 'along with'. This cannot mean that the principal sum must be due on the date of the filing of the suits. The suits are maintainable for recovery of the outstanding, principal amount, if any, along with the amount of interest on the delayed payments as calculated under Sections 4 and 5 of the Act. We are unable to agree with that if the principal sum is not due, no suit would lie for the recovery of the interest on the delayed payments, which might have already accrued. If such an interpretation is given the very object of enacting the Act would be frustrated. The Act had been enforced to see that small- scale industries get the payment regarding supply made by them within the prescribed period and in case of delay in payments the interest would be at a much higher rate (one-and-a-half times of lending rate charged by State Bank of India). The obligation of payment of higher interest under the Act is mandatory. Sections 4 and 5 of the Act of 1993 contain a non obstante clause i.e. 'Notwithstanding anything contained in any agreement between the buyer and the supplier'. In other words, the parties to the contract cannot even contract out of the provisions of the 1993 Act. Even if such provision that interest under the Act on delay meant would not be chargeable is incorporated in the contract, Sections 4 and 5 of the Act of 1993 would still

prevail as the very wording of these sections indicate. Take for instance that the buyer has not paid the outstanding amount of the supply by the due date. After much delay he offers the outstanding amount of the supply to the supplier. If the argument of the learned counsel for the appellant is to be accepted, then, if the supplier accepts entire amount he would be losing his right to recover the amount of interest on the delayed payment under the Act. Therefore, he would have to refuse to accept the amount of payment and then file a suit for recovery of the principal amount and the interest on the delayed payment under the Act. The Act does not create any embargo against supplier not to accept principal amount at any stage and thereafter file a suit for the recovery or realisation of the interest only on the delayed payments under the Act."

42. The word "due" has a variety of meanings, in different context it may have different meanings. In its narrowest meaning, the word "due" may import a fixed and settled obligation or liability. In a wider context the amount can be said to be "due", which may be recovered by action. The amount that can be claimed as "due" and recoverable by an action may sometimes be also covered by the expression "due". The expression "amount due from a buyer" followed by the expression "together with the amount of interest" under sub-section (1) of Section 6 of the 1993 Act must be interpreted keeping the purpose and object of the 1993 Act and its provisions, particularly Sections 3, 4 and 5 in mind. This expression does not deserve to be given a restricted meaning as that would defeat the whole purpose and object of the 1993 Act. Sub-section (1) of Section 6 provides that the amount due from a buyer together with amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be

recoverable by the supplier from the buyer by way of suit or other proceeding under any law for the time being in force.

43. If the argument of the Senior Counsel for the buyer is accepted, that would mean that where the buyer has raised some dispute in respect of goods supplied or services rendered by the supplier or disputed his liability to make payment then the supplier shall have to first pursue his remedy for recovery of amount due towards goods supplied or services rendered under regular procedure and after the amount due is adjudicated, initiate action for recovery of amount of interest which he may be entitled to in accordance with Sections 4 and 5 by pursuing remedy under sub-section (2) of Section 6.

44. We are afraid the scheme of Section 6 of the 1993 Act read with Sections 3, 4 and 5 does not envisage multiple proceedings as canvassed. Rather, whole idea of Section 6 is to provide a single window to the supplier for redressal of his grievance where the buyer has not made payment for goods supplied or services rendered in its entirety or part of it or such payment has not been made within time prescribed in Section 3 for whatever reason and/or for recovery of interest as per Sections 4 and 5 for such default. It is for this reason that sub-section (1) of Section 6 provides that "amount due from a buyer together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5" shall be recoverable by the supplier from buyer by way of a suit or other legal proceeding. Sub-section (2) of Section 6 talks of a dispute being referred to IFC in respect of the matters referred to in sub-section (1) i.e. the dispute concerning amount due from a buyer for goods supplied or services rendered by the supplier to the buyer and the amount of interest to which the supplier has become entitled under Sections 4 and 5.

45. It is true that word "together" ordinarily means conjointly

or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding under sub-section (1) or by making reference to IFC under sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of the Gauhati High Court in Assam SEB that word "together" in Section 6(1) would mean "along with" or "as well as". Seen thus, the action under Section 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, under Section 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability. IFC has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by the learned Senior Counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of the 1993 Act. The Preamble to the 1993 Act, upon which strong reliance has been placed by the learned Senior Counsel, does not persuade us to hold otherwise. It is so because the Preamble may not exactly correspond with the enactment; the enactment may go beyond the Preamble."

12. The decision of the Full Bench of the Gauhati High Court which has been approved by this Court in *Modern Industries* (supra) is impugned before us in one of the appeals. Since a Division Bench of this Court has already approved the dictum of the Full Bench of the High Court with regard to the

maintainability of a suit only for interest, that question is no longer res integra. Therefore, the suppliers may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act.

13. The other question that remains for our consideration is; as to whether the suppliers can get the benefit of the provisions of the Act even if the contract of supply was executed prior to the commencement of the Act, whereas the supplies being made after the commencement of the Act. In other words, the question we are called upon to answer is with regard to the status of contracts of supply concluded prior to the commencement of the Act vis-à-vis the Act.

Arguments on behalf of the suppliers

14. Shri Rakesh Dwivedi, learned Senior Counsel, would submit that the Act is a beneficial legislation and is aimed at providing relief to suppliers which are small scale industries, who are not paid on time even after supplies are effected and accepted and hence had to suffer severe financial crunch. He would submit that the Act is supply oriented and the date of the supply is the critical and crucial date for applying the provisions of the Act, and not the date on which the contract is entered into by the parties. Shri. Dwivedi, learned Senior Counsel would state that Section 1(3) of the Act by way of a deeming fiction, brought the Act into force from the date of the promulgation of the Ordinance i.e. 23rd September 1992. He would then draw our attention to the text of Section 3, and submit that the liability of a buyer to make payment arose on the completion of the event of supply of the good by the supplier/manufacturer. The learned Senior Counsel refers to the definition of 'appointed day' to mean the day of acceptance of the supply of goods or the date of deemed supply of goods. He would refer to Sections 4 and 5 and also Section 10 of the Act and submit that the liability and payment of higher rate of interest is a result of delayed payment by the buyer to the supplier at the time of the supply. He would also stress on the non-obstante clause that

is found in the text of section 5 and overriding effect given to the Act vide section 10 to stress upon the fact that the provisions of the Act with regard to compound interest would prevail even if there was an agreement to the contrary that the Act would override the provisions of any other law. He would lay emphasis upon the crucial date for the operation of the Act as the date on which the supply is made and not the date on which the contract of supply was concluded as understood by the decisions of this Court in Assam Small Scale Industries and Shakti Tubes. He would also lay emphasis on the expression "appointed day" as defined in Section 2(b) of the Act to contend that though the contract between the parties was prior to the enactment, it is the date of acceptance of the goods or any other service by a buyer from the supplier and thus, is the relevant date for applying the beneficial supply oriented legislation. In the alternative, it is contended by Shri Dwivedi that even if the contract is entered into prior to the date of commencement of the Act, and the supply was subsequent, then the Act would apply in respect of such buyers that made delayed payments to the suppliers. He would also submit that the ills of delayed payment was causing great inconvenience and hardship to the small scale industries, and that being the reason for the enactment of the legislation, coupled with the fact that the event of supply is the core theme of the legislation, hence all the supplies made after the 23rd September 1992 would attract the provisions of the Act.

15. In conclusion, Shri Dwivedi contends: (1) that the Act is a supply oriented; (2) that on a wholesome reading of Sections 4 and 5 and Section 10 of the Act, the Act has overriding effect over any other law which are inconsistent with the provisions of the Act; (3) the emphasis on the text of Section 3 on the supply of the goods and the liability of the buyer arose on the supply of goods; (4) It is a beneficial legislation and a purposive construction is required to be adopted. He points out that since these salient features are neither noticed nor considered in Assam Small Scale Industries, the decision needs reconsideration by a larger Bench.

16. Shri Sunil Gupta, learned Senior Counsel while adopting the principal arguments of Shri Rakesh Dwivedi would submit, that, on a plain reading of the Statement of Objects and Reasons of the Act, it is clear that Parliament enacted the legislation in order to assist the small scale industries to get their payment on time from the buyers. He would state that there is extrinsic evidence in the Act to show that the Act would apply even to those contracts, which were executed prior to 23rd September 1992. Shri Gupta would further rely on the long title of the Act to make good his submission that the scope of the Act was not restricted to contracts entered into after the Act came into force. He would further submit that the Act did not apply to those contracts or payment disputes that were ceased to exist but are maintainable to all those disputes, even if those cases in which recovery suit was filed and pending after the Act has come into force. The learned Senior Counsel would further submit that the Act is prospective and applies to all those contracts which had been executed earlier but supplies were made after the Act came into force. Shri Gupta would state that even if the agreement and supply was prior to the coming into force of the Act, it would still apply, if the issue with regard to delayed payment was still alive. He would submit that the vested right that has accrued in favour of the supplier should not be abrogated. Shri Gupta would also take us through the debates in Parliament by the various members while the legislation was being enacted and decisions of this Court in support of his submissions. Shri Gupta would also submit that the question to be addressed is not as to who is within the scope of the Act but who is necessarily out of the ambit of the Act.

Arguments of behalf of the Board

17. Shri Vijay Hansaria, learned Senior Counsel appearing

for the Board, would submit that the suits in both the cases of Shanti Conductors and Purbanchal Cables were barred by limitation.

18. In case of Purbanchal Cables (C.A. No. 2348 of 2003), the learned Senior Counsel would state that the last supply was made on 12.10.1993 and the suit was filed on 31.08.1996 i.e. after the expiry of the period of limitation. He would contend that the only reason assigned in the suit to take the benefit of Section 14 of the Limitation Act is that a writ petition filed on behalf of the Assam Conductors Manufacturers Association was pending and only after the same was disposed of, they have filed the suit. He would refer to Section 14 of the Limitation Act, 1963 and state that writ proceedings which caused the delay of the filing of the suit was filed by an Association on behalf of the suppliers. Further, he would submit that when the suit was filed, a writ appeal was pending. He would rely on the case of *Consolidated Engineering Enterprises v. Municipal Secretary, Irrigation Department,* (2008) 7 SCC 169, to contend that for the operation of Section 14, it was required that a civil proceeding be pending by the same party. Though, the learned Senior Counsel would state that the writ petition would fall within the ambit of a civil proceeding, it had to be filed by the same party, which is not the case in the present suit. The writ petition, he would state, was filed by an Association for different relief, than what was sought by the supplier in the suit, and hence, the benefit of Section 14 of the Limitation Act would not be available.

19. In case of Shanti Conductors (C.A. No. 2351 of 2003), the supply order was completed on 4th October 1993 and the suit was filed only on 10th January 1997 i.e. after the expiry of three year limitation period. The learned Senior Counsel would submit that there was no specific pleading with regard to applicability of Section 14 of the Limitation Act, 1963, though it was raised by the defendant in the suit. He would assail the trial court's reasoning wherein it is held that in view of the

Section 10 of the Act, the Limitation Act does not apply. He would submit that in the light of the judgment of this Court in *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker,* (1995) 5 SCC 5, this Court while construing Section 29 (2) of the Limitation Act has held that if the operation of the Limitation Act has to be barred, then a time schedule has to be given under the special law and in the absence of such, the Limitation Act would apply.

20. On the question of applicability of Act, the learned Senior Counsel would submit that since 2005, this Court has consistently held that the Act was not applicable to the contracts which were concluded prior to commencement of the Act. In aid of his submission, the learned Senior Counsel would draw our attention to issues raised and arguments canvassed in Assam Small Scale Industries, which was specifically answered in the negative by observing that the Act is not applicable for the contracts entered into prior to the commencement of the Act. Shri Hansaria, further submits that this issue was again raised in the case of Shakti Tubes, wherein this Court was called upon to reconsider the question of law decided by this Court in Assam Small Scale Industries and this Court in Shakti Tubes categorically refused to refer the matter to a larger Bench for reconsideration by approving the decision in Assam Small Scale Industries as correctly decided. He would then submit this Court had also considered this issue in *Rampur Fertilizers Limited v. Vigyan Chemical Industries*- (2009) 12 SCC 324 and *Modern Industries* (supra). Therefore, he would submit that this Court has consistently followed the above view and relying on several decisions of this Court, he would state that it is desirable to further uphold the same view as per the doctrine of stare decisis and precedents in order to maintain certainty of the law.

Our Conclusion

21. Though the learned Senior Counsel would state that the suits, filed by both the suppliers in the present batch of

appeals, were barred by limitation, we do not intend to express our view on the issue, since some of the appeals filed by the suppliers are still pending before the High Court. Any observation that we may make would certainly effect the interest of both the parties since that issue is yet to be decided by the High Court.

Retrospective operation of the Act

22. The fundamental rule of construction is the same for all statutes whether fiscal or otherwise. The under-lying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather from any notion. To arrive at the real meaning, it is always necessary to get an exact conception, scope and object of the whole Act.

23. In the case of *Zile Singh v. State of Haryana* - (2004) 8 SCC 1, this Court observed that there were four relevant factors which needed to be considered while considering whether a statute applied prospectively or retrospectively:

> "15.…Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated…."

24. The general scope of the Act has been discussed above. The remedy sought to be applied by the Act is made clear in the Statement of Objects and Reasons, in which, it is stated that due to the delayed payments by buyers to the small scale industries, their working capital was being affected, causing great harm to the small scale industries in general. This Act was passed by Parliament to impose a heavy interest on the buyers who delayed the payments of the small scale industries, in order to deter the buyers from delaying the payments after accepting the supplies made by the suppliers.

The policy statement of the Ministry of Micro, Small and Medium Enterprises dated 6th August 1991, reads:

> "3.4) A beginning has been made towards solving the problem of delayed payments to small industries setting up of 'factoring' services through Small Industries Development Bank of India (SIDBI). Network of such services would be set up throughout the country and operated through commercial banks. A suitable legislation will be introduced to ensure prompt payment of small industries' bills."

25. Keeping in view the above object, the Act was enacted by the Parliament. Before such enactment, it is required to examine rights of the supplier qua the buyer prior to the commencement of the Act. In case of delayed payment, the supplier, prior to the commencement of the Act, was required to file a suit for the payment of the principal amount, and could claim interest along with the principal amount. The supplier could avail of the same under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), Section 61 of Sale of Goods Act, 1930 and Section 3 of Interest Act, 1978.

26. In other words, the supplier whose payment was delayed by the buyer prior to the commencement of the Act, could file a suit for payment of the principal amount along with the interest. The supplier, thus, had the vested right to claim the principal amount along with interest thereon in case of a delay in payment by the buyer and it was the discretion of the Court to award this interest. The Court has the discretion to award interest along with the principal amount and the same is clear from the use of the word 'may' in all the three provisions cited above. Section 34 of the CPC is the main provision under which interest could be awarded by the Court and Section 61 of the Sale of Goods Act, 1930 is an offshoot of Section 34 of the CPC. Section 3 of the Interest Act, 1978 also makes the Interest Act subject to the provision of Section 34 of the CPC.

Hence, we can safely deduce that the interest awarded is a discretion exercised by the Court, on the principal amount claimed, in case of a suit for recovery of payment by the supplier if such payment is delayed by the buyer.

27. With the commencement of the Act, a new vested right exists with the supplier, that being, if there is delay in payment after the acceptance of the goods by the buyer, the supplier can file a suit for claiming interest at a higher rate, as prescribed by the Act. This position has been approved by this Court in the case of *Modern Industries* (supra). If a suit for interest simpliciter is maintainable as held by this Court in *Modern Industries* (supra), then a new liability qua the buyer is created with the commencement of the Act giving a vested right to the supplier in case of delayed payment. In other words, if there is a delayed payment by the buyer, then a right to claim a higher rate of interest as prescribed by the Act accrues to the supplier.

28) The phrase 'vested right' has been defined by this Court in the case of *Bibi Sayeeda Vs. State of Bihar* - (1996) 9 SCC 516 as:

> "17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563 as:
>
> > "Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."
>
> Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, (International Edn.) at p. 1397 'vested' is defined as:

> "[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.""

29. A statute creating vested rights is a substantive statute. This Court, in the case of *Executive Engineer, Dhenkanal Minor Irrigation Division Vs. N.C. Budharaj* - (2001) 2 SCC 721, opined:

> "23. … "Substantive law", is that part of the law which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides the method of enforcing rights. Decisions, including the one in Jena case while adverting to the question of substantive law has chosen to indicate by way of illustration laws such as Sale of Goods Act, 1930 [Section 61(2)], Negotiable Instruments Act, 1881 (Section 80), etc. The provisions of the Interest Act, 1839, which prescribe the general law of interest and become applicable in the absence of any contractual or other statutory provisions specially dealing with the subject, would also answer the description of substantive law…"

30. In the case of *Thirumalai Chemicals Limited Vs. Union of India* - (2011) 6 SCC 739, this Court comparing substantial law with procedural law, stated:

> "23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is

expressly or by necessary implication made to have retrospective operation."

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act."

31. In the case of *Shyam Sunder Vs. Ram Kumar* - (2001) 8 SCC 24, a Constitution Bench of this Court discussing the scope and ambit of a declaratory law has observed:

"39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word "declaratory", the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law."

32. In *Katikara Chintamani Dora Vs. Guntreddi Annamanaidu* - (1974) 1 SCC 567, this Court held:

"50. It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights (Maxwell on Interpretation, 12th Edn. 220). That is to say, "in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed"."

33. In *Govind Das Vs. ITO* - (1976) 1 SCC 906, this Court speaking through P.N. Bhagwati. J., (as he then was) held:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by *Halsbury* in Vol. 36 of the *Laws of England* (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

> "all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective"

and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language

which is fairly capable of either interpretation, it ought to be construed as prospective only."

34. In the case of *Jose Da Costa Vs. Bascora Sadasiva Sinai Narcornium* - (1976) 2 SCC 917, this Court held:

31. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that

> "while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (see Delhi Cloth and General Mills Co. Ltd. v. ITC.)

The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the application of this rule viz. (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see Garikapati Veeraya v. N. Subbiah Choudhury and Colonial Sugar Refining Co. Ltd. v. Irving).

35. In *K. Kapen Chako Vs. Provident Investment Co. (P) Ltd* - (1977) 1 SCC 593, this Court discussing the dicta of the English Courts on the aspect of retrospectivity observed:

"37. A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision pre-judicially ought not be so construed. It is a well recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, the prima facie construction of the Act is that it is not to be retrospective. (See *Gardner v. Lucas*).

38. In Moon v. Durden a question arose as to whether Section 18 of the Gaming Act, 1845 which came into effect in August 1845 was retrospective so as to defeat an action which had been commenced in June 1845. The relevant section provided that no suit shall be brought or maintained for recovering any such sum of money alleged to have been won upon a wager. It was held that it was not retrospective. Parke, B. said:

> "It seems a strong thing to hold that the legislature could have meant that a party who under a contract made prior to the Act, had as perfect a title to recover a sum of money as he had to any of his personal property, should be totally deprived of it without compensation."

39. Again in *Smithies v. National Union of Operative Plasterers* Section 4 of the Trade Disputes Act, 1906 which enacted that an action for tort against a trade union shall not be entertained by any court was held not to prevent the courts from hearing and giving judgment in actions of that kind begun before the passing of the Act. It

is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure and do not extend to rights of action. See *Re Joseph Suche & Co. Ltd.* If the legislature forms a new procedure alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it will be held to apply prima facie to all actions, pending as well as future."

36. In the case of *Dahiben Vs. Vasanji Kevalbhai* - 1995 Supp. (2) SCC 295, this Court held:

"12. As the amendment in question is not to a procedural law, it may be stated that the settled principle of interpretation, where substantive law is amended, is that the same does not operate retrospectively unless it is either expressly provided or the same follows by necessary implication. Lest it be thought that a vested right cannot be taken away at all by retrospective legislation, reference may be made to *Rafiquennessa v. Lal Bahadur Chetri* where it was stated that even where vested rights are affected, legislature is competent to take away the same by means of retrospective legislation; and retrospectivity can be inferred even by necessary implication."

37. In the case of *Zile Singh Vs. State of Haryana* - (2004) 8 SCC 1, this Court examined the various authorities on statutory interpretation and concluded:

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose

new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only — *"nova constitutio futuris formam imponere debet non praeteritis"* — a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)."

38. In the case of *State of Punjab Vs. Bhajan Kaur* - (2008) 12 SCC 112, this Court held:

"9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law."

39. There is no doubt about the fact that the Act is a

substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure.

40. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only said to accrue for sale agreements after the date of commencement of the Act, i.e. 23rd September 1992 and not any time prior.

Earlier Precedents

41. On a careful perusal of the judgment of this Court in Assam Small Scale Industries, we find that even the question regarding the applicability of the Act to contracts concluded prior to coming into force of the Act is no longer res integra. This question is answered by this Court in the case of *Assam Small Scale Industries Development Corpn. Ltd. Vs. J.D. Pharmaceuticals* - (2005) 13 SCC 19 as under:

> "37. We have held hereinbefore that clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply.

> The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.
>
> 38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter."

42. In *Shakti Tubes Ltd. Vs. State of Bihar* - (2009) 7 SCC 673, this Court approved the ratio in Assam Small Scale Industries, and held:

> 18. In our considered opinion, the ratio of the aforesaid decision in *Assam Small Scale Industries case* is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.
>
> 19. Now coming to the facts of the present case we find that there is no dispute with regard to the fact that the supply order was placed with the respondents on 16-7-1992 for supply of the pipes which date is admittedly prior to the date on which this Act came into effect.

20. Being faced with the aforesaid situation, the learned Senior Counsel appearing for the appellant-plaintiff sought to submit before us that the decision of this Court in Assam Small Scale Industries case refers to the expression "transactions". According to him, the transactions would be complete only when the appellant-plaintiff made the supply and since the supply was made in the instant case after coming into force of the Act, the appellant-plaintiff would be entitled to the benefit of Sections 4 and 5 of the Act. Refuting the aforesaid submission, the learned Senior Counsel appearing for the respondents submitted that the aforesaid contention is completely misplaced. He pointed out that if such a meaning, as sought to be given by the learned Senior Counsel appearing for the appellant-plaintiff, is accepted that would lead to giving benefit of the provisions of the Act to unscrupulous suppliers who, in order to get the benefit of the Act, would postpone the delivery of the goods on one pretext or the other.

21. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in para 37 of the judgment which we have already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in para 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made. Therefore, the submission made by the learned Senior Counsel appearing for the appellant-plaintiff fails.

43. The case of Assam Small Scale Industries has been followed in *Rampur Fertilizers Limited as well as Modern Industries* (supra). Therefore, we cannot agree with the submission that this Court in Assam Small Scale Industries Development Corporation's case did not specifically consider and decide the issue of whether the Act would apply to such of those contracts executed prior to the commencement of the Act but the supplies being made after the commencement of the Act.

Binding precedent or sub-silentio

44. However, the learned Senior Counsel appearing for the suppliers, Shri Rakesh Dwivedi, and Shri Sunil Gupta would contend that the decision of this Court is not a binding precedent.

45. Shri Rakesh Dwivedi, learned Senior Counsel would submit that the decisions of this Court in the case of Assam Small Scale Industries and Shakti Tubes (supra) regarding the prospective operation of the Act were not law declared under Article 141, as the point under consideration in those cases were different from the issues raised in these appeals. He would further submit that the question about operation of the Act for contracts concluded prior to 23rd September 1992 was not even a question, which came up for consideration before the Court and was not even argued by the learned Counsel appearing in that matter, and hence would not form a part of the ratio of the decision. He would further submit that the question was answered without adequately considering the provisions of the beneficial legislation and therefore, it cannot be treated as a binding precedent.

46. Shri Sunil Gupta, learned Senior Counsel while adopting the argument advanced by Shri Dwivedi on this issue, would submit that there are two exceptions to the doctrine of precedent, namely, per incurium and sub silentio. It was on the strength of the latter that Shri Gupta would submit that the

decisions of this Court in *Assam Small Scale Industries and Shakti Tubes* (supra) cannot be considered as precedents. The learned Senior Counsel would state that a decision would not apply as a precedent when the Court has failed to consider the objects and purpose of the Act in question and also certain previous judgments of this Court. He would further contend that the aforesaid judgments suffer from the sub-silentio principle being rendered without full and adequate arguments on the issue. The learned Senior Counsel would also state that the Court did not look at the issue from the viewpoint canvassed presently.

47. The learned Senior Counsel would rely on the decision of this Court in *Municipal Corporation, Delhi Vs. Gurnam Kaur* - (1989) 1 SCC 101. This Court has held:

> "11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the

Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

> "A decision passes *sub silentio,* in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In *Gerard v. Worth of Paris Ltd. (k).,* the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.,* the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed.

Precedents *sub silentio* and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

48. In the case of *State of U.P. Vs. Synthetics and Chemicals Ltd.* - (1991) 4 SCC 139, His Lordship R.M. Sahai. J., in his concurring judgment set out the principles of per incurium and sub silentio has held thus:

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (*Young v. Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has

come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

49. In the case of *Arnit Das Vs. State of Bihar* - (2000) 5 SCC 488, this Court held:

"20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point

of law was not consciously determined. (See *State of U.P. v. Synthetics & Chemicals Ltd.* SCC, para 41.)"

50. In the case of *Tika Ram Vs. State of Uttar Pradesh* - (2009) 10 SCC 689, it was held:

"104. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein…."

51) Though the submissions made by Shri Rakesh Dwivedi and Shri Sunil Gupta, learned Senior Counsel seems attractive in the first blush, we are of the view, they lack merit. In the case of *Assam Small Scale Industries* (supra), the question of retrospective operation of the Act or whether past contracts were governed by the Act, was argued by the learned Senior Counsel appearing for the respondent. In the said judgment this Court has observed:

"19……. The 1993 Act, it was submitted, being also a beneficent statute, the same should be construed liberally. The Act, Mr Chowdhury would argue, will thus, have a retrospective effect."

52. Further, in the case of *Shakti Tubes Ltd.* (supra), this issue was canvassed by the learned Counsel, due to which, this Court referred to the precedent in the case of *Assam Small Scale Industries* (supra). The argument on this point has been noted thus:

"9. According to the appellant-plaintiff, the said interest has been claimed by the appellant-plaintiff since it is entitled to so claim in terms of the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial

Undertakings Act, 1993 (hereinafter referred to as "the Act"). Mr G.C. Bharuka, learned Senior Counsel appearing for the appellant-plaintiff drew our attention to the provisions of the Act and to the decision of this Court in Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals. In support of his contention that the transaction in the instant case came to an end with the appellant-plaintiff supplying the goods after coming into force of the Act he has taken us through the relevant sections of the Act as also the Statements of Objects and Reasons of the Act. According to him, the appellant-plaintiff is entitled to be paid in terms of the provisions of the Act.

10. Mr Bharuka contended that the earlier supply order which was issued on 16-7-1992 came to be materially altered and substituted by a fresh supply order issued on 18-3-1993 by which date the aforesaid Act had already been enforced and therefore, the appellant-plaintiff was entitled to claim interest at a higher rate as envisaged in Sections 4 and 5 of the said Act.

11. Mr Dinesh Dwivedi, learned Senior Counsel appearing for the respondents strongly refuted the aforesaid submissions made by the learned Senior Counsel appearing for the appellant-plaintiff on the ground that the supply order was issued in the instant case on 16-7- 1992 and therefore, in terms of and in line with the decision of this Court in Assam Small Scale Industries case the appellant-plaintiff was entitled to be paid interest only at the rate of 9% per annum and not at a higher rate as contended by the appellant-plaintiff."

53. This Court, in *Shakti Tubes Ltd.* (supra) expressly rejected the argument of the learned Senior Counsel appearing for the appellant in that case, that the Act should be given retrospective effect because it was a beneficial legislation, in paragraphs 24 to 26, which have been set out below:

"24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

> "13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—nova constitutio futuris formam imponere debet non praeteritis—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440)."

25. In *Zile Singh Vs. State of Haryana* (supra), SCC at p. 9, this Court observed as follows: (SCC pp. 9-10, paras 15-16)

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that

the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is Attorney General v. Pougett (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)

> 'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it

passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)"

26. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small-scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and derived from the Act itself."

54. In the case of *Rampur Fertilizers Limited* (supra), this Court again examined the entire scheme of the Act before following the dicta of this Court in the case of *Assam Small Scale Industries* (supra). Even in *Modern Industries* (supra), this Court did not differ from the dicta of this Court in *Assam Small Scale Industries and Shakti Tubes* (supra).

Binding value of a precedent

55. In the case of *Waman Rao Vs. Union of India* - (1981) 2 SCC 362, His Lordship Y.V. Chandrachud. C.J., speaking for the Constitution Bench, held:

"40. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is

unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

56. In *Union of India Vs. Raghubir Singh* - (1989) 2 SCC 754, this Court held:

"8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

57. In *Krishena Kumar Vs. Union of India* - (1990) 4 SCC 207, this Court observed:

"33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases

where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it."

58. In the case of *Mishri Lal Vs. Dhirendra Nath* - (1999) 4 SCC 11, this Court held:

"13.…It is further to be noted that Meharban Singh case came to be decided as early as 1970 and has been followed for the last three decades in the State of Madhya Pradesh and innumerable number of matters have been dealt with on the basis thereof and in the event, a different view is expressed today, so far as this specific legislation is concerned, it would unsettle the situation in the State of Madhya Pradesh and it is on this score also that reliance on the doctrine of "stare decisis" may be apposite. While it is true that the doctrine has no statutory sanction and the same is based on a rule of convenience and expediency and as also on "public policy" but in our view, the doctrine should and ought always to be strictly adhered to by the courts of law to subserve the ends of justice."

59. In *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra,* (2005) 2 SCC 673, a Constitution Bench of this Court held:

"8. In Raghubir Singh case Chief Justice Pathak pointed out that in order to promote consistency and certainty in the law

laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decided questions of law, as is done by the Supreme Court of United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the Court should sit in divisions of consisting of Judges whose numbers may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has been merit of promoting certainty and consistency in judicial decisions and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

60. In the case of *Shanker Raju Vs. Union of India* - (2011) 2 SCC 132, this Court observed:

"10. It is settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible…."

61. In the case of *Fida Hussain Vs. Moradabad Development Authority* - (2011) 12 SCC 615, this Court held:

"15. Having carefully considered the submissions of the

learned Senior Counsel Shri Varma, we are of the view that the judgment in Gafar case does not require reconsideration by this Court. In Gafar case this Court had meticulously examined all the legal contentions canvassed by the parties to the lis and had come to the conclusion that the High Court has not committed any error which warrants interference. In the present appeals, the challenge is for the compensation assessed for the lands notified and acquired under the same notification pertaining to the same villages. Therefore, it would not be proper for us to take a different view, on the ground that what was considered by this Court was on a different fact situation. This view of ours is fortified by the judgment of this Court in *Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur,* wherein it was held that a decision of this Court is binding when the same question is raised again before this Court, and reconsideration cannot be pleaded on the ground that relevant provisions, etc., were not considered by the Court in the former case."

62. Judicial discipline demands that a decision of a Division Bench of two Judges should be followed by another Division Bench of two Judges and this has been stated time and again by this Court. In *Raghubir Singh* (supra), a Constitution Bench of this Court speaking through Chief Justice R.S. Pathak, held:

"28. We are of the opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court…."

63. In *Union of India Vs. Paras Laminates (P) Ltd.* - (1990) 4 SCC 453 this Court has observed:

"9. It is true that a bench of two members must not lightly

disregard the decision of another bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the administration of justice…."

64. Shri Vijay Hansaria, learned Senior Counsel contends that a case for referring the matter to a larger Bench though is pleaded by the learned Senior Counsel, Shri Rakesh Dwivedi, this Court ought to test the same by the parameters laid down by this Court in the case of *CIT Vs. Saheli Leasing and Industries Limited* - (2010) 6 SCC 384 to find out whether the matter deserves to be referred to a larger Bench. In Saheli Leasing, this Court held:

"29…(x) In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or these is an error apparent on its face or that a particular earlier decision was not noticed, which has direct bearing or has taken a contrary view…."

65. The Constitution Bench of this Court in the case of *Keshav Mills Co. Ltd. Vs. CIT* - (1965) 2 SCR 908 crystallized the position with regard to what the Court should do when a plea for consideration of an earlier judgment is made. It was held:

"…When it is urged that the view already taken by this Court should be reviewed and revised, it may not

necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviving and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons it is necessary that the earlier decision should be revised. When this Court decided questions of law, its decisions are, under Art. 141, binding on courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. This is not to say if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate the correct the error; but before a previous decision is pronounced to plainly erroneous the Court must be satisfied with fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend on several relevant considerations:- What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous there is such an error in the earlier view? What would be

the impact of the error on the general administration of law or public good? Has the earlier decision been followed on subsequent occasions either by this Court or by High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions…."

66. We are in full agreement with the view expressed in *Keshav Mills* case (supra). The learned Senior Counsel Shri Rakesh Dwivedi has not been able to make out a case for reconsideration of the decision of this Court in *Assam Small Scale Industries* (supra). In fact, a plea for reconsideration of the same was rejected by a Division Bench of this Court in *Shakti Tubes* (supra). We are unable to agree with the argument of Shri Dwivedi and Shri Gupta that the provisions of the Act were not considered in its entirety. In fact, the entire scheme of the Act has been considered in the case of *Rampur Fertilizers* (supra) and specific answer to the issue under consideration was answered.

67. In the case of *Ambika Prasad Mishra Vs. State of U.P.* - (1980) 3 SCC 719, His Lordship V.R. Krishna Iyer. J., speaking for the Constitution Bench held:

"6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned."…"

68. In light of this dictum, and the factum that no case has been made out for reconsideration by the learned Senior Counsel appearing for the suppliers, we do not see any reason much or less good reason to doubt the correctness of the decision in *Assam Small Scale Industries or Shakti Tubes* (supra). When there are four decisions of this Court with regard to the applicability of the Act for contracts entered into prior to

the commencement of the Act, and when the plea for reconsideration has been expressly rejected in the past, we are of the view, it would be against the spirit of the doctrine of stare decisis for us to take any view in divergence with same.

69. Lastly, learned Senior Counsel for suppliers also contended that the extension of date of supply order, from time to time by Board, amounts to a novation of contract or supply order in terms of Section 62 of the Indian Contracts Act and, therefore, the new contract or supply order would be governed by the Act. In our opinion, the ground or issue of novation of Contract is a mixed question of fact and law and it is being raised, for the first time, at the time of hearing of the case before us which cannot be permitted to be raised. The said fact of novation or alteration of contract is required to be urged evidentially and scrutinised by the courts below. In absence of such factual findings, it is not possible to decide such a mixed question of law and facts. In *Shakti Tubes Ltd.* (supra), the issue of novation of contract was raised before this Court for the first time at the time of hearing. This Court declined to entertain such ground as being a mixed question of law and fact. This Court further observed that even on the merits of the case the escalation of price, reduction of the quantity of the supply order and extension of date of supply does not amount to novation or alteration in the supply order.

Conclusion

70. The result is appeals fail and accordingly, they are dismissed. No order as to costs.

R.P. Appeals dismissed.

AZIM AHMAD KAZMI AND ORS.
v.
STATE OF U.P. & ANR.
(Civil Appeal No. 2006 of 2003 etc.)

JULY 16, 2012

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

Government Grants Act, 1895 - ss. 2 and 3 - Grant of lease by Government - Cancellation of before expiry of the lease period - Dispossession of lessee - Writ petition challenging cancellation and dispossession - Dismissed by High Court but observing that State shall not dispossess except in accordance with the procedure established by law - On appeal, held: Since the State has absolute power under the terms of the grant of lease to resume the leased property for itself or for any public purpose, the order canceling the lease is valid and legal - The State followed the special procedure as laid down under Clause 3(c) of the lease deed to dispossess the lessee, it was not required to follow any other procedure or law - Lease.

A lease-deed of the premises in question was executed by the State in favour of the appellants (in Civil Appeal No. 2006 of 2003) on 19.3.1996. The State cancelled the deed before expiry of the lease period and proceeded to resume the premises by order dated 15.12.2000. District Magistrate sent a notice dated 11.1.2001 to the lessees informing about the same. The objection raised by the lessees was rejected by order dated 24.8.2001 but with the observation that the lessor-State was not entitled to take forcible possession, and could take possession only in accordance with the procedure established by law. The lessees challenged

the orders dated 15.12.2000 and 24.8.2001 and the notice dated 11.1.2001 by filing a writ petition. The writ petition was dismissed by High Court affirming the cancellation of the lease deed. Lessees filed appeal to this court aggrieved by the dismissal of the petition. Lessor-State also filed appeal to this court aggrieved against the part of the order whereby it was held that the State was not entitled to take forcible possession but for in accordance with the procedure established by law.

The questions for consideration before this Court were (i) whether the order of the State for cancellation of the lease and resumption of possession was legally valid; and (ii) whether the State could dispossess the lessee in accordance with the Government Grants Act, 1895, without resorting to other procedure established by any other law.

Dismissing the appeal of the lessee and disposing of the appeal of the lessor-State, the Court

HELD: 1.1 As the State Government is resuming the leased property for itself or for any public purpose, which under the terms of the grant it has absolute power to do, the order passed by it on 15th December, 2000 is perfectly valid and does not suffer from any illegality. Clause 3(C) of the lease deed clearly confers power upon the lessor State that if the plot in question is required by the State Government for its own purpose or for any public purpose, it shall have the right to give one month's notice in writing to the lessees to remove any building standing on the plot and to take possession thereof on the expiry of the two months' from the date of service of notice. There is a further condition in the clause that if the lessor is willing to purchase the building standing on the plot, the lessee shall be paid such amount as may be determined by the Secretary to the State Government in the Nagar Awas Department. The clause of re-entry was

not introduced for the first time in the deed executed in 1996. [Paras 13 and 14] [970-B-D, G-H]

1.2. The plea of the lessee that it was for the first time in their case that a lease had been cancelled and the plot has been resumed by the State Government under the terms of the deed, is not correct as a similar course of action has been taken in the past also. Therefore, the violation of Article 14 cannot be alleged in the present case. [Para 15] [971-E-F]

2. For taking possession, the State Government is required to follow the law, if any, prescribed. In the absence of any specific law, the State Government may take possession by filing a suit. In the case in hand the procedure as laid down under clause 3 (c) of the lease deed procedure was followed. Therefore, there is no other procedure or law required to be followed, as a special procedure for resumption of land has been laid down under the lease deed. As a special procedure for resumption of land is prescribed under the lease deed, the High Court was not correct in holding that the State Government cannot dispossess the appellants but can take possession according to the procedure adopted by any other law. The State Government is allowed to take possession of the demised premises for extension of High Court building etc., as decided. [Paras 17 and 20] [971-G-H; 973-E-G; 974-B]

The State of U.P. vs. Zahoor Ahmad and Anr. **AIR 1973 SC 2520: 1974 (1) SCR 344 - relied on.**

Case Law Reference:

1974 (1) SCR 344	**Relied on**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2006 of 2003.

From the Judgment & Order dated 7.12.2001 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 32344 of 2001.

WITH

C.A. No. 2007 of 2003.

Amrendra Sharan, P.N. Mishra, Shail Kr. Dwivedi, AAG, Javed Mahmud Rao, Anis Suhrawardy, Awadhesh Kumar Singh, Tabrej Ahmad, T.N. Singh, Rajeev K. Dubey, Kamlendra Mishra for the appearing parties.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. These appeals have been preferred against the judgment dated 7.12.2001 passed by the Division Bench of the High Court of Judicature at Allahabad whereby the writ petition preferred by lessee – Azim Ahmad Kazmi and Ors. (hereinafter referred to as "the appellants") was dismissed with certain observations.

2. A lease-deed of the demised premises was executed by the respondent- State in favour of the appellants on 19th March, 1996 followed by a renewal of lease dated 17th July, 1998. The State Government vide order dated 15th December, 2000 cancelled the lease deed and proceeded to resume the demised premises which was informed to the appellants by the District Magistrate, Allahabad on 11th January, 2001. The objection preferred by the appellants was rejected on 24th August, 2001. The appellants preferred a writ petition against the order dated 15th December, 2000 passed by the State Government, the notice dated 11th January, 2001 and the order dated 24th August, 2001 passed by the District Magistrate, Allahabad which was dismissed but with the observation that the State Government is not entitled to take forcible possession though it may take possession of the demised premises in accordance with the procedure established by law. The appellants are aggrieved against the dismissal of the writ

petition whereby the order of cancellation of lease deed was affirmed, whereas the State Government is aggrieved against the last portion of the order whereunder it was mentioned that the State Government is not entitled to take forcible possession though it may take possession in accordance with the procedure established by law.

3. The dispute relates to Plot No. 59, Civil Station, Allahabad having an area of 1 acre and 4272 sq. yards (9112 sq. yards or 7618 sq. meters). Initially, a lease of aforesaid plot was granted in favour of one Thomas Crowby for a period of 50 years on 11th January, 1868 by the then Secretary of State for India in Council and it was signed by the Commissioner of Allahabad Division. A fresh lease was executed in favour of his successor for another period of 50 years on 12.4.1923 which was to operate from 1.1.1918. With the permission of the Collector, Allahabad, the successors of the lessee transferred their lease hold rights in favour of one Purshottam Das in the year 1945. According to appellants on 31st October, 1958, the legal representative of said Purshottam Das transferred the lease-hold rights in favour of appellant no. 7-Smt. Shakira Khatoon Kazmi, appellant no. 6- Smt. Sabira Khatoon Kazmi and their mother-Smt. Maimoona Khatoon Kazmi. The appellant no. 1- Azim Ahmad Kazmi, appellant no. 5- Omar Ahmad Kazmi, appellant no. 2- Shamim Ahmad Kazmi, appellant no. 3- Alim Ahmad Kazmi and appellant no. 4- Maaz Ahmad Kazmi are heirs of late Smt. Maimoona Khatoon Kazmi. The lease, which had been granted on 12th April, 1923 expired on 31st December, 1967 but the same was not renewed for a long period. Subsequently, a fresh lease deed was executed on behalf of Governor of Uttar Pradesh in favour of some of the appellants and their ancestors on 19th March, 1996 for a period of 30 years which was to operate with effect from 1.1.1996. This deed contained a clause that the lease deed may be renewed for two successive terms of 30 years each but the total period shall not exceed 90 years including the original term. The period of this deed expired on 31st December, 1997 and on

17th July, 1998 which was renewed for a further period of 30 years w.e.f. 1st January, 1998. Subsequently the State Government passed an order on 15th December, 2000 for cancelling the lease deed and resuming the possession of the plot in question. The District Magistrate, Allahabad, thereafter gave a notice dated 11th January, 2001 to the appellants intimating them that the State Government had passed an order dated 15th December, 2000 cancelling the lease and resuming possession of the plot in question as the same was required for a pubic purpose. The notice further mentioned that the appellants should remove the structure standing on the plot failing which possession will be taken in accordance with clause 3(c) of the lease deed. The appellants filed an objection against the notice before the District Magistrate on 2.2.2001. They further claimed to have sent an objection to the Chief Minister of Uttar Pradesh on 31.1.2001 praying for revocation of the order of the State Government dated 15.12.2000. The District Magistrate considered the objection and rejected the same by an order dated 24.8.2001. A copy of the aforesaid order along with cheques representing the compensation for the building standing over the plot (cheques for total amount of Rs.10 lakhs) were served upon the appellants. The respondent-State tried to dispossess the lease on 1.9.2001 and their stand was that the possession of open land was taken. It was at that stage when the writ petition was filed and a stay order was passed by High Court on 2nd September, 2001 staying the dispossession of the appellants. The writ petition was subsequently dismissed on merit.

4. Learned counsel appearing for the lessees submitted that the State Government initially made a proposal for acquiring disputed plot for the same purpose in accordance with the Provisions of Land Acquisition Act, 1894. The District Magistrate, Allahabad, wrote a letter to the State Government on 29th October, 1998 that looking to the area of plot, the estimated amount of compensation, including 30% solatium, 12% additional amount and interest, etc. could come to rupees

two crores and sixty two lakhs. The said proposal was not accepted by the State Government and was rejected by order dated 17th July, 2000. The State Government took possession of few other Nazul Lands in Allahabad under the Land Acquisition Act, 1894 wherein a good amount of compensation was paid to the lessees. It was contended that if the State Government had taken a recourse of the Provisions of the Land Acquisition Act, 1894 for acquiring the plot in question, the lessees would have got sufficient compensation and not by opting the said mode the lessees have been discriminated against and consequently, the impugned order of the State Government dated 15th December, 2000 is liable to be set aside. In the past, the State Government had not taken any recourse to resume the land in the manner. The State Government had taken over the possession of the land much prior to the completion of period of lease. The order passed by the State Government on 15th December, 2000 for cancellation of lease and a resumption of possession is illegal and not in accordance with the Government Grants Act, 1895.

5. It was next submitted that the public purpose, if any, existed prior to 17th July, 1998 when the lease was renewed and by renewal of the lease the State Government is stopped from pleading that there is a public purpose. By renewal of lease, the lessee legitimately expected that they will remain in occupation for 30 years from 1st January. 1998, the date from which the lease was renewed.

6. Learned counsel appearing on behalf of the respondent-State submitted that the existence of public purpose is not a new development. It was submitted that by letter dated 29th August, 1998, the District Magistrate informed the Special Secretary to the State Government, he had given the estimate for acquiring the property under the Provisions of the Land Acquisition Act, 1894. In the said letter, the reference of earlier letters including letter dated 2nd December, 1997 has been referred. Those letters shows that even before the renewal of

the lease deed in favour of the lessees, taking over the possession of property for extension of the Allahabad High Court and office of the Advocate-General, U.P. was seriously considered; it is wrong to suggest that the requirement of the land for public purpose was not in existence when the lease was renewed.

7. It was contended on behalf of the respondent-State that the lease has been cancelled and an order to resumption of possession has been passed as the plot in question is required for extension of the Allahabad High Court as also for extension of the office of Advocate General, U.P. The plot is situated just in front of the gate of the High Court on the Kanpur Road and, therefore, most suitable and ideal place for the aforesaid purpose. Several courts-room and chambers for the judges have been constructed in the past but there has been no addition of office space with the result that there is hardly any place to keep the records. Even pending files are being kept by having a make shift and temporary arrangement by enclosing the verandas. Similarly, there is an acute shortage of space in the office of Advocate-General. There is no place at all where the State counsel may sit and do the drafting work or for keeping the files. The grounds for passing of the order, namely, extension of the High Court and extension of office of Advocate-General is undoubtedly a public purpose and the same has rightly not been challenged by the learned counsel for the lessees.

8. It was further contended that the State Government having conferred power under Clause 3 (C) of the lease deed, as the plot in question was required for public purpose, it was open to the State Government to take possession of the land in question on expiry of the one month notice.

9. The questions which requires consideration are (i) whether the order passed by the State Government on 15th December, 2000 for cancellation of lease and resumption of possession is legally valid and (i) whether the State Government

can dispossess the lessee in accordance with the Government Grants Act, 1895 without resorting to other procedure established by any other law.

10. There is clear recital in the lease deed executed in favour of the appellants by the Government of U.P. on 19th March, 1996 that the same is being done under the Government Grants Act, 1895. Clause 3 (C) of the deed reads as follows:

> "3(C) That if the demised premises are at any time required by the lessor for his or for any public purpose he shall have the right to give one month's clear notice in writing to the lessees to remove any building standing at the time of the demised premises and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject however to the condition that if the lessor is willing to purchase the building on the demised premises, the lessees shall be paid for such building such amount as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department."

11. Sections 2 and 3 of the Government Grants Act, 1895, have been AMENDED BY U.P. ACT 13 OF 1960 WITH A RETROSPECTIVE EFFECT AND THE SUBSTITUTED SECTIONS READS AS FOLLOWS:

> "2. (1) Transfer of Property Act, 1882, not to apply to Government Grants. – Nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein, heretofore made or thereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
>
> (2) U.P. Tenancy Act, 1939 and Agra Tenancy Act, 1926

not to affect certain leases made by or on behalf of the Government. - Nothing contained in the U.P. Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing of the Government Grants (U.P. Amendment), Act, 1960, by leases of land by, or on behalf of, the Government in favour of any person, and every such creation, conferment or; grant shall be construed and take effect, notwithstanding anything to the contrary contained in the U.P. Tenancy Act, 1939 or the Agra Tenancy Act, 1926.

(3) Certain leases made by or on behalf of the Government to take effect according to their tenor. - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor; any decree or direction of a Court of law or any rule of law, statute or enactments of the Legislature, to the contrary notwithstanding:

Provided that nothing in this Section shall prevent, or be deemed ever to have prevented the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural lands."

12. THIS COURT IN THE CASE OF *THE STATE OF U.P. VS. ZAHOOR AHMAD AND ANOTHER,* REPORTED IN AIR 1973 SC 2520 HELD AS FOLLOWS:-

" Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Section 2 and 3 of the Government Grants Act is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has

unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

13. Clause 3(C) of the lease deed clearly confers power upon the lessor,State of U.P. that if the plot in question is required by the State Government for its own purpose or for any public purpose, it shall have the right to give one month's notice in writing to the lessees to remove any building standing on the plot and to take possession thereof on the expiry of the two months' from the date of service of notice. There is a further condition in the clause that if the lessor is willing to purchase the building standing on the plot, the lessee shall be paid such amount as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department.

14. The deed of renewal executed at 17th July, 1998 is a very short one and recites that the renewal is being done on the same terms and conditions including the clause for re-entry as is continued in the original lease deed dated 19th March, 1996 and the terms and conditions of the aforesaid deed would be binding upon the parties. The clause of re-entry was not introduced for the first time in the deed executed in 1996 but also contained as one of the clause in lease deed dated 12th April, 1923 wherein it was stipulated that if the Government shall at any time require to re-enter on the demised plot it can do so, on paying the cost of the building that may be on the site and that the lessee shall have no further claim of any sort against the Government. In fact, in the deed executed on 19th March, 1996, the right of re-entry has been fettered by the condition "required by the lessor for his or for any public purpose". As the State Government is resuming the leased property for his or for any public purpose, which under the terms of the grant it has absolute power to do, the order passed by it on 15th December, 2000 is perfectly valid and does not suffer

from any illegality.

15. The Division Bench noticed the fact that in paragraph 7 of the Supplementary counter affidavit filed in reply to the amendment application, it is averred that the properties, reference of which has been made in para 23 of the writ petition were in fact acquired at the instance of the Allahabad Development Authority for building of residential and commercial complex and for development of the area and the proceeding for acquisition had commenced on the basis of the proposals received from Allahabad Development Authority. In para 8 of the Supplementary counter affidavit, it is averred that when Nazul plot No. 13, Civil Station, Allahabad, which is situated in Civil Lines Area, was resumed by the State Government for the purpose of construction of a bus station, the same was done in exercise of power vested with it in a similar clause of the lease deed and no proceedings under the Land Acquisition Act had been initiated. The resumption by the State Government in the said case was challenged before the Division Bench of the Allahabad High Court which was dismissed on 16th December, 1999 and the Special Leave Petition No. 4329 of 2000 preferred against the judgment of the High Court was summarily dismissed by this Court on 7th September, 2001. Therefore, the contention of the lessee that it was for the first time in their case that a lease had been cancelled and the plot has been resumed by the State Government under the terms of the deed is, therefore, not correct and a similar course of action has been taken in the past also. Therefore, the violation of Article 14 cannot be alleged in the present case.

16. The first question is thereby answered in negative, against the appellants and in favour of the respondents.

17. For taking possession, the State Government is required to follow the law, if any, prescribed. In the absence of any specific law, the State Government may take possession by filing a suit. Under the Provisions of the Land Acquisition

Act, 1894, if the State Government decides to acquire the property in accordance with the provisions of the said Act, no separate proceedings have to be taken for getting possession of the land. It may even invoke the urgency provisions contained in Section 17 of the said Act and the Collector may take possession of the land immediately after the publication of the notice under Section 9. In such a case, the person in possession of the land acquired would be dispossessed forthwith. However, if the Government proceeds under the terms of the Government Grants Act, 1895 then what procedure is to be followed. Section 3 of Government Grants Act, 1895, stipulates that the lease made by or on behalf of the Government to take effect according to their tenor – All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to any Section 2, shall be valid and take effect according to their tenor; any decree or direction of a Court of Law or any rule of law, statute or enactments of the Legislature, to the contrary.

18, In the case of *The State of U.P. vs. Zahoor Ahmad and Another* (supra), this Court held that the Section 3 of the Act declares the unfettered discretion of the Government to impose such conditions and limitation as it thinks fit, no matter what the general law of land be. From Clause 3(C) of the deed, it is clear that the State of U.P. while granting lease made it clear that if the demised premises are at any time required by the lessor for his or for any public purpose, he shall have the right to give one month's clear notice to the lessee to remove any building standing at the time of the demised property and within two months' of the receipt of the notice to take possession thereof on the expiry of that period subject to the condition that the lessor is willing to purchase the property on the demised premises, the lessee shall be paid for such amount as may be determined by the Secretary to the Government of U.P. in the Nagar Awas Department.

19. In the case in hand, the District Magistrate , Allahabad High Court issued a notice on 11th January, 2001 to the

appellants intimating that the State Government had passed order on 15th December, 2000 cancelling lease deed and resuming possession of the disputed property as the same was required for public purpose. The appellants sent an application but instead of filing objections before the State Government represented before the Chief Minister of U.P. on 31st January, 2001 praying for revocation of order dated 15th December, 2000. Objection was filed before the District Magistrate, Allahabad who after consideration of the objection rejected the same by order dated 24th August, 2001 enclosing therein a cheque for rupees ten lakhs towards compensation for the building standing over the plot. The appellants refused to accept the cheques. The respondents thereafter dispossessed the appellants from the part of the land on 1st September, 2001.

20. Under Clause 3(C) of the lease deed, the respondent-State was permitted resumption of the land which required for its own use or for public purpose and after giving one month's clear notice in writing is entitled to remove any building standing at the time on the demised premises and within two months of the receipt of the notice to take possession thereof subject to the condition that if the lessor is willing to purchase the building of the demised premises required to pay the lessee the amount for such building as may be determined by the Secretary to Government of U.P. in the Awas Department. In the case in hand such procedure was followed. Therefore, we are of the view that there is no other procedure or law required to be followed, as a special procedure for resumption of land has been laid down under the lease deed. As a special procedure for resumption of land is prescribed under the lease deed, the High Court was not correct in holding that the State Government cannot dispossess the appellants but can take possession according to the procedure adopted by any other law. The finding of the High Court to such extent is set aside but the rest portion of the judgment affirming the order of the State Government dated 15th December, 2000, the notice dated 11th January, 2001 and an order passed by the District Magistrate

dated 24th August, 2001 is upheld. The appeal preferred by appellants Azim Ahmad Kazmi & Ors. is dismissed and the appeal preferred by the State of U.P. and Anr. stands disposed of with aforesaid observations. The interim order of stay is vacated. The State Government is allowed to take possession of the demised premises for extension of High Court building etc., as decided. However, the appellants are given three months time to hand over the possession of the land and building to the State and, if so necessary, the State Government will issue a fresh cheque for rupees ten lakhs in favour of the appellants, if earlier cheque has expired and not encashed. If the appellants fail to handover the possession of demised premises or create any third party interest in such case the State Government and the District Magistrate, Allahabad in particular will take forcible possession of the demised premises.

K.K.T. Appeals disposed of.

GIRIMALLAPPA

v.

THE SPECIAL LAND ACQUISITION OFFICER M & MIP & ANR.

(Special Leave Petition (C) No. 21397 of 2012)

JULY 16, 2012

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

LAND ACQUISITION ACT, 1892:

s.28-A - Re-determination of compensation on the basis of award of court - Held: The area of land acquired makes it clear that the petitioner was a man of means - He did not file a reference u/s 18 of the Act, but his application u/s 28-A of the Act was entertained - However, as the said order has not been challenged by the respondent(s), Supreme Court cannot examine the issue further, even if the order is totally unwarranted - Besides, petitioner's claim in the first appeal before the District Judge had been to the tune of Rs.24,000/- per acre which had been allowed - In appeal before the High Court, no specified amount was demanded by the petitioner - The memo of appeal reveals that Rs.25 was paid as court fee - High Court dealt with the issue elaborately taking note of the earlier proceedings so far including the order passed u/s 28-A of the Act and condonation of delay of 1717 by the first appellate court - SLP is also delayed by 154 days, though the said delay has been condoned - Mere making a reference in the memo of appeal that the High Court had awarded a higher amount in respect of a land covered by the same Notification u/s 4 of the Act, is not enough - Claimant has to satisfy the court that his land was similar in quality and had same geographical location or was situated in close vicinity of the land covered by the exemplar relied upon by him - In the instant case, no such attempt has ever been made by the petitioner - Thus, it is not that a meritorious case has been

thrown out and the cause of justice stood defeated - It cannot be said that the High Court preferred technicalities over substantial justice - Constitution of India, 1950 - Art. 136 - Delay/laches.

State of Orissa & Ors. v. Chitrasen Bhoi **2009 (14) SCR 558 =JT 2009 (13) SC 388 - relied on**

Chandrashekhar & Ors. v. Addl. Special Land Acquisition Officer **2009 (10) SCR 505 =AIR 2009 SC 3012 - held inapplicable**

Godrej Sara Lee Limited v. Assistant Commissioner (AA) & Anr. **2009 (4) SCR 1183 = (2009) 14 SCC 338; and** *Harcharan v. State of Haryana,* **AIR 1983 SC 43;** *Delhi Administration vs. Gurudeep Singh Uban* **2000 (2) Suppl. SCR 496 = 2000 AIR 3737 - referred to.**

Case Law Reference:

2009 (14) SCR 558	**relied on**	**para 5**
2009 (10) SCR 505	**held inapplicable**	**para 12**
2009 (4) SCR 1183	**referred to**	**para 13**
AIR 1983 SC 43	**referred to**	**para 14**
2000 (2) Suppl. SCR 496	**referred to**	**para 17**

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 21397 of 2012.

From the Judgment & Order dated 12.9.2011 of the High Court of Karnataka Circuit Bench at Gulbarga in Misc. Second Appeal No. 510 of 2010 (LAC).

Kiran Suri, Aparna Mattoo, Nakibur Rahman for the Appellant.

The Order of the Court was delivered

O R D E R

1. Delay condoned.

2. Facts and circumstances giving rise to this petition are that:

A. A huge area of land was notified under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the `Act') on 30.5.1984 including the petitioner's land measuring 11 Acres 32 Guntas at Gobbur (K) Village in District Gulbarga for the purpose of construction of a tank. The possession of the said land has been taken by the respondent authorities on 23.6.1985. The Land Acquisition Collector made an Award under Section 11 of the Act fixing the market value of the land at the rate of Rs. 3800/- per Acre.

B. One LAC Case No. 500 of 1993 filed by another person was decided by the Reference Court under Section 18 of the Act on 28.9.1994. While placing reliance on the same, the petitioner filed application under Section 28-A of the Act. The said application was allowed fixing the market value of the dry land at the rate of Rs.10000/- per Acre. Petitioner preferred a further reference against that order claiming Rs.45000/- per Acre for dry land and Rs.75000/- per Acre for irrigated lands. The said reference was decided vide order dated 27.9.2003 assessing the market value at the rate of Rs. 15000/- per Acre for dry land and Rs.21500/- per Acre for irrigated land.

C. Aggrieved from the said reference award, petitioner preferred LAC Appeal No. 64 of 2008 before the District Judge, Gulbarga, seeking enhancement of compensation assessing the market value of the land at the rate of Rs.24000/- per Acre which stood allowed vide judgment and decree dated 27.10.2009.

D. Petitioner filed MSA No. 510 of 2010 against the said judgment and decree dated 27.10.2009 before High Court

which has been dismissed by the impugned judgment and order dated 12.9.2011.

Hence, this petition.

3. Ms. Kiran Suri, learned counsel appearing for the petitioner, vehemently submitted that courts cannot defeat the claim based on substantial justice on mere technicalities. Learned counsel would submit that when technicalities are pitted against substantial justice, the latter must prevail; in case petitioner was entitled for a higher compensation, awarding a lesser amount of compensation, tantamounts to expropriation of the property in violation of mandate of Article 300-A of the Constitution of India. Petitioner has been deprived the higher compensation as he could not afford to pay the court fees though he was entitled for higher compensation claimed by him.

4. Record of the case reveals that petitioner's land measuring 11 Acres 32 Guntas had been acquired though there is nothing on record to show as to whether petitioner had some more land. But the area of land acquired makes it clear that petitioner was a man of means. We fail to understand, in case, he did not file a reference under Section 18 of the Act, under what circumstances his application under Section 28-A of the Act could be entertained.

5. This Court in *State of Orissa & Ors. v. Chitrasen Bhoi,* JT 2009 (13) SC 388, considered this aspect and held :

"The scope of provisions of Section 28-A of the Act was considered by this Court in Mewa Ram v. State of Haryana AIR 1987 SC 45, and the Court placed emphasis particularly on para 2 (ix) of the object and reasons of the Amendment Act, 1987 which provided for a special provision for inarticulate and poor people to apply for re-determination of the compensation amount on the basis of the court award in a land acquisition reference filed by comparatively affluent land owner. The Court observed as

under:

> Section 28-A in terms does not apply to the case of the petitioners..... They do not belong to that class of society for whose benefit the provision is intended and meant, i.e. inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of reference to the civil court under Section 18 of the Land Acquisition Act, 1894.

This Court approved and reiterated the law laid down in *Mewa Ram* (Supra) in *Scheduled Caste Cooperative Land Owning Society Ltd. Bhatinda v. Union of India & Ors,* AIR 1991 SC 730. In *Babua Ram & Ors. v. State of U.P. & Anr.* (1995) 2 SCC 689, this Court again reiterated the law laid down in Mewa Ram (Supra) observing as under:-

> Legislature made a discriminatory policy between the poor and inarticulate as one class of persons to whom the benefit of Section 28-A was to be extended and comparatively affluent who had taken advantage of the reference under Section 18 and the latter as a class to which the benefit of Section 28-A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded..... It is true that the legislature intended to relieve hardship to the poor, indigent and inarticulate interested persons who generally failed to avail the reference under Section 18 which is an existing bar and to remedy it, Section 28-A was enacted giving a right and remedy for re- determination.....The legislature appears to have presumed that the same state of affairs continue to subsist among the poor and inarticulate persons and they generally fail to avail the right under sub-section (1) of Section 18 due to poverty or ignorance or avoidance of expropriation.
>
> Thus, it is apparent that the legislature has carved out an exception in the form of Section 28-A and made a special provision to grant some relief to a particular class of society, namely poor, illiterate, ignorant and inarticulate people. It is made only for "little Indians". (Emphasis added)

6. Petitioner cannot claim, by any means to fall under the said category of "little Indians". However, as the said order has not been challenged by the respondent(s), we cannot examine the issue further, even if the order is totally unwarranted.

7. Petitioner's claim in the first appeal before the learned District Judge had been only to the tune of Rs.24000/- per Acre. The prayer before the learned District Judge in LAC No. 64 of 2008 reads as under:

> "Hence, it is prayed that the Hon'ble Court may kindly be pleased to set aside the order passed by the court below in LAC No. 193/01 and enhance it to Rs.24,000/- per Acre with all statutory benefits and excluding the interest for the delayed period in the interest of justice for which the appellants shall ever pray."

8. It may be pertinent to mention here that while hearing the appeal, the learned District Judge at Gulbarga condoned the delay of 1717 days in filing the appeal.

9. In the appeal before the High Court, no specific amount was demanded by the petitioner. The prayer made before the High Court reads as under:

> "Therefore, it is most humbly prayed that the Hon'ble Court may be pleased to allow this appeal and modify the judgment and Award dated 27.10.2009 passed in L.A.C. Appeal No. 64/2008 by the learned III Addl. District Judge

at Gulbarga, modifying the judgment and award dated 27.9.2003 passed in LAC No. 193/2001 by the Prl. Civil Judge (Sr.Dn.) Gulbarga and pass any other appropriate orders, in the interest of justice."

10. Thus, it is apparent that no specific demand was raised by the petitioner before the High Court. The Memo of Appeal reveals that Rs.25/- was paid as the court fees. The High Court dealt with the issue elaborately taking note of earlier proceedings/orders including the order passed under Section 28-A of the Act, and condonation of delay of 1717 days by the first appellate court. Finally the High Court held that the claim itself was restricted to Rs. 24000/- per Acre. There was no justification to interfere as the claim of the petitioner stood fully satisfied by the order passed in the first appeal.

11. This special leave petition is filed with a delay of 154 days, with an explanation that petitioner suffered from the ailment and could not approach the court within limitation.

12. The question does arise as to whether such a vague prayer can be entertained by the court. The memo of appeal before the High Court does not even reveal as to what was his demand. Reliance is being placed on the judgment of this Court in *Chandrashekhar & Ors. v. Addl. Special Land Acquisition Officer,* AIR 2009 SC 3012, wherein after considering the earlier judgments, this Court held that court should not be too technical in awarding the compensation in case there is a shortfall of court fees. The said judgment is not an authority on the proposition advanced before us in this petition that court is bound to enhance the amount of compensation though no specific amount is demanded by the petitioner.

13. It was not a case where an order could be challenged on the ground that the same is a nullity for want of competence of the issuing authority and proper pleadings including appropriate grounds challenging the same have been taken, but no prayer has been made for quashing the said order. In

such an eventuality the order can be examined only after considering the statutory provisions involved therein. The court may reach a conclusion that the order suffers from lack of jurisdiction. (See: *Godrej Sara Lee Limited v. Assistant Commissioner (AA) & Anr.,* (2009) 14 SCC 338).

14. In case, the petitioner was serious about the matter, he could have amended the Memo of Appeal and that application could have been considered sympathetically by the High Court as held by this Court in *Harcharan v. State of Haryana,* AIR 1983 SC 43.

15. The facts mentioned in this petition depict entirely different picture and it gives an impression as if the High Court had not enhanced the compensation though demanded by the petitioner for want of payment of court fees which he could not afford to pay due to paucity of funds.

16. The case relied upon by Ms. Kiran Suri is the case where the prayer was for a particular enhancement and it was further made clear that the applicants therein could not afford to pay the court fees for financial constraints. In the instant case, the first appeal filed by the petitioner was barred by 1717 days and the delay was condoned. This petition is also barred by 154 days. Petitioner for the reasons best known to him did not make the demand for a specific enhancement. Mere making a reference in the Memo of Appeal that the High Court had awarded a higher amount in respect of a land covered by the same Notification under Section 4 of the Act, is not enough. The claimant has to satisfy the court that his land was similar in quality and had same geographical location or was situated in close vicinity of the land covered by the exemplar relied upon by him. In the instant case, no such attempt has ever been made by the petitioner. Thus, it is not that a meritorious case has been thrown out and the cause of justice stood defeated.

More so, the exemplar cited first time before the High Court in Second Appeal has not been referred to in the First Appeal.

In absence thereof, it is beyond imagination as how findings recorded by the first Appellate Court could be termed as perverse and be a subject matter of appeal.

17. Justice is an illusion as the meaning and definition of 'justice' varies from person to person and party to party. Party feels having got justice only and only if it succeeds before the court, though it may not have a justifiable claim.

Justice is the virtue, by which the Society/Court/Tribunal gives to a man what is his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law. (Vide: *Delhi Administration v. Gurudeep Singh Uban,* AIR 2000 SC 3737).

18. Thus, in view of the above, we do not see any justification to accept the submission on behalf of the petitioner that the High Court preferred technicalities over substantial justice.

Petition lacks merit and is accordingly dismissed.

R.P. SLP dismissed.

AHMEDSAHEB (D) BY LRS. & ORS.

v.

SAYED ISMAIL

(Civil Appeal Nos. 5316-5318 of 2012 etc.)

JULY 19, 2012

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Rent Control and Eviction - Suits for recovery of arrears - Decreed by trial and first appellate court - In second appeal High Court non-suited the land-lord on the ground that the rent-deed was not registered and hence not admissible in evidence - On appeal, held: Since the relationship of land-lord and tenant was established, and the tenant had admitted the default, the land-lord could not have been non-suited on the sole ground that ren- deed was not admissible in evidence - Admission of a party is the best evidence and does not need any corroboration - In view of second para of s. 107 of TP Act, status of parties on the basis of undisputed facts as land-lord and tenant can always be accepted and the rights of the parties can be worked out on that basis - Decree modified as regards the rent and the total amount due - Transfer of Property Act, 1882 - s. 107 - Registration Act, 1908 - Evidence - Admission.

Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 - Eviction petition - On the ground that suit for recovery of rent was decreed, and statutory period of six months was over - Petition decided ex-parte and allowed directing eviction - Order confirmed by first appellate court - In Revision, High Court remitted the matter to Rent Controller to decide the matter afresh - On appeal, held: Since the application has been dismissed by Rent Controller after remission, the appeal become infructuous and hence dismissed.

Civil Appeal Nos. 5316-5318 of 2012:

The appellants filed civil suits in the years 1974, 1977 and 1980 against the respondent for recovery of arrears of rent for the period from October 1971 to November 1980. Trial court decreed the suit, and the same was confirmed by the first appellate Court. In second appeal, High Court set aside the judgment and decree passed by the courts below, on the ground that the rent deed marked as exhibit 69 cannot be legally accepted in evidence as the same was not registered.

In the present appeals, the appellants contended that even if the rent deed was not registered, it can be relied upon for the collateral purpose of ascertaining the rent and as to whether the tenant was liable to pay such rent.

SLP (C) No. 23457/2001:

The petitioners (who were also the appellants in CA Nos. 5316-5318 of 2012) filed petition u/s. 15 of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 for eviction of the respondent-tenants (the respondent in CA Nos. 5316-5318 of 2012), on the ground that since the petition for recovery of rent was decreed; and that the statutory period of 6 months was over, the tenant was liable to be evicted. The case was decided ex-parte by the Rent Controller, allowing the petition. Appellate court declined to interfere with the order of Rent Controller. In revision, High directed to give an opportunity of hearing to the tenant and to allow him to place on record his Written Statement and also asked the land-lords to comply with the requirements of s. 15(2)(i) of the Act. Thus, setting aside the orders of courts below, remitted the matter back to Rent Controller. Hence the present petition.

In the petition to this Court, it was brought to the

notice of the Court that after the remittal, the Rent Controller had dismissed the application and appeal against the order was pending before appellate court.

Allowing the appeal Nos. 5316-5318 of 2012 and dismissing SLP (C) No. 23457 of 2001 as infructuous, the Court

HELD:

Civil Appeal Nos. 5316-5318 of 2012:

1.1 The High Court ought to have upheld the decree for payment of arrears of rent by either directing the trial Court to calculate the actual amount payable by respondent or by modifying the decree to that extent. [Para 12] [994-F]

Anthony v. K.C. Ittoop and Sons and Ors. **2000 (6) SCC 394: 2000 (1)Suppl. SCR 645 - relied on.**

1.2. The appellants could not have been non-suited solely on the ground that Exhibit-69 was not admissible in evidence. Admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. Vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non-payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor. Even while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of land-lord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year. [Para 10] [992-D-G]

1.3. In the light of the provisions contained in second

para of Section 107 of Transfer of Property Act, the status of the parties on the basis of undisputed facts pertaining to the demised premises as land-lord and tenant can always be accepted and the rights of the parties can be worked out on that basis. [Para 5] [990-E-F]

1.4. The plea that Exhibit 69, though an unregistered document, can still be relied upon for collateral purposes, cannot be accepted. Exhibit 69 was relied upon not for any collateral purpose but for the support of the main claim of arrears of rent. The suit was for arrears of rent and Exhibit 69 was filed to show the agreement of lease of the demised premises, the other terms of the lease and the rate of rent between the parties. In that respect, the conclusion of the High Court as regards Exhibit 69 cannot be faulted. [Para 13] [994-G; 995-A-C]

S. Kaladevi vs. V.R. Somasundaram and Ors. **(2010) 5 SCC 407: 2010 (6) SCR 480 - distinguished.**

1.5. Therefore, while upholding the judgment and decree of the trial court as confirmed by the lower appellate court in holding that the respondent is liable to pay arrears of rent for the period from October 1971 to November 1980, The court only modifies the rent payable with actual rent due in a sum of Rs. 7200/- and the decree to that extent is granted. [Para 16] [996-C]

SLP (C) No. 23457 of 2011:

2. Having regard to the subsequent development relating to the Rent Control proceedings in which the appeal preferred by the petitioner is stated to be pending before the District Judge, the Court is not inclined to accede to the submission of the petitioner though C.A. Nos. 5316-5318/2012 preferred against the common judgment in Second Appeal Nos.148-150/92 was allowed. Such a shortcut method cannot be resorted to, based on

the submission of the petitioner. It is for the petitioners to work out their remedies in the Rent Appeal pending before the District Judge, in the light of the judgment passed in the Civil Appeal Nos. 5316-5318/2012. In the light of the decision in C.A.Nos.5316-5318/2012 and in the light of the fact that after the order of remittal passed in Civil Revision Application, the rent control proceeding having been concluded before the Rent Controller, it will have to be held that the petition has to be dismissed as having become infructuous. [Paras 19 and 20] [997-H; 998-A-C, D-E]

Case Law Reference:

2000 (1) Suppl. SCR 645 Relied on. Para 11

2010 (6) SCR 480 Distinguished. Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5316-5318 of 2012.

From the Judgment and Order dated 6.5.2011 of the High Court of Bombay, Bench at Aurangabad in Second Appeal Nos. 148/1992, 149/1992 and 150/1992.

WITH

SLP @ No. 23457 of 2001.

Vivek Solshe, C.G. Solshe for the Appellants.

Shirish K Deshpande, Ashok Kumar Gupta II, for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. The parties in the above special leave petitions are common and the issue relates to the shop premises with regard to which proceedings were initiated before the Courts below which were dealt with by the High Court in the orders impugned in these

petitions and, therefore, the same are being disposed of by this common order.

CIVIL APPEAL NOS. OF 2012(@ SLP (C) NOS. 26049-51 OF 2011)

2. Leave granted.

Challenge in these appeals is the orders of the learned Single Judge of the High Court of Bombay at Aurangabad dated 06.05.2011 passed in Second Appeal Nos. 148-150/ 1992.

3. To trace the brief facts, the appellants herein filed Regular Civil Suit No.167 of 1974, RCS No.211 of 1977 and RCS No.240 of 1980 against the respondent herein for recovery of arrears of rent for the period covering October 1971 to November 1980. The suits were decreed by the trial Court and the same was also confirmed by the lower appellate Court. However, the High Court set aside the judgment and decree of the Courts below on the sole ground that the rent deed marked as Exhibit-69 cannot be legally accepted in evidence for the purpose of recovery of rent and consequently the decree granted in favour of the appellants based on such inadmissible document cannot be sustained. While holding so, the High Court placed reliance on *Anthony v. K.C. Ittoop & Sons & Ors.* [2000 (6) SCC 394].

4. Assailing the judgment of the High Court, the counsel for the appellants contended that even if the rent deed was not registered, as required under the provisions of the Registration Act and Transfer of Property Act, it can be relied upon for the collateral purpose of ascertaining the rent and as to whether the respondent was liable to pay such rent for the period for which it was claimed by the appellants. Counsel for the respondent would, however, contend that there is no question of relying upon such document by way of collateral means and,

therefore, the impugned judgment of the High Court does not call for interference.

5. Having heard learned counsel for the respective parties and having perused the material papers, we are constrained to state that though there can be no two opinion that the rent deed relied upon by the appellants being an unregistered document cannot form the basis to support the claim of the appellants for recovery of rent due, if we are able to find that in the case on hand there were other uncontroverted evidence available on record to support the claim of the appellants that would be sufficient to uphold the decree for recovery of rent from the respondent. We also wish to point out that such other materials which existed should have been accepted by the High Court while examining the correctness of the order of the Courts below. We also wish to state that that very decision which was relied upon by the High Court, while laying down the principle that an unregistered document cannot be legally accepted in evidence to support the claim of the parties in regard to the respective status as lessor and lessee and vice versa as well as other recitals therein relating to rent, etc., in the light of the provisions contained in second para of Section 107 of Transfer of Property Act itself, the status of the parties on the basis of undisputed facts pertaining to the demised premises as landlord and tenant can always be accepted and the rights of the parties can be worked out on that basis.

6. To elaborate our conclusions, we wish to point out that when the appellants filed the first suit in RCS No. 167/1974, the suit was laid for recovery of the rent amounting to Rs. 3150.68/- being the rent payable by the respondent for the immediately preceding three years of the filing of the suit. According to the appellants, it was let out on 19.10.1971 for one year on a monthly rent of Rs. 83.32/- based on a rent note and that from the very first date the respondent failed to pay the rent. It was also averred that while initially it was governed by Exhibit 68 in which the rent was fixed at Rs.83.32/- the rent

was subsequently revised at Rs. 1150/- per year from 26.10.1973 under Exhibit 69. It was contended that such revised rent was payable by the respondent from then onwards and that he failed to pay that rent as well.

7. As against the above claim, according to the respondent the tenancy was entered into by him with the 8th respondent, namely, Abdul Rehman in the Second Appeal in the year 1968 and the rent was fixed at Rs.800/- per year. As far as non-payment of rent was concerned the same was not disputed by the respondent. The respondent however sought to explain it by saying that he carried out repairs by investing a sum of Rs. 5000/- and the appellants agreed to adjust the said sum from the rents payable to him. It was based on the above pleas that the parties went into trial.

8. The trial Court after examining the evidence rendered a categorical finding that the stand of the respondent was not supported by any legally admissible evidence, that the said Abdul Rehman himself admitted that the plaintiff Smt. Imambee wife of SK Mehtab Saheb who is none other than his mother was the owner of the shop and that the shop was rented out to the respondent only by his mother Imambee. The other respondents were the brothers and sisters of Abdul Rehman who also took a clear stand that it was only Imambee who was the owner of the demised premises. The Courts below also reached a definite finding that right from 1971 the respondent has not paid any rent to the plaintiff or even to the said Abdul Rehman.

9. As far as the adjustment of rent was concerned, the trial Court rendered a finding that though it was claimed in the written statement that the accounts registers were maintained to show the adjustment of rents to cover the expenses of repairs carried out in the demised premises, nothing was placed before the Court in support of the said stand. Exhibit-85 was relied upon by the respondent which was a receipt issued by the said Abdul Rehman for Rs. 300/- towards rent for the shop and that

the said document did not in any way support the stand of the respondent. Such findings were recorded by the trial Court in all the three suits based on the evidence before it. The lower appellate Court also sifted the evidence in detail and concurred with the conclusions of the trial Court as regards the non-payment of rent right from day one of the respondent's induction into the demised premises.

10. Keeping the above undisputed facts in mind, when we examine the legal issue, at the very outset, it will have to be stated that even while holding that Exhibits 68-69 being unregistered documents cannot be accepted in evidence, the relationship of the appellants and the respondent as landlord and tenant was not in controversy. Even according to the respondent himself the rent payable was Rs.800/- per year which was admittedly not paid by him right from day one when the tenancy commenced. It was an admitted case of the respondent that the rent was due from him from October, 1971 till the third suit was filed. We are unable to appreciate as to how the appellants could have been non-suited solely on the ground that Exhibit-69 was not admissible in evidence. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case (viz) the admission of the respondent in the written statement about the rate of rent and the further admission about its non-payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the Second Appeal which led to the dismissal of the appeals. Even while eschewing Exhibit-69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs. 800/- per year.

11. In this context, when we refer to the decision in *Anthony*

(supra) relied upon by the High Court, we wish to point out that while the learned Judge placed reliance upon paras 8 and 11 of the said decision, the learned Judge ought to have looked into other paragraphs of the same decision where this Court has made a specific reference to the second para of Section 107 of Transfer of Property Act to lay down the principle as under in paras 12 to 14:

"12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. *A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created.* What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of section 107 which reads thus:

"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."

"13.When lease is a transfer of right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument

came into existence would not stand in the way of the Court to determine whether there was in fact a lease otherwise than through such deed".

14. When it is admitted by both sides that the appellant was inducted into the possession of the building by the owner thereof and that the appellant was paying monthly rent or had agreed to pay rent in respect of the building, the legal character of the appellant's possession has to be attributed to a jural relationship between the parties. Such a jural relationship, on the fact situation of this case, cannot be placed anything different from that of lessor and lessee falling within the purview of the second para of Section 107 of the TP Act extracted above. *From the pleadings of the parties there is no possibility for holding that the nature of possession of the appellant in respect of the building is anything other than as a lessee.".*

(emphasis added)

12. When we apply the above principles laid down by this Court in juxtaposition with the stand of the respondent that the lease was in fact created in respect of the demised premises on an annual rent of Rs.800/-, and the trial Court, based on the evidence placed before it, reached a categorical finding that such lease was between the plaintiff and the respondent based on unimpeachable evidence available on record, having regard to the clear cut finding as regards the arrears of rent payable by the respondent, the High Court ought to have upheld the decree for payment of arrears of rent by either directing the trial Court to calculate the actual amount payable by respondent or by modifying the decree to that extent.

13. In the written submissions of the appellants, it was contended that Exhibit 69, though an unregistered document, can still be relied upon for collateral purposes. In support of the said contention reliance was placed upon the decision of this Court in *S. Kaladevi Vs. V.R. Somasundaram and Ors. -*

(2010) 5 SCC 407. The said decision is clearly distinguishable. In the case on hand Exhibit 69 was relied upon not for any collateral purpose but for the support of the main claim of arrears of rent. The suit was for arrears of rent and Exhibit 69 was filed to show the agreement of lease of the demised premises, the other terms of the lease and the rate of rent between the parties. Therefore, the contention that the document was filed merely for establishing some collateral transaction cannot be accepted. In that respect, the conclusion of the High Court as regards Exhibit 69 cannot be faulted. However, for reasons set out in the earlier paragraphs of our judgment we reiterate that the claim of the appellants for recovery of rent was established by the Defendant's own categorical admission about the rate as well its non-payment right from day one.

14. As far the decision now relied upon (viz) *Kaladevi* (supra) is concerned, that was a case where the suit was laid for specific performance and stress was made on the proviso to Section 49 of the Registration Act which specifically exclude the mandatory requirement of registration in the substantive part of Section 49 read along with Section 17 of the Transfer of Property Act. This Court, therefore, held that the reliance placed upon the unregistered Sale Deed at least for the purpose of proof of an oral agreement of sale as a collateral transaction was permissible. This Court also made it clear that in such a situation the document in question can be received in evidence by making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act. Therefore, the said decision in the facts and circumstances of the case is clearly distinguishable.

15. We are, therefore, of the view that the dismissal of the suit on the simple ground that Exhibit 69 was not a registered document cannot be accepted. Having regard to our above conclusion, the appeals deserve to be allowed. Since the claim of the plaintiff has been lingering from the year 1971, we do

not wish to relegate the parties once again to the Court below for the simple purpose of ascertaining the arrears. Since the respondent admitted the annual rent payable as Rs.800/- per year, the claim being from October 1971 to November 1980, namely, for 9 years by simple arithmetic, the arrears can be worked out to a sum of Rs.2400/- in RCS No.167/1974, Rs. 2400/- in RCS No.211/1977 and another Rs.2400 in RCS No. 240/1980, in all a sum of Rs.7200/-.

16. Therefore, while upholding the judgment and decree of the trial Court as confirmed by the lower appellate Court in holding that the respondent is liable to pay arrears of rent for the period from October 1971 to November 1980, we only modify the rent payable with actual rent due in a sum of Rs. 7200/- and the decree to that extent is granted. The appeals stand allowed. The impugned order of the High Court is set aside and the judgment and decree of the trial Court and the lower appellate Court stand restored with the above modification as regards the rent and the total amount due.

SLP (C) No.23457/2011

17. This Special Leave Petition arise out of the judgment and decree passed by the Single Judge of the High Court of Judicature at Bombay in Civil Revision Application No.424 of 1987 dated 06.05.2011. The said revision was preferred by the respondent challenging the order of the Rent Controller dated 13.01.1986 in file No.1979.R.C.A.3 in Rent No.1/86. The said petition was filed before the Rent Controller under Section 15 of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 for eviction of the defendant from House No.3-3-32 situated at Udgir. The plaintiff in RCS No.167/1974 along with her son Ahmed Saheb was the petitioner. The plaint for eviction was on the ground that RCS No.167/74 for recovery of rent was decreed, that the default in making the payment of rent was willful, that the tenancy was terminated on 6.12.1978, that the statutory period of six months was over and, therefore, the respondent was liable to be evicted. The respondent in the

eviction petition did not file the written statement for a period of six years. The rent controller found that even on the date of final hearing the tenant and his Advocate failed to appear and, therefore, it was decided ex parte. After hearing the arguments of the plaintiff the application for eviction was allowed and the respondent was directed to deliver vacant possession. The respondent-tenant preferred file No.1979.R.C.A.3 in Rent No.1/86 before the District Judge, Latur. The appellate Court declined to interfere with the order of the Rent Controller and the appeal was dismissed.

18. By the impugned order, the High Court held that the respondent tenant should be directed to place on record the written statement by giving an opportunity of hearing. While holding so the learned Judge also noted that since even the appellant did not lead any evidence, while permitting the respondent to file written statement, the appellant can be directed to comply with the requirements of Section 15 (2)(i) of the Hyderabad Houses (Rent, Eviction and Leases) Control Act, 1954 in respect of tendering of rent and whether default was committed by the respondent and accordingly set aside the orders of the Court below and remit the matter back to the Rent Controller for rendering a decision in accordance with law by fixing a time schedule.

19. Before us the learned counsel appearing for the respondent submitted that after the order of remittal the Rent Controller dismissed the application. Learned counsel also contended that as against the order of dismissal by the Rent Controller, the petitioner has preferred an appeal before the District Judge which is stated to be pending. Counsel for the petitioner in his submissions contended that since the petitioners in Special Leave Petitions are common if the judgment in Second Appeal No.148-150/1992 is to be set aside, there should be a direction for eviction as against the respondent. Having regard to the subsequent development relating to the Rent Control proceedings in which the appeal

preferred by the petitioner is stated to be pending before the Learned District Judge, we are not inclined to accede to the submission of the learned counsel for the petitioner though we have allowed C.A. Nos5316-5318/2012 (@ SLP (C) Nos.26049-51/2011 preferred against the common judgment in Second Appeal Nos.148-150/92. Such a shortcut method cannot be resorted to based on the submission of the learned counsel for the petitioner. It is for the petitioners to work out their remedies in the Rent Appeal No. 2/2012 pending before the learned Principal District Judge, Latur in the light of the judgment passed in the Civil Appeal Nos5316-5318/2012 (@ SLP© Nos. 26049-51/2011). In the light of our above conclusion, we do not find any necessity to traverse from the various other submissions made in the written submission of the respondent.

20. In the light of the decision in C.A.Nos5316-5318/2012(@ SLP (C) Nos.26049-51/2011) and in the light of the fact that after the order of remittal passed in Civil Revision Application No.424 of 1987 dated 06.05.2011, the Rent Control Proceeding having been concluded before the Rent Controller, it will have to be held that SLP (C) No.23457/2011 has to be dismissed as having become infructuous. Accordingly, while C.A.Nos……../2012(@ SLP (C) Nos.26049-51 of 2011) stand allowed with specific directions as regards the Rent arrears payable by the respondent, the Special Leave Petition No.23457 of 2011 stands dismissed as having become infructuous.

There will be no orders as to costs.

K.K.T. Appeal allowed & SLP dismissed.

SUPREME COURT BAR ASSOCIATION & ORS.

v.

B.D. KAUSHIK

I.A. No. 5 of 2012

IN

I.A. No. 1 of 2011

IN

Civil Appeal Nos. 3401 & 3402 of 2003

JULY 20, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

Advocates - Election of office bearers of Supreme Court Bar Association (SCBA) - Eligibility of the members of SCBA to elect - Direction of Supreme court to identify the members of SCBA who were regular practitioners in Supreme Court as they alone would be eligible to vote to elect the office bearers of SCBA - Pursuant to the direction, Implementation Committee laying down criteria for identification of members regularly practising in Supreme Court - Dispute regarding the criteria - Interlocutory Application seeking clarification and directions in respect of the criteria evolved by Implementation Committee - Held: Various suggestions made by the Implementation Committee for the purpose of identifying members of SCBA, regularly practising in Supreme Court, accepted - Direction to the members of the Implementation Committee to modify the criteria in the light of the suggestions accepted by the Court.

The Supreme Court, in the present appeals while determining interalia the question regarding eligibility of the members of Supreme Court Bar Association (SCBA) to elect the office bearers of the Association, issued various directions on the basis of the principle of 'One Bar one Vote' and called upon to device a mechanism to identify the members of SCBA who practiced regularly

before Supreme Court and those members alone would be entitled to vote to elect the office bearers of SCBA. The Court further directed to appoint a Committee to identify the regular practitioners of Supreme Court and to prepare a list of members regularly practicing, not regularly practising in Supreme Court and list of temporary members of SCBA and to post these lists on SCBA website and SCBA Notice Board.

Pursuant to the direction of the Court, an Implementation Committee consisting of senior advocates practicing in Supreme Court, was constituted. Certain disputes arose between the members of SCBA regarding the criteria laid down by the Implementation Committee for identification of members regularly practicing in Supreme Court. Therefore, instant Interlocutory Application was filed by SCBA seeking clarification and directions with regard to the criteria evolved by the Implementation Committee.

Disposing of the application, the court

HELD: 1. Certain suggestions need to be taken into consideration which were made by the Implementation Committee, while identifying the members of the SCBA who were regularly practicing in the Supreme Court for the purpose of determining their eligibility to vote to elect the office bearers of the SCBA. [Para 8] [1007-H; 1008-A]

2. The first criteria laid down by the Implementation Committee that all the members of the SCBA who had 50 appearances and/or 20 filings in a year, should be considered to be regular practitioners in the Supreme Court, is duly accepted. [Para 9] [1008-B-C]

3. Suggestion to include advocates, who have been continuously representing the State Governments or the Union Government before the Supreme Court for at least

three years and have a minimum of 50 appearances for such Government, in the category of regular practitioners with right to vote, is accepted. [Para 9] [1008-B-C, E]

4. Suggestion to include Advocates, who were Government Standing Counsel or counsel appearing for the Government in the Supreme Court and all Advocates-on-Record in the said category, is accepted. [Para 9] [1008-C-D]

5. Suggestion to include non-Advocates-on-Record who were in the panel of Amicus Curiae, approved by the Supreme Court Registry, and members who are working as Mediators in the Supreme Court Mediation Centre, is also accepted. [Para 9] [1008-D-E]

6. Suggestion was made for inclusion of all Senior Advocates of the Supreme Court, who are resident in Delhi and attending the Supreme Court. It was rightly pointed out that in view of the close proximity of the satellite townships, which had grown up around Delhi, such Senior Advocates who resided in Noida, Gurgaon, Faridabad and Ghaziabad, should also be included in this category. The said suggestion is sound and is accepted. [Para 10] [1008-F-G]

7. Yet another criteria for identification of regular practitioners in the Supreme Court, as suggested by the Implementation Committee was that all members of the SCBA who had attended the Supreme Court at least 90 days in the calendar year 2011, as established by the database showing the use of proximity cards maintained by the Registrar of the Supreme Court, could also be included in the list of regular practitioners. It was felt that instead of attendance of 90 days, the same should be reduced to 60 days, which suggestion is duly accepted. As a supplement to the above, it is also accepted that appearances before the Chamber Judge, as also before the Registrar's Courts, in the years 2009 and 2010, will

be counted towards the total number of appearances. [Para 11] [1008-H; 1009-A-B]

8. The suggestions made by the Implementation Committee with regard to the directions contained in the judgment delivered in the Civil Appeals regarding publication of details of the Voters' List on the website, showing the different categories of members of the SCBA who were recognized as regular practitioners and those who were not, was also taken up for consideration. It was felt that such publication could adversely affect the Advocates who were not shown to be regular practitioners in the Supreme Court. It was generally felt that the publication on the website should not be resorted to and individual members should be informed of their status either by E-mail or through SMS on their mobile phones. The objection has merit and is allowed and such publication need not be effected. [Para 12] [1009-C-E]

9. Allotment of Chambers, other than in the Supreme Court, should not be made a criteria for identifying members who were regular practitioners in the Supreme Court and the said decision was also considered and accepted. [Para 13] [1009-F]

10. Persons who had contested elections to the Executive Committee of any Court annexed Bar Association, other than the SCBA, during any of the years from 2007 to 2012, could not be allowed to vote to elect the Office Bearers of the SCBA on the "One Bar One Vote" principle, or to attend the General Body meetings of the SCBA. The same would also include a person who had cast his vote in any election to the Executive Committee of any Court annexed Bar Association, other than the SCBA, for the above-mentioned years. The said suggestion is also accepted and approved. [Para 14] [1009-G-H; 1010-A]

11. I.A. No.5 is, therefore, disposed of with a direction

to the Members of the Implementation Committee to modify the criteria suggested by it in the light of the above suggestions, which have been accepted in this order, for the purpose of identifying members of the SCBA, who are regular practitioners in the Supreme Court, for the purposes indicated in the judgment dated 26th September, 2011. [Para 11]

Vinay Balchandra Joshi vs. Registrar General of Supreme Court ofIndia **(1998) 7 SCC 461 - referred to.**

Case Law Reference:

(1998) 7 SCC 461	**Referred to**	**Paras 3 and 5**

CIVIL APPELLATE JURISDICTION : I.A. No. 5 of 2012.

IN

I.A. NO.1 OF 2011

IN

CIVIL APPEAL NOS. 3401 & 3402 OF 2003

From the Jughment & order dated 05.04.2003 of the Civil Judge, Delhi in Civil Suit Nos. 100 & 101 of 2003.

A.K. Ganguly, Amarender Saran, Rakesh Khanna, Ranjit Kumar, Mridul Aggarwal, Rajesh Aggarwal, Arun Kumar, Ranjeet Sharma, Binay Kumar Das, Yugal Kishore Prasad, Ram Shiromani Yadav, Narendra Kumar, Milind Kumar, Tripurari Ray, B.K. Choudhary, Ravi Shankar Kumar, Brahmajit Mishra, Baldeo Atrey, Parmanand Pandey, Dinesh Kumar Garg, D.K. Thakur, B.P. Yadav, Devendra Jha, Sushil Kumar, Rajesh Kumar Maurya, Nitin Kumar Thakur, Shivaji M. Jadhav for the appearing parties.

The Order of the Court was delivered by

ALTAMAS KABIR, J. 1. I.A.No.5 of 2012 has been filed on behalf of the Supreme Court Bar Association (SCBA) in Civil Appeal Nos.3401 and 3402 of 2003 which were disposed

of by this Court on 7th May, 2012, with various directions. In fact, this application arises out of the said directions.

2. The aforesaid appeals had been filed on behalf of the Supreme Court Bar Association and its then Honorary Secretary, Mr. Ashok Arora, and Ms. Sunita B. Rao, Coordinator, Implementation Committee of the Supreme Court Bar Association, against an interim order passed by the Civil Judge on 5th April, 2003, on an application for injunction filed in Civil Suit Nos.100 and 101 of 2003. In the said appeals various questions were raised regarding the administration of the Supreme Court Bar Association. One of the questions raised was with regard to the amendment of Rule 18 of the SCBA Rules governing the eligibility of the members of the SCBA to contest the elections to be elected and to elect the Office Bearers of the Association. After an extensive hearing, the appeals were disposed of by a detailed judgment with various directions, on the basis of the principle of "One Bar One Vote" projected by the learned Advocates who appeared in the matter.

3. While disposing of the said appeals the Hon'ble Judges noticed that there were many Advocates, admitted as members of the SCBA, who did not practise regularly in the Supreme Court and were members of other Bar Associations and that the majority of them made their presence felt only during elections for the Office Bearers of the SCBA. This Court was, therefore, called upon to devise a mechanism by which those members of the SCBA who practised regularly in this Court could be identified as members who could be entitled to vote to elect the Office Bearers of the SCBA, and those who would not be entitled, while retaining their membership. After considering the matter at length, Their Lordships came to the conclusion that in order to identify those advocates who practised regularly in the Supreme Court, the criteria adopted by this Court for allotment of Chambers, as explained in *Vinay Balchandra Joshi Vs. Registrar General of Supreme Court of*

India [(1998) 7 SCC 461], should be adopted for the purpose of identifying the members who would be entitled to vote to elect the Office Bearers of the SCBA. Their Lordships, accordingly, directed that the criteria adopted in Vinay Balchandra Joshi's case (supra), should be adopted by the SCBA and its Office Bearers to identify those advocates who practised regularly in the Supreme Court. A further direction was given that the Office Bearers of the SCBA or a small Committee to be appointed by the SCBA, consisting of three Senior Advocates, should take steps to identify the regular practitioners in the manner indicated in the order, and, thereafter, to prepare a list of members regularly practising in this Court and another separate list of members not regularly practising in this Court and a third list of temporary members of the SCBA. These lists were directed to be posted on the SCBA website and also on the SCBA Notice Board. It was also directed that a letter should be sent by the SCBA to each member, informing him about the status of his membership, on or before February 28, 2012. Any aggrieved member would be entitled to make a representation to the Committee within 15 days from the date of receipt of the letter from the SCBA, and if a request was made to be heard in person, the representation was to be heard by the Committee and a decision thereupon was to be rendered in the time specified therein. The decision of the Committee was to be communicated to the member concerned and the same was to be final, conclusive and binding on the member of the SCBA. Thereafter, a final list of advocates regularly practising in this Court was to be displayed by the SCBA.

4. Several other directions were also given as to what was to be done after the final list of the regular practitioners was made ready and published. The Court also found that the amendment made in Rule 18 of the SCBA Rules was legal and valid and that no right of the Advocates had been infringed by such amendment.

5. In keeping with the suggestions made on behalf of the

SCBA and the recommendations of the Court, Mr. K.K. Venugopal, Mr. P.P. Rao, and Mr. Ranjit Kumar, all Senior Advocates, practising in the Supreme Court, were appointed as the members of the Implementation Committee. After their appointment, the members of the Implementation Committee issued a questionnaire on 2nd January, 2012, which was forwarded to all the members of the SCBA, to be filled up and returned to the office of the SCBA for the purposes indicated in the judgment itself. The questionnaire was meant for Senior Advocates, Advocates-on-Record and Non-Advocates-on-Record. The same was prepared in keeping with the procedure followed in Vinay *Balchandra Joshi's* case (supra). Thereafter, the Implementation Committee held a meeting on 11th January, 2012 and adopted the following resolutions :

> "2. In view of the directions of the Supreme Court of India, in its judgment in *SCBA Vs. B.D. Kaushik,* to the effect that "the Committee of the SCBA to be appointed is hereby directed to prepare a list of regular members practising in this Court……", the following categories of members of SCBA, in addition to the list of members already approved by the Implementation Committee, are entitled to vote at, and contest, the election of the office bearers of the SCBA as 'regular members practising in this Court':
>
> (i) All Advocates on Record who have filed cases during the calendar year 2011.
>
> (ii) All Senior Advocates designated as Senior Advocates by the Supreme Court of India, who are resident in Delhi and attending the Supreme Court of India.
>
> (iii) All members who subscribed to any of the cause lists of the Supreme Court of India during the calendar year 2011.

(iv) All members who have been members of the SCBA for the last 25 years, commencing 01.01.1986, and have been paying subscription to the SCBA regularly, in each one of the 25 years.

3. The list of such members who are eligible to vote and contest elections will be put up on the SCBA notice board for the information of all members and will also be circulated in the usual manner including circulation with the daily cause list. Copies of this list will also be available at the reception desk in Library I.

4. The persons whose names figure in this list need not reply to the questionnaire issued earlier."

6. At a further meeting of the Implementation Committee held on 15th January, 2012, certain other resolutions were adopted identifying some of the members of the SCBA who were not required to fill up the questionnaire, except to indicate the category under which they claimed to be regular members practising in the Supreme Court.

7. Thereafter, certain incidents took place to which we need not refer in these proceedings. However, certain disputes arose between the members of the Supreme Bar Association regarding the criteria laid down by the Implementation Committee for identification of members who are regularly practising in the Supreme Court. As a consequence, Interlocutory Application No.5 came to be filed on behalf of the Supreme Court Bar Association seeking clarification and directions in regard to the criteria evolved by the Implementation Committee.

8. The said application was heard in the presence of the members of the SCBA and the Implementation Committee and certain suggestions were made which we feel need to be taken into consideration by the Implementation Committee while

identifying the members of the SCBA who were regularly practising in the Supreme Court for the purpose of determining their eligibility to vote to elect the Office Bearers of the SCBA. In fact, certain suggestions were made with regard to criteria evolved by the Implementation Committee.

9. The first criteria laid down by the Implementation Committee that all the members of the SCBA who had 50 appearances and/or 20 filings in a year, should be considered to be regular practitioners in the Supreme Court, was duly accepted. A suggestion was also made to include advocates who have been continuously representing the State Governments or the Union Government before the Supreme Court for at least three years and have a minimum of 50 appearances for such Government, in the category of regular practitioners with right to vote. Another suggestion was made to include Advocates, who were Government Standing Counsel or counsel appearing for the Government in the Supreme Court and all Advocates-on-Record in the said category. It was also suggested that non-Advocates-on-Record who were in the panel of Amicus Curiae, approved by the Supreme Court Registry, and members who are working as Mediators in the Supreme Court Mediation Centre, be also included in this category. The said suggestions were found to be sound and were accepted.

10. The next suggestion of the Implementation Committee was with regard to the inclusion of all Senior Advocates of the Supreme Court, who are resident in Delhi and attending the Supreme Court. It was rightly pointed out that in view of the close proximity of the satellite townships, which had grown up around Delhi, such Senior Advocates who resided in Noida, Gurgaon, Faridabad and Ghaziabad, should also be included in this category. The said suggestion is sound and is accepted.

11. Yet another criteria for identification of regular practitioners in the Supreme Court as suggested by the Implementation Committee was that all members of the SCBA

who had attended the Supreme Court at least 90 days in the calendar year 2011, as established by the database showing the use of proximity cards maintained by the Registrar of the Supreme Court, could also be included in the list of regular practitioners. It was felt that instead of attendance of 90 days, the same should be reduced to 60 days, which suggestion is duly accepted. As a supplement to the above, it is also accepted that appearances before the Chamber Judge, as also before the Registrar's Courts, in the years 2009 and 2010, will be counted towards the total number of appearances.

12. One of the suggestions made by the Implementation Committee with regard to the directions contained in the judgment delivered in the Civil Appeals regarding publication of details of the Voters' List on the website, showing the different categories of members of the SCBA who were recognized as regular practitioners and those who were not, was also taken up for consideration. It was felt that such publication could adversely affect the learned Advocates who were not shown to be regular practitioners in the Supreme Court. It was generally felt that the publication on the website should not be resorted to and individual members should be informed of their status either by E-mail or through SMS on their mobile phones. The objection has merit and is allowed and such publication need not be effected.

13. It was specifically felt that allotment of Chambers, other than in the Supreme Court, should not be made a criteria for identifying members who were regular practitioners in the Supreme Court and the said decision was also considered and accepted.

14. It was lastly indicated that persons who had contested elections to the Executive Committee of any Court annexed Bar Association, other than the SCBA, during any of the years from 2007 to 2012, could not be allowed to vote to elect the Office Bearers of the SCBA on the "One Bar One Vote" principle, or to attend the General Body meetings of the SCBA. The same

would also include a person who had cast his vote in any election to the Executive Committee of any Court annexed Bar Association, other than the SCBA, for the abovementioned years. The said suggestion is also accepted and approved.

15. I.A. No.5 filed in the disposed of Appeals is, therefore, disposed of with a direction to the Members of the Implementation Committee to modify the criteria suggested by it in the light of the above suggestions, which have been accepted in this order, for the purpose of identifying members of the SCBA, who are regular practitioners in the Supreme Court, for the purposes indicated in the judgment dated 26th September, 2011.

16. The Members of the Implementation Committee are directed to take expeditious steps in finalizing the Voters' List of members of the SCBA entitled to cast their votes in the election of Office Bearers of the SCBA, and, thereafter, to set the programme for the election of the Office Bearers and conduct the same as expeditiously as possible. Till then, the arrangement with regard to the management of the SCBA, as is existing, shall continue.

K.K.T. I.A. disposed of.

KAMALBAI SINKAR
v.
STATE OF MAHARASHTRA & ORS.
(Civil Appeal No. 5344 of 2012)

JULY 20, 2012

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Freedom Fighters' Pension - Application seeking freedom fighters' pension - In the category of 'Underground Freedom Fighter' - Documents furnished as per the requirement under Government Resolution - Application rejected by State Government - High Court confirming the order of State - On appeal, held: The applicant made out a case for grant of Freedom Fighters' Pension under the category 'Underground Freedom Fighter' - Since the applicant is no more, direction to grant the pension to his wife-appellant.

Husband of the appellant forwarded his application claiming freedom fighters pension under the category 'Underground Freedom Fighter'. He enclosed certain documents in support of his claim as required by the Government Resolution dated 4.7.1995. The State Government communicated the Collector that there was no concrete evidence to prove the participation in the freedom fight movement by the applicant and hence his application was rejected. Writ Petition was filed challenging the order of the State. High Court dismissed the petition confirming the order of the State. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1. The appellant's husband made a genuine effort to collect all those credentials in his support as

required under the Resolution of the State Government dated 04.07.1995, and forwarded them to the State Government along with his application. When the Collector forwarded his letter and reiterated his recommendation in his subsequent communications, there was no reason for the State Government to simply reject the application without assigning any reason. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a case for grant of Freedom Fighters' Pension under the category "Underground Freedom Fighter". There was nothing more for the State to examine to honour the claim of the appellant's husband for grant of Freedom Fighters' Pension. The claim of the appellant's husband cannot be held to be a fraudulent one or without any supporting material. The High Court ought to have examined the grievance of the appellant before confirming the order of rejection of the respondent State. [Paras 8 and 9] [1017-A-E]

Gurdial Singh v. Union of India and Ors. **2001 (8) SCC 8: 2001 (3) Suppl. SCR 323 - relied on.**

2. The respondent State is directed to grant Freedom Fighters' Pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant. [Para 9] [1017-F]

Case Law Reference:

2001 (3) Suppl. SCR 323 Relied on Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5344 of 2012.

From the Judgment & Order dated 6.3.2009 of the High Court of Judicature of Bombay, Bench at Nagpur in Writ Petition No. 506 of 2009.

Satyajit A. Desai, Anagha S. Desai, Somanatha Padhan for the Appellant.

Mike P. Desai, Sanjay Kharde, Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. Leave granted.

2. This appeal arises out of the order passed by the High Court in the Writ Petition in which the claim of the appellant's husband for grant of Freedom Fighters' Pension came to be rejected. Today the original applicant is not available and his wife is pursuing this litigation. By a Government Resolution dated 04.07.1995, after making references to various other earlier resolutions of the Government of Maharashtra relating to grant of Freedom Fighters' Pension, the criteria for grant of Freedom Fighters' Pension was specified under two different categories, namely, one under "Prisoners Freedom Fighter" and the other under the category of "Underground Freedom Fighter". The claim of the appellant's husband was under the second category, namely, "Underground Freedom Fighter".

3. For grant of pension under the said category following requisites were stipulated:

"E) Underground Freedom Fighter:-

Those freedom fighters who were under ground and doing a work in a movement of Quit India 1942-44 and Hydrabad Mukti Sangram 1947-48. They submit the following necessary certificates:

(1) Required to quit house and stay outside.

(2) Required to leave education or removed from Educational Institutions.

(3) Was so beaten by the police that caused disability.

(2) The Certificates of two Freedom Fighters who were convicted for minimum two years or who were declared absconding or who remained absconded for at least two years and along with such certificates, the Proclamation of conviction or absconding or supporting affidavit of person issuing such certificate alongwith the orders of Government.

(4) The certified copy, if any, Government document of that time is available regarding the underground.

(5) If any information about the name published in newspapers, the original newspaper.

(6) At the time of remark, District Gaurao Committee shall submit their opinion."

4. The said Resolution was issued with the consent of the Finance Department bearing reference No. C.R-1183/94/VY-4 dated 10.11.1994. Pursuant to the said resolution dated 04.07.1995, the husband of the appellant forwarded his application dated 05.08.1995 through the Collector of Amravati. Along with the said application, he also enclosed certain Annexures (viz) a certificate of renowned freedom fighter dated 24.04.1984 by name Shankar Pandurangji Choudhari, a certificate issued by Mr. Maganlal Bagdi, Ex-MP, Hoshangabad along with his own certificate, a certificate of Patwari Kasba, Warud Division, Taluk Warud dated 29.09.1981, a certificate dated 08.06.1981 of freedom fighter S.P.Choudhary of Warud Taluk, Amravati District, a certificate issued by the office of Naib Tehsildar, M.K. Puranik dated 05.08.1961 in favour of Shankar Pandurang Choudhary about the imprisonments suffered by him and a medical certificate dated 15.08.1981 issued by Dr. S.G. Choudhari in favour of the applicant about his participation in Satyagraha Morcha on 13.08.1942, the injuries suffered by him in the Lathi Charge and the treatment given to him between 13.08.1942 to 15.08.1942.

5. Based on an earlier order passed by the Nagpur Bench of the High Court in Writ Petition No.424 of 2007, the Collector of Amravati in his letter dated 29.10.2009 informed the appellant that her husband's claim for grant of Freedom Fighters' Pension was submitted to the Government along with recommendation of the Gaurav Samiti dated 20.12.1996. The appellant was advised to contact the Government. However, in the order of the State Government dated 22.01.2008 communicated to the Collector of Amravati, it was stated that there was no concrete evidence in proof of the participation of the freedom fight movement by the husband of the appellant and his claim for grant of Freedom Fighters' Pension was, therefore, rejected. The Collector was directed to communicate the same to the appellant.

6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of Freedom Fighter's Pension in the decision reported in *Gurdial Singh v. Union of India & Ors.* [2001 (8) SCC 8]. In paragraph 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of Freedom Fighters' Pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant's husband in the case on hand. Paragraph 7 reads as under:

> "7.The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about

> half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."
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> [emphasis added]

7. Keeping the above broad principles in mind, when we analyse the claim of the appellant's husband, we find that the appellant's husband had filed along with his application dated 05.08.1995, a host of documents in support of his claim. They were shown as Annexures to his application and the details of which have been referred to by us in the earlier part of this order. In fact after the order of the Nagpur Bench passed in WP No.424 of 2007, the Government in its communication dated 23.11.2007 addressed to the Collector of Amravati stated that the claim of the appellant's husband was not traceable and, therefore, all related documents were once again required to be collected and submitted to the Government including recommendations of Gaurav Samiti as well as the Collector's comments. Apparently, pursuant to the said communication, the Collector in his letter dated 29.10.2009 informed the appellant that the case submitted by her husband for getting pension as Underground Freedom Fighter was submitted to the Government along with office letter bearing No.KL/SS/PP/KV/ 3216 dated 20.12.1996 and the recommendations of Gaurav Samiti.

8. In the said circumstances, we only state that the appellant's husband made a genuine effort to collect all those credentials in his support as required under the Resolution of the State Government dated 04.07.1995, and forwarded them to the State Government along with his application dated 05.08.1995. When the Collector, Amrawati forwarded his letter dated 20.12.1996 and reiterated his recommendation in his subsequent communications dated 14.10.2007 and 30.11.2007 there was no reason for the State Government to simply reject the application without assigning any reason. A perusal of the documents enclosed by the appellant's husband along with his application disclose that the appellant's husband made out a case for grant of Freedom Fighters' Pension under the category "Underground Freedom Fighter". Applying the broad principles laid down in the decision of this Court in *Gurdial Singh* (supra), it will have to be held that there was nothing more for the State to examine to honour the claim of the appellant's husband for grant of Freedom Fighters' Pension. The claim of the appellant's husband cannot be held to be a fraudulent one or without any supporting material.

9. In our considered view, the High Court ought to have examined the grievance of the appellant before confirming the order of rejection of the respondent State. In the circumstances, the appeal deserves to be allowed. The impugned orders are set aside. The respondent State is directed to grant Freedom Fighters' Pension in favour of the appellant's husband and since he is no more, grant the same with all arrears to the appellant by passing appropriate orders expeditiously preferably within four weeks from the date of communication of copy of this order. We hope and trust that the State Government will not indulge in any further delay in the matter of grant of pension so as to enable the appellant to avail the benefits at least during her life time. The appeal stands allowed with the above directions to the respondent State. No costs.

K.K.T. Appeal allowed.

BHAU RAM
v.
JANAK SINGH & ORS.
(Civil Appeal No. 5343 of 2012)

JULY 20, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

O. 7, r. 11 r/w s.151 - Application for rejection of plaint - Held: While considering an application under O. 7, r. 11, the court has to examine the averments in the plaint; and the pleas taken by the defendant in the written statement would be irrelevant - High Court is fully justified in confirming the decision of the appellate court remitting the matter to trial court for consideration of all the issues.

In respect of the suit land, the application of the tenant for proprietary rights u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, was ultimately allowed by the High Court in the second appeal filed by the appellant, who, after the death of the widow of the tenant, being their nephew, was substituted in the proceedings. The SLP of the purchaser, who had meanwhile purchased the suit land from the owner thereof, was dismissed by the Supreme Court. Involving the same issue, one 'AS' who had earlier unsuccessfully filed an application for substitution after the death of the widow of the tenant claiming under a will, filed suit no. 424/1 of 99/97. The said suit was dismissed for default, but was subsequently restored. He again filed suit no. 10/1 of 2004 for possession of the suit land. The appellant filed an application under O. 7 r.11 read with s.151 CPC for rejection of the plaint which was allowed by the trial court

on the ground that the plaint was barred under the provisions of O. 9, rr. 8 and 9 and O. 23, rr.1(3) and 4(b) CPC. The suit filed by 'AS' was dismissed, but the appeal filed by him was allowed on the ground that the trial court had taken the pleas from the written statement which was not permissible under O. 7, r.11 CPC. By the impugned order, the High Court dismissed the second appeal filed by the appellant.

Dismissing the appeal, the Court

HELD: 1.1. The questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that while deciding the application under O. 7, r.11, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. This aspect has been rightly dealt with by the High Court. [para 8-9] [1024-G-H; 1025-A, D-E]

C. Natrajan vs. Ashim Bai and Another **2007 (11) SCR 33 = (2007) 14 SCC 183,** *Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others,* **2007 (10) SCR 520 = (2007) 10 SCC 59,** *Hardesh Ores (P) Ltd. vs. Hede and Company* **2007 (6) SCR 608 = (2007) 5 SCC 614,** *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others,* **2006 (1) SCR 860 = (2006) 3 SCC 100,** *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others,* **2004 (1) SCR 1004 = (2004) 3 SCC 137,** *Saleem Bhai and Others vs. State of Maharashtra and Others* **2002 (5) Suppl. SCR 491 = (2003) 1 SCC 557;** *The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee,* **2012 (6) JT 149 - relied on**

1.2. It is significant to note that Suit No. 424/1 of 99/

97 which was dismissed for default had been restored by the trial court even at the time of filing of the application by the defendant under O. 7, r.11 CPC and the said proceedings are going on. In view of the same, the provisions of O.9, rr. 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the instant suit are with regard to different properties. For the same reasons, the provisions of O.23, rr. 1 (3) and 4 (b) of CPC are not applicable. [para 7] [1024-E-G]

1.3. The High Court is fully justified in confirming the decision of the appellate court remitting the matter to the trial court for consideration of all the issues. The trial court is directed to decide the suit in its entirety considering all the issues. [para 10] [1025-F]

Case Law Reference:

2007 (11) SCR 33	**relied on**	**para 8**
2007 (10) SCR 520	**relied on**	**para 8**
2007 (6) SCR 608	**relied on**	**para 8**
2006 (1) SCR 860	**relied on**	**para 8**
2004 (1) SCR 1004	**relied on**	**para 8**
2002 (5) Suppl. SCR 491	**relied on**	**para 8**
2012 (6) JT 149	**relied on**	**para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5343 of 2012.

From the Judgment & Order dated 20.9.2010 of the High Court of Himachal Pradesh at Shimla in RSA No. 501 of 2009.

Radhika Gautam, Mahesh Agarwal, Rishi Agrawala, Abhinav Agrawal, E.C. Agrawala for the Appellant.

Sudhir Chandra, T.V. Ratnam, Munawwar Naseem, Bhagabati Prasad Padhy for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 20.09.2010 passed by the High Court of Himachal Pradesh at Shimla in R.S.A. No. 501 of 2009 whereby the High Court dismissed the appeal filed by the appellant herein.

3. Brief facts:

(a) One Shanker Lal owned and possessed several lands in District Shimla including the land in question. Originally the land in question was owned by Smt. Lari Mohansingh @ Madna Wati and was in occupation of Shankar Lal as a tenant. After coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, Shanker Lal, moved an application on 21.01.1957, for proprietary rights under Section 11 of the said Act before the Compensation Officer, Mahesu. In the meantime, Madna Wati sold the suit land to Panu Ram (defendant No.2) on 22.10.1960. Defendant No.2 purchased the said land as benami in the name of his wife Kamla Devi (defendant No.1), who was a minor at that time. After the sale of suit land, defendant No.1 through defendant No.2 was substituted as respondents in place of Madna Wati in the application pending before the Compensation Officer. During the pendency of the application, Shanker Lal died on 07.06.1960 and after his death, his wife Reshmoo Devi was substituted as his legal representative. Vide his order dated 31.08.1964, the Compensation Officer allowed the application and granted proprietary rights to Reshmoo Devi.

(b) Against the said order, Kamla Devi (defendant No.1) preferred an appeal before the District Judge, Mahesu, who, by his order dated 14.12.1966, dismissed the same.

(c) During the pendency of the proceedings before the Compensation Officer, one Raghunath Singh Thakur of Marina

Hotel, Shimla filed a Civil Suit No. 80/1 of 1962 in the Court of Sub-Judge, Mahesu against Madna Wati and Kamla Devi alleging that the suit land along with other land property was mortgaged with him by Madna Wati and, therefore, she had no rights to sell or transfer the suit land. The said suit was decreed in favour of Raghunath Singh. Aggrieved by the said order, they filed an appeal before the Judicial Commissioner, Himachal Pradesh at Shimla and Reshmoo Devi also preferred an appeal before the Judicial Commissioner, Shimla. Both the appeals were transferred to the High Court of Himachal Pradesh. The High Court allowed the appeal preferred by Reshmoo Devi and set aside the order of the sub-Judge Mahesu to the extent it affected her rights and further directed her to seek remedy against Kamla Devi by a separate suit.

(d) During the pendency of the appeal before the High Court, since the possession was forcibly taken from Reshmoo Devi, she filed a suit for recovery of possession being Suit No. 61/1 of 1976 before the Sub-Judge (I), Shima which was decreed in her favour on 25.03.1985.

(e) Aggrieved by that judgment, Kamla Devi filed an appeal before the sub-Judge, Ist Class, Shimla. During the pendency of the appeal, Reshmoo Devi died on 25.09.1985. An application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (in short "CPC") was filed by the sister of Reshmoo Devi for bringing her on record as legal representative (L.R.). However, another application was filed by Hira Singh and Attar Singh that they may be brought on record as L.Rs of Reshmoo Devi on the basis of a Will.

(f) Challenging the said Will, Bhau Ram, the appellant herein, who was the nephew of Reshmoo Devi, filed an application to implead himself as L.R. of Reshmoo Devi. By order dated 29.11.1986, sub-Judge Ist Class, Shimla held that Bhau Ram, the appellant herein, being the son of real brother of Shankar Lal, husband of Reshmoo Devi is the only legal representative.

(g) The appeal filed by Kamla Devi & Ors. was registered as Civil Appeal No. 118-S/13 of 1987. By order dated 02.12.1987, the Additional District Judge allowed the appeal and dismissed the suit filed by Reshmoo Devi for possession as barred by limitation. The appellant herein, who was substituted as L.R., filed second appeal being R.S.A. No.113 of 1988 before the High Court which was allowed by the High Court on 25.05.2000.

(h) Against that order, Kamla Devi & Ors. filed special leave petition before this Court which was dismissed.

(i) Involving the same issue, Attar Singh filed a Suit being Suit No. 424/1 of 99/97 in the Court of sub-Judge-IV, Shimla which was dismissed for default on 23.02.2001 but the same was restored vide order dated 14.08.2002. He again filed a Civil Suit No. 10/1 of 2004 before the Civil Judge (Jr. Division-II) Rohru, Shimla for possession of the suit land belonging to Reshmoo Devi. During the course of proceedings, the appellant herein filed an application under Order VII Rule 11 read with Section 151 of CPC for rejection of the plaint on certain grounds. By order dated 17.11.2004, the Civil Judge allowed the application and dismissed the suit filed by Attar Singh.

(j) Against the said order, Attar Singh filed F.A. No. 90-S/13 of 2005 before the District Judge (Forest), Shimla. After the death of Attar Singh, Kamla Devi was brought on record as his legal representative. Vide order dated 31.07.2009, the District Judge (Forest) allowed the appeal. Challenging the said order, the appellant herein and his sister, Kular Mani, filed R.S.A. No. 501 of 2009 before the High Court. By the impugned order dated 20.09.2010, the High Court dismissed the appeal. Against the said order, the appellant herein filed an appeal by way of special leave petition before this Court.

4. Heard Ms. Radhika Gautam, learned counsel for the appellant and Mr. Sudhir Chandra, learned senior counsel for respondent No.1 and Mr. T. V. Ratnam, learned counsel for respondent No.2.

5. The only point for consideration in this appeal is whether the High Court is justified in confirming the decision of the lower appellate Court and remitting the matter to trial Court for fresh consideration of all the issues.

6. In order to ascertain an answer for the above question, we have to consider whether the application under Order VII Rule 11 CPC filed by the defendant can be decided merely on the basis of the plaint and whether the other materials filed by the defendant in support of the application can also be looked into. The trial Court allowed the application of the appellant/defendant No.1 filed under Order VII Rule 11 CPC on the ground that the plaint was barred under the provisions of Order IX Rules 8 & 9 CPC and Order XXIII Rule 1 (3) & 4 (b) of CPC. The said order of the trial Court was set aside by the first appellate Court on the ground that the trial Court had taken the pleas from the written statement of the defendant which is not permissible under Order VII Rule 11 CPC and the High Court in the second appeal confirmed the judgment of the first appellate Court.

7. It is relevant to point out the findings of the trial Court particularly with reference to the Suit No. 424/1 of 99/97 which was dismissed for default had been restored by the trial Court even at the time of filing of the application by the defendant under Order VII Rule 11 CPC and it is also brought to our notice that the said proceedings are going on. In view of the same, the provisions of Order IX Rules 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the present suit are with regard to different properties. For the same reasons, the provisions of Order XXIII Rule 1 (3) & 4 (b) of CPC are not applicable.

8. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written

statements would be irrelevant. [vide *C. Natrajan vs. Ashim Bai and Another,* (2007) 14 SCC 183, *Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others,* (2007) 10 SCC 59, *Hardesh Ores (P) Ltd. vs. Hede and Company,* (2007) 5 SCC 614, *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others,* (2006) 3 SCC 100, *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others,* (2004) 3 SCC 137, *Saleem Bhai and Others vs. State of Maharashtra and Others,* (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in T*he Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee,* 2012 (6) JT 149.

9. As rightly pointed out by learned counsel for the respondents, the questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that only the averments in the plaint can be looked into while deciding the application under Order VII Rule 11. This aspect has been rightly dealt with by the High Court.

10. In the light of the above discussion and in view of the settled legal position, as mentioned above, we are of the view that the High Court is fully justified in confirming the decision of the appellate Court remitting the matter to the trial Court for consideration of all the issues. In view of the fact that the suit is pending from 2002, we direct the trial Court to decide the suit in its entirety considering all the issues, after affording adequate opportunity to both the parties, and dispose of the same within a period of six months from the date of receipt of copy of this judgment.

11. Consequently, the civil appeal is dismissed with the above direction. No order as to costs.

R.P. Appeal dismissed.

ARUMUGAM

v.

STATE REP. BY INSP. OF POLICE

(Criminal Appeal No. 879 of 2010)

JULY 24, 2012

[SWATANTER KUMAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860 - ss. 147, 148, 341 and 302 - Prosecution under - Of six accused - Three eye-witnesses - Two of them turning hostile - Conviction of two of the accused - High Court acquitting one of the convicted accused while confirming conviction of appellant-accused - On appeal, held: Conviction justified - Evidence of sole eye-witness was reliable - Delay in registering the FIR did not cause any serious dent in the prosecution case - The case of the prosecution that fatal injuries were caused by appellant-accused was supported by medical evidence and the ocular evidence of the eye-witness - The appellant-accused cannot be treated at par with the other accused - In view of the fact that deceased was assaulted by the accused even prior to the incident s. 304 (Part-II) is not applicable - There is no scope to alter the sentence.

The appellant-accused was prosecuted with five other accused for having caused death of one person. The prosecution case was that the accused persons assaulted the victim with the weapons called 'aruval'. PWs 1 to 3 were the eye-witnesses to the incident. PW-1 took the victim to the hospital. The victim informed the doctor (PW 8) who had examined him that he was assaulted by six known persons. The victim died in the hospital. Case was registered u/ss. 147, 148, 341 and 302 IPC. Prosecution case was also that the accused had assaulted the deceased twelve days prior to the incident

when the deceased had escaped. During trial, the eye-witnesses PWs 2 and 3 turned hostile. Trial court convicted appellant-accused and accused No. 6 and acquitted rest of the accused. High Court confirmed the conviction of the appellant-accused, while setting aside the conviction of accused No. 6.

In appeal to this court, appellant-accused contended that his conviction was not justified on the grounds there was delay is preferring the complaint and registration of FIR; that the injury Nos. 4 and 5 which were fatal for the deceased, according to the doctor (PW 11), who had conducted post mortem, were not attributed to appellant-accused; that appellant was required to be treated at par with the acquitted accused; and that even if the prosecution case is accepted, the case would fall u/s. 304 (Part II) IPC.

Dismissing the appeal, the Court

HELD: 1. The appeal does not merit any consideration. It is true that the whole case depends on the evidence of PW-1, the sole eye-witness to the occurrence. It is also true that he is the brother of the deceased. It was not argued before this Court that since he is the brother of the deceased, his version is liable to be thrown out. [Para 7] [1033-F]

Jaisy @ Jayaseelan v. State Rep. by Inspector of Police **2012 (1) SCC 529;** *Sucha Singh and Anr. v. State of Punjab* **2003 (7) SCC 643: 2003 (2) Suppl. SCR 35 - relied on.**

2. Delay in registering the FIR does not cause any serious dent in the case of the prosecution. The trial Court dealt with this aspect in a detailed manner. Since the deceased was in a serious condition, it was quite apparent that PW-1 as his brother had to stay along with him in the hospital and as was expected, despite the

treatment given to the deceased, he died in the hospital around 2 O'Clock. The only other person who was available with him was his mother (PW-4). Having regard to the unfortunate occurrence to his deceased brother, he would have only concentrated in staying at the hospital to support his mother and for taking required other steps to deal with the dead body of the deceased. Noting the sequence of events, from the time of the occurrence till the registration of the FIR, there is no substance in the plea of the appellant that there was delay in the registration of the FIR. [Para 8] [1034-F-H; 1035-B-D]

3. It is not borne out by records that there was no evidence to connect the appellant to any of the injuries sustained by the deceased. The No. 1 injury as described by PW-8 the doctor who attended on the deceased immediately after his admission to the hospital, was mentioned as an incised wound measuring 10 x 5 cm x bone deep over dorsal aspect of left elbow exposing elbow joint". The post mortem doctor PW-11 in his evidence while describing the said injury, made it clear that the tissues, the blood vessels, the nerves and the bones were completely cut and the front forearm was just hanging with the attached skin. PW-11, the post mortem doctor in his opinion made it clear that the death of the deceased was caused by injury Nos.4 and 5. As far as the said injury was concerned, it was reported by PW-1 that while A-2 held the deceased, A-1 caused a cut injury on the left elbow of the deceased. Before the Court also, PW-1 reiterated the said version as against the appellant. Therefore, the appellant cannot say that he was not responsible for causing any fatal injury and that there was no evidence to the effect that he caused a fatal injury. [Paras 9, 11 and 12] [1035-E-G; 1036-C-F]

4. In the circumstances of the case, there is no scope to compare the extent of involvement of the appellant in

the crime vis-à-vis the other accused to countenance the submission of the appellant to treat him on par with the other accused persons who were acquitted. [Para 13] [1037-B-C]

5. It is not as if the appellant had no intention to cause the death of the deceased or to cause such bodily injury with such a lack of intention. About twelve days prior to the occurrence, the accused had apprehended him and stated to have also assaulted him. On that occasion, the deceased stated to have escaped and reported the said incident to PW-1. PW-1, along with the deceased, stated to have reported the incident to the village Panchayat President who advised them to prefer a police complaint since the accused were not amenable to any Panchayat proceedings. PW-5, who is a local prominent person, in his evidence also supported the above version of PW-1. PW-4 the mother of the deceased also supported the said version of PW-1. [Para 13] [1037-D-H]

Case Law Reference:

2012 (1) SCC 529	**Relied on**	**Para 7**
2003 (2) Suppl. SCR 35	**Relied on**	**Para 7**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 879 of 2010.

From the Judgment & Order dated 12.12.2008 of the High Court of Madras, Madurai Bench in Crl. A. No. 1089 of 2001.

Nagendra Rai, M. Yogesh Kanna, V.N. Raghupathy for the Appellant.

B. Balaji, R. Rakesh Sharma for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal, at the instance of accused No.1 is directed against the

judgment of the Division Bench of the Madras High Court dated 12.12.2008 in Criminal Appeal 1089 of 2001 by which the High Court while confirming the conviction and sentence imposed on appellant-accused No.1 (A-1), set aside the conviction and sentence as against accused-6 (A-6) and acquitted him of the charges.

2. The case of the prosecution as projected before the Court below was that Murugesan (PW-1) and Sankar (deceased) were brothers and were native of a place called Sooriyur. As is the practice in their village, in the month of Markazhi (Tamil month), there used to be a game called Manju Virattu also called as Jalli Kattu in which bulls brought from other villages would be confined in an enclosure and then the bulls would be allowed to run, throwing a challenge to the youngsters to tame them and whosoever controls such bulls, used to get a reward in the function. It is stated that on 09.01.2000 which was in the Tamil month of Markazhi, the bull belonging to the appellant, who belonged to the place called Thiruvalarchipatti participated in the function. The deceased stated to have controlled the said bull and the appellant was stated to have been aggrieved by the so-called heroism of the deceased which resulted in alleged threat to the deceased. Twelve days prior to the murder of the deceased, six persons including the appellant stated to have quarreled and also assaulted the deceased which, according to PW-1 was reported by the deceased to him (PW-1). PW-1 appeared to have consoled the deceased by stating that they can report the conduct of the appellant and others to the local Panchayat. On 04.02.2000 at 10.30 a.m., when the deceased along with PW-1 was waiting at the bus stand which place was known as Manthai, the appellant and other accused chased the deceased and caught hold of the deceased at Mamundi temple. While the appellant inflicted cut injuries in the left arm of the deceased with the weapon called aruval, the other accused stated to have inflicted certain other injuries on the head, leg and the buttocks of the deceased. On sustaining the

injuries, the deceased stated to have fallen down. He was carried by PW-1 to his residence and from there, after arranging taxi from nearby town called Thiruvaramboor shifted him to Trichy Government Hospital around 01.30 p.m. The deceased was examined by Dr. Saminathan (PW-8) to whom the deceased informed that he was assaulted by six known persons. However, it is stated that the deceased did not survive and breathed his last around 2 p.m. Based on the information given by PW-1, a case was registered by sub-Inspector Ethiraj (PW-9) as crime No.20/2000 in the Navalpattu Police Station for offences under Sections 147, 148, 341 and 302, Indian Penal Code (for short 'IPC'). Inspector Kailasanathan (PW-12) stated to have simultaneously gone to the place of occurrence. He prepared the observation Mahazar in the presence of witnesses and also prepared a model sketch Exhibit P-6. The statements of witnesses were also recorded by him and then he went to the Government hospital, Trichy and prepared an inquest report Exhibit P-18. He also stated to have examined other witnesses including PW-1. The body of the deceased was sent for post mortem on the same day. On 05.02.2000, he enquired other witnesses and on 06.02.2000 at 4 p.m. Sakthivel (A-6) was arrested and based on the admissible portion of his statement five aruvals were stated to have been recovered from the thorn bush at 5.30 p.m. near a place called Koonavayil adjacent to Sulingu which were recovered in the presence of witnesses under Exhibit P-20. The post mortem was conducted by Dr. Karthikeyan (PW-11) and the post mortem certificate was marked as Exhibit P-15. The post mortem report disclosed as many as five injuries and the doctor opined that the deceased appeared to have died of shock and hemorrhage due to injury Nos.4 and 5.

3. All the accused were tried before the trial Court wherein the prosecution examined PWs-1 to 12, marked Exhibit P-1 to 20 and M.O.s 1 to 10. While M.O. 1 to 5 were the weapons, namely, aruval, M.O.6 was blood stained polyester lungi, M.O.-7 was blood stained Kasi towel, M.O.8 was blood stained

sand, M.O.-9 was unstained sand and M.O.-10 was yellow and blue colour mixed lungi seized from the deceased.

4. PW-1 to 3 were examined as eye witnesses. However, in the course of the examination PW-2 and 3 turned hostile and PW-1 alone supported the case of the prosecution. After the 313 questioning in which all the accused denied their participation in the crime, the trial court analysed the materials placed before it and reached a conclusion that except A-1 and A-6, guilt was not made out as against others, namely, A-2, A-3, A-4 and A-5. In the appeal preferred by the appellant-A-1 and A-6, the High Court set aside the conviction and sentence imposed on A-6 and confirmed the conviction and sentence imposed upon the appellant (A-1) herein.

5. We have heard Mr. Nagendra Rai, learned senior counsel for the appellant and Mr. B. Balaji, learned counsel for the respondent State. Mr. Rai, learned senior counsel raised three contentions. He contended that there was delay in preferring the complaint and the registration of the FIR and, therefore, on that ground the case of the prosecution should fail. It was then contended that as per the evidence of post mortem doctor (PW-11) injury Nos. 4 and 5 were fatal to the death of the deceased and those injuries were not attributed to the appellant -accused No.1 and when the other accused persons were released, the conviction and sentence imposed on the appellant cannot be sustained. In support of the said submission, learned counsel relied upon the deposition of PW-1 himself. Lastly, it was contended that even if the entire case is accepted, the case would fall under Section 304 Part II, IPC, and the appellant, having remained in jail for five years, no further punishment need be imposed.

6. As against the above submissions, Mr. Balaji, learned counsel for the State contended that there were enough evidence placed before the Court to hold that injury No.4 was caused at the instance of the appellant, that the said injury as

described in the post mortem certificate was so grave in nature and the post mortem doctor (PW-11) having opined that the said injury as well as injury No.5 were the cause of death of the deceased, the appellant was rightly convicted by the courts below. Learned counsel further pointed out that the deceased was examined by Dr. Saminathan (PW-8) when he was alive. He also noted the injuries in Exhibit P-8 which tallied with the post mortem report Exhibit P-15 prepared by PW-11, that PW-1 who witnessed the occurrence categorically stated that injury No.4 was inflicted by the appellant, that there is no reason to disbelieve the said version of PW-1. Learned counsel, therefore, contended that the case of the prosecution as against the appellant in inflicting injury No.4 on the deceased was consistent with Exhibit P-1 as well as the ocular evidence of PW-1 and, therefore, no ground was made out for the acquittal of the appellant. The learned counsel also contended that apart from the above, there is evidence to show that the deceased was threatened earlier also by the appellant and other accused, followed by which on 04.02.2000 he was murdered and, therefore, there is no question of invoking Section 304 part II, IPC to reduce the rigour of the offence found proved against the appellant.

7. Having heard learned counsel for the appellant as well as the respondent State, we are also convinced that the appeal does not merit any consideration. It is true that the whole case depends on the evidence of PW-1, the sole eye witness to the occurrence. It is also true that he is the brother of the deceased. It was not argued before us that since because he is the brother of the deceased, his version is liable to be thrown out. In this context, it will be worthwhile to refer to the recent decision of this Court reported as - 2012 (1) SCC 529 - *Jaisy @ Jayaseelan v. State Rep. by Inspector of Police.* That was also a case where there were more than one witnesses and ultimately except PW-1 in that case, the other eye witnesses turned hostile. PW-1 was also the brother of the deceased. This Court, while holding that on that ground alone his evidence could

not be discarded, reiterated the law laid down by this Court in the decision reported as *Sucha Singh & Another v. State of Punjab* - 2003 (7) SCC 643 which has been extracted in para 9 of the *Jaisy's* (supra) judgment. The same can be usefully referred to hereunder.

"9. As stated by this Court in Sarwan Singh v. State of Punjab and Sucha Singh v. State of Punjab it is not the law that:

"10. … the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. *Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration."*

[emphasis added]

This submission of the learned counsel is, therefore, rejected."

8. Keeping the above legal perception in mind, when we examine the submission of learned counsel for the appellant, the contention that there was delay in registering the FIR does not cause any serious dent in the case of the prosecution. Such submission was dealt with by the trial Court itself in a detailed manner wherein it was noted that immediately after the occurrence, noting the condition of the deceased, PW-1 took him to his house, arranged for a taxi to shift him to the hospital by which time it was 1.30 p.m. Since the deceased was in a serious condition, it was quite apparent that PW-1 as his brother had to stay along with him in the hospital and as was

expected, despite the treatment given to the deceased, he died in the hospital around 2 O'Clock. The only other person who was available with him was his mother Govindammal (PW-4). The avocation of PW-1 is agriculture. The deceased himself was working as a mason. Having regard to the unfortunate occurrence to his deceased brother, he would have only concentrated in staying at the hospital to support his mother and for taking required other steps to deal with the dead body of the deceased. Moreover, according to Ethiraj (PW-9) sub Inspector attached with the Navalpattu police station, he received information from the Trichy Government hospital at 13.45 hours and that he went to the hospital by 14.45 hours where he recorded the statement of Murugesan (PW-1) and he registered the crime as Crime No.20/2000 under Sections 147, 148, 341 and 302, IPC and recorded First Information Report and the express report-Exhibit P-9 was also forwarded to the Court through head constable 234. Noting such sequence of events, from the time of the occurrence till the registration of the FIR, we do not find any substance in the plea of the appellant that there was delay in the registration of the FIR. The said submission, therefore, stands rejected.

9. As far as the second submission, namely, that there was no evidence to connect the appellant to any of the injuries sustained by the deceased, here again as rightly contended by learned counsel for the State, we find that the said submission is not borne out by records. While examining the said contention, we feel it appropriate to refer to injury No.1 as described by PW-8 the doctor who attended on the deceased immediately after his admission to the hospital at which point of time the deceased was alive. The said injury was noted as first injury and was mentioned as an incised would measuring 10 x 5 cm x bone deep over dorsal aspect of left elbow exposing elbow joint".

10. In the post mortem report Exhibit P-15, the said injury has been noted as under:-

"(4) A transverse chop wound, 9cm x 4cm exposing the underlying structures on the back of upper third of left forearm, 4cm below the elbow joint with marginal bruising dark red, O/E, the edges are clean cut. The underlying tendons, muscles, blood vessels, nerves are found completely cut. Diffusion of blood into the surrounding tissues present. The portion of the left forearm distal to the wound is found attached by the skin on the front aspect."

11. The post mortem doctor PW-11 in his evidence which is in vernacular (Tamil), while describing the injury, made it clear that the tissues, the blood vessels, the nerves and the bones were completely cut and the front forearm was just hanging with the attached skin. As far as the said injury was concerned, as pointed out by the counsel for the State, in Exhibit P-1, it was reported by PW-1 that at the time of occurrence, when his brother attended a telephonic call and was returning back near the bus stand, he was chased by A-1 to A-6 who were armed with aruvals. His brother was cornered by them in front of Mamundi temple and while A-2 Vijay Kumar held his brother, A-1 caused a cut injury on the left elbow of his brother and that his brother fell down to the left side. Before the Court also, PW-1 reiterated the said version as against the appellant. Therefore, it is too late in the day for the appellant to contend that he was not responsible for causing any fatal injury and that there was no evidence to the effect that he caused a fatal injury.

12. At the risk of repetition, it will have to be stated that PW-11, the post mortem doctor in his opinion made it clear that the death of the deceased was caused by injury Nos.4 and 5. The High Court in para 11 of its judgment has only referred to the trial Court's judgment in para 25 insofar as it related to the other accused and in particular relating to A-6 where the trial Court observed as regards others that when several persons were involved in an occurrence, it was not possible to say which accused caused which injury. The said observation made by the trial Court and referred to by the High Court cannot be cited

out of context when there was direct evidence against the appellant connecting his part of inflicting injury No.4 on the deceased and the nature of injury was so grave. The post mortem doctor PW-11 clearly opined that the said injury along with injury No.5 was the cause of the death of the deceased.

13. In such circumstances, there is no scope to compare the extent of involvement of the appellant in the crime vis-à-vis the other accused to countenance the submission of learned senior counsel for the appellant to treat him on par with the other accused persons who were acquitted. With this, when we come to the last of the submissions made by the learned senior counsel, namely, that at best the conviction can only fall under Section 304 Part II, IPC, here again we are not in a position to accede to such submission . It is not as if the appellant had no intention to cause the death of the deceased or to cause such bodily injury with such a lack of intention. In that context, as rightly pointed out by the learned counsel for the state, about twelve days prior to the occurrence, when the deceased was returning from his work and got down at the bus stop, the accused apprehended him and stated to have also assaulted him. On that occasion, the deceased stated to have escaped and reported the said incident to PW-1. PW-1, along with the deceased, stated to have reported the incident to the village Panchayat President who advised them to prefer a police complaint since the accused were not amenable to any Panchayat proceedings. It is, however, stated that no police complaint was lodged with reference to the said incident. PW-1 reiterated the said fact in his oral evidence before the Court. In the cross examination he further stated that he did not report the said incident to the police as he felt that it can be sorted out at the level of Panchayat. PW-5, who is a local prominent person, in his evidence also supported the above version of PW-1. PW-4 the mother of the deceased also supported the said version of PW-1 that the same was reported to the Panchayat's President who advised them to lodge a complaint to the police.

14. When the said piece of evidence is analysed along with the alleged occurrence that took place on 04.02.2000, it is crystal clear that the appellant had an axe to grind against the deceased which he got fulfilled by executing the same by inflicting a fatal injury, namely, injury No.4 on the deceased and that caused the death of the deceased. When such is the clear evidence available on record, there is no scope to apply Section 304 part II, IPC or by way of mitigatory factor to dilute the rigour of the criminal act committed by the appellant. We, therefore, do not find any scope to alter the sentence as pleaded on behalf of the appellant. We find no merit in the appeal and the same is dismissed.

K.K.T. Appeal dismissed.

RESEARCH FOUNDATION FOR SCIENCE, TECHNOLOGY AND NATURAL RESOURCE POLICY

v.

UNION OF INDIA & ORS.

I.A. Nos. 61 & 62 of 2012

IN

Writ Petition (C) No. 657 of 1995

JULY 30, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

ENVIRONMENTAL LAW:

Hazardous Wastes (Management and Handling) Rules, 1989 – Writ petition challenging the Rules as unconstitutional and seeking direction to ban import of Hazardous wastes in India and amendment of the Rules in conformity with the BASEL Convention and Articles 21, 47 and 48A of the Constitution – During pendency of the petition, applications seeking permission of State Pollution Control Board and State Maritime Board to allow a ship (which had entered territorial waters of India) to beach for the purpose of dismantling – In the meantime disposal of the writ petition asserting the interim directions given in the writ petition from time to time with regard to handling of hazardous wastes and ship-breaking – Held: Since clearance has been given by State Pollution Control Board, State Maritime Board and Atomic Energy Regulatory Board for the ship to beach for the purpose of dismantling, it is presumed that the ship is free from hazardous and toxic substances except the substances which might be part of the superstructure of the ship and could be exposed only at the time of its dismantling – Direction to the authorities to allow the ship to beach and permit dismantling of the ship – Authorities concerned directed to take steps for disposal of the toxic wastes discovered during dismantling at the cost of the owner of the ship or its nominee/

nominees – In all future cases of similar nature, the authorities concerned to strictly comply with the norms laid down in BASEL Convention or any other subsequent provisions adopted by the Central government – BASEL Convention.

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 61 & 62 of 2012.

IN

Writ Petition (Civil) No. 657 of 1995.

Under Article 32 of the Constitution of India.

Ashok Bhan, T.S. Doabia, Raj Panjwani, Manjit Singh, Dr. Manish Singhvi, AAG, Sanjay Parikh, Sadhna Sandhu, B.K. Prasad, Hemantika Wahi, Jesal, Nandani Gupta, E.C. Agrawala, Vikas Bansal, Vibha Datta Makhija, Bijoy Kumar Jain, Manish K. Bishnoi, Sunita Sharma, Kiran Bhardwaj, S.S. Rawat, Asha G. Nair, D.S. Mahra, Vijendra Kumar, Shaikh Chand Saheb, Amit Kumar, P.S. Sudheer, Vijay Panjwani, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Garima Bose, Vivekta Singh, Kamal Mohan Gupta, Aditya Shamlal, Arijit Prasad, T.A. Khan. A.K. Sharma, Irshad Ahmad, Bhavanishankar V. Gadnis, A. Raghunath for the appearing parties.

The Order of the Court was delivered by

O R D E R

ALTAMAS KABIR, J. 1. On 6th July, 2012, Writ Petition (Civil) No.657 of 1995 filed by the Research Foundation for Science, Technology and Natural Resources Policy was disposed of by this Court. I.A. No.61 of 2012 which had been filed by M/s Best Oasis Ltd. on 9th May, 2012, and I.A. No.62 of 2012 filed by Gopal Krishna on 18th June, 2012, were heard separately since in the said applications relief was prayed for in respect of a specific ship named “Oriental Nicety” (formerly known as Exxon Valdez), which had entered into Indian territorial

waters and had sought the permission of the Gujarat Pollution Control Board and the Gujarat Maritime Board to allow the ship to beach for the purpose of dismantling. Such relief would, of course, be subject to compliance with all the formalities as required by the judgments and orders passed by this Court on 14th October, 2003, 6th September, 2007 and 11th September, 2007 in the Writ Petition. The Applicant, M/s Best Oasis Ltd. is the purchaser of the said ship.

2. Another prayer was for a direction to the above-mentioned Authorities and the Atomic Energy Regulatory Board to inspect the ship and to permit it to enter into Indian territorial waters and allow it to anchor in Indian waters, which has been rendered redundant, since, as submitted by Ms. Hemantika Wahi, learned Standing Counsel for the State of Gujarat, the said stages have already been completed and the ships is anchored outside Alang Port.

3. After the application had been filed, the Union of India in its Ministry of Environment and Forests, and the Gujarat Maritime Board, were directed to file their respective responses thereto.

4. Appearing on behalf of the Union of India in its Ministry of Environment and Forests, Mr. Ashok Bhan, learned Senior Advocate, submitted that an affidavit had been affirmed by Shri M. Subbarao, Director, Ministry of Environment and Forests, in which it had been disclosed that a Technical Expert Committee (TEC) had been appointed pursuant to the directions contained in the order dated 6th September, 2007, passed by this Court in the Writ Petition. The said Committee Report dealt in great detail with the hazards associated with the ship breaking industry, occupational and health issues, social welfare activities of workers, occupational hazards associated with breaking of different categories of ships of special concern, handling of hazardous material and the role and responsibilities of various defaulters. Mr. Bhan submitted that the said Report also focused on ships of special concern in assessment of hazardous wastes and potentially hazardous

materials. It was urged that a definite procedure for anchoring, beaching and breaking of ships had been laid down in the Report of the Committee which is applicable to ship-breaking activities in all the coastal States of India. In fact, it was pointed out by Mr. Bhan that the procedures recommended by the Committee were already in force and in terms of the order dated 6th September, 2007, the Report of the Committee is to remain in force until a comprehensive Report, incorporating the recommendations of the Committee, was formulated. In addition, Mr. Bhan submitted that in compliance with this Court's order dated 14th October, 2003, the Union of India, in its Ministry of Steel, has constituted an Inter-Ministerial Standing Monitoring Committee to periodically review the status of implementation of the recommendations of the Technical Expert Committee.

5. Mr. Bhan submitted that the provisions of the Basel Convention relating to the disposal of hazardous wastes are being strictly followed and as far as the present ship is concerned, it was for the Gujarat Maritime Board, which is the concerned local authority to take a decision for anchoring and subsequent beaching and dismantling of the ship, in strict compliance with the directions contained in the order passed by this Court on 6th September, 2007.

6. Mr. Bhan also referred to an affidavit affirmed on behalf of the Ministry of Shipping, in which it was stated that for permitting a vessel to anchor, inspection is to be carried out by the State Maritime Board in consultation with the State Pollution Control Board and Customs Department. In the affidavit, it has been specifically averred that an inspection of the vessel had been carried out by the Gujarat Maritime Board and it was found that the ship had been converted from an oil tanker to a bulk carrier in 2008 and there was no sign of any hazardous/toxic substance on board. It was also stated in the affidavit that the Board had given its "no objection" for beaching of the ship and the Ministry of Shipping, therefore, had no say in the matter.

7. Appearing for the Gujarat Pollution Control Board, Gandhinagar, Ms. Hemantika Wahi submitted that in keeping with the directions contained in the order passed by this Court on 6th September, 2007, an Inter-Ministerial Committee and Standing Monitoring Committee to review the status of implementation of the directions of this Court from time to time, had been constituted. However, as a matter of precaution, the Gujarat Pollution Control Board had not recommended that permission be granted to the vessel in question to anchor, until further orders were passed by this Court in the pending Writ Petition. Ms. Wahi submitted that in the order dated 6th September, 2007, this Court had recommended the formulation of a comprehensive code to govern the procedure to be adopted to allow ships to enter into Indian territorial waters and to beach at any of the ports in India for the purpose of dismantling. However, till such code came into force, the officials of the Gujarat Maritime Board, the concerned State Pollution Control Board, officials of the Customs Department, National Institute of Occupational Health and the Atomic Energy Regulatory Board, could oversee the arrangements. Ms. Wahi submitted that the application for recommendation for anchoring could be decided in view of the aforesaid order dated 6th September, 2007, and the TEC Report which had been accepted by this Court vide the said order, with liberty to file a response to the application at a later stage, if required.

8. Ms. Wahi then referred to the affidavit affirmed on behalf of the Gujarat Maritime Board by Capt. Sudhir Chadha, Port Officer, Ship Recycling Yard, in the Gujarat Maritime Board at Alang. Ms. Wahi submitted that in terms of the directions given on 25th June, 2012, on the application of M/s Best Oasis Ltd., the Gujarat Maritime Board instructed the company to bring the vessel to the Port area of Alang for inspection. Ms. Wahi submitted that when the vessel arrived outside the Port area of Alang on 30th June, 2012, officers of all concerned departments, including the Gujarat Maritime Board, the Gujarat Pollution Control Board, Customs Department, Explosives

Department, Atomic Energy Regulatory Board, went on board the ship to inspect and ascertain that there was no hazardous/toxic substance on it. Ms. Wahi submitted that upon inspection, nothing hazardous or toxic was discovered on the vessel, which was found to be in conformity with the documents submitted for desk review. The Gujarat Maritime Board, therefore, certified that the ship was fit for breaking/dismantling and beaching permission would be given after following the procedure laid down by TEC and approved by this Court in its order dated 6th September, 2007.

9. The recommendations of the Gujarat Maritime Board and the Gujarat Pollution Control Board to allow the vessel to beach at Alang was hotly contested by Mr. Sanjay Parikh, learned Advocate appearing for the Petitioner, Research Foundation for Science, Technology and Natural Resources Policy. Mr. Parikh urged that while disposing of the Writ Petition on 6th July, 2012, this Court had directed the Union of India and the Respondents concerned to follow the procedure which had been laid down in the Basel Convention in the matter of ship-breaking, which often generated large quantities of toxic waste. Mr. Parikh submitted that none of the safeguards which had been put in place by the Basel Convention had been complied with or followed in permitting the Oriental Nicety to enter into Indian territorial waters. Mr. Parikh submitted that under the Basel Convention, the country of export of the ship was required to inform the country of import of the movement of the ship in question and that it was non-hazardous and non-toxic. Mr. Parikh submitted that in the instant case such intimation was neither given nor was the ship certified to be free from hazardous and toxic substances.

10. It was also urged that the owners of the vessel were required to obtain clearance from the Government of India to bring the ship into Indian territorial waters, which was dependent upon the availability of landfill facilities, as also facilities for beaching. Mr. Parikh submitted that it is only after completion

of the aforesaid requirements, that the ship could be allowed entry into Indian territorial waters and to beach at any of the ship-breaking yards at any of the Ports designated for such purpose. Mr. Parikh submitted that in the absence of proper compliance with the norms laid down in the Basel Convention, the vessel ought not to have been permitted to enter into Indian territorial waters or the Port area at Alang by the Gujarat Pollution Control Board and the Gujarat Maritime Board. Mr. Parikh further submitted that now the vessel had been permitted to enter the Alang Ship-breaking Yard, further steps to dismantle the ship should not be permitted, without definite steps being taken to ensure that there were no hazardous substances on board the ship or that the ship itself was not a hazardous object.

11. Mr. Parikh further submitted that if during the dismantling of the ship any toxic or hazardous materials were found on board the ship or was found to be an integral part of the ship, adequate precautionary measures should be taken immediately to neutralize the same either by incineration or by creating adequate landfills for disposal of such waste.

12. We have carefully considered the submissions made on behalf of the respective parties in the light of the submissions made on behalf of Applicant, M/s Best Oasis Ltd., the owner of the vessel in question, that huge demurrage charges are being incurred by the ship owner each day. We are of the view that once clearance has been given by the State Pollution Control Board, State Maritime Board as well as the Atomic Energy Regulatory Board for the vessel to beach for the purpose of dismantling, it has to be presumed that the ship is free from all hazardous or toxic substances, except for such substances such as asbestos, thermocol or electronic equipment, which may be a part of the ship's superstructure and can be exposed only at the time of actual dismantling of the ship. The reports have been submitted on the basis of actual inspection carried out on board by the above-mentioned

authorities, which also include the Customs authorities. The Atomic Energy Regulatory Board has come up with suggestions regarding the removal of certain items of the ship during its dismantling. The suggestions are reasonable and look to balance the equities between the parties.

13. We, therefore, dispose of the two IAs which we have taken up for hearing and direct the concerned authorities to allow the ship in question to beach and to permit the ship owner to proceed with the dismantling of the ship, after complying with all the requirements of the Gujarat Maritime Board, the Gujarat Pollution Control Board and Atomic Energy Regulatory Board. It is made clear that if any toxic wastes embedded in the ship structure are discovered during its dismantling, the concerned authorities shall take immediate steps for their disposal at the cost of the owner of the vessel, M/s Best Oasis Ltd., or its nominee or nominees.

14. Before parting with the matter, we would like to emphasize that in all future cases of a similar nature, the concerned authorities shall strictly comply with the norms laid down in the Basel Convention or any other subsequent provisions that may be adopted by the Central Government in aid of a clean and pollution free maritime environment, before permitting entry of any vessel suspected to be carrying toxic and hazardous material into Indian territorial waters.

14. There will be no order as to costs.

K.K.T. I.As disposed of.

JAINENDRA SINGH

v.

STATE OF U.P. TR. PRINL. SEC. HOME & ORS.

(Civil Appeal No. 5671 of 2012)

JULY 30, 2012

[T.S. THAKUR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Service Law:

Termination – Constable in police department – Concealing certain relevant facts which he was called upon to disclose – At the time of his selection – Termination of his service after selection finalized and appointment made – Whether the termination on the ground of concealment justified – Conflicting views on the issue by various judgments passed by Division Bench of Supreme Court – Matter referred to Larger Bench for authoritative pronouncement on the issue.

Delhi Administration Through its Chief Secretary and Ors. vs. Sushil Kumar **1996 (11) SCC 605: 1996 (7) Suppl. SCR 199;** *Union of India and Ors. vs. M. Bhaskaran* **1995 Supp. (4) SCC 100: 1995 (4) Suppl. SCR 526;** *Regional Manager, Bank of Baroda vs. Presiding Officer, Central Govt. Industrial Tribunal and Anr.* **1999 (2) SCC 247;** *Kendriya Vidyalaya Sangathan and Ors. vs. Ram Ratan Yadav* **(2003) 3 SCC 437: 2003 (2) SCR 361;** *Secy., Deptt. of Home Secy. A.P. and Ors. vs. B. Chinnam Naidu* **2005 (2) SCC 746: 2005 (1) SCR 1147;** *R. Radhakrishnan vs. Director General of Police and Ors.* **(2008) 1 SCC 660: 2007 (11) SCR 456;** *Union of India and Ors. vs. Bipad Bhanjan Gayen* **(2008) 11 SCC 314: 2008 (8) SCR 99;** *Daya Shankar Yadav vs. Union of India and Ors.* **(2010) 14 SCC 103: 2010 (13) SCR 1076;** *State of West Bengal and Ors. vs. SK. Nazrul Islam* **2011 (10) SCC 184: 2011 (12) SCR 1033;** *Commissioner of Police and*

Ors. vs. Sandeep Kumar **(2011) 4 SCC 644:2011 (3) SCR 964:** *Commissioner of Police, Delhi and Anr. vs. Dhaval Singh* **1999 (1) SCC 246;** *Kamal Nayan Mishra vs. State of Madhya Pradesh and Ors.* **2010 (2) SCC 169: 2009 (16) SCR 237;** *Ram Kumar vs. State of U.P. and Ors.* **Civil Appeal No. 7106/2011 decided by Supreme Court on 19.8.2011 – referred to.**

Case Law Reference:

1996 (7) Suppl. SCR 199	**Referred to**	**Para 17**
1995 (4) Suppl. SCR 526	**Referred to**	**Para 18**
1999 (2) SCC 247	**Referred to**	**Para 19**
2003 (2) SCR 361	**Referred to**	**Para 20**
2005 (1) SCR 1147	**Referred to**	**Para 21**
2007 (11) SCR 456	**Referred to**	**Para 22**
2008 (8) SCR 99	**Referred to**	**Para 23**
2010 (13) SCR 1076	**Referred to**	**Para 24**
2011 (12) SCR 1033	**Referred to**	**Para 25**
2011 (3) SCR 964	**Referred to**	**Para 26**
1999 (1) SCC 246	**Referred to**	**Para 26**
2009 (16) SCR 237	**Referred to**	**Para 26**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5671 of 2012.

From the Judgment & Order dated 01.12.2010 of the High Court of Judicatute at Allahabad Writ Petition (C) No. 21900 of 2008.

Vineet Dhanda, Puneet Dhanda, JP Dhanda, Raj Rani Dhanda, Amrendra Kumar Singh, Abhijeet Shah for the Appellant.

Shobha Dikshit, Malvika Trivedi, Anuvrat Sharma, Alka Sinha, Gunnam Venkateswara Rao for the Respondents.

The Order of the Court was delivered by

O R D E R

FAKKIR MOHAMED IBRAHIM KALIFULLA,J. 1. Leave granted.

At the very threshold, we are confronted with a question as to which of the judgments which have taken conflicting views have to be followed in the matter of termination of a Constable in the Police Department, who concealed certain relevant facts which he was called upon to disclose after his selection was finalized and after order of appointment was issued by placing him on probation.

2. The brief facts of the case are; the appellant applied for the post of Constable pursuant to which he participated in the physical test held in the month of October, 2006. He having cleared the physical test was permitted to appear in the written examination which was held on 5.11.2006. Having come out successful in the written test also, he participated in the interview held in the month of November, 2006. After a subsequent medical examination, the appellant, along with others was declared fit and was sent for training.

3. At the time of consideration of the appellant's claim, a Declaration Form in the form of an Affidavit was called for in order to ascertain his conduct and involvement in any criminal or civil case. The appellant submitted the Declaration Form on 10.11.2006 by swearing to an affidavit.

4. In the said affidavit the appellant declared that he has not been convicted by any Court; that no criminal case was registered against him; that no criminal case was pending against him in any Court; that no criminal case was under investigation against him; that he had never been arrested by

police in connection with any criminal case; that he was never challaned in any criminal case and that his character was clean and bright. At the end of the declaration, in paragraphs 15-16 he declared that all the information/averments which he made in the affidavit were true and correct and if any information/ averment was found to be false or incorrect after his selection on the said post then his selection could be cancelled immediately without giving any notice and he could be removed from the training course.

5. He also fully understood the position that if any of the information/averment in that affidavit was found to be wrong or concealed then he would agree for all the legal proceedings that would be initiated against him.

6. However, it came to light that the appellant was involved in a criminal case for an offence falling under Sections 147,323,336, I.P.C. which was pending in the Court at the time of his selection though subsequently he was acquitted by the competent Court on 04.01.2007.

7. Since the appellant concealed his involvement in a criminal case, the Senior Superintendent of Police passed orders on 27.10.2007 terminating his appointment/ services on that ground.

8. Aggrieved by the said termination order, the appellant approached the High Court by filing a Writ Petition (C) No. 21900/2008 and by the impugned order the High Court declined to interfere with the order of termination holding that the appellant deliberately concealed the vital information in order to secure employment and subsequent acquittal would not enure to his benefit. The High Court while reaching upon the above conclusion, relied upon a decision of this Court in *Kendriya Vidyalaya Sangathan and Ors. Vs. Ram Ratan Yadav* – (2003) 3 SCC 437.

9. Besides the above decision, the learned counsel for the

appellant while seeking leave to challenge the order impugned placed reliance upon the three other decisions of this Court, namely, *Kamal Nayan Mishra Vs. State of Madhya Pradesh & Ors.*- 2010 (2) SCC 169; order dated 19.8.2011 in *Ram Kumar Vs. State of U.P. & Ors.* – Civil Appeal No. 7106/2011 and *Commissioner of Police and Ors. Vs. Sandeep Kumar* – (2011) 4 SCC 644.

10. Relying upon the above referred decisions, the learned counsel contended that a different view than what has been expressed by this Court in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) in the matter of employment in Police services has been stated and the appellant being identically placed, he is entitled for the same relief as was granted in the above referred to decisions.

11. Learned counsel for the State, however, contended that the decision reported in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) having laid down the principle after referring to the earlier decisions on this issue and that in a series of subsequent decisions, the said view having been followed consistently, no interference is called for to the order of the High Court impugned in this appeal.

12. While appreciating the respective contentions of the learned counsel for the parties and on perusing the decisions relied upon by the learned counsel for the appellant as well as the decision reported in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra), we feel that a detailed analysis is required to be made in order to find out whether the issue calls for further deliberations so as to arrive at an authoritative pronouncement.

13. We have come across the following decisions in which this Court has taken a similar view which has been propounded in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra). The said decisions are reported in *Union of India & Ors. Vs. M. Bhaskaran* - 1995 Supp. (4) SCC 100, Delhi

Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar -1996(11) SCC 605, *Regional Manager, Bank of Baroda Vs. Presiding Officer, Central Govt. Industrial Tribunal & Another* - 1999(2) SCC 247, Secy., *Deptt. of Home Secy., A.P. & Ors. Vs. B. Chinnam Naidu* - 2005 (2) SCC 746, *R. Radhakrishnan Vs. Director General of Police & Ors* - (2008) 1 SCC 660, *Union of India & Ors. Vs. Bipad Bhanjan Gayen* – (2008) 11 SCC 314, *Daya Shankar Yadav Vs. Union of India & Ors.*- (2010) 14 SCC 103, *State of West Bengal & Ors. Vs. SK. Nazrul Islam* - 2011 (10) SCC 184.

14. We also find that the following decisions have taken a different view than what has been expressed in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) i.e., *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* - 1999 (1) SCC 246, *Kamal Nayan Mishra Vs. State of Madhya Pradesh & Ors.* (supra), *Commissioner of Police & Ors. Vs. Sandeep Kumar* (supra) and the unreported judgment relied upon by the learned counsel for the appellant in *Ram Kumar Vs. State of U.P. & Ors.* (supra).

15. One common feature which we noted in all these cases is that all the above decisions were rendered by a Division Bench consisting of two- Judges alone. Though in the decisions in which the principle laid down in *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) has been either followed or similar view has been taken, we find a common thread in all those decisions in having laid down as a preposition of law that suppression of material information which a candidate was called upon to furnish and which he failed to do, such concealment would result in serious consequences and also not befitting the nature of service for which such recruitment was made, the State would be well within its powers to resort to cancellation of such appointment when the appointee was under-going probation in order to ensure cleanliness in the service.

16. We feel it appropriate to make a brief reference to the

principles laid down in the various decisions pro and cons in order to pass appropriate orders in this appeal.

17. In Delhi Administration through its *Chief Secretary and Ors. v. Sushil Kumar* (supra); this Court held:

> "3. It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. *The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof.* If the actual result happened to be in a particular way, the law will take care of the consequences. *The consideration relevant to the case is of the antecedents of the candidate.* Appointing authority, therefore, has rightly focused this aspect and found it not desirable to appoint him to the service.
>
> (Emphasis added)

18. In *Union of India & Ors. Vs. M. Bhaskaran* (supra), this Court held:

> *"6……Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such*

> *employment which would not have been made available to them* if they were not armed with such bogus and forged labourer service cards.
>
> xxx xxx xxx xxx xxx xxx xxx
>
> It was clearly a case of fraud on the appellant-employer. *If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned.* This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice.
>
> xxx xxx xxx xxx xxx xxx xxx
>
> The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. *No court should be a party to the perpetuation of the fraudulent practice.* It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was

continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here not there. *As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law.* Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits."

(Emphasis added)

19. In *Regional Manager, Bank of Baroda Vs. Presiding Officer, Central Govt. Industrial Tribunal and Anr.* (supra), this Court held:

"6.Learned counsel for the appellant submitted that once the Labour Court has found that the respondent was guilty of suppression of relevant facts and had also snatched an order of appointment which would not have been given to him had he not deliberately concealed the fact about the aforesaid prosecution against him for an offence under Section 307 of the Indian Penal Code, there was no question of awarding him any lesser punishment save and except confirming the order of termination. In this connection, he invited our attention to a decision of this Court in the case of *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100] wherein it has been clearly held that when appointment is procured by a workman on the basis of bogus and forged casual labourer's service card, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in favour of the workman or any estoppel against the employer and for such misconduct, termination would be justified and there was no question of holding any domestic enquiry.

7. There could be no dispute on this settled legal position……."

In this decision, the employee had already completed his probation and, however, having regard to the peculiar facts involved therein, this Court interfered with the order of termination. This Court at the end of the judgment has made it clear that the said order was rendered on the peculiar facts and circumstances of the case and would not be treated as a precedent in future.

20. In *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra), this Court laid down the law in no uncertain terms in para 12:

"12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/ or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a

teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open.

Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service.

In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of column nos. 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

(Emphasis added)

21. In *Secy. Deptt. Of Home Secy. A.P. & Ors. Vs. B.Chinnam Naidu* (supra), this Court held:

"7. xxx xxx xxx xxx xxx xxx

As is noted in Kendriya Vidyalaya Sangathan Case the object of requiring information in various columns like

column 12 of the attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. There can be no dispute to this position in law. But on the facts of the case it cannot be said that the respondent had made false declaration or had suppressed material information."

(Emphasis added)

Here again in the peculiar facts of the case, this Court thought it fit to interfere with the order of termination.

22. In *R. Radhakrishnan Vs. Director General of Police and Ors.* (supra), this Court held:

"10. *Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services.* Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed.

13. In the instant case, indisputably, the appellant had suppressed a material fact. In a case of this nature, we are of the opinion that question of exercising an equitable jurisdiction in his favour would not arise."

(Emphasis added)

23. In *Union of India and Ors. Vs. Bipad Bhanjan Gayen*- (supra), this Court held:

> "10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes a high level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated."
>
> (Emphasis added)

24. In *Daya Shankar Yadav Vs. Union of India & Ors.* (supra), all the earlier decisions right from *Delhi Administration through its Chief Secretary and Ors. Vs. Sushil Kumar* (supra) ending with *Union of India & Ors. Vs. Bipad Bhanjan Gayen* (supra) including *Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav* (supra) were considered in detail and the preposition of law was laid down as under:

> "16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment: i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and *(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."*
>
> (Emphasis added)

25. In *State of West Bengal and Ors. Vs. Sk. Nazrul Islam* (supra), this Court held:

> "3. On 28.09.2007, the respondent was supplied a verification roll for verification of his antecedents and the respondent filled the verification roll and submitted the same to the Reserve Officer, Howrah, on 29.09.2007. The verification roll of the respondent was sent to the District Intelligence Branch, Howrah, on 08.10.2007. In the course of enquiry, it came to light that he was involved in a criminal case involving offences under Sections 148/323/380/427/596, IPC in Bagnan PS Case No.97 of 2007 and after investigation, the charge-sheet had already been filed in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, and that the respondent had surrendered before the Court and had been granted bail. All these facts, however, had been concealed in Column 13 of the verification roll submitted by the respondent in which he was required to state whether he was ever arrested, detained or convicted. The authorities, therefore, did not appoint the respondent as a constable.
>
> 5. We have heard the learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148/323/380/427/596, IPC, against the respondent was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any mandamus could have been issued by the High Court to the authorities to appoint the respondent as a constable. *Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is*

suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/427/596 IPC, he cannot possibly be held to be suitable for appointment to the post of constable."

(Emphasis added)

26. As against the above decisions, a contrary view has been expressed by this Court in *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra), *Kamal Nayan Mishra Vs. State of Madhya Pradesh and Ors.* (supra), *Commissioner of Police and Ors. Vs. Sandeep Kumar* (supra) and in an un-reported decision in *Ram Kumar Vs. State of U.P. and Ors.* (supra).

27. In *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra), the factum of concealment of relevant information, namely, pendency of a criminal case against the concerned applicant was not in dispute. This Court, however, distinguished the said case by stating that after the provisional selection as well as the interview and before the order of appointment was issued, he voluntarily disclosed the pending criminal case by stating that by inadvertence he omitted to mention the same in the appropriate column and that he was subsequently acquitted. The said criminal case was also noted while granting the relief in favour of the candidate. The ratio laid down in the decision in Delhi Administration Through its *Chief Secretary & Ors. Vs. Sushil Kumar* (supra) was distinguished by stating that no such corrective measure was initiated by the candidate in *Delhi Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar* (supra) case. In *Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh* (supra) decision it was held:

"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal

case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court — it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above.

(Emphasis added)

28. In the decision in, *Kamal Nayan Mishra Vs. State of Madhra Pradesh & Ors.* (supra), the ratio decidendi in

Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav (supra) has been set out in para 14:

> "14. Therefore, the ratio decidendi of Ram Ratan Yadav is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. *The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.*
>
> (Emphasis added)

In the said case, the appellant was appointed much earlier and that while he was in service he was prosecuted for involvement in a criminal case for an offence u/s 148,324/149,326/149 and 506 IPC in which he was acquitted by the Criminal Court on 9.9.2004. The information furnished by him after more than a decade of his employment and the procedure followed while taking a decision in passing the ultimate order, this Court held that the appellant therein was entitled for the relief of reinstatement.

29. In *Commissioner of Police and Ors. Vs. Sandeep Kumar* (supra), the order of termination was interfered with holding as under:

> 12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be take in the matter."

This was also a case where the candidate after qualifying in all the tests, for the first time in the attestation form, disclosed his involvement in a criminal case which was compromised and subsequently based on such compromise he was acquitted. A Show-Cause notice was also issued to him asking him to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the criminal case and had made a wrong statement in his application form. A challenge was made by him before the Administrative Tribunal which declined to interfere. However, the High Court granted the relief, set aside the proposal for cancellation of his candidature. This Court also upheld the order of the High Court by granting the relief as quoted in para 12 above.

30. In the unreported decision in *Ram Kumar Vs. State of U.P. & Ors.*(supra), while suppression of the registration of a criminal case against the appellant therein was not in dispute; it was held that what was required to be considered by the appointing authority was to satisfy himself as to the suitability of the applicant to the post based on the nature of crime alleged against the applicant. It was held:

> "9. The order dated 18.07.2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15.01.2007 of the Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 08.08.2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular

because he did not furnish in his affidavit in the proforma of verification roll that a criminal case has been registered against him. As has been stated in the instructions in the Government Order dated 28.04.1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.

Ultimately the appointing authority was directed to take back the applicant without grant of any back wages.

31. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two-Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

(ii) Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to

appoint a person to a disciplined force can it be said to be unwarranted.

(iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

(iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

(v) Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

(viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case,

inasmuch as such a situation would make a person undesirable or unsuitable for the post.

(ix) An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

(x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

32. When we consider the above principles laid down in majority of the decisions, the question that looms large before us is when consideration of such claim by the candidates who deliberately suppressed information at the time of recruitment; can there be different yardsticks applied in the matter of grant of relief.

33. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the above mentioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the Courts to apply the law uniformly while dealing with such issues.

34. With that view, we feel it appropriate to refer this matter to be considered by a larger Bench of this Court. Registry is directed to place all the relevant documents before the Hon'ble the Chief Justice for constitution of a larger Bench.

K.K.T. Referred to larger Bench.

KRISHNAPPA & ORS.

v.

STATE OF KARNATAKA BY BABALESHWARA POLICE STATION

(Criminal Appeal No. 984 of 2010 etc.)

JULY 31, 2012.

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860:

ss. 302/149 – Murder committed by members of an unlawful assembly – Conviction by trial court of 3 accused – High Court acquitting one of them but reversing acquittal of four more accused – Held: The prosecution has clearly established with ample evidence that A-13 and A-14 had murdered the deceased – Further, A-1, A-15, A-16 and A-21 were members of the same assembly which has caused murder of deceased – They had dragged the deceased after first assault and contributed in preventing him from escaping the assault of A13 and A14 – Therefore, A-1, A-15, A-16, A-21 are guilty of murder along with A-13 and A-14 u/s 302 read with s. 149 IPC – FIR – Delay in registration of, explained.

The six appellants (A-13, A-14, A-1, A-15, A-16 and A-21 along with others were prosecuted for causing the death of the father of PW-1. The prosecution case was that there was a long standing enmity between the deceased and the families of the accused persons, as the grand father of the deceased had been killed by the members of the families of the accused. This enmity further intensified due to political rivalry. On the date of the incident at about 10 A.M., accused A-1, A-13 to A-17, and A-21, armed with axes, chopper and clubs reached the place of occurrence. A-13 and A-14 assaulted the victim with axe. A-1, A-15, A-16 and A-21 dragged the

victim. Again A-13, A-14 and A-17 assaulted the victim. The accused threatened the bystanders. Meanwhile A-2 to A-12, A-18 to A-20, A-22 and A-24 also reached the scene of occurrence and assaulted the victim with hands and also kicked him. Thereafter all the accused left the place with their weapons. PW-1 went to his elder brother and both of them reached the Police Station at 11.15 A.M. On arrival of the SHO, the written complaint of PW-1 was registered at 12.00 noon. The trial court convicted A-13, A-14 and A-17 u/s 302/149 IPC. The High Court allowed the appeal of the State and also convicted A-1, A-15, A-16 and A-21 u/s 302/149 IPC. The appeal of A-13 and A-14 was dismissed. However, A-17 was acquitted.

Dismissing the appeals, the Court

HELD: 1.1. The provisions of s.149 IPC will be attracted whenever any offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that the offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of s.149 IPC. [para 20] [1077-C-G]

Lalji v. State of U.P., **1989 (1) SCR 130 = (1989) 1 SCC 437;** *Allauddin Mian v. State of Bihar* **1989 (2) SCR 498 = (1989) 3 SCC 5;** *Ranbir Yadav v. State of Bihar* **1995 (2) SCR 826 = (1995) 4 SCC 392;** *State v. Krishan Chand* **2004 (3) Suppl. SCR 640 = (2004) 7 SCC 629;** *Deo Narain v. State*

of Uttar Pradesh **2010 (9) SCR 349 = (2010) 12 SCC 298 – relied on**

1.2. In the instant case, the prosecution has clearly established with ample evidence that accused- A13 and A14 had murdered the deceased. Further, accused- A1, A15, A16 and A21 were members of the same assembly which caused the murder of the deceased, in terms of s.149 IPC, as they had dragged the deceased after the first assault and contributed in preventing the deceased from escaping the assault of A13 and A14. Therefore, accused A1, A15, A16, A21 are guilty of murder along with A13 and A14 u/s 302 read with s. 149 IPC. There is no infirmity in the impugned judgment and order passed by the High Court. [para 21, 22 and 25] [1078-A-D-G]

Sahdeo v. State of U.P. **2004 (1) Suppl. SCR 918 = (2004) 10 SCC 682 and** State of *Uttar Pradesh v. Kishanpal* **2008 (11) SCR 1048 = (2008) 16 SCC 73 – held inapplicable.**

2. The delay in registering FIR is justified as the complainant had to travel 30 kms on a mud road to reach the Police Station from the scene of crime. Also, the absence of S.I. in the Police Station further contributed in delay in registering the FIR. [para 24] [1078-F]

Case Law Reference:

2004 (1) Suppl. SCR 918	**held inapplicable**	**para 15**
2008 (11) SCR 1048	**held inapplicable**	**para 15**
1989 (1) SCR 130	**relied on**	**para 20**
1989 (2) SCR 498	**relied on**	**para 20**
1995 (2) SCR 826	**relied on**	**para 20**
2004 (3) Suppl. SCR 640	**relied on**	**para 20**

2010 (9) SCR 349 relied on para 20

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 984 of 2010.

From the Judgment & Order dated 16.6.2009 of the High Court of Karnataka, Circuit Bench at Gulbarga in Criminal Appeal No. 1185 of 2006.

WITH

Crl. A. No. 1147 of 2012.

T.S. Doabia, Sharan Thakur (for Dr. Sushil Balwada), Rajani K. Prasad (for Abha R. Sharma) for the Appellant.

Anitha Shenoy, Rashmi Nandakumar for the Respondent.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Delay Condoned and Leave granted in SLP(Crl.) No. 5830 of 2012 (Criminal Miscellaneous Petition No.23190 of 2011).

2. Since both Criminal appeals arise out of the common judgment of the High Court, we propose to dispose of the same by this common judgment.

3. These appeals are directed against the common judgment and order passed by the High Court of Karnataka at Gulbarga in Criminal Appeal No. 1185 of 2006 and Criminal Appeal No. 824 of 2006, dated 16.06.2009, whereby and where under, the High Court has reversed the order of acquittal of accused Nos. A1, A15, A16, A21 and confirmed the order of conviction of accused Nos. A13 and A14 passed by the Sessions Judge, Bijapur, in Sessions Case No. 82 of 2002. The appellants are convicted under Section 302/149 IPC and sentenced to imprisonment for life.

4. The facts of the case, in brief, as put forth by the

prosecution are:- Shri. Bhimappa Biradar (deceased), the father of the Complainant had long standing enmity with Mansani family and Sirabur family, as 30 years ago, members of Mansani and Sirabur family had murdered the grand father of the deceased. Subsequently, this enmity further intensified due to political rivalry and their relationship became more hostile.

5. It is the case of prosecution that, at 10.00 am on 15.09.2001, the deceased Bhimappa Biradar (for short `Bhimappa') was sitting on the platform of village well and his son PW1 was getting his motor cycle tyres filled with air in the shop of PW-11, situated right opposite to the village well. PW-4 (grand daughter of deceased) informed the Bhimappa (deceased) that his presence was required in his house; the Bhimappa (deceased) got up and started proceeding towards his house. At that time, Maningappa Sannasiddappagol (A1) holding axe, Tippanna Ningappa Kundaragi (A13) holding club, Shivappa Tippanna Kundaragi (A14) holding axe, Krishnappa alias Kristappa Shashappa Biradar (A15) holding club, Jaggappa Mallappa Biradar (A16) holding club, Prakash Mallappa Shirabur (A17) holding chopper and Malappa Shashappa Biradar (A21) holding club came running from the side of the well. In response to this, the Bhimappa (deceased) tried to flee away but the above accused persons caught hold of him. Thereafter, the deceased sat down pleading not to assault. A13 and A14 unperturbed to deceased's imploration for mercy, assaulted him with axe due to which deceased's fingers of hand got cut. He sustained severe head injuries and fell down on the ground. Thereafter, A1, A15, A16 and A21 dragged Bhimappa (deceased) to a couple of feet to the road. Then, A13, A14 and A17 again assaulted the Bhimappa (deceased) on the neck, shoulders and legs. The above accused also threatened the bystanders with dire consequences, if any one attempt to intervene to rescue the deceased. Thereafter, A2 to A12, A18 to A20, A22 and A24 came running to the scene and assaulted the deceased with

hands and kicked him. After this assault, the above accused persons went away from the scene along with their weapons.

6. After this incident, PW1 went to his elder brother Venkappa who was constructing a house and from there, they both went to Babaleshwar Police Station at about 11:15 am to file a complaint but PSI (SHO)-PW18 was on duty at some other village. On arrival of PW18, the written complaint of PW1 was lodged at 12:00 Noon. On the basis of said complaint, the First Information Report dated 15.09.2001 in Crime No. 122/2001 was registered and sent to the Court of CJM, Bijapur.

7. Thereafter, all the accused were arrested within a week from the date of incident. Further, recoveries of blood stained weapons used for the commission of offence were made under a mahazar. The blood stained clothing of the deceased along with blood stained weapons were sent to the Forensic Science Laboratory. The Serology report and FSL confirmed that stains on the articles found are of human blood.

8. After investigation, the police charge-sheeted all the accused persons for committing offences punishable under Sections 143, 147, 148, 504, 506 (Part II) and 302 read with Section 149 IPC.

9. The Principal Sessions Judge, Bijapur had taken cognizance of the offence under Section 193, Cr.P.C. and registered the case as S.C. No. 82/2002. The learned Judge, on the basis of the allegations made in the charge-sheet, framed the charges against all the accused persons under Sections 143, 147, 148, 504, 506(Part II) and 302 read with Section 149 IPC. The accused pleaded that they are totally innocent and have been falsely implicated.

10. In order to prove the charges, the prosecution examined 18 witnesses in support of their case. The accused persons did not lead any evidence, whatsoever. The learned Sessions Judge, after recording the statement of the accused

persons under Section 313 of the Cr.P.C. and after considering the evidence on record, has come to the conclusion that A13, A14 and A17 are directly responsible for the death of deceased and therefore, guilty of murder punishable under Section 302 read with Section 149 of IPC. The learned Sessions Judge acquitted A1, A15, A16 and A21 on the ground that there acts are not solely responsible for the death of the deceased as they were merely holding Kalli Katagi and just prevented the deceased from escaping the assault made by A13, A14 and A17 and further, the post mortem report does not disclose any abrasion or injury by use of Kalli Katagi.

11. Aggrieved by the judgment and order so passed by the learned Sessions Judge, the appellants, A13, A14 and A17 preferred Criminal appeal No. 824 of 2006 before the High Court. Similarly, the State had carried the matter in Criminal appeal No. 1185 of 2006 before the High Court against the acquittal of A1, A15, A16 and A21.

12. The High Court, after perusing the entire evidence on record, allowed the appeal filed by the State and found it fit not to accept the conclusion of acquittal arrived by the learned Sessions Judge with regard to acquittal of A1, A15, A16 and A21, convicting them of charges punishable under Section 302 read with Section 149 of the IPC and sentencing them to undergo imprisonment for life. The appeal filed by the appellants- A13 and A14 came to be dismissed and the order of conviction and sentence passed by the Learned Sessions Judge was confirmed by the High Court. The High Court has allowed the appeal filed by A-17 (Prakash Mallappa Shirabur) and the conviction passed against A17 was set aside and he was acquitted.

13. Feeling aggrieved by this judgment of conviction and order of sentence passed by the High Court, the present appellants-accused are before us in these appeals.

14. Shri. T.S. Doabia, learned Senior Counsel appears for

the accused- A1, A15, A16 and A21 and accused A13 and A14 are represented by Ms. Rajani K. Prasad. Ms. Anita Shenoy, learned Counsel appears for the State of Karnataka.

15. Shri. T.S. Doabia, learned Senior Counsel contends that the view taken by the Trial Court was just and proper and the High Court ought not to have interfered with an order of acquittal. Learned Senior Counsel also submitted that the Trial Court in its judgment has given plausible and cogent reasons for acquitting these accused as there was no overt act on their part which has caused the death of the deceased in terms of Section 149 of IPC. He would submit that these accused were just carrying Kalli Katagi and had not dealt any blow by their Kalli Katagi on the deceased and this fact is corroborated by the post mortem report of the deceased. Therefore, they are not responsible for the murder of the deceased and deserves to be acquitted. He would submit that PW1's evidence as an eye witness is under serious doubts because PW9 in his deposition says that PW1 and his brother came to the spot after 30 minutes of the occurrence of the offence and asked him to accompany them to Police Station to file a complaint. He would further submit that there are contradictions in the statements of the eye witnesses regarding the arrival of the accused on the spot. PW1 stated that the accused came from behind the bench of the well. PW3 stated that they came from behind the road. PW4 says they came from back side of the well, whereas, PW2, PW5 and PW6 stated that they came from the right side of the well. He would further contend that there is another contradiction in the depositions of the eye witnesses with respect to the fact whether deceased was dragged or lifted to the road after the initial assault on his body. The statements of PW1, PW3, PW4 and PW6 shows that the deceased was dragged to the road but the statement of PW2 and PW5 shows that the deceased was lifted to the road. Shri. Doabia would rely on the decisions of this Court in *Sahdeo v. State of U.P.,* (2004) 10 SCC 682 and *State of Uttar Pradesh v. Kishanpal,* (2008) 16 SCC 73 in support of his submissions.

16. Ms. Rajani K. Prasad, learned Counsel would submit that there is a delay in registering the FIR and subsequent delay in submitting the same to the Court. She would contend that the incident took place at 10:00 am in the morning but the FIR was registered at 12:00 Noon, after two hours of the occurrence of such a grievous nature of incident. She would further submit that this FIR was delivered to the Court of C.J.M., Bijapur at 6.45 PM, after much unexplained delay, in order to manipulate the facts of occurrence of offence.

17. Per Contra, Ms. Anitha Shenoy, learned Counsel appearing for the State would submit that Section 149 of IPC would squarely apply to the accused in the present case as once the membership of unlawful assembly is established, then, every member of the group is vicariously liable. She would submit that the testimony of all the eye witnesses unanimously depicts that all the accused were carrying weapons and have taken active participation in the occurrence of the offence. She would submit that the incident occurred in a very short span of time, therefore any parrot like version cannot be expected from the eye witnesses. She would submit that the Statement under Section 166 Cr.P.C. was recorded on the same day of the incidence. She would further submit that FIR mentions the name of all the accused persons and this has been further corroborated by two independent witnesses and one witness is related to both the complainant and the accused. She would also submit that Kalli Katiga has been recovered from accused-A1, A15, A16 and A21, who had prevented the deceased from escaping the assault from A13, A14, A17 and they further dragged the deceased towards the road after the first assault and thereby facilitated A13 and A14 for assaulting the deceased for the second time.

18. In response to the submissions of Shri. Doabia that PW1 came later to the scene, Ms. Shenoy would contend that PW1 came back to the scene after half an hour along with his brother as explained by PW9 in his deposition and this was

certainly not the first time he came to the spot. She would further submit that there is no delay in filling the FIR as the Complainant had to travel nearly 30 km on the mud road to reach the Police Station and thereafter, he waited for half an hour for the Sub Inspector of Police to arrive at the Police Station.

19. In the backdrop of aforesaid arguments advanced by the parties, we will examine the contentions advanced by the learned Counsel for the parties with regard to the role of accused and application of Section 149 of IPC.

20. It is now well settled law that the provisions of Section 149 IPC will be attracted whenever any offence committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or when the members of that assembly knew that offence is likely to be committed in prosecution of that object, so that every person, who, at the time of committing of that offence is a member, will be also vicariously held liable and guilty of that offence. Section 149 IPC creates a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. This principle ropes in every member of the assembly to be guilty of an offence where that offence is committed by any member of that assembly in prosecution of common object of that assembly, or such members or assembly knew that offence is likely to be committed in prosecution of that object. [*Lalji v. State of U.P.,* (1989) 1 SCC 437; *Allauddin Mian v. State of Bihar,* (1989) 3 SCC 5; *Ranbir Yadav v. State of Bihar,* (1995) 4 SCC 392]. The factum of causing injury or not causing injury would not be relevant, where accused is sought to be roped in with the aid of Section 149 IPC. The relevant question to be examined by the court is whether the accused was a member of an unlawful assembly and not whether he actually took active part in the crime or not. [*State v. Krishan Chand,* (2004) 7 SCC 629; *Deo Narain v. State of Uttar Pradesh,* (2010) 12 SCC 298].

21. We have carefully perused the relevant records and statements of the eye witnesses in the case. In our opinion, the prosecution has clearly established with ample evidence that accused- A13 and A14 had murdered the deceased. We are in agreement with the view taken by the Trial Court and High Court. Therefore, the High Court is right in dismissing the appeal against the order of conviction passed by the learned Sessions Judge.

22. We are also of the opinion that accused- A1, A15, A16 and A21 were members of the same assembly which has caused the murder of the deceased, in terms of Section 149 IPC, as they had dragged the deceased after first assault and contributed in preventing the deceased from escaping the assault of A13 and A14. Therefore, accused A1, A15, A16, A21 are guilty of murder along with A13 and A14 under Section 302 read with Section 149 IPC.

23. We are afraid that the decisions relied on by Shri. Doabia, learned Senior Counsel would not come to assist the accused, as in the present case, there is clear evidence of overt act on the part of the accused- A1, A15, A16 and A21 who dragged the deceased and prevented him from escaping the fatal assault to his body.

24. Moreover, the delay in registering FIR is justified as the complainant had to travel 30 kms on a mud road to reach the Police Station from the scene of crime. Also, the absence of S.I. in the Police Station further contributed in delay in registering the FIR.

25. In the result, we do not find any infirmity in the impugned judgment and order passed by the High Court. Therefore, these appeals deserves to be dismissed and, accordingly, they are dismissed.

Ordered accordingly.

R.P. Appeals dismissed.

THE ORIENTAL INSURANCE CO. LTD.
v.
SIBY GEORGE & ORS.
(Civil Appeal No.5669 of 2012)

JULY 31, 2012

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

WORKMAN'S COMPENSATION ACT, 1923:

ss. 3 and 4-A – Liability to pay compensation and interest on delayed payment – Relevant date – Held: Is the date of accident and not the date of adjudication of the claim nor the date of filing of the claim petition – Compensation becomes payable as soon as the injury is caused.

The instant appeal was filed by the Insurance Company challenging the order of the Commissioner directing it to pay simple interest @ 12% per annum from the date of accident. Relying upon the decision in *Mubasir Ahmad*[1] **and** *Mohd. Nasir*[2], **it was contended for the appellant that the Commissioner erred in directing for payment of interest from the date of the accident and not from the date of the order.**

Dismissing the appeal, the Court

HELD: 1.1. As has been held by this Court in *Pratap Narain Singh Deo's** **case and** *Valsala's*** **case the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. Compensation becomes payable as soon as**

1. *National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr.* 2007 (2) SCR 117.
2. *Oriental Insurance Company Limited vs. Mohd. Nasir and Anr.* 2009 (8) SCR 829.

the injury is caused. It cannot be said that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in *Mubasir Ahmed* **and** *Mohd. Nasir* **insofar as they took a contrary view to the earlier decisions in** *Pratap Narain Singh Deo* **and** *Valsala* **do not express the correct view and do not make binding precedents. [para 8, 9 and 12] [1088-A-B; 1088-E-F]**

******Pratap Narain Singh Deo. Vs. Shrinivas Sabata and Anr.*, **1976 (2) SCR 872 = AIR 1976 SC 222;** ********Kerala State Electricity Board vs. Valsala K.*, **1999 (2) Suppl. SCR 657 = AIR 1999 SC 3502 – relied on**

United India Insurance Co. Ltd. vs. Alavi, **1998(1) KerLT 951(FB) – stood approved**

National Insurance Co. Ltd. vs. Mubasir Ahmed and Anr. **2007 (2) SCR 117 = (2007) 2 SCC 349** *Oriental Insurance Company Limited vs. Mohd. Nasir and Anr.* **2009 (8) SCR 829 = (2009) 6 SCC 280 – stood disapproved.**

1.2. Sub-s. (3) of s. 4-A of the Workman's Compensation Act, 1923 is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. On a plain reading of the provisions of sub-s. (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is

required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default *per se*. [Para 7] [1085-A-E]

Case Law Reference:

2007 (2) SCR 117	**stood disapproved**	**para 4**
2009 (8) SCR 829	**stood disapproved**	**para 5**
1976 (2) SCR 872	**relied on**	**Para 8**
1999 (2) Suppl. SCR 657	**relied on**	**para 9**
1998 (1) Ker LT 951 (FB)	**approved**	**para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5669 of 2012.

From the Judgment & Order dated 22.7.2009 of the High Court of Kerala at Ernakulam in MFA No. 172 of 2009.

Vishnu Mehra, Sakshi Gupta (for Pramod Dayal) for the Appellant.

Renjith B. Marar (for Sajith P.) for the Respondents.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

2. The short question that arises for consideration in this appeal is when does the payment of compensation under the Workmen's Compensation Act, 1923 (hereinafter the Act) become due and consequently what is the point in time from which interest would be payable on the amount of compensation as provided under section 4-A (3) of the Act.

3. In this case, the Commissioner for Workmen's Compensation, Ernakulam, by his order dated November 26, 2008 in WCC No.67 of 2006 directed for payment of simple

interest at the rate of 12% per annum **from the** *date of the accident* on July 12, 2006. The appellant's appeal (MFA No.172 of 2009) against the order of the Commissioner was dismissed by the Kerala High Court by order dated July 22, 2009 as barred by limitation. Against the order of the High Court the appellant filed the special leave petition (giving rise to this appeal) in which notice was issued "limited to the interest".

4. Mr. Mehra, learned counsel appearing for the appellant, submitted that the learned Commissioner was wrong in directing for payment of interest from the date of the accident and any interest on the amount of compensation would be payable only from the date of the order of the Commissioner. In support of the submission, he relied upon a decision of this Court in *National Insurance Co. Ltd.* vs. *Mubasir Ahmed and Anr*. (2007) 2 SCC 349, in which it was held that the compensation becomes due on the basis of the adjudication of the claim and hence, no interest can be levied prior to the date of the passing of the order determining the amount of compensation. In paragraph 9 of the decision the Court held and observed as follows:-

> "9…..In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. *Obviously it cannot be the date of accident. Since no indication is there as to when it becomes due, it has to be taken to be the date of adjudication of the claim.* This appears to be so because Section 4-A (1) prescribes that compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming

due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

(empasis added)

5. Learned counsel also invited our attention to another decision of the Court by which a number of appeals and special leave petitions were disposed of and which is reported as *Oriental Insurance Company Limited* vs. *Mohd. Nasir and Anr.* (2009) 6 SCC 280. In this decision the Court held that "*there cannot be any doubt whatsoever that interest would be from the date of default and not from the date of award of compensation*" (paragraph 47). It then went on to say that the Act does not prohibit grant of interest at a reasonable rate from the date of filing of the claim petition till an order is passed on it, adding that the higher, statutory rate of interest under sub-section (3) of section 4 would be payable in a case that attracted that provision and for which "a finding of fact as envisaged therein has to be arrived at". The Court then referred to paragraph 9 of the decision in *Mubasir Ahmad* (extracted above) but declined to follow it observing that the earlier decision had not considered the aspect of the matter as was being viewed in the case of *Mohd. Nasir*. In *Mohd. Nasir* the Court finally directed for payment of interest at the rate of 7½% per annum from the date of filing the application till the date of the award, further observing that thereafter interest would be payable at the rate as directed in the order passed by the Commissioner. (See paragraphs 47 to 50 of the judgment).

6. The view taken by the Court in *Mohd. Nasir* that the rate of interest provided under sub-section (3) of section 4-A would

apply only in case the "finding of fact as envisaged therein" is arrived at by the Commissioner, it must respectfully be stated, seems to result from the mixing up of 'interest due to default in payment of compensation' and 'penalty for an unjustified delay in payment of compensation' and is based on a misreading of the sub-section (3) of section 4-A.

Sections 4-A (1) and (3) are as under:-

4-A. Compensation to be paid, when due and penalty for default. – (1) compensation under section 4 shall be paid as soon as it falls due.

(2) xxx xxx xxx

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation. - xxx xxx xxx

(3A) xxx xxx xxx

7. It is, thus, to be seen that sub-section (3) of section 4-A is in two parts, separately dealing with interest and penalty in clauses (a) and (b) respectively. Clause (a) makes the levy of interest, with no option, in case of default in payment of compensation, without going into the question regarding the reasons for the default. Clause (b) provides for imposition of penalty in case, in the opinion of the Commissioner, there was no justification for the delay. Before imposing penalty, however, the Commissioner is required to give the employer a reasonable opportunity to show cause. On a plain reading of the provisions of sub-section (3) it becomes clear that payment of interest is a consequence of default in payment without going into the reasons for the delay and it is only in case where the delay is without justification, the employer might also be held liable to penalty after giving him a show cause. Therefore, a finding to the effect that the delay in payment of the amount due was unjustified is required to be recorded only in case of imposition of penalty and no such finding is required in case of interest which is to be levied on default *per se*.

8. Now, coming back to the question when does the payment of compensation fall due and what would be the point for the commencement of interest, it may be noted that neither the decision in *Mubasir Ahmed* nor the one in *Mohd. Nasir* can be said to provide any valid guidelines because both the decisions were rendered in ignorance of earlier larger Bench decisions of this Court by which the issue was concluded. As early as in 1975 a four Judge Bench of this Court in *Pratap Narain Singh Deo.* Vs. *Shrinivas Sabata and Anr.*, AIR 1976 SC 222 directly answered the question. In paragraphs 7 and 8 of the decision it was held and observed as follows:-

"7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in

the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. *The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section* **19.** What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. *There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.*

8. It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the

respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in *Kerala State Electricity Board* vs. *Valsala K.*, AIR 1999 SC 3502 answered the question in the negative holding, on the authority of *Pratap Narain Singh Deo,* that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

> "1.The neat question involved in these special leave petitions is whether the amendment of Ss.4 and 4A of the Workmen's Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?
>
> 2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.
>
> 3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata,* (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.

10. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd*. vs. *Alavi*, 1998(1) KerLT 951(FB) and approved it in so far as it followed the decision in *Pratap Narain Singh Deo*.

11. The decisions in *Pratap Narain Singh Deo* was by a four Judge Bench and in Valsala by a three Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* and *Mohd. Nasir,* each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* and *Valsala* were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* and *Mohd. Nasir*.

12. In light of the decisions in *Pratap Narain Singh Deo* and *Valsala*, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in *Mubasir Ahmed* and *Mohd. Nasir* insofar as they took a contrary view to the earlier decisions in *Pratap Narain Singh Deo* and *Valsala* do not express the correct view and do not make binding precedents.

13. In light of the discussion made above, we find no merit in the appeal and it is dismissed with costs amounting to Rs.20,000/-. The amount of cost must be paid to the respondents within six weeks from today.

R.P. Appeal dismissed.

M/S. OPTIEMUS INFRACOM LTD. ETC.
v.
M/S. ISHAN SYSTEMS PVT. LTD. & ANR.
(Civil Appeal No(s). 5696 of 2012 etc.)

AUGUST 1, 2012

[ALTAMAS KABIR AND J. CHELAMESWAR, JJ.]

CONSTITUTION OF INDIA,1950:

Art.226 – Writ petition before Allahabad High Court against order of debt Recovery Tribunal Delhi – Maintainability of – Held: In the subsequent writ petition filed by the appellant the said High Court has held that it had no jurisdiction to entertain the writ petition and dismissed the same accordingly – Jurisdiction.

Art.226– Writ petition challenging the order of Debt Recovery Tribunal by which the application challenging the auction of property was rejected– High Court found "no good ground to interfere with the order of the appellate authority", however, it gave direction to Debt Recovery Tribunal to decide the application and also restrained the auction purchaser for making any further transfer of the property – Held: It is true that the impugned order has more or less worked itself out, but the practice which was adopted by the High Court, is not only arbitrary, but also contrary to the concept of the principles of natural justice – Since the writ petition was to be dismissed without issuing notice, it should have been dismissed without giving any further directions in the matter – If there was any intention on the part of the high court to protect the properties in question during the pendency of the matter before the Debts Recovery Tribunal, the proper course of action would have been to issue notice, and, if necessary, pass interim orders and after hearing the parties to pass final orders in the

matter – The impugned judgment to the extent it restrains the appellants from alienating or encumbering the property, is set aside – Natural Justice – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – s.17-A.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5696 of 2012.

From the Judgment & Order dated 14.2.2012 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 8409 of 2012.

WITH

C.A. No. 5697 of 2012

Mukul Rohtagi, Nageshwar Rao, K.K. Venugopal, Ranjeet Kumar, Subramonium Prasad, Varun Tandon, Suresh Dobhar, Rahul Tyagi, Ruchi Kohli for the Appellant.

Chetan Sharma, Sameer Vashisht, Kanika Singh, Ashok Mathur for the Respondents.

The Order of the Court was delivered

O R D E R

1. Two Special Leave Petitions have been filed against the judgment and order dated 14th February, 2012, passed by the Allahabad High Court, in Civil Miscellaneous Writ Petition No.8409/2012.

2. The first Special Leave Petition has been filed by M/S. OPTIEMUS INFRACOM LTD., being SLP(C).....CC 12128/12. the second Special Leave Petition has been filed by M/S. PHOENIX ARC PVT.LTD., being SLP(C).....CC 12468/12.

3. Delay condoned.

4. Leave granted in both the Special Leave Petitions.

5. Writ Petition No.8409 of 2012, was filed by the respondent, M/S. ISHAN SYSTEMS PVT.LTD.& ANR., against the judgment and order dated 11th April, 2011, whereunder the property of the respondent/judgment-debtor Co. was put to auction. An application had been filed by the respondent-company before the Debts Recovery Tribunal complaining of violation of the statutory rules which regulate the auction of property. Other grounds were also taken, but the same were rejected by the High Court. In fact, the High Court, after examining the records of the writ petition, had found no good ground to interfere with the order of the Appellate Authority. Instead of stopping there, the High Court went on further to give various directions to the Debts Recovery Tribunal, to proceed and decide the application, which had been filed by the respondent No.1/petitioner, being S.A.No.714/2011. By another direction the auction purchaser was restrained from making any further transfer of the property in question and any construction raised would abide by the orders to be passed in the pending application before the Debts Recovery Tribunal. With the aforesaid directions, the High Court disposed of the writ petition finally.

6. The said judgment and order of the High Court had been questioned on the ground that having found no ground to interfere with the order of the Appellate Authority, the learned Judge of the High Court should not have passed other orders, and, in particular, an order of injunction, which was to the prejudice of the appellant before us, without issuing notice or giving the appellant an opportunity of hearing.

7. Since the writ petition was disposed of on the very first date, without notice to the respondents, there was no occasion to consider the competence of the Allahabad High Court to entertain the writ petition. Subsequently, another writ petition was filed by the respondents herein, being No.35215 of 2012, before the Allahabad High Court, for quashing the order dated

10th July, 2012, which had been passed by the D.R.T.-III, Delhi, by which the application filed by the respondents herein under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act), was rejected. In the said petition, the question of jurisdiction was raised and was heard and decided against the respondents herein. In fact, reference was made in the judgment delivered on 30th July, 2012, to the earlier writ petition and it had been observed that although, the earlier writ petition had been entertained by the Allahabad High Court, the issue relating to jurisdiction had not been gone into, since the writ petition had been disposed of on the first date, without hearing the respondents.

8. Ultimately, the learned Judge accepted the preliminary objections raised on behalf of the appellants herein and held that the Allahabad High Court had no jurisdiction to entertain the writ petition and dismissed the same accordingly.

9. Both, S/Shri Venugopal and Ranjit Kumar, learned senior advocates appearing for the appellants in these two appeals, submitted that, although, the order of the High Court has to some extent been worked out and the sale which had been effected has been confirmed, the only question which remained to be considered was the competence of the Allahabad High Court to entertain a writ petition from an order passed by the Debts Recovery Tribunal, Delhi, and the fact that the same was disposed of on the very first day, without notice, by issuing orders and directions which prejudiced the appellants.

10. Mr. Chetan Sharma, learned senior advocate appearing for the respondents, has tried to impress upon us that the order of injunction which was passed by the Allahabad High Court was innocuous and that it did not prejudice or adversely affect the appellants in any way and since the sale has been confirmed, nothing further remained to be decided, as far as the said question is concerned.

11. It is true that the impugned order has more or less worked itself out, but it needs to be indicated that the practice which was adopted by the Allahabad High Court, is not only arbitrary, but also contrary to the concept of the principles of natural justice. Since the writ petition was to be dismissed without issuing notice, it should have been dismissed without giving any further directions in the matter. Instead, certain positive instructions were given to the respondents and one of the respondents was restrained from dealing with the property, without any notice to him/them. If there was any intention on the part of the learned Judge to protect the properties in question during the pendency of the matter before the Debts Recovery Tribunal, the proper course of action would have been to issue notice, and, if necessary, pass interim orders and, thereafter, after hearing the parties to pass final orders in the matter.

12. We hope that in future, this kind of order will be avoided in the interest of justice and also having regard to the principles of natural justice.

13. The appeals are allowed. The impugned judgment to the extent that it restrains the appellants from alienating or encumbering the property, is hereby set aside.

14. The appeals are disposed of, accordingly.

R.P. Appeals disposed of.

BAR COUNCIL OF INDIA
v.
UNION OF INDIA
(Writ Petition (Civil) No. 666 of 2002)

AUGUST 3, 2012

[R.M. LODHA AND ANIL R. DAVE, JJ.]

Legal Services Authorities Act, 1987 – Chapter VI-A (ss. 22-A to 22-E) [as inserted by Legal Services Authorities (Amendment) Act, 2002] – Pre-litigation conciliation and settlement – Establishment of Permanent Lok Adalat – For settlement of disputes in matters of public utility services – Constitutional validity of – Held: Chapter VI-A is constitutionally valid – It is not violative of Articles 14 and 21 of the Constitution nor contrary to rule of law, fairness and even-handed justice – It is an alternative institutional mechanism for settlement of disputes concerning public utility services – Legislature has the power to set up such mechanism – It is in addition to and not in derogation of for a provided under special statutes – It is not a constitutional right to have dispute adjudicated by means of court only – Not making CPC and evidence Act applicable to the Lok Adalat does not make its justice delivery ineffective as the Adalat has to follow the principles of natural justice – Absence of right to appeal also does not make the provisions unconstitutional – The independence of the Lok Adalats have also not been compromised – Since the challenge to the provisions has already been decided by Supreme Court in an earlier case on merits and dismissed, deciding the same issues again is against public policy – Constitution of India, 1950 – Articles 39-A, 14, 21 and 141 – Precedent.

Appeal – Held: There is no inherent right of appeal – Appeal is a creature of statute – Non providing of appeal in

a statute by itself may not render that statute unconstitutional – Legal Services Authorities Act, 1987.

The petitioner challenged the *vires* of Chapter VIA comprising of ss. 22-A to 22-E of the Legal Services Authorities Act, 1987, as inserted by the Legal Services Authorities (Amendment) Act, 2002. The provisions were challenged on the ground that the same were arbitrary *per se,* violative of Article 14 of the Constitution of India and were contrary to the rule of law as they denied fair, unbiased and even-handed justice to all.

The respondent-State *interalia* contended that the issues raised in the present writ petition since already been decided in *S.N. Pandey v. Union of India* (Writ Petition (Civil) No. 543/2002 decided by Supreme Court on 28.10.2002), the present petition deserved to be dismissed on this ground alone.

Dismissing the petition, the Court

HELD: 1.1. Article 39-A came to be inserted in the Constitution by Constitution (42nd Amendment) Act, 1976 with effect from 3.1.1977. It enjoins upon the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and in particular to provide free legal aid by suitable legislation or schemes or in any other way and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Equal justice to all and free legal aid are hallmark of Article 39-A. Pursuant to these objectives, the 1987 Act was enacted by the Parliament to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of

the legal system promotes justice on the basis of equal opportunity. It was felt that the system of Lok Adalats provided in the 1987 Act sometimes results in delaying the dispensation of justice where the parties do not arrive at any compromise or settlement in Lok Adalat and the case is returned to the court of law or the parties are advised to pursue appropriate remedy for redressal of their grievance. Accordingly, amendment in the 1987 Act was felt by the Parliament to be necessary. [Paras 10 and 11] [1107-E-G; 1108-A; 1109-F-G]

1.2. Chapter VI-A inserted by the 2002 Amendment Act in 1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure. The disputes relating to public utility service like transport service for carriage of passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water or public conservancy system or sanitation or service in hospital or dispensary or insurance service, etc., in the very scheme of things deserve to be settled expeditiously. Prolonged dispute in respect of the above matters between the service provider and an aggrieved party may result in irretrievable damage to either party to the dispute. Today, with increasing number of cases, the judicial courts are not able to cope with the heavy burden of inflow of cases and the matters coming before them. The disputes in relation to public utility service need urgent attention with focus on their resolution at threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible. With large population in the country and many public utility services being provided by various service providers, the disputes in relation to these services are not infrequent between the service providers and common man. Slow motion procedures in the judicial courts are not conducive for

adjudication of disputes relating to public utility service. [Para 18] [1114-H; 1115-A-E]

1.3. The statement of objects and reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat. The mechanism provided in Chapter VI-A enables a party to a dispute relating to public utility service to approach the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court. [Para 19] [1115-F-H]

1.4. Settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. The power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), cannot be said to be unconstitutional and irrational. [Para 22] [1116-G-H; 1117-A-B]

1.5. An authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before

it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence. [Para 22] [1117-C-E]

1.6. Parliament can definitely set up effective alternative institutional mechanisms or make arrangements which may be more efficacious than the ordinary mechanism of adjudication of disputes through the judicial courts. Such institutional mechanisms or arrangements by no stretch of imagination can be said to be contrary to constitutional scheme or against the rule of law. The establishment of Permanent Lok Adalats and conferring them jurisdiction upto a specific pecuniary limit in respect of one or more public utility services as defined in Section 22-A(b) before the dispute is brought before any court by any party to the dispute is not anathema to the rule of law. Instead of ordinary civil courts, if other institutional mechanisms are set up or arrangements are made by the Parliament with an adjudicatory power, such institutional mechanisms or arrangements cannot be faulted on the ground of arbitrariness or irrationality. [Para 20] [1116-A-D]

1.7. It is not correct to say that the service provider may pre-empt the consideration of a dispute by a court or a forum under special statute by approaching the Permanent Lok Adalat established under Chapter VI-A of the 1987 Act and, thus, depriving the user or consumer of such public utility service of an opportunity to have the

dispute adjudicated by a civil court or a forum created under special statute. In the first place, the jurisdiction of fora created under the Special Statutes has not been taken away in any manner whatsoever by the impugned provisions. The Permanent Lok Adalats are in addition to and not in derogation of fora provided under Special Statutes. Secondly, not a single instance has been cited where a provider of service of public utility in a dispute with its user has approached the Permanent Lok Adalat first. [Para 28] [1120-E-H]

1.8. By not making applicable the Code of Civil Procedure and the statutory provisions of the Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit. [Para 29] [1121-B-C]

1.9. In view of the composition of Central Authority and the State Authority, it is misconceived to say that the judiciary has been kept out in the appointment of members of the Permanent Lok Adalats. The independence of Permanent Lok Adalats does not seem to have been compromised at all as even the non-judicial members of every Permanent Lok Adalat have to be appointed on the recommendation of a high powered Central or State Authority headed by none other than the Chief Justice of India or a serving or retired Judge of the Supreme Court where the nomination is made by the Central Government or by the Chief Justice of the State High Court or a serving or retired Judge of the High Court where the nomination is made by the State Government. [Para 30] [1122-A-D]

1.10. It is not unusual to have the tribunals comprising of judicial as well as non-judicial members. The whole idea of having non-judicial members in a tribunal like Permanent Lok Adalat is to make sure that the legal technicalities do not get paramountcy in conciliation or adjudicatory proceedings. The fact that a Permanent Lok Adalat established under Section 22-B comprises of one judicial officer and two other persons having adequate experience in public utility service does not show any abhorrence to the rule of law nor such composition becomes violative of principles of fairness and justice or is contrary to Articles 14 and 21 of the Constitution of India. [Para 31] [1122-E-G]

1.11. It is true that the award made by the Permanent Lok Adalat under 1987 Act has to be by majority of the persons constituting the Permanent Lok Adalat. In a given case, it may be that the two non-judicial members disagree with the judicial member but that does not mean that such majority decision lacks in fairness or sense of justice. [Para 32] [1122-G-H]

1.12. There is no inherent right of appeal. Appeal is always a creature of statute and if no appeal is provided to an aggrieved party in a particular statute, that by itself may not render that statute unconstitutional. Section 22-E(1) makes every award of the Permanent Lok Adalat under 1987 Act either on merit or in terms of a settlement, final and binding on all the parties thereto and on persons claiming under them. No appeal is provided from the award passed by the Permanent Lok Adalat but that, does not render the impugned provisions unconstitutional. In the first place, having regard to the nature of dispute upto a specific pecuniary limit relating to public utility service and resolution of such dispute by the procedure provided in Section 22-C(1) to 22-C(8), it is important that such dispute is brought to an end at the

earliest and is not prolonged unnecessarily. Secondly, and more importantly, if at all a party to the dispute has a grievance against the award of Permanent Lok Adalat he can always approach the High Court under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. [Para 33] [1123-A-D]

The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke ofBombay and Ors. **(1976) (1) SCC 496: 1976 (1) SCR 427;** *Fair Air Engineers Pvt. Ltd. and Anr. v. N.K. Modi* **(1996) 6 SCC 385: 1996 (4) Suppl. SCR 820;** *Skypak Couriers Ltd. v. Tata Chemicals Ltd.* **(2000) 5 SCC 294: 2000 (1) Suppl. SCR 324;** *Trans Mediterranean Airways v. Universal Exports and Anr.* **(2011) 10 SCC 316: 2011 (14) SCR 47;** *National Seeds Corporation Limited v. M. Madhusudhan Reddy and Anr.* **(2012) 2 SCC 506;** *Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (Dead) through LRs. and Ors.* **(2004) 1 SCC 305: 2003 (6) Suppl. SCR 659;** *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* **(2007) 4 SCC 579: 2007 (6) SCR 139;** ***M/s.*** *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and Ors.* **1962 (2) SCR 339;** *Associated Cement Companies Ltd. v. P. N.Sharma and Anr.* **(1965) 2 SCR 366;** *Kihoto Hollohan v. Zachillhu and Ors.***1992 Supp (2) SCC 651: 1992 (1) SCR 686;** *Union of India v. R. Gandhi, President, Madras Bar Association* **2010 (2010) 11 SCC 1: 2010 (6) SCR 857 – referred to.**

2. The challenge to the validity of the impugned provisions came up before this Court in *S.N. Pandey Case**. **Although the disposal of writ petition in** *S.N. Pandey* **was in** *limine* **and the order is brief, but the Court disposed of the same on merits. Therefore, it cannot be said that the order passed therein cannot be construed as a binding precedent; and that the said decision does not declare any law under Article 141 of the Constitution. It is against public policy and well defined principles of**

judicial discretion to entertain or hear petitions relating to same subject matter where the matter was heard and dismissed on an earlier occasion. [Paras 34, 35 and 36] [1123-F; 1124-F-H; 1125-C]

*B. Prabhakar Rao and Ors. v. State of Andhra Pradesh and Ors.***1985(Supp) SCC 432;** *Union of India and Ors. v. Jaipal Singh* **(2004) 1 SCC 121: 2003 (5) Suppl. SCR 115 – relied on.**

S.N. Pandey v. Union of India Judgement in* **Writ Petition (Civil) No. 543 of 2002 passed by Supreme Court on 22.10.2002; *B. Shama Rao v. Union Territory of Pondicherry* **AIR 1967 SC 1480: 1967 SCR 650;** *Municipal Corporation of Delhi v. Gurnam Kaur* **(1989) 1 SCC 101: 1988 (2) Suppl. SCR 929;** *State of Punjab v. Baldev Singh* **(1999) 6 SCC 172: 1999 (3) SCR 977 – referred to.**

Case Law Reference:

1976 (1) SCR 427	**Referred to**	**Para 7**
1996 (4) Suppl. SCR 820	**Referred to**	**Para 7**
2000 (1) Suppl. SCR 324	**Referred to**	**Para 7**
2011 (14) SCR 47	**Referred to**	**Para 7**
2012 (2) SCC 506	**Referred to**	**Para 7**
2003 (6) Suppl. SCR 659	**Referred to**	**Para 7**
2007 (6) SCR 139	**Referred to**	**Para 7**
1985 (Supp) SCC 432	**Relied on**	**Para 9**
2003 (5) Suppl. SCR 115	**Relied on**	**Para 9**
1967 SCR 650	**Referred to**	**Para 9**
1988 (2) Suppl. SCR 929	**Referred to**	**Para 9**
1999 (3) SCR 977	**Referred to**	**Para 9**

1962 (2) SCR 339	**Referred to**	**Para 23**
1965 (2) SCR 366	**Referred to**	**Para 24**
1992 (1) SCR 686	**Referred to**	**Para 25**
2010 (6) SCR 857	**Referred to**	**Para 26**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 666 of 2002.

Under Article 32 of the Constitution of India

Manoj Goel, Shuvodeep Roy, Wajeeh Shafiq, Gopal Verma, Shashank Kathuria (for Brij Bhusan) for the Petitioner.

T.S. Doabia, Rashmi Malhotra, Sunita Sharma (for B.V. Balramdas) for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Bar Council of India by means of this writ petition under Article 32 of the Constitution of India has raised challenge to the vires of Sections 22-A, 22-B, 22-C, 22-D and 22-E of the Legal Services Authorities Act, 1987 (for short, '1987 Act') as inserted by the Legal Services Authorities (Amendment) Act, 2002 (for short, '2002 Amendment Act').

2. By 2002 Amendment Act, in Section 22 of the 1987 Act, the words "Lok Adalat" were substituted by "Lok Adalat or Permanent Lok Adalat" and a new Chapter VI-A entitled "Pre-litigation Conciliation and Settlement" comprising of Sections 22-A to 22-E came to be inserted. In Section 23 of the 1987 Act, the words "members of the Lok Adalats" were substituted by the words "members of the Lok Adalats or the persons constituting Permanent Lok Adalats".

3. The challenge is principally on the ground that Sections 22-A, 22-B, 22-C, 22-D and 22-E are arbitrary per se; violative of Article 14 of the Constitution of India and are contrary to the

rule of law as they deny fair, unbiased and even-handed justice to all.

4. We have heard Mr. Manoj Goel, learned counsel for the petitioner and Mr. T. S. Doabia, learned senior counsel for the Union of India. After oral arguments were over, Mr. Manoj Goel, learned counsel for the petitioner has also filed written submissions. Elaborating the vice of arbitrariness in the impugned provisions, in the written submissions, it is submitted that Section 22-C(1) read with Section 22-C(2) provides that a dispute before Permanent Lok Adalat can be raised by moving an application to it unilaterally by any party to the dispute (before the dispute is brought before any court for settlement). The public utility service provider, thus, can play mischief by pre-empting an aggrieved consumer from going to the consumer fora or availing other judicial process for redressal of his grievance and enforcement of his rights. Permanent Lok Adalats have been empowered to decide dispute on merits upon failure between the parties to arrive at a settlement under Section 22-C(8). While deciding the case on merits, the Permanent Lok Adalat is not required to follow the provisions of the Civil Procedure Code or the Evidence Act. Section 22-C(8) prevents the courts and the consumer fora to examine the deficiencies in services such as transport, postal and telegraph, supply of power, light or water, public conservancy or sanitation, service in hospital, etc. and renders the provisions under challenge arbitrary and irrational.

5. It has been submitted on behalf of the petitioner that award of the Permanent Lok Adalat on merits is made final and binding and cannot be called in question in any forum or court of law under Section 22-E(1) and (4). No right to appeal has been provided for against the award in any court of law. Since all the public utility services basically relate to the fundamental right to life provided under Article 21 of the Constitution, any adverse decision on merits by Permanent Lok Adalat would immediately impinge upon fundamental right of an aggrieved

citizen and, therefore, even absence of one right of appeal makes these provisions unconstitutional as it is against the fundamental principles of fair procedure. To say that an aggrieved person can approach the High Court under Articles 226/227 of the Constitution against awards given by the Permanent Lok Adalats on merits and, therefore, absence of right of appeal does not matter, is completely misplaced. The writ jurisdiction under Articles 226/227 is extremely limited and is no substitute of the appellate jurisdiction.

6. An argument was raised that though Permanent Lok Adalat supplants the civil court, consumer court or motor accident claims tribunal yet its mechanism and delivery of justice are not as effective as the above fora as the Permanent Lok Adalat is not required to follow the procedure contemplated in the Code of Civil Procedure and the Evidence Act. Moreover an award given on merits by Permanent Lok Adalat has to be by majority and since Permanent Lok Adalat consists of one judicial member and two administrative members, there is preponderance of administrative members which is against fundamental principles of justice enshrined in the Constitution.

7. It was strenuously submitted on behalf of the petitioner that the jurisdiction conferred upon Permanent Lok Adalat can not oust the jurisdiction of the fora created under specialized statutes dealing with the services referred to in Section 22-A(b). In this regard, the provisions contained in three specialized statutes, namely, the Consumer Protection Act, 1986, The Telecom Regulatory Authority of India Act, 1997 and the Insurance Act, 1938 were referred. By relying upon a decision of this Court in *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Others*[1], in the written arguments it has been submitted that the consumer fora as well as specialized courts/tribunals under the Telecom Regulatory Authority of India Act, 1997 and the Insurance Act, 1938 have exclusive jurisdiction as far as enforcement of rights under

1. (1976) (1) SCC 496

these statutes are concerned and their jurisdiction can not be taken away by Permanent Lok Adalat. Particularly, with reference to the provisions contained in the Consumer Protection Act, it is submitted that compensatory remedies available under this law are in addition to and not in derogation of any other law and since Permanent Lok Adalats have no jurisdiction to grant compensatory relief, the jurisdiction of the consumer fora remains intact. Reliance has been placed on the decisions of this Court in *Fair Air Engineers Pvt. Ltd. and another v. N.K. Modi*[2], *Skypak Couriers Ltd. v. Tata Chemicals Ltd.*[3], *Trans Mediterranean Airways v. Universal Exports and another*[4] and *National Seeds Corporation Limited v. M. Madhusudhan Reddy and another*[5] . *National Seeds Corporation Limited*[5] was also pressed into service in support of the submission that consumer protection laws were enacted pursuant to the solemn international obligations of our country and, therefore, the Permanent Lok Adalats cannot oust the jurisdiction of the consumer courts. It is also submitted that the jurisdiction of the consumer courts is protected unless it is expressly barred even in cases where some disputes can be adjudicated in different fora. Two decisions of this Court in this regard, namely, *Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (Dead) through LRs. and Others*[6] and *Kishore Lal v. Chairman, Employees' State Insurance Corpn*[7]. have been relied upon.

8. Mr. T.S. Doabia, learned senior counsel for the Union of India, on the other hand, submitted that the issues raised in the writ petition have already been decided by this Court in *S.N. Pandey v. Union of India (Writ Petition* (Civil) No. 543/2002;

2. (1996) 6 SCC 385.
3. (2000) 5 SCC 294.
4. (2011) 10 SCC 316.
5. (2012) 2 SCC 506.
6. (2004) 1 SCC 305.
7. (2007) 4 SCC 579.

decided on 28.10.2002) and the writ petition deserves to be dismissed on this ground alone. He submitted that the impugned provisions are in conformity with the objectives of Article 39A and intended to provide an affordable, speedy and efficient mechanism to secure justice.

9. As regards decision of this Court in *S.N. Pandey* (supra), the counsel for the petitioner in rejoinder would submit that the dismissal of the earlier writ petition was in limine and would not be a binding precedent. The decisions of this Court in *B. Prabhakar Rao and others v. State of Andhra Pradesh and others*[8], *Union of India and others v. Jaipal Singh*[9] were relied upon. Learned counsel for the petitioner also submitted that in the earlier writ petition, there was no law declared under Article 141 of the Constitution since points now raised in the present writ petition were neither argued nor discussed. In this regard, the learned counsel referred to the two decisions of this Court in *B. Shama Rao v. Union Territory of Pondicherry*[10], *Municipal Corporation of Delhi v. Gurnam Kaur*[11] and *State of Punjab v. Baldev Singh*[12].

10. Article 39-A came to be inserted in the Constitution by Constitution (42nd Amendment) Act, 1976 with effect from 3.1.1977. It enjoins upon the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and in particular to provide free legal aid by suitable legislation or schemes or in any other way and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Equal justice to all and free legal aid are hallmark of Article 39-A. Pursuant to these objectives, the 1987 Act was enacted by the Parliament to constitute legal services authorities to provide free and

8. 1985 (Supp) SCC 432.

9. (2004) 1 SCC 121.

10. AIR 1967 SC 1480.

11. (1989) 1 SCC 101.

12. (1999) 6 SCC 172.

competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. The statement of objects and reasons that led to enactment of 1987 Act reads as follows :

> "Article 39-A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
>
> 2. With the object of providing free legal aid, Government had, by Resolution dated the 26th September, 1980 appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the Chairmanship of Mr. Justice P.N. Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories. CILAS evolved a model scheme for legal Aid programme applicable throughout the country by which several legal aid and advice boards have been set up in the States and Union territories. CILAS is funded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But on a review of the working of the CILAS certain deficiencies have come to the fore. It is, therefore, felt that it will be desirable to constitute statutory legal service authorities at the National, State and District levels so as to provide for the effective monitoring of legal aid programmes. The Bill provides for the composition of such authorities and for the funding of these authorities by means of grants from the Central Government and the

State Governments. Power has been also given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.

3. For some time now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration and settlement between the parties, of a large number of cases expeditiously and with lesser costs. The institution of Lok Adalats is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular Courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive."

11. For about a decade and half, the operation of the 1987 Act was closely watched. It was felt that the system of Lok Adalats provided in the 1987 Act sometimes results in delaying the dispensation of justice where the parties do not arrive at any compromise or settlement in Lok Adalat and the case is returned to the court of law or the parties are advised to pursue appropriate remedy for redressal of their grievance. Accordingly, amendment in the 1987 Act was felt by the Parliament to be necessary. The statement of objects and reasons of the 2002 Amendment Act, inter alia, reads as under:

"The Legal Services Authorities Act, 1987 was enacted to constitute legal services authorities for providing and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or

other disabilities and to organize Lok Adalats to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. The system of Lok Adalat, which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the Court.

2. However, the major drawback in the existing scheme of organisation of the Lok Adalats under Chapter VI of the said Act is that the system of Lok Adalats is mainly based on compromise or settlement between the parties. If the parties do not arrive at any compromise or settlement, the case is either returned to the Court of law or the parties are advised to seek remedy in a Court of law. This causes unnecessary delay in the dispensation of justice. If Lok Adalats are given power to decide the cases on merits in case parties fails to arrive at any compromise or settlement, this problem can be tackled to a great extent. Further, the cases which arise in relation to public utility services such as Mahanagar Telephone Nigam Limited, Delhi Vidyut Board, etc., need to be settled urgently so that people get justice without delay even at pre-litigation stage and thus most of the petty cases which ought not to go in the regular Courts would be settled at the pre-litigation stage itself which would result in reducing the workload of the regular Courts to a great extent. It is, therefore, proposed to amend the Legal Service Authorities Act, 1987 to set up Permanent Lok Adalats for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

3. The salient features of proposed legislation are as follows :-

(i) to provide for the establishment of Permanent Lok Adalats which shall consists (sic) of a Chairman who is or has been a District Judge or Additional District Judge or has held judicial officer (sic) higher in rank than that of the

District Judge and two other persons having adequate experience in public utility services;

(ii) the Permanent Lok Adalat shall exercise jurisdiction in respect of one or more public utility services such as transport services of passengers of goods by air, road and water, postal, telegraph or telephone services, supply of power, light or water to the public by any establishment, public conservancy or sanitation, services in hospitals or dispensaries, and insurance services;

(iii) the pecuniary jurisdiction of the Permanent Lok Adalat shall be up to Rupees Ten Lakhs. However, the Central Government may increase the said pecuniary jurisdiction from time to time. It shall have no jurisdiction in respect of any matter relating to an offence not compoundable under any law;

(iv) it also provides that before the dispute is brought before any Court, any party to the dispute may make an application to the Permanent Lok Adalat for settlement of the dispute;

(v) where it appears to the Permanent Lok Adalat that there exist elements of a settlement, which may be acceptable to the parties, it shall formulate the terms of a possible settlement and submit them to the parties for their observations and in case the parties reach an agreement, the Permanent Lok Adalat shall pass an award in terms thereof. In case parties to the dispute fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merits; and

(vi) every award made by the Permanent Lok Adalat shall be final and binding on all the parties thereto and shall be by a majority of the persons constituting the Permanent Lok Adalat."

12. With the above objectives, 2002 Amendment Act was

enacted by the Parliament and thereby Chapter VI-A (Sections 22-A to 22-E) was brought in with few other consequential amendments elsewhere.

13. The title of Chapter VI-A is "Pre-litigation Conciliation and Settlement". Section 22-A(a) defines "Permanent Lok Adalat" to mean a Permanent Lok Adalat established under sub-section (1) of Section 22-B. "Public utility service" is defined in Section 22-A(b). It means (i) transport service for the carriage of passengers or goods by air, road or water; or (ii) postal, telegraph or telephone service; or (iii) supply of power, light or water to the public by any establishment; or (iv) system of public conservancy or sanitation; or (v) service in hospital or dispensary; or (vi) insurance service. If the Central Government or the State Government declares in the public interest, any service to be a public utility service for the purposes of Chapter VI-A, such service on declaration is also included in the definition of 'public utility service' under Section 22-A(b).

14. The establishment of Permanent Lok Adalat is done under Section 22-B. The Central Authority and every State Authority, as the case may be, have been mandated to establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be notified. The composition of Permanent Lok Adalat is provided in Section 22-B (2). Accordingly, every Permanent Lok Adalat shall consist of (a) a person who is or has been a District Judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge and (b) two other persons having adequate experience in public utility service to be nominated by the Central Government or by the State Government, as the case may be on the recommendation of the Central Authority or by the State Authority (as the case may be). The judicial officer, namely, the District Judge or Additional District Judge or the Judicial Officer higher in rank than that of a District Judge shall be the Chairman of the Permanent Lok Adalat.

15. Section 22-C provides for the procedure for raising dispute before the Permanent Lok Adalat. Sub-section (1) provides that any party to a dispute may make an application to the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court. However, Permanent Lok Adalat has no jurisdiction to deal with any matter relating to an offence not compoundable under any law. The second proviso puts a cap on the pecuniary jurisdiction inasmuch as it provides that the Permanent Lok Adalat shall not have jurisdiction in a matter where the value of the property in dispute exceeds ten lakh rupees. The Central Government, however, may increase the limit of ten lakh rupees in consultation with the Central Authority by notification.

16. Sub-section (2) of Section 22-C puts an embargo on the parties to a dispute after an application has been made by any one of them under sub-section (1) in invoking jurisdiction of any court in the same dispute.

16.1. Sub-section (3) of Section 22-C provides for the procedure to be followed by the Permanent Lok Adalat once an application is made before it by any party to a dispute under sub-section (1). This procedure includes filing of a written statement by each party to the application stating therein the facts and nature of the dispute and highlighting the points or issues in such dispute and the documents and other evidence in support of their respective written statement and exchange of copy of such written statement together with copy of documents/other evidence. The Permanent Lok Adalat may require any party to the application to file additional statement before it at any stage of the conciliation proceedings. Any document or statement received by Permanent Lok Adalat from any party to the application is given to the other party. On completion of the above procedure, the Permanent Lok Adalat proceeds with conciliation proceedings between the parties to the application under sub-section (4) of Section 22-C. During conduct of the conciliation proceedings under sub-section (4)

of Section 22-C, the Permanent Lok Adalat is obliged to assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. Every party to the application has a duty to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

16.2. On satisfaction that there is likelihood of settlement in the proceedings, the Permanent Lok Adalat may formulate the terms of possible settlement of the dispute and give to the parties for their observations and where the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement/agreement and Permanent Lok Adalat then passes an award in terms thereof and furnishes a copy of the same to each of the parties concerned.

17. Upto the above pre-litigation conciliation and settlement procedure, there is no problem or issue. The petitioner is seriously aggrieved by the provision contained in Section 22-C(8) which provides that where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. This provision followed by Section 22-D which, inter-alia, provides that while deciding a dispute on merit the Permanent Lok Adalat shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 and Section 22-E which accords finality to the award of Permanent Lok Adalat under sub-section (1) and the provision made in sub-section (4) that every award made by the Permanent Lok Adalat shall be final and hence shall not be called in question in any original suit, application or execution proceedings form mainly bone of contention. Are these provisions violative of Article 14 of the Constitution of India and contrary to rule of law, fairness and even- handed justice? are the questions to be considered.

18. Chapter VI-A inserted by the 2002 Amendment Act in

1987 Act, as its title suggests, provides for pre-litigation conciliation and settlement procedure. The disputes relating to public utility service like transport service for carriage of passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water or public conservancy system or sanitation or service in hospital or dispensary or insurance service, etc., in the very scheme of things deserve to be settled expeditiously. Prolonged dispute in respect of the above matters between the service provider and an aggrieved party may result in irretrievable damage to either party to the dispute. Today, with increasing number of cases, the judicial courts are not able to cope with the heavy burden of inflow of cases and the matters coming before them. The disputes in relation to public utility service need urgent attention with focus on their resolution at threshold by conciliation and settlement and if for any reason such effort fails, then to have such disputes adjudicated through an appropriate mechanism as early as may be possible. With large population in the country and many public utility services being provided by various service providers, the disputes in relation to these services are not infrequent between the service providers and common man. Slow motion procedures in the judicial courts are not conducive for adjudication of disputes relating to public utility service.

19. The statement of objects and reasons itself spells out the salient features of Chapter VI-A. By bringing in this law, the litigation concerning public utility service is sought to be nipped in the bud by first affording the parties to such dispute an opportunity to settle their dispute through the endeavours of the Permanent Lok Adalat and if such effort fails then to have the dispute between the parties adjudicated through the decision of the Permanent Lok Adalat. The mechanism provided in Chapter VI-A enables a party to a dispute relating to public utility service to approach the Permanent Lok Adalat for the settlement of dispute before the dispute is brought before any court.

20. Parliament can definitely set up effective alternative institutional mechanisms or make arrangements which may be more efficacious than the ordinary mechanism of adjudication of disputes through the judicial courts. Such institutional mechanisms or arrangements by no stretch of imagination can be said to be contrary to constitutional scheme or against the rule of law. The establishment of Permanent Lok Adalats and conferring them jurisdiction upto a specific pecuniary limit in respect of one or more public utility services as defined in Section 22-A(b) before the dispute is brought before any court by any party to the dispute is not anathema to the rule of law. Instead of ordinary civil courts, if other institutional mechanisms are set up or arrangements are made by the Parliament with an adjudicatory power, in our view, such institutional mechanisms or arrangements cannot be faulted on the ground of arbitrariness or irrationality.

21. The Permanent Lok Adalats under the 1987 Act (as amended by 2002 Amendment Act) are in addition to and not in derogation of Fora provided under various statutes. This position is accepted by the Central Government in their counter affidavit.

22. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute

determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.

23. The difference between "courts" and "tribunals" has come up for consideration before this Court on more than one occasion. Almost five decades back, this Court in *M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and others*[13] stated that by "courts" the courts of civil judicature is meant and by "tribunals" those bodies of men who are appointed to decide controversies arising under certain special laws. All tribunals are not courts though all courts are tribunals. It was further observed that in the exercise of judicial power, a clear division was noticeable between courts and tribunals, particularly, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature.

13. 1962 (2) SCR 339.

Their procedures may differ, but the functions are not essentially different. Both courts and tribunals act "judicially".

24. In *Associated Cement Companies Ltd. v. P. N. Sharma & Anr.*[14], the Constitution Bench of this Court observed that under our Constitution, the judicial functions and powers of the State have been primarily conferred on the ordinary courts; the Constitution recognises a hierarchy of courts and they are normally entrusted to adjudicate all disputes between citizens and citizens as well as between the citizens and the State. The powers which the courts exercise are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions. The tribunals decide special matters entrusted to them for their decision. The procedure which the tribunals have to follow may not always be so strictly prescribed but the approach adopted by both the courts and tribunals is substantially the same; it is State's inherent judicial function which they discharge.

25. In *Kihoto Hollohan v. Zachillhu & Ors.*[15], it has been stated by this Court that where the authority is called upon to decide a lis on the rights and obligations of the parties, there is an exercise of judicial power. The authority is called a tribunal if it does not have all the trappings of a court.

26. In a comparatively recent decision in *Union of India v. R. Gandhi, President, Madras Bar Association*[16] (Civil Appeal No. 3067 of 2004); decided on May 11, 2010, a Constitution Bench of this Court was concerned with the matters wherein the constitutional validity of Parts I-B and I-C of the Companies Act, 1956 inserted by Companies (Second Amendment) Act, 2002 providing for the Constitution of National Company Law Tribunal and National Company Law Appellate Tribunal was under challenge. The Court while examining the

14. (1965) 2 SCR 366.

15. 1992 Supp (2) SCC 651.

16. (2010) 11 SCC 1.

difference between the courts and tribunals, inter alia, referred to earlier decisions of this Court, some of which have been noted above. The Court summarized the legal position as follows:

"(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for 'Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all tribunals will dilute and adversely affect the independence of the Judiciary.

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be

tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of the courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of the judiciary or the standards of the judiciary, the court may interfere to preserve the independence and standards of the judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive."

27. The competence of the Parliament to make a law creating tribunals to deal with disputes arising under or relating to a particular statute or statutes or particular disputes is, thus, beyond question.

28. Sine qua non of taking cognizance of a dispute concerning public utility service by the Permanent Lok Adalat is that neither party to a dispute has approached the civil court. There is no merit in the submission of the petitioner that the service provider may pre-empt the consideration of a dispute by a court or a forum under special statute by approaching the Permanent Lok Adalat established under Chapter VI-A of the 1987 Act and, thus, depriving the user or consumer of such public utility service of an opportunity to have the dispute adjudicated by a civil court or a forum created under special statute. In the first place, the jurisdiction of fora created under the Special Statutes has not been taken away in any manner whatsoever by the impugned provisions. As noted above, the Permanent Lok Adalats are in addition to and not in derogation of fora provided under Special Statutes. Secondly, not a single instance has been cited where a provider of service of public utility in a dispute with its user has approached the Permanent Lok Adalat first. The submission is unfounded and misplaced.

29. The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.

30. Insofar as composition of Permanent Lok Adalat is concerned, Section 22-B(2) provides that every Permanent Lok Adalat shall consist of a person who is or has been a District Judge or Additional District Judge or has held judicial office higher in rank than that of a District Judge and two other persons having adequate experience in public utility service to be nominated by the Central Government or the State Government, as the case may be, on the recommendation of the Central Authority or the State Authority, as the case may be. Of the three members, the judicial officer is the Chairman of the Permanent Lok Adalat. The Central Authority under Section 3 of the 1987 Act, inter alia, consists of the Chief Justice of India, a serving or retired Judge of the Supreme Court to be nominated by the President in consultation with the Chief Justice of India and the other members to be nominated by the Central Government in consultation with the Chief Justice of India. The Chief Justice of India is the Patron-in-Chief of the Central Authority while a serving or retired Judge of the Supreme Court is the Executive Chairman. Similarly, the State Authority under Section 6 consists of the Chief Justice of the High Court, a serving or retired Judge of the High Court to be nominated by the Governor in consultation with the Chief Justice of the High Court and such number of other members to be nominated by the State Government in consultation with the

Chief Justice of the High Court. It would be, thus, seen that the two members other than the judicial officer of a Permanent Lok Adalat can be appointed by the Central Government or the State Government, as the case may be, on the recommendation of the Central Authority or the State Authority only. The composition of Central Authority and the State Authority has been noted above. In the above view, it is misconceived to say that the judiciary has been kept out in the appointment of members of the Permanent Lok Adalats. The independence of Permanent Lok Adalats does not seem to have been compromised at all as even the non-judicial members of every Permanent Lok Adalat have to be appointed on the recommendation of a high powered Central or State Authority headed by none other than the Chief Justice of India or a serving or retired Judge of the Supreme Court where the nomination is made by the Central Government or by the Chief Justice of the State High Court or a serving or retired Judge of the High Court where the nomination is made by the State Government.

31. It is not unusual to have the tribunals comprising of judicial as well as non-judicial members. The whole idea of having non-judicial members in a tribunal like Permanent Lok Adalat is to make sure that the legal technicalities do not get paramountcy in conciliation or adjudicatory proceedings. The fact that a Permanent Lok Adalat established under Section 22-B comprises of one judicial officer and two other persons having adequate experience in public utility service does not show any abhorrence to the rule of law nor such composition becomes violative of principles of fairness and justice or is contrary to Articles 14 and 21 of the Constitution of India.

32. It is true that the award made by the Permanent Lok Adalat under 1987 Act has to be by majority of the persons constituting the Permanent Lok Adalat. In a given case, it may be that the two non-judicial members disagree with the judicial member but that does not mean that such majority decision lacks in fairness or sense of justice.

33. There is no inherent right of appeal. Appeal is always a creature of statute and if no appeal is provided to an aggrieved party in a particular statute, that by itself may not render that statute unconstitutional. Section 22-E(1) makes every award of the Permanent Lok Adalat under 1987 Act either on merit or in terms of a settlement final and binding on all the parties thereto and on persons claiming under them. No appeal is provided from the award passed by the Permanent Lok Adalat but that, in our opinion, does not render the impugned provisions unconstitutional. In the first place, having regard to the nature of dispute upto a specific pecuniary limit relating to public utility service and resolution of such dispute by the procedure provided in Section 22-C(1) to 22-C(8), it is important that such dispute is brought to an end at the earliest and is not prolonged unnecessarily. Secondly, and more importantly, if at all a party to the dispute has a grievance against the award of Permanent Lok Adalat he can always approach the High Court under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. There is no merit in the submission of the learned counsel for the petitioner that in that situation the burden of litigation would be brought back on the High Courts after the award is passed by the Permanent Lok Adalat on merits.

34. The challenge to the validity of the impugned provisions came up before this Court in *S.N. Pandey* (supra). A three-Judge Bench of this Court was not persuaded by the challenge and held as under:

> "We have gone through the provisions of the said Chapter which contemplated the setting up of permanent Lok Adalats, for deciding disputes in which public utility services is one of the matters involved. It is quite obvious that the effort of the legislature is to decrease the work load in the Courts by resorting to alternative disputes resolution. Lok Adalat is a mode of dispute resolution which has been in vogue since over two decades. Hundreds of thousands of cases have been settled through this mechanism and

> is undisputedly a fast means of dispensation of justice. The litigation is brought to a quick end with no further appeals or anguish to the litigants. The constitution of the permanent Lok Adalats mechanism contemplate the judicial officer or a retired judicial officer being there alongwith other persons having adequate experience in the public utility services.
>
> We do not find any constitutional infirmity in the said legislation. The act ensures that justice will be available to the litigant speedily and impartially. We do emphasis that the persons who are appointed on the Permanent Lok Adalats should be person of integrity and adequate experience. Appropriate rules, inter alia in this regard, no doubt will have to be framed, if not already in place.
>
> We upheld the validity of the said Act and hope the Permanent Lok Adalats will be set up at an early date. The Lok Adalats are enacted to Primarily bring about settlement amongst the parties. The parties are normally required to be present in person and since the impugned provisions are in the interest of the litigating public, the Lok Adalats shall perform their duties and will function; even if members of the Bar choose not to appear."

35. Learned counsel for the petitioner submitted that the disposal of the writ petition filed by S.N. Pandey was in limine and the order passed therein cannot be construed as a binding precedent. It was also submitted that the said decision does not declare any law under Article 141 of the Constitution since points now raised in the present matter, were neither argued nor discussed.

36. We are not persuaded by the submission of the learned counsel for the petitioner. Although the disposal of writ petition in S.N. Pandey was in limine and the order is brief but the court has disposed of the same on merits. In *B. Prabhakar*

Rao[8] , O. Chinnappa Reddy ,J. did observe in para 22 that the dismissal in limine of a writ petition cannot possibly bar the subsequent writ petitions but at the same time he also observed that such a dismissal in limine may inhibit the discretion of the Court. V. Khalid, J. in his supplementing judgment in para 27(6) exposited the position that normally this Court would be disinclined to entertain or to hear petitions raising identical points again where on an earlier occasion, the matter was heard and dismissed. Not that this Court had no jurisdiction to entertain such matters, but would normally exercise its discretion against it. We are in complete agreement with the above view of V. Khalid, J. It is against public policy and well defined principles of judicial discretion to entertain or hear petitions relating to same subject matter where the matter was heard and dismissed on an earlier occasion.

37. Independent of the view of this Court in S.N. Pandey, for the reasons that we have indicated above, we find no merit in the challenge to the impugned provisions of Chapter VI-A brought in the 1987 Act by 2002 Amendment Act.

38. We, accordingly, dismiss the writ petition with no order as to costs.

K.K.T. Writ Petition dismissed.

AVISHEK GOENKA

v.

UNION OF INDIA & ANR.

IA NOS. 4, 5, IA NOS. 6-8, IA. NOS. 9-11, 12, 13, 14 AND 15

IN

Writ Petition (Civil) No. 265 of 2011

AUGUST 3, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Motor Vehicles Rules, 1989 – Rule 100 – By judgment dated 27th April, 2012 passed in writ petition (civil) no.265 of 2011, Supreme Court had prohibited the use of black films of any Visual Light Transmission (VLT) percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country – Supreme Court took the view that Rule 100 does not permit use of any other material except the safety glass 'manufactured as per the requirements of law' – Applications for modification /clarification of the judgment dated 27th April 2012 – Held: Liable to be dismissed – In terms of Rule 100, no material including films of any VLT can be pasted on the safety glasses of the car and this law is required to be enforced – Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be unenforceable – Individual inconvenience cannot be a ground for giving the law a different interpretation – The expression 'maintained' used in r.100 has to be construed ejusdem generis to manufacture and cannot be interpreted in a manner that alterations to motor vehicles in violation of the specific rules have been impliedly permitted under the language of the Rule itself – Suggestion given that the expression 'we prohibit the use of black film of any VLT percentage or any other material upon safety glasses' in Para 27 of the judgment

dated 27th April 2012 should be substituted by 'we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses' would be in complete violation of the substantive part of the judgment – It is not the extent of VLT percentage of films which is objectionable under the Rules but it is the very use of black films or any other material, which is impermissible to be used on the safety glasses –Consequential directions passed.

By judgment dated 27th April, 2012 passed in writ petition (civil) no.265 of 2011, this Court had prohibited the use of black films of any Visual Light Transmission (VLT) percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country.

The applicants filed the instant IAs, seeking modification / clarification of the said judgment dated 27th April 2012 on various grounds: 1) that they were not parties to the writ petition and were not aware of the proceedings before this Court and so their submissions could not be considered by the Court; 2) that the use of films or even black films is permissible scientifically and in law; 3) that Rule 100(2) of the Motor Vehicle Rules, 1989 uses the expression 'maintained' which implies that safety glasses, including the wind screen, can be maintained with requisite VLT percentage even by use of black films; and 4) that para 27 of the judgment dated 27th April 2012 needs modification by substituting the words 'use of black films of any VLT percentage' by the words 'use of black films of impermissible VLT percentage".

Dismissing the IAs, the Court

HELD: 1. In the main Writ Petition no.265 of 2011, and even in these applications, there was no challenge to Rule 100 of the Motor Vehicles Rules, 1989. This Court

vide its judgment dated 27th April, 2012, had interpreted the said Rule *de hors* the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it is the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role herein, is to be performed by this Court. [Para 11] [1135-G-H; 1136-A-C]

Delhi Administration v. Gurdip Singh Uban and Ors. **(2000) 7 SCC 269 – referred to.**

2. In these applications, some grounds were taken to demonstrate that some other interpretation of the provision was possible. These grounds, firstly, were not grounds of law. They were primarily the grounds of inconvenience. Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be unenforceable. The challenge to the legislative act can be raised on very limited grounds and certainly not the ones raised in the present application. In fact, all the counsel appearing for various applicants fairly conceded that they were not raising any challenge to Rule 100 of the Rules. Once that position is accepted, there is no reason to alter the interpretation given to the said Rule in the judgment dated 27th April, 2012. [Para 12] [1136-C-E]

3. The judgment dated 27th April, 2012 was passed in a Public Interest Litigation and the orders passed by this Court would be operative *in rem*. It was neither expected of the Court nor is it the requirement of law that the Court should have issued notice to every shopkeeper selling the films, every distributor distributing the films

and every manufacturer manufacturing the films. But, in any case, this was a widely covered matter by the Press. It was incumbent upon the applicants to approach the Court, if they wanted to be heard at that stage. [Para 13] [1136-F-H]

4. Not only the present judgment but even the previous judgments of this Court, in the cases referred to in the judgment dated 27th April, 2012, in some detail have never permitted use of films on the glasses. What the Court permitted was tinted glasses with requisite VLT. Thus, the view of this Court has been consistent and does not require any clarification or modification. [Para 14] [1137-B-C]

5. Equally, without substance and merit is the submission that the expression 'maintained' used in Rule 100 would imply that subsequent to manufacturing, the car can be maintained by use of films with requisite VLT of 70 per cent and 50 per cent respectively. In the judgment, after discussing the scheme of the Act, the Rules framed thereunder and Rule 100 read in conjunction with Indian Standard No.2553 Part II of 1992, this court took the view that the Rule does not permit use of any other material except the safety glass 'manufactured as per the requirements of law'. Rule 100 categorically states that 'safety glass' is the glass which is to be manufactured as per the specification and requirements of explanation to Rule 100(1). It is only the safety glasses alone that can be used by the manufacturer of the vehicle. The requisite VLT has to be 70 per cent and 50 per cent of the screen and side windows respectively, without external aid of any kind of material, including the films pasted on the safety glasses. The use of film on the glass would change the very concept and requirements of safety glass in accordance with law. The expression 'maintained' has to be

construed to say that, what is required to be manufactured in accordance with law should be continued to be maintained as such. 'Maintenance' has to be construed *ejusdem generis* to manufacture and cannot be interpreted in a manner that alterations to motor vehicles in violation of the specific rules have been impliedly permitted under the language of the Rule itself. The basic features and requirements of safety glass are not subject to any alteration. If the interpretation given by the applicants is accepted, it would frustrate the very purpose of enacting Rule 100 and would also hurt the safety requirements of a motor vehicle as required under the Act. [Para 15] [1137-C-H; 1138-A-B]

6. The suggestion given by the applicants that the expression 'we prohibit the use of black film of any VLT percentage or any other material upon safety glasses' in Para 27 of the judgment dated 27th April 2012 should be substituted by 'we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses' would be in complete violation of the substantive part of the judgment. It is not the extent of VLT percentage of films which is objectionable under the Rules but it is the very use of black films or any other material, which is impermissible to be used on the safety glasses. Once the prescribed specifications do not contemplate use of any other material except what is specified in the Explanation to Rule 100(1), then the use of any such material by implication cannot be permitted. *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*. If the plain language in para 27 is substituted, it would render the entire judgment ineffective and contradictory in terms. [Para 17] [1138-F-H; 1139-A]

7.1. The manufacturer and distributors placed certain material, including some photographs and reports of the

American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra-violet rays. From these photographs, attempt was made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it was stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. To counter this, the petitioner has filed a detailed reply supported by various documents which shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. However, the controversy arising from the submissions founded on factual matrix does not call for any determination before this Court. The environment, atmosphere and geographical conditions of each country are different. The level of tolerance and likelihood of exposure to a disease through sun rays or otherwise are subjective matters incapable of being examined objectively in judicial sense. The Courts are neither required to venture upon such determination nor would it be advisable. [Paras 18, 19 and 20] [1139-B-F; 1140-A-C]

7.2. There are a large number of preventive measures that can be taken by a person who needs to protect himself from the ultra-violet rays. Use of creams, sun-shed and other amenities would be beneficial for the individual alleged to be intolerable to sun rays. It does not require change of a permanent character in the motor vehicle, that too, in utter violation of the provisions of the statute. The interpretation of law is not founded on a single circumstance, particularly when such circumstance is so

very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be interpreted and applied on its plain language. Individual inconvenience cannot be a ground for giving the law a different interpretation. [Paras 21, 22] [1140-D-G]

Saurabh Chaudri & Ors. v. Union of India & Ors. **AIR 2004 SC 361: 2003 (5) Suppl. SCR 152 – referred to.**

8. Use of black films is a clear violation of law. In terms of Rule 100, no material including films of any VLT can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Thus, the following orders are passed: a) All the applications filed for clarification and modification are dismissed; b) All the Director Generals of Police/ Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle. It is reiterated that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety glasses are removed forthwith and c) In the event of non-compliance of the judgment of this Court now, and upon it being brought to the notice of this Court, the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers. [Para 24] [1141-D-F; 1142-A-B]

Case Law Reference:

(2000) 7 SCC 269	**referred to**	**Para 3**

2003 (5) Suppl. SCR 152 referred to Para 21

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 4, 5, 6-8, 9-11, 12, 13, 14 and 15.

IN

Writ Petition (Civil) No. 265 of 2011.

Under Article 32 of Constitution of India.

Petitioner-In-Person.

Gaurab Banerjee, ASG, Soli J. Sorabjee, Rajesh Kumar, R.K. Srivastava, T.A. Khan, D.S. Mahra, S.A. Haseeb, R.K. Rathore, S.S. Rawat, Sunita Sharma, Debesh Panda, Nitish Gupta, Kedar Nath Tripathy, A.N. Haksar, Ranjan Kumar Pandey, Vijay Sondhi, Sanjay Kumar, Wasim Beg, Promod Nair, Mohit Bakshi, Dheeraj Nair, P.P. Hegde, Charu Ambwani, Prashant Kumar, AP & J Chambers, Manu Nair, Anuj Berry, Tanuj Bhushan (for Suresh A. Shroff & Co.), Gopal Jain, Nandini gore, Debmalya Banerjee, Abhishek Roy, Mahak Bhalla, R.N. Karanjawala, Manik Karanjawla, S. Nayyar (for Karanjawala & Co.), for the Respondents.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. The applications for impleadment and intervention are allowed subject to just exceptions. All applications for placing documents on record are also allowed.

2. I.A. No. 5 of 2012 has been filed by the Dealers and Distributors of tinted films in Writ Petition (Civil) No. 265 of 2011 under Order XVIII, Rule 5 of the Supreme Court Rules, 1966 against the dismissal of two interim applications, i.e., seeking permission to file application for impleadment and application for modification by the Registrar of this Court vide his Order dated 16th May, 2012.

3. The learned Registrar vide the impugned order noticed

that application for impleadment was not maintainable inasmuch as the writ petition in which the application was filed has already been disposed of. In regard to the application for modification, according to the applicants, the petitioner suppressed various aspects of the matter and misled the court in passing the order and the same order was therefore, liable to be modified. Dealing with this contention, the learned Registrar, while referring to the judgment of this Court in *Delhi Administration v. Gurdip Singh Uban and Ors.* [(2000) 7 SCC 269] held that the application, in fact, was an application for review and not for modification. Thus, he declined to receive the application and registered the same in accordance with the Rules of the Supreme Court.

4. We hardly find any error of law in the Order of the Registrar under appeal, but we consider it entirely unnecessary to deliberate upon this issue in any further detail, since, we have permitted the applicants to address the Court on merits of the application. Keeping in view the fact that a number of other applications have been filed for clarification and modification of the judgment of this Court dated 27th April, 2012, without commenting upon the merit or otherwise of the present appeal, we would deal only with the application for modification or clarification filed by these applicants along with others.

5. I.A. No. 15 has been filed by the International Window Film Association. I.A. No. 4 has been filed on behalf of Vipul Gambhir.

6. An unnumbered I.A. of 2012 is filed by 3M India Ltd. Another unnumbered I.A. has been filed on behalf of the dealers and distributors of the tinted films.

7. I.A. No. 3 of 2012, an application on behalf of the petitioner to appear in person, is allowed.

8. I.A. No. 7 of 2012 has been filed on behalf of M/s. Garware Polyester Ltd. I.A. No. 10 of 2012 is an application filed by M/s. Car Owners and Consumer Association.

9. Another unnumbered I.A. has been filed on behalf of M/s. Gras Impex Pvt. Ltd. All these applications have been filed by various applicants seeking clarification and/or modification of the judgment of this Court dated 27th April, 2012 on various grounds.

10. The petitioner has filed I.A. No. 11 of 2012 by way of a common reply to the grounds taken in all these applications and has also placed certain documents on record. The various applicants above-named have sought modification/clarification of the judgment of this Court dated 27th April, 2012 principally and with emphasis on the following grounds :

(1) That the applicants were not parties to the writ petition and were not aware of the proceedings before this Court. Thus, their submissions could not be considered by the Court, hence the judgment of the Court requires modification.

(2) The applicants have placed material and reports on record that the use of films or even black films is permissible scientifically and in law.

(3) It is contended that Rule 100(2) uses the expression 'maintained' which implies that safety glasses, including the wind screen, can be maintained with requisite VLT percentage even by use of black films.

(4) Lastly, it is contended that para 27 of the judgment needs modification by substituting the words 'use of black films of any VLT percentage' by the words 'use of black films of impermissible VLT percentage".

11. We must notice at the very threshold that in the main Writ Petition no. 265 of 2011 and even in the present applications, there is no challenge to Rule 100 of the Motor

Vehicles Rules, 1989 (for short, 'the Rules'). This Court vide its judgment dated 27th April, 2012, has interpreted the said Rule de hors the other factors. Once this Court interprets a provision of law, the law so declared would be the law of the land in terms of Article 141 of the Constitution of India. The law so declared is binding on all and must be enforced in terms thereof. Having interpreted the Rule to mean that it is the safety glasses alone with requisite VLT that can be fixed in a vehicle, it is not for this Court to change the language of the said Rule. It would, primarily, be a legislative function and no role herein, is to be performed by this Court.

12. In the applications before us, as already noticed, some grounds have been taken to demonstrate that some other interpretation of the provision was possible. These grounds, firstly, are not grounds of law. They are primarily the grounds of inconvenience. Enforcement of law, if causes any inconvenience, is no ground for rendering a provision on the statute book to be unenforceable. The challenge to the legislative act can be raised on very limited grounds and certainly not the ones raised in the present application. In fact, all the learned counsel appearing for various applicants fairly conceded that they were not raising any challenge to Rule 100 of the Rules. Once that position is accepted, we see no reason to alter the interpretation given by us to the said Rule in our judgment dated 27th April, 2012.

13. Still, we will proceed to discuss the contentions raised. The judgment dated 27th April, 2012 was passed in a Public Interest Litigation and the orders passed by this Court would be operative in rem. It was neither expected of the Court nor is it the requirement of law that the Court should have issued notice to every shopkeeper selling the films, every distributor distributing the films and every manufacturer manufacturing the films. But, in any case, this was a widely covered matter by the Press. It was incumbent upon the applicants to approach the Court, if they wanted to be heard at that stage. The writ petition was instituted on 6th May, 2011 and the judgment in the case

was pronounced after hearing all concerned, including the Union Government, on 27th April, 2012, nearly after a year. Hence, this ground raised by the applicants requires noticing only for being rejected.

14. Not only the present judgment but even the previous judgments of this Court, in the cases referred to in the judgment dated 27th April, 2012, in some detail have never permitted use of films on the glasses. What the Court permitted was tinted glasses with requisite VLT. Thus, the view of this Court has been consistent and does not require any clarification or modification.

15. Equally, without substance and merit is the submission that the expression 'maintained' used in Rule 100 would imply that subsequent to manufacturing, the car can be maintained by use of films with requisite VLT of 70 per cent and 50 per cent respectively. In the judgment, after discussing the scheme of the Act, the Rules framed thereunder and Rule 100 read in conjunction with Indian Standard No.2553 Part II of 1992, this court took the view that the Rule does not permit use of any other material except the safety glass 'manufactured as per the requirements of law'. Rule 100 categorically states that 'safety glass' is the glass which is to be manufactured as per the specification and requirements of explanation to Rule 100(1). It is only the safety glasses alone that can be used by the manufacturer of the vehicle. The requisite VLT has to be 70 per cent and 50 per cent of the screen and side windows respectively, without external aid of any kind of material, including the films pasted on the safety glasses. The use of film on the glass would change the very concept and requirements of safety glass in accordance with law. The expression 'maintained' has to be construed to say that, what is required to be manufactured in accordance with law should be continued to be maintained as such. 'Maintenance' has to be construed ejusdem generis to manufacture and cannot be interpreted in a manner that alterations to motor vehicles in violation of the

specific rules have been impliedly permitted under the language of the Rule itself. The basic features and requirements of safety glass are not subject to any alteration. If the interpretation given by the applicants is accepted, it would frustrate the very purpose of enacting Rule 100 and would also hurt the safety requirements of a motor vehicle as required under the Act. Number of Rules have been discussed in the judgment dated 27th April, 2012 to demonstrate that these Rules are required to be strictly construed otherwise they would lead to disastrous results and would frustrate the very purpose of enacting such law.

16. Now, we may come to the last contention that para 27 of the judgment needs modification as noticed above. Para 27 of the judgment reads as under:

> "27. For the reasons afore-stated, we prohibit the use of black films of any VLT percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/Commissioner of Police of the respective States/Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4th May, 2012."

17. According to the applicant, the expression 'we prohibit the use of black film of any VLT percentage or any other material upon safety glasses' should be substituted by 'we prohibit the use of black films of impermissible VLT percentage or any other material upon the safety glasses'. The suggestion of the applicants would be in complete violation of the substantive part of the judgment. We have already noticed that it is not the extent of VLT percentage of films which is objectionable under the Rules but it is the very use of black films or any other material, which is impermissible to be used on the safety glasses. Once the prescribed specifications do not contemplate use of any other material except what is specified

in the Explanation to Rule 100(1), then the use of any such material by implication cannot be permitted. Quando aliquid prohibetur ex directo, prohibetur et per obliquum. If we substitute the plain language in para 27, it would render the entire judgment ineffective and contradictory in terms. Having already held that no material, including the films, can be used on the safety glasses, there is no occasion for us to accept this contention as well.

18. The manufacturer and distributors have placed certain material before us, including some photographs and reports of the American Cancer Society, to show that mostly skin cancer is caused by too much exposure to ultra-violet rays. From these photographs, attempt is made to show that in the day time when the films are pasted upon the safety glasses, still the face and the body of the occupant of the car is visible from outside. It is also stated that certain amendments were proposed in the Code of Virginia relating to the use of sun shading and tinting films, on the motor vehicles. Relying upon the material relating to America, it is stated that there are large number of cancer cases in USA and the framers of the law have amended the provisions or are in the process of amending the provisions. This itself shows that it is a case of change in law and not one of improper interpretation, which is not the function of this Court.

19. To counter this, the petitioner has filed a detailed reply supported by various documents. This shows that tinted glasses have been banned in a number of countries and it is not permissible to use such glasses on the windows of the vehicle. Annexure A1 and A3 have been placed on record in relation to New South Wales, Australia, Afghanistan and some other countries. He has also placed on record a complete research article on the cancer scenario in India with future perspective which has specifically compared India as a developing country with developed countries like USA and has found that cancer is much less in India despite the fact that most of the Indian population is exposed to ultra-violet rays for the

larger part of the day for earning their livelihood for their daily works, business and other activities.

20. This controversy arising from the submissions founded on factual matrix does not, in our opinion, call for any determination before this Court. As already noticed, the Court has interpreted Rule 100 as it exists on the statute book. The environment, atmosphere and geographical conditions of each country are different. The level of tolerance and likelihood of exposure to a disease through sun rays or otherwise are subjective matters incapable of being examined objectively in judicial sense. The Courts are neither required to venture upon such determination nor would it be advisable.

21. It cannot be disputed and is a matter of common knowledge that there are a large number of preventive measures that can be taken by a person who needs to protect himself from the ultra-violet rays. Use of creams, sun-shed and other amenities would be beneficial for the individual alleged to be intolerable to sun rays. It does not require change of a permanent character in the motor vehicle, that too, in utter violation of the provisions of the statute. Suffice it to note that the reliance placed upon the literature before us is misconceived and misdirected. The interpretation of law is not founded on a single circumstance, particularly when such circumstance is so very individualistic. The Court is not expected to go into individual cases while dealing with interpretation of law. It is a settled canon of interpretative jurisprudence that hardship of few cannot be the basis for determining the validity of any statute. The law must be interpreted and applied on its plain language. (Ref. *Saurabh Chaudri & Ors. v. Union of India & Ors.* [AIR 2004 SC 361].

22. In IA 4, a similar request is made. We are not dealing with individual cases and individual inconvenience cannot be a ground for giving the law a different interpretation.

23. The petitioner argued with some vehemence that

despite a clear direction of this Court, the appellate authority has utterly failed in enforcing the law. According to him, in majority of the vehicles in the NCT Delhi and the surrounding districts of UP, like Ghaziabad, Noida as well as towns of Haryana surrounding Delhi, law is violated with impunity. All safety glasses are posted either with Jet black films or light coloured films. He has referred to two instances, one of rape in Ghaziabad and the other of kidnapping, where the cars involved in the commission of the crime had black films. He has also stated that as per the press reports, the vehicles which are involved in hit and run cases are also vehicles with black films posted on the safety glasses.

24. We are really not emphasizing on the security threat to the society at large by use of black films but it is a clear violation of law. In terms of Rule 100, no material including films of any VLT can be pasted on the safety glasses of the car and this law is required to be enforced without demur and delay. Thus, we pass the following orders :

(1) All the applications filed for clarification and modification are dismissed, however, without any order as to costs.

(2) All the Director Generals of Police/Commissioners of Police are hereby again directed to ensure complete compliance of the judgment of this Court in its true spirit and substance. They shall not permit pasting of any material, including films of any VLT, on the safety glasses of any vehicle.

(3) We reiterate that the police authorities shall not only challan the offenders but ensure that the black or any other films or material pasted on the safety glasses are removed forthwith.

(4) We make it clear at this stage that we would not initiate any proceedings against the Director

Generals of Police/Commissioners of Police of the respective States/Union Territories but issue a clear warning that in the event of non-compliance of the judgment of this Court now, and upon it being brought to the notice of this Court, the Court shall be compelled to take appropriate action under the provisions of the Contempt of Courts Act, 1971 without any further notice to the said officers.

We do express a pious hope that the high responsible officers of the police cadre like Director General/Commissioner of Police would not permit such a situation to arise and would now ensure compliance of the judgment without default, demur and delay.

(5) Copies of this judgment be sent to all concerned by the Registry including the Chief Secretaries of the respective States forthwith.

B.B.B. IA's dismissed.

SADHUPATI NAGESWARA RAO
v.
STATE OF ANDHRA PRADESH
(Criminal Appeal No. 1159 of 2012)

AUGUST 3, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

PENAL CODE 1860:

s.409– Fair Price Shop dealer– Convicted and sentenced to six months RI for misappropriation of rice entrusted to him under Food for Work Scheme (FFWS)– Held: The evidence proves that there was entrustment of property of Government (rice under FFWS) to the accused agent and the same was disbursed without proper coupons – Accused had dishonest intention not to distribute the rice properly to the beneficiaries – He was rightly found guilty and convicted of the offence punishable u/s 409 – Evidence of hostile witness.

SENTENCE/SENTENCING.

Conviction and sentence of six months RI and a fine of Rs.1000/- awarded to Fair Price Shop dealer u/s 409 IPC – Held: Courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities under any Scheme of the Government intended to benefit the public at large – There is no ground for reduction of sentence.

The appellant-accused, a Fair Price Shop dealer, was entrusted with the task of disbursement of rice free of cost under "Food for Work Scheme" (FFWS) to the workers on production of coupons. On a complaint regarding irregularities in distribution of essential

commodities, an inspection of the Shops of the appellant was carried out and it was found that he disposed of 67.65 quintals of rice intended for FFWS without any coupons. An FIR was registered against him for offences punishable u/ss 409 and 420 IPC. The trial court convicted the appellant-accused u/s 409 IPC and sentenced him to six months' RI and to pay a fine of Rs. 1000/-. His appeal and revision having been dismissed, he filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1. On 25.07.2002, PWs 2 and 3, along with PW-4 and some others, carried out an inspection of the Fair Price Shops of the appellant-accused. PW-3 stated that the appellant disposed of 67.65 quintals of rice worth around Rs.84,562/-in black market intended for FFWS. On the same day, i.e., on 25.07.2002, PW-2 recorded the statement of the appellant under Ext. P-7 wherein nowhere he denied the contents of the said statement. It is also clear from the prosecution evidence that the appellant was not in a position to show the correct details, particularly, the handing over of rice to the beneficiaries by securing coupons/ vouchers from them. [Para 9] [1150-G-H; 1151-A-B]

1.2. In addition to the official witnesses, viz., PWs 1-4, the prosecution also examined PW-5, who worked as an Attender in Cooperative Society and was the beneficiary. He deposed that he purchased essential commodities from the Fair Price Shop of the appellant even without having a ration card. He was the person who gave a report to the Mandal Revenue Officer (PW-1) under Ext. P1. He also admitted that he had no ration card at all. It is true that at a later point of time though PW-5 turned hostile, in his cross examination, he admitted that in Ext. P1 he mentioned that the appellant was not

distributing essential commodities properly to the beneficiaries. [para 8] [1150-C-E]

1.3. The evidence proves that there was entrustment of property of the government to the appellant. He was charged with misappropriation of 67.65 quintals of rice. The materials placed by the prosecution show that the appellant had dishonest intention not to distribute the rice properly to the beneficiaries and an offence of criminal breach of trust could be made out. All these aspects have been rightly considered by the trial court and it has found the appellant guilty of the offence punishable u/s 409 IPC. The appellate and revisional courts, on appreciation of the materials placed by the prosecution and defence, rightly confirmed the same. [para 9-10] [1151-G-H; 1152-A-B]

2. Section 409 enables the court to award imprisonment for life or imprisonment up to ten years alongwith fine. Considering the fact that the appellant was awarded imprisonment for 6 months alongwith a fine of Rs.1,000/- only, the same is not excessive. On the other hand, the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities under any Scheme of the Government intended to benefit the public at large. There is no ground for reduction of sentence. [para 11] [1152-C-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1159 of 2012.

From the Judgment & Order dated 8.4.2011 of the High Court of Judicature, Andhra Pradesh at Hyderbad in Criminal Revision No. 295 of 2005.

V. Giri, Shree Pal Singh, K. Sita Rama Rao, Rahul Singh, Sadiq for the Appellant.

Mayur Shah, D. Mahesh Babu, Suchitra H., Amit Nain, Bala Shivulu for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is filed against the impugned order dated 08.04.2011 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Revision Case No. 295 of 2005 whereby the High Court dismissed the Revision filed by the appellant herein and confirmed the conviction and sentence imposed upon him under Section 409 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") by the trial Court.

3. Brief facts:

(a) The appellant was the Fair Price Shop dealer of Stuartpuram village and also in-charge dealer of Fair Price Shop at Chinabethapudi. He was entrusted with the task of distribution of rice at free of cost under "Food For Work Scheme" (FFWS) to the workers on production of coupons, to maintain proper accounts and to handover the said coupons to the Mandal Revenue Office to that effect.

(b) During the 17th Janma Bhoomi programme, on 03.06.2002, one Nadendla Jakraiah filed a complaint against the appellant to the Mandal Revenue Officer (MRO), Bapatla regarding the irregularities committed in the distribution of essential commodities to the public and requested to take necessary action in the matter. The MRO, Bapatla forwarded the said complaint to the Deputy Tahsildar of Civil Supplies, Bapatla to inspect the fair price shop of the appellant and to take necessary action.

(c) On 25.07.2002, the Deputy Tahsildar along with other Revenue officials visited the Fair Price Shop of the appellant at Chinabethapudi and also at Stuartpuram Village. On inspection of the Fair Price Shop at Chinabethapudi, the

Revenue officials found the goods/stocks lying therein tallied with the records/Stock Register. In the similar manner, when the fair price shop at Stuartpuram was inspected, the Revenue officials could not find the records/Stock Registers, pursuant to the same, they made inventory of the goods lying in the shop and seized the same. According to the appellant, in the evening, he went to the Mandal Revenue Office along with the records/ registers and coupons but the revenue officials refused to look into the same and informed him that action had been initiated against him. Thereafter, the appellant sent a FAX/Telegram to the Joint Collector, Mandal Revenue Office.

(d) On 27.07.2002, the Revenue Officials (Civil Supplies) visited his Fair Price Shop at Chinabethapudi and took inventory of the stock in the shop and asked the appellant to sign the papers which were already prepared by them.

(e) On 31.07.2002, the MRO lodged a complaint with the S.H.O., P.S. Vedullapalli which was registered as FIR in Crime No. 22 of 2002 under Sections 409 and 420 of IPC. After investigation, the police arrested the appellant on 30.09.2002.

(f) After considering the evidence, the II Addl. Jr. Civil Judge-cum-Judicial First Class Magistrate, Bapatla, by judgment dated 22.05.2004 in C.C. No. 7/2003, found the appellant guilty for the offence punishable under Section 409 IPC and not guilty under Section 420 IPC and, accordingly, convicted and sentenced him to suffer simple imprisonment for 6 months and also to pay a fine of Rs.1,000/-, in default, to further undergo simple imprisonment for 1 month.

(g) Aggrieved by the said judgment, the appellant preferred an appeal being Criminal Appeal No. 210 of 2004 before the Ist Addl. Sessions Judge, Guntur. The Sessions Judge, by order dated 08.02.2005, dismissed his appeal and confirmed the order passed by the IInd Addl. Jr. Civil Judge-cum-Judicial First Class Magistrate dated 22.05.2004.

(h) Against the said order, the appellant filed Criminal Revision No. 295 of 2005 before the High Court of Andhra Pradesh. By impugned order dated 08.04.2011, the High Court dismissed the Revision filed by the appellant and confirmed the judgment passed by the Addl. Sessions Judge, Guntur.

(i) Challenging the said order of the High Court, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. V. Giri, learned senior counsel for the appellant and Mr. Mayur Shah, learned counsel for the respondent-State.

5. Mr. V. Giri, learned senior counsel for the appellant, after taking us through the necessary ingredients of Section 409 of IPC and the evidence led in, submitted that there was no acceptable material to establish that the appellant dishonestly misappropriated the foodgrain which was meant for workers under FFWS. He also pointed out that the prosecution failed to prove the fraudulent dishonest intention on the part of the appellant. He finally submitted that inasmuch as the prosecution witnesses being Nos. 2, 3, 4 and 6 are official witnesses and not independent witnesses, their evidence without corroboration with the independent witness, casts a reasonable doubt on the veracity of the prosecution allegation.

6. On the other hand, Mr. Mayur Shah, learned counsel for the State, after taking us through the entire materials placed by the prosecution and reasonings of the Courts below, pleaded for confirmation of the conviction and sentence imposed on the appellant.

7. In order to appreciate the above contentions, it is useful to refer the definition and punishment of criminal breach of trust and related provision provided under Sections 405, 406 and 409 IPC which read as under:-

"405. Criminal breach of trust.- Whoever, being in any

manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

409. Criminal breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 IPC, two ingredients are to be proved: namely, i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty bound to account for; and ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC. The basic requirement to bring home the accusations under Section 405 are the

requirements to prove conjointly i) entrustment and ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.

8. In the light of the above broad principles, let us examine the materials relied on by the prosecution. To prove the above offence, the prosecution examined PWs 1-6, viz., Mandal Revenue Officer (PW-1), Deputy Tahsildar (Civil Supplies) (PW-2), Revenue Inspector (PW-3), Village Secretary (PW-4). In order to prove the offence of criminal breach of trust, the prosecution must prove that the accused was, in any manner, entrusted with the property of the Government. In addition to the official witnesses, viz., PWs 1-4, the prosecution also examined Nadendla Jakraiah (PW-5), who worked as an Attender in Cooperative Society, Bethapudi and the beneficiary along with the appellant. In his examination, he deposed that he purchased the essential commodities from the Fair Price Shop of the appellant even without having a ration card. He was the person who gave a report to the MRO, PW-1 under Exh. P1. He also admitted that he had no ration card at all. It is true that at a later point of time though PW-5 turned hostile, in his cross examination, he admitted that in Exh. P1 he mentioned that the appellant accused was not distributing essential commodities properly to the beneficiaries. The Magistrate has rightly observed that how is it possible that PW-5 was receiving essential commodities from the shop of the accused without having a ration card.

9. Though PWs 2 to 4 are Government Officials, PW-5 is the beneficiary of the fair price shop of the accused and PW-6 is the I.O. All of them stated that the accused was running Fair Price Shop at Stuartpuram and also in-charge of Fair Price Shop at Chinabethapudi. As per the orders of PW-1, on 25.07.2002, PWs 2 and 3, along with PW-4 and some others, carried out an inspection over the Fair Price Shops of the appellant-accused at Chinabethapudi and Stuartpuram and submitted a Report. PW-3 stated that the appellant-accused

disposed of 67.65 quintals of rice in black market intended for FFWS. According to these witnesses, the value of foodgrain was around Rs. 84,562/-. On the same day, i.e., on 25.07.2002, PW-2 recorded the statement of the appellant-accused under Exh. P-7 wherein nowhere he denied the contents of the said statement. It is also clear from the prosecution evidence that the appellant was not in a position to show the correct details, particularly, the handing over of rice to the beneficiaries by securing coupons/vouchers from them. Though it was stated by the appellant that all those coupons/vouchers were with his father, it was demonstrated that his father failed to turn up even after twelve noon on 25.07.2002. There is no dispute that the appellant was entrusted with 13.8 quintals of rice, 387 litres of kerosene in respect of Chinabethapudi Fair Price Shop in the month of June, 2002 and he was also entrusted with 6.88 quintals of rice and 213 litres of kerosene in respect of Stuartpuram Fair Price Shop. It is also clear from the evidence led in by the prosecution that the appellant had failed to submit the coupons for the deficiency found by the inspecting officers. Though the appellant has pleaded that in the same evening, he went and met the officers concerned along with the coupons, it has come on record that those coupons does not belong to the persons alleged to the above mentioned Fair Price Shop. The materials placed by the prosecution show that the appellant-accused had dishonest intention not to distribute the rice properly to the beneficiaries and an offence of criminal breach of trust could be made out. As observed earlier, the coupons filed by the appellant-accused belong to Ramnagar and not to Stuartpuram village. The fact remains that on the date of inspection, the rice was disbursed without proper coupons.

10. The trial Court, after considering all the materials, came to the conclusion that the evidence of PWs 1 to 6 is reliable and trustworthy in relation to the offence in proving entrustment of property of the Government to the accused. In the case on hand, the appellant, an agent entrusted with the distribution of rice under the "Food for Work Scheme" (FFWS) to the workers

on production of coupons, was charged with misappropriation of 67.65 quintals of rice. The evidence also proves that there was entrustment of property to the accused. All these aspects have been rightly considered by the trial Court and found the appellant guilty of the offence punishable under Section 409 IPC. The appellate and revisional court, on appreciation of the materials placed by the prosecution and defence, confirmed the same. We are in entire agreement with the said conclusion.

11. Mr. Giri, learned senior counsel for the appellant submitted that inasmuch as the alleged occurrence took place in 2002, some leniency may be shown on the sentence imposed. We are unable to accept the said contention. Section 409 enables the Court to award imprisonment for life or imprisonment up to ten years alongwith fine. Considering the fact that the appellant was awarded imprisonment for 6 months alongwith a fine of Rs. 1,000/- only, we feel that the same is not excessive. On the other hand, we are of the view that persons dealing with the property of the Government and entrusted with the task of distribution under FFWS, it is but proper on their part to maintain true accounts, handover coupons to the Mandal Revenue Office and to execute the same fully and without any lapse. Such recourse has not been followed by the appellant. The courts cannot take lenient view in awarding sentence on the ground of sympathy or delay, particularly, if it relates to distribution of essential commodities under any Scheme of the Government intended to benefit the public at large. Accordingly, while rejecting the request of the learned senior counsel for the appellant, we hold that there is no ground for reduction of sentence.

12. Under these circumstances, we find no merit in the appeal. Consequently, the same is dismissed. In view of the dismissal of the appeal, the order granting exemption from surrender is revoked and the appellant has to surrender within four weeks and serve out the remaining period of sentence.

R.P. Appeal dismissed.

RAI SANDEEP @ DEEPU

v.

STATE OF NCT OF DELHI

(Criminal Appeal Nos 2486 of 2009 etc.)

AUGUST 7, 2012

[SWATANTER KUMAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Penal Code, 1860:

s.376(2)(g) – Gang rape – Evidence of prosecutrix – Two accused-appellants convicted and sentenced by courts below – Held: Apart from a total variation in the version of the prosecutrix as stated in the complaint, and as deposed before the court, the other two eye-witnesses, who were her niece and nephew, did not support the story of the prosecution – Further, there is a total somersault in her cross-examination – There are prevaricating statements of the prosecutrix herself in the implication of the accused to the alleged offence of gang rape – There are material variations as regards the identification of the accused persons as well as the manner in which the occurrence took place – The recoveries failed to tally with the statements made – FSL report did not co-relate the version alleged – In the absence of any other supporting evidence and corroboration, it will be unsafe to sustain the conviction and sentence imposed on the appellants merely on the basis of the solitary version of the chief-examination of the prosecutrix – Prosecution has miserably failed to establish the guilt of gang rape falling u/s. 376 (2) (g), against the appellants – They are, therefore, acquitted.

EVIDENCE:

Evidence of prosecutrix in a case of alleged gang rape –Characteristic of 'sterling witness' – Explained.

The appellants were prosecuted for committing rape of PW-4 (the prosecutrix), a married woman aged bout 34 years. The case of the prosecution was that in the night of 15.8.2001, at about 1.30 a.m., the prosecutrix was raped by the two accused-appellants. The trial court convicted both of them u/s 376(2)(g) IPC and sentenced them to rigorous imprisonment for 10 years each. The High Court upheld the conviction and the sentence.

It was contended for the appellant in Crl. A. No.2486 of 2009 that the offence was alleged to have been committed at 1.30 a.m. on 15.8.2001, whereas the FIR was lodged at 2.20 p.m.; and that there were many contradictions in the versions of the prosecutrix as mentioned in the FIR and her deposition in the court as also in the version of the prosecutrix vis-à-vis evidence of PWs 10 and 11, the niece and nephew, respectively, of the prosecutrix and inmates of the house. For the other appellant, it was further contended that he was not named in the FIR and was roped in due to the statement of the co-accused.

Allowing the appeals, the Court

HELD: 1.1. There are various contradictions and inconsistencies in the case of the prosecution as projected in the FIR and the oral and medical evidence. In the FIR, it was stated that on the night of 15.08.2001 at about 1.30 a.m., the prosecutrix heard knocking of the door and when she opened the door, the accused forcibly entered the house and after pushing her nephew (PW-11) and niece (PW-10) inside a room and bolting it from outside, committed rape on her one after another. But in the chief-examination of the so called 'sterling witness' of the prosecution, namely, the prosecutrix, she stated that when the persons, who knocked at the door, were enquired they claimed that they were from the crime

branch, which was not mentioned in the FIR. She further deposed that they made a statement that they had come there to commit theft and that they snatched the chain which she was wearing and also the watch from PW-11. While in the complaint, the accused were alleged to have stealthily taken the gold chain and wrist watch which were lying near the T.V. It was further alleged that the appellant in Crl. A. No. 2486 of 2009 was having a knife in his hand which statement was not found in the complaint. The police stated to have apprehended the appellants at the instance of PW-11 who knew the appellant in Crl. A. No. 2486 of 2009 even prior to the incident, that PW-11 also revealed his name to the prosecutrix and that, therefore, she was able to name him in the complaint. When the seized gold chain and watch were shown to her in the court, she made it clear that that was not the chain which she was wearing and that it did not belong to her and that the watch found in the same parcel which was a women's watch was not the one which was worn by PW-11. In the cross examination of the prosecutrix, there was a U-turn in her version where she went to the extent of stating that she never knew the appellant in Crl. A. No. 2486 of 2009 prior to the incident and she never stated before the police that PW-11 knew the said accused prior to the incident or at the time of incident, that since it was dark on the date of occurrence, she could not indentify the accused, that her statement of orally identifying the accused was at the instance of the police. [para 7-9] [1163-E-G; 1164-A, D-H; 1165-A, C-E]

1.2. Keeping aside the version of the prosecutrix, the evidence of so-called eye witnesses, PW-10 and PW-11, is much more revealing. When PW-10, who was aged about 10 years at the time of her examination, was asked to identity the accused, she made it clear that they were not the persons. As regards the incident, the witness further deposed that when she was sleeping in the house

she did not know as to what happened or as to anything happened at all. In her cross-examination, she deposed that two persons never entered her home or ever confined her or anybody else in any room nor did they threaten anybody. She also deposed that their house was not bolted from outside and her brother did not open the door from outside. PW-11, who was 20 years old at the time of his examination, stated in his chief-examination that he was sleeping on the roof top, that he saw two persons quarrelling with his aunt, that he raised a hue and cry, that thereafter both the persons ran away and that nothing else happened. He also stated that he did not come down at all. He totally denied the sequence of events as alleged in the complaint and as narrated by the prosecutrix in her evidence. [para 10-11] [1165-F; 1166-A-E]

1.3. Further, in the FSL report Ext. PW-14/N, it is stated that there was no semen detected on the red colour socks which was stated to have been used by the prosecutrix as also by the accused to clean themselves. However, human semen was detected on the petticoat. But there was no matching of the blood group noted on the petticoat vis-à-vis the blood group of the accused. The prosecutrix was a married woman and except the semen found on the petticoat, there is no other reliable evidence for implicating the accused-appellants to the crime alleged against them. [para 12 and 14] [1166-G; 1168-B]

1.4. The 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. There should be consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. The version of the said witness on the core spectrum of the crime should remain intact while all other

attendant materials, namely, oral and documentary evidence and the material objects should match the said version in material particulars in order to enable the court to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged. The version of the prosecutrix, in the instant case, has failed to pass any of these tests. There is total variation in her version from what was stated in the complaint and what was deposed before the court at the time of trial. Further, there is a total somersault in her cross-examination. There are material variations as regards the identification of the accused persons as well as the manner in which the occurrence took place. Apart from the prosecutrix not supporting her own version, the so-called eye witnesses (PWs 10 and 11), who were none other than her niece and nephew, did not support the story of the prosecution, the recoveries failed to tally with the statements made, the FSL report did not co-relate the version alleged. There are prevaricating statements of the prosecutrix herself in the implication of the accused to the alleged offence of gang rape. There is evidence on record that there was no injury on the private parts of the prosecutrix while according to her original version, the appellants had forcible sexual intercourse one after the other against her. These factors do not convincingly rope in the accused to the alleged offence of 'gang rape' on the date and time alleged in the charge-sheet. Thus, the prosecutrix failed to instill the required confidence of the court in order to confirm the conviction imposed on the appellants. The attendant circumstances also do not co-relate to the offence alleged against the appellants. Therefore, in the absence of proper corroboration of the prosecution version to the alleged offence, it will be unsafe to sustain the case of the prosecution. [para 13, 15-16, 20 and 24] [1168-C-F; 1169-B-E; 1171-B-E; 1174-B-E]

Lalliram & Anr. v. State of Madhya Pradesh **- 2008 (13) SCR 395 = 2008 (10) SCC 69; and** *Krishan Kumar Malik v. State of Haryana* **2011 (8) SCR 774 = 2011(7) SCC 130 – relied on**

State of Punjab v. Gurmit Singh & Ors. **- 1996 (1) SCR 532 = 1996 (2) SCC 384– held inapplicable**

Ashok Kumar v. State of Haryana **- 2003 (2) SCC 143 – referred to**

State of Himachal Pradesh v. Asha Ram **2005 (5) Suppl. SCR 280 = AIR 2006 SC 381 – distinguished.**

1.5. The solitary version of the chief examination of the prosecutrix cannot be taken as gospel truth for its face value, and in the absence of any other supporting evidence there is no scope to sustain the conviction and sentence imposed on the appellants. The prosecution has miserably failed to establish the guilt of gang rape falling u/s. 376 (2) (g), IPC against the appellants. They are, therefore, acquitted. The judgments and orders of the trial court and the High Court are set aside. [paras 26,27] [1175-D-G]

Case Law Reference:

1996 (1) SCR 532	**held inapplicable**	**para 6**
2011 (8) SCR 774	**relied on**	**para 6**
2008 (13) SCR 395	**relied on**	**para 6**
2003 (2) SCC 143	**referred to**	**para 6**
2005 (5) Suppl. SCR 280	**distinguished**	**para 21**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2486 of 2009.

From the Judgment & Order dated 27.01.2009 of the High Court of Delhi at New Delhi in Criminal Appeal No. 884 of 2006.

WITH

Crl. A. No. 2487 of 2009.

Ashok K. Srivastava, Saurabh Trivedi, Shiv Sagar Tiwari for the Appellant.

Mohan Jain, ASG, D.K. Thakur, P.K. Dey, Karthik Ashok, Shubham Aggarwal, A.K. Sharma, B.V. Balram Das, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. These two appeals at the instance of the accused arise out of the common judgment dated 27.01.2009. Hence, we will dispose them of by this common judgment. Both the appellants were convicted for the offence of gang rape by the trial Court and were sentenced to undergo rigorous imprisonment for 10 years each with a fine of Rs. 3,000/- each, in default to undergo further rigorous imprisonment for one year each under Section 376 (2)(g), IPC.

2. The case of the prosecution was that on 15.08.2001 in the night at about 1.30 a.m. the prosecutrix (PW-4) aged about 34 years was in her sister's house, namely, Seema, that she heard the noise of knocking at the door, that the minor daughter of her sister, namely, Noju (PW-10), opened the door and both the accused persons entered and the accused Rai Sandeep @ Deepu told the prosecutrix that he wanted to have sexual intercourse with her. According to the prosecutrix (PW-4), she rebuked their demand stating that she was not of that type and that the appellants threatened her, that in the meantime one Jitender (PW-11), minor son of her sister Seema appeared and both the minor children asked the appellants to go out of their house but the appellants pushed the minor children into a room and bolted the door of the room from outside. The further allegation of the prosecutrix (PW-4) was that the appellant-Rai

Sandeep @ Deepu in Criminal Appeal No.2486 of 2009 made her lie down in the Verandah outside the room and had forcible sexual intercourse with her while his companion, the appellant in Criminal Appeal No.2487 of 2009 was guarding the main door of the house. It was further alleged that after the appellant in Criminal Appeal No.2486 of 2009 had forcible intercourse with the prosecutrix (PW-4), he took the turn of guarding the door while his companion, the appellant in Criminal Appeal No.2487 of 2009 also had forcible sexual intercourse with her, that both the appellants wiped their private parts with a red colour socks which was lying in the Verandah and while leaving the place of occurrence, they took away a gold chain and a wrist watch which was lying near the TV inside the room. The appellants stated to have left the place by bolting the main door from outside. According to the prosecutrix (PW-4), since it was dark in the night she did not venture to go out at that time and in the morning she asked her nephew Jitender (PW-11) to get out of the house from roof top and open the door which was bolted from outside. Thereafter, she is stated to have reported the incident to the police.

3. Based on the investigation, the appellants were arrested and thereafter the gold chain and the wrist watch was recovered at the instance of the appellant in Criminal Appeal No.2486 of 2009 and subsequently on his disclosure the appellant in Criminal Appeal No.2487 of 2009 was also arrested. The prosecutrix (PW-4) and the appellants were stated to have been medically examined, that the appellant in Criminal Appeal No.2487 of 2009 refused to participate in the test identification parade, that FSL report of Exhibits were also obtained and the charge sheet was filed for the offence of gang rape. Seventeen witnesses were examined on the side of the prosecution which included the prosecutrix (PW-4) as well as her niece Noju and nephew Jitender, minor children of prosecutrix's sister Seema who were examined as PWs-10 and 11. PWs 1 and 5 were the doctors who testified the medical report of the prosecutrix (PW-4). PWs-2, 3 and 13 were the doctors who deposed about

the medical report of both the appellants. SI Rajiv Shah (PW-14) was the investigating officer. None were examined on the side of the appellants. The appellants have been convicted as stated above and the said conviction having been confirmed by the order impugned in this appeal, the appellants are before us.

4. Learned counsel appearing for the appellant in Criminal Appeal No.2486 of 2009 submitted that while the alleged offence took place on the night of 15.08.2001 at 1.30 a.m., the FIR was lodged at 14.20 hours on the next day, that in the FIR the name of the appellant in Criminal Appeal No.2486 of 2009 alone was mentioned and that there were very many contradictions in the version of the prosecutrix (PW-4) before the Court. Learned counsel by referring to the FSL report PW-14/N contended that the report does not implicate the appellant to the offence alleged against him. According to learned counsel, the trial Court as well as the High Court ignored the fact that the accused were neither identified nor their presence was established at the place of occurrence. It was also contended that there were material contradictions in the evidence of PWs10 and 11, and that of the prosecutirix (PW4) and, therefore, the conviction and sentence imposed is liable to be set aside.

5. Learned counsel appearing for the appellant in Criminal Appeal No.2487 of 2009 in his submissions contended that in the case on hand the evidence of the prosecutrix PW-4 definitely need corroboration, inasmuch as, there were contradictions in the entirety of her evidence which were fatal to the case of the prosecution. Learned counsel contended that the appellant was not named in the FIR and was roped in due to the statement of the co-accused, namely, the alleged confession Annexure P-3(colly) in Criminal Appeal No.2487 of 2009 stated to have been made on 30.08.2001 based on which the present appellant was implicated. Learned counsel also contended that the medical evidence also did not support the story of the prosecution. He

also made extensive reference to the evidence of the prosecutrix (PW-4) to contend that the same was not in consonance with what was stated in the FIR and that, therefore, serious doubts were created as to the case of the prosecution and the trial Court failed to appreciate the defects of the case in proper perspective. By making reference to para 48 of the judgment of the trial Court, learned counsel pointed out that the statement found therein by referring to the deposition of PW-11 was totally misleading inasmuch as no such statement was ever made by PW-11. Learned counsel further argued that the blood group AB stated to have been detected from the semen sample did not match with that of the accused and no blood of the accused was ever detected. Learned counsel also pointed out that no injury was noted in the breast and thighs of the prosecutrix (PW-4) and, therefore, the allegation of forcible intercourse was not proved. He further argued by making a reference to Exhibit PW-4/B the recovery memo of the socks from the place of occurrence, that in her evidence the prosecutrix (PW-4) deposed that after preferring the complaint she was taken to the hospital for medical examination where she handed over the socks to the police when her petticoat was seized. Learned counsel, therefore, contended that the offence of rape alleged against the appellant having not been established in the manner known to law, the conviction and sentence imposed on the appellant is liable to be set aside.

6. As against the above submissions, learned counsel for the State very fairly contended that PWs-10 and 11 did not support the version of the prosecutrix (PW-4) and solely based on the evidence of the prosecutrix as deposed in her chief examination, the offence was held proved against the appellants. Learned counsel contended that the variation in her statement in the course of cross examination may be due to the time gap of two years after her examination in chief and, therefore, the same does not in any way affect the case of the prosecution. Learned counsel by referring to the reasoning of the trial Court, namely, that semen stains were found on the

petticoat of the prosecutrix, that it was not the case of the accused that she had sexual intercourse with her husband on the previous night, that she was in the house of her sister on the date of occurrence, that the medical report Exhibit PW-5/A disclosed an abrasion on the right side of her neck below jaw and the said injury was not self inflicted and the prosecutrix being a married woman, there was no possibility of bleeding in vagina as the hymen was old torn and it was sufficient enough to prove the guilt of the accused. According to him, the refusal of the appellant in Criminal Appeal No.2487 of 2009 to participate in the test identification parade was sufficient to find the appellant guilty of the offence alleged against him. Learned counsel, therefore, contended that the conviction and sentence imposed do not call for any interference. He placed reliance upon the decision of this Court reported as *State of Punjab v. Gurmit Singh & Ors.* - 1996 (2) SCC 384 in support of his submission. Learned counsel for the appellant in Criminal Appeal No.2487 of 2009 relied upon the decision *in Lalliram & Anr. v. State of Madhya Pradesh* - 2008 (10) SCC 69, *Krishan Kumar Malik v. State of Haryana* - 2011(7) SCC 130 and *Ashok Kumar v. State of Haryana* - 2003 (2) SCC 143.

7. Having heard learned counsel for the appellants as well as the State counsel and having perused the relevant papers on record as well as the judgments of the courts below, we feel it appropriate to refer to the various contradictions pointed out by the learned counsel for the appellants and the inconsistencies in the case of the prosecution as projected in the FIR as sought to be demonstrated before the Court in the form of oral and medical evidence. To recapitulate the case of the prosecution as projected in the FIR, on the night of 15.08.2001 at about 1.30 a.m., PW-4, the prosecutrix aged about 34 years, a married woman, who was staying in her sister's house, heard knocking of the door and that when she opened the door along with her niece Noju (PW-10) who was a minor girl, the accused alleged to have forcibly entered the house and demanded sex from the prosecutrix which she

refused and the appellants forced themselves on her one after another after pushing her nephew Jitender (PW-11) and niece Noju (PW-10) inside a room and bolting it from outside, and that one of the accused kept vigil on the main door while the other had forcible sexual intercourse with her in turn. It was also alleged that after committing the offence and after wiping their private parts with a red colour socks lying in the verandah and while leaving the place of occurrence they stealthily removed a gold chain and a wrist watch and also bolted the door from outside. According to the prosecution, the appellant in Criminal Appeal No. 2486 of 2009 was apprehended in the first instance and based on the admissible portion of his confession, the gold chain and wrist watch were recovered and based on his disclosure the appellant in Criminal Appeal No. 2487 of 2009 was also arrested.

8. Keeping the above basic features of the offence alleged against the appellants in mind, when we make reference to the evidence of the so called 'sterling witness' of the prosecution, namely, the prosecutrix, according to her version in the chief examination when the persons who knocked at the door, were enquired they claimed that they were from the crime branch which was not mentioned in the FIR. She further deposed that they made a statement that they had come there to commit theft and that they snatched the chain which she was wearing and also the watch from Jitender (PW-11). While in the complaint, the accused alleged to have stealthily taken the gold chain and wrist watch which were lying near the T.V. It was further alleged that the appellant in Criminal Appeal No.2486 of 2009 was having a knife in his hand which statement was not found in the complaint. After referring to the alleged forcible intercourse by both the appellants she stated that she cleaned herself with the red colour socks which was taken into possession under Exhibit PW-4/B in the hospital, whereas, Exhibit PW-4/B states that the recovery was at the place of occurrence. The police stated to have apprehended the appellants at the instance of Jitender (PW-11) who knew the appellant in Criminal Appeal

No.2486 of 2009 even prior to the incident, that Jitender (PW-11) also revealed the name of the said accused to her and that, therefore, she was able to name him in her complaint. When the seized watch was shown to her in the Court, the brand name of which was OMEX, she stated that the said watch was not worn by her nephew Jitender (PW-11) as it was stated to be 'TITAN' and the chain was a gold chain having no pendant. She made it clear that that was not the chain which she was wearing and that it did not belong to her and that the watch found in the same parcel which was a women's watch was not the one which was worn by Jitender (PW-11).

9. All the above versions were found in the chief examination of the prosecutrix (PW-4). In her cross examination, there was a U-turn in the version of the prosecutrix where she went to the extent of stating that she never knew the appellant in Criminal Appeal No.2486 of 2009 prior to the incident and that she was not aware that accused Rai Sandeep was also known as Deepu, that she never stated before the police that Jitender (PW-11) knew Deepu prior to the incident or at the time of incident, that since it was dark on the date of occurrence, she could not indentify the accused, that her statement of orally identifying the accused was at the instance of the police. When the learned APP wanted to cross examine her, the same was declined by the crime Court and there was also no re-examination of the prosecutrix (PW-4).

10. Keeping aside the version of PW-4, the prosecutrix, when we examine the so-called eye witnesses Noju (PW-10) and Jitender (PW-11), their version is much more revealing. Noju (PW-10) is the niece of the prosecutrix (PW-4), daughter of prosecutrix (PW-4)'s sister, who was 10 years old at the time of examination. Before recording her evidence, with a view to test the capacity of the witness to depose before the Court, the Court questioned her about her blood relations, education and as to whether one should speak the truth or lie and on being satisfied, PW-10 was questioned. The trial Court, after

scrutinizing the replies and noting that the girl child was answering the questions in a rationale manner found her to be a competent witness. Thereafter when she was asked to identity the accused, she made it clear that they were not the persons. The witness further deposed that prosecutrix (PW-4) is her aunt, that in the year 2001 when she was sleeping in the house she did not know as to what happened or as to anything happened at all. Learned counsel with the permission of the Court, cross examined the said witness when she deposed that two persons never entered her home or ever confined her or anybody else in any room nor they threatened anybody. She also deposed that their house was not bolted from outside and her brother did not open the door from outside.

11. Jitender (PW-11) who was 20 years old at the time of his examination stated in his chief examination that 3 years prior to the date of his examination in the month of August, he was sleeping on the roof top, that he saw two persons quarrelling with his aunt, that he raised a hue and cry, that thereafter both the persons ran away and that nothing else happened. He also stated that he did not come down at all. He totally denied the sequence of events as alleged in the complaint and as narrated by PW-4 in her evidence.

12. Apart from the above version of the prosecution witnesses, when reference is made to the medical report relating to the prosecutrix as per Annexure P-4, there was an injury of abrasion on right side neck below her jaw and that there was no other injury either in the breast or her thighs. The hymen was torn old, that there was no injury on the valva and that there was no bleeding in her vagina. In the FSL report Exhibit PW-14/N, it is stated that there was no semen detected on the red colour socks. However, human semen was detected on the petticoat. But there was no matching of the blood group noted on the petticoat vis-à-vis the blood group of the accused.

13. Keeping the above evidence available on record, when we analyze the case of the prosecution as projected, we find

that apart from the total prevaricating statement of the prosecutrix herself in her oral version before the Court, the other two witnesses PWs10 and 11 who were none other then her niece and nephew not supported the story of the prosecution. Leaving aside the version of the prosecutrix, we wonder why Noju (PW-10), a minor girl child should at all make a statement totally conflicting with the case of the prosecution. The prosecutrix being her maternal aunt, there is no reason for her to spin a different story and let her down. Going by her version, the accused persons were never seen in her house on the date of occurrence. She being minor child, the trial court ascertained her capability to depose as a witness. When we examine the nature of queries made by the learned trial Judge to the said witness, we find that her replies were all cogent and she knew for what purpose she was standing before the Court. She was very much aware that she should not utter any falsehood. The Court was, therefore, convinced of her composure and only thereafter proceeded to record her statement. The Court itself pointed out the accused present before the Court and asked her as to whether they were present in her house on the date of incident, to which she replied without any hesitation and deposed that they were not present. She went one step ahead and made it clear that on that night nothing happened at all. Again her brother Jitender (PW-11) stated that he heard two persons quarrelling with his aunt. He also made it clear that apart from the said quarrel and on his making a hue and cry both of them ran away and nothing else happened.

14. The other discrepancies which are to be mentioned are the categorical statement of the prosecutrix (PW-4) herself that after the alleged forcible sexual intercourse by both the accused, she wiped of her private parts with a red colour socks which was lying in the house, though at another place it was stated that both the accused used the red colour socks to wipe of their private parts after the commission of the offence. Assuming both the versions to be true, we find that the red colour socks sent for chemical examination revealed that it did not contain any semblance of semen in it as per the FSL report Exhibit PW- 14/N. It was also pointed out that while according to her the socks was handed over to the police in the hospital when the petticoat and the socks were seized from her, according to the seizure memo the socks was recovered from the place of occurrence. She was a married woman and except the semen found in the petticoat, there is no other reliable evidence for implicating the accused-appellants to the crime alleged against them. In this background, when we refer to the oral version of the prosecutrix (PW-4), as pointed out by learned counsel for the appellant, very many facts which were not found in her original statement were revealed for the first time before the Court.

15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it

should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

16. In the anvil of the above principles, when we test the version of PW-4, the prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests mentioned above. There is total variation in her version from what was stated in the complaint and what was deposed before the Court at the time of trial. There are material variations as regards the identification of the accused persons, as well as, the manner in which the occurrence took place. The so-called eye witnesses did not support the story of the prosecution. The recoveries failed to tally with the statements made. The FSL report did not co-relate the version alleged and thus the prosecutrix failed to instill the required confidence of the Court in order to confirm the conviction imposed on the appellants.

17. With the above slippery evidence on record against the appellants when we apply the law on the subject, in the decision reported in *State of Punjab v. Gurmit Singh & Ors.* (supra), this Court was considering the case of sexual assault on an young girl below 16 years of age who hailed from a village and was a student of 10th standard in the Government High School and that when she was returning back to her house

she was kidnapped by three persons. The victim was stated to have been taken to a tubewell shed of one of the accused where she was made to drink alcohol and thereafter gang raped under the threat of murder.

18. The prosecutrix in that case maintained the allegation of kidnapping as well as gang rape. However, when she was not able to refer to the make of the car and its colour in which she was kidnapped and that she did not raise any alarm, as well as, the delay in the lodging of the FIR, this Court held that those were all circumstances which could not be adversely attributed to a minor girl belonging to the poor section of the society and on that score, her version about the offence alleged against the accused could not be doubted so long as her version of the offence of alleged kidnapping and gang rape was consistent in her evidence. We, therefore, do not find any scope to apply whatever is stated in the said decision which was peculiar to the facts of that case, to be applied to the case on hand.

19. In the decision reported in *Ashok Kumar v. State of Haryana* (supra), this court while dealing with the offence under Section 376 (2) (g) IPC read with explanation held as under in Para 8:

> "8.Charge against the appellant is under Section 376(2)(g) IPC. In order to establish an offence under Section 376(2)(g) IPC, read with Explanation I thereto, the prosecution must adduce evidence to indicate that more than one accused had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that she had been raped by one or more of them and it is not necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused. In other words, this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention; that common intention presupposes prior concert

which may be determined from the conduct of offenders revealed during the course of action and it could arise and be formed suddenly, but, there must be meeting of minds. It is not enough to have the same intention independently of each of the offenders. In such cases, there must be criminal sharing marking out a certain measure of jointness in the commission of offence."

20. Applying the above principle to the case on hand, we find that except the ipse-dixit of the prosecutrix that too in her chief examination, with various additions and total somersault in the cross examination with no support at all at the instance of her niece and nephew who according to her were present in the house at the time of occurrence, as well as, the FSL report which disclosed the absence of semen in the socks which was stated to have been used by the accused as well as the prosecutrix to wipe of semen, apart from various other discrepancies in the matter of recoveries, namely, that while according to the prosecutrix the watch snatched away by the accused was 'Titan' while what was recovered was 'Omex' watch, and the chain which was alleged to have been recovered at the instance of the accused admittedly was not the one stolen, all the above factors do not convincingly rope in the accused to the alleged offence of 'gang rape' on the date and time alleged in the chargesheet.

21. In the decision reported as *State of Himachal Pradesh v. Asha Ram* - AIR 2006 SC 381, this Court highlighted the importance to be given to the testimony of the prosecutrix as under in para 5:

5. .....It is now well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which

necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

(emphasis added)

22. That was a case where the father alleged to have committed the offence of rape on one of his daughters who was staying with him while his wife was living separately due to estranged relationship. While dealing with the said case, where the prosecutrix, namely, the daughter, apart from the complaint lodged by her, maintained her allegation against her father in the Court as well. This Court held that the version of the prosecutrix in the facts and circumstances of that case merited acceptance without any corroboration, inasmuch as, the evidence of rape victim is more reliable even that of an injured witness. It was also laid down that minor contradictions and discrepancies are insignificant and immaterial in the case of the prosecutrix can be ignored. As compared to the case on hand, we find that apart from the prosecutrix not supporting her own version, the other oral as well as forensic evidence also do not support the case of the prosecution. There were material contradictions leave alone lack of corroboration in the evidence of the prosecutrix. It cannot be said that since the prosecutrix was examined after two years there could be variation. Even while giving allowance for the time gap in the recording of her deposition, she would not have come forward with a version

totally conflicting with what she stated in her complaint, especially when she was the victim of the alleged brutal onslaught on her by two men that too against her wish. In such circumstances, it will be highly dangerous to rely on such version of the prosecutrix in order to support the case of the prosecution.

23. In the decision reported as *Lalliram & Anr. v. State of Madhya Pradesh* (supra) in regard to an offence of gang rape falling under Section 376 (2) (g) this Court laid down the principles as under in paras 11 and 12:

> "11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See *Aman Kumar v. State of Haryana.*)
>
> 12*. As rightly contended by learned counsel for the appellants, a decision has to be considered in the background of the factual scenario.* In criminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. In Aman Kumar case it was observed that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. In the latter case there is injury in the physical form while in the former both physical as well as psychological and emotional. *However, if the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial."*

(emphasis added)

24. When we apply the above principles to the case on hand, we find the prevaricating statements of the prosecutrix herself in the implication of the accused to the alleged offence of gang rape. There is evidence on record that there was no injury on the breast or the thighs of the prosecutrix and only a minor abrasion on the right side neck below jaw was noted while according to the prosecutrix's original version, the appellants had forcible sexual intercourse one after the other against her. If that was so, it is hard to believe that there was no other injury on the private parts of the prosecutrix as highlighted in the said decision. When on the face value the evidence is found to be defective, the attendant circumstances and other evidence have to be necessarily examined to see whether the allegation of gang rape was true. Unfortunately, the version of the so called eye witnesses to at least the initial part of the crime has not supported the story of the prosecution. The attendant circumstances also do not co-relate to the offence alleged against the appellants. Therefore, in the absence of proper corroboration of the prosecution version to the alleged offence, it will be unsafe to sustain the case of the prosecution.

25. In the decision reported as *Krishan Kumar Malik v. State of Haryana* (supra) in respect of the offence of gang rape under Section 376 (2) (g), IPC, it has been held as under in paras 31 and 32:

> "31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected

hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

(emphasis added)

26. Applying the said principles to the facts of the case on hand, we find that the solitary version of the chief examination of PW-4, the prosecutrix cannot be taken as gospel truth for its face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellants.

27. The prosecution has miserably failed to establish the guilt of gang rape falling under Section 376 (2) (g), IPC against the appellants. The conviction and sentence imposed on the appellants by the trial Court and confirmed by the impugned order of the High Court cannot, therefore, be sustained. The appeals are allowed. The judgment and order of conviction and sentence passed by the trial Court and confirmed by the High Court are hereby set aside. The appellants are acquitted of all the charges and they be set at liberty forthwith, if not required in any other case.

R.P. Appeals allowed.

STATE OF A.P. & ORS.

v.

D. RAGHUKUL PERSHAD (D) BY LRS & ORS.

(Civil Appeal No. 5822 of 2012)

AUGUST 8, 2012

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

Rent Control and Eviction – Suit for ejectment and resumption of possession of land filed by respondents on the ground that appellant-tenant failed to pay rent from 1986 – Plea of appellant in written statement that suit land actually belonged to him and the lease deed was executed and rent was paid to respondents by mistake of fact – Trial court decreed suit for eviction after recording finding that the appellants had failed to prove the title to the land – First appellate court and High Court upheld the decision of trial court – On appeal, held: Although plea was raised by appellants that the execution of lease deed as well as payment of rent pursuant to the lease deed were under mistake of fact, no issue as such was framed by trial Court on whether the lease deed was executed by mistake of fact – This issue was an issue of fact but as the issue was not framed, parties could not adduce evidence and no finding as such was recorded by trial Court on the said issue – Hence, this Court is not in a position to consider the argument of the appellants that the lease deed was executed and the rent was paid by mistake of fact – It is well settled that the tenant who has been let into possession by the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord – Although, there are some exceptions to this general rule, none of the exceptions were established by the appellants in this case – Therefore, appellants who were the

tenants of the respondents would have to surrender possession to the respondents before they can challenge the title of the respondents – In the plaint as framed by respondents in the instant case, the relief of eviction against the appellants was not based on the title of the respondents – Although an averment was made in the plaint that respondents were owners of the suit land, no relief for declaration of title as such was claimed by the respondents – Only the relief of eviction was sought in the plaint on the ground that the lease had not been renewed after 1986 and the rent had not been paid since 1986– Therefore, this being not a suit of declaration of title and recovery of possession but only a suit for eviction, trial Court, first appellate court and High Court were not called upon to decide the question of title – The findings of courts below on title is, therefore, set aside, but the decree for eviction is maintained – The appellants are directed to vacate the suit land within six months – Suit, if any, filed by the appellants for declaration of title and consequential relief cannot be entertained by the court unless the appellants first vacate and handover possession to the respondents.

D. *Satyanarayana v. P. Jagdish* **1987(4) SCC 424: 1988 (1) SCR 145 – relied on.**

Venkata Chetty v. Aiyanna Gounden **AIR 1917 Madras 789 – referred to.**

Case Law Reference:

AIR 1917 Madras 789	**referred to**	**Para 4**
1988 (1) SCR 145	**relied on**	**Para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5822 of 2012.

From the Judgment & Order dated 06.11.2009 of the High Court of Judicature, Andhra Pradesh at Hyderabad in S.A. No. 270 of 2009.

P.S. Narasimha, C.K. Sucharita, P. Parmeshwar, K., Sriram P., Vishnu Shankar Jain for the Appellants.

M.L. Verma, Venkateshwar Rao Anumolu, Satya Mirta, Prabhakar Parnam, T. Kanaka Durga for the Respondents.

The Order of the Court was delivered

O R D E R

1. Leave granted.

2. The facts briefly are that the respondents herein filed OS No. 2379 of 1990 in the Court of 5th Assistant Civil Judge, City Civil Court, Hyderabad against the appellants no. 1 to 4 for ejectment and resumption of possession of the suit land. The case of the respondents in the plaint was that the appellants had taken lease of the suit land from their common ancestor late Shri Dwaraka Pershad who had purchased the suit land from Nawab Raisyar Bahadur. The further case of the respondents in the plaint was that as the appellants failed to pay any rent from 1986 and renewed the lease after 1986, the respondents gave a notice to the appellants on 30.11.1989 to vacate the suit land. The appellants filed written statement pleading, inter alia, that the suit land actually belonged to the appellants and the lease deed had been executed and the rent had been paid to the respondents by mistake of fact. The learned Civil Judge decreed the suit for eviction after recording a finding, inter alia, that the appellants have not been able to prove the title to the land. The appellants filed First Appeal before the 3rd Additional Chief Judge, City Civil Court, Hyderabad which was numbered as AS No. 294 of 2005. The First Appellate Court held that the appellants were estopped from setting up title in them so long as they have not surrendered possession of the land to the lessees, namely, the

respondents and further held that the appellants have not been able to establish their title to the suit land.

3. Aggrieved, the appellants filed Second Appeal SA No. 270 of 2009 before the High Court and by the impugned order, the High Court has dismissed the Second Appeal after holding that the appellants cannot be permitted to deny the title of the respondents under the provisions of 116 of the Indian Evidence Act and also holding that the appellants have not been able to adduce any evidence to prove that the suit land belonged to the appellants. The High Court also held in the impugned order that in a writ petition WP No. 9717 of 1993 filed before the High Court one Mohammed Khasim and Ameena Begum had challenged the entries with regard to Survey No. 58(Old) of Bahloolkhanguda Survey No. 127(new) and the High Court had observed that Rayees Yar Jung was the owner and sales made by Rayees Yar Jung were therefore, valid. The High Court further observed that the order passed by the High Court in writ petition no. 9717 of 1993 was challenged before this Court by the Government but this Court had dismissed the appeal and therefore, the appellants were estopped from taking a different stand with regard to the ownership of the land. With the aforesaid findings, the High Court dismissed the Second Appeal of the appellants.

4. Mr. P.S. Narasimha, learned senior counsel appearing for the appellants cited a full Bench Judgment of the Madras High Court in *Venkata Chetty Vs. Aiyanna Gounden* AIR 1917 Madras 789 and particularly the observations of Abdul Rahim, officiating C.J., to the effect that a tenant who was not let into possession by the person seeking to eject him is not estopped from denying the plaintiff's title and he may also show that the title is in some third person or himself. He also relied on the observations of Sheshagiri Aiyar, J. in the aforesasid case that under the Indian Contract Act, it can be shown that any contract into which a party has entered into is vitiated by mistake and the principle of estoppel should not be held to override these

provisions of law of contract. He argued relying on the aforesaid observations in the judgment of the Madras High Court that the appellants, therefore, were entitled to plead in the written statement that the execution of the lease acknowledging title of the respondents was a mistake of fact and that the appellants were actually the owners of the suit land.

5. We have considered the submissions of Mr. P.S. Narasimha and we find that although plea was raised by the appellants in their written statement that the execution of the lease deed in the present case, as well as payment of rent pursuant to the lease deed were under mistake of fact, no issue as such was framed by the trial Court on whether the lease deed was executed by mistake of fact. This issue is an issue of fact and it is at the stage of trial that this issue will have to be raised and framed by the trial Court so that parties could lead evidence on the issue. In this case, as this issue has not been framed, parties have not adduced evidence and no finding as such has been recorded by the trial Court on this issue. Hence, we are not in a position to consider the argument of Mr. P.S. Narasimha that the lease deed was executed and the rent was paid by mistake of fact.

6. The law is settled by this Court in *D. Satyanarayana vs. P. Jagdish* 1987(4) SCC 424 that the tenant who has been let into possession by the landlord cannot deny the landlord's title however defective it may be, so long as he has not openly surrendered possession by surrender to his landlord. Although, there are some exceptions to this general rule, none of the exceptions have been established by the appellants in this case. Hence, the appellants who were the tenants of the respondents will have to surrender possession to the respondents before they can challenge the title of the respondents.

7. In the plaint as framed by the respondents in the present case, the relief of eviction against the appellants was not based on the title of the respondents. Mr. M.L. Varma, learned senior

counsel appearing for the respondents vehemently submitted that on a reading of the plaint, it will appear that the respondents had claimed to be owners of the land. We find that although an averment has been made in the plaint that the respondents were the owners of the suit land, no relief for declaration of title as such has been claimed by the respondents. Only the relief of eviction was sought in the plaint on the ground that the lease had not been renewed after 1986 and the rent had not been paid since 1986. In our considered opinion, therefore, this being not a suit of declaration of title and recovery of possession but only a suit for eviction, the trial Court, the First Appellate Court and the High Court were not called upon to decide the question of title.

8. For the aforesaid reasons, we set aside the findings of the trial Court, the First Appellate Court and the High Court on title, but we maintain the decree for eviction. We, however, order that the appellants will vacate the suit land within six months from today and further make it clear that the suit, if any, filed by the appellants for declaration of title and consequential relief cannot be entertained by the Court unless the appellants first vacate and handover possession to the respondents.

9. The judgment of the Courts below are modified accordingly. The appeal is allowed to the extent indicated above. No costs.

B.B.B. Appeal Partly allowed.

RAJOO @ RAMAKANT

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 140 of 2008)

AUGUST 9, 2012

[A.K. PATNAIK AND MADAN B. LOKUR, JJ.]

Constitution of India, 1950 – Article 39-A/Legal Services Authorities Act, 1987 – ss. 12 and 13 – Right to legal representation – Of the accused – At appellate stage – Entitlement – Held: Article 39-A as well as the Act provides for free legal aid – An eligible person is entitled to legal services at any stage of the proceedings either trial or appellate – In the instant case, the accused was not provided legal representation and the High Court failed to enquire as to whether the accused required legal assistance – Matter required to be re-heard by High Court after providing the accused opportunity of obtaining legal representation – Hence, remitted to High Court for fresh hearing.

The question which was determined in the present appeal was whether the appellant-accused was entitled,as a matter of right,to legal representation in the High Court.

Disposing of the appeal, and remitting the matter to High Court, the Court

HELD: 1. By the 42nd Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This Article provides for free legal aid by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Subsequently, with the intention of providing free legal

aid, the Central Government resolved (on 26th September, 1980) and appointed the "Committee for Implementing the Legal Aid Schemes". This committee was to monitor and implement legal aid programs on a uniform basis throughout the country in fulfillment of the constitutional mandate. Eventually the Legal Services Authorities Act, 1987 was enacted. The Act provides, inter alia for the constitution of a National Legal Services Authority, a Supreme Court Legal Services Committee, State Legal Services Authorities as well as Taluk Legal Services Committees. Section 12 of the Act lays down the criteria for providing legal services. It provides, *inter alia,* that every person who has to file or defend a case shall be entitled to legal services, if he or she is in custody. Section 13 of the Act provides that persons meeting the criteria laid down in Section 12 of the Act will be entitled to legal services provided the concerned authority is satisfied that such person has a *prima facie* case to prosecute or defend. [Paras 5, 6,7 and 8] [1185-G-H; 1186-A, D-G]

2. Neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. An eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. The Supreme Court Legal Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost. [Paras 21 and 9] [1191-A; 1187-A-C]

3. The High Court was under an obligation to enquire from the appellant-accused whether he required legal

assistance and if he did, it should have been provided to him at State expense. However, since the record of the case does not indicate any such endeavour having been made by the High Court, this case ought to be re-heard by the High Court after providing the appellant-accused an opportunity of obtaining legal representation. The case records are remitted back to the High Court for a fresh hearing. [Paras 21 and 22] [1191-B-D]

Hussainara Khatoon (IV) v. Home Secretary, State of Bihar **(1980) 1SCC 98: 1979 (3) SCR 532;** *Khatri (II) v. State of Bihar* **(1981) 1 SCC 627: 1981 (2) SCR 408;** *Suk Das v. Union Territory of Arunachal Pradesh* **(1986) 2 SCC 401: 1986 (1) SCR 590– relied on.**

Clark v. Registrar of the Manukau District Court **(2012) NZCA 193;***Condon v. R* **(2006) NZSC 62;** *Dietrich v. R* **1992 HCA 57 – referred to.**

Case Law Reference:

1979 (3) SCR 532	**Relied on.**	**Para 11**
1981 (2) SCR 408	**Relied on.**	**Para 12**
1986 (1) SCR 590	**Relied on.**	**Para 13**
(2012) NZCA 193	**Referred to.**	**Para 17**
(2006) NZSC 62	**Referred to.**	**Para 18**
1992 HCA 57	**Referred to.**	**Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 140 of 2008.

From the Judgment & Order dated 5.9.2006 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 3 of 1991.

Tara Chandra Sharma, Uma Datta, Neelam Sharma for the Appellant.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. After hearing arguments in this appeal, we had reserved judgment. While preparing the judgment, it was noticed that the appellant (Rajoo) was not represented in the High Court.

2. The issue that arises, therefore, is whether Rajoo was entitled, as a matter of right, to legal representation in the High Court. Our answer is in the affirmative.

The facts:

3. On 06.12.1998, seven persons including Rajoo are alleged to have gang-raped 'G'. The Trial Court convicted all of them for the offence and sentenced each of them to 10 years rigorous imprisonment and a fine of Rs. 500/-. In default thereof they were required to undergo rigorous imprisonment for a further period of 3 months.

4. Appeals were filed by all the convicted persons before the High Court. By its judgment and order dated 05.09.2006, the High Court set aside the conviction in respect of five of the convicts, but upheld the conviction in respect of Rajoo and Vijay. We have been informed that Vijay has accepted the judgment of the High Court. Only Rajoo has appealed against his conviction and sentence. Before us Rajoo was represented by learned counsel who took us through the material on record and made his submissions.

Constitutional and statutory provisions :

5. By the 42nd Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This Article provides for free

legal aid by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 39-A of the Constitution reads as follows:-

> *39A. Equal justice and free legal aid.* - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

6. Subsequently, with the intention of providing free legal aid, the Central Government resolved (on 26th September, 1980) and appointed the "Committee for Implementing the Legal Aid Schemes". This committee was to monitor and implement legal aid programs on a uniform basis throughout the country in fulfillment of the constitutional mandate.

7. Experience gained from a review of the working of the committee eventually led to the enactment of the Legal Services Authorities Act, 1987 (for short, the Act).

8. The Act provides, inter alia for the constitution of a National Legal Services Authority, a Supreme Court Legal Services Committee, State Legal Services Authorities as well as Taluk Legal Services Committees. Section 12 of the Act lays down the criteria for providing legal services. It provides, inter alia, that every person who has to file or defend a case shall be entitled to legal services, if he or she is in custody. Section 13 of the Act provides that persons meeting the criteria laid down in Section 12 of the Act will be entitled to legal services provided the concerned authority is satisfied that such person has a prima facie case to prosecute or defend.

9. It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial

stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. In fact the Supreme Court Legal Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

Decisions of this Court :

10. Pending the enactment of the Legal Services Authorities Act, the issue of providing free legal services or free legal aid or free legal representation (all terms being understood as synonymous) came up for consideration before this Court.

11. Among the first few decisions in this regard is *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar,* (1980) 1 SCC 98. In that case, reference was made to Article 39-A of the Constitution and it was held that free legal service is an inalienable element of "reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 [of the Constitution]." It was noted that this is "a constitutional right of every accused person who is unable to engage a lawyer and secure free legal services on account of reasons such as poverty, indigence or incommunicado situation." It was held that the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, subject of course to the accused person not objecting to the providing of a lawyer.

12. The essence of this decision was followed in *Khatri (II) v. State of Bihar,* (1981) 1 SCC 627. In that case, it was

noted that the Judicial Magistrate did not provide legal representation to the accused persons because they did not ask for it. This was found to be unacceptable. This Court went further and held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost. In this context, it was observed that the right to free legal services would be illusory unless the Magistrate or the Sessions Judge before whom the accused is produced informs him of this right. It would also make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services thereby rendering the constitutional mandate a mere paper promise.

13. *Suk Das v. Union Territory of Arunachal Pradesh,* (1986) 2 SCC 401 reiterated the requirement of providing free and adequate legal representation to an indigent person and a person accused of an offence. In that case, it was reiterated that an accused need not ask for legal assistance - the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid. This Court observed that it was now "settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21 [of the Constitution]."

14. Since the requirements of law were not met in that case, and in the absence of the accused person being provided with legal representation at State cost, it was held that there was a violation of the fundamental right of the accused under Article 21 of the Constitution. The trial was held to be vitiated on account of a fatal constitutional infirmity and the conviction and sentence were set aside.

15. We propose to briefly digress and advert to certain observations made, both in *Khatri (II)* and *Suk Das*. In both

cases, this Court carved out some exceptions in respect of grant of free legal aid to an accused person. It was observed that there "may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State." We have some reservations whether such exceptions can be carved out particularly keeping in mind the constitutional mandate and the universally accepted principle that a person is presumed innocent until proven guilty. If such exceptions are accepted, there may be a tendency to add some more, such as in cases of terrorism thereby diluting the constitutional mandate and the fundamental right guaranteed under Article 21 of the Constitution. However, we need not say anything more on this subject since the issue is not before us.

16. The above discussion conclusively shows that this Court has taken a rather pro-active role in the matter of providing free legal assistance to persons accused of an offence or convicted of an offence.

Another view:

17. A slightly different issue had recently arisen in *Clark v. Registrar of the Manukau District Court,* (2012) NZCA 193. The issue before the Court of Appeal in New Zealand was whether legally aided defendants in criminal proceedings are entitled to choose or prefer the counsel assigned to represent them. The discussion in that case centered round the New Zealand Bill of Rights Act, 1990 and the issue was answered in the negative.

18. However, in the course of discussion, the Court observed that the right of a fair trial is guaranteed by the Bill of Rights Act and it is an absolute right. A fundamental feature of a fair trial is a right to legal representation under the Bill of Rights Act. Reference was made to the decision of the Supreme Court of *New Zealand in Condon v. R,* (2006) NZSC

62 wherein it was concluded that representation by a lawyer is nearly always necessary for a trial for a serious offence to be fair. An accused person must have legal representation or at least should have been afforded a reasonable opportunity of attaining it when charged with a serious offence. But, the Supreme Court held that:

> "An accused has the right to employ a lawyer, but the state does not guarantee to provide the lawyer's services - in this respect its role is passive, in the sense that it must not impede the exercise of the right by the accused. The exception is under s 24(f) [of the Bill of Rights Act], when the accused does not have sufficient means to provide for legal assistance. Even in such a case, however, it is the accused who must take the necessary steps to obtain assistance under the Legal Services Act."

19. It was noted that the Supreme Court agreed with the High Court of Australia in *Dietrich v. R,* 1992 HCA 57 that, other than in exceptional circumstances, "an accused who conducts his or her own defence to a serious charge, without having declined or failed to exercise the right to legal representation, would not have had a fair trial." A conviction obtained in such circumstances would be quashed unless the prosecution is able to satisfy the appellate Court that the trial was actually fair.

20. That there is a right of legal representation available to an accused is undoubted, even in New Zealand and Australia. The only point of disagreement appearing from *Condon,* as far as we are concerned, is whether the accused should be asked whether he or she requires legal assistance or not. The Supreme Court in New Zealand appears to have taken the view that the role of the State (and indeed of the Court) in this regard is passive. The view taken by this Court on issues of legal representation, on the other hand, is pro-active and an obligation is cast on the Court to enquire of the accused or convict whether he or she requires legal representation at State expense.

Conclusion:

21. Under the circumstances, we are of the opinion that neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. We are also of the view that the High Court was under an obligation to enquire from Rajoo whether he required legal assistance and if he did, it should have been provided to him at State expense. However, since the record of the case does not indicate any such endeavour having been made by the High Court, this case ought to be re-heard by the High Court after providing Rajoo an opportunity of obtaining legal representation.

22. We dispose of this appeal by setting aside the judgment and order dated 05.09.2006 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.3 of 1991 and remit the case records back to the High Court for a fresh hearing. We request the High Court to expedite hearing the appeal.

K.K.T. Matter Remitted Back to High Court.

CANTONMENT BOARD, JAMMU & ORS.

v.

JAGAT PAL SINGH CHEEMA

(Civil Appeal No. 5820 of 2012)

AUGUST 9, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

CANTONMENTS ACT, 1924:

ss. 52— Power of Officer Commanding-in-Chief, the command on reference u/s.51 or otherwise — Held: The power conferred by s. 52 in the Officer Commanding-in-Chief, the Command, is a power to correct the decisions of the Cantonment Board – It is a power vested in a high functionary of the Cantonment to be exercised for the reasons spelt out by the statute – Therefore, the power conferred by the first part of s. 52 should not be, in any manner, curtailed by reading a limit thereon so as to exclude from its purview the matters that may have reached the specified authority by way of an invalid or incompetent reference.

The respondent, employed as a Section Officer with the appellant-Cantonment Board, consequent upon a departmental inquiry, was removed from service by order dated 6.9.1997. On the direction of the High Court in a writ petition filed by the employee, the Cantonment Board in its meeting held on 18.5.2001 reconsidered the enquiry report. The President of the Cantonment Board did not subscribe to the majority view to set aside the removal of the employee. The matter was referred to the Officer Commanding in-Chief, the Command, who affirmed the penalty of removal of the respondent from service. The writ petition filed by the employee was allowed by the Single Judge of the High Court holding that the Officer Commanding-in-Chief, the Command was not vested

with any power to annul the decision of the Cantonment Board. The letters patent appeal of the Cantonment Board was dismissed by the Division Bench of the High Court holding that the reference was not authorised and in consonance with the provisions of s.51 of the Cantonment Boards Act, 1924.

Allowing the appeal, the Court

HELD: 1.1. Section 52 of the Cantonment Boards Act, 1924 (the Act) is in two parts. The first part deals with the powers of the Officer Commanding-in-Chief, the Command, in respect of decisions of the Board that may have come to his notice or placed before him otherwise than by way of a reference made by the President of the Board u/s. 51(1). The second part of Section specifically deals with the power of the Officer Commanding-in-Chief, the Command, to deal with the decisions of the Board which have come before him by way of a reference made u/s. 51(1) of the Act. Both parts of Section 52 authorize the Officer Commanding-in-Chief, the Command, to annul a decision of the Board. [para 9] [1201-G-H; 1202-A-B]

1.2. The power conferred by s. 52 in the Officer Commanding-in-Chief, the Command, is a power to correct the decisions of the Cantonment Board. The necessity for such corrections may arise in myriad situations and the difference in the mode and manner in which such matters may reach the Officer Commanding-in-Chief, the Command, namely, by way of reference u/s. 51 or otherwise, cannot be determinative of the contours for exercise of the power. It is a power vested in a high functionary of the Cantonment to be exercised for the reasons spelt out by the statute. Therefore, in the considered view of this Court, the power conferred by the first part of s. 52 should not be, in any manner, curtailed by reading a limit thereon so as to exclude from its purview matters that may have reached the specified

authority by way of an invalid or incompetent reference. [Para 12] [1203-C-F]

1.3. In the instant case, the order dated 22.11.2001 passed by the Officer Commanding-in-Chief, the Command, which was under challenge before the High Court, specifically recites that the power is being exercised u/s. 52(1) of the Act. The said provision deals with matters/decisions of the Board that may have come before the Officer Commanding-in-Chief, the Command, otherwise than by way of reference u/s. 51. The President of the Board while referring the decision of the Board dated 18.5.2001 to the Officer Commanding-in-Chief, the Command, did not record any satisfaction that the majority decision of the Board was prejudicial to the health, welfare, discipline or security of the forces and the reasons therefor. Thus, the reference made in the instant case was invalid. The second undisputed fact is that the Officer Commanding-in-Chief, the Command, before passing the Order dated 22.11.2001 had issued show cause notice to the Board as required by either of the limbs of s. 52. [para 10-11] [1202-C-D, F-H; 1203-A]

1.4. The power to interfere with any decision of the Board is vested in the Officer Commanding-in-Chief, the Command, and the provisions of s.52 of the Act merely enumerate the slightly different modes of exercise of the power in the different circumstances contemplated therein. If the power to perform a particular act is traceable to a specific provision of the statute the court must lean in favour of the action taken. [Para 13] [1204-A-B]

1.5. Therefore, the conclusions reached by the High Court ought not to be sustained, and the order passed by it in the LPA is set aside. The matter is remanded to the High Court for consideration of all the other contentions raised in the writ petition by the employee. [Para 14 and 15] [1204-D-F]

State of Sikkim v. Dorjee Tshering Bhutia **1991 (3) SCR 633 = 1991 (4) SCC 243;** *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal* **1983 (2) SCC 442;** *N. Mani v. Sangeetha Theatre* **2004 (12) SCC 278; and** *B.S.E. Broker's Forum, Bombay v. Securities and Exchange Board of India* **2001 (3) SCC 482 – relied on.**

Case Law Reference:

1991 (3) SCR 633	**relied on**	**Para 13**
(1983) 2 SCC 422	**relied on**	**Para 13**
(2004) 12 SCC 278	**relied on**	**Para 13**
(2001) 2 SCC 482	**relied on**	**Para 13**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5820 of 2012.

From the Judgment & Order dated 7.2.2007 of the High Court of Jammu & Kashmir at Jammu in L.P.A. (SW) No. 158 of 2006.

Sidharth Luthra, ASG, Madhurima Tatia, D.L. Chidanand, Rekha Pandey, Yashpreet Singh, B.V. Balram Das, D.S. Mahra for the Appellant.

Debal Banerji, Shibashish Misra, Abhinandan Nanda, Joydeep Mazumdar for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. This appeal is directed against the judgment and order dated 7.2.2007 passed by the High Court of Jammu and Kashmir whereby the High Court has allowed the Writ Petition filed by the respondent challenging the punishment of removal from service that was imposed on him by the Cantonment Board, Jammu. It may be noticed, at the outset, that the High Court had allowed the Writ Petition of the respondent on the ground that the order of the Officer Commanding-in-Chief, the Command, affirming the order of the Cantonment Board

removing the respondent from service was passed on the basis of an invalid reference made to the Officer Commanding-in-Chief, the Command, under the provisions of the Cantonments Act, 1924 (hereinafter referred to as the 'Act').

3. A brief conspectus of the relevant facts would be necessary at this stage.

The respondent, Jagat Paul Singh Cheema, was employed as a Section Officer with the Cantonment Board, Jammu. On various charges a departmental enquiry was held against the respondent, whereafter he was removed from service by an order dated 6.9.1997. The appeal filed against the said order was dismissed. The respondent, therefore, moved the High Court of Jammu & Kashmir challenging the order of removal from service, interalia, on the ground that the report of the enquiry held against him was not furnished to him at any stage. The High Court by its order dated 4.4.2001 allowed the writ petition and directed the 'Punishing Authority' to re-decide the matter after affording an opportunity of hearing to the respondent. In compliance with the said directions the report of enquiry was furnished to the respondent and the matter was reconsidered by the Cantonment Board in its meeting held on 18.5.2001. In the said meeting while the non-official members (five in number) were of the view that the order of punishment imposed on the respondent should be set aside and he should be reinstated in service, the President of the Cantonment Board and two other ex-officio members supported the initial decision of the Cantonment Board to impose the punishment in question. Thereafter, it appears, that at the instance of the Chief Executive Officer of the Cantonment Board the matter was referred to the Officer Commanding-in-Chief, the Command.

4. The said authority issued a show cause notice dated 6.8.2001 to the Cantonment Board and on receipt of its reply, by order dated 22.11.2001, affirmed the penalty of removal of service imposed on the respondent.

5. Aggrieved by the aforesaid order dated 22.11.2001, the respondent again moved the High Court. The writ petition filed (WP No. 3039 of 2001) was allowed by an order dated 15.2.2006 passed by a learned Single Judge holding that the Officer Commanding-in-Chief, the Command, was not vested with any power under the Act to annul the decision of the Cantonment Board and the power of the said authority under the Act only extended to giving of directions to the Cantonment Board for reconsideration of the matter. Aggrieved by the said order of the learned Single Judge, the Cantonment Board filed a Letters Patent Appeal before a Division Bench of the High Court which was answered by the impugned order dated 7.2.2007. The Division Bench, by its aforesaid order, took the view that under the provisions of the Act, upon a reference made to him, the Officer Commanding-in-Chief, the Command, was duly empowered to annul a decision of the Cantonment Board after giving an opportunity of showing cause to the Board. However, in the present case, the reference made was not authorized and in consonance with the provisions of Section 51 of the Act. The power to annul the decision of the Board, though vested in the Officer Commanding-in-Chief, the Command, therefore, could not have been legitimately exercised in the present case. Accordingly the Division Bench affirmed the conclusions of the learned Single Judge, though for reasons different.

6. Shri Luthra, learned Additional Solicitor General, appearing for the appellant-Board has urged before us that the power of the Officer Commanding-in-Chief, the Command to deal with matters decided by the Cantonment Board is set out in the provisions contained in Section 52 of the Act. It is submitted that Section 52 is in two parts. While the first part deals with the power of the Officer Commanding-in-Chief, the Command, in respect of decisions of the Board which are not covered by a reference made under Section 51 of the Act, the later provisions of Section 52 specifically deals with matters referred to the Officer Commanding-in-Chief, the Command, under Section 51(1) of the Act. According to Shri Luthra the

power of the Officer Commanding-in-Chief, the Command, under the first part of Section 52 is broad and expansive and capable of authorizing a decision to annul any resolution of the Board. The exercise of power under the first part of Section 52, according to Shri Luthra, is not contingent on the manner in which the decision of the Board may have come to be placed before the Officer Commanding-in-Chief, the Command. In other words, according to Shri Luthra, the power under Section 52 can be exercised not only in situations where no reference is made under Section 51 but such power will be available to strike down a decision of the Board even in cases where such a decision may have come before the Officer Commanding-in-Chief, the Command, by way of an invalid or incompetent reference. Shri Luthra has further submitted that such a view would not be inconsistent with the provisions of Section 52 (2) in asmuch as the said provision specifically deal with the power of the Officer Commanding-in-Chief, the Command to deal with the decisions of the Board in cases where a specific reference is validly made by the Board under Section 51 of the Act. Shri Luthra has further buttressed his arguments by relying on the well-established proposition of law that so long as the power to perform an act in a particular manner is vested under the statute, the exercise of such power cannot be faulted on the ground of a wrong recital of the specific provision of the statute. In support, Shri Luthra has relied upon several decisions of this Court which will be noticed at a later stage of the present order.

7. In reply, Shri Banerjee, learned senior counsel appearing for the respondent has contended that it is not in dispute that in the present case the decision of the Board taken in the meeting held on 18.5.2001 was referred to the Officer Commanding-in-Chief, the Command, by the President of the Board under Section 51(1) of the Act. Pointing out the provisions of Section 51, Shri Banerjee, has urged that under Section 51(1) a reference can be made to the Officer Commanding-in-Chief, the Command, only in a situation where the President of the Cantonment Board dissents from any

decision of the Board on the ground that such a decision, in the view of the President, is prejudicial to the health, welfare, discipline or security of the forces. The reasons for such dissent on the grounds spelt out by Section 51(1), according to learned counsel, is required to be recorded in the Minutes of the meeting of the Board. In the present case though a reference has been made by the President to the Officer Commanding-in-Chief, the Command, the reasons why such a reference was considered necessary by the President have not been recorded. Therefore, according to Shri Banerjee, the reference to the Officer Commanding-in-Chief, the Command, was not a valid reference authorized by the provisions of Section 51(1). It is contended that as Section 52(2) is exhaustive of the powers of the Officer Commanding-in-Chief, the Command, in considering a decision of the Board that has been referred to him under Section 51(1), the said authority cannot proceed to exercise the power vested in him under Section 52(1) while in seisin of a matter referred to him by the Board under Section 51(1). According to learned counsel, the power under Section 52(1) will be available for exercise only in a situation where the decision of the Board is before the Officer Commanding-in-Chief, the Command, otherwise than by way of a reference.

8. Before adverting to the respective submissions advanced on behalf of the parties, it will be convenient to extract the provisions contained in Sections 51 and 52 of the Act which are extracted below:

> *"51. Power to override decision of Board* -- (1) If the President dissents from any decision of the Board, which he considers prejudicial to the health, welfare or discipline of the troops in the cantonment, he may, for reasons to be recorded in the minutes, by order in writing, direct the suspension of action thereon for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer Commanding-in-Chief, the Command, the reference being made, save in cases where the Officer Commanding the District is himself the Officer Commanding-in-Chief, the Command, for the purposes of this Act, through the Officer Commanding the District, who may make such recommendations thereon as he thinks fit.
>
> (2) If the District Magistrate considers any decision of a Board to the prejudicial to the public health, safety or convenience, he may, after giving notice in writing of his intention to the Board, refer the matter to the Government; and, pending the disposal of the reference to the Government no action shall be taken on the decision.
>
> (3) If any Magistrate who is a member of a Board, being present at a meeting, dissents from any decision which he considers prejudicial to the public health, safety or convenience, he may, for reasons to be recorded in the minutes and after giving notice in writing of his intention to the President, report the matter to the District Magistrate; and the President shall, on receipt of such notice, direct the suspension of action on the decision for a period sufficient to allow of a communication being made to the District Magistrate and of his taking proceedings as provided by sub-Section (2).
>
> 52. *Power of Officer Commanding-in-Chief, the Command, on reference under Section 51 or otherwise* -- (1) The Officer Commanding-in-Chief, the Command, may at any time-
>
> (a) direct that any matter or any specific proposal other than one which has been referred to the Government under sub-Section (2) of Section 51 be considered or re-considered by the Board; or
>
> (b) direct the suspension, for such period as may be stated in the order, of action on any decision of a Board, other than a decision which has been referred to him under sub-Section (1) of Section 51, and thereafter cancel the suspension or after giving the Board a reasonable opportunity of showing cause why such direction should not be made,

direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify.

(2) When any decision of a Board has been referred to him under sub-Section (1) of Section 51, the Officer Commanding-in-Chief, the Command, may, by order in writing,-

(a) cancel the order given by the President directing the suspension of action; or

(b) extend the direction of the order for such period as he thinks fit; or

(c) after giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall not be carried into effect or that it shall be carried into effect by the Board with such modifications as he may specify."

9. Section 51 authorizes the President of the Cantonment Board to dissent from a majority decision of the Board, if he considers the decision of the Board to be prejudicial to the health, welfare, discipline or security of the forces. If the President of the Board arrives at any such conclusion, he has been vested with the power to suspend the decision of the Board for a specified period, not exceeding one month, for reasons to be recorded in writing. However, Section 51 of the Act requires the President to make a reference of the matter to the Officer Commanding-in-Chief, the Command.

Section 52 of the Act deals with the power of the Officer Commanding-in-Chief, the Command in respect of the decisions of the Board. Section 52, really, is in two parts. The first part deals with the powers of the Officer Commanding-in-Chief, the Command, in respect of decisions of the Board that may have come to his notice or placed before him otherwise than by way of a reference made by the President of the Board under Section 51(1). The second part of Section 52 specifically deals with the power of the Officer Commanding-in-Chief, the Command, to deal with the decisions of the Board which have come before him by way of a reference made under Section 51(1) of the Act. Both parts of Section 52 authorize the Officer Commanding-in-Chief, the Command, to annul a decision of the Board. However, before doing so a show cause notice to the Board is required to be issued.

10. In the present case the order dated 22.11.2001 passed by the Officer Commanding-in-Chief, the Command, which was under challenge before the High Court specifically recites that power is being exercised under Section 52(1) of the Act. The said provision deals with matters/decisions of the Board that may have come before the Officer Commanding-in-Chief, the Command, otherwise than by way of reference under Section 51. The aforesaid conclusion reasonably follows from a reading of the provisions of Section 52(2) of the Act which deals with the powers of the Officer Commanding-in-Chief, the Command, in respect of the matters/decisions of the Board that may have come before him by way of reference under Section 51(1) of the Act. The question that confronts the Court is whether the two shades of power under Section 52 has to be understood to be available for exercise in specific water tight compartments which are mutually exclusive and inconsistent to each other.

11. Certain facts not in dispute and which may have a relevant bearing to the issue arising for determination as noticed above may now be taken note of. The President of the Board while referring the decision of the Board dated 18.5.2001 to the Officer Commanding-in-Chief, the Command, did not record any satisfaction that the majority decision of the Board was prejudicial to the health, welfare, discipline or security of the forces and the reasons therefor. There may, therefore, be substance in the argument raised on behalf of the respondent that the reference made in the present case was invalid. The second undisputed fact that will be required to be noticed is that the Officer Commanding-in-Chief, the

Command, before passing the Order dated 22.11.2001 had issued show cause notice to the Board as required by either of the limbs of Section 52.

12. The power vested in the Officer Commanding-in-Chief, the Command, by the two limbs of Section 52, though at first blush, may appear to be intended to apply and operate in specific fields, in our considered view, such an interpretation of Section 52 would run contrary to the legislative intent behind the conferment of the power in the Officer Commanding-in-Chief, the Command under Section 52. The power conferred by Section 52 in the Officer Commanding-in-Chief, the Command, is a power to correct the decisions of the Cantonment Board. The necessity for such corrections may arise in myriad situations and the difference in the mode and manner in which such matters may reach the Officer Commanding-in-Chief, the Command, namely, by way of reference under Section 52 or otherwise cannot be determinative of the contours for exercise of the power. It is a power vested in a high functionary of the Cantonment to be exercised for the reasons spelt out by the statute. If that is the purpose for which power has been vested by the statute, in our considered view, the power conferred by the first part of Section 52 should not be, in any manner, curtailed by reading a limit thereon so as to exclude from its purview matters that may have reached the specified authority by way of an invalid or incompetent reference. To read the provisions of Section 52(1) to cover situations where the decision of the Board may have reached the Officer Commanding-in-Chief, the Command, otherwise than by way of a valid reference, as in the present case, apart from suo moto exercise of the power by the said authority, according to us, would effectuate the legislative intent behind enactment of Section 52. The above manner of reading the power conferred by Section 52(1) will also not render the provisions of Section 52(2) nugatory in asmuch as Section 52(2) deals with situations where decisions of the Board have reached the Officer Commanding-in-Chief, the Command, by way of a valid reference.

13. The power to interfere with any decision of the Board is vested in the Officer Commanding-in-Chief, the Command, and the provisions of Section 52 merely enumerate the slightly different modes of exercise of the power in the different circumstances contemplated therein. The principle of law relied upon by the learned counsel for the appellant, namely, that if the power to perform a particular act is traceable to a specific provision of the statute the Court must lean in favour of the action taken, therefore, appears to be correct. In this regard support can be drawn from the decision of this Court in *State of Sikkim v. Dorjee Tshering Bhutia*[1]; *Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal*[2]*; N. Mani v. Sangeetha Theatre*[3] and *B.S.E. Broker's Forum, Bombay v. Securities and Exchange Board of India*[4] .

14. In view of the above discussion we are of the opinion that the conclusions reached by the High Court ought not to be sustained. We, accordingly, allow this appeal and set aside the order of the High Court passed in the LPA.

15. We have noticed that certain questions with regard to the merits of the order dated 22.11.2001 passed by the Officer Commanding-in-Chief, the Command, were raised in the writ petition. As the writ petition as well as the LPA arising therefrom were decided on the question of jurisdiction of the Officer Commanding-in-Chief, the Command, to pass the impugned order dated 22.11.2001, the High Court had no occasion to go into the said questions raised. We, therefore, remand the matter to the High Court for consideration of all the other contentions raised in the writ petition by the respondent herein which issues will now be decided by the High Court as expeditiously as possible.

R.P. Appeal allowed.

1. (1991) 4 SCC 243.
2. (1983) 2 SCC 422.
3. (2004) 12 SCC 278.
4. (2001) 3 SCC 482.