# JUDICIAL ACADEMY JHARKHAND

# SNIPPETS

# OF

# SUPREME COURT JUDGMENTS

## (July 01-July 05, 2019)

*Prepared by* :-

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   Decided on – 1.07.2019
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**(If succession opened prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.)**

***Facts***

Lal Singh passed away in 1951, and his entire property was inherited by his only son Inder Singh. In 1964, Inder Singh during his lifetime, effected a partition of the entire property between his three sons viz. Gurcharan Singh, Dharam Singh, and Swaran Singh in equal shares. The present matter pertains to the property which came to the share of one of his sons viz. Dharam Singh. Dharam Singh had only one son viz. Arshnoor Singh - the Appellant herein. The Appellant was born on 22.08.1985 to Dharam Singh through his 1st wife. Dharam Singh purportedly sold the entire suit property to Respondent No. 1 viz. Harpal Kaur vide two registered Sale Deeds dated 01.09.1999 for an ostensible sale consideration of Rs. 4,87,500/-.Subsequently, on 29.09.1999, Dharam Singh got married to Respondent No. 1. The Collector, Ferozepur *vide* Order dated 24.01.2000, held that the two Sale Deeds executed by Dharam Singh in favour of Respondent No. 1 were without any monetary transaction. The Appellant became a major on 22.08.2003.

On 23.11.2004, the Appellant filed a Suit for Declaration against his father Dharam Singh as Defendant No. 1, and Harpal Kaur as Defendant No. 2 (Respondent No. 1 herein) for a declaration that the suit property was coparcenary property, and hence the two Sale Deeds dated 01.09.1999 executed by his father Dharam Singh in favour of Respondent No. 1 herein were illegal, null and void. The Appellant further prayed for a permanent injunction restraining Respondent No. 1 from further alienating, transferring, or creating a charge on the suit property.

The Trial Court held that the suit property was ancestral coparcenary property of Dharam Singh and the Appellant. Respondent No. 1 failed to prove that Dharam Singh

had sold the suit property to Respondent No. 1 for either legal necessity of the family, or for the benefit of the estate. Consequently, the two Sale Deeds dated 01.09.1999 purportedly executed by Dharam Singh in favour of Respondent No. 1/Defendant No. 2 were illegal, null and void. The Appellant was held entitled to joint possession of the suit property with his father.

The High Court *vide* the impugned Judgment & Order dated 13.11.2018, allowed the RSA filed by the Respondents, and set aside the concurrent findings of the courts below.

The High Court held that (i) the Appellant had no locus to institute the Suit, since the coparcenary property ceased to exist after Inder Singh partitioned the property between his 3 sons in 1964; (ii) the Appellant had no right to challenge the Sale Deeds executed on 01.09.1999 on the ground that the sale consideration had not been paid, since only the executant of the Sale Deeds viz. Dharam Singh (Defendant No. 1) could have made such a challenge; and (iii) Jamabandis for the years 1957 - 58 till 1970 - 71 were not produced by the Appellant.

Aggrieved by the impugned Judgment & Order dated 13.11.2018 passed by the High Court, the Appellant filed the present Civil Appeal.

***Decision and Observations***

The issue that arose for consideration before the Court was whether the suit property was coparcenary property or self-acquired property of Dharam Singh and the validity of the Sale Deeds executed on 01.09.1999 by Dharam Singh in favour of Respondent No. 1, and the subsequent Sale Deed dated 30.10.2007 executed by Respondent No. 1 in favour of Respondent Nos. 2 & 3.

With respect to the first issue, the Hon'ble Court said that it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu *Mitakshara* law.

The Hon'ble Court referred to Mulla's commentary on *Hindu Law* (22nd Edition) which has stated the position with respect to succession under *Mitakshara* law as follows:

> *"All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.*
>
> *A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property."*

Also, in ***Shyam Narayan Prasad* v. *Krishna Prasad***[1], the Hon'ble Court has held that :

> *"The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."*

Therefore, the Hon'ble Court was of the opinion that ***under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.***

The Hon'ble Court noted that after the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post - 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

***If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.***

Therefore, in the present case where the succession opened in 1951 on the death of Lal Singh, the nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property

[1] (2018) 7 SCC 646.

amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degrees below them. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property *qua* the Appellant.

Regarding the second issue, the Hon'ble Court was of the opinion that it is settled law that the power of a Karta to sell coparcenary property is subject to certain restrictions viz. the sale should be for legal necessity or for the benefit of the estate. The onus for establishing the existence of legal necessity is on the alienee. However, Dharam Singh had deposed before the Trial Court that he sold the suit property to Respondent No. 1 without any consideration. Hence, the ground of legal necessity or benefit of the estate falls through. Also, as a consequence, the Sale Deeds dated 01.09.1999 was cancelled as being illegal, null and void. Since Respondent No. 1 has not obtained a valid and legal title to the suit property through the Sale Deeds dated 01.09.1999, she could not have passed on a better title to Respondent Nos. 2 & 3 either.

**2. *Asim Shariff v. National Investigation Agency (Criminal Appeal No. 949 of 2019)***

*Decided on – 1.07.2019*

Bench – (1) Hon'ble Mr. Justice A.M. Khanwilkar
(2) Hon'ble Mr. Justice Ajay Rastogi

**(Scope of Section 227 of the CrPC)**

***Facts***

The present appeal has been preferred by the accused appellant against whom a criminal case came to be registered along with four other accused persons for the offences punishable under Sections 120-B, 109, 150, 153A, 302, 201 read with Section 34 of IPC; Sections 3 and 27 of the Arms Act and Sections 15, 16, 17, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967.

After completion of the investigation, final report was submitted before the trial Court against the accused persons including appellant. The appellant claims that there was no material for registering the criminal case neither investigating nor submitting the final report against him. At this stage, the appellant filed application under Section 227 of Code of Criminal Procedure, 1973 seeking his discharge from the case for the aforesaid offences. The application was dismissed by the trial Judge/Special Judge who ordered for framing of charges against him for the aforesaid offences under Order dated 2nd January, 2018 which came to be challenged by the appellant in a writ petition filed under Article 226 and 227 of Constitution of India read with Section 482 CrPC which was dismissed by a lucid impugned judgment dated 22nd November, 2018 which is a subject matter of challenge in the instant appeal.

***Decision and Observations***

The Hon'ble Court referred to its decision in ***Union of India v. Prafulla Kumar Samal*** wherein it had an occasion to consider the scope of Section 227 CrPC.

> **"7.** *Section 227 of the Code runs thus:*
>
> *"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

The Hon'ble Court also referred to ***Sajjan Kumar* v. *Central Bureau of Investigation*** wherein the following was held:

***"21.*** *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

*(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

*(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

*(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

*(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

*(v.) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material*

*placed on record and must be satisfied that the commission of offence by the accused was possible.*

*(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

Therefore, the Hon'ble Court held that it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.

Taking note of the factual aspects of the case, the Court dismissed the appeal as the charge sheet and relevant record placed for perusal revealed that there was frequent telephonic conversation between the appellant and the other accused persons prior and subsequent to the date of incident which persuaded the court to arrive to a conclusion that there is a prime facie case of alleged offences of conspiracy being hatched by the accused persons and the truth and veracity of such conspiracy is to be examined during the trial.

### 3. *Satvinder Singh v. State of Bihar (Criminal Appeal No. 951 of 2019)*

Decided on – 01.07.2019

Bench – (1) Hon'ble Mr. Justice Ashok Bhushan
(2) Hon'ble Mr. Justice K.M. Joseph

**(Consuming liquor in a private vehicle in a place accessible to public is punishable under Bihar Excise Act)**

***Facts***

The appellants were travelling from Giridih, Jharkhand to Patna, Bihar to attend a meeting of Rotary Club on 25.06.2016. The appellants were travelling by a private vehicle .The vehicle was stopped for routine checkup at Rajauli Check Post, District Nawada, State of Bihar by one Sup-Inspector Excise. Nothing incriminating nor any liquor was found in the vehicle in which appellants were travelling. The appellants were subjected to breath analyser test in which test as per the prosecution case certain quantity of alcohol was found. The appellants were arrested and remained in custody for two days. First Information Report was lodged on 25.06.2016 on which Excise Case No. 316 of 2016 was registered. The Chief Judicial Magistrate, Nawada took cognizance by order dated 30.07.2016. The appellants filed application under Section 482 Cr.P.C. praying for setting aside the order dated 30.07.2016 passed by the Chief Judicial Magistrate taking cognizance. The High Court vide its order dated 16.02.2018 dismissed the application under Section 482 Cr.P.C. aggrieved by which order the appeal has been filed.

***Decision and Observations***

The Hon'ble Court dealt with the two submission made by the appellants. First, that even if it is presumed that they were found intoxicated on 25.06.2016 while travelling by their private vehicle, their vehicle cannot be treated to be a public place hence, Section 53(a) of the Bihar Excise (Amendment) Act, 2016 shall not be applicable. Second, that offence under Section 53(a) can be committed only when appellant consumes liquor in a public place.

Regarding the first issue, the Hon'ble court noted that it is to be examined whether the definition of 'public place' as introduced by Section 2(17A) shall include a private vehicle. The definition of 'place' as contained in Bihar Excise Act, 1915, Section 2(17) is the inclusive

definition which specifically includes "vehicle". When word 'place' includes vehicle the words 'public place' have to be interpreted in the same light. What Section 2(17A) defines is that a 'public place' means any place to which public have access, whether as a matter of right or not and includes all places visited by general public and also includes any open space. The key words are 'any place to which public have access', which phrase is further qualified by phrase "whether as a matter of right or not". Whether public have access to private vehicle or not is a question to be answered.

The private vehicle of the appellants was intercepted when it was on the public road. When private vehicle is passing through a public road it cannot be accepted that public have no access. It is true that public may not have access to private vehicle as matter of right but definitely public have opportunity to approach the private vehicle while it is on the public road. Hence, the Court rejected the submission that vehicle in which appellants were travelling was not covered by definition of 'public place' as defined in Section 2(17A) of the Bihar Excise (Amendment) Act, 2016. The omission of public conveyance in the definition of Section 2(17A) brought by the Bihar Excise (Amendment) Act, 2016 also indicates that the difference between public conveyance and private conveyance was done away in the statutory amendment.

Regarding the second issue the Court noted that the word 'consumes' is a verb transitive. When the word 'consumes' is followed by liquor, the action denoted by verb passes over from the doer to object i.e. liquor to constitute the offences within the meaning of Section 53(a). The action of consumption of liquor has to happen within the State of Bihar. A person who consumes liquor in a different State cannot be fastened with a penalty under Section 53(a) unless there is some evidence to prove that consumption of liquor by the accused has taken place in the State of Bihar. We may at this juncture further notice that now as per Bihar Prohibition and Excise Act, 2016 another category of offences which has been included in Section 37 is Section 37 sub-section (b) which "is found drunk or in a state of drunkenness at any place; or", thus, ***as per Bihar Prohibition and Excise Act, 2016 even a person consumes liquor outside the State of Bihar and enter into the territory of Bihar and is found drunk or in a state of drunkenness, he can be charged with offences under Section 37(b).*** But no offence as now contemplated by Section 37(b) was provided for in Bihar Excise (Amendment) Act, 2016, thus, the consumption of liquor has to be in the State of Bihar.

However, the Court was of the opinion that it cannot take a decision on the above issue in this appeal. Whether charge that consumption of liquor has taken place within the State of Bihar is made out in the facts of the present case are questions which need to be decided by the Magistrate after looking into the materials brought on record by means of the chargesheet.

4. ***Vasavi Engineering College Parents Association v. State of Telangana and Others(Civil Appeal No. 5133 of 2019)***

Decided on – 01.07.2019

Bench – (1) Hon'ble Mr. Justice Arun Mishra

(2) Hon'ble Mr. Justice Navin Sinha,

**(The court while adjudging the validity of an executive decision in economic matters must grant a certain measure of freedom or play in the joints to the executive. Not mere errors, but only palpably arbitrary decisions alone can be interfered with in judicial review.)**

***Facts***

In *Islamic Academy of Education* **v.** *State of Karnataka*, (2003) 6 SCC 697, the Hon'ble Supreme Court has directed the establishment in each State, of a Committee to regulate the fee structure in unaided minority and non-minority educational institutions. The Telangana Admission and Fee Regulatory Committee (for Professional Courses offered in Private Unaided Professional Institutions) Rules, 2006 (hereinafter referred to as "the Rules") were framed under Section 15 read with Sections 3 and 7 of the Telangana Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (hereinafter referred to as "the Act"). Under Rule 4(v), the Committee is required to communicate the fee structure determined by it to the State Government for notification. The fee structure so notified, inter alia for the B.E. and B.Tech courses, for the block period 2016-17 to 2018-19, on a challenge made by the respondent institutions did not meet the approval of the Single Judge. The matter was remanded to the Committee. On a reconsideration, the Committee granted some escalation, which was again challenged. Opining that the fixation was not proper, the Single Judge proceeded to fix the fee structure to his satisfaction. Aggrieved, the State of Telangana and the Fee Regulatory Committee assailed the same unsuccessfully before the Division Bench. The parent's association has also assailed the impugned orders directly before this Court, after having been granted leave to do so. Thus, the appeal.

***Decision and Observations***

The Supreme Court noted that

Rule 4(ii) vests jurisdiction in the TAFRC to decide whether a proposed fee structure submitted by an institution was justified or not and whether it amounted to profiteering or capitation fee. ***To prune the jurisdiction of the TAFRC by restraining it from examining and***

***scrutinising the statement of accounts to decide the justification of the proposed fee structure, and confining its role to mere perusal and comments, will amount to taking away its regulatory jurisdiction completely.*** The object of the TAFRC is to ensure a justified fee structure which does not reflect profiteering and capitation fee. Profiteering is the making of an unreasonable profit taking advantage of a situation by escalating prices which are disapprovingly much or grossly exaggerated income generated through manipulation of price by the use of a dominant position. On the contrary, the 10% inflation and 15% furtherance allowed by the TAFRC are aspects of a reasonable return or financial gain, which is but a process of managing or running the institution allowing a reasonable return for further growth as distinct from unnecessary profitability. While a Regulatory Authority will not allow profiteering, it will have to take into consideration the necessity of a financial gain required inherent to the nature of the activity as provided in Rule 4(ii)(e). We do not think the TAFRC has faulted on that score.

The crux of the controversy is the jurisdiction and the extent to which the court can examine the determination of the fee structure by the TAFRC and approved by the State government, in exercise of the powers of judicial review. The TAFRC, a statutory body headed by a retired High Court Judge, consists of domain experts from various fields including two from the finance sector, one of which is from the Government. Rule 3(vii) vests the TAFRC with the power to frame its own procedure in accordance with regulations notified by the Government in that regard and pursuant to which the guidelines for fee fixation have been framed by it. The recommendations of the TAFRC being the resultant of a quasi-judicial decision-making process, it will undoubtedly be amenable to the jurisdiction of the court for scrutiny by judicial review, so as to ensure adherence to the constitutional principles of reasonableness, fairness and adherence to the law under Article 14 of the Constitution.

Judicial review, as is well known, lies against the decision-making process and not the merits of the decision itself. If the decision-making process is flawed inter alia by violation of the basic principles of natural justice, is ultra-vires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance

with the law. The court, in the garb of judicial review, cannot usurp the jurisdiction of the decision maker and make the decision itself. Neither can it act as an appellate authority of the TFARC.

On judicial review, The Hon'ble Court referred to its decision in ***Fertilizer Corporation Kamgar Union (Regd.), Sindri* v. *Union of India,*** (1981) 1 SCC 568. Judicial restraint in exercise of Judicial review was considered in the ***State of (NCT) of Delhi* v. *Sanjeev,*** (2005) 5 SCC 181.

Further, the Court held that it needs no emphasis that complex executive decisions in economic matters are necessarily empiric and based on experimentation. Its validity cannot be tested on any rigid principles or the application of any straitjacket formula. ***The court while adjudging the validity of an executive decision in economic matters must grant a certain measure of freedom or play in the joints to the executive. Not mere errors, but only palpably arbitrary decisions alone can be interfered with in judicial review***. The recommendation made by a statutory body consisting of domain experts not being to the satisfaction of the State Government is an entirely different matter with which we were not concerned in the present discussion. The court should therefore be loath to interfere with such recommendation of an expert body, and accepted by the government, unless it suffers from the vice of arbitrariness, irrationality, perversity or violates any provisions of the law under which it is constituted. The court cannot sit as an appellate authority, entering the arena of disputed facts and figures to opine with regard to manner in which the TAFRC ought to have proceeded without any finding of any violation of rules or procedure. ***If a statutory body has not exercised jurisdiction properly the only option is to remand the matter for fresh consideration and not to usurp the powers of the authority.*** In ***Peerless General Finance and Investment Co. Ltd.* v. *Reserve Bank of India***, (1992) 2 SCC 343, it was observed:

> "31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the

function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

The need for judicial restraint with regard to recommendations of expert committees, more particularly in matters relating to finance and economics, was considered in ***BALCO Employees' Union (Regd.) v. Union of India,*** (2002) 2 SCC 333. Similar view was taken in ***Government of Andhra Pradesh v. P. Laxmi Devi***, (2008) 4 SCC 720.

The need for judicial restraint in economic and financial matters based on reports of domain experts was again considered in ***Tamil Nadu Generation and Distribution Corporation Ltd. v. CSEPDI-Trishe Consortium***, (2017) 4 SCC 318.

The fixation of fee by the TAFRC is not an adversarial exercise but is meant to ensure balance in the fee structure between the competing interest of the students, the institution and the requirement and desire of the society for accessible quality education. It is but a part of the high concept of fairness in opportunities and accessibility to education, which is an avowed constitutional goal. But to equate it to the extent of a right to challenge and interference only on basis of a different view being possible, cannot be a justification to interfere with the recommendation of an expert committee. It is nobody's case that the TAFRC has acted contrary to principles of accounting and economics or any fundamental precincts of the same.

Therefore, the Court held that the High Court exceeded its jurisdiction in interfering with the recommendation of the TAFRC .The orders of the High Court were set aside. The recommendation of the TAFRC dated 04.02.2017 for the block period 2016-2017 and 2018-2019 was restored.

## 5. *Parminder Singh v. New India Assurance Co. Ltd. (Civil Appeal No. 5123 of 2019)*

Decided on – 01.07.2019

Bench – (1) Hon'ble Ms. Justice Indu Malhotra
(2) Hon'ble Mr. Justice M.R. Shah

**( If the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.)**

***Facts***

The Appellant - driver, was driving a Hyundai Elantra car in which Captain Kanwaljit Singh, a Cabinet Minister in Punjab, was being driven from Ludhiana. When the car reached near Village Khanpur, a truck which came from the opposite direction at a very high speed rammed into the car. The accident occurred due to the contributory negligence of the driver of another truck which was wrongly parked on the road.

As a result of the accident, Captain Kanwaljit Singh and the Appellant - driver sustained grievous injuries. Captain Kanwaljit Singh succumbed to his injuries on the same day while undergoing treatment in the hospital. The Appellant - driver survived, but became permanently disabled.

The doctor opined that the Appellant shall not be able to work as a labourer, or do agricultural work, or work as a driver. His disability was assessed at 75%, which was permanent in nature.

The Appellant filed a Claim Petition before the MACT, Panchkula against the owners and drivers of the two offending trucks, along with the insurer of the two offending trucks viz. the Respondent - Insurance Company.The Appellant contended that he was earning an income of Rs. 10,000/- p.m. as a driver prior to the accident.The MACT, Panchkula *vide* Award dated 25.01.2013, allowed the Claim Petition, and awarded compensation of Rs. 10,43,666/- to the Appellant. On the question of liability to pay compensation, the drivers of both the offending trucks were found not to be holding valid and effective driving licenses at the time of the accident. As a result, the MACT held the owners and drivers of the two offending trucks jointly and severally liable to pay compensation to the Appellant. The Insurance Company was absolved of the liability to pay compensation. The Appellant filed FAO NO. 10473 of 2014 before the Punjab &

Haryana High Court for enhancement of the compensation awarded by the MACT. The High Court *vide* the impugned Judgment and Order dated 20.09.2017 partially allowed the FAO, and enhanced the compensation awarded to Rs. 21,06,000/-. The compensation was enhanced since the Appellant had suffered from 100% disability with respect to his earning capacity. The High Court granted Future Prospects @50% to the income of the Appellant.

The Respondent - Insurance Company was directed to pay compensation to the Appellant in the first instance, and recover the same from the owners and drivers of the two offending trucks.

The present Civil Appeal has been filed by the Appellant for enhancement of the compensation to Rs. 1,75,61,000/- since he is permanently disabled, leading a miserable life, and requires a permanent attendant.

***Decision and Observations***

The Hon'ble Court held that in the present case, it is an admitted position that it is not possible for the Appellant to get employed as a driver, or do any kind of manual labour, or engage in any agricultural operations whatsoever, for his sustenance. In such circumstances, the High Court has rightly assessed the Appellant's functional disability at 100% insofar as his loss of earning capacity is concerned. The Appellant is, therefore, awarded Rs. 32,40,000/-towards loss of earning capacity. In view of the facts and circumstances of the case, it would be just and fair to award a lump sum amount of Rs. 7,50,000/- towards hospitalization and medical expenses incurred in the past by the Appellant. Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life. In view of these uncontroverted facts, the Court found it fit and appropriate to award a lump sum amount of Rs. 10,00,000/- to the Appellant

towards medical expenses and attendant charges.In view of the aforesaid discussion, the Appellant is entitled to the following amounts:

i) Rs. 32,40,000/- to be awarded towards loss of future earnings by taking the income of the Appellant at Rs. 10,000/- p.m., and granting Future Prospects @50%;

ii) Rs. 7,50,000/- to be awarded towards repeated hospitalizations and medical expenses for undergoing 5 surgeries and medical treatment;

iii) Rs. 10,00,000/- to be awarded towards future medical expenses and attendant charges;

iv) Interest @ 9% awarded by the High Court from the date of the Claim Petition, till the date of recovery to be maintained.

On the issue of liability to pay the compensation awarded, the Court affirmed the view taken by the High Court that the Respondent - Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

The Court in ***Shamanna* v. *The Divisional Manager, The Oriental Insurance Co. Ltd.***, held ***that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.***

The Respondent - Insurance Company was directed to pay the enhanced amount of compensation as to the Appellant within a period of 12 weeks from the date of the judgment. The Respondent - Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks.

## 6. *State of Tamil Nadu v. Dr. Vasanthi Veerasekaran (Civil Appeal No. 8626 of 2009)*

Decided on – 01.07.2019

Bench – (1) Hon'ble Mr. Justice A.M. Khanwilkar
(2) Hon'ble Mr. Justice Ajay Rastogi

**(The principle cannot be extended as a condition in all cases of acquisition of the land that the owner must be given an alternative site or flat.)**

***Facts***

The property owned and possessed by the private respondents in the concerned appeals came to be acquired for the purpose of implementing the "Mass Rapid Transport System" (for short "MRTS") Railway Project, under the provisions of the Land Acquisition Act, 1894 (for short "1894 Act"). After following due process, the acquisition proceedings culminated with the passing of the award and taking over of possession of the concerned property. After possession was taken, the subject property was made over to the appropriate authority for implementation of the Railway Project.

The private respondent(s) in the respective appeals had, however, unsuccessfully challenged the acquisition proceedings by filing writ petitions in the High Court. While rejecting the challenge, the High Court vide order dated 12th December, 2003 observed that the appropriate authority of the State Government ought to consider the representation made by the private respondents in the concerned appeals for allotment of a housing site by way of rehabilitation as a special category of displaced persons, in view of the dictum presumably in *Hansraj H. Jain* **v.** *State of Maharashtra*. All connected writ petitions were accordingly heard and decided together by the impugned judgment. By these appeals, the State Government has assailed the aforementioned judgment.

***Decision and Observations***

The court observed that the foremost reason which weighed with the High Court is, the direction issued by the High Court vide order dated 12th December, 2003 had attained finality. Indubitably, that order has not been challenged by the State or any other State Authority. Nevertheless, the purport of the order is nothing more than a direction to the State Government and the Tamil Nadu Housing Board "to consider" the representation(s) made by the private respondent(s) for allotment of an alternative housing site in any one of the housing projects promoted by the Tamil Nadu Housing Board, as a special category of

displaced persons. Thus, the direction is not in the nature of a peremptory direction to allot an alternative housing site despite absence of any policy with reference to the project under consideration or obligation flowing from the provisions of 1894 Act. This is the first fallacy committed by the High Court in the impugned judgment.

The acquisition, as aforementioned, is for a project of MRTS (Railways) on behalf of the Ministry of Railway, Government of India and not for the State Government or State Authority. Furthermore, admittedly, no scheme has been formulated in relation to the stated railway project implemented by the Central Government for providing alternative housing sites to project affected persons. In the absence of such a scheme, it is unfathomable that the High Court could still issue a direction to the State Government and Tamil Nadu Housing Board, in exercise of writ jurisdiction, to provide alternative land to the private respondent(s) as a special category of displaced persons. Such a direction cannot be countenanced in law. This is reinforced from the principle underlying the dictum in the case of ***New Reviera Coop. Housing Society v. Special Land Acquisition Officer.*** In paragraph 9 of the said decision, ***the Court noted that it would be a different matter if the State had come forward with a proposal to provide an alternative site but that principle cannot be extended as a condition in all cases of acquisition of the land that the owner must be given an alternative site or flat. The Court unambiguously rejected the contention of the affected persons that acquisition of their land without providing them an alternative site would impinge upon their right to life under Article 21 of the Constitution of India.***

In this case the private respondents' lands have been acquired for implementation of MRTS Project implemented by the Government of India (Railways). The private respondent(s) have been duly compensated in conformity with the mandate of the Act of 1894. Therefore, they cannot expect any further relief much less from the State Government or, for that matter, the Tamil Nadu Housing Board.

## 7. *M/S Adani Power (Mundra) Ltd. v. Gujarat Electricity Regulatory Commission and Others (2019 SCC OnLine SC 813)*

*Decided on:* - 02.07.2019

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice B.R. Gavai
3. Hon'ble Mr. Justice Surya Kant

**(When can the doctrine of business efficacy be invoked for the interpretation of the terms of an agreement or a contract?)**

***Facts***

Respondent No. 2, namely, Gujarat Urja Vikas Nigam Ltd. (hereinafter referred to as "the procurer") is a holding company engaged in the business of bulk purchases from the power generators and supply to the distribution companies in the State of Gujarat. On 01.02.2006, the procurer initiated the process of bidding for supply of power on long term basis, by issuing a Request For Qualification ("RFQ" for short). The RFQ was followed by Request For Proposal ("RFP" for short) on 24.11.2006.

On being successful in the bidding process, the procurer issued a Letter of Intent ("LOI" for short) in respect of bid no. 2, to the appellant on 11.01.2007 for supplying 1000 MW power at the rate of Rs. 2.35 per Kwh. Consequently, the Power Purchase Agreement ("PPA" for short) came to be entered into between the procurer and the appellant, for purchase and sale of 1000 MW power from the appellant's power project at Korba, Chhatisgarh, at the delivery point at Nani Khakhar in the State of Gujarat.

On 12.02.2007, the appellant informed the procurer that it would supply power against bid No. 2, from Mundra Power Project in Gujarat instead of Chhatisgarh Project. Accordingly, a supplemental PPA was entered into between the appellant and the procurer on 18.04.2007, to off take the contracted capacity of 1000 MW against bid No. 2, from Mundra Power Project.

The appellant contended that, the bid submitted by it in respect of bid No. 2 was on the basis of the assurance given by Gujarat Mineral Development Corporation ("GMDC" for short) to supply 4 million tonnes of coal. It also contended that, the GMDC was not abiding by the said assurance. So it addressed a communication to the Government of Gujarat on 21.05.2007 to find out a solution. Since the Fuel Supply Agreement ("FSA" for short) could not be executed, as contemplated between the appellant and the GMDC; the appellant informed the procurer that the FSA between it and the GMDC had not yet been finalized.

The procurer, thereafter, in the month of June, 2008, addressed a communication to the appellants stating that, since it had not complied with certain conditions stipulated in the PPA and as such, it should furnish an additional performance bank guarantee. The appellant addressed another communication to the procurer on 17.01.2009, reiterating its inability to

supply the power to the procurer in the absence of FSA with GMDC. It also informed that it had no other option except to terminate the PPA. On 27.02.2009, the Government of Gujarat wrote to the GMDC, asking it to supply coal to the appellant from Naini block.

Thereafter, there was an attempt to amicably settle the matter between the appellant, the procurer, the GMDC as well as the Government of Gujarat. However, the said attempts were not fruitful. Finally, the appellant by a communication dated 28.12.2009, issued notice to the procurer, terminating the PPA with effect from 04.01.2010. The procurer addressed a communication to the Government of Gujarat on 30.12.2009, requesting the Government to impress upon the appellant to withdraw its termination notice dated 28.12.2009 and also impress upon the GMDC for resolution of FSA with the appellant. The procurer also addressed a communication to the appellant on 05.01.2010, requesting it to keep the notice of termination dated 28.12.2009 in abeyance. On 06.01.2010, the appellant addressed another communication to the procurer, informing it that since the period of termination has already expired, the PPA stands terminated with effect from 4.01.2010. The appellant also deposited an amount of Rs. 25 crores with the procurer towards liquidated damages in addition to the performance bank guarantee of Rs. 75 crores, which was already with the procurer. On 13.01.2010 the procurer sent a letter to the appellant, returning the amount of Rs. 25 crores and calling upon it to withdraw the termination notice. However, the appellant asserted that termination was valid.

The procurer, thereafter, filed a petition under Sections 86(1)(f) and 95 of the Electricity Act, 2003, for adjudication of the dispute between the procurer and the appellant on 01.02.2010 before the Commission. The Commission by its judgment dated 31.08.2010 allowed the petition of the procurer, holding that the termination of the PPA was illegal and directed the appellant herein to supply the power to the procurer at the rate determined in the PPA. Being aggrieved, the appellant approached the Appellate Tribunal for Electricity. By the judgment and order impugned dated 07.09.2011, the Appellate Tribunal dismissed the appeal. Hence, the present appeal.

***Appellant's Main Contention***

According to the Appellant, the bid which was submitted by the appellant in respect of bid No. 2 was on the basis of the commitment given to it by the GMDC that it will supply the coal. The PPA executed between the appellant and the procurer was on the premise that the GMDC would abide by its commitment. Since the GMDC had failed to abide by its commitment and had not executed the FSA with the appellant, there was a non-compliance with the conditions stipulated in Article 3.1.2 of the PPA and therefore the appellant was entitled to terminate the agreement, by giving 7 days notice in writing in accordance with the provisions of Article 3.4.2 of the PPA. So the only liability of the appellant was to pay the liquidated damages at the rate of Rs. 10 lakhs per Mega Watt of the contracted capacity, which is worked out to Rs. 100 crores for 1000 MW. Moreover, since the contract also

provided for liquidated damages, the Commission as well the Appellate Tribunal, ought not to have given a direction for specific performance.

***Respondents' Main Contention***

The PPA which was entered into between the parties was not executed on the basis of commitment by the GMDC. The procurer is not concerned with the issue as to from where the appellant would arrange for its supply of coal. The PPA between the appellant and the procurer is only in respect of supply of power. On the GMDC's failure to adhere to its commitment to supply indigenous coal, it was the responsibility of the appellant to make arrangement for an alternative source and to enter into FSA with any other coal supplier. It was submitted that as a matter of fact, the appellant is importing the coal from other nations and using it for generation of power, both for the plant under bid No. 1 and the plant under bid No. 2. By not making arrangements for fuel supply, it is the appellant who had committed default and, therefore, a party in default cannot be permitted to terminate the agreement. Moreover, the contract is required to be read as a whole and the provisions of the contract cannot be read in isolation.

***Cases Referred***

The Hon'ble Court before going into the merits of the case discussed on the issue of the interpretation of the clauses of a contract between parties and referred to the following judgments therefor :-

*(i)* ***Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond & Gem Development Corporation Ltd. & Anr., (2013) 5 SCC 470***

- A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meaning unless, there is some ambiguity therein.[2]
- The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely.

*(ii)* ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services INC, (2016) 4 SCC 126***

- In the matter of interpretation, the court has to make different approaches depending upon the instrument falling for interpretation. Legislative drafting is made by experts and is subjected to scrutiny at different stages before it takes final shape of an Act, Rule or Regulation. There is another category of drafting

[2] *See* also, *DLF Universal Ltd. v. Town and Country Planning Deptt.*, (2010) 14 SCC 1.

by lawmen or document writers who are professionally qualified and experienced in the field like drafting deeds, treaties, settlements in court, etc. And then there is the third category of documents made by laymen who have no knowledge of law or expertise in the field. The legal quality or perfection of the document is comparatively low in the third category, high in second and higher in first. No doubt, in the process of interpretation in the first category, the courts do make an attempt to gather the purpose of the legislation, its context and text. In the second category also, the text as well as the purpose is certainly important, and in the third category of the documents like wills, it is simply intention alone of the executor that is relevant. In the case before us, being a contract executed between the two parties, the court cannot adopt an approach for interpreting a statue. The terms of the contract will have to be understood in the way the parties wanted and intended them to be. In that context, particularly in agreements of arbitration, where party autonomy is the ground norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions and the use of the expressions at the proper places in the agreement.

*(iii)* ***Attorney General of Belize v. Belize Telecom Ltd., (2009) 1 WLR 1988 (PC)***

- The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.

*(iv)* ***Calcutta Gas Company (Proprietary) Ltd. vs. State of West Bengal and others, AIR 1962 SC 1044***

- Discussed the rule of construction for harmonizing two apparently conflicting entries.

*(v)* ***Sultana Begum vs. Prem Chand Jain, AIR 1997 SC 1006***

- Discussed the rule of "harmonious construction" to avoid a head on clash between two sections of an Act and held that to harmonize is not to destroy any statutory provision or to render it otiose.[3]

*(vi)* ***Nabha Power Ltd. (NPL) v. Punjab State Power Corporation Ltd. (PSPCL) and Anr., 2018 (11) SCC 508***

- *Dhanrajamal Gobindram v. Shamji Kalidas and Co., (1961) 3 SCR 1020* - Commercial documents are sometimes expressed in language which does not,

[3] *See* also, *Anwar Hasan Khan vs. Mohammed Shafi and others,* AIR 2001 SC 2984.

on its face, bear a clear meaning. The effort of courts is to give a meaning, if possible.

- *Union of India v. D.N. Revri & Co., (1976) 4 SCC 147* - It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach.
- *Satya Jain v. Anis Ahmed Rushdie, (2013) 8 SCC 131* – Elucidated the principle of "**business efficacy"** in interpretation of the terms of the contract.
  *"33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Bowen, L.J. in The Moorcock {(1889) LR 14 PD 64 (CA)}. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied – the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same……"*
- The development of law saw the "**five condition test**" for an implied condition to be read into the contract including the "**business efficacy**" test. It also sought to incorporate "**the Officious Bystander Test**" [Shirlaw v. Southern Foundries (1926) Ltd. {(1939) 2 KB 206 : (1939) 2 All ER 113 (CA)}]. This test has been set out in B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings {1977 UKPC 13 : (1977) 180 CLR 266 (Aus)} requiring the requisite conditions to be satisfied :
  (1) reasonable and equitable;
  (2) necessary to give business efficacy to the contract;
  (3) it goes without saying i.e. the Officious Bystander Test;
  (4) capable of clear expression; and
  (5) must not contradict any express term of the contract.

***Observations and Decision***

The Hon'ble Court after referring to the aforementioned cases and the test laid down in *Nabha Power* (supra), opined that the principle of business efficacy could be invoked only if by a plain literal interpretation of the term in the agreement or the contract, it is not possible to achieve the result or the consequence intended by the parties acting as prudent businessmen. This test requires that a term can only be implied, if it is necessary to give

business efficacy to the contract, to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. If the contract makes business sense without the term, the courts will not imply the same. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. It must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract.

Finally, the Hon'ble Court held that the observations of the Appellate Tribunal depicted an erroneous approach since a harmonious reading of Article 3.4.2 and Article 3.1.2 clearly indicates that in the event of non-compliance of any of the conditions as stipulated in Article 3.1.2 within the period prescribed thereunder, either of the parties, i.e., the seller or the procurer have the right to terminate the contract. However, in either of the events, it is the seller's liability to pay the liquidated damages at the rate of Rs. 10 lakhs per Mega Watt.

The Hon'ble Court further held that the finding of the Appellate Tribunal that the provisions under Article 3.4.2 of the PPA can be invoked only when there is an agreement between the parties that there is violation of any of the conditions specified in Article 3.1.2 of the PPA is totally incorrect. If such an argument is accepted, it will amount to inserting a totally new condition in Article 3.4.2 of the PPA and would amount to re-writing the contract between the parties; it would do total violence to the provisions of Article 3.4.2 of the PPA. It cannot be said to be a condition which is either reasonable or equitable; it also cannot be said to be a condition which is necessary to give business efficacy to the contract; it also cannot be said to be a test which justifies the Officious Bystander Test; it also cannot be said to be a condition which is capable of the clear expression; it is also not a condition which does not contradict any expressed terms of the contract. On the contrary, is a condition which would totally change the tenor of Article 3.4.2 of the PPA. Moreover, the appellant as well as the procurer and also the Government of Gujarat clearly understood that the bid submitted by the appellant was on the basis of the commitment of the GMDC to supply indigenous coal to it.

The Hon'ble Court applied the principles of "harmonious construction" discussed in *Calcutta Gas Company (Proprietary) Ltd.*(supra) and in *Sultana Begum* (supra) and the principle discussed in ***J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh***, *AIR 1961 SC 1170* and reiterated in ***Maharashtra State Board of Secondary and Higher Secondary Education and Ors. v. Paritosh Bhupeshkumar Sheth and Ors.***, *(1984) 4 SCC 27* that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic and, finally, held that the perusal of various Articles would reveal that provisions under Article 14 are general in nature. The provision under Article 3.4.2 is specific, only to be

invoked in the case of non-compliance with any of the conditions as provided under Article 3.1.2. As such, the special provision made in Article 3.4.2 will exclude the applicability of general provisions contained in Article 14 of the contract.

Regarding the compensation after valid termination of the contract, the Hon'ble Court held that even after the PPA was validly terminated, the appellant continued to take the project to its logical end. After commissioning of the project, it has started supplying electricity to the procurer in accordance with the decision of the Commission and the Appellate Tribunal. The appellant must have incurred huge expenditure on the same. In order to do economic justice, on the principle of business efficacy, the appellant would be entitled for adjustment of cost of the project and would also be entitled to the interest on the expenditure incurred by it for completion of the project. The expenditure towards running of the project after obtaining the coal from the open market would also be required to be taken into consideration. The appellant would also be entitled to the interest on the delay of payment after it receives payment upon determination of the rate which would be determined by the Central Electricity Regulatory Commission, where the appellant is at liberty to approach.

8. ***Pharez John Abraham (Dead) By Lrs. v. Arul Jothi Sivasubramaniam K. & others, (2019 SCC OnLine SC 819)***

*Decided on:- 02.07.2019*

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice M.R. Shah

**("In the Christian Law, there is no prohibition against adoption. Nothing has been pointed out that unlike in Hindu Law, there is any law prohibiting the Christian couple to adopt male or female child, although they may have natural born male or female child, as the case may be.")**

***Facts***

The suit property initially belonged to one John D. Abraham. The said John D. Abraham died intestate in the year 1964 leaving behind him his wife - Esther Abraham - original defendant no. 1 and four children - two sons and two daughters, namely, Pharez John Abraham (original defendant no. 2); Triza Kalyani John @ A.S. Meenakshi (the eldest daughter of John D. Abraham and the wife of original plaintiff no. 1); Vasanthi (original defendant no. 3); and Late Maccabeaus (father of defendant nos. 4 & 5). In the year 1979, Triza Kalyani John converted to Hinduism and married with original plaintiff no. 1. She died in the year 1986 leaving behind her the original plaintiffs. After the death of Triza Kalyani John @ Meenakshi, the original plaintiffs - the husband and children of Triza Kalyani John @ Meenakshi instituted the present suit for claiming partition and a separate possession and claimed that Triza Kalyani John @ Meenakshi had ⅓rd share in the property of John D. Abraham, who died intestate.

Initially, the plaintiffs, claiming to be the heirs of Triza Kalyani John @ Meenakshi joined original defendant nos. 1 & 2 - Esther Abraham, wife of John D. Abraham and Pharez John Abraham, son of John D. Abraham and stated that all the three namely original defendant no. 1, original defendant no. 2 and Triza Kalyani John @ Meenakshi had ⅓rd share each in the suit property. However, subsequently, original defendant nos. 3 to 5 came to be joined as parties. It was found that defendant no. 3 - Vasanthi and late Maccabeaus were the adopted children of John D. Abraham. The learned trial Court dismissed the suit on merits as well as on the ground of limitation. In the appeals preferred by the original plaintiffs and original defendant nos. 3 to 5, the High Court decreed the suit and held that original plaintiffs, original defendant no. 2, original defendant no. 3 and original defendant nos. 4 & 5 (jointly) have ¼th share each in the suit property. The impugned judgment and order passed by the High Court was the subject matter of the present appeal at the instance of original defendant no. 2 (now deceased and represented through the legal heirs).

***Observations and Decision***

The Hon'ble Court allowed the appeal and held the following:-

(i) The High Court has completely erred in holding that the plaintiffs would have ¼th share in the suit property being the heirs of deceased Triza Kalyani John @ Meenakshi - the daughter of John D. Abraham. At the time of marriage of Triza Kalyani John @ Meenakshi with original plaintiff no. 1, she converted to Hinduism and her name was changed to A.S. Meenakshi. At the relevant time when the said Triza Kalyani John @ Meenakshi had married to original plaintiff no. 1 and converted to Hinduism, there was opposition. However, despite the same, the said Triza Kalyani John @ Meenakshi converted to Hinduism and married to original plaintiff no. 1 and she was paid Rs. 50,000/- and some gold ornaments for relinquishing her right, if any, in the suit property belonging to John D. Abraham. It is required to be noted that original defendant no. 2 even incurred the expenditure from his own income for the purpose of improvement of the property. Original defendant no. 2 was serving in army and therefore he was having independent income. Considering the aforesaid facts and circumstances, the plaintiffs would not be entitled to any share of Triza Kalyani John @ Meenakshi. Therefore, the learned trial Court rightly dismissed the suit which was not required to be interfered with by the High Court.

(ii) Whether defendant nos. 3 to 5 would have any share in the suit property belonging to John D. Abraham?

- Defendant no. 3 and Maccabeaus were the adopted children of John D. Abraham and, as such, were entitled to share in the property of their adoptive father. The Court further held that ***"in the Christian Law, there is no prohibition against adoption. Nothing has been pointed out that unlike in Hindu law, there is any law prohibiting the Christian couple to adopt male or female child, although they may have natural born male or female child, as the case may be."***
- "By virtue of adoption, a child gets transplanted into a new family whereafter he or she is deemed to be member of that family as if he or she were born son or daughter of the adoptive parents having same rights which natural daughter or son had. The right which the child had to succeed to the property by virtue of being son of his natural father, in the family of his birth, is thus, clearly to be replaced by similar rights in the adoptive family, and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son. Thus, original defendant no. 3 and defendant nos. 4 & 5 (heirs of late Maccabeaus) are rightly held to be the co-sharers in the suit property belonging to John D. Abraham and they are entitled to the respective shares in the suit property belonging to John D. Abraham. Original defendant no. 1 - the wife of John D. Abraham had died and therefore the suit property is required

to be divided amongst original defendant no. 2, defendant no. 3 and defendant nos. 4 & 5. Therefore, original defendant no. 2, original defendant no. 3 and original defendant nos. 4 & 5 (jointly) shall have ⅓rd share each in the suit property. Therefore, the impugned judgment and decree passed by the High Court holding that the original plaintiffs shall have ¼thshare, original defendant nos. 2 & 3 shall have ¼th share each and original defendant nos. 4 & 5(jointly) would have ¼th share is required to be modified to the aforesaid extent holding that original defendant nos. 2 & 3 would have ⅓rd share each and original defendant nos. 4 & 5 jointly would have ⅓rd share in the suit property."

## 9. *Sunil Vasudeva and Others v. Sundar Gupta and Others (2019 SCC OnLine SC 814)*

*Decided on :- 06.07.2019*

Bench:- 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Ajay Rastogi

**(Power of the High Courts to review their judgment)**

The subject property (43, Prithviraj Road, New Delhi) was purported to be sold in the certificate proceedings initiated by Income Tax Department for recovery of income tax dues of Sambhuram Kirodimull HUF to the auction purchaser late V.N. Vasudeva for a sum of Rs. 2,60,000/- on August 18, 1964. Kirodimull objected against such purported sale to V.N. Vasudeva because no leave was obtained from the High Court of Calcutta which was overruled by the Chief Commissioner, Delhi and confirmed the purported sale in favour of V.N. Vasudeva vide Order dated 26th February, 1965. At this stage, application was filed by the Income Tax Department in Suit No. 1451 of 1957 praying for (a) condonation of the omission to obtain leave of Court before putting the Delhi property for sale and (b) leave be given to it to complete the said sale of the Delhi property in favour of V.N. Vasudeva and to give further effect thereto. On an application filed by Income Tax Department, the Single Judge of the High Court of Calcutta in its Order dated 8th September, 1965 taking note of the rival contention of the parties observed the following:-

> *"Upon reading on the part of the Union of India through its Income Tax Officer, Raigarh Civils, Raigarh (hereinafter referred to as the said applicant union), a Mastered Summons bearing date the third day of March last and an affidavit of Sanat Kumar Mukherjee of the due service thereof affirmed on the fifth day of April last and a petition of the said applicant and an affidavit of Ramdas Rambhorose Misra in verification thereof affirmed on the fifteenth day of March last and the exhibits annexed to the said petition and marked respectively A, B, C and D and an affidavit of Ramdas Rambhorose Misra of Raigarh affirmed on the Seventeenth day of June last all filled this day and upon reading on the part the of the defendants an affidavit of Premchand Gupta affirmed on the fifth day of May last and filed this day and upon hearing Mr. D. Gupta advocate for the said applicant Union and Mr. D.C. Basu advocate for the defendants (the plaintiffs nor appearing either in person or by advocate, or attorney).*
>
> *It is ordered that the said applicant Union be at liberty to put up the Delhi property being the joint moveable and immoveable properties including Premises No. 43, Prithviraj Road, New Delhi, for sale either by public auction or by private treaty to the best purchaser or purchasers that can be got for the same."*

Section 293 of the Income Tax Act, 1961 put a complete bar of filing suit in any civil court against the revenue/income tax authority and the mandate of law remain unnoticed when the order came to be passed by the Single Judge of the High Court on 26th October, 1990 while relegating the parties to address in the alleged pending Civil Suit No. 471 of 1985 before the District Judge at Delhi although it was dismissed much prior to the

pronouncement of the Judgment dated 26th October, 1990. Even in the LPA, the Division Bench of the High Court granted liberty to the respondents to file a fresh civil suit in respect of the subject property in Delhi and either party has not brought to the notice of the Court the mandate of law as envisaged under Section 293 of the Income Tax Act, 1961 that the civil suit against the Income tax Department is not maintainable under the law, which appears to be mistakenly omitted by the Court in arriving at the rival claims of the parties.

It was taken note of by the High Court in its review jurisdiction and arrived to the conclusion that there appears to be an error apparent on the face of record and consequently allowed the application for review, recalled the Order dated 19th October, 2012 and set aside the Judgment and Order dated 31st March, 2006 passed in miscellaneous application and for restoration of Writ Petition No. 18500(W) of 1985 to be heard on its own merits under the impugned judgment dated 24th September, 2014, which was under challenge in this appeal.

***Observations and Decision***

Regarding the power to review a judgment, the Hon'ble Court referred to the case of ***Kamlesh Verma* v. *Mayawati***[4], wherein it had been held as follows:-

> ***"20.*** *Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:*
>
> ***20.1.*** *When the review will be maintainable:*
> *(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
> *(ii) Mistake or error apparent on the face of the record;*
> *(iii) Any other sufficient reason.*
>
> *The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. (2013) 8 SCC 337.*
>
> ***20.2.*** *When the review will not be maintainable:*
> *(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
> *(ii) Minor mistakes of inconsequential import.*
> *(iii) Review proceedings cannot be equated with the original hearing of the case.*
> *(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
> *(v) (v.) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

[4] (2013) 8 SCC 320.

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

Taking note of the exposition of the above principles, the Hon'ble Court observed that the effect of Section 293 of the Income Tax Act had been mistakenly omitted under the judgment in review and that apart, the consequential effect of the order of the High Court on an application filed by the Union of India in Civil Suit No. 1451 of 1957 dated 8th September, 1965 was open to be examined in the writ proceedings and it was the defence of the Income Tax Department in the reply to the review application and also before this Court in their counter affidavit that in the auction sale which was held in the month of August, 1964, the permission from the Court was not obtained and after the order came to be passed on their application by the Single Judge of the High Court in Suit No. 1451 of 1957 dated 8th September, 1965, it would certainly affect the auction sale held by the Income Tax Department in reference to the subject property in question and it was their stand throughout in the proceedings.

The Hon'ble Court finally held as follows:-

> ***"31.*** *In the given facts and circumstances, we are not inclined to dilate the issues on merits raised in the Writ Petition No. 18500(w) of 1985 filed at the instance of the respondents before the High Court of Calcutta, but if the civil suit was not maintainable as alleged in view of Section 293 of the Income Tax Act and this was the purported defence of the respondents and of the Income Tax Department and consequential effect to the Order dated 8th September, 1965 of which a reference has been made by us, no party could be left remediless and whatever the grievance the party has raised before the Court of law, has to be examined on its own merits. In our considered view, there appears no error being committed by the High Court in passing the impugned judgment dated 24th September, 2014 in exercise of its review jurisdiction and that needs no interference by this Court."*

***10. Dalbir Singh v. Union of India and Others (2019 SCC OnLine SC 817)***

Decided on –02.07.2019

Bench – (1) Hon'ble Mr. Justice M.R. Shah
(2) Hon'ble Mr. Justice A.S. Bopanna

**(Though in service matters the past conduct, both positive and negative will be relevant not only while referring to the misconduct but also in deciding the proportionality of the punishment, the Court should be cautious while considering the case of an officer/soldier/employee of a disciplined force and the same yardstick or sympathetic consideration as in other cases cannot be applied.)**

***Facts***

The appellant was enrolled in the Army on April 06, 1999 and was posted to 3 Rashtriya Rifles (RR) Battalion (Bn) in the year 2006. While he was so serving, in respect of an incident which occurred on August 13, 2006, action was initiated under Section 34(c) of the Army Act, proceedings were held by the Summary General Court Martial (SGCM) and the sentence to undergo imprisonment for six months and dismissal from service was imposed. The appellant assailing the same was before the Armed Forces Tribunal and in the said proceedings the order impugned dated August 26, 2011 was passed.

The incident referred to is that according to the prosecution while the appellant was posted to 3 Rashtriya Rifles (RR) Battalion (Bn), it was ordered on August 13, 2006 to cordon and search be carried out in village Darigidiyan in the Jammu and Kashmir. The details of the officers who formed a part of the contingent was also referred in the proceedings. On reaching the village, there was a brief contact with the militant and exchange of fire, after which the militants took cover in a maize field. In that view, for the purpose of operation two teams were formed, among others the appellant was a part of the second team. At about 0800 Hrs on August 13, 2006 the team under SubedarSubhash Chand in which the appellant was also a member was divided into two groups. When the appellant and the group in which he was given the responsibility to search the house along with NaikSukhdev Raj and Sapper Bachitar Singh was searching, they heard firing from the direction of the maize field and as such the group exited the house from the window and the cordon was thereafter adjusted for the night around the maize field. In that regard, the Light Machine Gun (LMG) was also placed and the LMG was manned by Sapper Gurmail Singh and the appellant. To provide support, Sapper Bachitar Singh was positioned to his left at about 5-7 meters. At about 2300 Hrs intense fire came from the direction of the maize field towards the LMG spot wherein Sapper Gurmail Singh, SubedarDalbir Singh and the appellant were positioned. The charge against the appellant is that he left his post, jumped across the stone wall and failed to retaliate against the militants. He failed to use his AK-47 and a pistol which was with him due to which the militants broke the cordon, killed Sapper Gurmail Singh and took away the LMG. While jumping over the wall the appellant no doubt was hit by a bullet in the leg.

Based on such charge of exhibiting cowardice by abandoning his post, the proceedings were held in the SGCM. The witnesses were examined and on analysing the same the sentence dated March 06, 2008 was imposed, which was assailed before the Armed Forces Tribunal. The Armed Forces Tribunal referred to the evidence of each of the witnesses who had been examined in the SGCM while prosecuting the charge against the appellant and on such reappreciation had arrived at the conclusion that the sentence imposed on the appellant was justified. The order of the Tribunal had been challenged before the Hon'ble Court.

***Decision and Observations***

The Hon'ble Court, without adverting to all other aspects, observed that the necessary aspect which is to be taken note of is the charge that was made and the reason for which the competent authority had arrived at the conclusion that the appellant instead of performing his duty had run away from it. Limited to that aspect, what is to be taken note is that in the background of the situation that had arisen, the task assigned to the group of officers was to cordon the area and prevent the militants from breaking through.

The Hon'ble Court held that in the matter of the present nature when the task assigned to a soldier is cut out in a definite manner and when the duties are assigned, the only scope in a judicial proceeding is to find out whether the same has been performed by him based on the finding of fact that is recorded. In a matter where allegation of cowardice is made, the reason for which such allegation is made is to be taken note and considered. The Hon'ble Court further held that though the witnesses had admitted the appellant to be a good soldier, in the matter of protecting the border, a soldier cannot live merely on past glory but should rise to the occasion on every occasion to defend the integrity of the nation since such is the trust reposed in a soldier. ***Though in service matters the past conduct, both positive and negative will be relevant not only while referring to the misconduct but also in deciding the proportionality of the punishment, the Court should be cautious while considering the case of an officer/soldier/employee of a disciplined force and the same yardstick or sympathetic consideration as in other cases cannot be applied***. The resources of the country are spent on training a soldier to retaliate and fight when the integrity of the nation is threatened and there is aggression. In such grave situation if a soldier turns his back to the challenge, it will certainly amount to cowardice. The Hon'ble Court took note of the action taken against the appellant in this background and opined that the SGCM and the Armed Forces Tribunal were justified.

As far as the quantum of punishment was concerned, the Hon'ble Court held that the dismissal from the service is justified but the sentence of rigorous imprisonment need not be implemented under the peculiar facts and circumstances of the case because though the appellant had exhibited cowardice, the fact remained that he had also received a gunshot injury in the incident and also there has been a long lapse of time.

## 11. *State of Jharkhand and Others v. Ajanta Bottlers & Blenders Pvt. Ltd.(2019 SCC OnLine SC 817)*

*Decided on – 02.07.2019*

Bench – (1) Hon'ble Mr. Justice A.M. Khanwilkar
(2) Hon'ble Mr. Justice Ajay Rastogi

**(Imposition of Levy on "rectified spirit" under Section 90 Jharkhand Excise Act held to be within the legislative competence of the State and, therefore, constitutional)**

***Facts***

This appeal takes exception to the impugned judgment and order of the High Court of Jharkhand at Ranchi in Writ Petition (T) No. 7499 of 2012 dated 25th July, 2013, whereby the writ petition filed by the respondent to assail the notification dated 6th November, 2012, as published in the official gazette on 10th November, 2012, issued by the Board of Revenue, Jharkhand in exercise of powers conferred under Section 90 of the Jharkhand Excise Act, 1915 came to be allowed on the ground that the State had no legislative competence to levy tax/fee on the import of rectified spirit, as it is a non-potable liquor i.e. alcohol not fit for human consumption. Additionally, the High Court opined that the appellant-State had failed to justify the impugned levy on rectified spirit on the basis of services provided by the State in lieu thereof or being in the nature of *quid pro quo*.

***Decision and Observations of the Hon'ble Jharkhand High Court***

According to the Hon'ble High Court, the State under List-II is empowered to levy fee under Entry 66 in respect of any of the matters in the list but not including fees taken in any Court. Entry 66 read with Entry 8 of List II therefore provides competence to the State to levy fee in respect of intoxicating liquor i.e. alcoholic liquor fit for human consumption i.e. to say on the production, manufacture, possession, transport, purchase and sale of intoxicating liquor. The present levy seeks to levy fee on the import of rectified spirit to be utilized for the purpose of, firstly for manufacture of ENA through re-distillation process and then for manufacture of IMFL. Industrial alcohol/non-potable spirit i.e. rectified spirit being not alcoholic liquor fit for human consumption, cannot be the subject matter of any regulation or control by the State under Entry 8, 51 and 66 of List II of Seventh Schedule of the Constitution. According to the Hon'ble Court, the State has the power to levy fees under the garb of grant of privilege from those who deal in liquor or alcohol fit for human consumption i.e. potable liquor as distinct from non-potable liquor or alcoholic liquor unfit for human consumption.

Therefore, the Hon'ble Court opined that the levy of import fees on rectified spirit by the State Legislature before bottling of IMFL by shifting the event of taxation, cannot be held to be justified as in pith and substance, the levy is on import of rectified spirit i.e. non-potable liquor i.e. alcohol not fit for human consumption and thus, the impugned levy therefore is

beyond the legislative competence of the State Legislature and consequentially also beyond the rule making power of the Board of Revenue.

Regarding the plea of the State to justify the levy as a regulatory measure for supervision and control of potable liquor to protect public health and morality, the Hon'ble Court held that the respondent State have not been able to justify the impugned levy on rectified spirit on the basis of services provided in lieu thereof. Besides this, the petitioner has been paying licence fee for issuance of licence under different forms in the nature of a regulatory fee. The impugned levy, therefore, was held not to be justifiable on this account as well.

The Hon'ble Court, therefore, held that the levy of import fee on rectified spirit which is impermissible for the State Legislature, also has the effect of impeding the inter-State trade and commerce as guaranteed under Article 301 of the Constitution of India. At the same time, it is within the exclusive legislative competence of Parliament to levy any duty or tax on rectified spirit i.e. industrial alcohol. Such action therefore, is in teeth of the Article 301 of the Constitution of India, and therefore it cannot sustain in the eyes of law.

***Decision and Observations of the Hon'ble Supreme Court***

The Hon'ble Court observed that Ethyl Alcohol or Ethanol in India is usually produced from molasses derived from sugarcane in its concentrated form and it is also known as "Rectified Spirit". Rectified spirit after it undergoes certain 'physical changes' by adopting 'physical means' like re-distillation, rectification (repeated or fractional distillation) to remove impurities, it becomes purer and is known as Extra Neutral Alcohol (ENA). Thereafter, by addition and mixing of colouring and flavouring agents (compounding), as well as after dilution with water, ENA is left for maturation, to be bottled and used as 'intoxicating liquor' or 'potable liquor' known as Indian Made Foreign Liquor (IMFL). Whereas the country liquor, also known as 'Desi Sharab' is prepared from rectified spirit or low grade ENA having alcohol content below 40% (as decided by different State Governments) which may be coloured (by caramel) and may be spiced too. Notably, the chemical composition of Ethyl alcohol or Ethanol ($C_2H_6O$ or $C_2H_5OH$ or $CH_3CH_2OH$) remains the same in the entire process, though addition of colouring and flavouring agents makes it a mild concoction/mixture/solution (in chemical parlance a solution of alcohol is known as 'tincture') which renders it more palatable to human consumption.

According to the Hon'ble Court, the impugned notification makes it amply clear that the levy or impost fructifies only upon completion of distillation process (in two stages-first from rectified spirit to ENA and then from ENA to IMFL) and in particular converting into a final product "IMFL". The collection of impost is, however, deferred until the bottling of that product. In other words, the levy is not at the stage of import of rectified spirit within the State; nor at the stage of initial distillation thereof to Extra Neutral Alcohol (ENA) and not until the product IMFL is ready for bottling as such. Thus, the levy under the impugned rule ripens or fructifies only after the original raw material (imported rectified spirit) has

undergone distillation process at two different stages and transmute and mutate into an intoxicant or potable alcohol palatable to human consumption, but its (impost) collection is effected just before bottling it in that form (potable liquor). Indeed, the levy predicated in this rule is on the total quantity of imported rectified spirit utilised for mutating it in the form of IMFL, a new produce. The last part of the rule stipulates the quantum of charges to be levied on such utilized imported rectified spirit for production of the foreign liquor. For that limited purpose, the quantity of imported rectified spirit utilized in the production of potable liquor, is reckoned.

**Legislative Competence**

The Hon'ble Court further held that it is well established that the State may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 and 8 of List II and may also laydown regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol. Had it been the case of levy on non-potable alcohol (imported rectified spirit) *per se*, only then the question about the competency of the State Legislature or the justness of the levy on the doctrine of *quid pro quo*may become relevant. However, if it is a case of legislation in respect of potable alcohol, as has been noted by us hitherto, the State would be competent to legislate in that regard and levy charges - be it for regulating the same or impost for parting with its rights regarding manufacture, storage, export, sale and possession thereof.

The Hon'ble Court referred to the decision rendered by the Constitution Bench in***Har Shankar v. The Dy. Excise and Taxation Commissioner***[5], wherein it had been held as follows:-

> *""53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara case[6], Cooverjee case[7], Kidwai case[8], Nagendra Nath case[9], Amar Chakraborty case[10] and the R.M.D.C. case[11], as interpreted in Harinarayan Jaiswal case[12] and Nashirwar case[13]. There is no fundamental right to do trade or business in intoxicants.....*
>
> *It is significant that the judgment in Krishna Kumar Narula case[14] does not negate the right of the State to prohibit absolutely all forms of activities in relation to intoxicants. The wider right to prohibit absolutely would include the narrower right*

[5] (1975) 1 SCC 737.
[6] AIR 1957 SC 414.
[7]AIR 1954 SC 318.
[8]AIR 1957 SC 414.
[9]AIR 1958 SC 398.
[10](1972) 2 SCC 442.
[11]AIR 1957 SC 699.
[12](1972) 2 SCC 36.
[13](1975) 1 SCC 29.
[14] AIR 1967 SC 1368.

*to permit dealings in intoxicants on such terms of general application as the State deems expedient."*

* * * * * *

*55. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration. By Article 298 of the Constitution, the executive power of the State extends to the carrying on of any trade or business and to the making of contracts for any purpose..... The power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter. Nor indeed does the label affixed to the price determine either the true nature of the charge levied by the Government or its right to levy the same.*

*56. The distinction which the Constitution makes for legislative purposes between a "tax" and a "fee" and the characteristics of these two as also of "excise duty" are well-known. "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered". A fee is a charge for special services rendered to individuals by some governmental agency and such a charge has an element in it of a quid pro quo. Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. The amounts charged to the licensees in the instant case are, evidently, neither in the nature of a tax nor of excise duty. But then, the "licence fee" which the State Government charged to the licensees through the medium of auctions or the "fixed fee" which it charged to the vendors of foreign liquor holding licences in Forms L-3, L-4 and L-5 need bear no quid pro quo to the services rendered to the licensees. The word "fee" is not used in the Act or the Rules in the technical sense of the expression. By "licence fee" or "fixed fee" is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction.*

* * * * *

*59. .....But the "licence fee" or "fixed fee" in the instant case does not have to conform to the requirement that it must bear a reasonable relationship with the services rendered to the licensees. The amount charged to the licensees is not a fee properly so-called nor indeed a tax but is in the nature of the price of a privilege, which the purchaser has to pay in any trading or business transactions."*

The Hon'ble Court also referred to the case of ***Deccan Sugar &Abkari Co. Ltd. v. Commissioner of Excise, A.P.***[15], and held that indeed, if the State legislation was to provide for levy on the imported rectified spirit per se the same would be without jurisdiction.[16]

[15] (2004) 1 SCC 243.

[16] See also, *Synthetics and Chemicals Ltd. v. State of U.P.*, AIR 1990 SC 1927; *State of U.P. v. Modi Distillery*, (1995) 5 SCC 753.

**Whether the levy is in the nature of tax or excise duty**

The Hon'ble Court found merits in the argument advanced by the Appellant State that the impost is neither in the nature of a tax nor excise duty but it is towards the charges by whatever name, for regulating the production of potable liquor to preserve public health and morality including for parting with its rights or privileges regarding manufacture, supply or sale of potable liquor or intoxicating liquor and to regulate the use of imported rectified spirit for production and sale of potable liquor. In such a case, the State need bear no *quid pro quo* to the services rendered to the licencee for production of foreign liquor (IMFA). The Hon'ble Court further held that The fact that the manufacturer-respondent has already obtained requisite licences for import of rectified spirit and production of foreign liquor (IMFA) on payment of fixed rates does not mean that the State has surrendered all facets of its rights in respect of every form of activity in relation to potable liquor - its manufacture, storage, export, import, sale and possession. The amended provision is an enabling provision authorising the State to levy charges or impost for ceding its one or more of the activity in respect of foreign liquor (IMFL) produced by use of imported rectified spirit. Such impost can be in addition to the general power of the State to issue licence on payment of fees for production and sale of potable liquor. As observed in *Har Shankar* (supra), the State need bear no *quid pro quo* to the services rendered to the licensees of producer of foreign liquor.

The Hon'ble Court finally held as follows :-

> *"**21.** In view of the above, we do not intend to dilate on other arguments and reported decisions pressed into service by the respective parties. Suffice it to observe that the challenge to the amended Rule 106 (Tha), in our opinion, is unfounded and is based on erroneous assumption that it purports to authorise the State to levy charges on the imported rectified spirit as such. However, upon proper interpretation of the said rule we hold that it purports to empower the State to levy charges on the final processed product being foreign liquor (IMFL) manufactured by use of imported rectified spirit. This appeal, therefore, ought to succeed.*
>
> ***22.** Accordingly, we allow this appeal and quash and set aside the impugned judgment and order of the High Court dated 25th July, 2013 passed in WP(T) No. 7499 of 2012. The said writ petition stands dismissed. All pending interim applications are disposed of. No order as to costs."*

## *12. Amit Kumar Roy v. Union of India and Others (2019 SCC OnLine SC 823)*

*Decided on:- 03.07.2019*

Bench – (1) Hon'ble Mr. JusticeD.Y. Chandrachud
(2) Hon'ble Mr. Justice Hemant Gupta

**(The interests of the service are of paramount importance – A person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement)**

***Facts***

The appellant was enrolled on 12 January 2004 as an Airman in the Indian Air Force2. His regular engagement was to come to an end on 11 January, 2024. An advertisement was issued by the Bank of India on 7 August 2010 inviting applications for filling up 2,000 posts of Probationary Officers. While posted at the Three Base Repair Depot, the appellant responded to the advertisement and applied for the post of General Banking Officer in the pay scale of Rs. 14,500-25,700 in August 2010. The appellant did so without completing the mandatory period of service of seven years. Moreover, he did not obtain the prior permission of his unit authorities. This was (according to the Air Force authorities) in breach of the provisions of Air Force Order 14/2008 which was then in force. The appellant applied for the issuance of a No Objection Certificate3 and a Discharge on 30 May 2011. By then he had appeared at the written test held by the Bank on 16 March 2011 and for an interview at which he was declared to be successful. His application for an NOC and discharge was forwarded to the competent authority at Air Headquarters by the Headquarters Maintenance Command on 4 July 2011. On 28 July 2011, the appellant received an order of appointment as a Probationary Officer with the Bank. On 16 August 2011, he moved the AFT4 at its Regional Bench in Chandigarh seeking directions for the grant of an NOC and for discharge from the IAF to join a civil post with the Bank of India. On 18 August 2011, the AFT issued an interim direction to the IAF authorities to provisionally issue an NOC and to discharge the appellant so as to enable him to take up the new assignment before 24 August 2011. This was subject to the condition that in the event of his OA being dismissed, the appellant would have to give up his appointment and join the IAF within a reasonable period of time failing which he would be liable to action as a deserter absent without leave. On 2 September 2011 after the rejection of an application for review filed by the Air Force authorities before the AFT and faced with a contempt petition, Air Headquarters issued a provisional NOC to the appellant permitting him to take up the appointment in a civil post of a General Banking Officer (JMG Scale-I) with the Bank of India. A discharge order was issued on 20 September 2011 on a provisional basis on the conditions stipulated by the AFT. The appellant joined Bank of India on 24 September 2011. Later, the authorities cancelled the provisional NOC and called upon him to join duties. He was not given a clean discharge certificate and, therefore, his services were terminated by the Bank. Before the Hon'ble Supreme Court, the Appellant challenged

the order of the AFT which dismissed his OA as being infructuous and also rejected his prayer to amend the OA.

***Decision and Observations***

The Appellant's main contention inter alia was that he has a fundamental right under Article 19(1)(g) to choose his place of employment. The provisions of Article 19(1)(g) in their application to the members of the Air Force are not any different from their application to any other branch of government. The Hon'ble Court referred to Article 33[17] of the Constitution and also the provisions of the Indian Air Force Act and the rules made thereunder and held that it is not in agreement with the contention that the appellant had an unqualified right under Article 19(1)(g) of the Constitution to leave the service of the Air Force. The provisions of the Air Force Act, those contained in the rules and the terms of engagement of the appellant belie such an assertion. AFO 14/2008 emphasises aspects such as the criticality of the trade and the exigencies of service. They need to be verified and assessed before permission is granted. The Hon'ble Court held that *"**a person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement**. Such a construction, as urged on behalf of the appellant, will seriously impinge upon manning levels and operational preparedness of the armed forces. With the rapid advancement of technology, particularly in its application to military operations, there has been a reconfiguration of the human and technological requirements of a fighting force. **The interests of the service are of paramount importance. A balance has been sought to be drawn between the interests of the service with situations involving requests by persons enrolled to take civilian employment.** This balance is reflected in the provisions contained in the Air Force orders, in this case AFO 14/2008. A person enrolled cannot assert a general right to act in breach or defiance of those orders."*

Secondly and alternatively, the Appellant had also prayed for the equitable intervention of the Hon'ble Court under Article 142 for the grant of a 'clean' NOC and discharge certificate which would enable him to continue to serve the bank in which he is employed since as on February 2019, over five years have elapsed since the appellant commenced employment with the bank and the career advancement policy necessitates a liberal approach. The omission of the appellant to apply through proper channels was only a procedural irregularity and not an illegality. The appellant applied for discharge on 17 April 2013, which was followed by a fresh application on 13 July 2013. The failure to seek prior permission,as had been urged, is an irregularity and does not cause prejudice to the IAF.

The Hon'ble Court, on this submission, made the following observation:-

[17]**33.** *Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, – (a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.*

*"**32.** In the present case, we are now left with the alternative submission invoking the equitable jurisdiction of this Court under Article 142 of the Constitution. The appellant moved the AFT after submitting the application 30 May 2011. He had an interim order of the AFT dated 18 August 2011 in his favour for provisional discharge and for an NOC. This was implemented on 20 September 2011, following which the appellant was struck off the strength of the IAF with effect from 21 September 2011 and joined the Bank of India on 24 September 2011. This order of the AFT was not disturbed in the civil appeal filed by the Union of India, but this Court by an order dated 12 March 2012, directed the Air Force authorities to dispose of the application submitted by the appellant on 30 May 2011. After the application was rejected, an interim order enured to the benefit of the appellant. In this backdrop nearly eight years have elapsed since the appellant left service. No purpose will be served in directing the reinduction of the appellant into the IAF save and except to subject him to disciplinary action....."*

The Hon'ble Court, therefore, held as follows:-

*"**32.** .....Having regard to the facts and circumstances which we have noted above, we are of the view that the ends of justice would be met by directing that a final NOC and discharge be issued to the appellant no later than within a period of three months of the receipt of a copy of this order. At the same time, we are of the view that this should not be an unconditional direction. We accordingly issue an order in the above terms, subject to the appellant depositing with the Union of India a sum quantified at Rs. 3 lakhs within two months of the receipt of a copy of this judgment. A final NOC and discharge certificate shall be issued only after the above amount is deposited and within one month thereafter. The civil appeals are disposed of in the above terms. There shall be no order as to costs."*

## *13. Sopanrao and Another v.Syed Mehmood and Others (2019 SCC OnLine SC 821)*

*Decided on :- 03.07.2019*

Bench – (1) Hon'ble Mr. JusticeN.V. Ramana
(2) Hon'ble Mr. Justice Deepak Gupta
(3) Hon'ble Ms. Justice Indira Banerjee

**(Abatement of Appeal; Article 65 of the Limitation Act; Grant of lesser relief in Appeals; Filing of additional documents in Appellate Courts; Bar on the jurisdiction of the civil court)**

***Facts***

A suit was filed by Respondent Nos. 1 to 4 herein before the trial court against the present appellants and others in which the main prayers were as follows:

> *"(i) That, the lands S. Nos. 60, 62, 77, 79/2 and 78 admg. 31 acres 32 gunthas, 15 acres 22 gunthas, 27 acres 18 gunthas, 15 acres 19 gunthas and 9 acres 19 gunthas respectively situated at village HaregaonTq. Ausa Dist. Latur may be declared as Inam lands of Niyamatullah Shah DargahHaregaon and the plaintiffs as Inamdars of the above lands.*
>
> *(ii) That, the plaintiffs be put in possession of the lands referred to above from defendant No. 1 to 11."*

The present appellants and others contested the suit. According to the plaintiffs, the possession of the land in question was illegally given to NamdeoDeosthan Trust (for short 'the Trust') on 19.08.1978 by the Government and it was prayed that the possession of this land be restored to the plaintiffs. The defendants contested the suit on various grounds. One of the main grounds raised was that the suit was not filed within the period of limitation. It was also contended that the suit was bad for non-joinder of necessary parties and it was contended that the suit land belonged to the Trust since time immemorial and the suit be dismissed. The trial court vide judgment dated 14.10.1992 dismissed the suit of the plaintiffs and held that the suit was not filed within the period of limitation. It also held that the suit is bad for non-joinder of parties. Lastly, the trial court held that the plaintiffs had failed to prove that the suit land was *Inam* land or the plaintiffs are *Inamdars*.

Aggrieved, the plaintiffs filed an appeal in the Court of District Judge, Latur. The District Judge vide judgment dated 26.11.1997 reversed the judgment and decree of the trial court and came to the conclusion that the land originally belonged to DargahNiyamatullah Shah Quadri (for short 'the Dargah') and the plaintiffs and Defendant No. 12 were the *Inamdars* of the suit land. It further held that the Government had wrongly given the possession of the suit property. It was also held that all necessary parties had been joined in the suit. Finally, the first appellate court held that the plaintiffs were entitled to a decree for possession of the

suit land and accordingly allowed the appeal and decreed the suit in favour of the plaintiffs and Defendant No. 12 and against Defendant Nos. 1 to 11 and 15.

Aggrieved, the present appellants and two others filed an appeal in the High Court of Bombay. This appeal was dismissed vide judgment dated 29.03.2007. However, the High Court modified the decree of the District Judge to the limited extent that the plaintiffs and Defendant No. 12 were held to be descendents of *Mutawalis* and not *Inamdars*. Hence, this appeal was preferred before the Hon'ble Supreme Court.

***Decision and Observations***

The Hon'ble Court did not interfere with the findings upon facts made by the District Court and the High Court but proceeded to address the following contentions:-

(i) Regarding abatement of the appeal – The Hon'ble Court observed that during the pendency of this appeal, some of the plaintiffs have died and their legal representatives were not brought on record. Though a preliminary objection was raised that the appeal abates as a whole, the Hon'ble Court did not find any merit in this preliminary objection since the plaintiffs have been held to be descendents of *Mutawalis* of the properties which is in the nature of a managerial post and as such the appeal does not abate.

(ii) Whether the suit was filed within limitation – The Hon'ble Court held the contention to be untenable because the Court was of the opinion that "***9.****……..Admittedly, the possession of the land was handed over to the Trust only in the year 1978. The suit was filed in the year 1987. The appellants contend that the limitation for the suit is three years as the suit is one for declaration. We are of the view that this contention has to be rejected. We have culled out the main prayers made in the suit hereinabove which clearly indicate that it is a suit not only for declaration but the plaintiffs also prayed for possession of the suit land. The limitation for filing a suit for possession on the basis of title is 12 years and, therefore, the suit is within limitation. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. Reliance placed by the learned counsel for the appellants on the judgment of this Court in L.C. Hanumanthappa v. H.B. Shivakumar*[18] *is wholly misplaced. That judgment has no applicability since that case was admittedly only a suit for declaration and not a suit for both declaration and possession. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and, therefore, the suit will be governed by Article 65 of the Limitation Act, 1963. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date when possession of the land becomes adverse to the plaintiff. In the instant case, even if the case of the defendants is taken at the highest, the possession of the defendants became adverse*

[18] (2016) 1 SCC 332.

*to the plaintiffs only on 19.08.1978 when possession was handed over to the defendants. Therefore, there is no merit in this contention of the appellants."*

(iii) The contention that the High Court should not have granted the relief which was not sought for – The Hon'ble Apex Court referred to the judgment of the Supreme Court in ***BachhajNahar* v. *Nilima Mandal***[19] wherein it had been held that in a civil suit, a civil court cannot grant any relief it deems fit, ignoring the prayer but it can certainly grant a lesser relief or smaller version of what is claimed and therefore, it was held that since the plaintiffs claimed the status of *Inamdars* which is a higher position than that of *Mutawalis*, the High Court rightly granted a lesser or lower relief and not a higher relief or totally new relief.

(iv) Bar on the jurisdiction of the civil court to try the suit – The Hon'ble Court pointed out that the objection to jurisdiction was raised before the High Court and not before the trial court and secondly, the suit is of civil nature since the issue in this case was whether the properties were properties of the Dargah or not and the issue was not whether the properties are wakf properties or not. It was, therefore, held that the High Court rightly held that the plaintiffs were not claiming any personal right in the land but only claiming rights of management over the property of the Darga

(v) Additional documents before the Supreme Court – the appellants had filed a number of applications to place on record several documents in support of their case. However, the Hon'ble Court did not consider these additional documents since they had not been produced before the trial court nor any application was filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for leading additional evidence before the first appellate court or even before the High Court nor any reasons were set forth in the applications before the Hon'ble Court justifying the failure to produce the documents before the trial court or for the non-compliance of Order XLI Rule 27.

Based on the aforesaid discussions, the Hon'ble Court dismissed the appeal.

[19] (2008) 17 SCC 491.

## *14. Christopher Raj v. K. Vijayakumar (2019 SCC On Line SC 829)*

*Decided on 05.07.2019*

Bench – (1) Hon'ble Ms. JusticeR. Banumathi
(2) Hon'ble Mr. Justice A.S. Bopanna

**(When the accused was not represented, without appointing any counsel as *amicus curiae* to defend the accused, the High Court ought not to have decided the criminal appeal on merits; more so, when the appellant-accused had the benefit of the acquittal)**

***Facts***

The appellant-accused and the respondent-complainant are friends. On 12.08.2001, the appellant-accused borrowed a sum of Rs. 30,000/- from the respondent-complainant. The appellant-accused has issued a post-dated cheque drawn on Kuzhithurai Canara Bank dated 04.09.2003 of Rs. 30,000/-.

The respondent-complainant presented the cheque in his Co-Operative Bank Account on 16.01.2004 for collection. However, the cheque was returned from the bank on 19.01.2004 due to insufficient funds. The respondent-complainant sent a statutory notice on 12.02.2004 to the appellant-accused. Thereafter, the respondent-complainant filed the complaint before the Judicial Magistrate No. 1, Kuzhithurai.

In the trial court, PW-1 and PW-2 were examined and Exhibits P-1 to P-7 were marked. The appellant-accused has not adduced any evidence. Upon consideration of the evidence, the trial court held that the amount was borrowed in the year 2001 and the cheque was presented for collection after three years of borrowing the loan. The trial court took the view that the cheque was valid for six months and that the cheque was not presented within a period of six months from the date of payment of the amount and issuance of cheque. The trial court held that the charges levelled against the appellant-accused are not proved and on those findings, the trial court acquitted the appellant-accused.

Being aggrieved, the respondent-complainant preferred appeal before the High Court. In the appeal so preferred by the respondent before the High Court, there was no representation for the appellant-accused. Upon hearing the respondent-complainant, the High Court held that the cheque was returned due to "insufficient funds" and not "as time barred cheque". The High Court further found that the respondent-complainant has proved the statutory requirements and held that the findings of the trial court is erroneous. The High Court set aside the judgment of the trial court and convicted the appellant-accused under Section 138 of the Negotiable Instruments Act and imposed a fine of Rs. 60,000/- in default to undergo simple imprisonment for six months. Being aggrieved, the present appeal was filed before the Hon'ble Supreme Court.

***Decision and Observations***

The appeal was based mainly on the ground that in the absence of the counsel for the appellant-accused, the High Court should not have decided the appeal on merits, as held in ***K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721***. The Hon'ble Court agreed with this contention and held that when the accused had not entered appearance in the High Court, the High Court should have issued second notice to the appellant-accused or the High Court Legal Services Committee to appoint an advocate or the High Court could have taken the assistance of *amicus curiae*. The Hon'ble Court further held that when the accused was not represented, without appointing any counsel as *amicus curiae* to defend the accused, the High Court ought not to have decided the criminal appeal on merits; more so, when the appellant-accused had the benefit of the acquittal and, therefore, the High Court erred in reversing the acquittal without affording any opportunity to the appellant-accused or by appointing an *amicus curiae* to argue the matter on his behalf.

The matter was, therefore, remitted to the High Court for it consider the case afresh.

## *15. Director Steel Authority of India Ltd. v. IspatKhandanJantaMazdoor Union (2019 SCC On Line SC 831)*

*Decided on 05.07.2019*

Bench – (1) Hon'ble Mr. JusticeAjay Rastogi
(2) Hon'ble Mr. Justice A.M. Khanwilkar

**(The legal effect of the prohibition notification issued by the appropriate Government in exercise of power under Section 10(1) of the CLRA Act and its exposition by the Constitution Bench of this Court in *Steel Authority of India Ltd.*v. *National Union Waterfront Workers,* 2001 (7) SCC 1)**

***Facts***

The appellant SAIL is a Government of India undertaking and a State within the meaning of Article 12 of the Constitution of India and has its steel plants in the different parts of India. SAIL has one of the captive lime stone and dolomite mines in Kuteshwar in the District of Katni of Madhya Pradesh. Limestone and Dolomite are necessary ingredients for manufacture of steel. The SAIL did blasting work as this work had been departmentalised by Notification dated 15th December, 1979 w.e.f. 22nd June, 1980 and various tripartite agreements were executed between the principal employer(SAIL), contractor and contract labour and from time to time wages to which the contract labour was entitled for in terms of tripartite agreement which indisputedly was higher in comparison to the minimum wages notified by the appropriate Government from time to time under the Minimum Wages Act, 1948 was paid to each of the contract labour who had worked in the establishment of the appellant.

The contract labour which is represented through union had worked in the schedule work which has been prohibited by the appropriate Government under its notification issued under Section 10(1) of the CLRA Act, dated 17th March, 1993 and there is no challenge to the prohibition notification dated 17th March, 1993 at least in the instant proceedings.

After 3-4 rounds of litigation, a reference was made by the Government of India, Ministry of Labour vide its notification dated 27th January, 2003 followed by 22nd February, 2005 wherein respective claims with supporting oral and documentary evidence were placed by the contesting parties. CGIT under its award dated 16th September, 2009 recorded a finding of fact holding that the contract was not sham and bogus and if, at all, there was any violation in continuation of the contract labour after issuance of the prohibition notification dated 17th March, 1973 that entail penal consequences as referred to under Sections 23 to 25 of the CLRA Act and further held that the respondent workmen were not entitled for reinstatement and answered the reference accordingly under its award dated 16th September, 2009. The finding of fact in return came to be overturned by the High Court in its limited scope of judicial review under Article 226 & 227 of the Constitution of India under the impugned judgment dated 6th September, 2010 wherein it had been held as follows :-

*"41. As we have found the contract to be not genuine but mere camouflage in the facts and circumstances and considering prohibition notification under Section 10(1) of CLRA Act, inevitable conclusion is that the contract labours have to be treated as employees of the principal employer.*

*42. Considering the large number of workers involved in the instant case and the notification issued under Section 10 of CLRA Act, the regular workmen have to be ultimately employed by the SAIL. We decline to grant the backwages to the workers in the instant case. It would not be appropriate to saddle the huge liability of back wages. However, we direct that the SAIL to start the process of regular employment. The workers who were in the employment from 1993 till 1996 are ordered to be reinstated, and their cases be considered for regularization in accordance with the directions issued by the Apex Court in para 125 of Steel Authority of India Ltd. v. National Union Waterfront Workers (supra)."*

This judgment of the High Court was under challenge before the Hon'ble Supreme Court.

***Decision and Observations***

The Hon'ble Court referred to the judgment of the Constitution Bench in ***Steel Authority of India Ltd. v. National Union Waterfront Workers, 2001 (7) SCC 1***, which overruled the case of ***Air India Statutory Corporation and Others v. United Labour Union and Others***[20] wherein the effect of a prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour and the following consequences had been pointed out :-

*"**68.**..... (1) contractlabour working in the establishment concerned at the time of issue of notification will cease to function;*

*(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;*

*(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;*

*(4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;*

*(5) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;*

*(6) if a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act."*

The Hon'ble Court observed that the exposition of the judgment of the Constitution Bench of this Court made it clear that neither Section 10 nor any other provision in the CLRA Act provides for automatic absorption of contract labour on issuing a notification by the

[20] (1997) 9 SCC 377.

appropriate Government under Section 10(1) of the CLRA Act, and consequently the principal employer is not required or is under legal obligation by operation of law to absorb the contract labour working in the establishment. On the issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham, nominal or camouflage, then the so-called labour will have to be treated as direct employee of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age as it appears to be in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

Regarding the issue whether the person is an employee or an independent contractor in finding out whether the contract labour agreement is sham, nominal or a mere camouflage, the Hon'ble Court referred to the judgment of***International Airport Authority of India v. International Air Cargo Workers' Union***[21], wherein it had been held as follows :-

> ***"38.*** *The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
>
> ***39.*** *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer,*

[21]2009 (13) SCC 374.

*the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."*

After the aforesaid discussion, the Hon'ble Court observed that the High Court appeared to be primarily persuaded with the issuance of a prohibition notification under Section 10(1) of the CLRA Act as one of the salient factor to indicate that the committee constituted under the Act, after examining various factors including perennial nature of work, under the CLRA Act has recommended for abolition of contract labour and accepted by the Central Government coupled with the continuation of employment of contract labour after issuance of the prohibition notification under Section 10(1) of the CLRA Act in holding that the action of the establishment was opposed to the public policy principles enshrined under Section 23 of the Indian Contract Act and taking work from the contract labour was in violation of the statutory notification dated 17th March, 1993 and that appears to be the reason which persuaded to hold that the finding recorded by the Tribunal that contractors had full control and supervision over the work in view of the functioning of the scheme of mines was unsustainable, instead holding the total control and supervision was that of management of the appellant and the contract was sham and bogus and also the fact that in all the agreements executed between the parties, there was a provision of abolition of contract labour in the matter of work of a perennial in nature and certain other conditions of agreement in recording its satisfaction that the contract was sham and bogus.

The Hon'ble Court thus held that the finding recorded by the High Court under the impugned judgment is not sustainable for the reason that effect of the prohibition notification under Section 10(1) of CLRA Act has been settled by the Constitution Bench of the Supreme Court in *Steel Authority of India Ltd.* (supra) where it had been made clear that neither Section 10 nor any provision in the CLRA Act provides for automatic absorption of contract labour on issuance of prohibition notification by the appropriate Government under Section 10(1) of the CLRA Act and the Tribunal in the first place being the fact finding authority has extensively examined the documentary and oral evidence which came on record and also the relationship of principal employer, contractor and contract labour and the fact that their services were terminated by the contractor after the contract labour proceeded on a strike in April 1996. The Tribunal also considered various other factors in extenso regarding the wage slips, identity cards and the nature of work being discharged by the contract labour subsequent to the prohibition notification dated 17th March, 1993 and other documentary evidence which came on record and recorded the finding in return that the contract between the contractor and the employee was not sham and bogus and the workmen were not entitled for their absorption in service of the principal employer.To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non-compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in *International Airport Authority of India case* (supra)

where the contract was to supply of labour and necessary labour was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labour to be sham and bogus per se.

The Hon'ble Court, thus, held :-

> *"**47.** Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principal establishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came on record, the finding which has been recorded by the CGIT under its award dated 16th September, 2009 in absence of the finding of fact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.*
>
> ***48.** It is true that judgment in Dena Nath (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, non-compliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referred to in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.*
>
> ***49.** In our considered view, the Tribunal under its award dated 16th September, 2009 has rightly arrived to the conclusion that the contract was not sham and bogus and there shall be no automatic absorption of contract labour on issuance of a prohibition notification under the CLRA Act and the High Court of Madhya Pradesh has committed a manifest error in reversing the finding of fact in return under its impugned judgment dated 6th September, 2010 which, in our view, is not sustainable and deserves to be set aside."*

The appeal was accordingly disposed of and the judgment of the High Court was set-aside by the Hon'ble Supreme Court.

***16. Naval Kishore Mishra v. State of U.P. and Others (Criminal Appeal No. 979 of 2019)***

*Decided on 05.07.2019*

Bench – (1) Hon'ble Mr. JusticeSanjay KishanKaul
(2) Hon'ble Mr. Justice K.M. Joseph

**(Victim has a right to file an appeal against acquittal of the accused without seeking leave to Appeal)**

***Facts***

The accused-respondents were put to trial inSessions trial No.80 of 2014under Sections 452, 302/34 of the IndianPenal Code.The accused were acquitted by the trial Courtin terms of the Judgment dated 19.12.2016.The State aggrieved by the said order soughtleave to appeal in Government Appeal No.1947 of2017. In terms of Section 372 read with Section 378of the Code of Criminal Procedure, 1973 ("CrPC" forshort) such leave was declined vide order dated18.04.2017.

The appeal filed by the victim, however, cameup before the Court after the aforesaid transpiredand vide impugned order dated 23.11.2017 was dismissed on the following ground:

> *"Since another Bench of this Court has alreadyrefused to grant leave and the government appealitself stood dismissed in reference to therefusal to grant leave, it will not be congruousto unfold another course keeping pending to thisappeal."*

The same was challenged before the Hon'ble Apex Court mainly on the ground that the appeal filed by the victim, which had been filed by the brother of the unmarried deceased girl, was provided for and protected under the proviso to Section 372 of the CrPC and leave to appeal thereunder is not required under Section 278 of the CrPC, as held in ***MallikarjunKodagalli (d) through legal representatives v. State of Karnataka &Ors.***[22].

***Decision and Observations***

The Hon'ble Court agreed with the contention and observed that the only reason recorded for dismissing the appeal of the victim (in fact styledas leave to appeal) was on the ground that leave hadnot been granted to the Government to file theappeal. The Hon'ble Court, therefore, held as follows:-

> ***"14.*** *The legal position enunciated inMallikarjunKodagalli (d) through legalrepresentatives (supra) would show that theappellant had a right to file the appeal and infactno leave has to be sought in such a situation.Thus, the appeal has to be dealt as a regularappeal.*
> ***15.*** *In view of the aforesaid, we set aside theorder of the High Court and allow the appealremitting the appeal to be considered by the HighCourt on merits."*

[22] (2019) 2 SCC 752.

***17. State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee and (Civil Appeal No. 10720 of 2018)***

Decided on – 3.07.2019

Bench – (1) Hon'ble Mr. Justice Ashok Bhushan

(2) Hon'ble Mr. Justice K.M. Joseph

**(In cases pertaining to environmental matter, the State has to act as a facilitator and not as obstructionist. )**

***Facts***

All the appeals have been filed against the orders of National Green Tribunal. The orders which are subject matter in these appeals are orders dated 25.03.2015, 10.05.2016, 31.08.2018 and 04.01.2019.

In the order dated 25.03.2015, NGT noticed that the rampant, illegal, unscientific and life – threatening mining activity, particularly rat-hole mining is going on in the State of Meghalaya for years. The tribunal also noticed that State of Meghalaya has promulgated a Mining Policy of 2012 which does not deal with rat hole mining. The NGT vide its order dated 23.12.2015 had permitted transportation of coal for the period till 15.05.2016. By its order dated 31.03.2016, NGT refused to further extend the time for transportation and directed that after 15.05.2016 all extracted coal shall vest in the State. On 31.08.2018, the Tribunal noticing the earlier proceedings also noted that few issues were pending before the Apex Court arising out of orders passed by the Tribunal. The tribunal further directed that ban on rat hole mining shall continue subject to the final orders of the Apex Court and ban on transportation of extracted coal will also continue to subject to further orders. After, considering the report of the Katakey Committee and other materials on record, the Tribunal concluded that the State of Megahalaya failed to perform its duties to act on the recommendation of the report of the Meghalaya State Pollution Control Board submitted in the year 1997. The tribunal vide its order dated 04.01.2019 opined that interim amount be deposited towards the restoration of the environment.

***ISSUES***

1. Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?
2. Whether provisions of Mines and Minerals Development Regulation Act, 1957 are applicable in Tribal areas within the State of Meghalaya, included in Sixth Schedule of the Constitution?

3. Whether for mining the minerals from privately owned/community owned land in hills districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?
4. Whether under the MMDR Act, 1957 and Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?
5. Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in hills districts of State of Meghalaya?
6. Whether the power to allot land for mining purposes is vested in Autonomous District Councils?
7. Whether the order of National Green Tribunal dated 17.04.2014 directing for complete ban on mining is unsustainable?
8. Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of State and Tribals?
9. Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?
10. Whether the NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?
11. Whether NGT by constituting Committees has delegated essential judicial powers to the Committees and has further encroached the constitutional scheme of administration of Tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?
12. Whether direction to deposit Rs.100/- crores by the State of Meghalaya by order dated 04.01.2019 of NGT impugned in C.A.No.2968 of 2019 is sustainable?
13. Whether NGT's order dated 31.03.2016 that after 15.05.2016 all remaining coal shall vest in the State of Meghalaya is sustainable?
14. Whether assessed and unassessed coal which has already been extracted and lying in different Districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?

***Decision and Observations***

***ISSUE 1***

The Hon'ble Court considered the relevant provisions of NGT Act, 2010 to comprehend the jurisdiction vested with the Tribunal. Section 2(c) defines environment and 2(m) defines substantial question relating to environment.[23]

Chapter III of the Act deals with jurisdiction, powers and proceedings of the Tribunal. Sections 14 and 15 are relevant in the present case.

The submission which has been pressed by the State is that neither MMDR Act, 1957 nor Mines Act, 1952 is prescribed in Schedule I of the Act, hence, coal mining is not within the purview of Schedule I and not within the jurisdiction of the Tribunal. The submission further is that for applicability of Section 14 both the component of sub-section (1) of Section 14 that

(i) a substantial question relating to environment and
(ii) such question arises out of the implementation of the enactments specified in Schedule I has to be satisfied.

The Court looked into the pleadings in O.A.No.73 of 2014 which clearly and categorically alleged environmental degradation consequent to illegal coal mining. It was further stated that inaction of respondent authorities has resulted in violation of various enactments mentioned in Schedule I of the NGT Act, 2010 including the Water (Prevention and Control Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The application O.A.No.73 of 2014 thus has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14. Both the component as appearing in sub-section 1 of Section 14 that is (i) substantial question relating to environment and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were involved.
The Court opined that the present is not a case of mere allegation of applicant of environmental degradation by illegal and unregulated coal mining rather there were materials on the record including the report of the experts, the Meghalaya State Pollution Control Board published in the month of September, 1992, the report of Katakey committee

[23] "2(c) "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;
"2(m) "substantial question relating to environment" shall include an instance where,— (i) there is a direct violation of a specific statutory environmental obligation by a person by which,— (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or (B) the gravity of damage to the environment or property is substantial; or (C) the damage to public health is broadly measurable; (ii) the environmental consequences relate to a specific activity or a point source of pollution;"

appointed by the Tribunal where environmental degradation of water, air and surface of the land was proved.
Hence, there was sufficient allegation regarding substantial questions relating to environment and violation of enactments in Schedule I.

The Court, further said that ***in cases pertaining to environmental matter the State has to act as a facilitator and not as obstructionist.***

***ISSUE 2***

The Apex Court referred to its Constitution Bench decision in ***Raja Anand Brahma Shah v. The State of Uttar Pradesh and others*, AIR 1967 SC 1081,** wherein it has been down that prima facie owner of a surface of the land is entitled to everything beneath the land unless there is an express or implied reservation in the grant.
Thus, looking to the nature of the land tenure as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. ***Thus, private owners of the land as well as community owners have both the surface right as well as sub-soil right.*** The Court opined that the Tribals owned the land and also owned the minerals. Now coming to the Issue 2,whether the provisions of MMRD Act, 1957 are applicable in the Tribal area of Hills District of State of Meghalaya, the Apex Court examined Para 9 of the Sixth Schedule.[24]
The Apex Court referred to Sixth Schedule of the Constitution which is a provision for Administration of Tribal areas in the State of Meghalaya. Para 12A sub-clause (b) empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. In the light of this, the Apex Court noted that no notification has been issued by the President under Para 12A(b) of the VIth Schedule of the Constitution, although, the said Para 12A(b) is in the Constitution with effect from 21.1.1972. Thus, there is nothing in Sixth Schedule of the Constitution which may

[24] "9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—
(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State] and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final."

indicate about the inapplicability of Act, 1957 with regard to the Hills Districts of State of Meghalaya.

***ISSUE 3***

Whether Parliamentary legislation requires obtaining lease for winning the minerals in so far as mining of coal from privately owned land/community owned land are concerned?
Sub-section (1) of Section 4 is relevant here. The use of word "no person" in Section 4(1) is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, word 'any area' under Section 4(1) also has significance which does not have any exception. Further phrase 'except under and in accordance with terms and condition with a mining lease granted under the Act' are also significant which make the intent and purpose of prohibition clear and loud. Section 5 contains restriction on the grant of prospecting licences and mining lease The proviso to Section 5(1) is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of First Schedule except with the previous approval of the Central Government. In the present case , the Apex Court was concerned with coal which is in Para A of First Schedule.
The next provision which is relevant is Section 13 which provides for Rule making power of Central Government in respect of minerals.[25]
When clause (a) and clause (f) is read, it makes clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than Government. The statutory scheme, thus, is clear that ***lease can be granted with regard to both the categories of land, land in which Government is owner of minerals and land in which minerals vest in person other than Government. The Tribals, owners of the minerals shall expressly fall in Rule making power of the Government under Section 13(f).***

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[25] "**13. Power of Central Government to make rules in respect of minerals.**—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the person by whom, and the manner in which, applications for reconnaissance permits, prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;
the procedure for obtaining 5 [a reconnaissance permit, a prospecting licence or a mining lease] in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such 6 [a permit, licence or lease may be granted or renewed;

The statutory scheme delineated by Section 13(2)(f) and the Minerals (Concession) Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land, that is, land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government.

The word mining lease has been given specific meaning under Act, 1957. It is well settled principle of interpretation that the provisions of an Act including definition of a term is to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted for the purpose of undertaking mining operation and mining operation means any operation undertaken for the purpose of winning the mineral. Applying aforesaid definition in the Minerals (Concession) Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person.
While implementing statutory regime for carrying mining operations in the Hills District of the State of Meghalaya, ***the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection)Act, 1986.***

***ISSUE 4***

Having held that for carrying out mining operations in privately owned and community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a mandatory requirement for carrying out the mining, the Apex Court then proceeded to examine the procedure for grant of such mining lease and the authority/person, who is competent to grant such lease.

The Chapter V of Mineral Concession Rules, 1949 dealt with the mining lease granted by private persons, i.e., the category where the minerals were not owned by the Government but was owned by private persons. Chapter V of the Rules, 1960 contains substantially similar provisions. Thus, Chapter V of Rules, 1960 has to be treated to be dealing with minerals owned by private owners. The earlier statutory regime, which was enforced as per Rules, 1949 made it amply clear that mineral concessions are to be granted by private persons also, which is in substances retained in Chapter V of Rules, 1960. Thus, mining lease to be granted as per Chapter V of Rules, 1960 is mining lease by the owner of mineral and similar concept has to be borrowed and read in Chapter V as noted above. Absence of any procedure to make an application for mining lease to the State Government in Chapter V of the Rules, 1960 and lessor being the private persons and not the State Government, clearly indicates that State Government is not to grant the lease in respect of land of privately owned/community owned owners.
Another reason for not providing any application to State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that; without consent or willingness of private owners/community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the

owner, it is the owner of the minerals may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of Rules, 1960.

Thus, the Apex Court concluded that as per the statutory provisions contained in Rules, 1960 especially Chapter V, ***a mining lease for minerals, which belongs to a private owner or a community owner, it is not the State Government, which is entitled to receive any application or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them.***

***ISSUE 5***

As per Rule 42(2) of Chapter V of the Rules, 1960, except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act. Thus, previous approval of Central Government is mandatory before grant of mining lease of coal. Rule 63 provides that the approval of the Central Government has to be obtained through the State Government. Thus, the State Government has to be aware that any previous approval of the Central Government for mining coal has been obtained or not. Thus, restriction being statutory and without any exception State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of Central Government has to be routed through State Government. There are other rules in Chapter V itself, which provides for control of the State government in the mining of coal. Rule 50 empowers the State Government with the approval of the Central Government to direct the parties concerned not to undertake any mining operations, if it has reasons to believe that the grant or transfer of mining lease is in contravention of any of the provisions of Chapter V. Thus, when mining operations of coal are being conducted without prior approval of Central Government, State is not powerless to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public interest. Rule 52 gives the State Government ample power to prosecute and punish mining leases or his transferees or assignees on violation of the rules or contravention of any of the provisions of Chapter V, which is ample power to the State to ensure that the Act is faithfully followed.

The Apex Court concluded that that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under Mineral Concession Rules, 1960, Chapter V.

***ISSUE 6***

Regarding the Issue 6 , whether power to allot land for mining purpose is vested in Autonomous District Council, the Apex Court stated that District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with 1957 Act and Mineral Concession Rules, 1960.

**ISSUE 7 & 8**

Question which has been raised is whether the complete ban as imposed by the NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood.

The Apex Court clarified that in event mining operations are undertaken by the tribals or other owners of hills districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per 1957 Act and Mineral Concessions Rule, 1960, the ban order dated 17.04.2014 of the tribunal shall not come in its way of carrying mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per 1957 Act and 1960 Rules.

**ISSUE 9 &10**

It was contended that the NGT has no jurisdiction to constitute any committee. Similarly, order of the Tribunal directing for constituting a fund, namely, Meghalaya Environment Protection and Restoration Fund has been challenged on the ground that the Tribunal has no jurisdiction to constitute any fund.

Under Section 35 of the NGT Act, 2010 Central Government is empowered to make rule for carrying out the provisions of the Act. Rules have been framed in exercise of powers under Section 35, namely, National Green Tribunal (Practice and Procedure) Rules, 2011. The said Rules have been framed in exercise of powers under Section 4(4) as well as Section 35. The Rules, 2011 are Rules also for practices and procedure of the Tribunal. Rule 24 which is relevant for the present case

Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives vide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to Tribunal to pass orders and issue directions to secure ends of justice. Use of word 'may', 'such orders', 'gives such directions', 'as may be necessary or expedient', 'to give effect to its orders', 'order to prevent abuse of process', are words which enable the Tribunal to pass orders and the above words confer vide discretion. We , thus, are of the considered opinion that there is no lack of jurisdiction in the NGT to direct for appointment of committee or to obtain a report from a committee in given facts of the case.

The Apex Court concluded that NGT could have passed any order or direction to secure ends of justice which power especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power.

**ISSUE 11**

In respect of constitution of committee by the Tribunal there are two other limbs of submission; that (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the Constitution of committees encroaches the constitutional scheme of administration of Tribal areas under Article 244(2) read with Sixth Schedule of the Constitution.

In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time bound action to deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of Tribunal finding out that an unregulated coal mining has damaged environment and has caused the pollution including water pollution. It is not case of the appellant that District and Regional Councils have framed any law for restoration of environment which is being breached by the committee or its acts. The District and Regional Councils are free to exercise all their powers and the committee constituted by the Tribunal is only concerned with the Environmental degradation and illegal coal mining. The committees' report or direction of the Tribunal in no manner encroaches upon the administration of Tribal areas by the District and Regional Councils.

**ISSUE 12**

The NGT vide its order dated 04.01.2019 directed the State of Meghalaya to deposit an amount of Rs.100 Crores with the Central Pollution Control Board, which was to be spent for restoration of environment. The State of Meghalaya aggrieved by above direction has filed Civil Appeal No.2968 of 2019.

The Apex Court modified the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs.100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal (NGT) shall utilise the aforesaid amount of Rs.100 Crores only for restoration of the environment.

**ISSUE 13**

Vide order dated 31.03.2016, the NGT had permitted transportation of coal till 15.5.2016 under terms and conditions as enumerated therein. The order dated 31.3.2016 further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15.05.2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law.

The mining of coal in contravention of Section 4(1) invites penalties as enumerated in Section 21. The present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government has power under Section 21(5) to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. The NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost rather State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. The Apex Court concluded that ***coal extracted and lying in open after 15.05.2016 would not automatically vest in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.***

***ISSUE 14***

The Apex Court directed that Commissioner and Secretary of the State in the Department of Mining and Geology alongwith the officers of Coal India Ltd. may deliberate with the Katakey committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/auction as per rules of Coal India Ltd.

However, the coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with in a different manner The said seized coal shall be dealt by the State in accordance with Section 21 of the Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases has to be separately dealt with in accordance with law.

***18. Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission (Civil Appeal No. 5185 of 2019 )***

Decided on – 04.07.2019

Bench – (1) Hon'ble Mr. Justice S. Abdul Nazeer
(2) Hon'ble Ms. Justice Indira Banerjee

**( Whether a candidate who has availed of an age relaxation in a selection process as a result of belonging to a reserved category, can thereafter seek to be accommodated in/or migrated to the general category seat)**

***FACTS***

Gujarat Public Service Commission (for short 'GPSC') had issued an advertisement dated 01.03.2010 and corrigendum thereafter for 47 posts of Assistant Conservator of Forests (for short 'ACF') (Class-II) and 120 posts of Range Forest Officer (for short 'RFO') (Class-II). As per the said advertisement and corrigendum, total 84 posts were to be filled in from unreserved (general category) candidates. Out of the said 84 posts, 26 posts were reserved for women candidates, 48 posts were to be filled in from socially and economically backward classes (for short 'SEBC') category candidates. GPSC conducted preliminary test on 30.05.2010 and main written examination was held from 27.05.2013 to 02.06.2013. The result of the main written examination was declared on 21.05.2014. 505 candidates who cleared the main written examination were called for physical measurement test. Personal interviews were conducted from 16.06.2014 to 31.07.2014.The appellant submitted an application in the category of SEBC. He successfully passed the examination conducted by GPSC. In the list of selected candidates published on 25.09.2014, he was shown at serial no. 138.

It is the case of the appellant that while preparing the merit list, GPSC has ignored the judgment of this Court in *Jitendra Kumar Singh* v. *State of Uttar Pradesh*, (2010) 3 SCC 119. Therefore, the appellant filed Special Civil Application No. 1100 of 1015 before the Single Judge of the High Court of Gujarat challenging correctness of the aforesaid select list which was allowed. GPSC filed Letters Patent Appeal praying for setting aside of the order passed by the Single Judge. The Division Bench of the High Court by order dated 15.03.2017 has allowed the appeal and set aside the order of the Single Judge. In the present appeal, the appellant has challenged the legality and correctness of the aforesaid order of the division bench of the High court.

***DECISION AND OBSERVATIONS***

The Apex Court noted that from the two circulars issued by the State Government , it is evident that a candidate who has availed of age relaxation in the selection process as a result of belonging to a reserved category cannot, thereafter, seek to be accommodated in or migrated to the general category seats.

In the advertisement published by the GPSC inviting applications from the eligible candidates for the post of ACF (Class II) and RFO (Class II) dated 01.03.2010, upper age limit relaxation was granted to the candidates belonging to SC/ST and SEBC category. It was also specifically stated in the advertisement that if any candidate belonging to reserved category who applies in the open category, such candidate would not get the benefit of age relaxation.

Further, the Apex Court opined that Article 16(4) of the Constitution is an enabling provision empowering the State to make any provision or reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the service under the State. It is purely a matter of discretion of the State Government to formulate a policy for concession, exemption, preference or relaxation either conditionally or unconditionally in favour of the backward classes of citizens. ***The reservation being the enabling provision, the manner and the extent to which reservation is provided has to be spelled out from the orders issued by the Government from time to time.***

In the instant case, State Government has framed policy for the grant of reservation in favour of SC/ST and OBC by the Circulars dated 21.01.2000 and 23.07.2004. The State Government has clarified that when a relaxed standard is applied in selecting a candidate for SC/ST, SEBC category in the age limit, experience, qualification, permitting number of chances in the written examination etc., then candidate of such category selected in the said manner, shall have to be considered only against his/her reserved post. Such a candidate would be deemed as unavailable for consideration against unreserved post.

The Apex Court then distinguished the present case from the *Jitendra Kumar Singh* Case in which the Court was considering the interpretation of Sub-section (6) of Section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short "1994 Act") and the Government Instructions dated 25.03.1994. Subsection (6) of Section 3 of this Act provided for reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes. The State of U.P. issued Instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Groups in the Uttar Pradesh Public Services. Last line of the instructions is as under:—

> ***"It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category."***

The Apex Court noted that on consideration of sub-section (3) of Section 6 of the 1994 Act and the Instructions dated 25.03.1994, it was held that grant of age relaxation to a reserved category candidate does not militate against him as general category candidate if he has obtained more marks than any general category candidates. This judgment was based on the statutory interpretation of 1994 Act and the Instructions dated 25.03.1994 which is entirely different from the statutory scheme under consideration in the instant appeal. Hence, the Apex Court held that the principle laid down in *Jitendra Kumar Singh* has no application to the facts of the present case.