JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(November 04-November 17, 2019)

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1. *Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly and Others, (2019 SCC OnLine SC 1454)*

Decided on : 13.11.2019

Bench :- 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice Sanjiv Khanna
3. Hon'ble Mr. Justice Krishna Murari

Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member's resignation letter.

Facts

The present Writ Petitions are filed against five different orders passed by the Speaker of the Karnataka Legislative Assembly: two orders dated 25.07.2019 in Disqualification Petition No. 01 of 2019 and Disqualification Petition No. 07 of 2019 respectively; two orders dated 28.07.2019 in Disqualification Petition No. 05 of 2019 and Disqualification Petition No. 08 of 2019 respectively; and a common order dated 28.07.2019 in Disqualification Petition Nos. 3 and 4 of 2019.

Though the BJP was the single largest party, its attempt to form the Government was not successful. A coalition government of INC and JD(S) was formed under the leadership of Mr. Kumaraswamy. This Government had a short life of about 14 months. The events leading up to the resignation of the Chief Minister, on losing the trust vote on 23.07.2019, after several days delay, form the backdrop to the case of the present Petitioners.

On 11.02.2019 Disqualification Petition No. 1 of 2019 was instituted against Ramesh L. Jarkhiholi, Mahesh Iranagaud Kumathalli, Umesh G. Jadhav and B. Nagendra. The main allegations against the aforesaid persons were that they did not participate in the meetings of the party and the proceedings of the Assembly session held from 06.02.2019 onwards, and the conduct of all the aforesaid members' was in violation of the whip issued by the INC in this regard. Thereafter, Petitioners in Writ Petition (C) No. 997 of 2019, Ramesh L. Jarkhiholi and Mahesh Iranagaud Kumathalli, are said to have submitted their resignations to the Speaker on 06.07.2019.

Other Petitioners, including, Dr. K. Sudhakar, Pratap Gouda Patil, B.C. Patil, Arbail Shivaram Hebbar, S.T. Somashekar, B.A. Basvaraja, Munirathna, A.H. Vishwanath, K. Gopalaiah, K.C. Narayanagowda, Anand Singh, N. Nagaraju MTB and Roshan Baig

submitted their resignations from the membership of the House between 01.07.2019 to 11.07.2019.

However, the Speaker did not take any call on the resignation of the above persons. Aggrieved by the fact that their resignations were not accepted, and with the impending trust vote being inevitable, most of the above persons approached this Court by way of a Writ Petition, being Writ Petition (C) No. 872 of 2019. This Court, on 11.07.2019, in the aforesaid Writ Petition directed the Speaker to take a decision qua the resignations forthwith, and further directed the same to be laid before this Court.

Meanwhile, on 11.07.2019, members of the INC withdrew their disqualification complaint against B. Nagendra in Disqualification Petition No. 1 of 2019. The Speaker, it appears, did not take any decision on the resignation in spite of the order of this Court. Simultaneously, a whip was issued by the INC and the JD(S) on 12.07.2019 calling upon their members to attend proceedings, and cautioning the members of disqualification if they failed to attend the same. Further, Disqualification Petition Nos. 3, 4 and 5 were filed against Dr. K. Sudhakar, Pratap Gouda Patil, B.C. Patil, Arbail Shivaram Hebbar, S.T. Somashekhar, B.A. Basvaraja, Munirathna, A.H. Vishwanath, K. Gopalaiah, K.C. Narayanagowda, Anand Singh, N. Nagaraju MTB and Roshan Baig between 10.07.2019 to 12.07.2019.

Disqualification Petition No. 7 of 2019 was filed against R. Shankar on 16.07.2019 and Disqualification Petition No. 8 of 2019 was filed against Shrimanth Balasaheb Patel on 20.07.2019. The Speaker thereupon issued emergent notices between 18.07.2019 to 20.07.2019 to all the Petitioners regarding the pending disqualification petitions to appear before him on the date of hearing fixed for 23.07.2019 and 24.07.2019. The notices did not refer to the resignation letters which had been submitted by 15 Petitioners, who are parties to the Writ Petition (C) No. 872 of 2019 filed before this Court. The Petitioners have alleged that the period given in the aforesaid notices was too short and in fact some of them had not even received notices within time to respond.

While the aforesaid disqualification petitions/resignation letters were pending, the INC on 20.07.2019 had again issued a whip requiring their members of the Legislative Assembly to attend the proceedings of the House on 22.07.2019.

The trust vote was finally taken up for consideration on 23.07.2019. The 17 Petitioners did not attend the House. As a result, the INC and JD(S) coalition Government, under the leadership of Mr. Kumaraswamy was in a minority, resulting in the resignation of Mr. Kumaraswamy as Chief Minister. Further, as detailed above, on 25.07.2019 and 28.07.2019, the Speaker passed the five impugned orders in Disqualification Petition Nos. 1, 3, 4, 5, 7 and 8 of 2019. In these orders, the Speaker:

a. Rejected the resignation of the members asserting that they were not voluntary or genuine

b. Disqualified all the Petitioners, and

c. Disqualified the Petitioners till the end of the 15th

Legislative Assembly term

Aggrieved, by the aforesaid disqualifications, all the Petitioners herein have approached this Court under Article 32 of the Constitution.

Issues

1. Whether the Writ Petition challenging the order of the Speaker under Article 32 is maintainable?
2. Whether the order of the Speaker rejecting the resignation and disqualifying the Petitioners is in accordance with the Constitution?
3. Even if the Speaker's order of disqualification is valid, does the Speaker have the power to disqualify the members for the rest of the term?
4. Whether the issues raised require a reference to the larger Bench?

Decision and Observations

Regarding the maintainability of the writ petition the Apex court referred to the decision in ***Kihoto Hollohan* v. *Zachillhu,***[1] and noted that the Speaker, while exercising the power to disqualify, is a Tribunal and the validity of the orders are amenable to judicial review. The Apex Court also referred to ***Tamil Nadu Pollution Control Board* v. *Sterlite Industries (I) Ltd.,***[2] and stated that by challenging the order directly under Article 32, the Petitioners have leapfrogged the judicial hierarchy as envisaged under the Constitution. Despite the fact that the Court has sufficient jurisdiction to deal with disqualification cases under the writ jurisdiction, a party challenging a disqualification order is required to first approach the High Court as it would be appropriate, effective and expeditious remedy to deal with such issues. Also, the Apex Court would have the benefit of a considered judicial verdict from the High Court. If the parties are still aggrieved, then they may approach the Apex Court.

Regarding the scope of judicial review with respect to acceptance/rejection of the resignation by the Speaker, the Apex Court noted that there is no doubt that the Petitioners have categorically stated and have re-affirmed before the Speaker and this Court, in unequivocal terms, that they have voluntarily and genuinely resigned their membership of the House. This Court, in the earlier Writ Petition, being Writ Petition (C) No. 872 of 2019, had also directed the Speaker to look into the resignation of the members, but the same was kept pending.The Apex court also stated that the Speaker can reject a resignation only if the inquiry demonstrates that it is not "voluntary" or "genuine". The inquiry should be limited

[1] 1992 Supp (2) SCC 651
[2] 2019 SCC OnLine SC 221

to ascertaining if the member intends to relinquish his membership out of his free will. Once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.

Regarding the disqualification proceedings after resignation, it was contended by the Petitioners that the Speaker did not have the jurisdiction to deal with disqualification petitions, as the Petitioners having resigned were no longer members who could have been disqualified. The Apex court considered the 10th Schedule and the 91st Constitutional Amendment and stated that the constitutional amendment sought to create additional consequences resultant from the determination that a person was disqualified under the Tenth Schedule. The Apex Court said, "If we hold that the disqualification proceedings would become infructuous upon tendering resignation, any member who is on the verge of being disqualified would immediately resign and would escape from the sanctions provided under Articles 75(1B), 164(1B) and 361B. Such an interpretation would therefore not only be against the intent behind the introduction of the Tenth Schedule, but also defeat the spirit of the 91st Constitutional Amendment."

Also, the Apex Court stated that the disqualification relates to the date when such act of defection takes place. The tendering of resignation does not have a bearing on the jurisdiction of the Speaker in this regard. the taint of disqualification does not vaporise, on resignation, provided the defection has happened prior to the date of resignation.

Therefore, even if the resignation is tendered, the act resulting in disqualification arising prior to the resignation does not come to an end. The pending or impending disqualification action in the present case would not have been impacted by the submission of the resignation letter, considering the fact that the act of disqualification in this case have arisen prior to the members resigning from the Assembly.

Regarding the validity of the disqualification order, it was stated that :

> **93.** There is no gainsaying that the scope of judicial review is limited to only grounds elaborated under the *Kihoto Hollohan case* (supra). In this regard, the Petitioners have not been able to establish any illegality in the orders passed by the Speaker. The Speaker, in our view, had concluded based on material and evidence that the members have voluntarily given up their membership of the party, thereby accruing disqualification in terms of the Tenth Schedule, which facts cannot be reviewed and evaluated by this Court in these writ petitions. So, we have to accept the orders of the Speaker to the extent of disqualification.

However with regard to the question whether the power of the Speaker extends to specifically disqualifying the members till the end of the term, the Apex Court was of the following opinion:

102. The contrast in phraseology between Article 191(1) and Article 191(2) of the Constitution is crucial for deciding the present controversy. Article 191(1) of the Constitution provides that a person disqualified under any one of the clauses of Article 191(1) is disqualified both "for being chosen as" and "for being" a member of the house. In contrast, Article 191(2) only uses the phrase "for being a member", which is the language used in paragraph 2 of the Tenth Schedule. The exclusion of the phrase "for being chosen as" a member in Article 191(2) of the Constitution suggests that the disqualification under the Tenth Schedule is qualitatively and constitutionally different from the other types of disqualification that are provided for under Article 191(1) of the Constitution. The phrase "for being chosen as" has a specific connotation, meaning that a person cannot become a member of the House, if suffering from a disqualification under Article 191(1) of the Constitution. At the same time, the absence of these words in Article 191(2) of the Constitution suggests that a person who is no longer a member due to disqualification under the Tenth Schedule of the Constitution does not suffer from the additional infirmity of not being allowed to become a member subsequently. Therefore, such a person is not barred from contesting elections.

107. [.....] Clearly, Section 36 of the Representation of the People Act, 1951 also does not contemplate such disqualification. Therefore, neither under the Constitution nor under the statutory scheme is it contemplated that disqualification under the Tenth Schedule would operate as a bar for contesting re-elections. The language of clauses (1) and (2) of Article 191, Articles 164(1B) and 361B are contrary to the contention of the Respondents.

108. Given this position, we conclude that the Speaker does not have any explicit power to specify the period of disqualification under the Tenth Schedule or bar a member from contesting elections after disqualification until the end of the term of the Legislative Assembly.

120. From the above, it is clear that the Speaker, in exercise of his powers under the Tenth Schedule, does not have the power to either indicate the period for which a person is disqualified, nor to bar someone from contesting elections. We must be careful to remember that the desirability of a particular rule or law, should not in any event be confused with the question of existence of the same, and constitutional morality should never be replaced by political morality, in deciding what the Constitution mandates. [refer to *Indra Sawhney* v. *Union of India*, 1992 Supp (3) SCC 217].

121. We, therefore, hold that part of the impugned orders passed by the Speaker which specifies that the disqualification will last from the date of the order to the expiry of the term of the 15th Legislative Assembly of Karnataka to be ultra vires the constitutional mandate, and strike down this portion of the disqualification orders. However, this does not go to the root of the order, and as such, does not affect the aspect of legality of the disqualification orders.

The Apex Court concluded:

163. In light of the discussion above, summary of law as held herein is as follows:

a. The Speaker, while adjudicating a disqualification petition, acts as a quasi-judicial authority and the validity of the orders thus passed can be questioned before this Court

under Article 32 of the Constitution. However, ordinarily, the party challenging the disqualification is required to first approach the High Court as the same would be appropriate, effective and expeditious.

b. The Speaker's scope of inquiry with respect to acceptance or rejection of a resignation tendered by a member of the legislature is limited to examine whether such a resignation was tendered voluntarily or genuinely. Once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.

c. Resignation and disqualification on account of defection under the Tenth Schedule, both result in vacancy of the seat held by the member in the legislature, but further consequences envisaged are different.

d. Object and purpose of the Tenth Schedule is to curb the evil of political defection motivated by lure of office or rather similar considerations which endanger the foundation of our democracy. By the 91st Constitutional Amendment, Articles 71(1B), 164(1B) and 361B were enacted to ensure that a member disqualified by the Speaker on account of defection is not appointed as a Minister or holds any remunerative political post from the date of disqualification or till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier.

e. Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member's resignation letter.

f. In the earlier Constitution Bench judgment of *Kihoto Hollohan* (supra), the order of the Speaker under Tenth Schedule can be subject to judicial review on four grounds: mala fide, perversity, violation of the constitutional mandate and order passed in violation of natural justice.

g. Our findings on allegations of not granting specific time in all the above cases are based on the unique facts and circumstances of the case. It should not be understood to mean that the Speaker could cut short the hearing period. The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding and ordinarily follow the time limit prescribed in the Rules of the Legislature.

h. In light of the existing Constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term. However, a member disqualified under the Tenth Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution, which provides for a bar from being appointed as a Minister or from holding any remunerative political post from the date of

disqualification till the date on which the term of his office would expire or if he is re-elected to the legislature, whichever is earlier.

i. There is a growing trend of the Speaker acting against the constitutional duty of being neutral. Further horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is need to consider strengthening certain aspects, so that such undemocratic practices are discouraged and checked.

j. The existence of a substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the "question of law" will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench.

2. *Rojer Mathew v. South Indian Bank Ltd. and Others , (2019 SCC OnLine SC 1456)*

Decided on : -13.11.2019

Bench :- 1. Hon'ble Mr. Chief Justice Ranjan Gogoi
2. Hon'ble Mr. Justice N. V. Ramana
3. Hon'ble Mr. Justice D. Y. Chandrachud
4. Hon'ble Mr. Justice Deepak Gupta
5. Hon'ble Mr. Justice Sanjiv Khanna

(The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 formulated by the Central Government under Section 184 of the Finance Act, 2017 being contrary to the parent enactment and the principles envisaged in the Constitution, struck down in entirety)

Issues

I. Whether the 'Finance Act, 2017' insofar as it amends certain other enactments and alters conditions of service of persons manning different Tribunals can be termed as a 'money bill' under Article 110 and consequently is validly enacted?

II. If the answer to the above is in the affirmative then Whether Section 184 of the Finance Act, 2017 is unconstitutional on account of Excessive Delegation?

III. If Section 184 is valid, Whether Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 are in consonance with the Principal Act and various decisions of this Court on functioning of Tribunals?

IV. Whether there should be a Single Nodal Agency for administration of all Tribunals?

V. Whether there is a need for conducting a Judicial Impact Assessment of all Tribunals in India?

VI. Whether judges of Tribunals set up by Acts of Parliament under Articles 323-A and 323-B of the Constitution can be equated in 'rank' and 'status' with Constitutional functionaries?

VII. Whether direct statutory appeals from Tribunals to the Supreme Court ought to be detoured?

VIII. Whether there is a need for amalgamation of existing Tribunals and setting up of benches.

Decision and Observations

- ***Issue 1*** :Whether the 'Finance Act, 2017' insofar as it amends certain other enactments and alters conditions of service of persons manning different Tribunals can be termed as a 'money bill' under Article 110 and consequently is validly enacted?

The Apex court discussed the meaning and nature of Money bills in paragraph 95 of the judgment, also stating in paragraph 97 that the Speaker of the Lok Sabha is the only appropriate authority to decide the nature of the bill under Article 110(3). In the subsequent paragraph, the Apex Court noted that the Lok Sabha Speaker, in fact, on a dispute having so arisen has adjudicated the then Finance Bill, 2017 to be a 'money bill.' Regarding the scope and ambit of judicial review in matters of parliamentary privileges and powers under the Article 105 of the Constitution, the Apex court referred to *Raja Ram Pal* v. *Lok Sabha*[3] wherein it has been held that under Article 122(1) and 212(1), immunity that has been granted is limited to 'irregularity of procedure' and does not extend to substantive illegality or unconstitutionality. However, the Apex Court noted:

> **105.** Determining whether an impugned action or breach is an exempted irregularity or a justiciable illegality is a matter of judicial interpretation and would undoubtedly fall within the ambit of Courts and cannot be left to the sole authority of the Parliament to decide. Such a position has also been taken in the United Kingdom by the House of Lords in *R (Jackson)* v. *Attorney General*{[2005] UKHL 56} where notwithstanding the explicit bar to judicial consideration of all Parliamentary proceedings (and not just procedural irregularities as under the Constitution of India), the Court assumed jurisdiction whilst noting that interpretation of statutes dealing with legislative processes would fall within the domain of the Courts; statutory interpretation being a judicial exercise, regardless of the immunities granted to parliamentary proceedings under the Bill of Rights.
>
> **106.** It would hence be gainsaid that gross violations of the Constitutional scheme would not be mere procedural irregularities and hence would be outside the limited ambit of immunity from judicial scrutiny under Article 122(1). In the case at hand, jurisdiction of this Court is, hence, not barred.

Further, the Apex court stated :

> **124.** Upon an extensive examination of the matter, we notice that the majority in *K.S. Puttaswamy* (Aadhaar-5) pronounced the nature of the impugned enactment without first delineating the scope of Article 110(1) and principles for interpretation or the repercussions of such process. It is clear to us that the majority dictum in *K.S. Puttaswamy* (Aadhaar-5) did not substantially discuss the effect of the word 'only' in Article 110(1) and offers little guidance on the repercussions of a finding when some of the provisions of an enactment passed as a "Money Bill" do not conform to Article

[3] (2007) 3 SCC 184

110(1)(a) to (g). Its interpretation of the provisions of the Aadhaar Act was arguably liberal and the Court's satisfaction of the said provisions being incidental to Article 110(1)(a) to (f), it has been argued is not convincingly reasoned, as might not be in accord with the bicameral Parliamentary system envisaged under our constitutional scheme. Without expressing a firm and final opinion, it has to be observed that the analysis in *K.S. Puttaswamy* (Aadhaar-5) makes its application difficult to the present case and raises a potential conflict between the judgements of coordinate Benches.

125. Given the various challenges made to the scope of judicial review and interpretative principles (or lack thereof) as adumbrated by the majority in *K.S. Puttaswamy* (Aadhaar-5) and the substantial precedential impact of its analysis of the Aadhaar Act, 2016, it becomes essential to determine its correctness. Being a Bench of equal strength as that in *K.S. Puttaswamy* (Aadhaar-5), we accordingly direct that this batch of matters be placed before Hon'ble the Chief Justice of India, on the administrative side, for consideration by a larger Bench.

- ***Issue 2:*** If the answer to the above is in the affirmative then Whether Section 184 of the Finance Act, 2017 is unconstitutional on account of Excessive Delegation?

The second challenge against Part XIV of the Finance Act, 2017 is predicated on the assertion that this is a case of excessive delegation as it falters on the anvil of "essential legislative functions" and "policy and guidelines" tests. In order to proceed further, the Apex Court deliberated upon the approach adopted by the Court in gauging the validity of the delegated legislation. In order to answer this question, the Apex Court referred to ***M.K. Papiah & Sons v. Excise Commissioner*** [4]in which this Court had examined what constitutes essential features that the legislature cannot delegate, to observe that this cannot be delineated in detail but nevertheless and certainly it does not include the change of policy. Elaborating further, the Apex Court stated that the legislator is the master of the policy and the delegate is not free to switch the policy for then it would be usurpation of legislative power itself. Therefore, when the question of the excessive delegation arises, investigation has to be made whether policy of the legislation has not been indicated sufficiently or whether change of policy has been left to the pleasure of the delegate. This aspect is of substantial importance and relevance in the present case. However, in ***Avinder Singh v. State of Punjab***[5] it was stated that while essential legislative policy cannot be delegated, however inessentials can be delegated over to relevant agencies.

In the context of the present enactment, the Apex Court stated:

158. On examining the Constitutional scheme, the statutes which had created tribunals and the precedents of this Court laying down attributes of independence of tribunals in different facets, we do not think that the power to prescribe qualifications, selection procedure and service conditions of members and other office holders of the

[4] (1975) 1 SCC 492
[5] (1979) 1 SCC 137

tribunals is intended to vest solely with the Legislature for all times and purposes. Policy and guidelines exist. Subject to aforesaid, the submission of learned Attorney General that Section 184 was inserted to bring uniformity and with a view to harmonise the diverse and wide-ranging qualifications and methods of appointment across different tribunals carries weight and, in our view, needs to be accepted.

159. Cautioning against the potential misuse of Section 184 by the executive, it was vehemently argued by the learned counsel for the petitioner(s) that any desecration by the Executive of such powers threatens and poses a risk to the independence of the tribunals. A mere possibility or eventuality of abuse of delegated powers in the absence of any evidence supporting such claim, cannot be a ground for striking down the provisions of the Finance Act, 2017. It is always open to a Constitutional court on challenge made to the delegated legislation framed by the Executive to examine whether it conforms to the parent legislation and other laws, and apply the "policy and guideline" test and if found contrary, can be struck down without affecting the constitutionality of the rule making power conferred under Section 186 of the Finance Act, 2017.

- ***Issue 3 :*** If Section 184 is valid, Whether Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 are in consonance with the Principal Act and various decisions of this Court on functioning of Tribunals?

Regarding the third issue, the Apex Court examined the various components of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 under the following headings:

(a)Composition of search cum selection committee

167. We are of the view that the Search-cum-Selection Committee as formulated under the Rules is an attempt to keep the judiciary away from the process of selection and appointment of Members, Vice-Chairman and Chairman of Tribunals. This Court has been lucid in its ruling in *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[6] ***(Fourth Judges Case)***, wherein it was held that primacy of judiciary is imperative in selection and appointment of judicial officers including Judges of High Court and Supreme Court. Cognisant of the doctrine of Separation of Powers, it is important that judicial appointments take place without any influence or control of any other limb of the sovereign. Independence of judiciary is the only means to maintain a system of checks and balances on the working of Legislature and the Executive. The Executive is a litigating party in most of the litigation and hence cannot be allowed to be a dominant participant in judicial appointments.

[6] (2016) 5 SCC 1

168. We are in complete agreement with the analogy elucidated by the Constitution Bench in the *Fourth Judges Case* (supra) for compulsory need for exclusion of control of the Executive over quasi-judicial bodies of Tribunals discharging responsibilities akin to Courts. The Search-cum-Selection Committees as envisaged in the Rules are against the constitutional scheme inasmuch as they dilute the involvement of judiciary in the process of appointment of members of tribunals which is in effect an encroachment by the executive on the judiciary

(b)Qualifications of members and presiding officers

169. The Rules also prescribe the qualifications for Chairperson, Vice-Chairperson, Member, etc. of both judicial and technical members. A bare perusal of the Rules reveals that while prescribing the qualifications of technical member, the prior dicta of this Court has been ignored by the Central Government inasmuch as the technical members are being appointed without any adjudicatory experience. ....

171. [....] It has been repeatedly ruled by this Court in a catena of decisions that judicial functions cannot be performed by technical members devoid of any adjudicatory experience.

172. In *Madras Bar Assn.* v. *Union of India* [(2014) 10 SCC 1]a five-judge Bench of this Court reiterated the urgent need to monitor the pressure and/or influence of the executive on the Members of the Tribunals. It was asserted that any Tribunal which sought to replace the High Court must be no less independent or judicious in its composition. It was also clarified that the Members of the Tribunal, replacing any Court, including the High Court must possess expertise in law and shall have appropriate legal experience. Even though Parliament can transfer jurisdiction from the traditional Courts to any other analogous Tribunal, the Tribunal must be manned by members having qualifications equivalent to that of the Court from which adjudicatory function is transferred. Hence, any adjudication transferred to a Technical or Non-Judicial member is a clear act of dilution and an encroachment upon the independence of judiciary. It was further ruled by this Court that even though the legislature has the powers to reorganise or prescribe qualifications for members of Tribunals, it is open for this Court to exercise "judicial review" of the prescribed standards, if the adjudicatory standards are adversely affected

175. At this juncture it must also be reiterated that equality can only be amongst equals, and that it would be impermissible to treat unequals equally on the basis of undefined contours of 'Uniformity'. A Tribunal to have the character of a quasi-judicial body and a legitimate replacement of Courts, must essentially possess a dominant judicial character through their members/presiding officers. It was observed in *Madras Bar Association* [(2010) 11 SCC 1] that it is a fundamental prerequisite for transferring adjudicatory functions from Courts to Tribunals that the latter must possess the same capacity and independence as the former, and that members as well as the presiding officers of Tribunals must have significant judicial training and legal experience. Further, knowledge, training and experience of members/presiding

officers of a Tribunal must mirror, as far as possible, that of the Court which it seeks to substitute.

(c) Constitutionality of procedure of removal

179. It is clear from the Scheme contemplated under the Rules that the government has significantly diluted the role of the Judiciary in appointment of judicial members. Further, in many Tribunals like the NGT, the role of the Judiciary in appointment of non-judicial members has entirely been taken away. Such a practice violates the Constitutional scheme and the dicta of this Court in various earlier decisions already referred to. It is also important to note that in many Tribunals like the National Green Tribunal where earlier removal of members or presiding officer could only be after an enquiry by Supreme Court Judges and with necessary consultation with the Chief Justice of India, under the present Rules it is permissible for the Central Government to appoint an enquiry committee for removal of any presiding officer or member on its own. The Rules are not explicit on who would be part of such a Committee and what would be the role of the Judiciary in the process. In doing so, it significantly weakens the independence of the Tribunal members. It is well understood across the world and also under our Constitutional framework that allowing judges to be removed by the Executive is palpably unconstitutional and would make them amenable to the whims of the Executive, hampering discharge of judicial functions.

Referring to ***Madras Bar Association*** *(2014),* the Apex Court reiterated that that Members and Presiding Officers of Tribunals cannot be removed without either the concurrence of the Judiciary or in the manner specified in the Constitution for Constitutional Court judges.

(d) Term of office and maximum age

186. This Court criticised the imposition of short tenures of members of Tribunals in *Union of India* v. *Madras Bar Association, (2010)* (supra) and a longer tenure was recommended. It was observed that short tenures also discourage meritorious members of Bar to sacrifice their flourishing practice to join a Tribunal as a Member for a short tenure of merely three years. The tenure of Members of Tribunals as prescribed under the Schedule of the Rules is anti-merit and attempts to create equality between unequals. A tenure of three years may be suitable for a retired Judge of High Court or the Supreme Court or even in case of a judicial officer on deputation. However, it will be illusory to expect a practising advocate to forego his well-established practice to serve as a Member of a Tribunal for a period of three years. The legislature intended to incorporate uniformity in the administration of Tribunal by virtue of Section 184 of Finance Act, 2017. Nevertheless, such uniformity cannot be attained at the cost of discouraging meritorious candidates from being appointed as Members of Tribunals.

187. Additionally, the discretion accorded to the Central or State Government to reappoint members after retirement from one Tribunal to another discourages public faith in justice dispensation system which is akin to loss of one of the key limbs of the

sovereign. Additionally, the short tenure of Members also increases interference by the Executive jeopardising the independence of judiciary.

188. In the light of the discussion as aforesaid, we hold that the Rules would require a second look since the extremely short tenure of the Members of Tribunals is anti-merit and has the effect of discouraging meritorious candidates to accept posts of Judicial Members in Tribunals.

(e) contradictions in the rules

189. On the contentions of parties and in the light of the aforementioned discussion, the Bench has observed following contradictions in the Rules:

(a) There is an inconsistency within the Rules with regard to the tenure prescribed for the Members of Tribunals insofar as a fixed tenure of three years for both direct appointments from the Bar and appointment of retired judicial officers or judges of High Court or Supreme Court. It is also discriminatory to the extent that it attempts to create equality between unequal classes. The tenure of Members, Vice-Chairman, Chairman, etc. must be increased with due consideration to the prior decisions of the Court.

(b) The difference in the age of superannuation of the Members, Vice-Chairmen and Chairmen, as formulated in the Rules is contrary to the objectives of the Finance Act, 2017 viz., to attain uniformity in the composition of the Tribunal framework. There should be a uniform age of superannuation for Members, Vice-Chairmen, Chairmen, etc. in all Tribunals.

(c) Rule 4(2) of the Rules providing that the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted shall be the convener of the Search-cum-Selection Committee, is in direct violation of the doctrine of Separation of Powers and thus contravenes the basic structure of the Constitution. Corollary to the dictum of this Court in the ***Fourth Judges Case***, judicial dominance in appointment of members of judiciary cannot be diluted by the Executive.

(d) Rule 7 accords unwarranted discretion to the Central Government insofar as it merely directs and not mandates the Central Government to consider the recommendation of Committee for removal of a Member of a Tribunal. The Central Government shall mandatorily consider the recommendation of the Committee before removal of any Member of Tribunal. Furthermore, the proviso to Rule 7 creates an unjust classification between National Company Law Appellate Tribunal (NCLAT) and other fora inasmuch as the removal of Chairperson or member of NCLAT alone is to be in consultation with the Chief Justice of India.

(e) Moral turpitude is a term well defined by this Court in numerous decisions. Rule 7(b) cannot be allowed to survive as it allows the Executive to interpret the meaning of 'moral turpitude', which is an encroachment on the judicial domain.

(f) The power of relaxation of rules with respect to any class of persons shall be vested with the Search-cum-Selection Committee and not with the Central Government as provided under Rule 20. As ruled by this Court earlier in *Madras Bar Association (2014)* (supra), the Central Government cannot be allowed to have administrative control over the Judiciary without subverting the doctrine of separation of powers.

- ***Issue 4:*** Whether there should be a Single Nodal Agency for administration of all Tribunals?

194. What appears to be of paramount importance is that every Tribunal must enjoy adequate financial independence for the purpose of its day to day functioning including the expenditure to be incurred on (a) recruitment of staff; (b) creation of infrastructure; (c) modernisation of infrastructure; (d) computerisation; (e) perquisites and other facilities admissible to the Presiding Authority or the Members of such Tribunal. It may not be very crucial as to which Ministry or Department performs the duties of Nodal Agency for a Tribunal, but what is of utmost importance is that the Tribunal should not be expected to look towards such Nodal Agency for its day to day requirements. There must be a direction to allocate adequate and sufficient funds for each Tribunal to make it self-sufficient and self-sustainable authority for all intents and purposes. The expenditure to be incurred on the functioning of each Tribunal has to be necessarily a charge on the Consolidated Fund of India. Therefore, hitherto, the Ministry of Finance shall, in consultation with the Nodal Ministry/Department, shall earmark separate and dedicated funds for the Tribunals. It will not only ensure that the Tribunals are not under the financial control of the Department, who is a litigant before them, but it may also enhance the public faith and trust in the mechanism of Tribunals.

- ***Issue 5***: Whether there is a need for conducting a Judicial Impact Assessment of all Tribunals in India?

199. In the fitness of things, we deem it appropriate to direct the Union of India to carry out financial impact assessment in respect of all the Tribunals referable to Sections 158 to 182 of the Finance Act, 2017 and undertake an exercise to assess the need based requirements and make available sufficient resources for each Tribunal established by the Parliament.

Issue 6: Whether judges of Tribunals set up by Acts of Parliament under Articles 323-A and 323-B of the Constitution can be equated in 'rank' and 'status' with Constitutional functionaries?

202. A similar situation arose in *T.N. Seshan* v. *Union of India* [(1995) 4 SCC 611] wherein the Government of India had by ordinance accorded pay and perks equivalent to that of Supreme Court judges to the Chief Election Commissioner. Consequently, a demand was made for according rank in the Warrant of Precedence equivalent to that of Supreme Court judges. A five-judge bench of this Court held that mere equality in conditions of service to that of a Supreme Court judge cannot confer equal status to such other functionaries

203. In light of the unequivocal assertions of a co-ordinate bench of this Court, there can be no doubt that executive action cannot confer status equivalent to that of either Supreme Court or High Court judges on any member or head of any Tribunal or other judicial fora.

204. Furthermore, that even though manned by retired judges of High Courts and the Supreme Court, such Tribunals established under Article 323-A and 323-B of the Constitution cannot seek equivalence with High Courts or the Supreme Court. Once a judge of a High Court or Supreme Court has retired and he/she no longer enjoys the Constitutional status, the statutory position occupied by him/her cannot be equated with the previous position as a High Court or a Supreme Court judge. The rank, dignity and position of Constitutional judges is hence *sui generis* and arise not merely by their position in the Warrant of Precedence or the salary and perquisites they draw, but as a result of the Constitutional trust accorded in them. Indiscriminate accordance of status of such Constitutional judges on Tribunal members and presiding officers will do violence to the very Constitutional Scheme.

205. This Court in *L. Chandra Kumar* (supra) observed that Tribunals are not substitutes of Superior Courts and are only supplemental to them. Hence, the status of members of such Tribunals cannot be equated with that of the sitting judges of Constitutional Courts else, as V.R. Krishna Iyer, J. aptly pointed in his article titled 'Why Stultify Judges' Status?', "Creating deemed Justices of High Courts with equal status and salaries suggests an oblique bypassing of the Constitution....". The relevant extract of *L. Chandra Kumar* (supra) is reproduced as follows:

"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional power of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts...."

206. We would further point out that the Warrant of Precedence is a mere self-serving executive decision and not a law in itself. It is a reflection of the inter-se hierarchy amongst functionaries for the purposes of discharge of important ceremonial functions and other State duties. It cannot either confer rights or alter the status accorded by law. It would further be clearly abhorrent to use such an instrument to undermine the order of precedence clearly accorded under the Constitution.

207. It is hence essential that the Union of India, takes note of the observations of this Court herein and abide by the spirit of the Constitution in respecting the aforementioned difference between constitutional functionaries and statutory authorities. It is important for the Union of India to ensure that judges of High Courts

and the Supreme Court are kept on a separate pedestal distanced from any other Tribunal or quasi-judicial Authority.

- ***Issue 7*** : Whether direct statutory appeals from Tribunals to the Supreme Court ought to be detoured?

The Apex court noted that at present, there are more than two dozen statutes which provide direct appeals to the Supreme Court from various Tribunals and High Courts

215. Such statutory appeals take away the inherent ability of the Supreme Court, as envisaged in the Constitution, to regulate cases before it by confining its consideration to cases involving the most egregious of wrongs and/or having the greatest impact on public interest.

216. Further, in providing for appeals directly from Tribunals, the jurisdiction of High Courts is in effect curtailed to a great extent. Not only does this hamper access to justice, but it also takes away the much needed exposure for High Court judges, earnestly needed in a vibrant and ever-evolving judiciary. Since majority of the judges of the Supreme Court are elevated from the High Courts, their lack of exposure to these specialised areas of law hinders their efficacy in adjudicating the direct statutory appeals from specialised Tribunals.

- ***Issue 8:*** Whether there is a need for amalgamation of existing Tribunals and setting up of benches.

235. As noted by this court on numerous occasions, including in *Madras Bar Association (2014)* (supra), although it is the prerogative of the Legislature to set up alternate avenues for dispute resolution to supplement the functioning of existing Courts, it is essential that such mechanisms are equally effective, competent and accessible. Given that jurisdiction of High Courts and District Courts is affected by the constitution of Tribunals, it is necessary that benches of the Tribunals be established across the country. However, owing to the small number of cases, many of these Tribunals do not have the critical mass of cases required for setting up of multiple benches. On the other hand, it is evident that other Tribunals are pressed for resources and personnel.

236. This 'imbalance' in distribution of case-load and inconsistencies in nature, location and functioning of Tribunals require urgent attention. It is essential that after conducting a Judicial Impact Assessment as directed earlier, such 'niche' Tribunals be amalgamated with others dealing with similar areas of law, to ensure effective utilisation of resources and to facilitate access to justice.

237. We accordingly direct the Union to rationalise and amalgamate the existing Tribunals depending upon their case-load and commonality of subject-matter after conducting a Judicial Impact Assessment, in line with the recommendation of the Law

Commission of India in its 272nd Report. Additionally, the Union must ensure that, at the very least, circuit benches of all Tribunals are set up at the seats of all major jurisdictional High Courts.

CONCLUSION

The Apex Court in paragraph 238 concluded the following:

(i) The issue and question of Money Bill, as defined under Article 110(1) of the Constitution, and certification accorded by the Speaker of the Lok Sabha in respect of Part-XIV of the Finance Act, 2017 is referred to a larger Bench.

(ii) Section 184 of the Finance Act, 2017 does not suffer from excessive delegation of legislative functions as there are adequate principles to guide framing of delegated legislation, which would include the binding dictums of this Court.

(iii) The Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 suffer from various infirmities as observed earlier. These Rules formulated by the Central Government under Section 184 of the Finance Act, 2017 being contrary to the parent enactment and the principles envisaged in the Constitution as interpreted by this Court, are hereby struck down in entirety.

(iv) The Central Government is accordingly directed to re-formulate the Rules strictly in conformity and in accordance with the principles delineated by this Court in *R.K. Jain* (supra), *L. Chandra Kumar* (supra), *Madras Bar Association* (supra) and *Gujarat Urja Vikas Ltd.* (supra) conjointly read with the observations made in the earlier part of this decision.

(v) The new set of Rules to be formulated by the Central Government shall ensure non-discriminatory and uniform conditions of service, including assured tenure, keeping in mind the fact that the Chairperson and Members appointed after retirement and those who are appointed from the Bar or from other specialised professions/services, constitute two separate and distinct homogeneous classes.

(vi) It would be open to the Central Government to provide in the new set of Rules that the Presiding Officers or Members of the Statutory Tribunals shall not hold 'rank' and 'status' equivalent to that of the Judges of the Supreme Court or High Courts, as the case may be, only on the basis of drawing equal salary or other perquisites.

(vii) There is a need-based requirement to conduct 'Judicial Impact Assessment' of all the Tribunals referable to the Finance Act, 2017 so as to analyse the ramifications of the changes in the framework of Tribunals as provided under the Finance Act, 2017. Thus, we find it appropriate to issue a writ of mandamus to the Ministry of Law and Justice to carry out such 'Judicial Impact Assessment' and submit the result of the findings before the competent legislative authority.

(viii) The Central Government in consultation with the Law Commission of India or any other expert body shall re-visit the provisions of the statutes referable to the Finance Act, 2017 or other Acts as listed in para 174 of this order and place appropriate proposals before the Parliament for consideration of the need to remove direct appeals to the Supreme Court from orders of Tribunals. A decision in this regard by the Union of India shall be taken within six months.

(ix) The Union Government shall carry out an appropriate exercise for amalgamation of existing Tribunals adopting the test of homogeneity of the subject matters to be dealt with and thereafter constitute adequate number of Benches commensurate with the existing and anticipated volume of work.

3. *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2019 SCC OnLine SC 1459)*

Decided on : -13.11.2019

Bench :- 1. Hon'ble Mr. Chief Justice Ranjan Gogoi
2. Hon'ble Mr. Justice N. V. Ramana
3. Hon'ble Mr. Justice Dr. D. Y. Chandrachud
4. Hon'ble Mr. Justice Deepak Gupta
5. Hon'ble Mr. Justice Sanjiv Khanna

(The Chief Justice and the Supreme Court are not two distinct and separate 'public authorities', albeit the latter is a 'public authority' and the Chief Justice and the judges together form and constitute the 'public authority', that is, the Supreme Court of India

'Public Interest test' in the context of RTI- The delicate balance requires identification of public interest behind each exemption and then cumulatively weighing the public interest in accepting or maintaining the exemption(s) to deny information in a particular case against the public interest in disclosure in that particular case)

Background

Civil Appeal No. 2683 of 2010 arose from an application dated 10th November, 2007 moved by Subhash Chandra Agarwal seeking information on declaration of assets made by the judges to the Chief Justices in the States, which application was dismissed by the CPIO, Supreme Court of India vide order/letter dated 30th November, 2007 stating that information relating to declaration of assets of the judges of the Supreme Court of India and the High Courts was not held by or was not under control of the Registry of the Supreme Court of India. On the first appeal, the appellate authority had passed an order of remit directing the CPIO, Supreme Court of India to follow the procedure under Section 6(3) of the RTI Act and to inform Subhash Chandra Agarwal about the authority holding such information as was sought. The CPIO had thereafter vide order dated 07th February, 2008 held that the applicant should approach the CPIO of the High Courts and filing of the application before the CPIO of the Supreme Court was against the spirit of Section 6(3) of the RTI Act. Thereupon, Subhash Chandra Agarwal had directly preferred an appeal before the CIC, without filing the first appeal, which appeal was allowed vide order dated 06th January, 2009.

Aggrieved, the CPIO, Supreme Court of India had filed Writ Petition (Civil) No. 288 of 2009 before the Delhi High Court, which was decided by the learned Single Judge vide judgment dated 02nd September, 2009, and the findings were summarised as:

> "84. [...]
>
> Re Point Nos. 1 & 2 *Whether the CJI is a public authority and whether the CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI*;

Answer: The CJI is a public authority under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a "public authority" under the Act and is covered by its provisions.

Re Point No. 3: *Whether asset declaration by Supreme Court Judges, pursuant to the 1997 Resolution are "information", under the Right to Information Act, 2005.*

Answer: It is held that the second part of the respondent's application, relating to declaration of assets by the Supreme Court Judges, is "information" within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are "information" and subject to the provisions of the Right to Information Act.

Re Point No. 4: *If such asset declarations are "information" does the CJI hold them in a "fiduciary" capacity, and are they therefore, exempt from disclosure under the Act*

Answer: The petitioners' argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Re Point No. 5: *Whether such information is exempt from disclosure by reason of Section 8(1)(j) of the Act.*

Answer: It is held that the contents of asset declarations, pursuant to the 1997 resolution—and the 1999 Conference resolution—are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Re Point No. (6): *Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.*

Answer: These are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States—including the redaction norms—under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of Judges whose revelation might endanger them; and (2) extend the authority of the Judicial

> Conference to redact certain personal information of judges from financial disclosure reports may be considered."

On further appeal by the CPIO, Supreme Court of India, LPA No. 501 of 2009 was referred to the Full Bench, which has vide its decision dated 12th January, 2010 dismissed the appeal. This judgment records that the parties were ad-idem with regard to point Nos. 1 and 2 as the CPIO, Supreme Court of India had fairly conceded and accepted the conclusions arrived at by the Single Judge and, thus, need not be disturbed. Nevertheless, the Full Bench had felt it appropriate to observe that they were in full agreement with the reasoning given by the Single Judge.

The Full Bench had, thereafter, re-casted the remaining three questions as under:

"(1) Whether the respondent had any "right to information" under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to 1997 Resolution?

(2) If the answer to question (1) above is in affirmative, whether CJI held the "information" in his "fiduciary" capacity, within the meaning of the expression used in Section 8(1)(e) of the Act?

(3) Whether the information about the declaration of assets by the Judges of the Supreme Court is exempt from disclosure under the provisions of Section 8(1)(j) of the Act?"

The above questions were answered in favour of the respondent-Subhash Chandra Aggarwal as the Full Bench has held that the respondent had the right to information under Section 2(j) of the RTI Act with regard to the information in the form of declarations of assets made pursuant to the 1997 Resolution. The Chief Justice did not hold such declarations in a fiduciary capacity or relationship and, therefore, the information was not exempt under Section 8(1)(e) of the RTI Act.

Addressing the third question, the Bench had observed:

> "116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j). We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); that they are not otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in "larger public interest."

The three appeals were tagged to be heard and decided together vide order dated 26th November, 2010. This order while referring the matter to a larger bench had framed the following substantial questions of law as to the interpretation of the Constitution, which read as under:

1. Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the Judiciary?

2. Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?

3. Whether the information sought for is exempt under Section 8(1)(j) of the Right to Information Act?

Decision and Observations

Whether the Supreme Court of India and the Chief Justice of India are two separate public authorities?

The Apex Court replied to the issue in the following manner:

> **14.** The Supreme Court of India, which is a 'public authority', would necessarily include the office of the Chief Justice of India and the judges in view of Article 124 of the Constitution. The office of the Chief Justice or for that matter the judges is not separate from the Supreme Court, and is part and parcel of the Supreme Court as a body, authority and institution. ***The Chief Justice and the Supreme Court are not two distinct and separate 'public authorities', albeit the latter is a 'public authority' and the Chief Justice and the judges together form and constitute the 'public authority', that is, the Supreme Court of India.*** The interpretation to Section 2(h) cannot be made in derogation of the Constitution. To hold to the contrary would imply that the Chief Justice of India and the Supreme Court of India are two distinct and separate public authorities, and each would have their CPIOs and in terms of subsection (3) to Section 6 of the RTI Act an application made to the CPIO of the Supreme Court or the Chief Justice would have to be transferred to the other when 'information' is held or the subject matter is more closely connected with the 'functions' of the other. This would lead to anomalies and difficulties as the institution, authority or body is one. ***The Chief Justice of India is the head of the institution and neither he nor his office is a separate public authority.***
>
> **(emphasis supplied)**
>
> **15.** This is equally true and would apply to the High Courts in the country as Article 214 states that there shall be a High Court for each State and Article 216 states that

every High Court shall consist of a Chief Justice and such other judges as the President of India may from time to time deem it appropriate to appoint

Fiduciary Relationship under Section 8(1)(e) of the RTI Act

The expression *'fiduciary relationship'* was examined and explained in ***Secondary Education v. Aditya Bandopadhyay***[7] wherein it was held that information available with the public authority relating to beneficiaries cannot be withheld from or denied to the beneficiaries themselves. The Apex Court then referred to ***Reserve Bank of India* v. *Jayantilal N. Mistry***[8] wherein the Court had outlined the contours of the fiduciary relationship by listing out the governing principles which read:

> "58. [...] (*i*) *No conflict rule* — A fiduciary must not place himself in a position where his own interest conflicts with that of his customer or the beneficiary. There must be 'real sensible possibility of conflict'.
>
> (ii) *No profit rule* — A fiduciary must not profit from his position at the expense of his customer, the beneficiary.
>
> (iii) *Undivided loyalty rule* — A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.
>
> (iv) *Duty of confidentiality* — A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

Further, the Apex court stated :

> **34.** Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself. Section 8(1)(e) is a legal acceptance that there are ethical or moral relationships or duties in relationships that create rights and obligations, beyond contractual, routine or even special relationships with standard and typical rights and obligations. Contractual or non-fiduciary relationships could require that the party should protect and promote the interest of the other and not cause harm or damage,

[7] (2011) 8 SCC 497
[8] (2016) 3 SCC 525

but the fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self-interest. A fiduciary's loyalty, duties and obligations are stricter than the morals of the market place and it is not honesty alone, but the *punctilio* of an honour which is the most sensitive standard of behaviour which is applied {See - Opinion of Cardozo, J. in *Meinhard* v. *Salmon* (1928) 164 N.E. 545, 546}. Thus, the level of judicial scrutiny in cases of fiduciary relationship is intense as the level of commitment and loyalty expected is higher than non-fiduciary relationships. Fiduciary relationship may arise because of the statute which requires a fiduciary to act selflessly with integrity and fidelity and the other party, that is the beneficiary, depends upon the wisdom and confidence reposed in the fiduciary. A contractual, statutory and possibly all relationships cover a broad field, but a fiduciary relationship could exist, confined to a limited area or an act, as relationships can have several facets. Thus, relationships can be partly fiduciary and partly non-fiduciary with the former being confined to a particular act or action which need not manifest itself in entirety in the interaction and relationship between two parties. What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral, personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. This may arise due to superior knowledge and training of the fiduciary or the position he occupies.

35. ***Ordinarily the relationship between the Chief Justice and judges would not be that of a fiduciary and a beneficiary.*** However, it is not an absolute rule/code for in certain situations and acts, fiduciary relationship may arise. Whether or not such a relationship arises in a particular situation would have to be dealt with on the tests and parameters enunciated above.

(emphasis supplied)

Right to Privacy under Section 8(1)(j) and Confidentiality under Section 11 of the RTI Act

47. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a *distinction* in its treatment of *personal information*, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word 'information' which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.

> **53.** While clause (j) exempts disclosure of two kinds of information, as noted in paragraph 47 above, that is "personal information" with no relation to public activity or interest and "information" that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information.

After referring **to** ***Girish Ramchandra Deshpande* v. *Central Information Commissioner***[9] **,** ***Canara Bank* v. *C.S. Shyam***[10]**,*Subhash Chandra Agarwal* v. *Registrar, Supreme Court of India***[11] ***R.K. Jain* v. *Union of India***[12] **, *Central Board of Secondary Education v. Aditya Bandopadhyay***[13]**,**the Apex Court said:

> **59.** Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.

After considering the Confidentiality in case of personal information and its co-relation with the right to privacy and disclosure of the same on the anvil of the **public interest test** the Apex Court proceeded to look at confidentiality of information concerning the government and information relating to its inner-workings and the difference in approach in applying the public interest test in disclosing such information, as opposed to the approach adopted for other confidential/personal information.

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[9] (2013) 1 SCC 212
[10] (2018) 11 SCC 426
[11] (2018) 11 SCC 634
[12] (2013) 14 SCC 794
[13] (2011) 8 SCC 497

69. The aforesaid passages highlight the relevance of confidentiality in the government and its functioning. However, this is not to state that plea of confidentiality is an absolute bar, for in terms of proviso to Section 11(1) of the RTI Act, the PIO has to undertake the balancing exercise and weigh the advantages and benefits of disclosing the information with the possible harm or injury to the third party on the information being disclosed. We have already referred to the general approach on the right of access to government records under the heading "*Section 8(1)(j) and Section 11 of the RTI Act*" with reference to the decisions of the High Court of Australia in *Heinemann Publishers Pty Ltd.* (supra) and *John Fairfax and Sons Ltd.* (supra).

70. [...] Confidentiality may have some bearing and importance in ensuring honest and fair appraisals, though it could work the other way around also and, therefore, what should be disclosed would depend on authentic enquiry relating to the public interest, that is, whether the right to access and the right to know outweighs the possible public interest in protecting privacy or outweighs the harm and injury to third parties when the information relates to such third parties or the information is confidential in nature.

Meaning of the term 'public interest'

76. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person.....

78. Public interest has no relationship and is not connected with the number of individuals adversely affected by the disclosure which may be small and insignificant in comparison to the substantial number of individuals wanting disclosure. .....***The delicate balance requires identification of public interest behind each exemption and then cumulatively weighing the public interest in accepting or maintaining the exemption(s) to deny information in a particular case against the public interest in disclosure in that particular case. Further, under Section 11(1), reference is made to the 'possible' harm and injury to the third party which will also have to be factored in when determining disclosure of confidential information relating to the third parties.***

(emphasis supplied)

Judicial independence

Having dealt with the doctrine of the public interest under the RTI Act, the Apex Court examined its co-relation with transparency in the functioning of the judiciary in matters of judicial appointments/selection and importance of judicial independence. The Apex court said:

88. We have referred to the decisions and viewpoints to highlight the contentious nature of the issue of transparency, accountability and judicial independence with various arguments and counterarguments on both sides, each of which commands merit and cannot be ignored. Therefore, it is necessary that the question of judicial independence is accounted for in the balancing exercise. It cannot be doubted and debated that the independence of the judiciary is a matter of ennobled public concern and directly relates to public welfare and would be one of the factors to be taken into account in weighing and applying the public interest test. Thus, when the public interest demands the disclosure of information, judicial independence has to be kept in mind while deciding the question of exercise of discretion. However, we should not be understood to mean that the independence of the judiciary can be achieved only by denial of access to information. Independence in a given case may well demand openness and transparency by furnishing the information. Reference to the principle of judicial independence is not to undermine and avoid accountability which is an aspect we perceive and believe has to be taken into account while examining the public interest in favour of disclosure of information. Judicial independence and accountability go hand in hand as accountability ensures, and is a facet of judicial independence. Further, while applying the proportionality test, the type and nature of the information is a relevant factor. Distinction must be drawn between the final opinion or resolutions passed by the collegium with regard to appointment/elevation and transfer of judges with observations and indicative reasons and the inputs/data or details which the collegium had examined. The rigour of public interest in divulging the input details, data and particulars of the candidate would be different from that of divulging and furnishing details of the output, that is the decision. In the former, public interest test would have to be applied keeping in mind the fiduciary relationship (if it arises), and also the invasion of the right to privacy and breach of the duty of confidentiality owed to the candidate or the information provider, resulting from the furnishing of such details and particulars. The position represents a principled conflict between various factors in favour of disclosure and those in favour of withholding of information. Transparency and openness in judicial appointments juxtaposed with confidentiality of deliberations remain one of the most delicate and complex areas. Clearly, the position is progressive as well as evolving as steps have been taken to make the selection and appointment process more transparent and open. Notably, there has been a change after concerns were expressed on disclosure of the names and the reasons for those who had not been approved. The position will keep forging new paths by taking into consideration the experiences of the past and the aspirations of the future.

Questions referred to the Constitution Bench are accordingly answered, observing that it is not possible to answer these questions in absolute terms, and that in each case, the public interest test would be applied to weigh the scales and on balance determine whether information should be furnished or would be exempt. Therefore, a

universal affirmative or negative answer is not possible. However, independence of judiciary is a matter of public interest.

4. *Manoharan v. State By Inspector of Police, (2019 SCC OnLine SC 1433)*

Decided on : -07.11.2019

Bench :- 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Sanjiv Khanna

(Regarding the contention that death ought not to be awarded in case of a single dissent, held, it is settled in law that dissenting opinions have little precedential value and that there is no difference in operation between decisions rendered unanimously or those tendered by majority, albeit with minority dissenting views.)

Facts

The review petitions are directed against the judgment dated 01.08.2019 passed in ***Manoharan* v. *State by Inspector of Police***,[14] wherein the three-Judge Bench had affirmed conviction of the accused Manoharan for offences punishable under Sections 302, 376(2)(f) and (g) and 201 of the Penal Code, 1860 (in short "IPC") and by majority upheld the death sentence confirmed by the High Court. Succinctly, the prosecution's version of events is that Mohanakrishnan using a borrowed school van, picked up two children (X and Y) who were waiting to go to school at about 7:50 a.m. He further picked up his friend, Manoharan from his house at 9:30 a.m. and subsequently, they took the children to a remote location where after the girl child was raped and sodomised. Subsequently, Manoharan and Mohanakrishnan purchased cow dung powder (a poisonous substance) which was mixed in milk and then administered to the children to end their life. However, both the children spat out the substance and only ingested a small portion. Since poisoning did not work, Mohanakrishnan and the petitioner threw both the children into the turbulent waters of a nearby Canal, hence drowning them.

Decision and observations

Regarding the scope of review, the Apex Court stated that the even in death penalty cases it has been narrowed down as has been laid down in ***Vikram Singh* v. *State of Punjab***,[15] that review can only be on a glaring error apparent on the face of the judgement or order. A mere change or addition of grounds cannot be allowed at the stage of review.[16] The Apex Court

[14] (2019) 7 SCC 716
[15] (2017) 8 SCC 51
[16] *"23. In view of the above, it is clear that scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent on the face of the record. Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice. By review application an applicant cannot be allowed to reargue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This*

also referred to ***Mukesh* v. *State of (NCT of Delhi)***[17]. In ***Kamlesh Verma* v. *Mayawati***,[18] it has been prescribed that Courts should refrain from re-appreciating the entirety of evidence only to arrive at a different possible conclusion, besides illustrating an inexhaustible list of instances where review shall not be maintainable. The relevant part reads as follows:

> *"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) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
>
> *(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."*

The Apex court stated that the scope of a Review is more constrained than that of an appeal. A party cannot be allowed to reurge the case on merits to effectively seek re-appreciation of evidence when the matter has already been decided earlier, even if on different grounds. Interference in the earlier judgment assailed in a Review is permissible only on the basis of an error apparent on the face of record or discovery of important new evidence which has a direct bearing on the ultimate outcome of the case and if not well appreciated, would cause manifest injustice.

The Apex Court discussed the contentions raised of voluntariness of confession and effect of retraction, independent re appreciation of evidence, inadequacy of legal representation, discrepancies in arrest & recovery of evidence, erroneous conviction under section 376 IPC, and erroneous reliance on POCSO.

Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice to exercise the review jurisdiction under Article 137 read with Order 40 Rule 1. There has to be a material error manifest on the face of the record with results in the miscarriage of justice."

[17] (2018) 8 SCC 149
[18](2013) 8 SCC 320

Regarding sentencing, the Apex Court stated as follows:

> **59.** At this juncture, it is necessary to highlight that the contention of Mr. Luthra urging that death ought not to be awarded in case of a single dissent, notwithstanding the opinion of the majority is unsupported in view of more than one decisions of this Court. In ***Devender Pal Singh* v. *State of NCT of Delhi***[(2003) 2 SCC 501], and also in ***Krishna Mochi* v. *State of Bihar***[(2003) 2 SCC 501] a concurrent Bench had refused to review the death sentence which had earlier been upheld in appeal by two out of three judges of this Court. The reliance on ***Suthendraraja* v. *State***[(1999) 9 SCC 323] itself is erroneous for the proposition relied upon was delivered in a minority opinion, which was unsupported both by the order of the Court and also was disagreed with by Quadri J., who noted:
>
> *"The ambit of Rule XL(1) of the Supreme Court Rules which provides grounds for review, as interpreted by this Court in* P.N. Eswara Iyer *v.* Registrar, Supreme Court of India *[(1980) 4 SCC 680] vis-à-vis criminal proceedings, is not confined to "an error apparent on the face of the record". Even so by the process of interpretation it cannot be stretched to embrace the premise indicated by my learned brother as a ground for review. That apart there are two difficulties in the way. The first is that the acceptance of the said proposition would result in equating the opinion of the majority to a ground analogous to "an error apparent on the face of the record" and secondly in a Bench of three Judges or of greater strength if a learned Judge is not inclined to confirm the death sentence imposed on a convict, the majority will be precluded from confirming the death sentence as that per se would become open to review.*
>
> **60.** Further, even sans the aforesaid decisions, we are not inclined to accept such a reasoning for it is contrary to the established jurisprudence of precedents and interpretation of verdicts with multiple opinions. ***It is settled in law that dissenting opinions have little precedential value and that there is no difference in operation between decisions rendered unanimously or those tendered by majority, albeit with minority dissenting views.***
>
> **(emphasis supplied)**
>
> **61.** Although Mr. Luthra's contention that the petitioner has not received adequate opportunity to place material regarding his circumstances is unsubstantiated, we have nevertheless re-considered sentencing. We have re-visited the mitigating circumstances against aggravating circumstances, as well as a report commissioned by this Court during the course of appeal and submitted by the jail superintendent which reveals that the conduct of the Petitioner is merely satisfactory and he has not undertaken any study or anything else to show any signs of reformation.
>
> **62.** It has been made clear in the preceding parts of this judgment that the prosecution case has been established through numerous evidences in addition to

there being a clear confession, which proves the Petitioner's guilt beyond any residual doubt. Conflicting versions have been deposed by the Petitioner and the defence witnesses, and no explanation to discharge the onus under Section 106 has been provided. Hence, it is not a case fit for application of the theory of "residual doubt" as noted in ***Ravishankar* v. *State of Madhya Pradesh***[2019 SCC OnLine SC 1290] Accordingly, even the contention that death ought not to be awarded considering that the present case is one involving circumstantial evidence is unfounded. It is no longer *res integra* that there can be no hard rule of not awarding death in cases based on circumstantial evidence owing to recent developments in medical science and the possibility of abuse by seasoned criminals.

63. Furthermore, there is nothing to support the characterisation of the accused as being a helpless, illiterate young adult who is a victim of his socioeconomic circumstances. Far from being so, it is clear through the version of events that the accused had the presence of mind to craft his own defence and attempt to retract his confession through an elaborately written eleven page letter addressed to the Magistrate and had further received adequate legal representation.

64. Mr. Luthra's reliance on the retraction letter to contend that in so far as the statement shows that he stopped the co-accused from committing rape, is evident of the fact that he has remorse which entitles him to commutation, if not acquittal, is misplaced. As noted earlier, the retraction was extremely belated and only a defence to shield himself. Further, medical evidence has proved that rape was committed on the deceased girl. It is hence factually incorrect to state that the Petitioner prevented the co-accused from raping the girl and is nothing more than a belated lie at the end of the trial. Hence, the exculpatory parts ought to be excluded per ***Nishi Kant Jha* v. *State of Bihar*** [(1969) 1 SCC 347].

65. Even observed devoid of any aggravating circumstances, mere young age and presence of aged parents cannot be grounds for commutation. One may view that such young age poses a continuous burden on the State and presents a longer risk to society, hence warranting more serious intervention by Courts. Similarly, just because the now deceased co-accused Mohanakrishnan was the mastermind whose offence was comparatively more egregious, we cannot commute the otherwise barbarically shocking offences of the petitioner. We are also not inclined to give leeway of the lack of criminal record, considering that the current crime was not just one offence, but comprised of multiple offences over the series of many hours.

66. Even if the cases involving confession merit some leniency and compassion, however, as was earlier noted in our majority opinion, the attempted retraction of the statement shows how the petitioner was in fact remorseless. Such belated retractions further lay rise to the fear that any remorse or repentance being shown by the petitioner now may be temporary and that he can relapse to his old ways. Irrespective of the underlying reasons behind such retraction, whether it be the fear of death or

feeling that he was not getting any benefit of his earlier confession, but the possibility of recidivism has only been heightened and we can no longer look at the initial confession in a vacuum.

67. Rather, the present case is essentially one where two accused misused societal trust to hold as captive two innocent school-going children, one of whom was brutally raped and sodomised, and thereupon administered poison and finally, drowned by throwing them into a canal. It was not in the spur of the moment or a crime of passion; but craftily planned, meticulously executed and with multiple opportunities to cease and desist. We are of the view that the present offence(s) of the Petitioner are so grave as to shock the conscience of this Court and of society and would without doubt amount to rarest of the rare.

The review petition was dismissed.

5. *State of Madhya Pradesh v. Man Singh, (2019 SCC OnLine SC 1414)*

Decided on : -04.11.2019

Bench :- 1. Hon'ble Mr. Justice Deepak Gupta
2. Hon'ble Mr. Justice Aniruddha Bose

The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes *functus officio* and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error

Facts

The respondent, Man Singh was prosecuted for having committed offences punishable under Sections 468, 471 and 419 of Indian Penal Code, 1860 (for short 'IPC'). The allegation against him was that he had used a transfer certificate of one Kalu Singh and forged the certificate to show that it bore his name and date of birth. Using this certificate, he had procured appointment to the post of Buffalo Attendant in the Veterinary Department. The trial court convicted the accused for the offences punishable under Sections 468, 471 and 419 IPC. On the issue of sentence, it was specifically urged before the trial court that benefit of Probation of Offenders Act, 1958 (for short 'the Act') may be given to the respondent, Man Singh. The trial court came to the conclusion that the accused had got service on the basis of forged documents depriving a deserving unemployed person of getting such employment and, therefore, according to the trial court, this is not a fit case to grant probation. Accordingly, the trial court imposed punishment under various provisions of IPC for different offences but essentially the accused was to undergo rigorous imprisonment for one year and was to pay a total fine of Rs. 2000/-.

The accused-respondent, Man Singh filed an appeal. The Sessions Judge dismissed the appeal. On the issue of sentence he found that the accused had been dealt with leniently and refused to interfere with the sentence. A criminal revision was filed in the High Court. The High Court affirmed the conviction but reduced the substantive sentence from one year to the period already undergone and enhanced the fine to Rs. 10,000/-.

The accused-respondent, Man Singh deposited the fine and then filed a petition under Section 482 of CrPC praying that the fine had been deposited and since he is in Government job, he may be granted benefit of the Act. The learned Judge, without giving any other reasons, directed as follows:—

> "After having heard learned counsel for the parties, prayer is allowed and the benefit of Probation of Offenders Act is extended to the petitioner for the purpose that the sentence, which has already undergone would not affect service career of the petitioner.

With the aforesaid observations petition stands disposed of C.C. today."

The order was challenged.

Issue

Whether a Judge of the High Court can exercise powers under Section 482 of the Code of Criminal Procedure, 1973 (for short 'CrPC') to alter the sentence which has been passed by the High Court itself.

Decision and Observations

The Apex Court stated the following:

6. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of CrPC[1]. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits[*State Rep. by D.S.P., S.B.C.I.D., Chennai* v. *K.V. Rajendran*, 2009 CriLJ 355 SC]. After disposing of a case on merits, the Court becomes *functus officio* and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error[*Hari Singh Mann* v. *Harbhajan Singh Bajwa* (2001) 1 SCC 169]. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers [*Sooraj Devi* v. *Pyare Lal*, (1981) 1 SCC 500 : AIR 1981 SC 736]

7. We have, therefore, no doubt in our mind that the High Court had no power to entertain the petition under Section 482 CrPC and alter the sentence imposed by it. We may also add that the manner in which the probation has been granted is not at all legal. The trial court had given reasons for not giving benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the Probation Officer in terms of Section 4 of the Act, granted probation. Even in such a case it had to give reasons why it disagreed with the trial court and the first appellate court on the issue of sentence. The High Court, in fact, reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and sentence was imposed. After sentence had been imposed and served and fine paid, there was no question of granting probation.

8. Another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon during such period, not

exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behaviour. The proviso to sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the Court can exercise jurisdiction. Sub-section (2) lays down that before making any order under sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to *M.C.D.* v. *State of Delhi* [(2005) 4 SCC 605 : AIR 2005 SC 2658]

9. In the present case, on 03.01.2011, the counsel for the accused-respondent sought an adjournment on the ground that the accused proposes to file a special leave petition (SLP) against the order passed in criminal revision petition upholding his conviction. That SLP was filed but dismissed on 28.01.2011. Once that SLP has been dismissed, we cannot grant any relief to the accused-respondent.

10. We are also constrained to observe that the High Court in its order directed that the sentence which the accused has already undergone, would not affect his service career. We fail to understand under what authority the High Court could have passed such an order. Even in a case where the High Court grants benefit of probation to the accused, the Court has no jurisdiction to pass an order that the employee be retained in service. This Court in *State Bank of India* v. *P. Soupramaniane* [AIR 2019 SC 2187] clearly held that grant of benefit of probation under the Act does not have bearing so far as the service of such employee is concerned. This Court held that the employee cannot claim a right to continue in service on the ground that he was released on probation. It was observed:

"The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably."

11. In the present case the accused obtained a job on the basis of forged documents. Even if he was to be given benefit of the Act, then also he could not retain his job because the job was obtained on the basis of forged documents. We are constrained to observe that the High Court passed the order in a mechanical and pedantic manner without considering what are the legal issues involved.

NOTE: Recently, on 06.12.2019, the Hon'ble Supreme Court, through its three-Judges Bench, in *New India Assurance Co. Ltd. v. Krishna Kumar Pandey*, relied on the decision of the Court rendered in *State of Punjab v. Davinder Pal Singh Bhullar & Others* and held that the inherent power of the High Court under Section 482 Cr4PC is saved from the restriction of Section 362, where an order has been passed by the Criminal Court which is required to be set-aside to secure the ends of justice or where the proceeding amounts to abuse of the process of the Court.