JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(December,2020)

Prepared by :-

ABHIJEET TUSHAR
ISHA ANUPRIYA
JUDICIAL ACADEMY JHARKHAND

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1. ***State of Jharkhand and Others v. Brahmputra Metallics Ltd., Ranchi and Another, 2020 SCC OnLine SC 968***

Decided on: 01.12.2020
Bench: 1. Hon'ble Mr. Justice **D. Y. Chandrachud**
2.Hon'ble Ms. Justice Indu Malhotra

(The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts.)

Background

This appeal arises from a judgment of the High Court of Jharkhand. While allowing a petition instituted by the respondents under Article 226 of the Constitution, the Division Bench:

(i) struck down the last paragraph of a notification dated 8 January 2015 issued by the State government in its Department of Commercial Taxes, giving prospective effect to the rebate/deduction from electricity duty offered under the Jharkhand Industrial Policy, 2012;

(ii) directed that the notification shall be deemed to be in effect from 1 April 2011, when the Industrial Policy 2012 was enforced with retrospective effect; and

(iii) upheld the claim of the respondent that it was entitled to a rebate/deduction from electricity duty in terms of the representation held out in the Industrial Policy 2012, and that the denial of the exemption by the State government for FYs 2011-12, 2012-13 and 2013-14 was contrary to the doctrine of *promissory estoppel*.

3. The State is in appeal to challenge the judgment dated 11 December 2019.

Issue

The issue for determination is whether the respondent is entitled to claim a rebate or deduction of 50 per cent of the amount assessed towards electricity duty for FYs 2011-12, 2012-13 and 2013-14. The respondent claims its entitlement on the basis of the Industrial Policy 2012 (notified by the appellant on 16 June 2012) and a statutory notification dated 8

January 2015 issued under Section 9 of the Bihar Electricity Duty Act 1948. The Bihar Act 1948 was adopted with effect from 15 November 2000 for the State of Jharkhand under the provisions of the Bihar Reorganization Act 2000.

Decision and Observations

The Apex Court was of the opinion that as an integral component of the policy, Clause 32.10 envisages the grant of an exemption from the payment of 50 per cent of the electricity duty for a period of five years both for new and existing industrial units setting up captive power plants for self-consumption or captive use.The period of five years was to be reckoned from the date of the commissioning of the plant. Under Clause 35.7(b), the entitlement would ensue from the financial year following the date of production. The State government was cognizant of the need to implement the policy immediately to secure the benefit to eligible units over the entire term of five years. Recognizing this need, Clause 38(b) envisaged that notifications by its diverse departments to enforce the terms of the policy would be issued within a period of one month.

That period of one month stretched on interminably with the result that the purpose and object of granting the exemption would virtually stand defeated. The net result was that when belatedly, the State government issued a notification under Section 9 of Bihar Act 1948 on 8 January 2015, it was prospective. As a consequence, by the time that the exemption notification was issued, a large part of the term for which the exemption was to operate in terms of the Industrial Policy 2012 had come to an end.

Before the High Court, the State of Jharkhand sought to sustain its action on the ground that though the follow-up notification under Section 9 was issued on 8 January 2015, no outer limit for the issuance of a notification was prescribed and there was no vested right on the part of the respondent to get the notification implemented from an earlier date or to obtain the benefit of the policy until it was implemented by a follow-up notification. In sum and substance, the objection was that the writ petitioner - the respondent here - had no vested right to claim that a follow-up notification should be issued and that the doctrine of *promissory estoppel* would not, in the facts, apply.

The Apex court then discussed at length the origin and evolution of the doctrine of promissory estoppel, the development from estoppel to expectations under the common law from para 29 to 39 of the judgment of which para 39 is reproduced below:

> **39.** Consequently, while the basis of the doctrine of *promissory estoppel* in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of *promissory estoppel* has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its *public functions*

What is of relevance is the discussion on Indian law and the doctrine of Legitimate expectations, in relation to which the below mentioned paragraphs are important:

> **46.** In *Union of India* v. *Lt. Col. P.K. Choudhary* (2016) 4 SCC 236, speaking through Chief Justice T.S. Thakur, the Court discussed the decision in *Monnet Ispat* [(2012) 11 SCC 1] and noted its reliance on the judgment in *Attorney General for New South Wales* v. *Quinn* [(1990) 64 Aust LJR 327 : (1990) 170 CLR 1]. It then observed:
>
> "This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."
>
> **47.** Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

As regards the relationship between Article 14 and the doctrine of legitimate expectation, the Apex court referred to ***Food Corporation of India* v. *Kamdhenu Cattle Feed Industries***[1]and ***NOIDA Entrepreneurs Assn.* v. *NOIDA***[2] and stated*"we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression."*

Applying the doctrine of legitimate expectations to the facts of the present case, the Apex Court said the following:

> **51.** Applying the abovementioned principles in the present case, we are unable to perceive any substance in the submission of the State which was urged in defense before the High Court. Not only did the State in the present case hold out a solemn

[1] (1993) 1 SCC 71
[2] (2011) 6 SCC 508

representation, this representation was founded on its stated desire to encourage industrialization in the State. The policy document spelt out:

(i) The nature of the incentives;

(ii) The period during which the incentives would be available; and

(iii) The time limit within which follow-up action would be taken by the State government through its departments for implementing the Industrial Policy 2012.

52. The State having held out a solemn representation in the above terms, it would be manifestly unfair and arbitrary to deprive industrial units within the State of their legitimate entitlement. The State government did as a matter of fact, issue a statutory notification under Section 9 but by doing so prospectively with effect from 8 January 2015 it negated the nature of the representation which was held out in the Industrial Policy 2012. Absolutely no justification bearing on reasons of policy or public interest has been offered before the High Court or before this Court for the delay in issuing a notification. The pleadings are completely silent on the reasons for the delay on the part of the government and offer no justification for making the exemption prospective, contrary to the terms of the representation held out in the Industrial Policy 2012.

53. It is one thing for the State to assert that the writ petitioner had no vested right but quite another for the State to assert that it is not duty bound to disclose its reasons for not giving effect to the exemption notification within the period that was envisaged in the Industrial Policy 2012. Both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate against accepting such a notion of state power. The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest. This conception of state power has been recognized by this Court in a consistent line of decisions. As an illustration, we would like to extract this Court's observations in *National Buildings Construction Cororation* (supra):

"The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice."

54. Therefore, it is clear that the State had made a representation to the respondent and similarly situated industrial units under the Industrial Policy 2012. This representation gave rise to a legitimate expectation on their behalf, that they would be offered a 50 per cent rebate/deduction in electricity duty for the next five years. However, due to the failure to issue a notification within the stipulated time and by the grant of the exemption only prospectively, the expectation and trust in the State stood violated. Since the State has offered no justification for the delay in issuance of the notification, or provided reasons for it being in public interest, we hold that such a course of action by the State is arbitrary and is violative of Article 14.

2. *Sandeep Kumar and Others v. State of Uttarakhand and Another, 2020 SCC OnLine SC 980*

Decided on: 02.12.2020
Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice**K. M. Joseph**
3. Hon'ble Mr. Justice Aniruddha Bose

(The appreciation of the evidence of the witnesses by the trial court unless it is found to be a case of misreading of the evidence or are based on an erroneous understanding of the law, could not have been interfered with by the High court.

Tests necessary to establish a case of poisoning referred to)

Facts

The appellants, who were charged with the offence punishable under Section 304B of the Penal Code, 1860 (hereinafter referred to as "IPC") stood acquitted of the said charge by learned sessions judge, Haridwar. However, in appeal carried by the complainant/respondent No. 2 herein, the verdict of acquittal was set aside and the appellants after conviction under section 304-B of IPC stand sentenced to undergo imprisonment for life.

Decision and Observations

Regarding theappellate court's jurisdiction in relation to scope of interference with a verdict of acquittal, the Apex Court referred to *Ghurey Lal* **v.** *State of Uttar Pradesh*,[3]wherein it was laid down as follows:

> "69. The following principles emerge from the cases above:
>
> *1*. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.
>
> *2*. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
>
> *3*. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

[3] (2008) 10 SCC 450

> 70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:
>
> *1*. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
>
> A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:
>
> (*i*) The trial court's conclusion with regard to the facts is palpably wrong;
>
> (*ii*) The trial court's decision was based on an erroneous view of law;
>
> (*iii*) The trial court's judgment is likely to result in "grave miscarriage of justice";
>
> (*iv*) The entire approach of the trial court in dealing with the evidence was patently illegal;
>
> (*v*.) The trial court's judgment was manifestly unjust and unreasonable;
>
> (*vi*) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.
>
> (*vii*) This list is intended to be illustrative, not exhaustive.
>
> *2*. The appellate court must always give proper weight and consideration to the findings of the trial court.
>
> *3*. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

Regarding the Charge under Section 304B, the Apex Court said:

> The charge is one under Section 304B. The ingredients of the offence are well-settled. A marriage performed within seven years before the death of the wife. The death must be unnatural. Soon before the death, the deceased wife must have been at the receiving end of cruelty or harassment, on account of demand for dowry. It is described as dowry death. The relatives concerned, including husband, become liable. Section 113B of the Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death if, it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry.

Regarding the law about poisoning, the Apex Court referred to***Anant ChintamanLagu* v. *State of Bombay***[4]wherein three tests were considered necessary to establish in a case of poisoning.

1. Death took place on account of poisoning
2. The accused had the poison in his possession
3. The accused had an opportunity to administer the poison

The Apex Court then referred to***Sharad Birdhichand Sarda v. State of Maharashtra***[5]in relation to the cases of poisoning. The relevant paragraph is as follows:

[4] AIR 1960 SC 500

"165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased."

The Apex Court then stated the following:

> **60.** There are no symptoms, which point to poisoning. Nothing in the post mortem appearance is brought out to show poisoning. The evidence of witnesses do not establish poisoning.
>
> **61.** It is to be noticed that there is no evidence in this case which could have persuaded the High Court to conclude that there were compelling reasons to interfere with the acquittal by the High Court. The appreciation of the evidence of the witnesses by the trial court unless it is found to be a case of misreading of the evidence or are based on an erroneous understanding of the law, could not have been interfered with. When the High Court records that there is ample evidence on record that the accused were demanding dowry from the deceased, it is done without noticing the features in regard to the demand for Rs. 10 lakhs. As far as the other evidence is concerned, the evidence has not been accepted by the trial court as inspiring confidence. At best it could be said that there were two views possible. Even if that were so, it did not furnish a ground to the High Court to overturn the judgment of the trial court containing the findings which we have referred to. We do not think that this is a case where the finding of the trial case could be characterised as perverse.
>
> *****
>
> **64.** Even if we were to follow the said principles the statement attributed to the deceased that she had told the doctors (DW2 and DW4) about her having suffered from TB is admissible for the fact of her having stated so even if it is not admissible for the truth of the statement. That apart, the action of the Medical Practitioner in acting upon it, by way of prescribing medicines and ordering blood test and x-ray would appear to be relevant and admissible. The appellants in their questioning under Section 313 CrPC, set up the case of TB. We need not probe the matter further including the aspect as to whether the matter may be relevant under Section 32 of the Evidence Act.
>
> ******
>
> **68.** The High Court, in our view, without any justification, reversed the acquittal. The High Court has sought to draw support from the circumstance that the dead body of the deceased was recovered from the car. The first appellant has a case that he has taken the deceased to certain hospitals. There is also a case that they themselves notified the Police. We find it certainly not a circumstance so as to draw an inference that the deceased died an unnatural death or that the appellants administered poison to her. We would think that the High Court has clearly erred in interfering with the acquittal of the appellants by the High Court. The appeals are only to be allowed. We thus allow the Appeals. The impugned judgment of the High

[5] (1984) 4 SCC 116

Court is set aside and the judgment of the Sessions Judge is restored. The first appellant who is in custody shall be released unless his custody is required in any other case. As the appellants 2 and 3 are already on bail, their bail bonds shall stand discharged.

3. *Paramvir Singh Saini v. Baljit Singh and Others , 2020 SCC OnLine SC 983*

Decided on: 02.12.2020

Bench: 1. Hon'ble Mr. Justice **R. F. Nariman**

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

3. Hon'ble Mr. Justice Aniruddha Bose

Directions related to installation of CCTV cameras in police stations

Background

The Apex Court vide Order dated 03.04.2018, reported as *Shafhi Mohammad* v. *State of Himachal Pradesh* (2018) 5 SCC 311, directed that a Central Oversight Body (hereinafter referred to as the "COB") be set up by the Ministry of Home Affairs to implement the plan of action with respect to the use of videography in the crime scene during the investigation. The Apex Court, while considering the directions issued in *D.K. Basu* v. *State of West Bengal* (2015) 8 SCC 744, held that there was a need for further directions that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish a report of its observations thereon. The COB was further directed to issue appropriate instructions in this regard at the earliest.The Apex Court further directed that the COB may issue appropriate directions from time to time so as to ensure that use of videography becomes a reality in a phased manner, the first phase of which be implemented by 15.07.2018. The crime scene videography ought to be introduced at least at some places as per viability and priority determined by the COB.

Pursuant to the aforesaid directions a COB was constituted by the Ministry of Home Affairs on 09.05.2018 (as per the Affidavit dated 26.07.2018) to oversee the implementation of the use of photography and videography in the crime scene by the State/Union Territory Government and other Central Agencies, to suggest the possibility of setting up a Central Server for implementation of videography, and to issue appropriate directions so as to ensure that use of videography becomes a reality in a phased manner. Accordingly, directions were issued to the Administrators of the Union Territory, State Governments and other Central Agencies for effective implementation of the use of photography and videography at the crime scenes, and to furnish an Action Taken Report on the implementation of the use of videography in the crime scene.

TheCourt, vide Order dated 16.07.2020, issued notice in the instant Special Leave Petition to the Ministry of Home Affairs on the question of audio-video recordings of Section 161 CrPC statements as is provided by Section 161(3) proviso, as well as the larger question as to installation of CCTV cameras in police stations generally. While issuing notice this Court also took note of the directions in *Shafhi Mohammad* (supra).

The Apex Court, vide Order dated 16.09.2020, impleaded all the States and Union Territories to find out the exact position of CCTV cameras qua each Police Station as well as the

constitution of Oversight Committees in accordance with the Order dated 03.04.2018 of this Court in *ShafhiMohammad* .

Decision and Observations

10. So far as constitution of Oversight Committees in accordance with our Order dated 03.04.2018 is concerned, this should be done at the State and District levels. The State Level Oversight Committee (hereinafter referred to as the "SLOC") must consist of:

(i) The Secretary/Additional Secretary, Home Department;

(ii) Secretary/Additional Secretary, Finance Department;

(iii) The Director General/Inspector General of Police; and

(iv) The Chairperson/member of the State Women's Commission.

11. So far as the District Level Oversight Committee (hereinafter referred to as "DLOC") is concerned, this should comprise of:

(i) The Divisional Commissioner/Commissioner of Divisions/Regional Commissioner/Revenue Commissioner Division of the District (by whatever name called);

(ii) The District Magistrate of the District;

(iii) A Superintendent of Police of that District; and

(iv) A mayor of a municipality within the District/a Head of the Zilla Panchayat in rural areas.

12. It shall be the duty of the SLOC to see that the directions passed by this Court are carried out. Amongst others, the duties shall consist of:

a) Purchase, distribution and installation of CCTVs and its equipment;

b) Obtaining the budgetary allocation for the same;

c) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;

d) Carrying out inspections and addressing the grievances received from the DLOC; and

e) To call for monthly reports from the DLOC and immediately address any concerns like faulty equipment.

13. Likewise, the DLOC shall have the following obligations:

a) Supervision, maintenance and upkeep of CCTVs and its equipment;

b) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;

c) To interact with the Station House Officer (hereinafter referred to as the "SHO") as to the functioning and maintenance of CCTVs and its equipment; and

d) To send monthly reports to the SLOC about the functioning of CCTVs and allied equipment.

e) To review footage stored from CCTVs in the various Police Stations to check for any human rights violation that may have occurred but are not reported.

14. It is obvious that none of this can be done without allocation of adequate funds for the same, which must be done by the States'/Union Territories' Finance Departments at the very earliest.

15. The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the concerned SHO shall inform the DLOC of the arrest/interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the concerned SHO has reported malfunctioning or non-functioning of CCTVs of a particular Police Station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

16. The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a Police Station to entrust the SHO of the concerned Police Station with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification etc.

17. The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every Police Station functioning in the respective State and/or Union Territory. Further, in order to ensure that no part of a Police Station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the reception area; all verandas/outhouses, Inspector's room; Sub-Inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (not inside) washrooms/toilets; Duty Officer's room; back part of the police station etc.

18. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

19. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each District of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made

available to an investigation agency in order to further process the complaint made to it.

20. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:

(i) Central Bureau of Investigation (CBI)

(ii) National Investigation Agency (NIA)

(iii) Enforcement Directorate (ED)

(iv) Narcotics Control Bureau (NCB)

(v) Department of Revenue Intelligence (DRI)

(vi) Serious Fraud Investigation Office (SFIO)

(vii) Any other agency which carries out interrogations and has the power of arrest.

21. As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

22. The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

23. The SLOC and the COB (where applicable) shall give directions to all Police Stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the concerned premises by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

24. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India, and since nothing substantial has been done in this regard for a period of over 2½ years since our first Order dated 03.04.2018, the Executive/Administrative/police authorities are to implement this Order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/Union Territory giving this Court a firm action plan with exact timelines for compliance with today's Order. This is to be done within a period of six weeks from today.

25. We record our gratitude to Shri Siddhartha Dave, learned Amicus Curiae, for rendering his services to this Court.

26. The Supreme Court registry to send a copy of this Order to all Chief/Principal Secretaries of all the States and Union Territories, both by physical as well as electronic means, today itself.

4. ***Panther Security Service Private Limited v. Employees' Provident Fund Organisation and Another, 2020 SCC OnLine SC 981***

Decided on: 02.12.2020
Bench: 1. Hon'ble Mr. Justice Navin Sinha
2. Hon'ble Mr. Justice Surya Kant

(The provisions of the Private Security Agencies (Regulation) Act of 2005 make it manifest that the appellant is the employer of such security guards and who are its employees and are paid wages by the appellant. Merely because the client pays money under a contract to the appellant and in turn the appellant pays the wages of such security guards from such contractual amount received by it, it does not make the client the employer of the security guard nor do the security guards constitute employees of the client.)

Facts

The appellant is engaged in the business of providing private security guards to its clients on payment basis. The appellant is registered under the Private Security Agencies (Regulation) Act, 2005 (hereinafter referred to as "the Act of 2005"). The appellant is aggrieved by the order of the High Court, affirming the order dated 28.07.2008 of the Assistant Provident Fund Commissioner, Kanpur under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act") holding the appellant liable for compliance with the provisions of the EPF Act and to deposit statutory dues within 15 days. The dues of the appellant as quantified by order dated 15.04.2009 are Rs. 42,01,941/-, and statutory interest under Section 7Q at Rs. 30,44,224/

Arguments by the parties

Counsel for the appellant submitted that the appellant was not covered by G.S.R. No. 805 dated 17.05.1971 issued under Section 1(3)(B) of the EPF Act, since it was not engaged in rendering any expert services. It merely facilitated in providing Chowkidars to its clients at the request of the latter. The appellant only levelled a service charge for facilitation. The salary was paid to the Chowkidars by the client who engaged their services. The appellant had only 5 persons on its rolls. The EPF Act was therefore not applicable to it. Placing reliance on Section 2(e)(ii) and (f) of the EPF Act it was submitted that since the salary was paid by the client and who had the ultimate control over the security guards deployed with them, the appellant was not the employer of these security guards and neither were they employees of the appellant. Reliance was placed on *Krantikari Suraksha RakshakSanghatana* v. *Bharat Sanchar Nigam Limited*, (2008) 10 SCC 166 and *Saraswath Films* v. *Regional Director, Employees' State Insurance Corporation, Trichur*, (2010) 11 SCC 553.

Counsel for the respondents submitted that the appellant renders expert services by way of providing trained personnel as security guards. It is fully covered by the Notification dated 17.05.1971. Despite repeated notices the appellant never furnished its wage and salary registers. The balance sheets seized for the financial years 2003-04, 2004-05, 2005-06 and 2006-07, during raid, reveals a very large amount paid towards salaries and wages running into several lacs which cannot be the wage bill of five employees. The letter dated 03.04.2001 written by the appellant to the New India Assurance Company Limited seeking Group

JantaPersonnel Accident Insurance Policy of one lac each was in respect of 79 security personnel. It was lastly submitted that the appellant did not approach the Tribunal under Section 7I of the EPF Act against the order passed under Section 7A, where all disputed facts could have been examined and instead filed a writ petition directly.

Decision and Observations

6. By G.S.R. No. 805 dated 17.05.1971 issued under Section 1(3)(b) of the EPF Act and published in the Gazette on 25.09.1971 the provisions of the EPF Act were made applicable to specified establishment and which reads as follows:

"G.S.R. No. 805 : In exercise of the powers conferred by clause (b) of sub-section (3) of Section 1 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the Central Government hereby specifies that with effect from the 31st May, 1971, the said Act shall apply to every establishment rendering expert services such as supplying of personnel, advice on domestic or departmental enquiries, special services in rectifying pilferage, thefts and payroll, irregularities to factories and establishments on certain terms and conditions as may be agreed upon between the establishment and the establishment rendering expert services and employing twenty or more persons."

7. The appellant was engaged in providing security services to its clients since the year 2001. A squad under the EPF Act visited the appellant's establishment on 29.12.2005 and seized certain records opining that the provisions of the EPF Act applied to the appellant. The Assistant Provident Fund Commissioner on 07.03.2006 on basis of the seized documents opined that the appellant had 79 employees as on 03.04.2001 allotting Code No. UP/39076, requiring the appellant to deposit the necessary contributions. The appellant having objected to the same, proceedings were initiated under Section 7A of the EPF Act with due opportunity of defence to the appellant. The appellant failed to submit the attendance register, wage register etc. The Assistant Provident Fund Commissioner on basis of balance sheets seized during raid opined that the appellant had more than twenty employees on its rolls and stood covered by the term "expert services" such as providing of personnel under the Notification dated 17.05.1971. It also noticed that wages were not paid directly by the clients to the security guards deployed by the appellant but that the payments were made by the clients to the appellant, who in turn disbursed wages to the security guards. The remedy of an appeal before the Tribunal under Section 7-I was bypassed by the appellant instituting the writ petition directly. The High Court declined interference with the conclusion of expert services being rendered by the appellant. A review petition contending that the appellant stood duly registered under the Act of 2005 was also rejected.

8. The Act of 2005 defines a private security agency under Section 2(g) as an organization engaged in the business of providing security services including training to private security guards and providing such guards to any industrial or business undertakings or a company or any other person or property. A licence is mandatory under Section 4 and those security agencies existing since earlier were mandated to obtain such licence within one year of coming into force of the Act. A complete procedure is provided with regard to making of an application for grant of a licence under Section 7, renewal under Section 8 of the Act. The eligibility for appointment as a security guard with such security agency is provided under Section 10 of the Act. Section 11 provides for the condition of the licence and the licence can be cancelled under Section 13. A private security agency under Section 15 is required to maintain a register inter alia with the names, addresses, photographs and salaries of the private security guards and supervisors under its control. The Private Security Agencies Central Model Rules, 2006, framed under the Act of 2005, requires verification by the security agency before employing any person as a security guard

or supervisor in the manner prescribed. Proper security training of the person employed is the responsibility of the security agency under Rule 5, and Rule 6 prescribes the standard of physical fitness for security guards. Under Rule 14 the security agency is required to maintain a Register in Form VIII, Part-I of which contains details of the management, Part-II contains the name of guard, his parentage, address, photograph, badge no. and the salary with the date of commencement. Part III contains the name of the customer, address, the number of guards deployed, date of commencement of duty and date of discontinuance. Part IV contains the name of the security guard/supervisor, address of the place of duty, if accompanied by arms, date and time of commencement of duty and date and time of end of duty.

9. We have no doubt in our mind that the appellant is engaged in the specialised and expert services of providing trained and efficient security guards to its clients on payment basis. The contention that the appellant merely facilitated in providing Chowkidars cannot be countenanced. The provisions of the Act of 2005 make it manifest that the appellant is the employer of such security guards and who are its employees and are paid wages by the appellant. Merely because the client pays money under a contract to the appellant and in turn the appellant pays the wages of such security guards from such contractual amount received by it, it does not make the client the employer of the security guard nor do the security guards constitute employees of the client. The appellant therefore is squarely covered by the Notification dated 17.05.1971.

10. The appellant never made available the statutory registers under the Act of 2005 to the authorities under the EPF Act. In fact, we have no hesitation in holding that it actually withheld relevant papers. This coupled with the letter dated 03.04.2001 written by the appellant, the appellant's balance sheet seized for the financial years 2003-04, 2004-05, 2005-06 and 2006-07 showing payment of wages running into lacs, necessarily and only leads to the irresistible conclusion that the appellant has more than 20 employees on its roles. The provisions of the Act therefore necessarily apply to it.

11. *Krantikari Suraksha RakshakSanghatana* (supra) has no relevance to the present controversy as it concerned to the provision of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981. The applicability of the EPF Act did not fall for consideration there. *Saraswath Films* (supra) was in the context of the Employees' State Insurance Act, 1948 interpreting the term “immediate employer”, which again has no relevance to the present controversy.

12. That the provisions of the EPF Act are applicable to a private security agency engaged in the expert service of providing personnel to its client, if it meets the requirement of the EPF Act. The question is no more res integra evident from the discussions contained in *Group 4 Securitas Guarding Ltd.* v. *Employees Provident Fund Appellate Tribunal*, (2011) 184 DLT 591, *G4S Secure Solutions India Pvt. Ltd.* v. *The Regional Provident Fund Commissioner-I*, ILR 2018 Kar 2527, *Orissa State Beverages Corporation Limited* v. *Regional Provident Fund Commissioner*, 2016 LLR 413, *Roma Henney Security Services Private Limited* v. *Central Board of Trustees, EPF Organisation*, 2012 SCC OnLine Del 3597, *Sarvesh Security Services Private Limited* v. *University of Delhi*, 2017 SCC OnLine Del 12209.

13. The appeals are therefore dismissed and the interim order dated 12.05.2009 restraining coercive steps for enforcement of the demand notice dated 15.04.2009 is vacated.

5. *Jayant etc. v. State of Madhya Pradesh, 2020 SCC OnLine SC 989*

Decided on: 03.12.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice M.R. Shah

(The Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted

Facts

By the impugned common judgment and order dated 11.05.2020, the Madhya Pradesh High Court has dismissed the aforesaid applications filed under Section 482 Cr.P.C. to quash the respective FIRs for the offences under Sections 379 and 414, IPC, Sections 4/21 of the Mines & Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as the 'MMDR Act') and under Rule 18 of the M.P. Minerals (Prevention of illegal Mining, Transportation and Storage) Rules, 2006 (hereinafter referred to as the '2006 Rules'). The original petitioner as well as the State of Madhya Pradesh have preferred the present appeals against the impugned judgment and order.

On a surprise inspection, the respective Mining Inspectors checked the tractor/trolleys of the private appellants along with the minor mineral (sand/storage/yellow soil etc.) loaded in them. They handed over the tractor/trolleys to the concerned police stations to keep them in safe custody. Finding the private appellants indulged in illegal mining/transportation of minor mineral, the mining Inspectors prepared their respective cases under Rule 53 of the Madhya Pradesh Minor Mineral Rules, 1996 (hereinafter referred to as the '1996 Rules') and submitted them before the Mining Officers with a proposal of compounding the same for the amount calculated according to the concerned 1996 Rules. The concerned Mining Officers submitted those cases before the Collector, who approved the proposal. The violators accepted the decision and deposited the amounts determined by the Collector for compounding the cases. Their tractor/trolleys along with the minerals, which were illegally excavated/transported, were released.

However, in the light of the newspaper reports with respect to illegal excavation/transportation of mineral sand from Chambal, Shivna and Retam, it was revealed that illegal mining, storage and transportation of mineral sand was being carried out at large scale. It was also reported that despite the offences under Sections 379 and 414, IPC and the offences under the MMDR Act and the 2006 Rules were found attracted, necessary legal action has not been taken and the violators were permitted to go on compounding the offence under Rule 53 of the 1996 Rules. The learned Judicial Magistrate, First Class, Mandsuar took note of the aforesaid information and in the light of the decision in *State (NCT of Delhi)* v. *Sanjay*, (2014) 9 SCC 772 taking the view that offences under the IPC and offences under the MMDR Act are distinct and different and it is permissible to

lodge/initiate the proceedings for the offences under the IPC as well as under the MMDR Act, the learned Magistrate in exercise of powers conferred under Section 156(3), Cr.P.C. (suo motu) directed to register criminal case under Section 156(3) Cr.P.C. for initiation of investigation and for submitting of report after due investigation is conducted. The learned Magistrate also directed the concerned In-charge/SHOs of the concerned police stations to register the first information report and a copy of the first information report be sent to the learned Magistrate as per the provisions of Section 157, Cr.P.C.

That pursuant to the order passed by the learned Magistrate, the In-charge/SHOs of the concerned police stations lodged separate FIRs for the aforesaid offences for illegal mining/transportation of sand

That thereafter the private appellants and others approached the High Court to quash the aforesaid FIRs registered against them for illegal mining/transportation of sand by submitting the applications under Section 482, Cr.P.C. It was mainly contended on behalf of the private appellants and other violators that in view of Bar under Section 22 of the MMDR Act, the order passed by the learned Magistrate directing to register the FIRs is unsustainable and deserves to the quashed and set aside. It was also contended on behalf of the private appellants and other violators that once there was compounding of offence in exercise of powers under Rule 53 of the 1996 Rules and the violators paid the amount determined by permitting them to compound the offence, thereafter the Magistrate was not justified in directing to initiate fresh proceedings which would be hit by the principle of "double jeopardy". That by the impugned common judgment and order, the High Court has dismissed all the aforesaid applications relying upon the decision of this Court in the case of *Sanjay*.

Decision and observations

The Apex Court referred to its decision in *State (NCT of Delhi)* v. *Sanjay*, (2014) 9 SCC 772 wherein it was held that the prohibition contained in Section 22 of the MMDR Act against prosecution of a person except on a written complaint made by the authorised officer in this behalf would be attracted only when such person is sought to be prosecuted for contraventions of Section 4 of the MMDR Act and not for any act or omission which constitutes an offence under the Penal Code.

However, the Apex Court took note of the fact that in the case of *Sanjay* , the Apex Court had no occasion and/or had not considered when and at what stage the bar under Section 22 of the MMDR Act would be attracted. The Apex court then said, "The further question which is

required to be considered is, when and at what stage the Magistrate can be said to have taken cognizance attracting the bar under Section 22[6] of the MMDR Act?"

Regarding this issue, the Apex Court said that on a fair reading of Section 22 of the MMDR Act, the bar would be attracted when the Magistrate takes cognizance. After relying on several judicial pronouncements[7] on "cognizance", the Apex Court said:

> **29.** Applying the law laid down by this Court in the cases referred to hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173, Cr.P.C.
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> **30.** At this stage, it is required to be noted that as per Section 21 of the MMDR Act, the offences under the MMDR Act are cognizable. 10.2 As specifically observed by this Court in the case of *Anil Kumar* (supra), 'when a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage'.
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> **31.** Even as observed by this Court in the case of *R.R. Chari* (supra), even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution Bench of this Court in the case of *A.R. Antulay* (supra), filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Therefore, when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case, when such an order is made the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with respect to taking cognizance by the learned Magistrate would arise.

The Apex court concluded in the following words:

> **36.** After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court

[6]**Section 22.** ***Cognizance of offences.***—No court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

[7]*Krishna Pillai* v. *T.A. Rajendran*, 1990 Supp SCC 121; *A.R. Antulay* v. *Ramdas Sriniwas Nayak*, (1984) 2 SCC 500; *Manohar M. Galani* v. *Ashok N. Advani*, (1999) 8 SCC 737; *S.K. Sinha, Chief Enforcement Officer* v. *Videocon International Limited*, (2008) 2 SCC 492; *Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157; *Subramanian Swamy* v. *Manmohan Singh*, (2012) 3 SCC 64; *Anil Kumar* v. *M.K. Aiyappa*, (2013) 10 SCC 705

in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

37. In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the MMDR Act - Sections 4/21 of the MMDR Act only. The appeal preferred by the State of Madhya Pradesh stands dismissed.

6. *Chaman Lal v. State of Himachal Pradesh, 2020 SCC OnLine SC 988*

Decided on: 03.12.2020

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M. R. Shah

(Law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittalreiterated)

Facts

The father of the prosecutrix lodged an FIR against the accused with the allegations that on 1.4.2008, his wife Dhaneshwari Devi telephonically informed him at Shimla that their daughter (prosecutrix) is pregnant. It was alleged that the prosecutrix told her mother that when she used to go to jungle to graze goats and cattle, accused also used to go to jungle to graze cattle and goats. The prosecutrix told her mother that three-four months ago, accused had sexual intercourse with her forcibly and without her consent. That the accused threatened the prosecutrix not to disclose the incident to anyone. That due to fear and due to forgetting the same and further due to mental weakness, she did not disclose about the incident to anyone including her mother. That the prosecutrix was got medically examined and as per the Medical Officer the prosecutrix was carrying a pregnancy of 31 weeks. Her age was stated to be 19 years. Prosecutrix was alleged to be mentally retarded. She was medically examined at IGMC, Shimla as well as PGI, Chandigarh. Prosecutrix gave birth to a female child on 19.6.2008 at KNH, Shimla. Blood samples of the prosecutrix, the baby and the accused were taken for DNA test. As per report, accused was the biological father of the female child. The accused was arrested. After completion of the investigation, the Investigating Officer submitted the chargesheet against the accused for the offences under Sections 376 and 506 IPC. The accused pleaded not guilty and therefore he came to be tried by the learned trial Court for the aforesaid offences. The learned trial Court acquitted the accused mainly on the ground of delay in lodging the FIR and also on the ground that the prosecutrix was not mentally unsound to understand the consequences and what was happening.

Feeling aggrieved and dissatisfied with the judgment and order of acquittal passed by the learned trial Court, the State preferred appeal before the High Court and by the impugned judgment and order and on re-appreciation of the entire evidence on record, more particularly the medical evidence, the High Court has reversed the order of acquittal and has convicted the accused for the offences under Sections 376 and 506 IPC by observing that the prosecutrix was not in a position to understand the good and bad aspect of the sexual assault. On re-appreciation of the entire evidence on record, the High Court came to the conclusion that the IQ of the prosecutrix was 62 and that she had mild mental retardation.

Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the High Court convicting the accused for the aforesaid offences, the original accused has preferred the present appeal.

Decision and Observations

The Apex Court considered the question whether the High Court is justified in interfering with the order of acquittal passed by the trial Court and thereby convicting the accused. The Apex Court referred to the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal.

The Apex court referred to para 12 to 19 of its decision in *Babu* v. *State of Kerala,* (2010) 9 SCC 189 which is being reproduced below:

> 12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. .....
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> 13. In *Sheo Swarup* v. *King Emperor*, AIR 1934 PC 227, the Privy Council observed as under :
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> "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."
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> 14. .....
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> 15. In *Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415, this Court reiterated the legal position as under :
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> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that

every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

16. In *Ghurey Lal* v. *State of U.P.*, (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan* v. *Naresh*, (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that :

> "*20.* ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P.* v. *Banne*, (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include :

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal* v. *State*, (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

The Apex Court also referred to its recent decision in *Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436, wherein the Court had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal.

This Court considered catena of decisions of this Court right from 1952 onwards. Relevant is para 31 of that decision.
The Apex Court then said the following:

> **22.** Having gone through the impugned judgment and order passed by the High Court and also the judgment and order of acquittal passed by the learned trial Court, we are of the firm opinion that in the facts and circumstances of the case the High Court is justified and, as such, has not committed any error in reversing the order of acquittal passed by the learned trial Court and convicting the accused for the offences under Sections 376 and 506 IPC. Being the first appellate Court and as observed hereinabove in the aforesaid decisions the High Court was justified in re-appreciating the entire evidence on record and the reasoning given by the learned trial Court. In the facts and circumstances of the case, the High Court has acted within the parameters of the law laid down by this Court in the decisions, referred to hereinabove.

7. *Skill Lotto Solutions Pvt. Ltd. v. Union of India and Others, 2020 SCC OnLine SC 990*

Decided on: 03.12.2020

Bench: 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(The inclusion of actionable claim in definition "goods" as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods and is neither illegal nor unconstitutional.)

Background

The petitioner, an authorized agent, for sale and distribution of lotteries organized by State of Punjab has filed the writ petition impugning the definition of goods under Section 2(52) of Central Goods and Services Tax Act, 2017 and consequential notifications to the extent it levies tax on lotteries. The petitioner seeks declaration that the levy of tax on lottery is discriminatory and violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

The Parliament enacted the Lotteries (Regulation) Act, 1998 to regulate the lotteries and to provide for matters connected therewith and incidental thereto. Section 2(b) of the Act defines lottery which provides that "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets. Section 4 provides that a State Government may organise, conduct or promote the lottery subject to conditions enumerate therein. Different States have been organizing and conducting lotteries in accordance with the aforesaid Act. It is to be noted that prior to parliamentary enactment for regulating the lotteries, different States have enacted legislation regulating the lotteries which were the legislations even prior to the enforcement of the Constitution, levying tax on the sale of lottery tickets. Reference is made to Bengal Finance Sales Tax Act, 1941 and Madras General Sales Tax Act, 1939. Another Statute to be noticed is Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act, 1958.

Service tax was levied on lottery tickets by Finance Act, 1994. A Circular dated 14/21.2.2017 was also issued providing for mode of determination of the amount of service tax. Rules were also framed namely Lotteries (Regulation) Rules, 2010 by the Central Government containing a set of rules for regulation of the lotteries organized by the States.

By Constitution (One Hundred and First Amendment) Act, 2016, Article 246A was inserted in the Constitution containing special provisions with respect to Goods and Services Tax. Article 269A and Article 279A were also inserted by same constitutional amendment. Article 279A provided for constitution of Goods and Services Tax Council. The Parliament enacted the Central Goods and Services Tax Act, 2017 (Act No. 12 of 2017) to make provisions for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. The Act came into force w.e.f. 12.04.2017. The Parliament also enacted the Integrated Goods and Services Tax Act, 2017 (Act No. 13 of 2017), the Union Territory Goods and Services Tax Act, 2017 (Act

No. 14 of 2017) and the Goods and Services Tax (compensation to States) Act, 2017 (Act No. 15 of 2017).

Under Section 2(52) of Central Goods and Services Tax Act, 2017, the term "goods" has been defined which provides that "goods" means every kind of movable property other than money and securities but includes actionable claim……. Chapter III of the Act provides for levy and collection of tax. Section 15 deals with value of taxable supply. After the enactment of Act No. 12 of 2017, Notification was issued by Government of India dated 28.06.2017 in exercise of power conferred by sub-section (1) of Section 9 notifying the rate of the integrated tax. By the notification dated 28.06.2017 with regard to lottery run by the State Government, value of supply of lottery was deemed to be 100/112 of the face value of the ticket or the prize as notified in the official gazette of the organising State, whichever is higher. With regard to lotteries authorised by the State Government value of supply of lottery was deemed to be 100/128.

Issues

(i) Whether the writ petition is not maintainable under Article 32 of the Constitution of India since the writ petition relates to lottery, which is *res extra commercium* and the petitioner cannot claim protection under Article 19(1)(g)?

(ii) Whether the inclusion of actionable claim in the definition of goods as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is contrary to the legal meaning of goods and unconstitutional?

(iii) Whether the Constitution Bench judgment of this Court in *Sunrise Associates* (supra) in paragraphs 33, 40, 43 and 48 of the judgment has laid down as the proposition of law that lottery is an actionable claim or the observations made in the judgment were only an *obiter dicta* and not declaration of law?

(iv) Whether exclusion of lottery, betting and gambling from Item No. 6 Schedule III of Central Goods and Services Tax Act, 2017 is hostile discrimination and violative of Article 14 of the Constitution of India?

(v) Whether while determining the face value of the lottery tickets for levy of GST, prize money is to be excluded for purposes of levy of GST?

Decision and Observations

Regarding the maintainability of the writ petition the Apex Court opined that the petitioner has challenged the provisions of Central Goods and Services Tax Act, 2017 insofar as it imposes tax on the lottery. The grounds of challenge include violation of Article 14 of the Constitution of India. The levy of GST has been attacked as discriminatory. It is also submitted that there is a hostile discrimination in taxing only lottery, betting and gambling

whereas leaving all other actionable claims from the taxing net as is evident by entry 6 of Schedule III of Act, 2017.

Regarding issue II and III, the Apex Court considered as to what is the legal meaning of goods and whether actionable claim can also be a part of goods.

> **48.** It cannot be said that the question as to whether lottery is a goods or actionable claim had not arisen in the decision in *Sunrise Associates*. When an item was covered by excluded category, the said conclusion could have been arisen only after consideration of the definition and the exclusionary clause. We, thus, are not in agreement with the submission of the learned counsel for the petitioner that the observations of the Constitution Bench holding lottery as actionable claim is only obiter dicta and not binding. The Constitution Bench in *Sunrise Associates* has categorically held that lottery is actionable claim after due consideration which is ratio of the judgment. When Section 2(52) of Act, 2017 expanded the definition of goods by including actionable claim also, the said definition in Section 2(52) is in the line with the Constitution Bench pronouncement in *Sunrise Associates* and no exception can be taken to the definition of the goods as occurring in Section 2(52).
>
> **49.** We are of the view that definition of goods under Section 2(52) of the Act, 2017 does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12). Article 366 clause(12) as observed contains an inclusive definition and the definition given in Section 2(52) of Act, 2017 is not in conflict with definition given in Article 366(12). As noted above the Parliament by the Constitution(One Hundred and First Amendment) Act, 2016 inserted Article 246A. a special provision with respect to goods and services tax. The Parliament was fully empowered to make laws with respect to goods and services tax. Article 246A begins with non obstante clause that is "Notwithstanding anything contained in Articles 246 and 254", Which confers very wide power to make laws. The power to make laws as conferred by Article 246A fully empowers the Parliament to make laws with respect to goods and services tax and expansive definition of goods given in Section 2(52) cannot be said to be not in accord with the constitutional provisions.
>
> **61.** The inclusion of actionable claim in definition "goods" as given in Section 2(52) of Central Goods and Services Tax Act, 2017 is not contrary to the legal meaning of goods and is neither illegal nor unconstitutional.
>
> **62.** The Constitution Bench judgment of this Court in *Sunrise Associates* has laid down that lottery is an actionable claim as proposition of law. The observation cannot be said to be *obiter dicta*.

Regarding issue IV, the Apex Court said the following:

> **70.** Lottery, betting and gambling are well known concepts and have been in practice in this country since before independence and were regulated and taxed by different legislations. When Act, 2017 defines the goods to include actionable claims and included only three categories of actionable claims, i.e., lottery, betting and gambling for purposes of levy of GST, it cannot be said that there was no rationale for including these three actionable claims for tax purposes. Regulation including taxation in one or other form on the activities namely lottery, betting and gambling has been in existence since last several decades. When the parliament has included above three for purpose of imposing GST and not taxed other actionable claims, it

cannot be said that there is no rationale or reason for taxing above three and leaving others.

71. It is a duty of the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The Constitution Bench in *State of Bombay* v. *R.M.D. Chamarbaugwala* (supra) has clearly stated that Constitution makers who set up an ideal welfare State have never intended to elevate betting and gambling on the level of country's trade or business or commerce. In this country, the aforesaid were never accorded recognition of trade, business or commerce and were always regulated and taxing the lottery, gambling and betting was with the objective as noted by the Constitution Bench in the case of *State of Bombay* v. *R.M.D. Chamarbaugwala* (supra), we, thus, do not accept the submission of the petitioner that there is any hostile discrimination in taxing the lottery, betting and gambling and not taxing other actionable claims. The rationale to tax the aforesaid is easily comprehensible as noted above. Hence, we do not find any violation of Article 14 in Item No. 6 of Schedule III of the Act, 2017.

Regarding the issue V, the Apex Court said the following;

78. For determining the value of the lottery, now, there is statutory provision contained in Section 15 read with Rule 31A as noted above. Section 15 of the Act, 2017 by sub-section (2) it is provided what shall be included in the value of supply. What can be included in the value is enumerated in sub-clause (a) to (e) of sub-section (2) of Section 15. Further, subsection (3) of Section 15 provides that what shall not be included in the value of the supply. When there are specific statutory provisions enumerating what should be included in the value of the supply and what shall not be included in the value of the supply we cannot accept the submission of the petitioner that prize money is to be abated for determining the value of taxable supply. What is the value of taxable supply is subject to the statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in the value of taxable supply cannot be added by judicial interpretation.

79. Further, Rule 31A as noted above, sub-rule (2) as amended clearly provides that value of supply shall be deemed to be 100/128 of the face value of ticket or of the prize as notified in the Official Gazette by the Organising State, whichever is higher. Learned Additional Solicitor General has explained the working of Rule 31A of Rules by giving an example:

"For example, if Rs. 100 is the face value of lottery ticket, 28% GST is levied only on Rs. 78.125[(100*28)/128]. GST amount will be 21.875. Therefore, Rs. 100 includes GST of 21.875 on the taxable value of Rs. 78.125. This is a mechanism to split the face value of Rs. 100 in two parts (A and B). A is the transaction value. B is GST on A. The formula as above is to come to A by reverse calculation."

80. The value of taxable supply is a matter of statutory regulation and when the value is to be transaction value which is to be determined as per Section 15 it is not permissible to compute the value of taxable supply by excluding prize which has been contemplated in the statutory scheme. When prize paid by the distributor/agent is not contemplated to be excluded from the value of taxable supply, we are not persuaded to accept the submission of the petitioner that prize money should be excluded for computing the taxable value of supply the prize money should be excluded. We, thus, conclude that while determining the taxable value of supply the prize money is not to be excluded for the purpose of levy of GST.

8. *National Medical Commission v. MothukuruSriyahKoumudi and Others, 2020 SCC OnLine SC 992*

Decided on: 07.12.2020
Bench: 1. Hon'ble Mr. Justice **L. Nageswara Rao**
2. Hon'ble Mr. Justice Hemant Gupta

(Directions issued in *S. Krishna Sradha* case can be made applicable to admission to Post Graduate Courses as well.)

Facts

Aggrieved by the denial of admission to 1st year Post-Graduate Medical Specialty course of MS (General Surgery) for the academic year 2020-2021, the Respondent No. 1 filed a Writ Petition in the High Court of Judicature at Hyderabad for the State of Telangana. The High Court allowed the Writ Petition and directed the Appellant-National Medical Commission/Medical Council of India to create or sanction one seat in MS (General Surgery). A further direction was given to Respondent No. 2- Kamineni Academy of Medical Sciences and Research Centre, Hyderabad to grant admission to the Respondent No. 1 in MS (General Surgery) course. The judgment of the High Court is challenged in the above Appeal.

The Respondent No. 1 passed the final year MBBS Examination in January, 2019. She completed the one-year Compulsory Rotary Internship as a Resident Intern from 28.03.2019 to 27.03.2020 at Malla Reddy Narayana Multispecialty Hospital. Thereafter, she was awarded Bachelor of Medicine and Bachelor of Surgery Degree on 11.06.2020. In the meanwhile, she appeared in the All-India National Eligibility-cum-Entrance Test (NEET) Medical PG Entrance examination, 2020 on 05.01.2020. She secured All India Rank-93563 with 327 marks in the NEET examination for admission into Post Graduation Medical Course. The Respondent No. 1 was called for counselling and was given provisional admission to the MS (General Surgery) course in the Mop-up Phase (MQ)-P3 on 28.07.2020 and was allotted to the Respondent No. 2- College under Management Quota. According to the provisional allotment order, Respondent No. 1 was required to report before the Principal of Respondent No. 2-College by 04: 00 PM on 30.07.2020. In case of failure to report before Respondent No. 2-College within the prescribed time, the provisional selection of Respondent No. 1 shall be automatically cancelled. According to Respondent No. 1, she approached Respondent No. 2-College along with her father on 29.07.2020 and 30.07.2020 for submission of certificates and payment of tuition fees as well as college fees. In spite of her presence in Respondent No. 2-College, the admission of Respondent No. 1 was not completed. On 30.07.2020, the last date for admission into PG Medical Courses was extended till 30.08.2020 pursuant to the directions issued by this Court. Respondent No. 1 made an attempt to meet the Chairman of Respondent No. 2-College on 07.08.2020. However, she was not permitted to meet the Chairman.

Having left with no other alternative, Respondent No. 1 filed a Writ Petition for seeking a declaration that denial of admission to her in the PG Medical Course for the academic year 2020-2021 as illegal.
By its judgment dated 18.09.2020, a Division Bench of the High Court allowed the Writ Petition and directed the Appellant to create a seat in MS (General Surgery) and to grant admission to Respondent No. 1. The High Court disbelieved the statement of Respondent

No. 2-College that Respondent No. 1 did not approach the College either on 29.07.2020 or 30.07.2020. The admission granted to Respondent No. 5 who is 2000 ranks below Respondent No. 1 on 11.08.2020 was found fault with by the High Court. As Respondent No. 1 was illegally denied admission by Respondent No. 2-College, the High Court directed creation of a seat and to grant admission in MS (General Surgery) to her. Admission that was granted to Respondent No. 5 was not interfered with as he might have been an innocent party unaware of the circumstances in which seat was denied to Respondent No. 1 by Respondent No. 2-College. The Appellant is mainly aggrieved by the direction given by the High Court to create or sanction an additional seat in Post-Graduate Medical Specialty course of MS (General Surgery) for the academic year 2020-2021.

Decision and Observations

9. The question that arises for our consideration is whether the High Court was right in directing creation of a seat for this academic year for granting admission to Respondent No. 1. It has been repeatedly held by this Court that directions cannot be issued for increasing annual intake capacity and to create seats. The annual intake capacity is fixed by the Medical Council of India (now National Medical Commission) which has to be strictly adhered. Admissions to Medical Colleges cannot be permitted to be made beyond the sanctioned annual intake capacity of a medical college as has been repeatedly held by this Court.

10. The next point that arises for our consideration is whether Respondent No. 1 can be left high and dry in spite of having suffered due to the illegal action of Respondent No. 2-College in denying admission to her. This Court in *S. Krishna Sradha* (supra) had occasion to consider the nature of relief to be granted to a student after the last date of admissions in case it is found that he or she was denied admission illegally. The conflicting judgments of this Court in *Asha* v. *Pt. D.B. Sharma University of Health Sciences* (2012) 7 SCC 389 and *Chandigarh Administration* v. *Jasmine Kaur* (2014) 10 SCC 521 was resolved by this Court in the judgment of *S. Krishna Sradha* (supra). In the case of *Asha* (supra), it was held by this Court that the rule of merit for preference of medical courses and colleges admits no exception and that the said rule has to be followed strictly and without demur. The last date for admissions has to be strictly followed except in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency. In such cases, admission can be granted by courts even after the last date. A contrary view was taken in *Jasmine Kaur case* (supra) wherein this Court was of the opinion that a student is only entitled to a compensation in cases of illegal denial of admission and no admission can be directed after the last date. In *S. Krishna Sradha case* (supra), this Court held as follows:

"33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the Court

under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course."

11. As the dispute in *S. Krishna Sradha case* (supra) pertained to admission to the undergraduate MBBS Course, this Court held that they have not dealt with the Post Graduate Medical Courses. Mr. Parameshwar argued that there is no reason why the logic behind the judgment in *S. Krishna Sradha case* (supra) should not be made applicable to Post Graduate Courses. We find force in the said argument of Mr. Parameshwar. This Court was only dealing with the admission to the MBBS Course for which reason directions given in the said judgment were restricted to the MBBS Course. Directions issued in *S. Krishna Sradha case* (supra) can be made applicable to admission to Post Graduate Courses as well.

12. As the last date for admissions for the present academic year is 30.08.2020, we are not inclined to grant admission to Respondent No. 1 for this academic year. Even if the admission of Respondent No. 5 is cancelled as having not been in accordance with the Regulations, it would not be of any use to Respondent No. 1 or to any other eligible candidate. Furthermore, the High Court is right in holding that Respondent No. 5 might not have known about the denial of admission to Respondent No. 1 illegally. Though we disapprove the practice of Respondent No. 2-College in picking up students for granting admission without following the merit list, we do not seek to disturb the admission granted to Respondent No. 5. Respondent No. 2-College adopted unfair means to deprive Respondent No. 1 admission to PG course. Respondent No. 1 has lost one precious academic year for no fault of hers for which she has to be compensated by way of an amount of Rs. 10 Lakhs to be paid by Respondent No. 2- College within a period of four weeks from

today. Furthermore, Respondent No. 1 is entitled for admission to the MS (General Surgery) course in the next academic year 2021-22 and shall be given admission in a seat allocated to Respondent No. 2-College. In other words, one seat in MS (General Surgery) course from the Management Quota of Respondent No. 2-College for the next academic year (2021-22) shall be granted to Respondent No. 1.

13. The Appeal is disposed off with the above directions.

9. *Vikesh Kumar Gupta and Another v. State of Rajasthan and Others, 2020 SCC OnLine SC 993*

Decided on: 07.12.2020

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2.Hon'ble Mr. Justice Hemant Gupta
3. Hon'ble Mr. Justice Ajay Rastogi

(Judicial review with regards to re- evaluation of answer sheets- Courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible.)

Facts

Mr. Vikesh Kumar Gupta and Mr. Mahesh Kumar Meena, the Appellants herein, have filed SBCWP No. 10992 of 2019 in the High Court of Judicature for Rajasthan, Jaipur Bench aggrieved by their non-selection to the post of Senior Teacher (Grade II) in Social Science. By an order dated 10.07.2019, the High Court stayed the appointments to the post of Senior Teachers (Social Science) pursuant to the Advertisement dated 13.07.2016 till further orders. The said order was challenged by some of the candidates who were selected. By an order dated 24.07.2019, the Division Bench of the High Court set aside the interim order dated 10.07.2019. While doing so, the Writ Petition filed by Mr. Vikesh Kumar Gupta and Mr. Mahesh Kumar Meena was disposed of along with a connected Writ Petition filed by Mr. Mukesh Kumar Sharma and others. The Appellants challenged the said judgment of the Division Bench dated 24.07.2019 in the appeals.

For the sake of convenience, we refer to the facts of the Appeals arising out of SLP (C) Nos. 20512-20513 of 2019. An advertisement was issued by the Rajasthan Public Service Commission (for short "the RPSC") on 13.07.2016 for selection of 9,551 Senior Teachers (Grade II) in Social Science, Sanskrit, Hindi, English and Mathematics. Written examinations were conducted on 01.05.2017 and 02.07.2017 in General Knowledge and Social Science respectively. The RPSC issued the 1st Answer Key on 06.02.2018 and declared the results. The names of the Petitioners were mentioned in the list of selected candidates but they could not be appointed due to certain defects in the detail forms filed by the Petitioners after their selection. On 25.04.2018, a Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench referred 3 questions in the 1st Answer Key to be reconsidered by an Expert Committee. Shortly thereafter, a Single Judge of the High Court of Judicature for Rajasthan, Jodhpur Bench referred another 8 questions for reconsideration by an Expert Committee on 05.05.2018. An Expert Committee constituted by the RPSC revised the Key Answers for 2 questions in Social Science and 1 question in General Knowledge. A revised Key Answer, which shall be referred to as the 2nd Answer Key, was issued pursuant thereto, and the Merit List was also revised on 17.09.2018. The names of the Petitioners were not included in the revised Merit List.

The judgment dated 05.05.2018 of the learned Single Judge of the High Court of Judicature for Rajasthan, Jodhpur Bench by which 8 questions were referred to the Expert Committee for reconsideration was the subject matter of appeal before a Division bench of the High Court. The grievance of the Appellants therein was that they had challenged the correctness

of 33 questions which required to be referred to an Expert Committee. The High Court examined the correctness of the disputed questions by itself and came to a conclusion that the answers to 5 questions were wrong. After being informed that the results have been announced and the selection process was completed, the Division Bench of the High Court by its judgment dated 12.03.2019 in D.B. Special Appeal Writ No. 922 of 2018 directed revision of the Select List and give benefit of the revision only to the Appellants before the Court. The Appeal arising out of SLP (C) Nos. 10035-36 of 2020 is filed questioning the correctness of the judgment dated 12.03.2019.

On 13.03.2019, a direction was issued by a learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench that the names of the ineligible candidates should be deleted from the Select List and a revised Select List shall be issued. The 3rd Answer Key was published by the RPSC on 08.04.2019 but the benefit of the said revision was given only to the Appellants in the D.B. Special Appeal Writ No. 922 of 2018. The direction issued by the learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench on 13.03.2019 was implemented and the Select List was revised on 21.05.2019 by excluding ineligible candidates. The names of 124 candidates were included in the said revised Select List which was prepared on the basis of the 2nd Answer Key. A Waiting List was prepared on 22.05.2019 by the RPSC, again on the basis of the 2nd Answer Key.

The grievance of the Appellants in the Writ Petition was the preparation of the revised Select List of 21.05.2019 on the basis of the 2nd Answer Key. In the Appeal preferred against the interim order passed by the learned Single Judge on 10.07.2019 in the Writ Petition filed by the Appellants, the Division Bench of the High Court considered the matter in detail and disposed of the Writ Petition filed by the Appellants. The interim order in favour of the Appellants in the Writ Petition was set aside.

While taking note of the entire gamut of the litigation arising out of the Notification issued on 13.07.2016 for selection to the posts of Senior Teachers, the Division Bench was of the considered opinion that there was confusion that was caused due to divergent directions given by different Benches of the High Court. The Division Bench found that the judgment of the Division Bench in D.B. Special Appeal Writ No. 922 of 2018 dated 12.03.2019 was not brought to the notice of the learned Single Judge when he issued a direction to revise the Select List on 13.03.2019. It was held that the Appellants were not entitled to any relief as the direction given by the Division Bench in its judgment dated 12.03.2019 to revise the Select List on the basis of the findings recorded therein was made applicable only to the Appellants therein and not to other candidates. The Select List that was issued on the basis of the 2nd Answer Key was approved by the Division Bench and the RPSC was directed to proceed with the selection and issue appointments on the basis of the List published on 16.04.2019. The Waiting List that was prepared on 22.05.2019 was also upheld by the Division Bench.

Decision and Observations

The relevant extracts from the judgment are as follows:

> **11.** The point that arises for the consideration of this Court is whether the revised Select List dated 21.05.2019 ought to have been prepared on the basis of the 2nd Answer Key. The Appellants contend that the Wait List also should be prepared on the basis of the 3rd Answer Key and not on the basis of the 2nd Answer Key. The 2nd Answer Key was released by the RPSC on the basis of the recommendations made by the Expert Committee constituted pursuant to the directions issued by the

High Court. Not being satisfied with the revised Select List which included only a few candidates, certain unsuccessful candidates filed Appeals before the Division Bench which were disposed of on 12.03.2019. When the Division Bench was informed that the selections have been finalized on the basis of the 2nd Answer Key, it refused to interfere with the Select List prepared on 17.09.2018. However, the Division Bench examined the correctness of the questions and Answer Keys pointed by the Appellants therein and arrived at a conclusion that the answer key to 5 questions was erroneous. On the basis of the said findings, the Division Bench directed the RPSC to prepare revised Select List and apply it only to the Appellants before it.

12. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of reevaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates (*Himachal Pradesh Public Service Commission* v. *Mukesh Thakur*)[(2010) 6 SCC 759]Courts have to show deference and consideration to the recommendation of the Expert Committee who have the expertise to evaluate and make recommendations [See-*Basavaiah (Dr.)* v. *Dr. H.L. Ramesh*)[(2010) 8 SCC 372] Examining the scope of judicial review with regards to reevaluation of answer sheets, this Court in *Ran Vijay Singh* v. *State of Uttar Pradesh*[(2018) 2 SCC 357]held that court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows:

"31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being

worse confounded. The overall and larger impact of all this is that public interest suffers."

13. .....

14. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel.

15. .....

16. We uphold the Select List dated 21.05.2019 and the Wait List dated 22.05.2019 prepared on the basis of the 2nd Answer Key.

10. State of M.P. v. U.P. State Bridge Corp.Ltd., (2020 SCC OnLine SC 1001)

Decided on : -08.12.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice K.M. Joseph

(Parameters for judicial interference in tender/contract matters discussed)

Facts

These appeals were related to a notice inviting tender ["**N.I.T.**"] dated 02.12.2019 by the State of Madhya Pradesh, Public Works Department ["**PWD**"]. The N.I.T. was for the construction of an Elevated Corridor (Flyover) from LIG Square to Navlakha Square (Old NH 3) A-B Road in Indore district in the State of Madhya Pradesh of a length of 7.473 kilometers. The work was for an estimated cost of Rs. 272.66 crores, to be completed within a period of 24 months including the rainy season.

Eleven companies bid for the aforesaid project, including U.P. State Bridge Corporation Limited ["**UPSBC**"], Rajkamal Builders Infrastructure Pvt. Ltd. ["*Rajkamal Builders*"] and Rachana Construction Co. Insofar as UPSBC is concerned, the State of Madhya Pradesh rejected its bid on the ground that the bidder suppressed information required under paragraph 13 of Appendix IA and clause 7(b) of Annex I. Hence, the aforesaid bid was considered to be non-responsive. Likewise, insofar as Rachana Construction Co. is concerned, it did not fulfil the criteria under clause 2.2.2.2(ii) of the N.I.T. for "one similar work" of 25% of the estimated project cost, and was also therefore considered non-responsive. Pursuant to the rejection of the technical bid of UPSBC in the Technical Evaluation Committee's meeting held on 13.03.2020, Writ Petition No. 6681 of 2020 was filed by UPSBC and by an interim order dated 17.03.2020, the financial bid of UPSBC was ordered to be opened.

On the opening of the financial bids, it was found that UPSBC had bid for a sum of Rs. 306.27 crores and Rajkamal had bid for Rs. 315.80 crores. Being disqualified, Rachana Construction Co.'s bid for Rs. 293.25 crores was not under consideration.

By the impugned judgment dated 15.06.2020 in Writ Petition No. 6681 of 2020 filed by UPSBC, it was held that as on the date of submission of the technical bid, since no investigation was pending within the meaning of clause 7(b) of Annex I, there was no suppression of facts by UPSBC, despite the fact that an FIR dated 15.05.2018 had been lodged against it in respect of a particular bridge constructed by it at Janpad, Varanasi which had collapsed, killing 15 persons and injuring 11 persons. The investigation in this case resulted in a charge sheet being filed. After the trial commenced, the High Court of Judicature at Allahabad, by an order dated 30.07.2019, stayed the trial. Despite these facts not being stated in the bid document submitted by UPSBC, the High Court found that there was no

suppression of facts, as clause 7(b) of Annex I only required details as to investigations that were pending, and as "investigation" as defined under the Code of Criminal Procedure ["**Cr.P.C.**"] was different from inquiries and trials, there was no need to disclose the FIR and its aftermath, as there was no "investigation pending" strictly speaking, as it had culminated in a charge sheet. The High Court was also swayed by the fact that there was a difference of Rs. 9 crores between the financial bids of UPSBC and Rajkamal. Public interest therefore demanded that the rejection of UPSBC's technical bid be set aside. The State of Madhya Pradesh was therefore directed to issue a letter of intent ["**LOI**"] in favour of UPSBC for the financial bid of Rs. 306.27 crores within a period of 30 days from the date of the judgment.

Meanwhile, Rachana Construction Co. also filed Writ Petition No. 8404 of 2020 challenging the rejection of its technical bid by the State of Madhya Pradesh. By the impugned judgment dated 02.07.2020, the High Court adverted to the judgment dated 15.06.2020 in UPSBC's writ petition and thereafter went on to examine whether Rachana Construction Co.'s bid had been rightly rejected. Insofar as Rachana Construction Co.'s bid was concerned, the High Court referred to clause 2.2.2.2(ii) in paragraph 9 of its judgment and held that there was nothing wrong with the State of Madhya Pradesh's rejection.

In addition, the High Court also held that Rachana Construction Co., despite knowing that UPSBC had filed a writ petition, neither intervened in the said writ petition nor filed an independent writ petition on its own until much later. Considering that the UPSBC had been declared as L-1 by a judgment dated 15.06.2020, UPSBC should have been arrayed as a respondent in the writ petition and not being so arrayed, the petition also suffered from non-joinder of a necessary party and therefore had to be dismissed.

Decision and Observations

The Hon'ble Court referred to the following cases and discussed the parameters of judicial review in matters such as the present one:-

- ***Tata Cellular* v. *Union of India*, (1994) 6 SCC 651**
- ***Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517**

"Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

- ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622***

  "48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

- ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818***
- ***Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272***
- ***Caratel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd., (2019) 14 SCC 81***

Applying the principles of law discussed in the aforementioned cases, the Hon'ble Court held as follows :-

27. It is clear that Shri Dhruv Mehta is right when he refers to and relies upon the aforesaid judgment for the proposition that where there is a format which had to be strictly complied with, his client was justified in going by the literal reading of the aforesaid format, which only required a disclosure of pending investigations under clause 7(b) of Annex I of the N.I.T. However, as has correctly been pointed out by Shri Saurbh Mishra and Shri Puneet Jain, clause 7(b) of Annex I, which is in terms similar to paragraph 13 of Appendix IA, must be read together with paragraph 11 thereof, which, as has been pointed out hereinabove, requires the bidder to certify that in regard to matters other than security and integrity of the country, the bidder has not been convicted by a court of law or indicted. Clearly in the facts of the present case, though the investigation is no longer pending and though there is no conviction by a court of law, UPSBC has certainly been "indicted", in that, a charge sheet has been filed against it relatable to the FIR dated 15.05.2018 in which a trial is pending, though stayed by the High Court. Also, Shri Saurabh Mishra is correct in stating that "fraudulent practice", as defined in clause 4.3(b) of the N.I.T., would include an omission of facts or disclosure of incomplete facts in order to influence the bidding process. In the facts of the present case, there is clearly an omission of a most relevant fact and suppression of the same fact, namely that an FIR had been lodged against UPSBC in respect of the construction of a bridge by it, which had collapsed, and in which a charge sheet had been lodged.

28. This being the case, *Secy., Deptt. of Home Secy., A.P.* v. *B. Chinnam Naidu*, (2005) 2 SCC 746 is clearly distinguishable, as in the facts of that case, the expression "convicted" could not have possibly included the factum of arrest which was pre-conviction. On the

facts of the present case, we have seen as to how UPSBC has indulged in a fraudulent practice and has suppressed the fact that it was indicted for offences relatable to the construction of a bridge by it, which had collapsed. Equally, paragraphs 12 to 18 of the judgment in *Vinubhai Haribhai Malaviya* v. *State of Gujarat*, (2019) 17 SCC 1, which distinguish between investigation, inquiry and trial in a criminal case, are also of no avail to UPSBC in view of the finding hereinabove. Equally, the well-known rule of contra proferentem as expounded in *Bank of India* v. *K. Mohandas*, (2009) 5 SCC 313 (at paragraph 32) is also of no avail, given the fact that there is no ambiguity whatsoever insofar as the fraudulent practice clause and paragraph 11 of Appendix IA are concerned.

29. Adverting to Shri Dhruv Mehta's argument that his client has been non-suited only on application of clause 7(b) of Annex I, a reference to the Technical Evaluation Committee's order dated 13.03.2020 declaring UPSBC's bid non-responsive shows that it also refers to Appendix IA comprising the technical bid and paragraph 13 thereof, in particular. We have already held that paragraph 13 has to be read along with paragraph 11, which clearly states that a person who is "indicted" for a criminal offence has to disclose the factum of indictment. A technical objection based on the rejection order cannot be allowed to prevail in the face of the suppression of a most material fact, that is of an FIR pertaining to the construction of a bridge by UPSBC, which has collapsed.

30. Coming to the public interest factor, and the fact that the financial bid of UPSBC is about Rs. 9 crores less than that of Rajkamal, the sting has been removed inasmuch as Shri Puneet Jain readily accepts that if, as a result of UPSBC being disqualified, his client is to be awarded the tender, he will do so at the same amount as the financial bid of UPSBC. For all these reasons, the impugned judgment dated 15.06.2020 is set aside.

31. We now come to *Rachana Construction Co.'s case*. Insofar as Rachana Construction Co. is concerned, it will not be open for a constitutional court, in accordance with all the decisions cited hereinabove, to substitute their view of the view of the tendering authority, when it reads clause 2.2.2.2(ii) in the manner that has been done. Suffice it to say that the expression "at least one similar work" could possibly mean only one such work, namely, the construction of one such bridge and not two such bridges, even if two bridges were to be constructed under the same tender document. It is not possible, therefore, for this Court to say that the construction of the aforesaid clause by the tendering authority is an impossible one rendering it perverse. Also, Shri Puneet Jain's argument, though made here for the first time, does support the State of Madhya Pradesh, in that the two road over bridges that have been constructed under the agreement between DFCCIL and Rachana Construction Co. have a span of only 2380 meters taken together, which is certainly less than 50% of 7.473 kilometers. For these reasons, we dismiss Rachana Construction Co.'s SLP and uphold the judgment dated 02.07.2020 and the review judgment dated 04.08.2020.

32. Given the lapse of time taken in court proceedings, the State of Madhya Pradesh is directed to issue a LOI as soon as is practically possible to Rajkamal insofar as the present tender is concerned at the same financial bid as that of UPSBC. All the appeals are disposed of accordingly.

11. Anita Sharma v. New India Assurance Co. Ltd., (2020 SCC OnLine SC 1002)

Decided on : - 08.12.2020

Bench :- 1. Hon'ble Mr. Justice **Surya Kant**
2. Hon'ble Mr. Justice Aniruddha Bose

(Strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. Further, there is nothing in the Act to preclude citing of a witness in motor accident claim who has not been named in the list of witnesses in the criminal case. What is essential is that the opposite party should get a fair opportunity to cross examine the concerned witness. Once that is done, it will not be open to them to complain about any prejudice caused to them. If there is any doubt to be cast on the veracity of the witness, the same can come out in cross examination.)

Facts

Sandeep Sharma (deceased), was a resident of District Sikar in Rajasthan. He was travelling in a car bearing registration no. UP 65 AA 7100 from Ghazipur to Varanasi (Uttar Pradesh) on the night of 25.03.2009 along with his friend Sanjeev Kapoor (Respondent No. 2) and two other occupants. Sanjeev Kapoor, who was also its owner, was driving the car when at about 10: 20PM near village Atroli, a truck coming from the opposite side struck the car as a result of which all the occupants suffered injuries. Sandeep along with the other injured-occupants was rushed to the District Hospital in Ghazipur at around 11: 55PM, but was subsequently referred to the Institute of Medical Sciences and S.S. Hospital, BHU, Varanasi on 26.03.2009 considering the severity and multiplicity of his injuries. Although he was discharged on 16.04.2009 and brought back to Rajasthan, it appears that Sandeep kept experiencing one after another medical complications, and remained hospitalized at the Jain Hospital in Jaipur and later the Joshi Nursing Home at Sikar. His injuries eventually got the better of him and Sandeep Sharma passed away on 10.12.2009.

At the time of death, the deceased was aged 34 years and was an income tax assessee with an Employees Provident Fund (EPF) account. He was employed in Mumbai at Kelvin Ess Vee Textiles as a Sales Officer on regular basis. He left behind a widow, two minor children and a mother; all of whom were dependent on him.

Sandeep's dependents filed a claim petition for Rs. 60,94,000/- (Rupees sixty lakhs and ninety-four thousand) on 26.08.2010 alleging, *inter alia*, that he died as a result of the injuries suffered in the abovementioned accident of 25.03.2009, which occurred due to the rash and negligent driving of Sanjeev Kapoor who was the owner-cum-driver of the car in which Sandeep was travelling. Sanjeev Kapoor (hereinafter, "owner-cum-driver") and the insurer of the car - New India Assurance Co. Ltd. (hereinafter, "insurance company") were impleaded as party respondents.

The owner-cum-driver in his written statement admitted that the deceased had suffered multiple injuries in the accident while travelling in the car with him but he disowned responsibility for the accident by asserting that it was the truck which was coming from the opposite side at a very fast speed, and was being driven in a rash and negligent manner. Since all the four occupants of the car had been injured, they were unable to note the registration details of the truck which made a hasty get-away towards Ghazipur.

The insurance company in its separate written statement took the preliminary objection that as per the police investigation and first information report, the accident was caused by an unknown truck which hit the car No. UP-65-AA-7100 and, therefore, the claim petition filed against the owner of the car or its insurer was contrary to law. The factual averments made in the Claim Petition were denied for want of knowledge.

In reaching its verdict, the Tribunal relied upon the statement of the eye-witness Ritesh Pandey (AW-3), according to whom Sanjeev Kapoor was driving the car at a very fast speed when it overtook a vehicle and collided head-on against the oncoming truck. The Tribunal, thus, assigned liability for the accident upon the respondents and partly allowed the Claim Petition with a compensation of Rs. 16,08,000/- (Rupees sixteen lakhs and eight thousand).

Both the insurance company and the appellant-claimants filed their respective appeals before the High Court. Through judgment dated 23.07.2018, the High Court set aside the Tribunal's award and dismissed the claim petition for the reasons that *first*, Ritesh Pandey (AW-3) had failed to report the accident to the jurisdictional police. He was apparently introduced by the claimants only to seek compensation. *Second*, the FIR had been lodged by the owner-cum-driver, Sanjeev Kapoor, who would not have done so had he been at fault or driving rashly. *Third*, the assertion of Ritesh Pandey (AW-3) that he took the injured to hospital was not proved from the record of the Government Hospital, Ghazipur which revealed that Sandeep Sharma was brought to the hospital by Sub-Inspector Sah Mohammed.

Decision and Observations

The Hon'ble Court observed that the approach of the High Court was "not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State". The Hon'ble Court referred to ***Parmeshwari* v. *Amir Chand***[8], ***Kartar Singh* v. *State of Punjab***[9], ***Sunita* v. *Rajasthan State***

[8] (2011) 11 SCC 635
[9] (1994) 3 SCC 569

Road Transport Corporation[10] and *Dulcina Fernandes* v. *Joaquim Xavier Cruz*[11] and concluded the following findings :-

15. It is not in dispute that the accident took place near Ghazipur and that numerous people had assembled at the spot. Some bystander would obviously have informed the police also. While the contents of the FIR as well as the statement of Ritesh Pandey (AW-3) leave no room to doubt that the injured were taken to the Hospital by private persons (and not by the police), it is quite natural that the police would also have reached the Government hospital at Ghazipur and, therefore, it was mentioned that Sandeep Sharma was brought-in by SI Sah Mohammed.

16. It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it is highly likely that the name of Ritesh Pandey or other persons who accompanied the injured to the hospital did not find mention in the medical record. There is nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. The statement of AW-3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. Ritesh Pandey (AW-3) acted as a good samaritan and a responsible citizen, and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW-3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal.

17. It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to Police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW-3 to lodge a report once again to the police at a later stage either.

18. Unfortunately, the approach of the High Court was not sensitive enough to appreciate the turn of events at the spot, or the appellant-claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State.....

19. The failure of the respondents to cross examine the solitary eyewitness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of a crucial witness.

20. The importance of cross-examination has been elucidated on several occasions by this Court, including by a Constitution Bench in *Kartar Singh* v. *State of Punjab*[2], which laid down as follows:

.....

21. Relying upon *Kartar Singh* (supra), in a MACT case this Court in *Sunita* v. *Rajasthan State Road Transport Corporation*[3] considered the effect of non-examination of the pillion rider as a witness in a claim petition filed by the deceased of the motorcyclist and held as follows:

[10] 2019 SCC OnLine SC 195
[11] (2013) 10 SCC 646

.....

22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in *Dulcina Fernandes* v. *Joaquim Xavier Cruz* wherein this Court reiterated that:

.....

23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.

24. Further, little reliance can be placed on the contents of the FIR (Exh.-1), and it is liable to be discarded for more than one reasons. *First*, the author of the FIR, that is, Praveen Kumar Aggarwal does not claim to have witnessed the accident himself. His version is hearsay and cannot be relied upon. *Second*, it appears from the illegible part of the FIR that the informant had some closeness with the owner-cum-driver of the car and there is thus a strong possibility that his version was influenced or at the behest of Sanjeev Kapoor. *Third*, the FIR was lodged two days after the accident, on 27.03.2009. The FIR recites that some of the injured including Sandeep Sharma were referred to BHU, Varanasi for treatment, even though as per the medical report this took place only on 26.03.2009, the day after the accident. Therefore the belated FIR appears to be an afterthought attempt to absolve Sanjeev Kapoor from his criminal or civil liabilities. Contrarily, the statement of AW-3 does not suffer from any evil of suspicion and is worthy of reliance. The Tribunal rightly relied upon his statement and decided issue No. 1 in favour of the claimants. The reasoning given by the High Court to disbelieve Ritesh Pandey AW-3, on the other hand, cannot sustain and is liable to be overturned. We hold accordingly.

25. Adverting to the claimants' appeal for enhancement of compensation, we are of the view that no effective argument could be raised on their behalf as to how the compensation assessed by the Tribunal was inadequate, except that in view of the authoritative pronouncement of this Court in *National Insurance Co Ltd* v. *Pranay Sethi*[5], the claimants are entitled to an increase of 40% towards annual dependency on account of 'future prospects' given the undisputed age of the deceased. Their appeal to that extent deserves to be allowed.

12. Daulat Singh v. State of Rajasthan and Ors., (2020 SCC OnLine SC 1004)

Decided on : - 08.12.2020

Bench :- 1. Hon'ble Mr. Justice **N.V.Ramana**
2. Hon'ble Mr. Justice S.Abdul Nazeer
3. Hon'ble Mr. Justice Surya Kant

(The Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. In a transfer through gift, acceptance can be inferred by the implied conduct of the donee.)

Facts

Daulat Singh (since deceased and now represented through his legal representatives and who shall hereinafter for the sake of convenience be referred to as the appellant) was owner of 254.2 Bighas of land. On 19.12.1963, he gifted away 127.1 Bighas of land to his son, Narpat Singh. After the said transfer, the appellant was left with 17.25 standard acres of land, which was below the prescribed limit under the Ceiling Act.

Although, a proceeding was initiated under the ceiling law, the same was dropped on 15.04.1972 by the Court of Deputy Sub-Divisional Officer, Pali, Rajasthan. While dropping the proceedings, the Court observed that, the amendment of Section 30DD of the Rajasthan Tenancy Act, 1955 (*hereinafter "Tenancy Act of 1955"*) was effective from 31.12.1969, and since the gift deed was executed before the aforesaid amendment, the aforesaid transfer was valid.

However, by notice dated 15.03.1982, the Revenue Ceiling Department re-opened the case of the appellant. The Revenue Ceiling Department while issuing the aforesaid notice stated that the earlier order dated 15.04.1972, passed by the Court of Deputy Sub-Divisional Officer, Pali was rendered without investigating whether the land transfers are recognizable as per the provisions of Section 30 of the Tenancy Act of 1955. The same being in contravention of the provisions, needs to be reopened.

The Court of Additional District Collector, Pali vide order dated 28.10.1988, declared that the mutation of the land done in favour of the son of the appellant was invalid as there was no acceptance of the gift. It was declared therein that the appellant was holding 11 standard acres of extra land over and above the ceiling limit. The Collector, therefore, directed the appellant to handover vacant possession of the aforesaid 11 standard acres of extra land to the Tahsildar, Pali.

Aggrieved by the aforesaid order, the appellant preferred an appeal before the Board of Revenue. *Vide* order dated 02.07.1990, the Board of Revenue, modified the earlier order dated 28.10.1988, and upon re-calculation held that the appellant is holding 4.5 standard acres of land in excess of the ceiling limit.

Aggrieved, the appellant preferred a Writ Petition under Article 227 of the Constitution of India before the High Court. *Vide* order dated 02.04.1997, the learned Single Judge of the High Court allowed the writ petition preferred by the appellant. The Court held that the case was beyond the purview of Section 6 of The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (*hereinafter "Ceiling Act of 1973"*) because the land was transferred by way of gift before 26.09.1970. It was further held that the aforesaid transfer of land, by the appellant in favour of his son by virtue of a registered gift deed, being bona fide, was valid in the eyes of law. The learned Single Judge, therefore held that there is no surplus land which is available with the appellant which can be resumed.

Thereafter, the respondents preferred an appeal against the above order before the Division Bench, which allowed the appeal holding that the gift deed was invalid as the son of the appellant was unaware about the same. The Division Bench *vide* impugned judgment dated 25.04.2008, held that the learned Single Judge passed the judgment in ignorance of the provisions of Section 30C and 30D of the Tenancy Act of 1955. Therefore, the Division Bench of the High Court set aside the order passed by the Single Judge Bench for being untenable and upheld the order passed by the Board of Revenue.

Aggrieved, the appellant has preferred the present appeal by way of Special Leave Petition before the Supreme Court.

Observations and Decision

The Hon'ble Court referred to the following issues :-

i. Whether reopening of the case was beyond the period of limitation?

ii. Whether the registered gift deed executed by the appellant is valid in the eyes of law?

iii. Whether the judgment of learned Single Judge is in ignorance of the provisions of Sec 30C and 30D of the Tenancy Act of 1955?

Regarding the first issue, the Hon'ble Court held as follows :-

> **13.** Section 15 of the Ceiling Act of 1973 confers upon the State Government the power to re-open the cases, if it is satisfied that the earlier order was in contravention with the provisions of the Act and is prejudicial to the State interest. The aforesaid direction to re-open cases must be preceded by a show-cause notice served upon the person concerned. However, the proviso clause states that no notice can be issued after the expiry of five years from the date of the final order sought to be re-opened or after the expiry of 30th June 1979, whichever is later.
>
> **14.** Therefore, the provision mandates that, after the expiry of five years from the date of final order sought to be re-opened, or after the expiry of 30th June 1979, whichever is later, no notice for re-opening of such cases can be issued. Therefore, the relevant dates for determination of the issue of limitation is the date of order sought to be reopened and the date of issuance of show-cause notice under Section 15 of the Ceiling Act of 1973.

15. During the course of the hearing and on a query raised by the Bench, the respondents have brought to our notice the xerox copy of the Notice dated 20.11.1976 issued by Deputy Government Secretary, Revenue (Billing), Rajasthan.

16. It ought to be noted that, the aforesaid notice was sent to the appellant on 20.11.1976, that is within five years of the earlier order dated 15.04.1972. Further, the notice also satisfied the requirements as provided under Section 15 of the Ceiling Act of 1973, and hence was valid in the eyes of law. The case was, thus, re-opened within the time period stipulated under Section 15 of the Ceiling Act of 1973. Therefore, issue no. 1 is answered in favour of the respondent-State.

Regarding the second issue, the Hon'ble Court referred to the provisions Sections 122 and 123 of the Transfer of Property Act and the decisions of the Supreme Court in ***Naramadaben Maganlal Thakker* v. *Pranjivandas Maganlal Thakker***, (1997) 2 SCC 255 and ***Asokan* v. *Lakshmikutty***, (2007) 13 SCC 210, and held as follows :-

24. At the outset, it ought to be noted that Section 122 of the Transfer of Property Act, 1882 neither defines acceptance, nor does it prescribe any particular mode for accepting the gift.

25. The word acceptance is defined as "*is the receipt of a thing offered by another with an intention to retain it, as acceptance of a gift.*" (See *Ramanatha P. Aiyar: The Law Lexicon, 2nd Edn., page 19*).

26. The aforesaid fact can be ascertained from the surrounding circumstances such as taking into possession the property by the donee or by being in the possession of the gift deed itself. The only requirement stipulated here is that, the acceptance of the gift must be effectuated within the lifetime of the donor itself.

27. Hence, being an act of receiving willingly, acceptance can be inferred by the implied conduct of the donee.....

33. Therefore, the abovementioned circumstances clearly indicate that there was an acceptance of the gift by the donee during the lifetime of the donor. Not only the gift deed in itself contained recitals about transfer of possession, but also the mutation records and the statements of the both the donor and donee indicate that, there has been an acceptance of the gift by conduct.

34. The respondents failed to bring on record any evidence to rebut the fact that the donee was in enjoyment of the property. In light of the same, the learned Single Judge Bench took a plausible view that, it was a transfer between a father and a son and there was a valid acceptance of the gift when the donee-son started living separately. Lastly, it ought to be noted that apart from the point of acceptance by the donee as held above since the deed is registered, bears the signature of the donor and has been attested by two witnesses, the requirements under Section 123 of the Transfer of Property Act, 1882 have been satisfied. In line with the aforementioned observations, issue no. 2 is answered in favour of the appellant.

Regarding the third issue, the Hon'ble Court held as follows :-

44. It is, thus, apparent that the legislature has carved out two separate categories of lands, one which is includable and other which is outside the purview of ceiling laws. Once such a

classification has been made, with their being no challenge to its vires, it is the solemn duty of every authority to give full effect to the same, in both letter and spirit. Although, it is possible that there can be a voluntary transfer which would meet the qualifications of both Sections 30D and Section 30DD, however, it is significant to note that Section 30DD opens up with a *non-obstante* clause with overriding effect on Section 30D, as a result of which, any land included within its purview would be protected from the rigors of Section 30D of the Tenancy Act of 1955. Therefore, if the appellant succeed in its endeavor to establish that the transfer was covered under Section 30DD of the Tenancy Act of 1955, then such transferred land has to be exempted from computation of confiscable land, irrespective of the fact that it falls within the ceiling limit as prescribed under Section 30D of the Tenancy Act of 1955.

45. Another significant piece of evidence is the statement of the transferor-appellant dated 31.08.1984, wherein he has stated that the transferee-son was living separately and was cultivating the aforesaid gifted property. It is also mentioned that the transferee is in possession of an ox and equipments for ploughing and agriculture. The aforesaid facts have been reiterated by the transferee as well *vide* his statement dated 15.12.1988, wherein he has clearly stated that, he is in independent possession of the gifted property and has been cultivating the said land.

46. The aforesaid pieces of evidence clearly indicate that due to certain family issues, the appellant and his son were living separately. During such separation, when the transferee-son had already attained the age of majority, the appellant-owner of the land, who was an agriculturalist himself, transferred the aforesaid land in favour of his son, so as to enable him to cultivate the same. The statements of transferor and the transferee clearly indicate that the transferee had the equipment and skills and was sustaining himself as an agriculturalist.

47. Lastly, it must be taken into consideration that, the aforesaid transfer was executed way before the cut-off date stipulated under Section 30DD i.e. 31.12.1969. Therefore, the registered gift deed dated 19.12.1963 was a *bona fide* transfer squarely covered within the ambits of Section 30DD, which intended to protect the rights of agriculturalists. Issue no. 3, stands answered in favour of the appellant, as the transfer is not invalid as it stands protected as per the provision of Section 30DD of the Tenancy Act of 1955.

48. In light of the aforesaid findings, the decision rendered by the Division Bench of the High Court is liable to be set aside. The transfer of the land being valid under Section 30DD of the Tenancy Act of 1955, the ceiling area of the appellant falls within the ceiling limit as provided under Section 30C.

49. There is no gainsaying that Section 6 of the Ceiling Act of 1973 also does not advance the case of the State. Firstly, the repeal of Chapter III-B of the Tenancy Act of 1955 through Section 40 of the Ceiling Act of 1973 is not retrospective. Hence, the provisions of the Ceiling Act of 1973 are not attracted in the present case as the case was re-opened and decided under the provisions of the of Tenancy Act of 1955. Secondly, Section 6 of the Ceiling Act of 1973 declares that every transfer of land including by way of gift, made on or after 26-09-1970 and before 01-01-1973, shall be deemed to have been made to defeat the provisions of the Ceiling Act of 1973. In the instant case, the gift deed was executed on 19-12-1963, that is much before 26-09-1970. Therefore also, Section 6 of the Ceiling Act of 1973 does not affect the transfer of land by the appellant-donor in favour of the doneeson. Thirdly, there is no finding that the gift deed in the present case was actuated upon any extraneous consideration. Hence, it constitutes a *bona fide* transfer which are exempted from the rigors of Section 6 of the Ceiling Act of 1973.

13. Project Director, Project Implementation Unit v. P.V. Krishnamoorthy and Others, (2020 SCC OnLine SC 1005)

Decided on : - 08.12.2020

Bench :- 1. Hon'ble Mr. Justice **A.M. Khanwilkar**
2. Hon'ble Mr. Justice B.R. Gavai
3. Hon'ble Mr. Justice Krishna Murari

(The Union has the legislative competence to issue notification and directions under the provisions of the National Highways Act for the declaration of a national highway even in respect of non-existent road.

The scope of judicial interference in matters related to acquisition is limited.

The necessity of prior environmental/forest clearance would arise only if finally, the land in question (site specific) is to be notified under Section 3D of the National Highways Act, as being acquired for the purposes of building, maintenance, management or operation of the national highway or part thereof.)

Facts

These appeals emanated from the common judgment and order of the High Court of Judicature at Madras holding the notifications issued under Section 3A(1) of the National Highways Act, 1956 for acquisition of specified lands for development/construction of Chennai-Krishnagiri-Salem (National Corridor) 8 Lanes new National Highway (NH-179A and NH-179B) being part of the larger project - "Bharatmala Pariyojna - Phase I", as illegal and bad in law on the grounds stated in the impugned judgment.

Observations and Decision

The Hon'ble Court addressed the issues under the following heads :-

- **Legislative Competence of the Union**

29. The threshold issue, we propose to answer at the outset is about the legislative competence of the Parliament to enact a law for declaring open green-field lands as national highway. Notably, no declaration was sought by the writ petitioners in reference to the provisions of the 1956 Act, the 1988 Act and in particular, Section 2 of the 1956 Act, to be *ultra vires* as such. The argument is that since only the State legislature is competent to make a law for construction of new roads traversing through the open green-fields, where no road exists and only in case of an existing road/highway, would the Central Government have power to declare it as a national highway. To buttress this submission, reliance is placed on Entry 13 of List II (State List) of the Seventh Schedule dealing with the subject on which the State legislature has exclusive power to make a law, namely:—

….....

41. Section 3A of the 1956 Act inserted by way of an amendment in 1997, empowers the Central Government to declare its intention to acquire "any land". It need not be linked to an existing road or State highway. For, the expression "any land" ought to include open green-fields for construction or building of a national highway, consequent to declaration under Section 2(2) of the same Act in that regard. The central condition for exercise of such power by the Central Government is that it should be satisfied that such land is required for the public purpose of building a national highway or part thereof. Section 3B of the 1956 Act empowers the person authorised by the Central Government to enter upon the notified lands for the limited purpose of survey etc., to ascertain its suitability for acquisition for the stated purpose or otherwise. The final declaration of acquisition is then issued under Section 3D of the Act after providing opportunity to all persons interested in the notified land to submit their objections and participate in a public hearing under Section 3C. The contour of issues debated during this public hearing are in reference to matters relevant for recording satisfaction as to whether the notified land is or is not required for a public purpose for building, maintenance, management or operation of a national highway or part thereof. Be it noted that consequent to publication of declaration under Section 3D, the land referred to in the notification vests absolutely in the Central Government, free from all encumbrances. Possession of such land is then taken under Section 3E of the Act, upon depositing the compensation amount in the manner provided in Section 3H of the Act and as determined under Section 3G. Section 3F empowers the Central Government to enter upon the land after the same is vested in terms of Section 3D of the Act. Notably, Section 3J of the Act is a non-obstante provision and it predicates that nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under the 1956 Act. The national highways vest in the Union in terms of Section 4 of the 1956 Act and the responsibility for development and maintenance thereof is primarily that of the Central Government in terms of Section 5. The Central Government is competent to issue directions to the Government of any State in respect of matters specified in Section 6 of the Act. Section 9 empowers the Central Government to make rules in respect of matters provided therein for carrying out the purposes of the 1956 Act.

42. It is not necessary to dilate on the other provisions of the 1956 Act for the time being. As aforesaid, Sections 3A to 3J have been inserted by way of amendment of 1997. On close examination, the 1956 Act, as amended and applicable to the present case, is an Act to authorise Central Government to declare the notified stretches/sections in the State concerned as a highway to be a national highway; and for matters connected therewith including acquisition of "any land" for building or construction of a new highway (which need not be an existing road/highway). The substance of this Act is ascribable to Entry 23 of the Union List and matters connected therewith.

43. Having said thus, we have no hesitation in concluding that the challenge to the notifications issued under Section 2(2) of the 1956 Act on the argument of lack of legislative competence, is devoid of merits. The High Court justly negatived the same and we uphold that conclusion.

- **Executive Powers of the Union**

44. A *fortiori*, even the challenge to the stated notifications on the ground of being *ultra vires* the Constitution derived executive powers of the Union, must fail. That challenge is founded on the purport of Article 257, which has been reproduced above. It is urged that Article 257 pointedly refers to the sphere of executive powers of the Union. Article 257 of the Constitution, as aforesaid, deals with administrative relations between the States and the Union. In the first place, having said that the Parliament has exclusive legislative competence

to make a law in respect of national highways and all matters connected therewith, which includes declaring any stretch/section within the State (not being existing roads/highways) as a national highway, it must follow that the Central Government alone has the executive powers to construct/build a new national highway in any State and to issue directions to the Government of any State for carrying out the purposes of the 1956 Act. It is incomprehensible as to how the argument of lack of executive power of the Central Government despite such a law, can be countenanced. Concededly, the validity of Section 2 of the 1956 Act, which empowers the Central Government to notify any other highway (other than the scheduled national highways) as a national highway, has not been put in issue. No declaration is sought that the said provision is *ultra vires* the Constitution or the law. Therefore, the argument essentially requires us to examine the question as to whether Section 2(2) of the 1956 Act enables the Central Government to declare a national highway in respect of a non-existing road(s)/highway(s) and on open green-fields land within the State. Suffice it to observe that the challenge to notifications issued by the Central Government under Section 2(2) of the 1956 Act on the ground of being *ultra vires* the Constitution derived executive powers, is also devoid of merits.

- **Scope of Section 2 (2) of the National Highways Act**

45. We may revert to the argument that the Central Government, even if is competent to declare any stretch/section as a national highway, can do so only in respect of an existing road/highway within the State and not in respect of non-existent road, much less traversing through the open green-field lands. Somewhat similar question was dealt with by the same High Court (Madras High Court) in reference to the provisions of the Tamil Nadu Highways Act, 2001 in *Jayaraman* (supra). However, we are called upon to examine the question under consideration in reference to the 1956 Act and the 1988 Act. Hence, we proceed to examine Section 2 of the 1956 Act, which reads thus:—

.....

50. The Central Government, whilst exercising power under Section 2(2) of the 1956 Act creates a right in the locals of the concerned area to pass and repass along a highway from one marked town or inhabited place to another inhabited place for the purpose of legitimate travel. Such highway is dedicated for the ordinary and reasonable user of the road as a national highway from one designated town (Chennai) upto another town (Salem), which will be common to all the subjects. As expounded hitherto, the Central Government is fully competent to notify "any land" (not necessarily an existing road/highway) for acquisition, to construct a highway to be a national highway.

- **Modification of Project and Extent/Scope of Judicial Review**

51. It was next contended that the decision to change the stretch/section to C-K-S (NC) was arbitrary and was not backed by scientific study. The original Project (Bharatmala Pariyojna - Phase I) included section - C-M (EC), as approved by the CCEA in October, 2017. It is true that the Project (Bharamala Pariyojna Phase I) was conceived after a scientific study as a comprehensive project at the macro (national) level for 24,800 kms. in Phase I, spanning over a period of 5 years (2017-18 to 2021-22) at an estimated outlay of INR 5,35,000 crores with an objective to improve the efficiency of freight and passenger movement across the country by bridging critical infrastructure gaps through effective interventions like development of Economic Corridors, Inter Corridors and Feeder Routes (ICFR), National Corridor Efficiency

Improvement, Border and International connectivity roads, Coastal and Port connectivity roads and Green-field expressways. This Project, being a macro level project, does not reckon the nuanced imperatives of a particular region or area, which may only be a miniature of the whole Project traversing across around 24,800 kms. in Phase I.....

59. Be it noted that the notifications under Section 2(2) to declare the C-K-S (NC) section as NH-179A and NH-179B, as the case may be, were issued only after due deliberation by the broad-based committee of experts, which decision we find is also in conformity with the guidelines contemporaneously issued by the concerned department on the same subject matter. Such a decision cannot be labelled as manifestly arbitrary, irrational or taken in undue haste as such. As a result, it was not open to the High Court to interfere with the change so articulated in the meeting held on 19.1.2018 or the notifications issued under Section 2(2) of the 1956 Act declaring C-K-S (NC) as a national highway (i.e. NH-179A and NH-179B). The declaration of a highway being a national highway is within the exclusive domain of the Central Government in terms of Section 2(2) of the 1956 Act. The argument of the land owners that prior approvals ought to have been obtained from the CCEA and regarding budgetary arrangement, is premised on the manuals which govern the functioning of the executing agency (NHAI). As the decision regarding change of stretch/section has been taken by the concerned department of the Central Government itself and the approved Project (Bharatmala Pariyojna - Phase I) also recognises that such change in the form of substitution/replacement of the stretch/section can be done by the Ministry upto 15% length of 24,800 kms., so long as it does not entail in incurring of additional costs, it becomes integral part of the originally approved project (for Phase I) for all purposes. In the present case, the costs for construction of C-K-S (NC) were bound to be less than the originally conceived C-M (EC), as the length of the road is reduced significantly. In other words, it would operate as minor change to the original plan with deemed approval thereof and get interpolated therein. Further, the minutes recorded on 19.1.2018 do indicate that the decision was to be placed before the CCEA in the ensuing biannual meeting, where it would be duly ratified. Suffice it to observe that the decision taken by the Committee which culminated with the issuance of notification under Section 2(2) of the 1956 Act is in complete conformity with the governing provisions and guidelines and founded on tangible and objective facts noted in the minutes dated 19.1.2018. The Central Government had full authority to adopt such a change of stretch/section, by way of substitution/replacement whilst ensuring that there is no need for higher budgetary allocation than envisaged in the already approved programme for Phase I. Thus, there is no legal basis to doubt the validity of the notification under Section 2(2) and *ex consequenti* Section 3A of the 1956 Act as well.

60. The High Court has completely glossed over these crucial aspects and entered into the domain of sufficiency and adequacy of material including the appropriateness of the route approved by the competent authority. Such enquiry, in exercise of judicial review is forbidden. Furthermore, the High Court, despite noting that judicial interference in acquisition matters is limited, went on to interfere in the guise of extra-ordinary circumstances obtaining in this case. On a thorough perusal, the impugned judgment does not reveal any just circumstance for invoking the judicial review jurisdiction. In light of the above discussion, we hold that challenge to the decision of the Committee and *ex consequenti* of the Central Government, regarding change of section - C-M (EC) to C-K-S (NC) at the micro level for the implementation of the original Project as approved, ought not to have been doubted by the High Court. Notably, in the final conclusion and declaration issued by the High Court, it has justly not struck down the notifications under Section 2(2) of the 1956 Act. In other words, so long as Section 2(2) of the 1956 Act was to remain in force and the decision regarding change of stretch/section to C-K-S

(NC) being the foundation for issue of notification under Section 3A, would continue to bind all concerned and in particular, the officials of NHAI being the executing agency.

- **Prior Environmental/Forest Clearance : Stage**

61. That takes us to the next challenge premised on the argument that notification under Section 3A(1) of the 1956 Act could not have been issued without prior permission of the competent authority under the environmental/forest laws. This argument is based on the dictum of this Court in *Karnataka Industrial Areas Development Board* (supra). In paragraph 100 of the said decision, a general direction came to be issued that in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment…….

81. Applying the tenet underlying this notification, it is amply clear that before the process of acquisition of land is ripe for declaration under Section 3D of the 1956 Act, it would be open to the executing agency (NHAI) to make an application to the competent authority for environmental clearance. That process can be commenced parallelly or alongside the acquisition process after a preliminary notification under Section 3A of the 1956 Act, for acquisition is issued.

82. As in this case, after notification under Section 3A of the 1956 Act came to be issued, NHAI must have, and in fact has, moved into action by making application to the competent authorities under the environmental laws, as well as, forest laws to accord necessary permissions.

83. Considering the provisions of the 1956 Act and the 1988 Act, NHAI can take over the work of development and maintenance of the concerned national highway only if the notified land is vested in it or when the same is entrusted to it by the Central Government. From the scheme of the enactments in question, as soon as notification under Section 3A is issued, it is open to the Central Government to issue direction/notification in exercise of power under Section 5 of the 1956 Act read with Section 11 of the 1988 Act so as to entrust the development of the proposed national highway to NHAI. Upon such entrustment, NHAI assumes the role of an executing agency and only thenceforth can move into action to apply for requisite permissions/clearances under the environmental/forest laws including as provided in terms of notification/Office Memorandum dated 14.9.2006 and 7.10.2014 respectively.

84. It is not in dispute that environmental/forest clearance is always site specific and, therefore, until the site is identified for construction of national highways manifested vide Section 3A notification, the question of making any application for permission under the environmental/forest laws would not arise, as predicated in Office Memorandum dated 7.10.2014. The site is identified only in reference to the notification under Section 3A of the 1956 Act, giving description of the land which is proposed to be acquired for public purpose of building, maintenance, management or operation of the national highway or part thereof.

85. Considering the interplay of provisions empowering the Central Government coupled with the purport of the notification/Office Memorandum issued by the MoEF dated 14.9.2006 and 7.10.2014 respectively, it will be paradoxical to countenance the argument that the Central Government is obliged to seek prior approval/permission of the competent authorities under the environment/forest laws, as the case may be, even before issuing notification under Section 2(2) or for that matter, Section 3A of the 1956 Act.

- **Re : Deemed Lapsing and the Way Forward**

88. The argument of the writ petitioners that the expression "shall" occurring in Section 3D(1) be interpreted as "may", though attractive on the first blush, deserves to be rejected. If that interpretation is accepted, it would render the efficacy of Section 3D(3) of lapsing of the acquisition process otiose. It is a mandatory provision. Instead, we have acceded to the alternative argument to give expansive meaning to the proviso in Section 3D(3) of the 1956 Act by interpretative process, including by invoking plenary powers of this Court under Article 142 of the Constitution to hold that the dictum of this Court in *Karnataka Industrial Areas Development Board* (supra) be regarded as stay granted by the Court to all notifications issued under Section 3A of the 1956 Act until the grant or non-grant of permissions by the competent authorities under the environmental and forest laws, as the case may be, including until the stated permissions attain finality. In other words, time spent by the executing agency/Central Government in pursuing application before the concerned authorities for grant of permission/clearance under the stated laws need to be excluded because of stay by the Court of actions (limited to issue of notification under Section 3D), consequent to notification under Section 3A. Thus, the acquisition process set in motion upon issue of Section 3A notification can go on in parallel until the stage of publication of notification under Section 3D, which can be issued after grant of clearances/permissions by the competent authority under the environment/forest laws and attaining finality thereof.

89. In the present case, it is noticed that the NHAI being the executing agency, had soon submitted Terms of Reference to the MoEF after publication of notification under Section 2(2) of the 1956 Act dated 1.3.2018, declaring the section - C-K-S (NC) as a national highway. That was submitted on 19.4.2018 and the approval in furtherance thereof was granted by the MoEF on 8.6.2018, consequent to the recommendation made by the EAC on 7.5.2018. Indeed, the NHAI thereafter submitted amendment to the Terms of Reference on 5.7.2018 and 21.8.2018. The EAC after examining the amendment in Terms of Reference, submitted its recommendation on 30.8.2018. It is also matter of record and stated on affidavit by the EAC that no lapses have been committed by the NHAI in complying with necessary formalities. Similarly, NHAI had submitted application on 12.5.2018 to Conservator of Forests for grant of permissions under the forest laws in respect of lands forming part of the notification under Section 3A of the 1956 Act. That application was duly processed and the permission was granted by the competent authority under the forest laws on 8.6.2018. Concededly, these permissions/clearances have been issued by the concerned authorities under the environment and forest laws after notification under Section 3A and before issuance of declaration under Section 3D of the 1956 Act. In terms of this decision, therefore, the time spent for obtaining such clearances including till the pronouncement of this decision and until the stated permissions/clearances attain finality, whichever is later, as the matter had remained *sub judice*, need to be excluded. Even after excluding such period, if any notification under Section 3A impugned before the High Court is not saved from the deemed lapsing effect predicated in Section 3D(3), the Central Government may have to issue fresh notification(s) under Section 3A of the 1956 Act and recommence the process of acquisition, if so advised. We are not expressing any final opinion in that regard. However, such fresh notifications may be issued only in respect of land forming part of permissions/clearances given by the competent authority under the environment/forest laws, being site specific.

- **Other Contentions**

90. That takes us to the grievance regarding the same Consultant being continued for the changed section i.e. C-K-S (NC). Indeed, the eligibility of the Consultant was in reference to the originally conceived project concerning C-M (EC). It was found eligible to undertake the consultancy work for the said project and letter dated 29.9.2017 was also issued by NHAI. In the

Committee's meeting chaired by the Secretary of MoRTH on 19.1.2018, new alignment was finalised thereby deviating from the original project of C-M (EC). Instead, section - C-K-S (NC) was finalised. However, the same Consultant had been continued by execution of a contract agreement dated 22.2.2018 for the changed stretch/section. This was done as the terms and conditions were same. Indeed, it was vehemently contended before us that the authorities should have followed the procedure stipulated for appointment of Consultant for the changed project afresh. However, we find that in none of the writ petitions filed before the High Court, express declaration had been sought or for that matter, the contract agreement dated 22.2.2018 executed between NHAI and the Consultant came to be challenged. Moreover, the terms and conditions of appointment of the Consultant would have no financial ramifications, considering the fact that the consultancy charges were to be paid on per kilometre basis; and in fact due to change of alignment, the length of proposed national highway stood reduced to only around 277 kms. (instead of original stretch [C-M (EC)] of around 350 kms.) Further, no challenge is set forth regarding the qualification and eligibility of the Consultant as such. Notably, the decision to change the stretch/section from Economic Corridor to National Corridor was that of the Committee. It was not founded on the recommendation of the Consultant, as has been assumed by the writ petitioners and so propounded before the high Court. The decision of the Committee was backed by tangible reasons as recorded in the minutes and also intrinsic in it its vast experience about the efficacy of governing policies for developing seamless national highway connectivity across the country. In any case, irregularity, if any, in the appointment of the Consultant cannot be the basis to quash and set aside a well-considered decision taken by the Committee after due deliberations, much less the impugned notifications under Section 2(2) or Section 3A(1) of the 1956 Act. We therefore, hold that the High Court should have eschewed from expressing any opinion on the manner of appointment of the same Consultant for the changed section/stretch [C-K-S (NC)], as no relief challenging its appointment was sought and thus it was not the matter in issue before it; and for the same reason, we do not wish to dilate on this aspect any further. Thus understood, the dictum of this Court in decisions relied upon by the respondents/writ petitioners in *K. Lubna* (supra) and *Shrilekha Vidyarthi* (supra) will be of no avail in this case.

91. Having dealt with the merits of the controversy in extenso, it is unnecessary to dilate on the question of maintainability of the writ petitions being premature.

The Hon'ble Court made the following conclusions after dealing with the issues in detail under the aforementioned headings:-

92. Before we conclude and for the completion of record, we may advert to the direction issued by the High Court in paragraph 106 of the impugned judgment as reproduced hitherto. The High Court directed the concerned revenue authorities to restore the mutation entries effected in favour of the acquiring body/NHAI merely on the basis of notification under Section 3A of the 1956 Act. By virtue of notification under Section 3A of the 1956 Act, neither the acquiring body nor the NHAI had come in possession of the concerned land nor the land had vested in them, so as to alter the mutation entry in their favour. To that extent, we agree with the High Court that until the acquisition process is completed and possession of land is taken, the question of altering the mutation entry merely on the basis of notification under Section 3A of the 1956 Act cannot be countenanced and, therefore, the earlier entries ought to be restored. That direction of the High Court needs no interference.

93. While parting, we must place on record that we have not expressed any opinion either way on the correctness and validity of the permissions/clearances accorded by the competent authorities under the environment and forest laws, as the case may be. For, those orders were not the subject matter or put in issue before the High Court. Therefore, it would be open to the affected persons to question the validity thereof on grounds, as may be permissible, before the appropriate forum. All contentions available to parties in that regard are left open.

94. We need to place on record that we have not dilated on other decisions adverted to and relied upon before us by the learned counsel appearing for the concerned parties, to avoid prolixity and also because the same have no bearing on the questions dealt with by us hitherto. In our opinion, appeals filed by the authorities ought to succeed merely on the issues answered by us for dismissing the challenge to notifications under Section 2(2) and Section 3A of the 1956 Act, in the concerned writ petitions. Further, we do not wish to deal with the decisions relied upon, that the Project of this nature may have environmental impact and ought not to be taken forward. As aforesaid, we have not examined the efficacy of the permissions/clearances granted by the competent authority under the environment or forest laws, as the case may be. If those permissions/clearances are assailed, only then the decisions in *Hanuman Laxman Aroskar* (supra), *M.C. Mehta* (supra) and *Bengaluru Development Authority* (supra) may be looked at. Inasmuch as in those cases, the Court was called upon to examine the challenge in the context of permissions given by the competent authority under the environment laws.

95. Needless to observe that if any decision of the High Courts, which had been relied upon is not in consonance with the view taken by us, the same be treated as impliedly overruled in terms of this decision. We do not wish to multiply the authorities of the High Courts as commended to us on the issues answered in this judgment.

96. In view of the above, the appeals filed by the Union of India and NHAI (Civil Appeals arising out of SLP(C) Nos. 13384-85/2019, 16098-16100/2019, 18577-18580/2019, 19160-19166/2019, 1775-1776/2020, 1777-1780/2020 and 1781-1783/2020) are partly allowed in the aforementioned terms; but the appeal filed by the land owner(s)/aggrieved party(ies) (Civil Appeal arising out of SLP(C) No. 18586/2019) stands dismissed. The impugned judgment and order is modified to the extent indicated in this judgment. The challenge to impugned notifications under Sections 2(2) and 3A of the 1956 Act, respectively, is negatived. The direction issued (in paragraph 106 of the impugned judgment) to the concerned authorities to restore the subject mutation entries is, however, upheld.

97. The Central Government and/or NHAI may proceed further in the matter in accordance with law for acquisition of notified lands for construction of a national highway for the proposed section/stretch - C-K-S (NC), being NH Nos. 179A and 179B.

14. Saritha S. Nair v. Hibi Eden, (2020 SCC OnLine SC 1006)

Decided on : - 09.12.2020

Bench :- 1. Hon'ble Mr. Justice S.A. Bobde (CJ)
2. Hon'ble Mr. Justice A.S. Bopanna
3. Hon'ble Mr. Justice **V. Ramasubramanian**

(Mere suspension of the execution of sentence is not sufficient to take the rigour out of Section 8(3) of the Representation of People Act. In effect, the disqualification under Section 8(3) will continue so long as there is no stay of conviction.)

Facts

In the elections held to the Lok Sabha in April-May, 2019, the petitioner filed her nomination on 04.04.2019 in the Ernakulam Constituency. The petitioner was to contest as an independent candidate. On 06.04.2019 the nomination of the petitioner was rejected on the ground that she was convicted in 2 criminal cases. In the first case the petitioner was imposed with a punishment of imprisonment for 3 years, with a fine of Rs. 45 lakhs. In the second case she was imposed with a punishment of imprisonment for 3 years, with a fine of Rs. 10 lakhs.

The petitioner filed Criminal Appeal No. 87 of 2015 before the Sessions Court, Pathanamthitta, against her conviction. But the appeal was dismissed and the petitioner filed a revision before the High Court. On 04.01.2018, the High Court merely suspended the execution of the sentence and enlarged the petitioner on bail, subject to her executing a bond for Rs. 5 lakhs with 2 solvent sureties and also upon her depositing Rs. 10 lakhs towards the fine amount. Similarly, the petitioner filed another Criminal Appeal before the Sessions Court, Ernakulam against her conviction in the second case. The Appellate Court stayed the execution of the sentence on condition of the appellant executing a bond for Rs. 1 lakh with 2 sureties.

The Returning Officer, noted in his order dated 06.04.2019 that the petitioner stood disqualified in terms of Section 8(3) of the Representation of the People Act, 1951, as the period of disqualification had not lapsed.

Aggrieved by the order of rejection of the nomination, the petitioner filed an appeal to the Chief Electoral Officer. Thereafter, the petitioner moved a writ petition. But the Writ Petition was dismissed on 09.04.2019. The petitioner filed a writ appeal but the same was also dismissed on 12.04.2019.

Therefore, after the elections were over, the petitioner filed an election petition, primarily contending that the rejection of her nomination was illegal and unjustified and that such rejection materially altered the outcome of the election in which the Respondent herein was declared elected. The main contention of the petitioner in her election petition was that she had simultaneously filed a nomination in the Amethi Constituency of Uttar Pradesh and that

despite disclosure of the very same information about her conviction and pendency of appeals, her nomination was accepted there. Therefore, she contended that 2 different yardsticks cannot be applied and that in any case, so long as the sentence of imprisonment remained suspended, the disqualification under Section 8(3) of the Representation of the People Act, 1951, may not be attracted.

The petitioner had filed her nomination from one more constituency, namely Wayanad Constituency and her nomination was rejected even in the said Constituency, for the very same reasons. Therefore, she filed another election petition in Election Petition No. 3 of 2019 as regards the election from the Wayanad Constituency.

A number of defects were noticed by the Registry of the High Court in both the election petitions. The defects noticed in both the election petitions were more or less the same. But in so far as Election Petition No. 4 of 2019 is concerned, out of which the present SLP arises, the Registry noted one additional defect namely that the prayer of the petitioner was incomplete.

Therefore, both the election petitions were posted before the Court without being numbered. However, the Court, by order dated 29.07.2019 directed the election petitions to be numbered subject to the condition that the petitioner should address arguments on the question of curability of the defects. Thereafter, notices were issued to the Election Commission, the respective Returning Officers and the respective returned candidates.

The fact that the petitioner was convicted in 2 independent criminal cases and sentenced to imprisonment for 3 years in each of those cases and the fact that though the execution of the sentence was suspended in both the cases, the conviction was not suspended, were all admitted by the petitioner herself. The case of the petitioner was that it is enough if an appellate/revisional court had suspended the sentence and not the conviction.

In view of the aforesaid stand of the petitioner, the High Court framed a preliminary issue on 01.10.2019 as to whether the election petitions were maintainable, when the conviction was not suspended in appeal or revision. The High Court decided to take up this preliminary issue also for consideration along with the question relating to curability of defects noticed in the election petitions.

Thereafter, the High Court heard the learned counsel for the petitioner and learned counsel for the returned candidates and passed an order dated 31.10.2019 rejecting both the election petitions on 2 grounds namely:—

(i) that there were incurable defects in the election petitions in terms of Section 86(1) of the Representation of the People Act, 1951; and

(ii) that the petitioner was disqualified in view of the inhibitions contained in Section 8(3) of the Act read with Article 102(1)(e) of the Constitution.

16. Aggrieved by the common order passed on 31.10.2019 in Election Petition Nos. 3 and 4 of 2019, the petitioner filed SLP(C) Diary No. 4200 of 2020 and SLP(C) No. 10678 of 2020. The

SLP in SLP(C) Diary No. 4200 of 2020, arising out of the order in Election Petition No. 3 of 2019, was dismissed for non-prosecution on 02.11.2020. The present SLP arising out of Election Petition No. 4 of 2019 came up thereafter for hearing.

Observations and Decision

The Hon'ble Court addressed the two issues based on which the High Court had dismissed the election petition. Regarding the 1st issue that *there were incurable defects in the election petitions in terms of Section 86(1) of the Representation of the People Act, 1951,* the Hon'ble Court observed and held as follows:-

> **18.** On the first issue, the High court noted that some of the defects in the election petition are covered by Sections 81 and 82 and that there was no semblance of any verification in terms of section 83(1)(c) read with Order VI, Rule 15 of the CPC. The High court held that there were 3 defects which were incurable. They were:
>
> (i) Petitioner has not signed in the declaration portion of verification of the election petition;
>
> (ii) In verification portion, in respect of Annexures, affidavits and petitions, it is stated that the index has been verified instead of Annexures, affidavits and petitions;
>
> (iii) Annexures are not verified by the petitioner as mandated and instead of verification, annexures are seen certified as true copies by the petitioner and the counsel.
>
> **19.** In addition to the above 3 defects, which the High Court considered as incurable in both the election petitions, the High Court noted that in Election Petition No. 4 of 2019, even the relief sought was incomplete and meaningless. Prayer (a) made in the election petition was "***To declare that the election of the 5th respondent from Ernakulam Lok Sabha Constituency***". It actually meant nothing, unless the word "void" had been added thereto. Since the word "void" was not there in prayer (a), the High Court thought that the election petition had been prepared and filed in a casual manner. Coupled with this, was the fact that the election petition also contained some allegations of serious nature against the former Chief Minister of Kerala. Therefore, the High Court thought that the petitioner had malafide intentions to malign the reputation of third parties, through the election petition without proper verification and prayer and that this is nothing but a ruse for the petitioner to escape at a later stage from owning up the pleadings.
>
> **20.** In other words, what weighed with the High Court were:—
>
> (i) Lack of proper verification;
>
> (ii) An incomplete prayer; and
>
> (iii) Allegations of serious nature made against the former Chief Minister with a possible leverage not to own up the pleadings.

The Hon'ble Court referred to the provisions of the CPC and the Representation of People Act especially Chapters II and III of Part IV and also to the judgments[12] of the Supreme Court regarding the effects of defects in an election petition and held as follows:-

> **31.** The presentation of election petitions is covered by Sections 80 to 84 falling in Chapter-II. The trial of election petitions is covered by Sections 86 to 107 and they are contained in Chapter-III.
>
> **32.** This compartmentalization, may be of significance, as seen from 2 facts namely:—
>
> (i) That under Section 80 no election shall be called in question except by ***an election petition presented*** in accordance with the provisions of "***this part***"; and
>
> (ii) That a limited reference is made to the provisions of the Code of Civil Procedure, 1908 in Chapter-II, only in places where signature and verification are referred to.
>
> **34.** Some of the rules contained in Chapter II are inflexible and inviolable. But some may not be. Whether the manner of signing and verifying an election petition is an inflexible rule, is what is to be seen here.
>
> **45.** Though all the aforesaid decisions were taken note by a two-member Bench in *P.A. Mohammed Riyas* v. *M.K. Raghavan*[6], the Court held in that case that the absence of proper verification may lead to the conclusion that the provisions of Section 81 had not been fulfilled and that the cause of action for the election petition would remain incomplete. Such a view does not appear to be in conformity with the series of decisions referred to in the previous paragraphs and hence *P.A. Mohammed Riyas* cannot be taken to lay down the law correctly. It appears from the penultimate paragraph of the decision in *P.A. Mohammed Riyas* (supra) that the Court was pushed to take such an extreme view in that case on account of the fact that the petitioner therein had an opportunity to cure the defect, but he failed to do so. Therefore, *P.A. Mohammed Riyas* (supra) appears to have turned on its peculiar facts. In any case *P.A. Mohammed Riyas* was overruled in *G.M. Siddeshwar* v. *Prasanna Kumar*[7] on the question whether it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1). As a matter of fact, even the filing of a defective affidavit, which is not in Form 25 as prescribed by the Rules, was held in *G.M. Siddeshwar* to be a curable defect and the petitioner was held entitled to an opportunity to cure the defect.
>
> **46.** The upshot of the above discussion is that a defective verification is a curable defect. An election petition cannot be thrown out *in limine*, on the ground that the verification is defective.
>
> **47.** Therefore, the High Court committed a grave error in holding the 3 defects mentioned in paragraph 18 hereinabove as incurable. The defects are curable and as rightly contended by

[12] *Murarka Radhey Shyam Ram Kumar* v. *Roop Singh Rathore,* AIR 1964 SC 1545; *F.A. Sapa* v. *Singora,* (1991) 3 SCC 375; *R.P. Moidutty* v. *P.T. Kunju Mohammad,* (2000) 1 SCC 481; *Sardar Harcharan Singh Brar* v. *Sukh Darshan Singh,* (2004) 11 SCC 196; *K.K. Ramachandran Master* v. *M.V. Sreyamakumar,* (2010) 7 SCC 428.

the learned counsel for the petitioner, an opportunity to cure the defects ought to have been given. Instead, the election petition was posted before Court without numbering, in view of the defects noticed. The Court directed the petition to be numbered subject to arguments on the curability of defects. Thereafter notices were issued to the respondents in the election petition and finally the order impugned herein was passed after hearing both sides. The High Court did not even rely upon any rule framed by the High court to follow the said procedure.

50. The procedure adopted by the High Court of Kerala cannot be approved. The High Court was wrong in thinking that the defective verification of the election petition was a pointer to the game plan of the election petitioner to disown the pleadings at a later stage, especially after making serious allegations against the former Chief Minister. If only the High Court had given an opportunity to the petitioner to cure the defects in the verification and if, despite such an opportunity, the petitioner had failed to come up with a proper verification, the High Court could have then held the petitioner guilty of playing hide and seek. The failure of the High Court to give an opportunity to cure the defects is improper.

51. The defect in the prayer made by the petitioner was also a curable defect, as the words "*as void*" were omitted to be included, making the prayer as it existed, meaningless. It is true that the election petitioner should have been more careful and diligent in incorporating an appropriate relief and making a proper verification. But no motives could have been attributed to the petitioner, only because she made serious allegations against someone. Hence we hold on the first issue that the defects in the verification and prayer made by the petitioner were curable and an opportunity ought to have been given to the petitioner to cure the defects.

Regarding the second issue that *the petitioner was disqualified in view of the inhibitions contained in Section 8(3) of the Act read with Article 102(1)(e) of the Constitution,* the Hon'ble Court referred to the provisions of the Representation of People Act and the judgments[13] of the Supreme Court and observed and held as follows :-

53. Admittedly the petitioner was imposed with a punishment of imprisonment for a period not less than two years in two independent criminal cases. Therefore, her case is covered by Section 8(3) of the Act.

54. What was suspended by the appellate Court in one case and the revisional Court in another case was only the execution of the sentence of imprisonment and not the conviction. The contention of the petitioner is that the suspension of the sentence was sufficient to save her from the applicability of Section 8(3).

55. But we do not think so. Section 8(3) reads as follows:

.....

56. It is seen from a reading of Section 8(3) that it deals with two aspects *namely* ***(i)*** the conditions for disqualification; and ***(ii)*** the period of disqualification. The conditions for disqualification are ***(i)*** conviction for any offence other than an offence referred to in Subsections (1) and (2); and ***(ii)*** sentence of imprisonment for not less than two years.

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[13] *B.R. Kapur* v. *State of Tamil Nadu,* (2001) 7 SCC 231; *Lily Thomas* v. *Union of India,* (2013) 7 SCC 653; *Rama Narang* v. *Ramesh Narang,* (1995) 2 SCC 513; *Ravikant S. Patil* v. *Sarvabhouma S. Bagali,* (2007) 1 SCC 673; *Lok Parhari* v. *Election Commissioner of India,* AIR 2018 SC 4675.

57. In so far as the period of disqualification is concerned, Section 8(3) says that the disqualification will commence from the date of conviction. This is made clear by the usage of the words "*shall be disqualified from the date of such conviction*". It is needless to state that the words "the date" appearing in Section 8(3) refers to the event of conviction and it is post facto. The disqualification which commences from the date of conviction, continues till the expiry of a period of six years from the date of his release.

58. In other words, ***the date of conviction is what determines the date of commencement of the period of disqualification. However, it is date of release which determines the date on which the disqualification will cease to have effect***.

59. When viewed in that context, it will be clear that the mere suspension of the execution of the sentence is not sufficient to take the rigour out of Section 8(3).

64. Therefore, in effect, the disqualification under Section 8(3) will continue so long as there is no stay of conviction. In the case on hand, the petitioner could not obtain a stay of conviction but obtained only a stay of execution of the sentence. Hence her nominations were validly rejected by the Returning Officer. Merely because the Returning Officer in Amethi Constituency committed an error in overlooking this fact, the petitioner cannot plead estoppel against statutory prescription.

The Hon'ble Court dismissed the SLP and held as follows :-

65. Therefore, in fine, we hold that the petitioner was disqualified from contesting the elections in terms of Section 8(3) of the Act. In such circumstances, she could not have maintained an election petition as "a candidate at such election" in terms of Section 81(1). Therefore, the High Court was right in not venturing into an exercise in futility, by taking up the election petition for trial, though the High Court was wrong in rejecting the election petition on the ground of existence of incurable of defects.

15. Rohtas and Anr. v. State of Haryana, (2020 SCC OnLine SC 1014)

Decided on : - 10.12.2020

Bench :- 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice **Surya Kant**
3. Hon'ble Mr. Justice Aniruddha Bose

(Sometimes, although the number of accused is more than five at the time of charge-sheeting, but owing to acquittals of some of them over the course of trial, the remaining number of accused falls below five. It may be true in such cases that the charge under Section 148 and 149 IPC would not survive. This does not, however, imply that Courts cannot alter the charge and seek the aid of Section 34 IPC (if there is common intention), or that they cannot assess whether an accused independently satisfies the ingredients of a particular offence.)

Facts

A complaint was lodged with the police by the victim-Ranbir Singh (PW-1) on 26.01.1998 stating that two days ago while on his way to irrigate his agricultural field, he was stopped by Rohtas, Sanjay, Bijender (the present three appellants) and Om Prakash (since deceased) who collectively threatened him with death if he were to return to his fields for irrigation. The complainant came back to his house and narrated the incident to his family members who while cautioning him against picking a quarrel, asked him to go about his normal routine. On the following day, i.e. 25.01.1998, when the complainant was passing by the *Hudawala* field while on his way to another agricultural plot (known as *Patewala* field), the four accused - Om Parkash, Rohtas, Sanjay and Bijender intercepted him. They started inflicting blows on the complainant's body using axes, thereby causing him to fall down and seriously injuring his legs, hand and head. Another group of three accused persons, comprising Hawa Singh, Virender @ Beero and Rajinder also joined in thrashing the complainant. The assailants further declared that they would not rest till they killed the complainant. Upon hearing the complainant's cries, his brother Balwan (PW-3) who was irrigating a nearby *Budewala* field, rushed to the spot and raised an alarm. Thereafter, all seven accused ran from the spot. Balwan subsequently carried his injured brother to Government Civil hospital at Sonipat for treatment. Owing to the seriousness of multiple injuries, Ranbir was referred to Post Graduate Institute of Medical Sciences at Rohtak (in short, "PGIMS, Rohtak").

The jurisdictional police recorded the statement of the injured on 26.01.1998 at PGIMS, Rohtak and formally registered the First Information Report under Sections 307, 323, 325, 506, 148 and 149 of the IPC. All the seven accused were then arrested. Post completion of investigation, they were committed to trial. The Additional Sessions Judge, Sonipat framed two charges; *first*, of rioting with deadly weapons under Section 148, and *second*, of attempt to murder with common object as part of an unlawful assembly under Section 307 read with

Section 149 of the IPC. All seven accused pleaded not guilty and claimed trial. During trial, however, Om Prakash died and proceedings against him stood abated on 08.11.2000.

The prosecution examined twelve witnesses to establish the accused's guilt, which included the victim-complainant - Ranbir Singh (PW-1) and his brother and only eye-witness - Balwan (PW-3). The complainant very effectively corroborated his earlier version. He remained firm during cross-examination. (PW-4), who had medico-legally examined the injured soon after the occurrence, lead the medical evidence. The Orthopaedic Surgeon, Dr. Ajay Goel (PW-10), deposed that he was posted as Registrar in the Department of Orthopaedics, X-Ray and Emergency Wing, at PGIMS Rohtak when he attended to the complainant and diagnosed him with fracture of both the lower bones in both of his legs, along with vascular and nerve injuries.

Analysing the substantial ocular and medical evidence, the learned Additional Sessions Judge, Sonipat negated the defence's objection against reliance on testimony of PW-3, for he being related to the complainant or that the medical evidence did not reconcile with the ocular evidence. The trial Court noted that an 'unlawful assembly' with a common object had caused serious injuries to the complainant. All the six accused were consequently convicted for the offence under Section 307 read with Section 149 of the IPC (with sentence of seven years rigorous imprisonment) and also under Section 148 of the IPC (with an additional one year's concurrent imprisonment).

The High Court, in appeal, re-appraised the entire evidence and took further notice of the complainant's admission that three of the accused, namely Rajinder, Hawa Singh and Beero @ Virender, had arrived at the scene of occurrence after he had already suffered injuries from the other accused. Sensing the possibility that the late-arriving accused might have been named only to widen the net and settle past scores, the High Court extended the benefit of doubt to Rajinder, Hawa Singh and Beero @ Virender and acquitted them of all charges. As regards the present three appellants - Rohtas, Sanjay and Bijender, the High Court found no ground to interfere with their conviction, though it reduced the quantum of sentence under the charge of Section 307 IPC from seven years to five, with a combined additional fine of Rs. 1,00,000 (Rupees One Lakh) to be paid to the victim-complainant (PW-1).

These three remaining convicts, namely, Rohtas and Sanjay (jointly) and Bijender assailed their conviction and sentence through these two criminal appeals.

Contentions

First , the minimum number of persons required to constitute an 'unlawful assembly' and concomitantly sustain any charge under Section 149 IPC is five. Given that three of the original seven accused have been acquitted by the High Court, the conviction for attempt to murder as part of an unlawful assembly could not survive and that the case should not be converted to one under Section 307 IPC simplicitor at an advanced stage.

Second, the prosecution story was highly doubtful as Balwan (PW-3) was an interested witness and no other independent witness had been examined.

Third and finally, it was urged alternatively that the appellants after having undergone some part of their sentence were enlarged on bail by this Court almost a decade back, and it would not serve the ends of criminal justice to return them to Jail at this juncture. The sentence thus ought to be reduced to the period already undergone by the appellants.

Observations and Decision

Regarding ***framing of charge and its subsequent alteration,*** the Hon'ble Court referred to the several judgments[14] of the Supreme Court and held :-

> **15.** The primary attack on the judgment of the High Court by learned counsel for the appellants is on a question of law, which although seems interesting at first but turns out to be superficial upon a deeper consideration. The oversight regarding Section 148 and 149 of the IPC as highlighted by the appellants is indeed inescapable. Before the members of an 'unlawful assembly' can be vicariously held guilty of an offence committed in furtherance of common object, it is necessary to establish that not less than five persons, as mandatorily prescribed under Section 141 read with Section 149 of the IPC had actually participated in the occurrence. It is not uncommon, like in the present facts, when although the number of accused is more than five at the time of charge-sheeting, but owing to acquittals of some of them over the course of trial, the remaining number of accused falls below five. It may be true in such cases, as rightly urged by the appellants that the charge under Section 148 and 149 IPC would not survive.
>
> **16.** This does not, however, imply that Courts can not alter the charge and seek the aid of Section 34 IPC (if there is common intention), or that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. Sections 211 to 224 of CrPC which deal with framing of charges in criminal trials, give significant flexibility to Courts to alter and rectify the charges. The only controlling objective while deciding on alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy.[4] The emphasis of Chapter XVII of the CrPC is thus to give a full and proper opportunity to the defence but at the same time to ensure that justice is not defeated by mere technicalities. Similarly, Section 386 of CrPC bestows even upon the appellate Court such wide powers to make amendments to the charges which may have been erroneously framed earlier. Furthermore, improper, or non-framing of charge by itself is not a ground for acquittal under Section 464 of the CrPC. It must necessarily be shown that failure of justice has been caused, in which case a re-trial may be ordered.[5]
>
> **22.** Although both Section 34 and 149 of the IPC are modes for apportioning vicarious liability on the individual members of a group, there exist a few important differences between these two provisions. Whereas Section 34 requires active participation and a prior meeting of

[14] *Nallapareddy Sridhar Reddy* v. *State of AP*, 2020 SCC OnLine SC 60, *Kantilal Chandulal Mehta* v. *State of Maharashtra*, (1969) 3 SCC 166, Subran and Ors. v. State of Kerala, (1993) 3 SCC 722, *Karnail Singh* v. *State of Punjab,* AIR 1954 SC 204, *Willie (William) Slaney* v. *State of MP,* AIR 1956 SC 116, *Chittarmal* v. *State of Rajasthan,* (2003) 2 SCC 266, *Atmaram Zingaraji* v. *State of Maharashtra,* (1997) 7 SCC 41, *Nallabothu Venkaiah* v. *State of Andhra Pradesh,* (2002) 7 SCC 117.

minds, Section 149 IPC assigns liability merely by membership of the unlawful assembly. In reality, such 'common intention' is usually indirectly inferred from conduct of the individuals and only seldom it is done through direct evidence.[12]

23. Applying these settled principles to the facts of the present case, it may be seen that both the common object and the common intention are traced back to the same evidence, i.e., evaluating the conduct of the accused as narrated by the injured and the eye-witness. Further, a perusal of Section 313 CrPC statement shows that the appellants were expressly confronted with their specific role in the offence : that each of them had individually attacked the complainant with a deadly object in furtherance of the common intention of killing him. We, therefore, do not find that the appellants suffered any adverse effect when the High Court held the three of them individually guilty for the offence of attempted murder, without the aid of Section 149 IPC.

24. We have no doubt that on facts, an offence under Section 307 IPC is clearly made out against each of the three appellants. The medical experts have in their depositions clearly explicated that the weapons used and the injuries inflicted were more than sufficient to cause death in ordinary course of nature. The appellants made death threats to the complainant on 24.01.1998 and then they used sharp edged weapons the very next day and further declared that they would not rest till they killed the complainant. It manifests the appellant's intention to inflict bodily injury knowing fully that such injuries would ordinarily lead to the complainant's death. The recovery of the axe (*kulhari*) from Rohtas, which is on the record as Exhibit-P7, further punches holes in the mask of denial worn by the appellants.

25. The gravity of the injuries is beyond doubt. Not only were there seven injuries, some of which were deep cuts on vital parts of the body including on the head (above the ear); but the appellants broke all the bones in the complainant's feet below the knee. Most appallingly, the injuries have led to amputation of an entire limb, leaving the complainant permanently disabled. This by itself shows the very likely possibility of the complainant dying if not for the timely intervention of PW-3 and appropriate medical care by PGIMS Rohtak. Given such extreme injuries, we can fathom no rhyme or reason for either the complainant (PW-1) or his brother, Balwan (PW-3) to falsely implicate the appellants and allow the actual culprits to go scot-free. On the contrary, the candour of PW-1 and the responses of PW-3 inspire confidence and provide undoubtable explanation of the incident.

26. That apart, even the requirements of Section 34 of IPC are well established as the attack was apparently pre-meditated. The incident was not in a spur-of-the-moment. The appellants had previously threatened the complainant with physical harm if he were to attempt to irrigate his fields. Their attack on 25.01.1998 was thus pre-planned and calculated. There is nothing on record to suggest that the complainant caused any provocation. Specific roles have been attributed to each of the appellants by the injured and the solitary eye-witness, establishing their individual active participation in the crime.

Regarding ***independence of witnesses***, the Hon'ble Court held :-

27. It is true that the duty of the prosecution is to seek not just conviction but to ensure that justice is done.[13] The prosecution must, therefore, put forth the best evidence collected in the course of investigation. Although it is always ideal that independent witnesses come forward to substantiate the prosecution case but it would be unfair to expect the presence of third-parties in every case at the time of incident, for most violent crimes are seldom anticipated. Any adverse inference against the non-examination of independent witnesses thus needs to be

assessed upon the facts and circumstances of each case. In fact, it must first be determined whether the best evidence though available, has been actually withheld by the prosecution for oblique or unexplained reasons.

28. The present crime took place in a private agriculture field and not in the middle of a busy public place. The defence has not claimed that other farmers also gathered at the scene and yet have not been examined. This shows that the appellants have in fact been blowing both hot and cold with their arguments. Earlier in the trial they had tried to discredit the ocular testimony of PW-3 by claiming that he might not have been able to witness the incident owing to standing crops in the field. Nonetheless, they expect this Court to believe that there could have been others who witnessed the incident but have deliberately been suppressed by the prosecution.

The Hon'ble Court set aside the conviction under Section 148 of the IPC but upheld the conviction under Section 307 of the IPC. It also did not find any justification to show leniency and reduce the sentence.

16. *APJ Abdul Kalam Technological University and Anr. v. Jai Bharath College of Management and Engineering Technology and Ors., (2020 SCC OnLine SC 1015)*

Decided on : - 10.12.2020

Bench :- 1. Hon'ble Mr. Justice S.A. Bobde (CJ)
2. Hon'ble Mr. Justice A.S. Bopanna
3. Hon'ble Mr. Justice **V. Ramasubramanian**

(While it is not open to the Universities to dilute the norms and standards prescribed by AICTE, it is always open to the Universities to prescribe enhanced norms. As regards the role of the Universities vis-à-vis the AICTE, the Supreme Court held in *Bharathidasan University* v. *All India Council for Technical Education*, that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them.)

Facts

With a view to regulate technical education in the State, the State of Kerala enacted the APJ Abdul Kalam Technological University Act, 2015 (hereinafter referred to as "the University Act").The first respondent is a self-financing Institution which was earlier offering B.Tech courses in five disciplines with an annual permitted intake of 60 students in each of the disciplines. After closing the course in one particular discipline, the first respondent applied in February/March-2020 seeking approval of the AICTE for starting a new course in "*Artificial Intelligence and Data Science*" with a permitted annual intake of 60 students, from the Academic Year 2020-21. The application was in accordance with the AICTE Approval Process Handbook 2020-21, issued in terms of the AICTE (Grant of Approvals for Technical Institutions) Regulations, 2020.

On 13.06.2020, AICTE granted approval to the first respondent, for starting the newly proposed course, even while granting extension of approval for the existing courses.

Simultaneously with the submission of the application to the AICTE, the first respondent also submitted an application for affiliation to the appellant-University, in February/March 2020. The first respondent also paid the Inspection Fee/Affiliation Fee.

But even before the first respondent took a decision to start a new course, something happened in the State of Kerala. A study conducted by a group of academic experts seems to have revealed that there was a steady decline in the actual intake of students in self-financing engineering colleges. As against the permitted intake of 58,165 students for the academic year 2015-16, only 37,007 students got admitted leaving 19,468 seats vacant. The number of vacant seats rose to 20,038 in the academic year 2016-17 and to 22,819 in the academic year 2017-18.

Therefore, based on the study conducted by the group of academic experts, the Government issued an order in G.O. (Rt) No. 1039/2019/HEDN dated 22.06.2019. It was directed by this

Order that permission for starting new courses in Engineering shall be granted only if three conditions are satisfied namely : **(i)** that the college should have NBA accreditation; **(ii)** that the admission of students in the previous academic years should have been more than 50% of the sanctioned intake; and **(iii)** that the new course should be innovative.

Following the said Government order, the Syndicate of the appellant-University resolved in its meeting held on 04.02.2020 to fix the following norms for the grant of affiliation to new programs based on the recommendation of the Academic Council : **(i)** that at least one of the existing programs should have NBA accreditation; **(ii)** that the average annual intake of the institution for the previous three years should be more than 50% of the sanctioned intake; **(iii)** that the proposed programme should have AICTE approval and NOC from State Government; and **(iv)** that the proposed programme should have industry demand/employment potential.

Thereafter, a sub-committee was constituted for the purpose of recommending affiliation for new courses or programmes for the affiliated colleges who have submitted applications for starting new programmes. This sub-committee resolved in its meeting held on 20.03.2020 to suggest some criteria for the consideration of the Syndicate of the University.

Finding that the Government Order G.O. (Rt) No. 1039, dated 22.06.2019 and the resolution of the Syndicate dated 04.02.2020 has led to an unfavourable climate with the subcommittee not recommending the grant of affiliation for their proposed new course, the first respondent-College filed a writ petition before the High Court of Kerala.

The 13th meeting of the Syndicate of the appellant-University was held on 24.06.2020 and was chaired by the Vice Chancellor of the University. It was attended by a total of nine persons, of which one was the Principal Secretary, Higher Education Department of the Government of Kerala, and another was the Director of Technical Education. The rest were academicians. In this meeting, the Syndicate examined the list of colleges which had applied for new courses/programmes, without any NBA accreditation. Finding that even colleges which did not have NBA accreditation had been granted approval by AICTE, the Syndicate resolved in its meeting held on 24.06.2020 that affiliation can be granted even to colleges without NBA accreditation, subject to the satisfaction of the following criteria : **(i)** that the Institution should have more than 50% pass for the outgoing students at the time of application for affiliation; **(ii)** that the Institution should have most recent academic audit overall score of "Good"; and **(iii)** that the Institution should have three years average intake of more than 50% of the sanctioned intake.

The writ petition filed by the first respondent challenging the denial of affiliation for starting a new B.Tech course in Artificial Intelligence and Data Science, was taken up along with similar writ petitions filed by other colleges (including those filed by the Colleges, which have now come up with applications for intervention/impleadment and for vacation of interim order) and all of them were disposed of by a learned Judge of the High Court by a Judgment dated 06.08.2020. Not satisfied with the partial relief granted and the directions

issued by the learned Judge, the first respondent filed a writ appeal in Writ Appeal No. 1073 of 2020 before the Division Bench of the High Court. The other Colleges who were writ petitioners, also filed separate writ appeals.

By the common Judgment dated 08.09.2020 impugned in this appeal, the Division Bench partially allowed the writ appeals, holding : **(i)** that the Syndicate did not have the power to take the decisions dated 04.02.2020 (as communicated on 10.06.2020) and 24.06.2020, as there was no University Statute in force on that date and that in the absence of the Statute, the Vice-Chancellor alone had the power under section 14(6) of the Act to make any recommendation to the Board of Governors in the matter of affiliation; and **(ii)** that the University cannot go beyond AICTE Regulations.

Aggrieved by the said judgment of the Division Bench of the Kerala High Court, the University has come up with the above appeal. It is stated across the Bar that the appellant-University has filed similar appeals against the very same impugned Judgment and those appeals are yet to be numbered.

Observations and Decision

Issues :-

(i) the power of the Syndicate to lay down norms for the grant of affiliation; and
(ii) the very power of the University to go beyond the AICTE Regulations.

The Hon'ble Court allowed the appeal. Regarding the first issue, the Hon'ble Court referred to the provisions of the APJ Abdul Kalam University Act and held as follows :-

> **39.** When the Statutes have not prescribed any conditions for affiliation but have left it to the Syndicate to take care of matters relating to affiliation, the function of the Syndicate to lay down norms and standards by virtue of the powers conferred by Section 30(2), is made free of any fetters.
>
> **40.** Therefore, the norms prescribed by the Syndicate in its meeting held on 24.06.2020 under the Chairmanship of the Vice Chancellor could not have been taken exception to. After all, the norms which the Colleges have objected to, merely seek to ensure that at least 50% of the outgoing students had passed their respective courses and that the Institution should have the most recent academic audit overall score of "Good", apart from having an actual intake of more than 50% of the sanctioned intake in the preceding three years on an average. We fail to understand how colleges can demand affiliation for creating additional courses, when the pass percentage of outgoing students is less than 50% and the Colleges could not even have an average intake of more than 50% of the sanctioned intake in the preceding three years.
>
> **41.** Therefore, we are of the view that the High Court was in error in holding on the first issue that the resolutions passed by the Syndicate prescribing norms and standards for the grant of affiliation for additional courses, are *ultra vires* the Act.

Regarding the second issue, the Hon'ble Court held as follows :-

48. The law is now fairly well settled that while it is not open to the Universities to dilute the norms and standards prescribed by AICTE, it is always open to the Universities to prescribe enhanced norms. As regards the role of the Universities vis-à-vis the AICTE, this Court held in *Bharathidasan University* v. *All India Council for Technical Education*[4], that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them. This view was followed in *Association of Management of Private Colleges* v. *All India Council for Technical Education*[5].

49. That even the State Government can prescribe higher standards than those prescribed by AICTE was recognized by a 3-member Bench of this court in *State of T.N.* v. *S.V. Bratheep (Minor)*[6]. This principle was later applied in the case of Universities in *Visveswaraiah Technological University* v. *Krishnendu Halder*[7] where this Court considered the previous decisions and summarised the legal position emerging therefrom as follows:

.....

50. *Visveswaraiah* (supra) principles were reiterated in *Mahatma Gandhi University* v. *Jikku Paul*[8]. The legal position summarised in paragraph 14 of the report in *Visveswaraiah* (supra) (extracted above) were quoted with approval by the Constitution Bench in *Modern Dental College & Research Centre* v. *State of Madhya Pradesh*[9]. In *Modern Dental College* (supra), issue No. IV framed for consideration by the Constitution Bench (as reflected in the opinion of the majority) was as to "***whether the legislation in question was beyond the legislative competence of the State of Madhya Pradesh***". While answering this issue, the opinion of the majority was to the effect (i) that the decision in *Dr. Preeti Srivastava* v. *State of M.P.*[10] did not exclude the role of the States altogether from admissions; and (ii) that the observations in *Bharati Vidyapeeth (deemed university)* v. *State of Maharashtra*[11] as though the entire gamut of admissions was covered by Entry 66 of List-I, has to be overruled. In the concurring and supplementing opinion rendered by R. Banumathi, J., in *Modern Dental College* (supra), the legal position enunciated in *Visveswaraiah* (supra) were extracted and followed.

53. Thereafter, in *Bharathidasan University* (supra), the Supreme Court noted *Jaya Gokul Educational Trust* (supra) and came to the conclusion that a careful scanning of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition will show that the role of the AICTE vis-à-vis the Universities is only advisory, recommendatory and a guiding factor. Therefore, on the issue on hand, *Jaya Gokul* is of no assistance to the first respondent. *Mata Gujri Memorial Medical College* followed *Jaya Gokul*, without reference to *Bharathidasan University*. In any case, as on date *Visveswaraiah, Mahatma Gandhi University and Modern Dental College* hold the field, but apparently, they were not brought to the notice of the High Court.

56. Quite unfortunately the AICTE has filed a counter affidavit before this Court supporting the case of the first Respondent College and branding the fixation of additional norms and conditions by the University as unwarranted. Such a stand on the part of the AICTE has compelled us to take note of certain developments that have taken place after 2012 on the AICTE front.

57. After the advent of AICTE Regulations, 2012, the applications for extension of approvals are processed by AICTE only online, merely on the basis of the self-disclosure made by the colleges in their online applications. If all infrastructural facilities as prescribed by AICTE are found to be available on paper (whether available at site or not), the AICTE grants extension of approval.

58. The position ever since 2012 has been that all applications for approval/extension of approval are processed by AICTE only online. The AICTE Regulations, 2020, also require under Regulation 5.6.a. that existing institutions should submit applications using their unique User ID. Regulation 6.3.a. states that the applications submitted by the existing institutions will be processed after confirming that the applicant had fulfilled all the norms and standards through the procedure as prescribed in the Approval Process Handbook. Chapter II of the Approval Process Handbook for 2020-21 makes it clear that the extension of approval will be based on self-disclosure. Paragraph 13 of the counter affidavit of the AICTE contains an extract of Clause 2.15.4(b) of APH 2020-21, which confirms that the assessment is based on self-disclosure on AICTE web portal.

59. Though AICTE has reserved to itself the power to conduct inspections and take penal action against colleges for false declarations, such penal action does not mean anything and does not serve any purpose for the students who get admitted to colleges which have necessary infrastructure only on paper and not on site. The Regulations of the AICTE are silent as to how the students will get compensated, when penal action is taken against colleges which host false information online in their applications to AICTE. Ultimately, it is the universities which are obliged to issue degrees and whose reputation is inextricably intertwined with the fate and performance of the students, that may have to face the music and hence their role cannot be belittled. Today, even the universities are being ranked according to the quality of standards maintained by them. The Ministry of Human Resources Development of the Government of India launched an initiative in September 2015, known as National Institutional Ranking Framework (NIRF), for ranking institutions including universities in India. The ranking is based on certain parameters such as : **(i)** Teaching, Learning and Resources; **(ii)** Research and Professional Practice; **(iii)** Graduation Outcomes; **(iv)** Outreach and Inclusivity; and (v) Peer Perception. No State run university can afford to have a laid-back attitude today, when their own performance is being measured by international standards. Therefore, the power of the universities to prescribe enhanced norms and standards, cannot be doubted.

17. Vidya Drolia v. Durga Trading Corporation, (2020 SCC OnLine SC 1018)

Decided on : - 14.12.2020

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

(Tests for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable have been laid down and the issue as to who decides the arbitrability have been decided in this case which overruled the ratio in :-

- *N. Radhakrishnan* inter alia observing that allegations of fraud can be made a subject matter of arbitration when they relate to a civil dispute,

- The Full Bench decision of the Delhi High Court in the case of *HDFC Bank Ltd.* which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable

- *Himangni Enterprises* which had held that landlord-tenant disputes are non-arbitrable.

- *Patel Engineering Ltd.* on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, since the same is not applicable post the amendments of 2015 and 2019.)

Issues

This judgment decides the reference to three Judges made vide order dated 28th February, 2019 in Civil Appeal No. 2402 of 2019 titled *Vidya Drolia* v. *Durga Trading Corporation*[15], as it doubts the legal ratio expressed in *Himangni Enterprises* v. *Kamaljeet Singh Ahluwalia*[16] that landlord-tenant disputes governed by the provisions of the Transfer of Property Act, 1882, are not arbitrable as this would be contrary to public policy.

Following issues had been framed by the Hon'ble Court:-

(i) meaning of non-arbitrability and when the subject matter of the dispute is not capable of being resolved through arbitration; and

(ii) the conundrum - "who decides" - whether the court at the reference stage or the arbitral tribunal in the arbitration proceedings would decide the question of non-arbitrability.

The second aspect also relates to the scope and ambit of jurisdiction of the court at the referral stage when an objection of non-arbitrability is raised to an application under Section 8 or 11 of the Arbitration and Concilliation Act, 1996 (for short, the 'Arbitration Act').

[15] 2019 SCC OnLine SC 358.
[16] (2017) 10 SCC 706.

Observations and Decision

Regarding the first issue, the Hon'ble Court referred to the ….. and held as follows :-

60. In view of the above discussion, we would like to propound a fourfold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

(1) when cause of action and subject matter of the dispute relates to actions *in rem*, that do not pertain to subordinate rights *in personam* that arise from rights *in rem*.

(2) when cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

(3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and

(4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

61. These tests are not watertight compartments; they dovetail and overlap, *albeit* when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is non-arbitrable. Only when the answer is affirmative that the subject matter of the dispute would be non-arbitrable.

62. However, the aforesaid principles have to be applied with care and caution as observed in *Olympus Superstructures Pvt. Ltd.*:

"35…Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of fats relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (*Keir* v. *Leeman*). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (*Soilleux* v. *Herbst*, *Wilson* v. *Wilson* and *Cahill* v. *Cahill*)."

63. Applying the above principles to determine non-arbitrability, it is apparent that insolvency or intracompany disputes have to be addressed by a centralized forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also actions *in rem*. Similarly, grant and issue of patents and registration of trademarks are exclusive matters falling within the sovereign or government functions and have *erga omnes* effect. Such grants confer monopoly rights. They are non-arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offenses against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have *erga omnes* effect. Matters relating to probate, testamentary matter etc. are actions *in rem* and are a declaration to the world at large and hence are non-arbitrable.

64. In view of the aforesaid discussions, we overrule the ratio in *N. Radhakrishnan* inter alia observing that allegations of fraud can be made a subject matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to nonarbitrability. We have also set aside the Full Bench decision of the Delhi High Court in the case of *HDFC Bank Ltd.* which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.

65. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions *in rem* but pertain to subordinate rights *in personam* that arise from rights *in rem*. Such actions normally would not affect third-party rights or have *erga omnes* affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

66. In view of the aforesaid, we overrule the ratio laid down in *Himangni Enterprises* and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

With respect to the second issue, as to who decides the question of arbitrability, the Hon'ble Court held :-

69. Issue of non-arbitrability can be raised at three stages. *First*, before the court on an application for reference under Section 11 or for stay of pending judicial proceedings and reference under Section 8 of the Arbitration Act; *secondly*, before the arbitral tribunal during the course of the arbitration proceedings; or *thirdly*, before the court at the stage of the challenge to the award or its enforcement. Therefore, the question - '*Who decides nonarbitrability?*' and, in particular, the jurisdiction of the court at the first look stage, that is, the referral stage.

70. Who decides the question of non-arbitrability? - a jurisdictional question is a technical legal issue, and requires clarity when applied to facts to avoid bootstrapping and confusion. The doubt as to who has the jurisdiction to decide could hinder, stray, and delay a many arbitration proceedings. Unfortunately, *who decides non-arbitrability* remains a vexed question that does not have a straightforward universal answer as would be apparent from opinions in the at-variance Indian case laws on this subject. To some extent, the answer depends on how much jurisdiction the enactment gives to the arbitrator to decide their own jurisdiction as well as the court's jurisdiction at the reference stage and in the post-award proceedings. It also depends upon the jurisdiction bestowed by the enactment, viz. the facet of non-arbitrability in question, the scope of the arbitration agreement and authority conferred on the arbitrator.

73. The legal position as to who decides the question of nonarbitrability under the Arbitration Act can be divided into four phases. The first phase was from the enforcement of the Arbitration Act till the decision of the Constitution Bench of seven Judges in *Patel Engineering Ltd.* on 26th October 2005. For nearly ten years, the ratio expressed in *Konkan Railway Corpn. Ltd.* v. *Mehul Construction Co.*,[44] affirmed by the Constitution Bench of five Judges in *Konkan Railway Construction Ltd.* v. *Rani Construction Pvt. Ltd.*,[45] had prevailed. The second phase commenced with the decision in *Patel Engineering Ltd.* till the legislative amendments, which were made to substantially reduce court interference and overrule the legal effect of *Patel Engineering Ltd.* vide Act 3 of 2016 with retrospective effect from 23rd October 2015. The third phase commenced with effect from 23rd October 2015 and continued till the enactment of Act 33 of 2019 with effect from 9th August 2019, from where commenced the fourth phase, with a clear intent to promote institutionalized arbitration rather than *ad hoc* arbitration. The amendments introduced by Act 33 of 2019 have been partially implemented and enforced. In the present case, we are primarily concerned with the legal position in the third phase with effect from 23rd October 2015 when amendments by Act 3 of 2016 became operative.

138. Discussion under the heading 'Who decides Arbitrability?' can be crystallized as under:

(a) Ratio of the decision in *Patel Engineering Ltd.* on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23.10.2015) and even post the amendments vide Act 33 of 2019 (with effect from 09.08.2019), is no longer applicable.

(b) Scope of judicial review and jurisdiction of the court under Section 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

(c) The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of nonarbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

(d) Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and *ex facie* certain that the arbitration agreement is nonexistent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably 'non-arbitrable' and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

18. Amar Nath Chaubey v. Union of India and Ors., (2020 SCC OnLine SC 1019)

Decided on : - 14.12.2020

Bench :- 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice Krishna Murari

(The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation.)

Facts

One Shri Ram Bihari Chaubey, the father of the petitioner, was shot dead at his residence in Village Shrikanthpur, Chaubepur, Varanasi in the State of Uttar Pradesh, on 04.12.2015 at around 7.15 AM. An F.I.R. under Sections 302, 147, 148 and 149, I.P.C. was registered the same day at Chobepur Police Station at 11.15 AM. Four unknown assailants were stated to have come on a motor cycle. Two of them entered the residence and shot the deceased, while the two others waited outside, after which they all escaped. The petitioner, son of the deceased, approached the Allahabad High Court complaining of the lackadaisical manner in which the police was investigating because some powerful political personalities were also involved. The investigating officers were also being changed with regularity seeking a mandamus for a proper inquiry into the murder of his father including by the C.B.I. The High Court called for a progress report and also required the Chief Secretary to file his affidavit in the matter. The petitioner, aggrieved by the impugned order of the High Court dated 17.05.2018 disposing the writ petition, accepting the contention of the police that the investigation would be concluded expeditiously and report will be submitted before the competent court within a period of eight weeks, approached the Supreme Court.

Observations and Decision

The Hon'ble Court referred to the judgment of *Manohar Lal Sharma v. Principal Secretary* reported in (2014) 2 SCC 532 and observed as follows :-

> **6.** We have considered the matter. The F.I.R. was registered on 04.12.2015. Eight investigating officers have been changed. Respondent no. 5 suo moto sought impleadment in

the writ petition filed in the High Court. An investigation which had been kept pending since 04.12.2015 was promptly closed on 30.01.2019 after this Court had issued notice on 07.09.2018. The affidavit of the Director General of Police, U.P. not being satisfactory, on 26.10.2020 this Court required the respondents to file copy of the closure report stated to have been filed before the court concerned. The affidavit filed by the Circle Officer, Pindara, Varanasi dated 31.10.2020, pursuant to our order dated 26.10.2020 encloses the closure report dated 02.09.2018, the supervision note of the Superintendent of Police, Rural dated 17.12.2018 and the closure report dated 30.01.2019 submitted in court. We have gone through the same. It simply states that there was no concrete evidence of conspiracy against respondent no. 5 and that the informant had not placed any materials before the police direct or indirect with regard to the conspiracy. As and when materials will be found against respondent no. 5 in future, action would be taken as per law. No credible evidence was found against Manish Singh and Dabloo Singh.

7. We are constrained to record that the investigation and the closure report are extremely casual and perfunctory in nature. The investigation and closure report do not contain any material with regard to the nature of investigation against the other accused including respondent no. 5 for conspiracy to arrive at the conclusion for insufficiency of evidence against them. The closure report is based on the *ipse dixit* of the Investigating Officer. The supervision note of the Senior Superintendent of Police (Rural), in the circumstances leaves much to be desired. The investigation appears to be a sham, designed to conceal more than to investigate. The police has the primary duty to investigate on receiving report of the commission of a cognizable offence. This is a statutory duty under the Code of Criminal Procedure apart from being a constitutional obligation to ensure that peace is maintained in the society and the rule of law is upheld and applied. To say that further investigation was not possible as the informant had not supplied adequate materials to investigate, to our mind, is a preposterous statement, coming from the police.

(emphasis supplied)

8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

(emphasis supplied)

10. The trial is stated to have commenced against the charge sheeted accused, and the informant summoned to give evidence. In the facts of the case, we direct that further trial

shall remain stayed. The closure reports dated 02.09.2018, 17.12.2018 culminating in the report dated 30.01.2019 are partly set aside insofar as the non-charge sheeted accused are concerned only. Those already charge sheeted, calls for no interference.

11. We hereby appoint Shri Satyarth Anirudh Pankaj, I.P.S. as the senior officer, State of Uttar Pradesh to carry out further investigation in the matter through a team of competent officers to be selected by him of his own choice. The State shall ensure the availability of such officers. The investigation must be concluded within a period of two months from the date of receipt of a copy of this order, unless extension is required, and the final report be placed before this Court. The Director General of Police, Uttar Pradesh shall do the needful.

19. Iqbal Basith and Ors. v. N.Subbalakshmi and Ors., (2020 SCC OnLine SC 1020)

Decided on : - 14.12.2020

Bench :- 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice **Navin Sinha**
3. Hon'ble Mr. Justice Krishna Murari

(An adverse inference can be drawn against a witness on the basis of the principle of Illustration (g) of Section 114 of the Indian Evidence Act if he fails, without explanation, to appear in the witness box and also present himself for cross-examination.)

Facts

The suit property bearing no. 44/6 in J.C. Road, Bangalore measures totally 90 ft. × 110 ft. The property originally belonged to the municipality, identified as site no. 10 and 17 J.C. Road, 6th Division, Bangalore. On 08.08.1945, the City Municipal Council resolved to sell 75 ft. × 110 ft. to one O.A. Majid Khan. Sanction for the sale was accorded by the Municipality on 07.09.1946, by Government Order No. L.3392-3/ML-55-46-6 under Section 41(2) of the Act. The respondents themselves filed a certified copy of the same in the suit, which was marked as Ex. D-1. The said O.A. Majid Khan, by letter no. A7.0.170/46-47 dated 17.09.1946 was directed to deposit Rs. 17,361/- as consideration. The Municipal Engineer on 30.09.1946 was directed to hand over possession after deposit of the consideration amount. Possession was handed over to O.A. Majid Khan on 10.10.1946. On 16.04.1956, the Assistant Revenue Officer of the Municipality, informed that the property bearing no. 10 and 17 sold to O.A. Majid Khan had been renumbered as 44, J.C. Road, 25th division.

Sufia Khatoon, the widow of O.A. Majid Khan, sold the property to the mother of the appellants Zahara Khatoon, original plaintiff no. 3, on 10.07.1956 by a registered sale deed. Two confirmatory sale deeds were also executed on 08.04.1958 and 21.08.1959 by the legal heirs of O.A. Majid Khan in favour of Zahara Khatoon after attaining majority. Subsequently on 27.09.1962 the remaining portion of the suit property admeasuring 15 ft. × 110 ft. was sold by the municipality to Zahara Khatoon by a registered sale deed. Zahara Khatoon thus became the owner of the suit area of 90 ft. × 110 ft. of property bearing no. 44/6. The mother of the appellants gifted the property to them in 1966. The necessary entries were made in the property tax register, and the tax receipts demonstrate the payment of tax by the appellants from 1964-65 up to the year 1969-70 and again from 1984-85, 1986-87.

The present suit was instituted by the appellants in 1974 seeking permanent injunction as the respondents attempted to encroach on their property. The suit schedule property was described as no. 44/6. The respondents in their written statement claimed ownership and possession of property no. 42, acknowledging that other properties lay in between. A feeble vague objection was raised, but not pursued, questioning the title of the appellants. The respondents raised no genuine objection to the validity or genuineness of the government

documents and the registered sale deeds produced by the appellants in support of their lawful possession of the suit property. The original defendant no. 1 did not appear in person to depose, and be cross-examined in the suit. His younger brother deposed on the basis of a power of attorney, acknowledging that the latter had separated from his elder brother.

The plaintiffs were before the Supreme Court in appeal against the concurrent findings by two courts, rejecting their plaint seeking the relief for permanent injunction. Both the Courts held that the respondents had no concern with the suit property, yet ventured to decide that the appellants had failed to establish title and dismissed the suit.

Observations and Decision

Regarding the fact that the original defendant no. 1 did not appear in person to depose, the Hon'bble Court referred to ***Iswar Bhai C. Patel v. Harihar Behera***, (1999) 3 SCC 457 and observed :-

> **9. .....** The original defendant no. 1 did not appear in person to depose, and be cross-examined in the suit. His younger brother deposed on the basis of a power of attorney, acknowledging that the latter had separated from his elder brother. No explanation was furnished why the original defendant did not appear in person to depose. We find no reason not to draw an adverse inference against defendant no. 1 in the circumstances. In *Iswar Bhai C. Patel* v. *Harihar Behera*, (1999) 3 SCC 457 this Court observed as follows:—
>
> > "17.....Having not entered into the witness-box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of the Evidence Act, 1872."

The Hon'ble Court, allowing the appeal, set-aside the impugned orders and held as follows :-

> **12.** Both the courts then proceeded to consider the title of the appellants to decide lawful possession. The respondents had themselves produced a certified copy of Ex. D-1 dated 07.09.1946. The appellants produced photocopies of all other resolutions, government orders and sale deed in favour of their vendor O.A. Majid Khan by the Municipality. The failure to produce the originals or certified copies of other documents was properly explained as being untraceable after the death of the brother of P.W.1 who looked after property matters. The attempt to procure certified copies from the municipality was also unsuccessful as they were informed that the original files were not traceable. The photocopies were marked as exhibits without objection. The respondents never questioned the genuineness of the same. Despite the aforesaid, and the fact that these documents were more than 30 years old, were produced from the proper custody of the appellants along with an explanation for non-production of the originals, they were rejected without any valid reason holding that there could be no presumption that documents executed by a public authority had been issued in proper exercise of statutory powers. This finding in our opinion is clearly perverse in view of Section 114(e) of the Indian Evidence Act 1872, which provides that there shall be a presumption that all official acts have been regularly performed. The onus lies on the person who disputes the same to prove otherwise.

13. This Court in *Lakhi Baruah* v. *Padma Kanta Kalita*, (1996) 8 SCC 357, with regard to admissibility in evidence of thirty years old documents produced from proper custody observed as follows:—

.....

14. The appellants were seeking the relief of permanent injunction only. Their title to the suit property was not disputed by the respondents. The respondents acknowledged that they were in ownership and possession of plot no. 42, which had no concern with the suit property and was situated at a distance of 103 feet with other intervening properties. The two reports of the Pleader Commissioner also confirmed the possessory title of the appellants along with property tax registers and municipal tax receipts. The appellants had more than sufficiently established their lawful possession of the suit property.

15. The conclusion by the courts below that the appellants had failed to establish title and therefore could not be said to be in lawful possession is therefore held to be perverse and unsustainable. Similarly, the conclusion that the identity of the suit property was not established is also held to be perverse in view of letter dated 16.04.1956 from the municipality, referred to herein above. The contention of the respondents feebly seeking to question the title of the appellants was rejected holding that they had nothing to do with the suit schedule property and that their conduct was questionable. Yet the appellants were wrongly denied the relief of permanent injunction. In our considered opinion the Trial Court and the High Court both posed unto themselves the wrong question venturing to decide the title of the appellants, and arrived at an erroneous conclusion.

20. Samir Agrawal v. Competition Commission of India and Ors., (2020 SCC OnLine SC 1024)

Decided on : - 15.12.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice K.M.Joseph
3. Hon'ble Mr. Justice Krishna Murari

(Given the context of the Act in which the CCI and the NCLAT deal with practices which have an adverse effect on competition in derogation of the interest of consumers, it is clear that the Act vests powers in the CCI and enables it to act *in rem*, in public interest. This would make it clear that a "person aggrieved" must, in the context of the Act, be understood widely and not be constructed narrowly. the expressions used in sections 53B and 53T of the Act are "*any* person", thereby signifying that *all* persons who bring to the CCI information of practices that are contrary to the provisions of the Act, could be said to be aggrieved by an adverse order of the CCI in case it refuses to act upon the information supplied.)

Facts

The Appellant/Informant, by an Information filed on 13.08.2018 ["the Information"], sought that the Competition Commission of India ["CCI"] initiate an inquiry, under section 26(2) of the Competition Act, 2002 ["the Act"], into the alleged anti-competitive conduct of ANI Technologies Pvt. Ltd. ["Ola"], and Uber India Systems Pvt. Ltd., Uber B.V. and Uber Technologies Inc. [together referred to as "Uber"], alleging that they entered into price-fixing agreements in contravention of section 3(1) read with section 3(3)(a) of the Act, and engaged in resale price maintenance in contravention of section 3(1) read with section 3(4)(e) of the Act. According to the Informant, Uber and Ola provide radio taxi services and essentially operate as platforms through mobile applications ["apps"] which allow riders and drivers, that is, two sides of the platform, to interact. A trip's fare is calculated by an algorithm based on many factors. The apps that are downloaded facilitate payment of the fare by various modes.

The Informant alleged that due to algorithmic pricing, neither are riders able to negotiate fares with individual drivers for rides that are booked through the apps, nor are the drivers able to offer any discounts. Thus, the pricing algorithm takes away the freedom of riders and drivers to choose the best price on the basis of competition, as both have to accept the price set by the pricing algorithm. As per the terms and conditions agreed upon between Ola and Uber with their respective drivers, despite the fact that the drivers are independent entities who are not employees or agents of Ola or Uber, the driver is bound to accept the trip fare reflected in the app at the end of the trip, without having any discretion insofar as the same is concerned. The drivers receive their share of the fare only after the deduction of a commission by Ola and Uber for the services offered to the rider. Therefore, the Informant

alleged that the pricing algorithm used by Ola and Uber artificially manipulates supply and demand, guaranteeing higher fares to drivers who would otherwise compete against one and another. Cooperation between drivers, through the Ola and Uber apps, results in concerted action under section 3(3)(a) read with section 3(1) of the Act. Thus, the Informant submitted that the Ola and Uber apps function akin to a trade association, facilitating the operation of a cartel. Further, since Ola and Uber have greater bargaining power than riders in the determination of price, they are able to implement price discrimination, whereby riders are charged on the basis of their willingness to pay and as a result, artificially inflated fares are paid. Various other averments *qua* resale price maintenance were also made, alleging a contravention of section 3(4)(e) of the Act.

The CCI by its Order dated 06.11.2018, under section 26(2) of the Act, discussed the Information provided by the Appellant/Informant and held that no case of contravention of the provisions of Section 3 has been made out and the matter is accordingly closed herewith under Section 26(2) of the Act. The Appellant/Informant, being aggrieved by the Order of the CCI, filed an appeal before the National Company Law Appellate Tribunal ["NCLAT"] which resulted in the impugned judgment.

Observations and Judgment

Regarding the *locus* of the appellant to file the case before the CCI, the Hon'ble Court referred to the provisions of the Competition Act, 2002 especially section 19 and held :-

> **14.** A reading of the provisions of the Act and the 2009 Regulations would show that "any person" may provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of "person" in section 2(l) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person. This may be contrasted with the definition of "consumer" in section 2(f) of the Act, which makes it clear that only persons who buy goods for consideration, or hire or avail of services for a consideration, are recognised as consumers.
>
> **15.** A look at section 19(1) of the Act would show that the Act originally provided for the "receipt of a complaint" from any person, consumer or their association, or trade association. This expression was then substituted with the expression "receipt of any information in such manner and" by the 2007 Amendment. This substitution is not without significance. Whereas, a *complaint* could be filed only from a person who was aggrieved by a particular action, *information* may be received from any person, obviously whether such person is or is not personally affected. This is for the reason that the proceedings under the Act are proceedings *in rem* which affect the public interest. That the CCI may inquire into any alleged contravention of the provisions of the Act on its own motion, is also laid down in section 19(1) of the Act. Further, even while exercising *suo motu* powers, the CCI may receive information from any person and not merely from a person who is aggrieved by the conduct that is alleged to have occurred. This also follows from a reading of section 35 of the Act, in which the earlier expression "complainant or defendant" has been substituted by the expression, "person or an enterprise," setting out that the informant may appear either in person, or through one or more agents, before the CCI to present the information that he has gathered.

16. Section 45 of the Act is a deterrent against persons who provide information to the CCI, *mala fide* or recklessly, inasmuch as false statements and omissions of material facts are punishable with a penalty which may extend to the hefty amount of rupees one crore, with the CCI being empowered to pass other such orders as it deems fit. This, and the judicious use of heavy costs being imposed when the information supplied is either frivolous or *mala fide*, can keep in check what is described as the growing tendency of persons being "set up" by rivals in the trade.

17. The 2009 Regulations also point in the same direction inasmuch as regulation 10, which has been set out hereinabove, does not require the informant to state how he is personally aggrieved by the contravention of the Act, but only requires a statement of facts and details of the alleged contravention to be set out in the information filed. Also, regulation 25 shows that public interest must be foremost in the consideration of the CCI when an application is made to it in writing that a person or enterprise has substantial interest in the outcome of the proceedings, and such person may therefore be allowed to take part in the proceedings. What is also extremely important is regulation 35, by which the CCI must maintain confidentiality of the identity of an informant on a request made to it in writing, so that such informant be free from harassment by persons involved in contravening the Act.

18. This being the case, it is difficult to agree with the impugned judgment of the NCLAT in its narrow construction of section 19 of the Act, which therefore stands set aside.

Regarding the next contention that the appellant cannot be said to be a *"person aggrieved"* for the purpose of Sections 53B and 53T of the Act, the Hon'ble Court referred to the case of ***A.Subash Babu* v. *State of A.P.,*** (2011) 7 SCC 616, and held as follows :-

20. ..... In this context, it is useful to refer to the judgment in *A. Subash Babu* v. *State of A.P.*, (2011) 7 SCC 616, in which the expression "person aggrieved" in section 198(1)(c) of the Code of Criminal Procedure, 1973, when it came to an offence punishable under section 494 of the Penal Code, 1860 (being the offence of bigamy), was under consideration. It was held that a "person aggrieved" need not only be the first wife, but can also include a second "wife" who may complain of the same. In so saying, the Court held:

.....

21. Clearly, therefore, given the context of the Act in which the CCI and the NCLAT deal with practices which have an adverse effect on competition in derogation of the interest of consumers, it is clear that the Act vests powers in the CCI and enables it to act *in rem*, in public interest. This would make it clear that a "person aggrieved" must, in the context of the Act, be understood widely and not be constructed narrowly, as was done in *Adi Pherozshah Gandhi* (supra). Further, it is not without significance that the expressions used in sections 53B and 53T of the Act are "*any* person", thereby signifying that *all* persons who bring to the CCI information of practices that are contrary to the provisions of the Act, could be said to be aggrieved by an adverse order of the CCI in case it refuses to act upon the information supplied. By way of contrast, section 53N(3) speaks of making payment to an applicant as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act, having been committed by an enterprise. By this sub-section, clearly, therefore, "any person" who makes an application for compensation, under sub-section (1) of section 53N of the Act, would refer only to persons who have suffered loss or damage, thereby, qualifying the expression "any person" as being a person who has

suffered loss or damage. Thus, the preliminary objections against the Informant/Appellant filing Information before the CCI and filing an appeal before the NCLAT are rejected.

22. An instructive judgment of this Court reported as *Competition Commission of India* v. *Steel Authority of India*, (2010) 10 SCC 744 dealt with the provisions of the Act in some detail and held:

.....

23. Obviously, when the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act.

Regarding the merits of the case, the Hon'ble Court did not find any reason to interfere with the findings of the CCI and the NCLAT and held as follows :-

24. Coming now to the merits, we have already set out the concurrent findings of fact of the CCI and the NCLAT, wherein it has been found that Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT. We, therefore, see no reason to interfere with these findings. Resultantly, the appeal is disposed of in terms of this judgment.

21. *Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd., (2020 SCC OnLine SC 1025)*

Decided on : - 15.12.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice K.M.Joseph
3. Hon'ble Mr. Justice Krishna Murari

(In a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.)

Facts

A winding up petition under sections 433(e) and (f), 434 and 439 of the Companies Act, 1956, being Co. Pet. No. 731 of 2016 was filed by one Shyam Metalics and Energy Limited (Respondent No. 1 herein), seeking winding up of the appellant company inasmuch as for goods supplied to the appellant company, a sum of Rs. 4.55 crore was still due.

These appeals arise out of a judgment of the Division Bench of the Delhi High Court dated 10.10.2019 by which a Single Judge's order dated 14.01.2019 transferring a winding up proceeding pending before the High Court to the National Company Law Tribunal ["NCLT"] was upheld.

Observations and Decision

With regard to the issue of transfer of winding-up petitions from Company Court to the NCLT, the Hon'ble Court referred to the provisions of the Companies Act, 2013, the Companies (Transfer of Pending Proceedings) Rules, 2016 and the Insolvency and Bankruptcy Code and to the judgments of the Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, *Jaipur Metals & Electricals Employees Organization v. Jaipur Metals & Electricals Ltd.,* (2019) 4 SCC 227, *Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd.,* 2019 SCC OnLine SC 87, *Kaledonia Jute &*

Fibres Pvt. Ltd. v. Axis Nirman & Industries Ltd., 2020 SCC OnLine SC 943 and observed as follows :-

20. What becomes clear upon a reading of the three judgments of this Court is the following:

(i) So far as transfer of winding up proceedings is concerned, the Code began tentatively by leaving proceedings relating to winding up of companies to be transferred to NCLT at a stage as may be prescribed by the Central Government.

(ii) This was done by the Transfer Rules, 2016 (supra) which came into force with effect from 15.12.2016. Rules 5 and 6 referred to three types of proceedings. Only those proceedings which are at the stage of pre-service of notice of the winding up petition stand compulsorily transferred to the NCLT.

(iii) The result therefore was that post notice and pre admission of winding up petitions, parallel proceedings would continue under both statutes, leading to a most unsatisfactory state of affairs. This led to the introduction of the 5th proviso to section 434(1)(c) which, as has been correctly pointed out in *Kaledonia* (supra), is not restricted to any particular stage of a winding up proceeding.

(iv) Therefore, what follows as a matter of law is that even post admission of a winding up petition, and after the appointment of a Company Liquidator to take over the assets of a company sought to be wound up, discretion is vested in the Company Court to transfer such petition to the NCLT. The question that arises before us in this case is how is such discretion to be exercised?

21. The Companies Act, 2013 deals with winding up of companies in a separate chapter, being Chapter XX. When a petition to wind up a company is presented before the Tribunal, the Tribunal is given the power under Section 273 to dismiss it; to make any interim order as it thinks fit; to appoint a provisional liquidator of the company till the making of a winding up order; to make an order for the winding up of the company; or to pass any other order as it thinks fit - *see* section 273(1).

31. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in *custodia legis* and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in

accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.

32. In the facts of the present case, the concurrent finding of the Company Judge and the Division Bench is that despite the fact that the liquidator has taken possession and control of the registered office of the appellant company and its factory premises, records and books, no irreversible steps towards winding up of the appellant company have otherwise taken place. This being so, the Company Court has correctly exercised the discretion vested in it by the 5th proviso to section 434(1)(c). Resultantly, civil appeal arising out of SLP (Civil) No. 26415 of 2019 stands dismissed.

22. *Dr. AKB Sadbhavana Mission School of Homeo Pharmacy v. Secretary, Ministry of Ayush and Ors., (2020 SCC OnLine SC 1022)*

Decided on : - 15.12.2020

Bench :- 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(Homeopathy has been envisaged by the Ministry as the therapeutic aid and as medicines for prophylaxis, amelioration and mitigation. It also specifically provides that "the prescription has to be given only by institutionally qualified practitioners". However, no medical practitioner can claim that it can cure COVID-19. There is no such claim in other therapy including allopathy. The Homeopathy is contemplated to be used in preventing and mitigating COVID-19 as is reflected by the advisory and guidelines issued by the Ministry of AYUSH.)

Facts

This appeal was filed by the appellant aggrieved by the part of Division Bench judgment of Kerala High Court dated 21.08.2020 passed in Writ Petition (C) No. 9459 of 2020. The appellant, who was not party in the writ petition feeling aggrieved by certain directions issued by the High Court had come up in this appeal.

The petitioner pleaded that to control the spread of Coronavirus (COVID-19), notification dated 06.03.2020 was issued by the Secretary, Ministry of AYUSH to the Chief Secretaries of all States in which notification, it was pointed out that interventions under AYUSH systems have been varyingly used for making an effective public health response in similar situations faced in many States/Union Territories earlier. The petitioner's grievance was that State of Kerala and the Secretary, Department of AYUSH, Government Secretariat, Trivandrum did not take steps to implement the advisory dated 06.03.2020 whereas many other State Governments have taken steps much earlier. The petitioner pleaded that Homeopathic system would have been absolutely able to control the spread of COVID-19 through its immunity boosting medicines. Petitioner further stated in the writ petition that if the Homeopathic medicines had been distributed earlier in highly affected pockets and particularly to those under isolation and quarantine, the explosive situation had not happened, which has happened in the State of Kerala.

The High Court of Kerala disposed of the case with the following directions :-

> *We also make it clear that if any qualified doctor practising AYUSH medicine, makes any advertisement or prescribes any drugs or medicines, as a cure for COVID-19 disease, except those specifically mentioned in Annexure-I advisory to Exhibit-P1 D.O. letter dated 6.3.2020, it is open for the respondents to take appropriate action under the provisions of the Disaster Management Act, 2005, and the orders of the Governments, both Central as well as the State,*

issued from time-to-time. Only those tablets or mixtures shall be given as immunity booster and not as cure for COVID-19. AYUSH medical practitioners are further directed not to violate the Government Order dated 6.3.2020. In this regard, Medical/Police Departments are also directed to monitor the action of AYUSH medical practitioners.

Observations and Decision

The Hon'ble Court referred to the advisory, notifications and guidelines issued by the Ministry of AYUSH and held as follows :-

15. The advisory dated 06.03.2020 issued by the Ministry of AYUSH has been relied by the learned counsel for the appellant as well as learned Solicitor General and was also extensively extracted by the High Court in its judgment. The advisory dated 06.03.2020 contains the object of AYUSH systems. It is useful to extract following (relevant of Homeopathic only), which is part of advisory dated 06.03.2020:—

.....

16. The above clearly indicate that Ministry of AYUSH specifically permits use of Homeopathy for following three ways:—

(i) Preventive and prophylactic;

(ii) Symptom management of COVID-19 like illness;

(iii) Add on interventions to the conventional care.

18. It is clear from the advisory dated 06.03.2020 and the specific stand taken by the Ministry of AYUSH as contained in paragraph 16 extracted above that Homeopathic medical practitioners are not only confined to prescribe Homeopathic medicines only as immunity booster. The following observations in paragraph 13 by the High Court does not correctly comprehend the guidelines dated 06.03.2020:—

> "13. .....When the Central as well as State Governments have approved prescription of certain mixtures and tablets, as immunity boosters, qualified medical practitioners in AYUSH can also prescribe the same, but only as immunity boosters."

19. The High Court in the impugned judgment has emphasised that if any qualified doctor practising AYUSH medicine, makes any advertisement or prescribes any drugs or medicines, as a cure for COVID-19 disease, except as prescribed in letter dated 6.3.2020, it is open to the authorities to take appropriate action under the provisions of the Disaster Management Act, 2005. Insofar as advertisement by Homeopathic practitioners is concerned, i.e., clearly prohibited by the regulations framed in Section 33 read with Section 24 of Homeopathy Central Council Act, 1973 namely the Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. The Regulation 6 prohibits advertisement for solicitation of patients personally or advertisement in the newspaper by the Homeopathic practitioners. Regulation 6 is to the following effect:—

.....

20. When statutory regulations itself prohibit advertisement, there is no occasion for Homeopathic medical practitioners to advertise that they are competent to cure COVID-19

disease. When the Scientists of entire world are engaged in research to find out proper medicine/vaccine for COVID-19, there is no occasion for making any observation as contained in paragraph 14 with regard to Homeopathic medical practitioners. The homeopathy does not cure the disease, but it cures the patients.

21. We have already noticed that the writ petition, which was filed in the Kerala High Court only with a limited relief for issuing direction to respondent to implement the advisory dated 06.03.2020 issued by Ministry of AYUSH, there was no occasion for High Court to make observations and issue direction as it has been made in paragraph 14.

22. We, however, make it clear that what is permissible for Homeopathic medical practitioner in reference to COVID-19 symptomatic and asymptomatic patients is already regulated by the said advisory and guidelines. The Government of India, Ministry of AYUSH has also brought on record the guidelines issued subsequent to 06.03.2020 for Homeopathy medical practitioners for COVID-19, where Homeopathic approach to COVID-19 has been elaborately dealt with. The said guidelines, which has been issued after 04.04.2020 has been brought on the record as Annexure C by the Ministry of AYUSH. The guidelines contained following under the heading "Homeopathic approach"-

.....

23. The above guidelines make it clear that Homeopathy has been envisaged by the Ministry as the therapeutic aid.

24. The above guidelines refer to Homeopathy medicines as medicines for prophylaxis, Amelioration and mitigation. The guidelines, however, specifically provides that "the prescription has to be given only by institutionally qualified practitioners". The High Court in its impugned judgment has not fully comprehended the guidelines dated 06.03.2020 and taking a restricted view of the guidelines and have made observations for taking appropriate actions against the Homeopathic medical practitioners, which cannot be approved. The High Court, however, is right in its observation that no medical practitioner can claim that it can cure COVID-19. There is no such claim in other therapy including allopathy. The High Court is right in observing that no claim for cure can be made in Homeopathy. The Homeopathy is contemplated to be used in preventing and mitigating COVID-19 as is reflected by the advisory and guidelines issued by the Ministry of AYUSH as noticed above.

25. We, thus, observe that directions issued by the High Court in paragraph 14 of the judgment need to be modified to the extent as indicated above. It goes without saying that Homeopathic medical practitioners have to follow the advisory dated 06.03.2020 issued by AYUSH Ministry as well as guidelines for Homeopathic medical practitioners for COVID-19 issued by Government of India, Ministry of AYUSH, as noted above. The Civil Appeal is disposed of accordingly. The interlocutory applications filed seeking permission for impleadment is rejected.

23. S.Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others, (2020 SCC OnLine SC 1023)

Decided on : - 15.12.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee

(A significant object of the PWDV Act[17] is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.)

Facts

The appellant and the Fourth respondent were married on 30 May 2002. Soon thereafter, a matrimonial dispute arose between the parties. The appellant alleges that she was harassed for dowry and even compelled to institute a suit for partition against her father in 2003[4] which she later withdrew, after her spouse allegedly deserted her to be in a relationship with another woman. The subject matter of the controversy is a residential house situated at Gangondonahalli, Dasanapura, Hobli, Bengaluru North Taluk. The land was purchased by the Fourth respondent on 2 May 2002, a few months before the appellant married him. The appellant alleges that her father had financed a portion of this purchase.

On 5 October 2006, the Fourth respondent sold the land to his father - the Third respondent. The transaction of sale between the father and the son was for the same consideration of Rs. 1.19 lacs, as was paid by the Fourth respondent for the original purchase of the property in 2002. By then, the appellant and the Fourth respondent had a daughter. In 2009, the Fourth respondent instituted a petition for divorce under Section 13(1)(ia) and (ib) of Hindu Marriage Act 1955 before the Senior Civil Judge and Judicial Magistrate, First Class, Nelamangala. The Third respondent, following the purchase of the property and after constructing a house, gifted it to his spouse - the Second respondent, on 19 July 2010. Soon thereafter, on 17 August 2010, the Second respondent instituted a suit against the appellant before the JMFC, Nelamangala seeking a permanent injunction restraining the appellant from interfering with the possession of the suit property. The suit is pending. On 5 December 2013, the petition for divorce was allowed by the Trial Judge and the marriage

[17] Protection of Women against Domestic Violence Act, 2005.

between the appellant and the Fourth respondent was dissolved. On 19 March 2014, the appellant instituted a proceeding for maintenance. She also filed an appeal before the High Court of Karnataka against the dissolution of her marriage by the Trial Judge. The proceedings for divorce and maintenance are also pending.

The present dispute arises out of an application filed by the Second and Third respondents against the appellant, who is their daughter-in-law. The Second and Third respondents are the parents of the Fourth respondent, who is the estranged spouse of the appellant. The Second and Third respondents filed an application under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act 2007[1], and *inter alia*, sought the appellant and her daughter's eviction from a residential house in North Bengaluru.

The Assistant Commissioner, and the Deputy Commissioner in appeal, allowed the application under the Senior Citizens Act 2007 and directed the appellant to vacate the suit premises. Aggrieved by this order, the appellant unsuccessfully pursued a writ proceeding under Article 226 of the Constitution before a Single Judge, and in appeal before a Division Bench of the High Court of Karnataka. The Division Bench by its judgment dated 17 September 2019 held that the suit premises belonged to the mother-in-law (the Second respondent) of the appellant and the remedy of the appellant for maintenance and shelter lies only against her estranged husband (the Fourth respondent). The Division Bench upheld the Order of the Deputy Commissioner, and directed the appellant to vacate the suit premises before 31 December 2019. Challenging the jurisdiction of the authorities to decree her eviction under the Senior Citizens Act 2007, the appellant has moved the Supreme Court under Article 136 of the Constitution.

Observations and Decision

After analyzing the scheme and the provisions of the Protection of Women against Domestic Violence Act 2005 and Senior Citizens Act 2007, the Hon'ble Court, applying the principles of harmonious construction and referring to the judgments[18] of the Supreme Court, held :-

> **37.** In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, "is widely prevalent but has remained largely invisible in the public domain". The Statements of Objects and Reasons indicates that while Section 498A of the Penal Code, 1860 created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would "provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society".....

[18] *Solidaire India Ltd.* v. *Fairgrowth Financial Services Ltd.*, (2001) 3 SCC 71, *Bank of India* v. *Ketan Parekh,* (2008) 8 SCC 148, *Pioneer Urban Land and Infrastructure Ltd.* v. *Union of India,* (2019) 8 SCC 416.

38. The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act 2005 cannot be ignored by a sleight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act 2007.

39. This Court is cognizant that the Senior Citizens Act 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act 2007 under Section 3, cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the PWDV Act 2005. The PWDV Act 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section 26[27] of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act 2007, she shall duty-bound to inform the Magistrate under the PWDV Act 2005, as per Sub-section (3) of Section 26 of the PWDV Act 2005. This course of action would ensure that the common intent of the Senior Citizens Act 2007 and the PWDV Act 2005- of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

40. Adverting to the factual situation at hand, on construing the provisions of sub-Section (2) of section 23 of the Senior Citizen Act 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her 'shared household' within the meaning of Section 2(s) of the PWDV Act 2005. We have also seen the series of transactions which took place in respect of the property : the

spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant), who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act 2007. The fact that specific proceedings under the PWDV Act 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse (Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act 2005.

41. For the above reasons, we have come to the conclusion that the claim of the appellant that the premises constitute a shared household within the meaning of the PWDV Act 2005 would have to be determined by the appropriate forum. The claim cannot simply be obviated by evicting the appellant in exercise of the summary powers entrusted by the Senior Citizens Act 2007. The Second and Third Respondents are at liberty to make a subsequent application under Section 10 of the Senior Citizens Act 2007 for alteration of the maintenance allowance, before the appropriate forum.

24. SS Group Pvt. Ltd. v. Aaditiya J. Garg and Anr., (2020 SCC OnLine SC 1050)

Decided on : - 17.12.2020

Bench :- 1. Hon'ble Mr. Justice Vineet Saran
2. Hon'ble Mr. Justice Ravindra Bhat

(The decision in *New India Assurance Co. Ltd.* clearly provides that no written statement is to be allowed to be filed beyond the period of 45 days as per Section 38 of the Consumer Protection Act, 2019 but it has to be kept in mind that the order dated 23.03.2020 passed by the Supreme Court in SMW(C) No. 3 of 2020, titled as "In Re: Cognizance for Extension of Limitation" that a *period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s* is still in force.)

Facts

This batch of civil appeals had been filed by the appellant/builder challenging the order dated 07.09.2020 passed by the the National Consumer Disputes Redressal Commission, New Delhi ("the National Commission", for short). The respondents herein had booked the flats with the appellant and since the flats were allegedly not delivered on time, the respondents filed Consumer Complaints before the National Commission claiming refund of money. The notices in each of the complaint petitions were issued by the National Commission in June 2020 and were received by the appellant on 13.07.2020 in each of complaint cases.

It was submitted that as per Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days time is provided for filing written statement, which could be extended for a further period of 15 days. In the present matter, the period of 30 days expired on 12.08.2020 and extended period of 15 days expired on 27.08.2020. Admittedly, the written statement/reply was filed by the appellant before the National Commission on 31.08.2020, which filing was beyond the period of 45 days. The National Commission thus declined to take the written statement on record in view of the Constitution Bench decision of the Supreme Court in *New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage (P) Ltd.*, (2020) 5 SCC 757, wherein it has been held that the Consumer Court has no power to extend the time for filing the response to the complaint beyond 45 days. Said decision of the National Commission was under challenge in these appeals.

Observations and Decision

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

> **10.** It is true that the decision of the Constitution Bench of this Court in *New India Assurance Co. Ltd.* (supra) clearly provides that no written statement is to be allowed to be filed beyond the period of 45 days as per Section 38 of the Consumer Protection Act, 2019. However, in this context, it is noteworthy to refer to the order dated 23.03.2020 passed by this Court in

SMW(C) No. 3 of 2020, titled as "In Re: Cognizance for Extension of Limitation", which reads as under:

> "This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).
>
> To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.
>
> We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.
>
> This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.
>
> Issue notice to all the Registrars General of the High Courts, returnable in four weeks."
>
> (Emphasis supplied)

11. The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also.

12. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No. 3 of 2020 was continuing.

13. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed.

25. Dr. Naresh Kumar Mangla v. Anita Agarwal and Ors., (2020 SCC OnLine SC 1031)

Decided on : - 17.12.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee

(The Hon'ble Court reiterated the considerations which guide the grant of anticipatory or regular bail and discussed the power of Higher Courts to order investigation by a special investigating agency such as CBI, even after the submission of charge-sheet.)

Facts

The marriage between the deceased (Deepti) and Sumit Agarwal took place on 3 November 2014. On 7 August 2020, the appellant lodged a complaint which was registered as a First Information Report ("**"FIR**") under Section 154 of the CrPC. The FIR, *inter alia*, records that Deepti was a doctor and the appellant spent an amount in excess of Rs. 1.50 crores for conducting the marriage. It is alleged that even thereafter, Sumit, his parents, brother-in-law and sister-in-law misbehaved with the deceased on account of dowry. The deceased, it is alleged, was pressurized to bring money. The FIR alleges that the appellant had paid money on several occasions by cheque to the in-laws of the deceased. On account of the demand for dowry, it was alleged that she was severely assaulted in 2017 and the injuries were medically examined at the Government Hospital in Vrindavan. In the meantime, Deepti suffered miscarriages on two occasions and ultimately, adopted a daughter. The incident which eventually led to the unnatural death by the alleged suicide of Deepti has been recorded in the FIR.

The spouse of the deceased, who is also a doctor by profession, was taken into custody on 7 August 2020. On 10 August 2020, the four respondents (A-2 to A-5) sought anticipatory bail before the Sessions Court, Agra. By an order dated 21 August 2020, the Sessions Judge, Agra declined anticipatory bail.

The Sessions Judge noted that besides naming the accused specifically, there were also allegations against the four respondents in the FIR of torturing the deceased and of making demands for dowry. On 9 September 2020, non-bailable warrants were issued against the four accused. Applications for anticipatory bail were filed on their behalf before the High Court. On 22 September 2020, a learned Single Judge, after noting the submissions, posted the applications for anticipatory bail for "further hearing" on 28 September 2020 and protected the accused against arrest in the interim. On 28 September 2020, another Single Judge of the High Court before whom the application was listed noted the fact that the earlier order dated 22 September 2020 had posted the application for "further hearing" and directed the registry to process the listing of the proceedings accordingly. Eventually, anticipatory bail has been granted by the order of the High Court dated 29 September 2020.

The reasons on the basis of which the High Court proceeded to grant anticipatory bail are contained in paragraph 20 of the judgment of the High Court which is extracted below:

> *"20. Having heard the learned counsel for applicants, learned A.G.A. and the learned counsel for the informant and the undisputed position which has emerged from the record as noted above, the fact of the matter is that the applicants are the father-in-law, mother-in-law, Jeth and Jethani of deceased. Secondly, the husband of the deceased is already in jail. Thirdly, the F.I.R. is not to be treated as an encyclopedia of prosecution case but must reflect the basic prosecution case. When judged in the light of above, the F.I.R. prima facie appears to be engineered to implicate the applicants. There is no co-relation in between the various allegations leveled in the F.I.R. The allegations made are general in nature and no specific role has been assigned to any of the above named applicants regarding the alleged demand of dowry. From the perusal of the material on record, particularly the income-tax returns it cannot be said that the applicants are not of sufficient means. The absence of any external injury on the body of the deceased, clearly denotes the bonafide (sic) of applicants."*

Applications for anticipatory bail under Section 438 of the Code of Criminal Procedure 1973 ("**"CrPC**") were filed by four out of five persons who have been named as accused in Case Crime No. 0623 of 2020 registered at Police Station Tajganj, District Agra under Sections 498A, 304-B, 323, 506 and 313 of the Penal Code, 1860 ("**"IPC**") and Sections 3/4 of the Dowry Prohibition Act, 1961. The husband of the deceased[1] is in custody. The applicants for anticipatory bail are the parents-in-law, brother-in-law and sister-in-law of the deceased. A Single Judge of the High Court of Judicature at Allahabad allowed the applications and granted them anticipatory bail. The father of the deceased is in appeal.

Observations and Decision

The Hon'ble Court referred to the bail orders and referring to the settled principles of law which have to be taken into consideration in passing such order, observed:-

> **14.** Having recorded the above premises, the Single Judge held that (a) "the FIR *prima facie* appears to be engineered to implicate the applicants"; (b) "there is no co-relation in between the various allegations leveled in the FIR"; and (c) the allegations "are general in nature" with no specific role being assigned to the accused.
>
> **15.** We have prefaced this analysis by a reference to the FIR. There is no cogent basis for the Single Judge to have arrived at any of the three prima facie findings. The informant had suffered a loss of his own daughter due to an unnatural death in close proximity to the lodging of his complaint. The FIR contains a reference to the previous incident of October 2017, to the demands for dowry, payments of money in cheque by the informant to the groom's family and the telephone calls received by the informant from the father-in-law of the deceased and later from the deceased in close proximity to the incident, on the same day that she died. The FIR contains specific allegations against the accused, commencing with the incident of October 2017. Whether such an incident, as reported by the deceased to the police on 1 October 2017 did take place, leading to her suffering injuries which were examined at the Government Hospital, is a matter for investigation. How the learned Single Judge could have concluded - in the face of specific allegations in the FIR and the reference by the Sessions Judge to money transactions -

that the FIR *prima facie* has been "engineered to implicate the accused" defies reasonable explanation. Similar is the case with the finding that "there is no co-relation between the allegations leveled in the FIR." A reading of the FIR would reveal that the finding of the Single Judge that the allegations "are general without assigning a specific role to the accused" is contrary to the record. The Single Judge observed, from the income tax returns of the accused, that "it cannot be said that they are not of sufficient means". The Single Judge has erred in drawing this inference without a full investigation by the investigating arm of the state. Mr. Luthra has sought to rely on the payment of monies to the deceased by the two hospital establishments, the transfer of funds for the purchase of properties and the joint ownership of properties. The trail of monies alleged to be received by the deceased for her professional work is a matter to be investigated. Similarly, the transfer of monies by the deceased to her father-in-law and the nexus, if any, with the funds which she had received from her parents is a matter for serious investigation. The death was unnatural which took place within seven years of the marriage. The alleged phone calls received by the informant from some of the accused and by the deceased on the day when she was found to be hanging are matters which required to be probed. The alleged absence of an external injury on the body of the deceased is a matter for investigation. The approach of the High Court is casual. The surmises which are contained in the reasons recorded by the High Court have no basis in the materials with which it was confronted. The observation of the High Court that no specific role is assigned in the FIR to the accused is based on a misreading of the FIR. The entire approach of the High Court is flawed. It is contrary to the record and, as we shall now explain, contrary to settled principles of law governing the exercise of discretion on the grant of anticipatory bail in a case involving the alleged commission of a serious offence.

16. It is a well settled principle of law that the setting aside of an "unjustified, illegal or perverse order" granting bail is distinct from the cancellation of bail on the ground of the supervening misconduct of the accused or because some new facts have emerged, requiring cancellation. In *Puran* v. *Ramvilas*[7], this Court has held that where an order granting bail ignores material on record or if a perverse order granting bail is passed in a heinous crime without furnishing reasons, the interests of justice may require that the order be set aside and bail be cancelled. The recording of no reasons is one end of the spectrum. The other end of the domain for interference with an order granting anticipatory bail (into which the present case settles) is where the reasons are contrary to the material on record and hence found to suffer from perversity.

17. The facts which must be borne in mind while considering an application for the grant of anticipatory bail have been elucidated in the decision of this Court in *Siddharam Satlingappa Mhetre* v. *State of Maharashtra*[8] and several other decisions. The factors to be considered include:

.....

The Hon'ble Court also referred to the judgments rendered in ***Jai Prakash Singh* v. *State of Bihar***, (2012) 4 SCC 379, ***Kanwar Singh Meena* v. *State of Rajasthan***, (2012) 12 SCC 180, and the recent cases of ***Sushila Agarwal* v. *State (NCT of Delhi)***, (2020) 5 SCC 1, ***Myakala Dharmarajam* v. *The State of Telangana***, (2020) 2 SCC 743. The Hon'ble Court also highlighted the **distinction between the considerations which guide the grant of anticipatory bail and regular bail**, by referring to the judgment of the Supreme Court in ***Pokar Ram v. State of Rajasthan***, (1985) 2 SCC 597. Regarding the order of the Single Judge of the High Court, the Hon'ble Court held :-

> **23.** Judged in the light of the above principles, the judgment of the Single Judge of the High Court of Judicature at Allahabad is unsustainable. The FIR contains a recital of allegations bearing on the role of the accused in demanding dowry, of the prior incidents of assault and the payment of moneys by cheque to the in-laws of the deceased. The FIR has referred to the telephone calls which were received both from the father-in-law of the deceased on the morning of 3 August 2020 and from the deceased on two occasions on the same day-a few hours before her body was found. The grant of anticipatory bail in such a serious offence would operate to obstruct the investigation. The FIR by a father who has suffered the death of his daughter in these circumstances cannot be regarded as "engineered" to falsely implicate the spouse of the deceased and his family. We hasten to add that our observations at this stage are *prima facie* in nature, and nothing that we have said should be construed as a determination on the merits of the case which will be adjudicated at the trial.

On the question of **transferring the case to the CBI at the stage when the charge-sheet had already been forwarded by the State Police**, the Hon'ble Court referred to the principles of law enunciated through the judgments rendered by the Supreme Court in ***Arnab Goswami* v. *Union of India***, 2020 SCC OnLine SC 462, ***Vinay Tyagi* v. *Irshad***, (2013) 5 SCC 762, ***Disha* v. *State of Gujarat***, (2011) 13 SCC 337, ***Rubabbuddin Sheikh* v. *State of Gujarat***, (2010) 2 SCC 200, ***Pooja Pal* v. *Union of India***, (2016) 3 135 and ***Dharam Pal* v. *State of Haryana***, (2016) 4 SCC 160 and held :-

> **31.** Having regard to the circumstances which have emerged on the record, which have been adverted to in the earlier part of the judgment, we are of the view that it is necessary to entrust a further investigation of the case to the CBI in exercise of the powers of this Court under Article 142 of the Constitution. The conduct of the investigating authorities from the stage of arriving at the scene of occurrence to the filing of the charge-sheet do not inspire confidence in the robustness of the process. A perusal of the charge-sheet evinces a perfunctory rendition of the investigating authorities' duty by a bare reference to the facts and the presumption under Section 304B of the IPC when the death occurs within seven years of the marriage. The stance taken by the Deputy Superintendent of Police in the Counter Affidavit, filed a few days after forwarding the charge-sheet, travels beyond the scope of the investigation recorded in the charge-sheet with respect to the veracity of the suicide note, medical examination of injuries and the past miscarriages of the deceased. Critical facts of the money trail between the deceased, her father (the informant), and the accused; and the call history of A2, the informant and the deceased are unexplored. No attempt at custodial interrogation of the applicants was made between the issuance of non-bailable warrants on 9 September 2020 and interim protection from arrest by the High Court granted on 22 September 2020. As noted above, upon questioning during the hearing, the Counsel for the State answered that no investigation on the allegation of murder had been conducted. It would indeed be a travesty if this Court were to ignore the glaring deficiencies in the investigation conducted so far, irrespective of the stage of the proceedings or the nature of the question before this Court. The status of the accused as propertied and wealthy persons of influence in Agra and the conduct of the investigation thus far diminishes this Court's faith in directing a further investigation by the same authorities. The cause of justice would not be served if the Court were to confine the scope of its examination to the wisdom of granting anticipatory bail and ignore the possibility of a trial being concluded on the basis of a deficient investigation at best or a biased one at worst.

26. *Rahna Jalal v. State of Kerala and Anr., (2020 SCC OnLine SC 1061)*

Decided on : - 17.12.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee

(On a true and harmonious construction of Section 438 of CrPC and Section 7(c) of the Muslim Women (Protection of Rights on Marriage) Act 2019, there is no bar on granting anticipatory bail for an offence committed under the Act, provided that the competent court must hear the married Muslim woman who has made the complaint before granting the anticipatory bail. It would be at the discretion of the court to grant ad-interim relief to the accused during the pendency of the anticipatory bail application, having issued notice to the married Muslim woman.)

Issue

Whether Section 7 (c) of the Muslim Women (Protection of Rights on Marriage) Act 2019 (*hereinafter* referred to as "the Act") would bar the grant of anticipatory bail under Section 438 of the CrPC?

Observations and Decision

The Hon'ble Court referred to the provisions of Sections 3, 4 and 7 of the Act[19], the decision rendered in *Balchand Jain v. State of Madhya Pradesh* (1976) 4 SCC 572 and *Prathvi Raj Chauhan v. Union of India,* (2020) 4 SCC 727, the provisions of the Maharashtra Control of Organised Crime Act, 1999, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and held as follows :-

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[19] **3. *Talaq* to be *void* and illegal:** Any pronouncement of *talaq* by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Punishment for pronouncing *talaq* : Any Muslim husband who pronounces *talaq* referred to in Section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."

7. Offences to be cognizable, compoundable, etc. : Notwithstanding anything contained in the Code of Criminal Procedure, 1973, -

(a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom *talaq* is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom *talaq* is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine;

(c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

10. The provisions of Section 7(c) apply to the Muslim husband. The offence which is created by Section 3 is on the pronouncement of a *talaq* by a Muslim husband upon his wife. Section 3 renders the pronouncement of *talaq* void and illegal. Section 4 makes the Act of the Muslim husband punishable with imprisonment. Thus, on a preliminary analysis, it is clear that the appellant as the mother-in-law of the second respondent cannot be accused of the offence of pronouncement of triple *talaq* under the Act as the offence can only be committed by a Muslim man.

11. Having said that, we shall now deal with the contention that Section 7(c) of the Act bars the power of the court to grant anticipatory bail under Section 438 of the CrPC. Under clause (c) of Section 7, Parliament has provided that no person who is accused of an offence punishable under the Act shall be released on bail unless the Magistrate, on an application filed by the accused *and* after hearing the married Muslim woman upon whom the *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail.

12. Section 7 begins with a *non-obstante* clause, which operates "notwithstanding anything contained" in the CrPC. However, it is equally necessary to emphasize that the *non-obstante* clause operates only in the area covered by clauses (a), (b) and (c). Under clause (a), the offence is cognizable if the information is given by the married Muslim woman or a person related to her by blood or marriage to the officer in charge of a police station of the commission of the offence. Under clause (b), the offence is compoundable at the instance of the married Muslim woman upon whom the talaq is pronounced. However, in clause (b), the permission of the Magistrate is required. The Magistrate can specify the terms and conditions for compounding. Facially, clause (c) begins with the words "no person accused of an offence punishable under this Act shall be released on bail". But what follows is equally important, because it conditions what precedes it. Two conditions follow. One of them is in the realm of procedure while the second is substantive. The former requires a hearing to be given to the married Muslim woman upon whom *talaq* has been pronounced. The latter requires the court to be "satisfied that there are reasonable grounds for granting bail to such person". This substantive condition is only a recognition of something which is implicit in the judicial power to grant bail. No court will grant bail unless there are reasonable grounds to grant bail. All judicial discretion has to be exercised on reasonable grounds. Hence, the substantive condition in clause (c) does not deprive the court of its power to grant bail. Parliament has not overridden the provisions of Section 438 of the CrPC. There is no specific provision in Section 7(c), or elsewhere in the Act, making Section 438 inapplicable to an offence punishable under the Act. The power of the court to grant bail is a recognition of the presumption of innocence (where a trial and conviction is yet to take place) and of the value of personal liberty in all cases. Liberty can, of course, be regulated by a law which is substantively and procedurally fair, just and reasonable under Article 21. In *Hema Mishra* v. *State of U.P.* (2014) 4 SCC 453, this Court emphasized on the mandate of a constitutional court to protect the liberty of a person from being put in jeopardy on account of baseless charges. This Court held that a writ court is even empowered to grant anticipatory bail inspite of a statutory bar imposed against the grant of such relief.

13. The statutory text indicates that Section 7(c) does not impose an absolute bar to the grant of bail. On the contrary, the Magistrate may grant bail, if satisfied that "there are reasonable grounds for granting bail to such person" and upon complying with the requirement of hearing the married Muslim woman upon whom *talaq* is pronounced. Hence, though Section 7 begins with a *non obstante* clause which operates in relation to the CrPC, a plain construction of Section 7(c) would indicate that it does not impose a fetter on the power of the

Magistrate to grant bail, save and except, for the stipulation that before doing so, the married Muslim woman, upon whom talaq is pronounced, must be heard and there should be a satisfaction of the Magistrate of the existence of reasonable grounds for granting bail to the person. This implies that even while entertaining an application for grant of anticipatory bail for an offence under the Act, the competent court must hear the married Muslim woman who has made the complaint, as prescribed under Section 7(c) of the Act. Only after giving the married Muslim woman a hearing, can the competent court grant bail to the accused.

14. The above interpretation is fortified by the fact that the legislature has not expressly barred the application of Section 438 of CrPC. In this context, it would be useful to refer to an earlier decision of this Court in *Balchand Jain* v. *State of Madhya Pradesh* (1976) 4 SCC 572. A three judge Bench of this Court had to interpret Rule 184 of the Defence and Internal Security of India Rules, 1971, which provided as follows:

.....

22. Thus, even in the context of legislation, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, where a bar is interposed by the provisions of Section 18 and Sub-section (2) of Section 18-A on the application of Section 438 of the CrPC, this Court has held that the bar will not apply where the complaint does not make out "a *prima facie* case" for the applicability of the provisions of the Act. A statutory exclusion of the right to access remedies for bail is construed strictly, for a purpose. Excluding access to bail as a remedy, impinges upon human liberty. Hence, the decision in *Chauhan* (supra) held that the exclusion will not be attracted where the complaint does not *prima facie* indicate a case attracting the applicability of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

23. For the above reasons, we have come to the conclusion that on a true and harmonious construction of Section 438 of CrPC and Section 7(c) of the Act, there is no bar on granting anticipatory bail for an offence committed under the Act, provided that the competent court must hear the married Muslim woman who has made the complaint before granting the anticipatory bail. It would be at the discretion of the court to grant ad-interim relief to the accused during the pendency of the anticipatory bail application, having issued notice to the married Muslim woman.

27. *Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu @ Dhiraj Sahu and Anr., (2020 SCC OnLine SC 1039)*

Decided on : - 18.12.2020

Bench :- 1. Hon'ble Mr. Justice **S.A. Bobde (C.J.)**
2. Hon'ble Mr. Justice A.S. Bopanna
3. Hon'ble Mr. Justice V.Ramasubramanian

(Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?)

Issue

"Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?"

Observations and Decision

The Hon'ble Court referred to the provisions of the Constitution of India, the Representation of the People Act, 1951, the Conduct of Election Rules, 1961 and the principles of law discussed in several judgments[20] and held as follows :-

> **13.** It is clear as daylight that the event which causes the disqualification under Article 191(1)(e) read with Section 8(3) is a conviction of a person for any of the specified offences. The consequence of such disqualification is that the seat becomes vacant. Obviously therefore, a Member of the Legislative Assembly who has become disqualified and whose seat has become vacant is not entitled to cast his vote for electing a representative from his State under Article 80(4) which provides that the representatives of each State "shall be elected by the elected members". His name is liable to be deleted from the list of members of the State Legislative Assembly maintained under Section 152 of the Representation of the People Act, 1951. He ceases to be an elector in relation to election by assembly member and cannot cast his vote.

[20] *Saritha S. Nair* v. *Hibi Eden,* 2020 SCC OnLine SC 1006, *Jyoti Basu* v. *Devi Ghosal,* (1982) 1 SCC 691, *Pashupati Nath Singh* v. *Harihar Prasad Singh,* AIR 1968 SC 1064, *Prabhu Dayal Sesma* v. *State of Rajasthan,* (1986) 4 SCC 59, *Tarun Prasad Chatterjee* v. *Dinanath Sharma,* (2000) 8 SCC 649, *B.R Kapur* v. *State of T.N.,* (2001) 7 SCC 231, *Pierson* v. *Secretary of State for the Home Department,* (1997) 3 ALL ER 577, *Union of India* v. *G.S Chatha Rice Mills,* 2020 SCC OnLine SC 770, *K Prabhakaran* v. *P Jayarajan,* (2005) 1 SCC 754, *New India Assurance Company Limited* v. *Ram Dayal,* (1990) 2 SCC 680, *Re F.B. Warren,* (1938) 2 ALL ER 331, *National Insurance Company Limited* v. *Jijubhai Nathuji Dabhi,* (1997) 1 SCC 66, *New India Assurance Company* v. *Bhagwati Devi,* (1998) 6 SCC 534, *State of Madhya Pradesh* v. *Centre for Environment Protection Research and Development,* 2020 SCC OnLine SC 687, *Gokaraju Rangaraju* v. *State of Andhra Pradesh,* (1981) 3 SCC 132, *Pushpadevi M. Jatia* v. *M.L. Wadhawan, Additional Secretary, Government of India,* (1987) 3 SCC 367, *Pulin Behari Das* v. *King Emperor,* (1912) 15 Cal LJ 517, *Henry R Towne* v. *Mark Eisner,* 245 US 418.

14. The Representation of the People Act, 1951 was enacted for the purpose of providing for the conduct of elections of both houses of Parliament and to the House/Houses of State Legislatures, the qualifications and disqualifications for membership of those houses, the corrupt practices etc.,. Section 8 of the Act deals with disqualification on conviction for certain offences. For the purpose of disqualification, the offences are classified in section 8 into 3 categories, namely:

(i) offences falling under sub-section (1)

(ii) offences falling under sub-section (1) and

(iii) offences not falling either under sub-section (1) or under subsection (2).

15. The disqualification results in the Member becoming liable to be removed from the list of voters under Section 152 of the Representation of the People Act, 1951, though the actual deletion may take time. In any case, he ceases to be an elector vide Rule 2(d) of the Conduct of Election Rules, 1961 which provides that an elector in relation to an election by assembly members means any person entitled to vote at that election.

19. Once the period of disqualification starts running, the seat hitherto held by the person disqualified becomes vacant by virtue of Article 190(3) of the Constitution. While speaking about the seat of the disqualified person becoming vacant, Article 190(3) uses the expression "***thereupon***". We may have to keep this in mind while interpreting the words "***the date of such conviction***".

21. Placing heavy reliance upon the decision of this Court in *Pashupati Nath Singh* v. *Harihar Prasad Singh*[3], it is contended that wherever the statute uses the words "***on the date***", it should be taken to mean "***on the whole of the day***" and that law disregards as far as possible, fractions of the day.

22. But in our considered view *Pasupati Nath Singh* hardly supports the contention of the Appellant. In that case the election to the Bihar legislative Assembly from Dumro constituency was in issue. As per the schedule, the filing of nominations was to take place from 13.01.1967 to 20.01.1967. The date of scrutiny of nomination papers was fixed as 21.01.1967. The returning officer, upon scrutiny of nominations on 21.01.1967, rejected the nomination paper of the Appellant before this Court, on the ground that he had not made and subscribed the requisite oath or affirmation as enjoined by clause (a) of Article 173, either before the scrutiny or even subsequently on the date of scrutiny.

.....

24. In other words, this Court interpreted the words "date" in *Pashupati Nath Singh*, not necessarily to mean 00.01 A.M. to 24.00 P.M. This was despite the fact that in common parlance a date would mean 24 hours in time. But the running of time got arrested, the moment the nomination of the appellant in *Pashupati Nath Singh* was taken up for scrutiny. Thus, the benefit of the whole day of 24 hours was not made available by this court in *Pashupati Nath Singh* to the appellant therein and the act of the Returning officer in drawing the curtains down at the happening of the event namely scrutiny of nomination papers, was upheld by this court in *Pashupati Nath Singh*.

25. In fact, *Pashupati Nath Singh* can be said to be a mirror image or the converse of the case on hand. In the case on hand the period of commencement of an event is in question, while in *Pashupati Nath Singh* the period of conclusion was in issue. ***If the date on which***

scrutiny was taken up can be held to have ended at the time when the event of scrutiny was taken up, we should, by the very same logic, hold that the date of commencement of an event such as conviction and the consequent disqualification should also begin only from the time when the event happened.

26. In fact, the argument of the appellant in this case is a double edged weapon. If the event of conviction and sentencing that happened at 2.30 P.M. on 23.03.2018 can relate back to 00.01 A.M., the event of voting by Shri. Amit Kumar Mahto which happened at 9.15 A.M. can also relate back to 00.01 A.M. Once both of them are deemed to relate back to the time of commencement of the date, the resulting conundrum cannot be resolved. This why, the emphasis in *Pashupati Nath Singh* was to provide an interpretation that will avoid confusion.

30. We must point out at this juncture that even in criminal law, there is a vast difference between (i) the interpretation to be given to the expression "date", while calculating the period of imprisonment suffered by a person and (ii) the interpretation to be given to the very same expression while computing the period limitation for filing an appeal/revision. Say for instance, a person is convicted and sentenced to imprisonment and also taken into custody pursuant thereto, on 23.03.2018, the whole of the day of March 23 will be included in the total period of incarceration. But in contrast, the day of March 23 will be excluded for computing the period of limitation for filing an appeal. Though one contrasts the other, both interpretations are intended to benefit the individual.

32. We have no doubt that disqualification is not a penal provision and that the object of disqualification is to arrest criminalisation of politics.

33. But what triggered the disqualification in this case, under Section 8(3) was a conviction by a criminal Court, for various offences under the Penal Code. Therefore, the phrase "***the date of conviction***" appearing in Section 8(3) should receive an interpretation with respect to the penal provisions under which a person was convicted.

35. In our view to hold that a Member of the Legislative Assembly stood disqualified even before he was convicted would grossly violate his substantive right to be treated as innocent until proved guilty. In Australia this principle has been described as an aspect of the rule of law "known both to Parliament and the Courts, upon which statutory language will be interpreted"[8].

36. In the present case, it would be significant to add that it is not necessary to make a declaration incompatible in the use of the word "date" with the general rule of law since the word "date" is quite capable of meaning the point of time when the event took place rather than the whole day.

37. The well-known presumption that a man is innocent until he is found guilty, cannot be subverted because the words can accommodate both competing circumstances. While it is known that an acquittal operates on nativity, no case has been cited before us for the proposition that a conviction takes effect even a minute prior to itself. Moreover, the word "date" can be used to denote occasion, time, year etc. It is also used for denoting the time up to the present when it is used in the phrase "the two dates". Significantly, the word "date" can also be used to denote a point of time etc. (See Roget's International Thesaurus third edition Note 114.4).

38. To say that this presumption of innocence would evaporate from 00.01 A.M., though the conviction was handed over at 14.30 P.M. would strike at the very root of the most fundamental principle of Criminal Jurisprudence.

39. Inasmuch as a conviction for an offence is under a penal law, it cannot be deemed to have effect from a point of time anterior to the conviction itself. As rightly pointed by Dr. A.M. Singhvi, this court held in *Union of India* v. *G.S Chatha Rice Mills*[9] that legal fiction cannot prevail over facts where law does not intend it to so prevail. It was a case where a notification was issued by the Government of India under section 8A of the Customs Tariff Act 1975, introducing a tariff on all goods originating in or exported from Pakistan. The notification was uploaded on the e-gazette at 20 : 46 : 58 hours on 16.02.2019. The Government of India took a stand that the enhanced rate of duty was applicable even to those who had already presented bills of entry for home consumption before the enhanced rate was notified in the e-gazette. The importers successfully challenged the claim of the customs authorities before the High court and the Union of India came up on appeal to this Court. An extensive analysis was made in Section H of the decision in *G.S. Chatha Rice Mills*, on the interpretation of the words "day" and "date". After taking note of several decisions, some of which arose under the law of Limitation, some under the law of Insurance and some under the Election law, this Court pointed out that these expressions were construed in varying contexts and that a general position in law, divorced from subject, context and statute, has not been laid down. As succinctly put by this Court, "***Legislative silences create spaces for creativity***" and that "***between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense***".

48. A disqualification for which penalty is prescribed under Article 193, also invites civil consequences such as the denial of privileges that go with the membership, other than the penalty stipulated in Article 193. Once a person is disqualified, he ceases to be a member and his right to vote also ceases alongwith his membership. This is a natural consequence of a person ceasing to be a member and this consequence is automatic and not dependent upon Article 193. Therefore, we cannot stretch Article 193 to such an extent that even the natural consequences of disqualification of a member will not get attracted because of the prescription of a penalty.

49. However, Article 193 and the interpretation given to the same by this Court may be of significance for finding out whether an act or omission done by a person disqualified would also perish and if so in what circumstances.

53. Therefore, it is clear that dehors the liability for penalty under Article 193, the act done by the elected member is not liable to be invalidated, but only in certain circumstances. One of them may be a case like the one on hand apart from cases falling foul of Article 188. But the position would have been different if Shri Amit Kumar Mahto had been convicted and sentenced in the forenoon of 23.03.2018 and yet he voted in the election to the Rajya Sabha in the afternoon with full knowledge.

54. The fallacy of the argument of the appellant that wherever the word "date" is used in a Statute, it should be understood to relate back to 00 : 01 a.m. can be best understood if we apply the same to a reverse situation. If in a hypothetical situation, the conviction and sentence had taken place in the forenoon and Shri Amit Kumar Mahto had cast his vote in the afternoon, the defeated candidate would not have argued that the voting should be deemed to have taken place at 00 : 01 a.m.

55. In any case the principle that the acts of the officers de facto performed within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally regarded as valid and binding as if they were the acts of the officers de jure, articulated in *Pulin Behari Das* v. *King Emperor*[17], was invoked by this Court in *Gokaraju Rangaraju* v. *State of Andhra Pradesh*[18] when a question arose as to the validity of the judgments pronounced by an Additional Session Judge whose appointment was declared by the Court to be invalid subsequently. This Court pointed out that the de facto doctrine is founded on good sense, sound policy and practical expedience and that it is aimed at the prevention of public and private mischief and the protection of public and private interest. As stated by this Court this doctrine avoids endless confusion and needless chaos.

58. Therefore, it is not possible to hold that the vote cast by Shri Amit Kumar Mahto at 9 : 15 a.m. on 23.03.2018 should be treated as invalid on account of the conviction and sentence passed by the criminal Court at 2 : 30 p.m. on the same day. This conclusion can be drawn through another process of reasoning also. Article 191(1) of the Constitution deals with five different grounds of disqualification. They are **(i)** holding an office of profit as specified in the First Schedule; **(ii)** unsoundness of mind, which stands so declared by a competent Court; **(iii)** undischarged insolvency; **(iv)** absence of citizenship of India or acquisition of citizenship of a foreign State etc.; and **(v)** disqualification by or under any law made by Parliament.

59. The interpretation to be given to the expression "the date" appearing in Section 8(3) of the Representation of the People Act, 1951 will have a bearing upon the interpretation to be given to the date of happening of any one of the above events of disqualification.

60. While it may be convenient for the appellant in this case to interpret the expression "*the date*" appearing in Section 8(3) with reference to Article 191(1)(e), we may have to see whether the same would fit into the scheme of Article 191(1) in entirety. It may not. If tested against each one of Sub-clauses (a) to (d) of Clause (1) of Article 191 we would find that the interpretation offered by the appellant would not survive. Justice Oliver Wendell Holmes, Jr. in *Henry R Towne* v. *Mark Eisner*[20] while dealing with the construction of a word in the Constitution as well as a statute, observed:—

> *"A word is not a crystal, transparent and unchanged; it is the skin of a living though and may vary greatly in colour and content according to the circumstances and tie in which it is used"*

61. Therefore, on the first issue we hold that the vote cast by Shri Amit Kumar Mahto at 9 : 15 a.m. on 23.03.2018 was rightly treated as a valid vote. To hold otherwise would result either in an expectation that the Returning Officer should have had foresight at 9 : 15 a.m. about the outcome of the criminal case in the afternoon or in vesting with the Election Commission, a power to do an act that will create endless confusion and needless chaos.

28. *Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers v. New J.K. Roadways, Fleet Owners and Transport Contractors and Others, (2020 SCC OnLine SC 1035)*

Decided on : - 18.12.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice K.M.Joseph

(The authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible.)

Facts

In this appeal, the Inspector General of Police, Kashmir Zone, Zonal Police HQR's Kashmir, Srinagar ["**ZPHS**"], being Respondent No. 4 before us, invited online tenders (e-tenders) vide e-N.I.T. No. 01 of 2020 dated 18.02.2020 ["**N.I.T.**"] from reputed transporters, registered firms/associations for the supply of various types of commercial vehicles (without fuel) for the carriage of troops and equipment for the Financial Year 2020-2021. Pursuant to the N.I.T., 4 parties, namely, M/s Associated Contractors; M/s Quareshi Transport Co.; M/s Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers ["**Appellant**"]; and M/s New J.K. Roadways, Fleet Owners and Transport Contractors ["**JK Roadways**"] submitted their bids for consideration and the same were uploaded through an e-tendering system. The tender process consisted of a technical bid and a financial bid. The Tender Opening Committee met on 11.03.2020 and found that JK Roadways, Respondent No. 1 herein, and Associated Contractors did not meet the qualifying requirements of the technical bid, leaving Quareshi Transport Co. and the Appellant, who were considered technically eligible for the allotment of the contract. The Appellant's financial bid being the lowest, vide an order dated 30.03.2020, the Appellant was allotted the contract for the supply of commercial vehicles for the Financial Year 2020-2021.

A writ petition was filed by JK Roadways seeking the quashing of the allotment of the contract in favour of the Appellant. Aggrieved by the order of the Single Judge, JK Roadways filed LPA before the Division Bench which passed the impugned order dated 16.10.2020, and recorded *inter alia*:

"**14)** Though the appellant has raised a number of grounds in the appeal yet during the course of arguments, the main thrust of arguments advanced by the learned counsel for the appellant was on the following grounds:

(**I**) That the official respondents were not justified in rejecting bid of the appellant on the ground that it had submitted only the list of heavy motor vehicles and that the list did not contain the particulars of light motor vehicles;

(**II**) That the respondent No. 5 despite lacking the requisite experience in supply of vehicles, was awarded the contract, which action has amounted to award of contract in favour of an ineligible bidder to the exclusion of an eligible bidder."

16) From a perusal of the aforesaid condition, it is clear that the official respondents while formulating the tender notice have used the expression "HMV/LMV" meaning thereby that a tenderer had the option of furnishing the particulars of either HMVs or LMVs or both types of vehicles. No other construction can be given to the expression "HMV/LMV". If the official respondents desired that a tenderer must own both types of vehicles i.e. HMVs as well as LMVs, they could have easily used the word "and" instead of "/" in between HMV and LMV in the tender notice, use whereof refers to "or". This is not the case over here. Thus, if the appellant has furnished the list of Heavy Motor Vehicles only, he has done what a reasonable and prudent person would do upon going through the tender condition quoted hereinabove. The action of the official respondents of rejection of technical bid of the appellant on the ground of non-furnishing of list of both types of vehicle is, therefore, irrational, arbitrary and perverse. Therefore, the contention of the appellant in this regard is full of substance and deserves to be accepted."

Observations and Decision

Regarding the interpretation of tender documents and the adjudication of matters related thereto, the Hon'ble Court referred to the judgments of ***Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corporation Ltd.,*** (2016) 16 SCC 818, ***Bharat Coking Coal Ltd.* v. *AMR Dev Prabha*** 2020 SCC OnLine SC 335, ***Silppi Constructions Contractors* v. *Union of India,*** 2019 SCC OnLine SC 1133, ***Jagdish Mandal* v. *State of Orissa,*** (2007) 14 SCC 517 and held as follows :-

14. In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings.....

17. In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word "*both*" appearing in Condition No. 31 of the N.I.T. For this reason, the Division Bench's conclusion that JK Roadways was wrongly declared to be ineligible, is set aside.

18. Insofar as Condition No. 27 of the N.I.T. prescribing work experience of at least 5 years of not less than the value of Rs. 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the Appellant before us. Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled that unless

arbitrariness or *mala fide* on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court.

.....

The Hon'ble Court set-aside the impugned judgment and held :-

19. Similarly, in *Montecarlo Ltd.* v. *NTPC Ltd.*, (2016) 15 SCC 272, this Court stated as follows:

"**26.** We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints."

(page 288)

20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the Appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own.

21. As was correctly pointed out by Shri Mukherjee, learned senior counsel appearing on behalf of the Appellant, the contention as to the invalidity of the Appellant's service licence for the requisite period does not appear to have been argued before the Division Bench, though argued before and rejected by the learned Single Judge. This being the case, we do not think that the scope of this appeal be enlarged to include any such point which appears to have been given up before the Division Bench.

29. Suresh Shah v. Hipad Technology India Private Limited, 2020 SCC OnLine SC 1038

Decided on: 18.12.2020

Bench: 1. Hon'ble Mr. Chief Justice S. A. Bobde
2. Hon'ble Mr. Justice **A. S. Bopanna**
3. Hon'ble Mr. Justice V. Ramasubramanian

(When the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to secure possession of the leased property in a normal circumstance is required to institute a suit in the Court which has jurisdiction. However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned Arbitrator.)

Facts

The petitioner has instituted this petition under Section 11(5) of the Arbitration and Concilliation Act, 1996 ('Act, 1996' for short) seeking appointment of a Sole Arbitrator for resolving the disputes that have arisen between the parties in relation to the Sub-Lease deed dated 14.11.2018.

The property bearing No. 154-B, Block 'A' Sector 63, Phase-III, NOIDA, Gautam Budh Nagar, U.P. having been initially allotted and leased by New Okhla Industrial Development Authority ('NOIDA' for short) under a Lease dated 26.03.2003 had changed hands and the lease was ultimately transferred in favour of the petitioner under a Transfer Memorandum dated 13.04.2011.

The petitioner thus having acquired absolute long-term leasehold right of the land and building referred supra has Sub-Leased the same to the respondent under the Sub-Lease Deed dated 14.11.2018. In respect of the Sub-Lease entered into between the parties, certain disputes are stated to have arisen which is to be resolved. Since the Sub-Lease Deed provides for resolution of the disputes through arbitration vide Clause 12 thereof the petitioner invoked the same by issuing a notice dated 11.12.2019, nominated the Sole Arbitrator and sought concurrence from the respondent. The respondent did not respond to the same. The petitioner is, therefore, before this Court seeking appointment of the Arbitrator.

The parties to the petition have entered into a Sub-Lease Deed dated 14.11.2018 whereunder the terms of lease have been agreed to between the parties. In respect of the terms and conditions agreed under the Sub-Lease Deed certain disputes have arisen between the parties. In the Deed the parties have agreed that the disputes arising out of the same shall be resolved through Arbitration. The clause thereto reads as hereunder:

> "12.1 All disputes, differences or disagreements arising out of, in connection with or in relation to this Sub-Lease Deed, including w.r.t. its interpretation, performance,

termination, in the first instance shall be endeavored to be settled through good faith mutual discussions between the officials of the Sub-Lessor and the Sub-Lessee.

12.2 If no settlement can be reached through such discussions between the Parties within a period of 21 (twenty one) days, then all such unresolved disputes, differences or disagreements shall be finally decided through arbitration, to be held in accordance with the provisions of the Arbitration &Concilliation Act, 1996. The venue of arbitration shall be New Delhi and the language of such arbitration shall be English.

12.3 The Arbitral Tribunal shall consist of a sole arbitrator to be mutually agreed by the Parties. In the event of any disagreement regarding the appointment of the sole arbitrator, the same shall only and exclusively be appointed by the Hon'ble High Court of Delhi at New Delhi. The arbitral award shall be final and binding."

The petitioner, therefore, got issued a Notice dated 11.12.2019 detailing the default committed by the respondent which gave rise to the dispute between the parties and also invoked the Arbitration Clause. The petitioner proposed the name of Justice (Retired) Mukul Mudgal as the Sole Arbitrator and indicated that if the respondent does not agree to the same the petitioner would seek appointment of Sole Arbitrator through Court. It is in that view the petitioner is before this Court.

Decision and Observations

The Apex court took note of theabove extracted Clause which indicates that the disputes between the parties is to be resolved through Arbitration. A further perusal of the Clause indicates that the parties have agreed to secure appointment of the Arbitrator through the High Court of Delhi at New Delhi. It is in that view an indication to the same effect is made in the notice dated 11.12.2019. Though that be the position the description of the petitioner in the Sub-Lease Deed as well as in the cause title to this petition and also the averments in the petition indicate that the petitioner is a citizen of Kenya and habitually is a resident of Nairobi, Kenya.

Having considered the above facts, the Apex court said, "*Thus, the petitioner being an individual who is a national of Kenya and is habitually a resident of that country; having entered into a contract and since disputes have arisen under the said document, the same qualifies as an 'International Commercial Arbitration' as defined in Section 2(f) of Act, 1996. In such circumstance, Supreme Court is to appoint an Arbitrator as provided under Section 11(6) of the Act, 1996 and not by the High Court as stated in the contract entered into between the parties.*"

The Apex court then considered the arbitrability of the dispute relating to lease/tenancy agreements/deeds when such lease is governed by Transfer of Property Act, 1882 .On this aspect, the Apex Court referred to ***Booz Allen and Hamilton Inc* v. *SBI Home Finance Limited***[21] (2011) 5 SCC 532 , ***Himangni Enterprises* v. *Kamaljeet Singh Ahluwalia*** (2017) 10

[21]"36. The well-recognised examples of nonarbitrable disputes are : (*i*) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (*ii*) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (*iii*) guardianship matters; (*iv*) insolvency and winding-

SCC 706, ***Natraj Studios (P) Ltd.* v. *Navrang Studios*** (1981) 1 SCC 523. The Apex court stated that in ***Vidya Drolia* v. *Durga Trading Corporation*** 2019 SCC OnLine SC 358, it was noticed that *Natraj Studios* had dealt with tenancy under Rent Act and *Booz Allen* had made reference to special statutes and had not stated with respect to non-arbitrability of cases arising under TP Act.

The Apex Court then took note of the provisions contained in Section 111, 114 and 114A of the TP Act and said the following:

> **15.** A perusal of the provisions indicate the manner in which the determination of lease would occur, which also includes determination by forfeiture due to the acts of the lessee/tenant in breaking the express condition agreed between the parties or provided in law. The breach and the consequent forfeiture could also be with respect to non-payment of rent. In such circumstance where the lease is determined by forfeiture and the lessor sues to eject the lessee and, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, Section 114 of TP Act provides that the Court instead of passing a decree for ejectment may pass an order relieving the lessee against the forfeiture due to which the lessee will be entitled to hold the property leased as if the forfeiture had not occurred. ***Under Section 114A of the TP Act a condition for issue of notice prior to filing suit of ejectment is provided so as to enable the lessee to remedy the breach. No doubt the said provisions provide certain protection to the lessee/tenant before being ejected from the leased property. In our considered view, the same cannot be construed as a statutory protection nor as a hard and fast rule in all cases to waive the forfeiture. It is a provision enabling exercise of equitable jurisdiction in appropriate cases as a matter of discretion.***
>
> ***.....***
>
> ***16. Such equitable protection does not mean that the disputes relating to those aspects between the landlord and the tenant is not arbitrable and that only a Court is empowered to waive the forfeiture or not in the circumstance stated in the provision. In our view, when the disputes arise between the landlord and tenant with regard to determination of lease under the TP Act, the landlord to secure possession of the leased property in a normal circumstance is required to institute a suit in the Court which has jurisdiction. However, if the parties in the contract of lease or in such other manner have agreed upon the alternate mode of dispute resolution through arbitration the landlord would be entitled to invoke the arbitration clause and make a claim before the learned Arbitrator***. Even in such proceedings, if the circumstances as contained in Section 114 and 114A of TP Act arise, it could be brought up before the learned Arbitrator who would take note of the same and act in accordance with the law qua passing the award. In other words, if in the arbitration proceedings the landlord has sought for an award of ejectment on the ground that the lease has been forfeited since the tenant has failed to pay the rent and breached the express condition for payment of rent or such other breach and in such proceedings the tenant pays or tenders the rent to the lessor or remedies such other

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up matters; (*v*) testamentary matters (grant of probate, letters of administration and succession certificate); and (*vi*) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

breach, it would be open for the Arbitrator to take note of Section 114, 114A of TP Act and pass appropriate award in the nature as a Court would have considered that aspect while exercising the discretion.

17. On the other hand, the disputes arising under the Rent Acts will have to be looked at from a different view point and therefore not arbitrable in those cases. This is for the reason that notwithstanding the terms and conditions entered into between the landlord and tenant to regulate the tenancy, if the eviction or tenancy is governed by a special statute, namely, the Rent Act the premises being amenable to the provisions of the Act would also provide statutory protection against eviction and the courts specified in the Act alone will be conferred jurisdiction to order eviction or to resolve such other disputes. In such proceedings under special statutes the issue to be considered by the jurisdictional court is not merely the terms and conditions entered into between the landlord and tenant but also other aspects such as the bonafide requirement, comparative hardship etc. even if the case for eviction is made out. In such circumstance, the Court having jurisdiction alone can advert into all these aspects as a statutory requirement and, therefore, such cases are not arbitrable. As indicated above, the same is not the position in matters relating to the lease/tenancy which are not governed under the special statutes but under the TP Act.

18. In the backdrop of the above discussion, we are of the considered view that ***insofar as eviction or tenancy relating to matters governed by special statutes where the tenant enjoys statutory protection against eviction whereunder the Court/Forum is specified and conferred jurisdiction under the statute alone can adjudicate such matters. Hence in such cases the dispute is non-arbitrable.*** If the special statutes do not apply to the premises/property and the lease/tenancy created thereunder as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an Arbitration Clause; the dispute between the parties is arbitrable and there shall be no impediment whatsoever to invoke the Arbitration Clause. This view is fortified by the opinion expressed by the Co-ordinate Bench while answering the reference made in the case of *Vidya Drolia* wherein the view taken in Himangni Enterprises is overruled.

30. State of Maharashtra and Another v. Keshao Vishwanath Sonone and Another ,2020 SCC OnLine SC 1040

Decided on: 18.12.2020

Bench: 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M. R. Shah

(The High Court could not have entertained the claim of a caste "Gowari" that it be declared a Scheduled Tribe as "Gond Gowari" included at Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950 nor High Court could have taken evidence to adjudicate the above claim.)

Issues

1) Whether the High Court in the writ petition giving rise to these appeals could have entertained the claim of the caste "Gowari", which is not included as Scheduled Tribe in the Constitution (Scheduled Tribes) Order, 1950, that it be declared a Scheduled Tribe as "Gond Govari" which is included at Item No. 18 of Constitution (Scheduled Tribes) Order, 1950 applicable in the State of Maharashtra and further to take evidence to adjudicate such claim?

2) Whether the ratio of the judgment of the Constitution Bench of this Court in *B. Basavalingappa* v. *D. Munichinnappa*, AIR 1965 SC 1269 permits the High Court to take evidence to find out whether 'Gowari' are 'Gond Gowari' and is there any conflict in ratio of judgment of Constitution Bench in *B. Basavalingappa* and subsequent Constitution Bench judgment of this Court in *State of Maharashtra* v. *Milind*, (2001) 1 SCC 4?

3) Whether the High Court could have entered into the adjudication of the issue that 'Gond Gowari' which is a Scheduled Tribe mentioned in **Scheduled Tribes Order, 1950**, as amended up to date is no more in existence and was extinct before 1911?

4) Whether the conclusion of the High Court in the impugned judgment that 'Gond Gowari' Tribe was extinct before 1911 is supported on the materials which were on record before the High Court?

5) Whether caste 'Gowari' is same as 'Gond Gowari' included at Item No. 28, Entry 18 of the Constitution (Scheduled Tribes) Order, 1950 and the High Court could have granted declaration to caste 'Gowari' as 'Gond Gowari' entitled for Scheduled Tribe certificate?

6) Whether the High Court is correct in its view that 'Gond Gowari' shown as Item No. 28 in Entry 18 of **the Constitution (Scheduled Tribes) Order, 1950** is not a sub-tribe of Gond, hence, its validity cannot be tested on the basis of affinity test specified in Government Resolution dated 24.04.1985?

Decision and Observations

Issue 1 and 2

The Apex Court took note of the fact that there has been a series of judgmentsincluding Constitution Benches on Articles 341 and 342 as well as entries in Scheduled Castes and Scheduled Tribes Order, 1950. The Apex Court had occasion to consider as to what extent the Courts including the High court and the Apex Court could interpret the entries in Scheduled Castes and Scheduled Tribes Orders. In this regard, the following judgmnets were referred to:

B. Basavalingappa* v. *D. Munichinnappa, AIR 1965 SC 1269, ***Bhaiya Lal v. Harikishan Singh,*** AIR 1965 SC 1557,***Srish Kumar Choudhury* v. *State of Tripura***, 1990 Supp SCC 220, ***Palghat JillaThandanSmudhayaSamrakshna Samithi v. State of Kerala***, (1994) 1 SCC 359, ***Kumari Madhuri Patil* v. *Addl. Commissioner, Tribal Development***, (1994) 6 SCC 241,***Nityanand Sharma* v. *State of Bihar***, (1996) 3 SCC 576 ,***State of Maharashtra* v. *Milind***, (2001) 1 SCC 4.

> **61.** It is further to be noticed that Constitution Bench in *Milind's case* (supra) has noted the ratio of earlier two Constitution Bench judgments in *B. Basavalingappa's case* and *Bhaiya Lal's case* and in paragraph 28 has reaffirmed the ration of above two Constitution Bench judgments. In paragraph 28, following is laid down:—
>
> **"28.** Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer Question 1 in the negative."
>
> **62.** In view of the ratio of judgments of this Court as noticed above, the conclusion is inescapable that the High Court could not have entertained the claim or looked into the evidences to find out and decide that tribe "Gowari" is part of Scheduled Tribe "Gond Gowari", which is included in the Constitution (Scheduled Tribes) Order, 1950. It is further clear that there is no conflict in the ratio of Constitution Bench judgments of this Court in *B. Basavalingappa's case* and *State of Maharashtra* v. *Milind* (supra). The ratio of *B. Basavalingappa's case* as noted in paragraph 6 of the judgment and extracted above is reiterated by subsequent two Constitution Bench judgments in *Bhaiya Lal's case* and *Milind's case*. There being no conflict in the ratio of the above Three Constitution Bench judgments, we do not find any substance in submission of Shri Rohatgi that for resolving the conflict, the matter need to be referred to a larger Constitution Bench. We, thus, answer question Nos. 1 and 2 in following words:—
>
> (i) The High Court in the writ petition giving rise to these appeals could not have entertained the claim of a caste "Gowari" that it be declared a Scheduled Tribe as

"Gond Gowari" included at Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950 nor High Court could have taken evidence to adjudicate the above claim.

(ii) There is no conflict in the ratio of the judgment of Constitution Bench of this Court in *Basavalingappa's case* and *Milind's case*.

Issue 3 and 4

ANSWER NO. 3

The High Court could not have entered into the issue that "Gond Gowari" which was Scheduled Tribe mentioned in Constitution (Scheduled Tribes) Order, 1950 as amended upto 1976 is no more in existence and became extinct before 1911.

ANSWER NO. 4

The conclusion of the High Court in the impugned judgment that "Gond Gowari" Tribe had been extinct before 1911 is not supported by the materials which were on record before the High Court.

Issue 5 and 6

97. [....] As per Article 342(1), tribes or tribal communities or parts or groups within tribes or tribal communities shall for the purposes of the Constitution be deemed to be Scheduled Tribes. There has to be some purposes for joining number of tribes together in one entry, but as observed above in case with regard to 'Gond Gowari' the affinity is more than apparent with 'Gond' and the judgment of this Court in *State of Maharashtra* v. *Mana AdimJamat Mandal* (Supra) cannot be read as an authority to hold that 'Gond Gowari' is not a sub-tribe of 'Gond' and no affinity is required to be established with Gond by the tribe 'Gond Gowari'. We thus do not find any infirmity in Government Resolution dated 24.04.2984 insofar as Scheduled Tribe 'Gond Gowari' is concerned.

98. In view of the foregoing discussion we answer question No. 5 and 6 in following manner:—

ANSWER NO. 5

The caste 'Gowari' is not the same as 'Gond Gowari'. The High Court could not have granted declaration of caste 'Gowari' as 'Gond Gowari'.

ANSWER NO. 6

The High Court is not correct in its view that 'Gond Gowari' shown as item No. 28 in Entry 18 of Scheduled Tribes Order, 1950, is not a sub-tribe of 'Gond'. The validity of caste certificate to 'Gond Gowari' has to be tested on the basis of affinity test as specified in the Government Resolution dated 24.04.1985.

99. In view of the foregoing discussion, none of the reasons given by the High Court in paragraph 74 of the judgment are sustainable to hold that 'Gowari' are entitled to Scheduled Tribes Certificate of 'Gond Gowari'. The entire basis of the judgment of the High Court that tribe 'Gond Gowari' was completely extinct before 1911 having been found to be flawed, the entire basis of judgment is knocked out.