Supreme Court of India
Prakash H. Jain vs Ms. Marie Fernandes on 23 September, 2003
Author: . A Lakshmanan
Bench: Doraiswamy Raju, Arijit Pasayat.

CASE NO.:
Appeal (civil) 7977 of 2003

PETITIONER:

RESPONDENT:
Ms. Marie Fernandes @
September 23, 2003.
Doraiswamy Raju & Arijit Pasayat.
J U D G M E N T

[Arising out of S.L.P. (C) No.18351 of 2002 D. RAJU, J.

Special leave granted.

The appellant, who got an order in his favour before the Competent Authority under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as `the Act') condoning the delay in filing an application to defend the eviction proceedings and also consequent leave to defend, but suffered an order against him before a learned Single Judge of the High Court of Bombay, has filed this appeal.

The appellant was said to have been allowed to use the property in question as a licencee and a deed for the purpose was executed on 10.7.1999 between the parties, the period being for one year from the date of the deed. According to the respondent, the said leave and licence agreement expired on 9.6.2000. Though, according to the appellant, in March 2001 after expiry of the period as noticed above, a further agreement was executed permitting the appellant to use the property for commercial purposes for a period of five years, such a claim is being disputed and it is not only unnecessary but we are not also entering into any exercise to deal with the correctness or otherwise of such claim having regard to the limited issue that is before us in these proceedings. The respondent filed an application under Section 24 read with Section 42 of the Act before the Competent Authority (Rent Act) Konkan Division, Mumbai, for eviction of the appellant and also for compensation on the ground that the leave/ licence has expired by efflux of time. The property is said to be a residential property and fully furnished and the further grievance of the respondent appears to be that the property has been an unauthorisedly used for commercial purposes as well. The said petition for eviction seems to have been filed before the Competent Authority on 9.5.2001. Summons to the respondent therein, the appellant herein, was said to have been served on 19.5.2001 and the appellant entered appearance on 29.5.2001 before the said Authority. He appears to have filed an application to summon for a document supported by an affidavit. It is necessary to state even at this stage and it is the common case of parties that in the said application, there was no prayer seeking to grant leave to defend the proceedings for eviction. As a matter of fact, such an application was said to have been filed only on 10.8.2001 with an application for condoning the delay in filing the application seeking for grant of leave to defend the proceedings for eviction. It is

also stated that earlier application filed on 29.5.2001 with an affidavit for summoning some document was said to have been also withdrawn as not pressed on 10.8.2001. Overruling the objections of the respondent, the Competent Authority by its order dated 20.9.2001 allowed the application for condonation of delay filed on 5.8.2001. As a consequence whereof, the application for grant of leave to defend the eviction proceedings seems to have been separately considered and orders passed on 17.1.2002 granting leave to defend and directing the written statement in the eviction proceedings to be filed within the time stipulated therein.

Aggrieved, the respondent approached the High Court by filing Writ Petition No.1575/ 2002 challenging the order condoning the delay and the subsequent order granting also leave to defend. The learned Single Judge, as noticed earlier, set aside the orders passed by the Competent Authority, both in respect of condonation of the delay and the leave granted to defend the proceedings as a consequence thereof, on the view that there is no provision in the Act or any other law which vests power in the Competent Authority to condone the delay in filing such a belated application. Consequently, the Competent Authority was directed to pass further orders on the application of the respondent filed for eviction of the appellant, in accordance with law. Aggrieved, the present appeal has been filed. Since admittedly there were arrears, while granting stay, this Court issued certain directions for payment of arrears and it appears substantial sum has been paid though correctness of the arrears as had been paid, is being disputed by the respondent. The learned senior counsel for the appellant strenuously contended that the learned Single Judge in the High Court committed a grave error in interfering with the order of the Competent Authority inasmuch as the Competent Authority had the power of condonation. It is the stand of the appellant that the Competent Authority, being one which has all trappings of a Court, is a `Court' in the eye of law and consequently possess inherent power to condone the delay as is available to any other Court under the Civil Procedure Code, all the more so when Sections 42 and 43 of the Act is indicative of the applicability of the provisions of the CPC. It was also contended that the appearance within 30 days would be sufficient compliance and it is not necessary that the application itself seeking for leave to defend also should be filed within that period. It was further urged that Section 5 or the principles contained in Section 5 of the Limitation Act, 1963 would apply to the case on hand to enable the Competent Authority to countenance the claim for condonation in an appropriate case and no exception could be taken to the said order passed in this case by the Competent Authority. On behalf of the appellant, certain decisions have been brought to our notice, a reference to which will be made at the appropriate stage while considering the submissions of the counsel on either side and also dealing with the decisions referred to by them in support of their respective stand. Per contra, the learned counsel appearing for the respondent, while placing strong reliance upon Sections 39 and 43 of the Act, contended with equal vehemence that Chapter VIII is a distinct and separate one standing apart and disassociated from the other provisions of the Act and according to the Scheme underlying the said Chapter and the various provisions contained therein, the powers of the Competent Authority are limited as specifically delineated and indicated therein and no further or other powers outside the provisions contained in the said Chapter could be invoked by the said Authority. Argued the learned counsel for the respondent further that the Competent Authority is neither a `Court' in the eye of law as would denote a Court of ordinary jurisdiction nor the provisions of the Limitation Act or the principles enshrined therein could be invoked or exercised by the said Authority in relation to any of the proceedings arising under the said Chapter.

In Gurditta Mal vs Bal Swarup (AIR 1980 Delhi 216) a learned Single Judge of the said High Court chose to infer conferment of power under Rule 23 of the Delhi Rent Control Rules, 1959, though such power was not conferred under the statute, by relying upon Section 151 CPC which in our view could not have been, having regard to the very nature and content of power under Section 151 and its inapplicability to Authorities other than ordinary courts. The decision in Mukri Gopalan vs Cheppilat Puthanpurayil Aboobacker [1995 (5) SCC 5], proceeded on the assumption, keeping in view the authority concerned which was held to be 'court' and not person a designata, that Limitation Act applied in view of Section 29(2) of the said Act. The decision in P.Sarathy vs State Bank of India [2000(5) SCC 355] while construing Section 14 of the Limitation Act observed that the authority constituted under Section 41(2) of the Tamilnadu Shops and Establishments Act to hear and decide appeals was a 'court' within the meaning of the said provision, though not a 'civil court' on the view that the proceedings before him were civil proceedings. In Thakur Jugal Kishore Sinha vs The Sitamarhi Central Co-operative Bank Ltd. & Another [1967(3) SCR 162] the Assistant Registrar of Co-operative Societies, was considered to be 'court' for purposes of attracting Contempt of Courts Act, keeping in view the nature of powers discharged by him.

In Sakuru vs. Tanaji [1985(3) SCC 590] while considering the question as to whether the collector who was the appellate authority under Section 90 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950, was court and Limitation Act, 1963 applied to appeals before him for invoking powers under Section 5 this court, on the provisions as it stood prior to certain subsequent amendments specifically made for the purpose did not approve the claim for condonation invoking powers under Section 5 of the Limitation Act. In Birla Cement Works vs. G.M. Western Railways & Another [1995(2) SCC 493] Railway Claims Tribunal constituted under Section 78B of the Railways Act, 1890, was held to be not a civil court and Section 17(1)(c) of the Limitation Act, 1963 had no application, the Tribunal being only a creature of the statute. In France B. Martins vs. Mafaida Maria Teresa Rodrigues (AIR 1999 SC 3243) it was held that the complaint filed under the Act was not either a suit or appeal or an application within the meaning of the Limitation Act, 1963 and consequently prior to the amendments effected by insertion of Section 24A in the year 1993 in the Consumer Protection Act, the Limitation Act had no application. We have carefully considered the submissions of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the Authority, whether it is court or not but also on the nature of powers conferred on such Authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone delay in filing a proceedings before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other partly under the statute concerned. So far as the Maharashtra Rent Control Act, 1999 is concerned, different provisions seem to have been made constituting different authorities conferred with different nature of powers as well in dealing with claims before such Authorities/Court constituted for the purpose as well as in relation to further avenue of remedies against orders passed by the original Authority. Chapter VIII of the Act is itself with a caption, "Summary disposal of certain applications" and Section 39 reads that the provisions of Chapter VIII or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law

for the time being in force. Therefore, there is hardly any scope to have recourse to any other provisions in the very Act or any other law, when particularly there is specific and clear provisions or stipulation in chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Act. Section 40 envisages the appointment of competent Authority by the Government for purposes of exercising powers therein. Section 41 has its own definition of landlord for the purposes of the said chapter and Section 42 provides a special procedure for seeking eviction under the said chapter, and Section 43 provides special procedure, as the legislature itself calls it to be, for disposal of applications. Sub-section (2) of Section 43 mandates the issue of summons in the form specified in Schedule III, which form indicates, apart from informing the person concerned about the filing of an application seeking for his eviction, the need to appear and contest the application for eviction on the ground mentioned therein and that in default whereof the applicant will be entitled, at any time after the expiry of the period stipulated therefor, to obtain an order for his eviction from the said premises and further as to how the said application should be filed as well. Section 44 states that the order of competent Authority is not appealable and only revision could be sought before the Government or the Authority designated for the purpose. Section 49 deems the competent Authority under the chapter to be a public servant within the meaning of Section 21 of the IPC, while all proceedings before such Authority are deemed to be judicial proceedings for the purposes of Section 193 and 228 IPC under Section 50, and Section 51 deems the competent Authority to be civil court for the purposes of Section 345 and 346 of the Code of Criminal Procedure, 1973. Sub-section (4) of Section 43 of the Act, which is relevant for our purpose reads as follows:

"(4)(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application."

The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given overriding effect over any other provisions in the very act or any other law for the time being in force, though for enforcement of

other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once over again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not 'court' and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such Competent Authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas that the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent Authority can by no means be said to be 'court' for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963.

The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands. The appeal, consequently, fails and shall stand dismissed with no order as to costs.

5 2050-2052 1996 BATIARANI GRAMIYA BANK Vs.

PALLAB KUMAR & ORS.

DATE OF JUDGMENT: 10/09/2003 BENCH:

M. B. Shah & Dr. AR. Lakshmanan.

JUDGMENT:

JUDGMENT Dr. AR. LAKSHMANAN, J.

These appeals are directed against the judgment and order of the Division Bench of the High Court of Orissa dated 26.09.1994 in O.J.C. Nos. 1866, 2981 and 5052 of 1991.

The High Court, by the impugned judgment, has allowed the writ petitions filed by the respondents herein and has directed the appellant-Bank to issue appointment orders to them for the post of Officer/Field Supervisors.

For the purpose of recruitment, the Banking Service Recruitment Board (hereinafter referred to as "the BSRB") issued an advertisement in the newspapers. The contention of the Bank before the High Court was that in view of the financial crisis they had revised their indents submitted to the BSRB, long before the publication of the results regarding intimation of selection and as such the BSRB ought not to have gone ahead and issued letters of selection based on the original indent submitted by the Bank to the candidates and that merely by getting an intimation of selection, no right accrues to the candidates for appointment.

The selections to the category of Officers in the Bank is done by the BSRB. Indents are submitted by the Bank to the BSRB. By letter dated 14.01.1987, an indent was placed by the Bank to the BSRB. In the said indent for the category of Officers, 36 posts were mentioned and for the category of Field Supervisors, 61 posts were mentioned. Thereafter, by letter dated 23.06.1987, the indent for Field Supervisors was revised from 61 to 30. By further letter of 18.11.1987 another revised indent was submitted, wherein the requirements were as follows:- Officers Cadre 36 Field Supervisors 30 On 23.08.1988 a revised indent was submitted by the Bank to the BSRB under which their requirements were as follows:-

Officers 14 Field Supervisors 11 This letter was replied to by the BSRB on 01.09.1988 whereunder they refused to accommodate the Bank's request. According to the Bank, as stated in the grounds of special leave petition, the reasons which had pruned their indent well ahead of the publication of the results were:

a) the Bank incurred loss of more than Rs. 7 crores;

b) the target in the various anti-poverty programmes could not be met on account of the loss;

c) the ban imposed by the State Government, for the opening of further branches, in view of the loss;

d) due to poor recovery performances, the rural banks became ineligible for refinance from NABARD and

e) due to the Award given by the National Industrial Tribunal on 30.04.1990, all staff of Gramiya Bank were equated with the corresponding staff of the Sponsor Bank as regards pay and allowances and all other benefits with retrospective effect from 1987. In view of this the arrears payable to the existing employees alone come to Rs. 2. crores and establishment expenditure increased by 150%.

According to the Bank, they had bona fide and genuine reasons for pruning down the indent and the Bank had communicated the revised indent by 23.08.1988, well ahead of the publication of the results and if the Banks are forced to accommodate Officers and Field Supervisors more than their required indent, it will have a crippling effect on the Bank.

As already noticed, the Bank had placed a revised indent in view of the changed circumstances. However, the BSRB expressed its unwillingness to accept the revised indent and they had stated that the matter will be considered by the Board. In the meeting of the Board held on 11.11.1988, it was decided that no reduction in the original indent was to be done. The BSRB expressed their unwillingness to accommodate the appellant-Bank's request and sent nomination letters to the respondents based on the original indent and also published the results and also intimated the selection on 28.11.1988. The respondents/candidates aggrieved by the non-absorption filed writ petitions in the High Court seeking Mandamus directing the appellant-Bank to appoint them in the respective posts. The matter was placed before the Division Bench of the High Court. The Division Bench observing that as a common merit list was drawn by the BSRB, there can be no dispute that the appointments have to be strictly in accordance with the merit list, in view of the conflicting views expressed in various decisions placed the writ applications before a larger Bench to decide the question as to (a) when specific vacancies were intimated by the Gramya Banks for appointment to the posts of Field Supervisors and Officers, and in pursuance of their indent, the BSRB conducted one common examination, and the petitioners were successful, whether they can be denied the orders of appointment by the concerned Bank on the ground of financial crisis, (b) when BSRB after conducting examination in respect of all the posts prepared one merit list and because of individual choice, any/some successful candidates were allotted to a particular Bank whether the Bank, to which any successful candidate is allotted can refuse order of appointment even if the candidate is higher up in the select list. Particularly, in this case while other Banks issued appointment orders to other successful candidates, non-issuance of appointment letters by Baitarani Gramya Bank will be violative of Articles 14 and 16 of the Constitution, and (c) whether a person selected in pursuance of an advertisement for selection has a right to demand order of appointment, if he is higher up in merit list, and others lower in the merit list are appointed in other Banks. The Full Bench held as follows:

"Coming to the question referred to us, we may say that the ground given in the present case for slashing down is "financial crisis". As to this reason, we would say, as admitted by Shri Dora that the entire finance for Gramya Banks comes from outside sources; 35% from the sponsor Bank, 15% from

the concerned State Government and the remaining 50% from the Central Government. So, there is no financial contribution by the Gramya Bank. We, therefore, do not understand as to what financial crisis was there or could have been there for the Bank at hand to slash down the indent to 14, unless that was a self-created crisis. Shri Dora submits that the crisis was generated because the aforesaid authorised were not carrying out their obligations. That, however, was a matter to be taken up with the concerned authorities. The selected candidates cannot be allowed to suffer because of this, as the result of the same may be that a selectee would not get appointment even if he be higher in merit list whereas a candidate lower in ranking would get appointment, which could be totally against public interest and cannot be allowed to take place. This is our answer to question No.(a).

Question No. (b) answers itself in view of our answer to question No.(a). To reiterate, we say that once an allotment is made to a particular Bank, it would not be open to it do refuse appointment which would even be violative of Article 16 of the Constitution.

As to question No. (c), we would state that though in law a selected candidate does not acquire an indefeasible right of appointment in view of what has been held by a Constitution Bench in Shankarsan Dash vs. Union of India, AIR 1991 SC 1612, which was followed by a three Judge Bench decision in Union Territory of Chandigarh vs. Dilbagh Singh, AIR 1993 SC 16, but the Scheme of selection of the Officers and other employees of the regional rural Banks, to which we have referred, which requires examination of the matter by a centralised agency (the Board) and which permits giving of option and visualises preparation a select list as per descending order of merit, would clothe a selectee higher up in the merit list with a right to demand appointment if a person lower in the list has been appointed in any other Bank; any other view would denude his fundamental right available by the force of Article 16 of the Constitution.

The aforesaid are our answers to the three questions. Let the cases be now placed before the Bench which had made the reference for their disposal keeping in view the answers given."

The Division Bench after remand by the Full Bench passed the following order:

"As noted earlier, while referring the cases to the Full Bench, we had discussed in detail the case of the parties and the contentions raised on their behalf. Therefore, we do not like to burden this order by repeating the same in the said order. For the present purpose, it is sufficient to state that the Full Bench has answered all the three questions formulated in favour of the petitioners. In that view of the matter, there is little scope for doubt that the petitioners are entitled to the reliefs claimed.

Accordingly, the writ petitions are allowed. The opposite party Baitrani Gramya Bank is directed to issue appointment orders to the petitioners in the respective posts for which they have been selected forthwith. There will be no order for costs."

Aggrieved by the judgment and order dated 26.09.1994 of the Division Bench of the High Court, the above three appeals were filed.

Mr. K.V. Viswanathan, learned counsel appearing for the appellant-Bank, submitted that the impugned order has totally overlooked the prejudice that would be caused to public interest if the respondents are directed to be appointed in the appellant-Bank. He also submitted that in the advertisement issued by the BSRB, based on their original indent, it was clearly mentioned that the vacancies are approximate and likely to be varied upward or downwards depending on the needs of the indenting Banks and that this aspect of the matter has not been considered at all either by the Full Bench or by the Division Bench of the High Court. He would further submit that in the case of the appellant-Bank, the revised indent was submitted on 23.08.1988, long before the publication of the result an intimation of selection was sent to the respondents and the BSRB ought to have sent the nominations on the basis of the revised indent and not on the basis of the original indent and that for the fault of the BSRB, the appellant-Bank cannot be prejudiced. In any case, he submitted that the selection/nomination does not confer a indefeasible right on the respondents to seek appointments and the selection intimation was not an offer of appointment when in fact in the selection nomination itself it was mentioned that the offer of appointment was to be made by the Bank. It is to be noted that no such offer was made. He further submitted that the Bank had reduced the indent for bona fide reasons as stated in the grounds of special leave petition and that the Bank had bona fide and genuine reasons for pruning down the indent.

Referring to the Full Bench judgment of the High Court, Mr. Viswanathan, learned counsel submitted that there was no material either before the Full Bench or before the Division Bench to prove that candidates with lesser merit had been favoured with letters of appointment and in the absence of any material particulars, the Full Bench could not have been proceeded on the basis that candidates with lesser merit were given offers of appointment and candidates with higher merits were denied. He would further argue that, in any case, it is for the BSRB to accommodate the unabsorbed candidates since it was their fault of having proceeded on the basis of the original indent and not on the basis of the revised indent in spite of their own advertisement clearly intimated the candidates that the vacancies notified were only approximate and are likely to vary upwards or downwards depending on the needs of the indenting Bank. Mr. Viswanathan, in support of his contention, placed reliance on the following judgments:-

1. Shankarsan Dash vs. Union of India reported in (1991) 3 SCC 47

2. Babita Prasad & Ors. vs. State of Bihar & Ors. reported in 1993 Supp(3) SCC 268

3. State of Bihar & Ors. vs. Secretariat Assistant Successful Examinees Union 1986 &Ors. reported in (1994) 1 SCC 126.

4. Rani Laxmibai Kshetriya, Gramin Bank vs. Chand Behari Kapoor & Ors. reported in (1998) 7 SCC 469.

5. State of A.P. & Anr. Vs. V. Sadanandam & Ors. reported in AIR 1989 SC 2060

6. Union Territory of Chandigarh vs. Dilbagh Singh & Ors. reported in (1993) 1 SCC 154.

Concluding his arguments, Mr. Viswanathan submitted that the judgment of the Division Bench impugned in these appeals is liable to be set aside and interfered with.

Mr. Vinoo Bhagat, learned counsel appearing for the respondents, in reply to the arguments of Mr. Viswanathan raised a preliminary objection in regard to the maintainability of the present appeals. He said that this Court had already dismissed an earlier special leave petition of the Bank being Special Leave Petition (Civil) No. 2505 of 1992 by order dated 03.03.1992 against another judgment of the High Court directing the Bank to appoint the respondent therein who was placed at serial No. 4 in the same Select List of Field Supervisors in which respondent No.2 in the present matters (Special Leave Petition No. 738 of 1995) is placed at serial No. 3 and that the Respondent No. 2 is at a higher position in the same select list than the respondent in the earlier Special Leave Petition, he cannot be denied appointment when the person below him has been appointed pursuant to the rejection of the earlier Special Leave Petition. He would further submit that the writs issued by the High Court in two earlier writ petitions, O.J.C. No.1265 of 1991 (the one challenged in the special leave petition mentioned above) and No. 6566 of 1991 (which was not challenged), have been implemented and the writ petitioners, Surya Prasad Rath and Anjan Kumar Mallik, have been appointed in their respective posts and, therefore, it is illegal and improper that the appellant-Bank should thereafter challenge the High Court's judgment in the remaining cases of the present respondents and, therefore, the plea in the present special leave petitions/appeals that the appellant-Bank had to produce the indents due to subsequent events was negatived in the two judgments of the High Court also and became final in respect of the same dispute and, therefore, these special leave petitions are liable to be dismissed.

Arguing further, learned counsel for the respondents submitted that the appellant-Bank was bound to disclose the dismissal of its previous special leave petitions in identical matter, as also the fact that it had implemented the High Court's writs issued in other similar matters, but it has chosen to indulge in suppression instead and, therefore, the present matters are liable to be dismissed on account of such suppression. In regard to the reasons for reducing the indent given by the Bank, learned counsel submitted that the reasons stated in the special leave petitions, namely, the financial constraints etc. find no place in the contemporaneous documentary records and, therefore, the said reasons have been invented subsequently in an attempt to mislead this Court and, therefore, the special leave petitions ought to be dismissed on this ground alone. According to Mr. Vinoo Bhagat, learned counsel for the respondents, the Bank's financial constraints were never cited as the reason before the litigation began and this reason has been dishonestly invented for the purposes of litigation and as correctly noticed by the High Court, the appellant is financed entirely by outside sources.

It is further argued that the appellant-Bank has not even appointed the persons eligible under its pruned list and that two of the respondents, namely, Tridip Kumar Dass at serial No.4 in the select list of Officers and Alekha Prasad Behera at serial No.3 in the select list of Field Supervisors were entitled to appointment even if the indent stood reduced to 14 Officers and 11 Field Supervisors and the fact that they have not been appointed makes it clear that the appellant's case is entirely dishonest. He would further urge that since the appellant-Bank did not challenge the judgment of the Full Bench of the High Court dated 14.09.1993 that judgment attained finality and it is the abuse of

the process of the Court to try and fault with the judgment in the present matters.

The appellant-Bank filed rejoinder affidavit denying the allegations made in the counter affidavit. The Chairman of the Bank has also filed an affidavit on 10.04.2002 pursuant to the order dated 12.01.1996 of this Court. The said order dated 12.01.1996 reads thus:

"Leave granted.

Printing of appeals dispensed with. Appeals will be heard on the SLP paper books with liberty to file additional papers, if any, within ten weeks.

The petitioners will make appointments on the posts as indicated in their last indent on the basis of the merit list sent by the BSRB (respondent No.4). In respect of the additional persons whose names have been recommended by respondent No.4 for appointment with the petitioners, it will be open to the respondent No.4 to proceed on the lines similar to the guidelines contained in the letter dated 31.3.1993, annexure O to the SLPs with regard to recruitment to the clerical cadre persons in regional rural banks."

It was submitted that pursuant to the above order, appointment orders were issued to 9 Field Supervisors and 14 Officers and 2 Field Supervisors had already been appointed pursuant to the judgment of the High Court dated 08.11.1991 and 18.11.1991 in O.J.C. No. 1265 and O.J.C. No. 6506. It was further stated therein that the appellant-bank has also advised the BSRB, Bhubaneswar to take care of the candidates as per direction dated 12.01.1996 of this Court and as such the dossiers in respect of 11 Officers and 19 Field Supervisors which were in excess of the Bank's last indent were returned. It was also submitted in the affidavit that out of 30 candidates, 23 appointment orders were issued by them, 5 Officers/Field Supervisors have joined the appellant-Bank on 10.04.1996. It was further submitted that at the relevant time, there is no vacancy in any cadre in the appellant-Bank and as per the Government of India's revised guidelines, the appellant-Bank is identified as having surplus man-power and that the accumulated loss of the bank as on 31.03.2001 was Rs. 39.69 crores and the Bank is not in a position to absorb any more additional establishment cost.

This affidavit was verified on 10.04.2002 and signed by the Chairman of the Bank. On the above pleadings, the following questions of law would emerge for consideration:-

a) Whether the respondents/writ petitioners had acquired any indefeasible right to be appointed to the posts in question, when the decision taken by the appellant-Bank not to fill up all the vacancies is based on bona fide and appropriate reasons;

b) Whether the appellant-Bank is under any legal obligation or legal duty to fill up any or all of the vacancies;

c) Whether the appellant-Bank is entitled to revise their indents submitted to the BSRB long before the publication of the results by the BSRB in view of financial crisis as stated in the grounds of

special leave petition and

d) Whether the basis indicated by the appellant-Bank can be characterized to be mala fide or unreasonable.

We have given our anxious consideration to the points urged by both the learned counsel with reference to the pleadings, documents and annexures.

The entire basis for the arguments advanced by counsel for the respondents appears to be the judgment of the High Court of Orissa at Cuttack in O.J.C. No. 1265 of 1991 in the case of Surya Prasad Rath and Another vs. Batiarani Gramiya Bank dated 08.11.1991 and the subsequent dismissal of the special leave petition by this Court on 03.03.1992. In this context, the respondents has failed to notice that there were two other judgments on the issue one of which was subsequent in point of time which accepted the contention of the Bank and rejected the writ petition filed by the selected candidates. The said judgments are Ashok Kumar Sarangi vs. Secretary, BSRB and Others in O.J.C. No. 2902 of 1990 dated 16.01.1992 (page Nos.81-89 of the paper-book. Bipin Bihari Das and Others vs. Batiarani Gramiya Bank and Others in O.J.C. No. 1125 of 1991 dated 04.10.1991 (page Nos.90-93 of the paper-book).

The respondents, in our opinion, has failed to appreciate the fact that in view of the conflicting judgments, the Division Bench of the High Court of Orissa by its order dated 19.04.1993 made a reference in this very matter to the Full Bench of the Orissa High Court and the Full Bench of the High Court by its judgment dated 14.09.1993 answered the questions and relegated the matter to the Division Bench for disposal in accordance with the answers given. The Full Bench while answering the questions has categorically held that a selected candidate does not acquire indefeasible right of appointment. In holding so, the Full Bench has placed reliance on a Constitution Bench judgment of this Court in Shankarasan Dass vs. Union of India reported in AIR 1991 SC 1612 equivalent to 1991 (3) SCC 47and another judgment by a Bench of three-Judges of this Court in Union Territory of Chandigarh vs. Dilbagh Singh reported in AIR 1993 SC 16 equivalent to 1993 (1) SCC 154. The only exception made by the Full Bench (about which the present appellant-Bank made a grievance in the present appeals) is that the Full Bench has held that a selectee higher up in the merit list will have a right to demand appointment if a person lower than in the list has been appointed in any other Bank. The Full Bench overlooked the fact that the advertisement extract (page 38- 39 of the paper book) and the paper clipping clearly mentioned the following:-

(a) "Bank once opted for can not be changed later".

(b) In the notes under item one it was mentioned that "the above vacancies are approximate and likely to vary upwards or downwards depending on the need of the indenting banks."

(c) From the Full Advertisement, it is also clear in para in the left-hand column under the head 'Selection Procedure' that the finally selected will be allotted to the regional rural bank for which the candidates originally opted.

(d) Further in para 10(a), it says (right-hand column 1st line) "the choice will be restricted to one RRB only."

(e) Further in para 10(b) it says :

"10(b) The candidates for posts of Officers and Field Supervisors (posts 1 and 2) should apply in separate applications along with requisite fee for the respective post. But for both the posts his choice will be restricted to a single regional rural bank."

All these clearly go to show that the assumption of the Full Bench that a Common Merit List for all the Banks is prepared and that a selectee higher in merit list would be overlooked is incorrect. Further, the assumption that the procedure/scheme visualises preparation of a select list as per descending order of merit, would clothe a selectee higher up in the merit list with a right to demand appointment if a person lower in the list has been appointed in any other Bank, is also erroneous. No material or factual foundation was laid in the writ petition and nothing has been found regarding this by the Full Bench. On the contrary, one of the writ petitions annexed the Paper Publication of the final results and that showed that results were declared qua each Bank.

Once the premise of the Full Bench is found to be erroneous, the judgment of the Full Bench and the impugned order deserve to be set aside It was argued by learned counsel for the respondents that the Bank has stated the aspect of financial crisis/constraints for the first time in the special leave petitions as the reasons mentioned by them in pruning down the indent. This statement is factually incorrect. The Division Bench, by its common order, in O.J.C. Nos. 1866, 2981 and 5052 of 1991 while referring to the counter affidavit filed by the Bank has clearly stated that on account of various factors including liquidity crisis, ban order for opening new branches and on account of financial burden incurred on account of implementation of agricultural rural debt relief scheme and the award given by the National Industrial Tribunal, the Authorities had decided not to fill up the posts though at the time of advertisement indent had been given. Thus, it is seen that counter affidavit in all the writ petitions, the appellant-Bank has raised the aspect of financial crisis. This submission of the respondents is, therefore, liable to be rejected. In regard to the submission made by learned counsel for the respondents though the appellant-Bank was bound to disclose the dismissal of its previous special leave petitions in an identical matter, we are of the opinion that the same need not be disclosed in the present special leave petitions since the previous special leave petition was dismissed at the special leave petitions stage (Annexure- R1). This Court in a catena of decisions has held that the dismissal of special leave petition by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. Such an order does not constitute the law laid down by the Supreme Court for the purpose of Article 141. In this context, we may refer to a recent decision of this Court in Kunhayammed & Ors. vs. State of Kerala & Anr. reported in 2000 (6) SCC 359 (Three Judges) In regard to the argument of learned counsel for the respondents that the Full Bench judgment of the Orissa High Court was not challenged and, therefore, that judgment has attained finality, learned counsel for the respondents is not correct in submitting so. The appellant-Bank could not have challenged the Full Bench judgment because the Full Bench answered the questions and relegated the matter to the Division Bench for disposal and the cause of action for filing the present appeals

arose only after the Division Bench of the High Court disposed of the matters.

In our view, the respondents/writ petitioners had not acquired any indefeasible right to be appointed to the post in question when the Bank has taken a decision not to fill up all the vacancies which is based on sound bona fides and appropriate reasons. The Bank is also under no obligation or legal duty to fill up any or all of the vacancies and that the basis indicated by the appellant-Bank for pruning the indents cannot at all be characterized to be mala fide or unreasonable. The law is well-settled. This Court has taken the same view in the following judgments.

In State of Andhra Pradesh and Another vs. V. Sadanandam and Others etc. etc. AIR 1989 SC 2060, this Court has observed as under:- "The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. The question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down."

This Court, in a judgment rendered by a Constitution Bench in Shankarsan Dash vs. Union of India (1991) 3 SCC 47, observed as under:- "Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

In Union Territory of Chandigarh vs. Dilbagh Singh and Others (1993) 1 SCC 154, this Court has observed as follows:-

"A candidate who finds a place in the select list as a candidate selected for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. He could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons. Hence such candidate, even if he has a legitimate expectation of being appointed due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration accepted the complaints and cancelled the select list it cannot be said to have acted either arbitrarily or without bona fide and valid reasons."

In Babita Prasad and Others vs. State of Bihar and Others 1993 Supp. (3) SCC 268, this Court held that a panel, as prepared in the said case, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed. This Court further held as follows:

"The mere fact that the candidates who had been brought on the panel had been sent for training at the Government expense, would also not imply that any right had been created in their favour for appointment after they had completed their training because training was intended to confer eligibility on the candidates for being brought on the list."

In the case of The State of Haryana vs. Subash Chander Marwaha & Ors. reported in (1974) 3 SCC 220, this Court has observed as under: "The existence of vacancies does not give a legal right to candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the Rules in this respect.

In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance.

Since there was no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition was clearly misconceived."

In the case of U.P. Bhumi Sudhar Nigam Ltd. vs. Shiv Narain Gupta reported in 1994 Supp (2) SCC 541, this Court has observed as under: "We are of the view that the High Court fell into patent error in issuing the mandamus in the facts and circumstances of this case. This Court has authoritatively laid down that even if a vacancy is available and the employer bona fide declines to make an appointment, the candidate on the select list has no right whatsoever to claim appointment. In the present case, the post was abolished by the Board of Director in the year 1991. Shiv Narain Gupta in fact challenged before the High Court the action of the Corporation in abolishing the post. Neither the facts of this case nor the law on the subject warranted any interference by the High Court in the writ petition filed by Shiv Narain Gupta. The Constitution Bench judgment in Shankarsan Dash case was cited before the learned single Judge of the High Court. We are constrained to say that the learned Judge failed to appreciate the binding ratio of the said judgment. "

Our attention was drawn to Annexure-J issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) dated 31.03.1993 on the subject "Recruitment of Clerical Cadre Personnel in Regional Rural Banks". In the said communication, course of action was advised to the Chairman of all Banking Services Recruitment Boards to resolve the problem. We are concerned only with regard to the course of action II which reads thus: "As regards candidates

who have already been selected for the posts of Clerk of RRBs but have not yet absorbed/appointed, the BSRBs concerned may follow the following Board guidelines:

a. BSRBs may invite indents from all the RRBs in a State in order to make an assessment of their actual requirement.

b. If the number of unabsorbed candidates is more than the indents received from RRBs they may identify the candidates who fulfil the requirements in respect of age, qualification etc. for posting in the public sector banks.

c. They may get an option from such candidates found eligible as stated above, for their posting to the public sector banks.

d. Allegation of the candidates may be made to RRBs/Public Sector Banks in order of merit list already drawn by the RSRBs and only those candidates who are coming in that merit list and are eligible for public sector Banks will be allocated to these Banks.

2. In addition to the above, BSRBs may also explore the possibility of absorbing the remaining unabsorbed candidates in the RRBs in the adjoining States through RSRBs of these States, after obtaining option from the unabsorbed candidates in this regard."

The respondents in the counter affidavit filed by them has stated that the letter of 31.03.1993 has not been annexed to the special leave petitions. The statement is not correct. The other letter has been annexed as Annexure-J and is at page 77 of the paper-book. The letter of 31.03.1993 makes it very clear that the cause of action for the writ petitioners is against the BSRB and not against the appellant-Bank.

The Government of India Circular dated 31.3.1993, which has been extended to the present case by order dated 12.1.1996 of this Court, pre-supposes that there can be revision of indent even before declaration of results and even after declaration of results and alternative mechanism has been laid down. Neither the Regional Rural Banks Act, 1976 nor the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988, restricts pruning and/or mandates that of selectee should be appointed. No rule has been placed.

Learned counsel for the respondents did not dispute the legal position. His contention was based on the letter of the BSRB dated 28.11.1988 and he stated that Mr. Surya Prasad Rath has been appointed whereas those above him have not been appointed. The communication dated 28.11.1988 at page 130 has to be read with the reply of the Bank (at page 109 of the paper book) where the Bank's query was about the merit list. Further one thing that is clear that selection is qua Bank. No factual foundation was laid to show that within the Bank a lower selectee was preferred.

We have already noticed though the advertisement was published in the newspapers and the examinations were held thereafter on 20.03.1988, the Bank had communicated the revised indent by 23.08.1988 well ahead of the intimation of selection and publication of results. The Bank had

bona fide and genuine reasons for pruning down the indent. If the Banks are forced to accommodate Officers and Field Supervisors more than their required indent, it will have a crippling effect on the Bank and public interest will stand seriously prejudiced as several employees will have to be unnecessarily retained and public money will have to be expended on them. When public interest competes with private interest, the private interest will have to give way to public interest. In this case, asking the appellant-Bank to accommodate as directed by the BSRB would cause loss to public revenue. It has been clearly stated in the counter affidavit filed by the Bank before the High Court in the writ petition that on account of various factors including liquidity crisis, ban order for opening new branches and on account of financial burden incurred on account of implementation of Agricultural Rural Debt Relief Scheme and the award given by the National Industrial Tribunal, the Bank had decided not to fill up the posts though at the time of advertisement indents had been given. Thus, it is seen that the decision of the Bank not to fill up the posts was due to financial crisis. Therefore, no direction can be given to issue appointment letters to the respondents/writ petitioners though they have come out successful in the selection process. The aforesaid being the decision, we would hold that the respondents/writ petitioners had not acquired any indefeasible right and the decision not to fill up all the vacancies had been taken bona fide reasons and directions as sought for by the respondent cannot, therefore, be issued.

Today the position is that the appellant-Bank has filed an affidavit setting out how it has implemented the order of this Court dated 12.1.1996. As averred in para 4 therein, there is no vacancy in any cadre in the Bank. In the Government of India revised guidelines the appellant-Bank has been identified as having surplus manpower. The accumulated loss today is in the range of 39.65 crores. Pursuant to the order of this Court, three of the respondents have been admittedly appointed. They are :

(a) Mr. Pallab Kumar Das (OJC No. 1866)

(b) Mr. Alekha Prasad Behera (OJC No. 1866)

(c) Mr. Tridip Kumar Das (OJC No. 5652) Today 15 years have passed after the advertisement and seven years after the order of this Court dated 12.1.1996. In view of the settled legal position, the respondents do not have any indefeasible right.

However, with a view to do justice between the parties and balance the equities, we issue the following directions:-

a) If, however, the business of the Bank would require filling up of more vacancies and if the respondents/writ petitioners turn would come as per the merit list, we have no doubt that the concerned respondents/writ petitioners would be absorbed in service as per rules.

b) The appointment shall be made on the basis of merit/select list if there are vacancies in any cadre.

c) The select list would remain in force for two years from now.

d) The appellant-Bank, we hope, will consider the question of relaxation of age bar in suitable cases so as to minimize their hardship. We are unable to subscribe to the opinion expressed by the Full Bench and the Division Bench of the Orissa High Court impugned in these appeals for the reasons stated in paragraphs supra.

The judgment dated 14.9.1993 of the Full Bench and of the judgment dated 26.9.1994 of the Division Bench of the High Court hereby are set aside and the appeals filed by the appellant-Bank stand allowed. However, there will be no order as to costs.