JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

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1. *Punjab Urban Planning and Development Authority (Now GLADA) v. Vidya Chetal, (2019 SCC OnLine SC 1193)*

Decided on : -16.09.2019

Bench :- 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Mr. Justice Ajay Rastogi

(If the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any Statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the Consumer Forums would continue to have the jurisdiction to deal with the same.)

Background

The reference arose out of the order dated 13.07.2018, passed by a two-Judge Bench of the Apex Court, wherein they expressed doubt as to the correctness of the judgment rendered in the case of *HUDA v. Sunita*.[1] . The Apex Court therein held that the National Consumer Disputes Redressal Commission (for short, referred to as "**NCDRC**") had no jurisdiction to adjudicate the legality behind the demand of "*composition fee*" and "*extension fee*" made by HUDA, as the same being statutory obligation, does not qualify as "*deficiency in service*".

Decision and observations

Regarding the law on beneficial interpretation of an Act, the Apex court referred to *Commissioner of Customs (Import), Mumbai* **v.** *Dilip Kumar,*[2] wherein it had been emphasized that the purpose of interpretation is to find the legislative intent of an Act. Also, emphasising on the fact that it is established by umpteen number of cases in India and abroad that beneficial or remedial legislation needs to be given 'fair and liberal interpretation', the Apex Court referred to *Om Prakash* **v.** *Reliance General Insurance*[3].

[1] (2005) 2 SCC 479
[2] (2018) 9 SCC 40
[3] (2017) 9 SCC 724

Then the Apex Court considered the meaning of the concerned statutory provisions of the Act. Section 2(1)(g)[4] of the Act explains the meaning of deficiency. According to the Apex Court, the basis for application of the consumer laws hinges on the relationship between the service provider and consumer. The usage of 'otherwise' within the provision subsumes other modes of standard setting alternative instruments other than contracts such as laws, bye-laws, rules and customary practices etc. Also, Service is defined under Section 2(1)(o)[5] of the Act which according to the Apex Court is not exhaustive definition rather the legislature has left the task to expound the provision on a case to case basis to the judiciary. The purpose of leaving this provision open ended, without providing an exhaustive list indicates the requirement for a liberal interpretation. It is inclusive of all those services performed for a consideration, except gratuitous services and contract of personal services. Moreover, aforesaid provision reflects the legislative intent of providing impetus to 'consumerism'. It may be noted that such a phenomenon has had a benevolent effect on the Government undertakings, wherein a new dynamism of innovation, accountability and transparency are imbibed.

The Apex Court observed that:

> **"11.** On perusal of the impugned precedent, it may be noted that it does not provide clear-cut reasoning for the view held by the Court, except to the extent of pointing out that statutory obligations are not encompassed under the Act. Such broad proposition necessarily required further elaboration, as there is a possibility of over-inclusivity. Further, there is no gainsaying that all statutory obligations are not sovereign functions. Although all sovereign functions/services are regulated and performed under constitutional/statutory instruments, yet there are other functions, though might be statutory, but cannot be called as sovereign functions. These sovereign functions do not contain the consumer-service provider relationship in them and are not done for a consideration. Moreover, we need to be mindful of the fact that sovereign functions are undergoing a radical change in the face of privatization and globalization. India being a welfare State, the sovereign functions are also changing.

[4] **"deficiency"-** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

[5] (o) "**service**" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

We may note that the government in order to improve the quality of life and welfare of its citizens, has undertaken many commercial adventures.

12. ***Sovereign functions like judicial decision making, imposition of tax, policing etc, strictly understood, qualify for exemption from the Act, but the welfare activities through economic adventures undertaken by the Government or statutory bodies are covered under the jurisdiction of the consumer forums. Even in departments discharging sovereign functions, if there are subunits/wings which are providing services/supply goods for a consideration and they are severable, then they can be considered to come within the ambit of the Act***. [refer to *Standard Chartered Bank Ltd.* v. *Dr. B.N. Raman*, (2006) 5 SCC 727]"

The Apex Court referred to ***Lucknow Development Authority* v. *M.K. Gupta***,[6] wherein the Court was concerned with the question as to the amenability of statutory authorities like Lucknow Development Authority, for development of plots, to the Consumer Protection Act, 1986.[7]

[6] (1994) 1 SCC 243

[7] The Court answered the relevant question in the following manner:—

"**5. This takes us to the larger issue if the public authorities under different enactments are amenable to jurisdiction under the Act**. It was vehemently argued that the local authorities or government bodies develop land and construct houses in discharge of their statutory function, therefore, they could not be subjected to the provisions of the Act. …

… Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and the spirit behind it. … A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. **Truly speaking it would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions be scrutinised as public accountability is necessary for healthy growth of society.**

6. What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within the meaning of clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression 'housing construction' in the definition of "service" by Ordinance No. 24 of 1993. **… So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993.**

…

8…..Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. … Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation."

(**emphasis supplied**)

The Apex Court held that the interpretation provided by the *Sunita case* that the NCDRC had no jurisdiction to adjudicate the legality behind the demand of composition or extension fee by a developmental authority, could not be sustained as the service provided by the petitioner squarely comes under the ambit of 'service'. The Apex Court stated that ***if the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any Statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the Consumer Forums would continue to have the jurisdiction to deal with the same***.

However, the Apex court noted the distinction between statutory liability which arise generally such as a tax, and those that may arise out of a specific relationship such as that between a service provider and a consumer, was not considered by the Court in the case of *Sunita*. For instance, a tax is a mandatory imposition by a public authority for public purpose enforceable by law; and is not imposed with respect to any special benefit conferred, as consideration, on the tax payer. There is no element of *quid pro quo* between the tax payer and the public authority. In a catena of judgments, the Court has recognized that certain statutory dues may arise from services rendered by a statutory authority. The Apex Court referred to the case of ***Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt***,[8] wherein a seven Judge-Bench of the Apex Court held that—

> **"46. Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed**. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay [Vide *Lutz on Public Finance*, p. 215]. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.
>
> 47. …**The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege**. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest [Vide *Findlay Shirras on Science of*

[8] 1954 SCR 1005

Public Finance, Vol. I, p. 202]. Public interest seems to be at the basis of all impositions, but in a fee, it is some special benefit which the individual receives."

(emphasis supplied)

Also, in ***Kewal Krishan Puri* v. *State of Punjab,***[9] decided by the five Judge Bench, the Apex Court took note of the fact that certain statutory dues can arise from a *quid pro quo* relationship between the authority and an individual upon whom the liability falls.

> **"23.** ...(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably **it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee."**
>
> ***(emphasis supplied)***

Therefore, the Apex Court stated that:

> **"22.** Therefore, it is a clearly established principle that certain statutory dues, such as fees, can arise out of a specific relation. Such statutory dues might be charged as a *quid pro quo* for a privilege conferred or for a service rendered by the authority. As noted above, there are exactions which are for the common burden, like taxes, there are dues for a specific purpose, like cess, and there are dues in lieu of a specific service rendered. Therefore, it is clear from the above discussion that not all statutory dues/exactions are amenable to the jurisdiction of the Consumer Forum, rather only those exactions which are exacted for a service rendered, would be amenable to the jurisdiction of the Consumer Forum.
>
> **23.** At the cost of repetition, we may note that those exactions, like tax, and cess, levied as a part of common burden or for a specific purpose, generally may not be amenable to the jurisdiction of the Consumer Forum. However, those statutory fees, levied *in lieu of service provided*, may in the usual course be subject matter of Consumer Forum's jurisdiction provided that there is a 'deficiency in service' etc."

The Apex Court then referred to the case of ***Ghaziabad Development Authority* v. *Balbir Singh,***[10] wherein it was held that the power of the Consumer forum extends to redressing any injustice rendered upon a consumer as well as over any *mala fide*, capricious or any oppressive act done by a statutory body.[11]

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[9] (1980) 1 SCC 416

[10] (2004) 5 SCC 65

[11] The relevant para of the judgment reads as under:

> **"6. ....Thus, the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities**. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen.
>
> ...

The Apex Court concluded that the determination of the dispute concerning the validity of the imposition of a statutory due arising out of a "*deficiency in service*", can be undertaken by the consumer fora as per the provisions of the Act.

Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behaviour."

2. *Shrirang Yadavrao Waghmare v. State of Maharashtra and Others, (2019 SCC OnLine SC 1237)*

Decided on : -16.09.2019

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

(A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge)

Facts

The appellant was a Judicial Officer. He was appointed as a Judicial Magistrate on 01.03.1985. On 08.02.2001, he was put under suspension and dismissed from service on 15.01.2004. The appellant challenged his writ petition filed before the High Court. The same was dismissed. Notice was issued in the special leave petition on 14.12.2015 limited to the question of quantum of punishment. The only issue to be decided was whether the punishment imposed upon him was justified or a lenient view could have been taken in the matter. The allegation was that he had a proximate relationship with a lady lawyer and due to this relationship he passed certain judicial orders in favour of her clients, including her mother and brother when they were parties to certain proceedings.

Decision and Observations

The Apex court emphasized on the fact that the first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. On this point the Apex Court referred to ***Tarak Singh* v. *Jyoti Basu***[12] wherein it has been held as follows:—

> "Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpekers inside pose a larger threat than the storm outside."

[12] (2005) 1 SCC 201

The behavior of a Judge has to be of an exacting standard, both inside and outside the Court. This Court in ***Daya Shankar* v. *High Court of Allahabad***[13] held thus:

> "Judicial Officers cannot have two standards, one in the court and other outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

The Apex Court emphasised that Judges are also public servants. ***A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge.*** One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges. In ***R.C. Chandel* v. *High Court of Madhya Pradesh***,[14] the Apex Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person.[15]

The Apex court noted that a judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law. The Apex Court observed that in this case the officer decided the cases because of his proximate relationship with a lady lawyer and not because the law required him to do so. This is also gratification of a different kind.

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[13] (1987) 3 SCC 1

[14] (2012) 8 SCC 58

[15] The following observations of this Court are relevant:

> "37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, judicial system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartially and intellectual honesty."

The Apex Court concluded:

12. The Judicial Officer concerned did not live up to the expectations of integrity, behavior and probity expected of him. His conduct is as such that no leniency can be shown and he cannot be visited with a lesser punishment.

3. *Karnataka Power Transmission Corporation Limited, Represented by Managing Director (Admin. and HR) v. C. Nagaraju and Another,(2019 SCC OnLine SC 1192)*

Decided on : -16.09.2019

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta

(Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different)

Facts

The judgment of the High Court by which the order of dismissal of Respondent No. 1 from the service was set aside is the subject matter of this Appeal. Respondent No. 1 was appointed as a Meter Reader-cum-Clerk in the Karnataka Power Transmission Corporation Limited (KPTCL) in the year 1974. He was promoted as a Junior Engineer in the year 1997. On 21.06.2003, Additional Registrar of Enquiries-I, Karnataka Lokayukta, Bangalore framed a charge[16] against the Respondent .The Respondent submitted his explanation to the charge. After conducting an inquiry, Additional Registrar of Enquiries-I, Karnataka Lokayukta, who was nominated as the Inquiry Officer, held that the charge against Respondent No. 1 was proved. The Lokayukta examined the inquiry report and approved the findings of the Inquiry Officer. Having regard to the serious misconduct committed by Respondent No. 1, the Lokayukta imposed the penalty of dismissal from service under Clause VIII of Regulation No. 9 of Karnataka Electricity Board Employees (Classification, Discipline, Control and Appeal) Regulations, 1987.

[16] *"Charge:*

That you DBE Sri. C. Nagaraju, while working as Junior Engineer (Elecl.,) at KEB, VV-1 (O&M) South Zone, Vidyaranyapuram Circle, Mysore during the year 1998, one Sri. K. Chandrasekhar, Class II Electrical Contractor, Resident of Vidyaranyapuram, Mysore, (hereinafter called as 'Complainant') had approached you for obtaining electrical power supply to the house and shop of his customer Smt. Savithramma, on 14-5-1998, and you demanded a sum of Rs. 1,250/- as illegal gratification, and on 16-5-1998 you once again demanded and accepted illegal gratification of Rs. 750/- as advance amount, from the complainant for doing the said work of giving electrical power supply, and thereby you being a public servant failed to maintain absolute integrity and devotion to duty and did an act which was unbecoming of a Government servant and thereby you have committed an act of misconduct as enumerated under Rule 3(1)(i) & (iii) of K.E.B. Employees Service (Conduct) Regulation Rules, 1988."

The final notice was issued by the Appellant seeking an explanation from Respondent No. 1 as to why the report of the Inquiry Officer should not be accepted. The reply submitted by Respondent No. 1 was considered, and by an order dated 23.03.2007, Respondent No. 1 was dismissed from service. The said order was affirmed by the Appellant Authority on 24.06.2008. Aggrieved by the order of dismissal from service, Respondent No. 1 filed a writ petition in the High Court of Karnataka which was allowed by a single Judge by a judgment dated 08.09.2011. The Writ Appeal filed by the Appellant was dismissed by the Division Bench. Dissatisfied with the judgment of the High Court, the Appellant is before the Apex Court.

Also, Respondent No. 1 was tried by the Court of Special Judge, Mysore (for short, referred to as "the Criminal Court") for committing offences under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("*the PC Act*"). He was acquitted by the Criminal Court as the prosecution witnesses turned hostile and did not support the case of the prosecution.The single Judge of the High Court allowed the Writ Petition relying upon the judgments of the Apex Court in ***Captain M. Paul Anthony* v. *Bharat Gold Mines Ltd.***[17] and ***G.M. Tank* v. *State of Gujarat.***[18] It was held that the charges in the departmental inquiry and the criminal case are the same and Respondent No. 1 ought not to have been dismissed from service after he was found not guilty by the Criminal Court. The Division Bench upheld the judgment of the Single Judge by observing that an order of dismissal from service could not have been passed once the Respondent was honourably acquitted by the Criminal Court.

Decision and Observations

The Apex Court opined that the acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [19] In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The

[17] (1999) 3 SCC 679
[18] (2006) 5 SCC 446
[19] *Ajit Kumar Nag* v. *General Manager (PJ), Indian Oil Corpn. Ltd., Haldia,* (2005) 7 SCC 764

standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different.[20].

The Apex Court concluded:

> **"14.** Having considered the submissions made on behalf of the Appellant and the Respondent No. 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court."

[20] *State of Rajasthan* v. *B.K. Meena*, (1996) 6 SCC 417

4. *Pradeep Singh Dehal v. State of Himachal Pradesh and Others, (2019 SCC OnLine SC 1216)*

Decided on : -17.09.2019

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta

(The process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal.)

Facts

An advertisement No. 3 of 2010 was published inviting applications for seven posts of Assistant Professor viz. four posts under Unreserved category, one post under Other Backward Classes category, one post under Scheduled Castes category and one post in Scheduled Tribes category. The appellant and the writ petitioner were the applicants for such posts. However, none of the candidates were appointed to such posts. Thereafter, another advertisement No. 3 of 2011 was published. This time, advertisement was published for the post of Assistant Professor inviting applications for six posts under Unreserved category, one post under OBC category, one post under Scheduled Castes category and one post under Scheduled Tribes category. One of the conditions in the advertisement was that the candidates who have applied earlier as per revised UGC guidelines and also with reference to previous advertisements need not to apply again. However, they may send additional information, if any.

The appellant and the writ petitioner did not apply again nor said to have furnished any additional information. In such selection process, the appellant was recommended by the Expert Committee for appointment against the post meant for OBC category, having obtained 60.83 marks. Such appointment was challenged by the writ petitioner, *inter alia*, on the ground that he has not been given any credit of "publications" whereas, for such "publications", he has been given credit when he was considered in pursuance of the post applied in response to advertisement No. 3 of 2010. The High Court accepted the claim of the writ petitioner with the following directions:

> "The writ petition is accepted and respondents No. 1 and 2 are directed to add to the score-sheet of the petitioner five marks on the parameter of "publications". In case the petitioner then is ranked first, then subject to completion of all necessary formalities the

respondent concerned shall proceed to in accordance with law appoint him to the post of Assistant Professor, Education."

The appellant filed review petition which came to be summarily dismissed on July 30, 2015. Still aggrieved, the appellant filed the present appeal.

The challenge in the present appeals is to orders passed by the High Court of Himachal Pradesh, Shimla on June 24, 2015 and July 30, 2015 whereby, the Himachal Pradesh University was directed to add five marks on the parameter of "publications" in favour of the respondent No. 3 (hereinafter referred to as writ petitioner)in respect of appointment to the post of Assistant Professor in the Department of Education in the International Centre for Distance Education and Open Learning, Shimla.

Decision and Observations

The Apex Court noted that as per the conditions pertaining to advertisement No. 3 of 2011, the applications submitted earlier were to be considered which shows that the "publications" of the writ petitioner were with the University when the writ petitioner was granted marks for "publications". But the writ petitioner has not been granted any marks under the heading "publications" in the interview held on May 12, 2012, when the candidates for under OBC category were interviewed but the writ petitioner was granted five marks for "publications" when the interview was being conducted for the post of Assistant Professor under general category on May 13, 2012. Though, the writ petitioner has not appeared in the interview but the fact remains that he has been granted five marks for "publications". It is the same Selection Committee who conducted interview on May 12, 2012 and on May 13, 2012. But it is equally true that it is for the experts to award marks for "publications". The High Court, while exercising the power of judicial review, does not sit in the arm chair of the experts to award the marks for publications, that too, on the basis of an earlier selection process. The marks obtained by the writ petitioner under the heading "publications" on May 13, 2012 were not before the High Court. The appellant was granted three marks for "publications" in the earlier selection process initiated vide advertisement No. 3 of 2010. Such "publications" were also required to be taken into consideration by the Selection Committee.

The Apex Court observed that the process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal. It has been a consistent view of the Court starting from ***Indra Sawhney* v. *Union of India***[21] that if a reserved category candidate is in merit, he will occupy a general category seat. In *Indra Sawhney's case*, the Court held as under:

> "811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

In ***Vikas Sankhala* v. *Vikas Kumar Agar-wal***[22] one of the questions examined was whether reserved category candidate who obtains more marks than the last general category candidate is to be treated as general category candidate. It was held that such reserved category candidate has to be treated as unreserved category candidate provided such candidate did not avail any other special concession.[22]

The concessions which were availed by the reserved category candidates are in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates.

The Apex court held :

> "we find that the selection process conducted by the University cannot be said to be fair and reasonable. Consequently, the University is directed to re-examine the selection process by constituting an Expert Committee who shall consider the "publications" of the candidates who were being considered in pursuance of advertisement No. 3 of 2011 and make suitable recommendations accordingly by having a joint merit list of all the categories of candidates who applied for appointment to the post of Assistant Professor. However, in such selection process, the appointment of candidates already selected will not be disturbed, except the appellant whose appointment shall be subject to the decision of the University on the basis of recommendation of the Expert Committee."

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[21] 1992 Supp (3) SCC 217

[22] The Court held as under:

"84.2. Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last un-reserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category."

5. *D.A.V. College Trust and Management Society and Others v. Director of Public Instructions and Others (2019 SCC OnLine SC 1210)*

Decided on : -17.09.2019

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

(Whether non-governmental organisations substantially financed by the appropriate government fall within the ambit of 'public authority' under Section 2(h) of the Right to Information Act, 2005- an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.)

Issue

Whether non-governmental organisations substantially financed by the appropriate government fall within the ambit of 'public authority' under Section 2(h) of the Right to Information Act, 2005?

Decision and Observations

The Apex Court noted that the definition of public authority has been dealt in *Thalappalam Service Cooperative Bank Ltd.* v. *State of Kerala*[23]. Dealing with Section 2(h) of the Act, it was held as follows:

> "**30.** The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. The meanings of the expressions "means" and "includes" have been explained by this Court in *DDA* v. *Bhola Nath Sharma* (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.
>
> 31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

[23] (2013) 16 SCC 82

In the *Thalappalam case* there was an order issued directing that cooperative societies would fall within the ambit of the Act. The validity of this order was challenged on the grounds that the cooperative societies were neither bodies owned, controlled and/or substantially financed by the government nor could they be said to be NGOs substantially financed, directly or indirectly, by funds provided by the appropriate Government.

(1) an authority or body or institution of self-government established by or under the Constitution,

(2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

32. The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government."

The Apex Court noted that when the definition clause contains the words 'means and includes' then both these words must be given the emphasis required and one word cannot override the other. On this point the Apex Court referred to ***P. Kasilingam* v. *P.S.G. College of Technology***[24] wherein the Court was dealing with the expression 'means and includes'.[25] The judgment in P. Kasilingam was followed in ***Bharat Coop. Bank (Mumbai) Ltd.* v. *Coop.***

[24] 1995 Supp (2) SCC 348

[25] Justice S.C. Agrawal observed as follows:—

"**19.** …A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : *Gough* v. *Gough*; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court*.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : *Dilworth* v. *Commissioner of Stamps (Lord Watson)*; *Mahalakshmi Oil Mills* v. *State of A.P.* The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time…"

Bank Employees Union[26] and *Delhi Development Authority* v. *Bhola Nath Sharma (Dead) by L.Rs.*[27]

The Apex Court observed that, in *P. Kasilingam's case* the words 'means and includes' has been used but in the present case the word 'means' has been used in the first part of sub-section (h) of Section 2 whereas the word 'includes' has been used in the second part of the said Section. They have not been used together.

Further, the Apex Court noted :

"16. If we analyse Section 2(h) carefully it is obvious that the first part of Section 2(h) relates to authorities, bodies or institutions of self-government established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. There is no dispute with regard to clauses (a) to (c). As far as clause (d) is concerned it was contended on behalf of the appellants that unless a notification is issued notifying that an authority, body or institution of self-government is brought within the ambit of the Act, the said Act would not apply. We are not impressed with this argument. The notification contemplated in clause (d) is a notification relating to the establishment or constitution of the body and has nothing to do with the Act. Any authority or body or institution of self-government, if established or constituted by a notification of the Central Government or a State Government, would be a public authority within the meaning of clause (d) of Section 2(h) of the Act.

17. We must note that after the end of clause (d) there is a comma and a big gap and then the definition goes on to say 'and includes any -' and thereafter the definition reads as:

"(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"

18. The words 'and includes any', in our considered view, expand the definition as compared to the first part. The second part of the definition is an inclusive clause which indicates the intention of the Legislature to cover bodies other than those mentioned in clauses (a) to (d) of Section 2(h).

19. We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the

[26] (2007) 4 SCC 685

[27] (2011) 2 SCC 54

Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a public authority.

20. As far as sub-clause (ii) is concerned it deals with NGOs substantially financed by the appropriate Government. Obviously, such an NGO cannot be owned or controlled by the Government. Therefore, it is only the question of financing which is relevant."

Then, the Apex Court mentioned the principle of purposive construction of a statute and on this point referred to ***New India Assurance Company Ltd.* v. *Nusli Neville Wadia***[28] and ***Abhiram Singh* v. *C.D. Commachen (Dead) by L.Rs.***[29]

The Apex Court held that:

"25. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub clauses (i) and (ii). Any other interpretation would make clauses (i) and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of the Parliament was to include these two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.

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27. A society which may not be owned or controlled by the Government, may be an NGO but if it is substantially financed directly or indirectly by the government it would fall within the ambit of sub-clause (ii)."

The Apex court then elaborated the meaning of "substantial" and stated as follows:

"29. In our view, 'substantial' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

30. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not be called substantially financed. Supposing a small NGO which has a total capital of Rs. 10,000/- gets a grant of Rs. 5,000/- from the Government,

[28] (2008) 3 SCC 279

[29] (2017) 2 SCC 629

though this grant may be 50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.

31. Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed."

The Apex Court held that the D.A.V. College Trust and Management Society, New Delhi; D.A.V. College, Chandigarh; M.C.M. D.A.V. College, Chandigarh and D.A.V. Senior Secondary School, Chandigarh are substantially financed and are public authority within the meaning of Section 2(h) of the Act.

6. *Ali Hussain(D) Through Lrs v. Rabiya and Others, (2019 SCC OnLine SC 1217)*

Decided on : -17.09.2019

Bench :- 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Mr. Justice Ajay Rastogi

(Burden to prove that the alleged power of attorney was the result of fraud rests on the one who attacks.)

Facts

The facts in brief are that the first respondent-plaintiff filed a suit against the defendant-appellant for cancellation of sale deed dated 10th May, 1995 registered in Sub-Registrar Office, Roorkee on 22nd May, 1995. According to the plaint, the plaintiff-first respondent Smt. Rabiya inherited the property shown in the schedule of property indicated at the foot of the plaint, from her father late Sri Ahamad and is the owner and in possession of the suit property in question. It was further averred that the impleaded defendants in the suit (defendant nos. 1 and 3, Ali Hussain and Abdul Hassan) are the sons of her great grandfather and impleaded defendant no. 2 Smt. Raquiba, is the wife of Ali Hussain (impleaded defendant no. 1).

It was averred in the plaint that the impleaded defendant no. 1 (appellant) in order to grab the suit property of the plaintiff-respondent, got prepared a forged registered power of attorney, in the name of the plaintiff-first respondent on 25th April, 1995 and on the basis of the forged power of attorney, sold the suit property by a registered sale deed for a consideration of Rs. 1,50,000/- on 10th May, 1995 in favour of defendant nos. 2 and 3 (Smt. Raquiba and Abdul Hassan). According to the plaintiff-first respondent, the sale price of the suit property could not be less than Rs. 3,00,000/-. It is also alleged in the plaint that there is no recital as to who had actually received the sale consideration and she is in actual possession of the suit property and the forged sale deed was never acted upon. It was prayed for the decree for cancellation of power of attorney and the sale deed obtained by playing fraud.

The trial Judge, after hearing the parties and considering the evidence on record, dismissed the suit filed by the plaintiff-first respondent vide judgment and decree dated 19th January, 2001 which was further assailed at the instance of the plaintiff-first respondent in first appeal

which was dismissed vide judgment and decree dated 27th August, 2001, further assailed in second appeal before the High Court of Uttarakhand.

The High Court after hearing the parties proceeded on the premise that the plaintiff-first respondent was the pardanasheen illiterate lady and taking note of the judgment of this Court in Mst. Kharbuja Kuer v. Jangbahadur Rai AIR 1963 SC 1203, relying on the judgment of the Privy Council (Farid-Un-Nisa v. Mukhtar Ahmad AIR 1925 PC 204) held that burden of proof in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor.

The High Court held that the burden to prove that the alleged power of attorney is not a result of fraud and misrepresentation lie on the shoulder of the appellant-defendant because they are the beneficiaries and the trial Court and the first Appellate Court has committed a manifest error in shifting the burden on the shoulders of the plaintiff-first respondent and accordingly set aside the judgment and decree of the Courts below and remitted the matter back to the trial Judge to decide the suit afresh in view of the evidence available on record taking note of the observations made by the High Court in the impugned judgment dated 18th August, 2008 which is a subject matter of challenge at the instance of the appellant-defendant no. 1 before the Apex Court. The Apex Court, while issuing notice on 14th November, 2008 stayed the operation of the impugned judgment dated 18th August, 2008.

Decision and Observations

The Apex Court noted that the perusal of the plaint revealed that it has nowhere been pleaded that the plaintiff-first respondent is a pardanasheen illiterate lady. In the ordinary course the burden of proof rest, on who attack. It was revealed from the record that without there being any factual foundation, the High Court, while admitting the appeal, framed two substantial questions of law[30] in reference to which there was no supporting pleadings on record.

[30] The High Court admitted the appeal on the following substantial questions of law: –
1. As to whether both the courts below were justified placing burden of proof on the plaintiff/appellant to prove negative fact that power of attorney is not executed by her?

The Apex Court held:

> **"14.** We still, for our satisfaction have gone through the plaint placed on record at Annexure P/1 and we are unable to find the pleadings in support that she was a pardanasheen illiterate lady and was entitled for protection of law and the burden was on the defendant-appellant to prove that the alleged power of attorney was the result of fraud."

2. Whether burden/onus of proof lies on the transferee when transferor totally denies execution of the deed by himself? If so, its effect?

7. *Sri Ganapathi Dev Temple Trust v. Balakrishna Bhat Since Deceased By His Lrs. and Others, (2019 SCC OnLine SC 1219)*

Decided on : -17.09.2019

Bench :- 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Mr. Justice Ajay Rastogi

(It is the bounden duty of the archak to protect the temple property, and they cannot usurp such property for their own gains)

Facts

The judgment passed by the Division Bench of the High Court of Karnataka at Bangalore in a Writ Appeal is called into question in the present appeal.By the impugned judgment, the Division Bench set aside the order dated 21.05.2003 of the Tehsildar, Ankola Taluk and the consequential mutation entry No. 7948 dated 28.05.2003 in respect of the suit property; the order dated 30.07.2005 passed by the Assistant Commissioner, Kumta and the order dated 23.03.2006 passed by the Deputy Commissioner, Uttara Kannada, Karward upholding the aforesaid mutation entry, as well as the order dated 22.03.2007 passed by the Single Judge in Writ Petition No. 12482 of 2006 dismissing the respondents' writ petition for quashing of the mutation entry.

The Respondent Nos. 1(a) to (e) in the present appeal claim that one late Baba Bommayya Bhat was the *archak* of the appellant Ganapathi Dev temple and he was in actual possession and enjoyment of agricultural land bearing Survey No. 68/2001 to the extent of 4 guntas) (hereinafter 'suit property') situated in the village of Avarsa, which he had been cultivating since 1969; that after the death of the said Baba Bommayya Bhat, his son, the late Balakrishna Bhat (husband of Respondent No. 1(a) and father of the Respondents No. 1(b) to 1(e) herein) continued in possession of the suit property and consequently the name of Balakrishna Bhat was entered into the revenue records.

Further that the deceased Balakrishna Bhat, after obtaining necessary permission from the Panchayat, constructed a house in the suit property in 1994 and obtained an electricity

connection for the said house; and that after his demise, Respondent Nos. 1(a) to (e) are residing in the same house. Respondent Nos. 1(a) to (e) therefore claimed to be the deemed tenants of the suit property under the Karnataka Land Reforms Act, 1961 ('1961 Act').

Decision and Observations

The Apex Court noted the scheme for land reforms as provided under the 1961 Act. The Apex Court mentioned Section 2(34) of the 1961 Act which defines 'tenant' as meaning an agriculturist who cultivates personally the land he holds on lease from a landlord and includes a person who is deemed to be a tenant under Section 4 of the Act.[31] Under Section 44 of the 1961 Act, as substituted by Amending Act No. 1 of 1974, all lands held by or in possession of tenants immediately prior the commencement of the Amendment Act shall with effect from 01.03.1974 ('date of vesting') vest with the State Government. Section 45(1)[32] of the 1961 Act provides for the right of tenants to be registered as occupants of the land vested with the Government. Section 48A of the 1961 Act enables any person entitled to be registered as an occupant of land under Section 45 to make an application to the Land Tribunal praying for such registration. Respondent No 1(b), Vitthaldas Bhat, filed a Form-7 application under Section 48A in 1979 for grant of occupancy rights in respect of the suit property in his favour, Form-7 being the format for such application as prescribed under Rule 19 of the Karnataka Land Reform Rules, 1974 ('1974 Rules'). However, during course of enquiry before the Land Tribunal, Respondent No 1(b) himself deposed that he was not cultivating the property and the Form 7 application was made by him on a wrong notion. He stated that the suit property is to remain in the name of the appellant temple and pleaded for

[31] Section 4 defines a deemed tenant as follows:

> "**4. Persons to be deemed tenants.**—A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not,— (a) a member of the owner's family, or (b) a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or (c) a mortgagee in possession."

[32] **"45. Tenants to be registered as occupants of land on certain conditions.**—(1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such sub-tenant shall, with effect on and from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally."

dismissal of his application. Hence the Land Tribunal by order dated 28.01.1981 rejected the said Form 7 application filed under Section 48A of the 1961 Act. Thus, it is clear that as of 28.01.1981, and prior thereto, Respondent Nos. 1(a) to (e) were not cultivators of the property, and therefore could not be deemed tenants under Section 4 of the 1961 Act.

In view of rejection of his son's Form 7 application under Section 48A, the deceased Balakrishna Bhat was not entitled to apply for grant of occupancy rights under Section 77A of the amended 1961 Act. He nonetheless filed a Form 7A application under Section 77A. The Assistant Commissioner, Kumta by order dated 15.03.2000 rightly rejected the application of the deceased Balakrishna Bhat on the ground that it was not possible to confer occupancy rights or grant in view of the earlier Land Tribunal order dated 28.01.1981.

The Apex Court stated:

> **"15.** The suit property admittedly belongs to the appellant temple. It is also not disputed that the Respondent No. 1(b) and his predecessors were the archaks of the temple. Needless to say, ***it is the bounden duty of the archak to protect the temple property, and they cannot usurp such property for their own gains***. It is relevant in this regard to refer to the judgment of this Court in *Bishwanath* v. *Sri Thakur Radha Ballabhji*, (1967) 2 SCR 618,:
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> "9. Three legal concepts are well settled: (1) An idol of a Hindu temple is a juridical person; (2) when there is a Shebait, ordinarily no person other than the Shebait can represent the idol; and (3) worshippers of an idol are its beneficiaries, though only in a spiritual sense...
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> 10. The question is can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest...
>
> 11...B. K. Mukherjea in his book '*The Hindu Law of Religious and Charitable Trust*' 2nd Edn., summarizes the legal position by way of the following propositions, among others, at p. 249. '(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said, to be merged in that of the Shebait.
>
> (2) Where, however, the Shebait refuses to act for the idol or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol then there must be some other agency which must have the right to act for the idol.

> The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol.' This view is justified by reason as well as by decisions."
>
> (emphasis supplied)
>
> **16.** Therefore, it is well-settled that the deity in a Hindu temple is in deemed to be a minor, and the Shebait, archaka, etc. or the person functioning as manager/trustee of such temple acts as the guardian of the idol and conducts all transactions on its behalf. However, the Shebait or archaka is obligated to act solely for the idol's benefit. In *Sri Thakur Radha Ballabhji* (supra), this Court affirmed the lower courts' finding that a sale made by the manager of the deity to a third party, which was not for the necessity of the benefit of the idol, would not be binding on the deity, and worshippers or other parties who had been assisting in the management of the temple could apply to have such a sale set aside.
>
> **17.** In the present case, since the Respondent No. 1(a) to 1(e) and his predecessors were holding the position of archaks and were involved in the management of the temple, it would have been easy for them to get their names entered in the revenue records, ignoring the interest of the temple. Even otherwise, their attempt to claim occupancy rights over the suit property have failed. As mentioned supra, according to their own admission before the Land Tribunal, they were not in possession of the suit property."

Applying the principle laid down in ***Bishwanath* v. *Sri Thakur Radha Ballabhji***,[33] the Apex Court held that the appellant temple has the right, through its present managing trustee, to undertake proceedings for the benefit of the idol for having such wrongful entries set aside, and such wrongful entries would not be binding on the temple.

The Apex Court held:

> **"19.** We find that the reasons assigned by the Division Bench in the impugned judgment for granting relief in favour of the respondents, while setting aside the concurrent findings of the three revenue authorities as well as the order of the learned Single Judge, are unacceptable."

[33] (1967) 2 SCR 618

8. *Municipal Council Neemuch v. Mahadeo Real Estate and Others, (2019 SCC OnLine SC 1215)*

Decided on : -17.09.2019

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

(Scope of judicial review of an administrative action by the High Court)

Facts

The present appeals challenge the Judgment and Order passed by the Division Bench of the Madhya Pradesh High Court, Bench at Indore, dated 31.08.2017 thereby allowing the writ petition filed by respondent No. 1 herein and the subsequent Order dated 05.07.2018 thereby, rejecting the Review Petition filed by the appellant.

The factual background, in brief, giving rise to the present appeals is as under.

The appellant, which is a Municipal Council, duly constituted under the Madhya Pradesh Municipality Act, 1961 (hereinafter referred to as the "said Act") had invited tenders for allotment of land on lease, for a period of 30 years. The land was ad-measuring 163176 sq. ft. situated in Scheme No. 1A (Commercial-cum-Residential Use), Neemuch. The Notice Inviting Tenders ("NIT" for short) was published in the daily newspapers.Respondent No. 1, which is a registered partnership firm along with other bidders had submitted the tender thereby giving an offer of Rs. 5,81,00,106/-. It had also deposited the earnest money amounting to Rs. 47,00,000/-. The bids of the participants were opened in presence of the representatives of all the bidders. The bid of respondent No. 1 herein was found to be highest.

The appellant issued a letter dated 27.09.2008 thereby informing respondent No. 1 that its bid was accepted. Respondent No. 1 was directed to deposit an amount of Rs. 1,45,25,050/-, i.e., 25% of the bid amount within a period of seven days. Respondent no. 1 in accordance therewith deposited the aforesaid amount on 01.10.2008.

It appears that an objection was raised by two members of the Municipal Council under the provisions of Section 323 of the said Act before the Collector with regard to the said tender process. It further appears, that the Collector vide Order dated 18.07.2008 had stayed further proceedings of the tender process. Vide Order dated 23.12.2008, the Collector disposed of the

proceeding observing therein, that the proposal be sent for approval of the State Government in the Urban Administrative and Development Department, respondent No. 2 herein, under the provisions of Section 109 of the said Act.

Thereafter, it appears that, there was certain correspondence between the Urban Administrative and Development Department, on one hand, and the Divisional Revenue Commissioner of Ujjain, respondent No. 3 herein, on the other hand. Finally, respondent No. 3 passed an order dated 03.07.2010 observing therein that, the tenders invited in connection with transfer of the said land were not competitive. He further observed in the said Order, that the NIT was published only in Indore edition of two Hindi Newspapers at Indore and as such there was no wide circulation. As such, he rejected the proposal of the Municipal Council and returned the same with the direction to invite the tenders again by publishing the NIT in at least one National level English newspaper and one State level reputed Hindi newspaper. Being aggrieved thereby, respondent No. 1 herein approached the Madhya Pradesh High Court in Writ Petition No. 12204 of 2010. The Division Bench vide Order dated 31.08.2017 allowed the writ petition thereby quashing and setting aside the Order dated 03.07.2010 passed by respondent No. 3 and further directing him to grant approval on behalf of the State Government for allotment of the land on lease in favour of respondent no. 1. The appellant, thereafter, preferred Review Petition No. 1072 of 2017. The same was rejected. Hence, the present appeals challenging both the Orders dated 31.08.2017 and 05.07.2018.

Decision and Observations

The Apex Court referred to the provisions of Section 109[34] of the said Act. Clause (ii) of subsection (3) of Section 109 of the said Act provides that, no land exceeding fifty thousand

[34]"109. Provisions governing the disposal of Municipal property vesting in or under the management of Council.- No streets, land public places, drains or irrigation channels shall be sold, leased or otherwise alienated, save in accordance with such rules as may be made in this behalf.-
(2) Subject to the provisions of sub-section (1)-
(a) the Chief Municipal Officer may, in his discretion, grant a lease of any immovable property belonging to the Council, including any right of fishing or of gathering and taking fruits, flowers and then like, of which the premium or rent, or both, as the case may be, does not exceed two hundred and fifty rupees for any period not exceeding twelve months at a time:
Provided that every such lease granted by the Chief Municipal Officer, other than the lease of the class in respect of which the President-in-Council has by resolution exempted the Chief Municipal Officer from compliance with the requirements of this proviso, shall be reported by him to the President-in-Council within fifteen days after the same has been granted.
(b) with the sanction of the President-in-Council, the Chief Municipal Officer may, by sale or otherwise grant a lease of immovable property including any such right as aforesaid for any period not exceeding three years at a

rupees in value shall be sold or otherwise conveyed without the previous sanction of the State Government. It further provides that, every sale or other conveyance of property vesting in the Council shall be deemed to be subject to the conditions and limitations imposed by the said Act or by any other enactment for the time being in force. The Apex Court also referred to Rule 3[35] of the Municipal Corporation (Transfer of Immovable Property) Rules, 1994 (hereinafter referred to as the "said Rules").

Therefore, no land, exceeding fifty thousand rupees in the value shall be sold or otherwise conveyed without the previous sanction of the State Government. The perusal of the aforesaid Rule further makes it clear that the immovable property which yields or is capable of yielding an income shall not be transferred by sale or otherwise conveyed, except to the highest bidder at the public auction or by inviting offers in a sealed cover. No doubt, with the previous sanction of the State Government such a transfer could be effected without public auction or inviting offers in a sealed cover. The second proviso further provides that, the Corporation may, with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder.

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time of which the premium, or rent, or both, as the case may be, for any one year does not exceed one thousand five hundred rupees;
(c) with the sanction of the Council, the Chief Municipal Officer may lease, sell or otherwise convey any immovable property belonging to the Council.
(3) The sanction of the President-in-Council or of the Council under sub-section (2) may be given either generally for any class of cases or specially in any particular case:
Provided that-
(i) no property vesting in the Council in trust shall be leased, sold or otherwise conveyed in a manner that is likely to prejudicially effect the purpose of the trust subject to which such property is held;
(ii) no land exceeding fifty thousand rupees in value shall be sold or otherwise conveyed without the previous sanction of the State Government and every sale or other conveyance of property vesting in the Council shall be deemed to be subject to the conditions and limitations imposed by this Act or by any other enactment for the time being in force."

[35] "3. No immovable property which yields or is capable of yielding an income shall be transferred by sale, or otherwise conveyed except to the highest bidder at a public auction or by inviting offers in a sealed cover:

Provided that if the Corporation is of the opinion that it is not desirable to hold a public auction or to invite offers in sealed covers the Corporation may, with the previous sanction of the State Government, effect such transfer without public auction or inviting offers in sealed covers:

Provided further that the Corporation may with the previous sanction of the State Government and for the reasons to be recorded in writing, transfer any immovable property to a bidder other than the highest bidder:

Provided also that for any such transfer by lease a reasonable premium shall be payable at the time of granting the lease and annual rent shall also be payable in addition during the total period of the lease."

Therefore, whenever any land which is having a value exceeding fifty thousand rupees is to be sold the same cannot be done without the previous sanction of the State Government.

Then the Apex Court examined the scope of the powers of the High Court of judicial review of an administrative action. On this point the Court referred to ***Tata Cellular v. Union of India*** [36] wherein in paragraph 77 it was stated:

> "77. The duty of the court is to confine itself to the question of legality. Its concern should be:
> 1. Whether a decision-making authority exceeded its powers?
> 2. Committed an error of law,
> 3. committed a breach of the rules of natural justice,
> 4. reached a decision which no reasonable tribunal would have reached or,
> 5. abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
> (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
> (ii) Irrationality, namely, Wednesbury unreasonableness.
> (iii) Procedural impropriety."

Therefore, the Apex Court observed:

> **"15.** It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion, that the decision maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision maker is vitiated by irrationality and that too on the principle of "Wednesbury Unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision making process. It is also equally well settled, that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process."

In a recent case of ***West Bengal Central School Service Commission v. Abdul Halim*** [37] the Apex Court considered the scope of interference under Article 226 in an administrative action.[38]

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[36] (1994) 6 SCC 651

[37] 2019 SCC OnLine SC 902

[38] "31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held

The Apex Court stated ***that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law, i.e., when the error is apparent on the face of the record and is self evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the court considers reasonable or unreasonable but a decision which the court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.***

In the Present case, the Apex Court noted that the Municipal Council, Neemuch, invited tenders for allotment of the said land on lease for 30 years. This was done without taking prior approval of the State Government as in required under Section 109 of the said Act. Two municipal counsellors raised objections before the Collector under the provisions of Section 323 of the said Act. The Collector, who initially granted stay on 18.07.2008, vide order dated 23.12.2008 directed the Municipal Council to seek approval of the State Government to the said proposal. Vide communication dated 21.12.2009, the State Government directed respondent No. 3-Revenue Commissioner to hand over the possession of the land to respondent No. 1. While doing so, the State Government directed the Commissioner to inspect as to whether the land was being put for use as per the development plan. On receipt of the communication, the Divisional Commissioner addressed a communication to the State Government on 03.03.2010 thereby, specifically pointing out that no proper publicity was given to the NIT and that the rates were not competitive as per the market value. It was specifically observed that there was a cartel among the tenderers and, therefore, sought clear

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by this Court in *Satyanarayan* v. *Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect."

orders of the State Government in view of Section 109 of the said Act. He also proposed to reject the proposal with further direction to invite fresh tenders by giving adequate publicity. In response to the said communication, the State Government re-examined the issue and by communication dated 18.05.2010 authorised the Commissioner for transferring the land in question. It is further clear from the said communication that, the State Government authorised the Commissioner to take necessary decision with regard to grant of sanction under the provisions of Section 109 of the said Act and Rule 7 of the said Rules. It specifically observed that, if the Commissioner does not agree with the proposal of the Municipal Council he may while invalidating the proposal of the Municipal Council give orders for initiation of proceedings afresh. It is in view of this authorisation that the Divisional Commissioner has passed the orders which were impugned before the Madhya Pradesh High Court.

In the background of this factual situation, the Apex Court held that the finding of the Division Bench of the High Court that the action of the Commissioner is arbitrary and illegal is neither legally or factually correct. As discussed hereinabove, the High Court, while exercising its powers of judicial review of administrative action, could not have interfered with the decision unless the decision suffers from the vice of illegality, irrationality or procedural impropriety.

9. *Gargi v. State of Haryana , (2019 SCC OnLine SC 1229)*

Decided on : -19.09.2019
Bench :- 1. Hon'ble Mr. Justice A. M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari

(The circumstantial evidence is the one whereby other facts are proved from which the existence of fact in issue may either be logically inferred, or at least rendered more probable.)

Facts

The appellant was charged with the imputations that she killed her husband by strangulation and, with the help of co-accused persons (her brothers), hanged the dead body in one of the rooms in the house, as if it were a case of suicide. The matter rested on circumstantial evidence where, according to the prosecution, the relations of the deceased (husband) and the appellant (wife) were too strained; the deceased had stated threat perceptions that his wife might kill him, for she was involved in illicit relations and was desirous of grabbing his property. Two of the siblings of deceased, one brother and one sister, testified in support of the prosecution case. *Per contra*, the appellant, while denying the imputations, took the plea that she was leading a happy married life with her husband for 18-19 years with two children; and that the brother of the deceased, on whose statement FIR was registered and who was the prime prosecution witness, was carrying the ill-intentions to grab the property of her husband and had managed her prosecution. The Trial Court convicted all the accused persons while accepting the prosecution case and rejecting the defence version. In appeal, the High Court, though found that the circumstances brought on record were not sufficient to bring home the charge of conspiracy against the brothers of the appellant and acquitted them but, affirmed the findings against the appellant and maintained her conviction for the offence of murder of her husband. Hence, the present appeal.

Decision and observations

Circumstantial evidence

The Apex Court distinguished between the evidence which is either direct or circumstantial. The direct evidence proves the existence of a particular fact that emanates from a document or an object and/or what has been observed by the witness. The circumstantial evidence is the one whereby *other facts are proved from which the existence of fact in issue may either be logically inferred, or at least rendered more probable*.

Regarding the principles governing the circumstantial evidence the Apex Court referred to ***Chandmal* v. *State of Rajasthan*,**[39] wherein it has been stated

> *"14. It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt."*

The Apex Court referred to ***Sharad Birdhichand Sarda* v. *State of Maharashtra***[40] , wherein the Apex Court has laid down the golden principles of standard of proof required in a case sought to be established on circumstantial evidence.[41]

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[39] (1976) 1 SCC 621

[40] (1984) 4 SCC 116

[41] *"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*

> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
>
> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793] *where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
>
> *"Certainly, it is a primary principle that the accused* must *be and not merely* may *be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

Last seen theory: Proof and effect

Insofar as the 'last seen theory' is concerned, the Apex Court stated that there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act directly operates against the appellant. However, the Apex Court noted that such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden. On this point the Apex Court referred to ***Sawal Das v. State of Bihar*** .[42]

The Apex Court stated that in the given set of circumstances, the last seen theory cannot be operated against the appellant only because she was the wife of the deceased and was living with him. The gap between the point of time when the appellant and deceased were last seen together and when the deceased was found dead had not been that small that possibility of any other person being the author of the crime is rendered totally improbable. On this pointy the Apex Court referred to *SK. Yusuf* v. *State of West Bengal*[43] this Court has said:—

> *"21. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."*

Effect of the acquittal of co-accused persons

Although the Apex Court observed that merely for the reason of acquittal of co-accused, another accused in a criminal case may not be acquitted if cogent evidence against him is available and his case could be segregated from the case against the acquitted co-accused. However, on the basic facts of the present case, it is evident that the gruesome act in question

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154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

[42] (1974) 4 SCC 193,
"10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused……"
[43](2011) 11 SCC 754

had not been the handiwork of one person and it would be rather preposterous to assume that the appellant hanged the dead body by ceiling fan all by herself. In the given circumstances, when the alleged collaborators of the appellant are acquitted, the already existing clouds of doubts on the prosecution story get congealed. The High Court has proceeded with over-simplification of the matter by leaving the missing link as merely a fault of the investigating agency.As soon as the brothers of the appellant were acquitted, the High Court ought to have examined the consequence of such acquittal that an important link in the prosecution theory was snapped and it was difficult to conclude that the prosecution has established its case against the appellant beyond all reasonable doubts.

The Apex Court concluded:

> **"89.** For what has been discussed hereinabove, we are clearly of the view that the Trial Court and the High Court have approached the case from an altogether wrong angle and have overlooked the major flaws and shortcomings in the prosecution case. In the given set of facts and circumstances, even if the prosecution has been able to create some suspicion against the appellant, it would be unsafe to accept that the implicating circumstances have been established by cogent evidence and such circumstances form a complete chain that rules out any other hypothesis except guilt of appellant. Hence, the conviction of the appellant cannot be sustained; she is entitled to the benefit of doubt.
>
> **90.** Consequently, this appeal is allowed in the manner that the impugned judgment and orders convicting the appellant for the offence punishable under Section 302 IPC are set aside; the appellant is extended the benefit of doubt and is, accordingly, acquitted. Her bail bonds are cancelled and sureties are discharged."