JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(April,2020)

Prepared by :-

ABHIJEET TUSHAR
ISHA ANUPRIYA
Research Scholars,
JUDICIAL ACADEMY JHARKHAND

TABLE OF CONTENTS

1. *Raja alias Ayyappan v. State of Tamil Nadu, 2020 SCC OnLine SC 346*

Decided on : -01.04.2020

Bench :- 1. Hon'ble Mr. JusticeS. Abdul Nazeer

3. Hon'ble Mr. JusticeDeepak Gupta

(If for any reason, a joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case)

Facts

This criminal appeal filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'the TADA Act') is directed against the judgment and order dated 04.12.2009 passed by the Presiding Judge, Designated Court No. 2, Chennai, in Calendar Case No. 1/2007, whereby the Designated Court has convicted the appellant and sentenced him to undergo rigorous imprisonment for 2 years under Section 120-B IPC and 5 years each under Section 120-B IPC read with Section 3(3) and 4(1) of the TADA Act and under Section 120-B IPC read with Section 5 of Explosive Substances Act, 1908 and all the sentences imposed were ordered to be run concurrently.

The Designated Court has convicted the appellant on the basis of the confession of the appellant made on 27.02.2007 (Ex. P-57) and the confession statement of the two other co-accused (Ex. P-26 and P-27).

Issues

Whether the statement of two other co-accused (Ex. P-26 and P-27) is admissible in evidence?

Decision and Observations

The Hon'ble Apex Court was of the following opinion:

> **25.** The confession statement of the co-accused was recorded by the Superintendent of Police (PW-20) in Crime No. 160/1990. The appellant was absconding, hence the proclamation order was issued by the trial court and thereafter the case was split against the appellant. A separate trial was conducted against the appellant and the impugned judgment convicting the appellant-accused has been passed by the Designated Court.
>
> **28.** Section 30 of the Indian Evidence Act mandates that to make the confession of a co-accused admissible in evidence, there has to be a joint trial. If there is no joint trial, the confession of a co-accused is not at all admissible in evidence and, therefore, the same cannot be taken as evidence against the other co-accused. The Constitution Bench of this Court in *Kartar Singh* [(1994) 3 SCC 569.], while considering the inter-play between Section 30 of the Indian Evidence Act and Section 15 of the TADA Act held that as per Section 15 of the TADA Act, after the

amendment of the year 1993, the confession of the co-accused, is also a substantive piece of evidence provided that there is a joint trial.

29. In *State* v. *Nalini [* (1999) 5 SCC 253.]JusticeQuadri has held that a confession of an accused made under Section 15 of the TADA Act is admissible against all those tried jointly with him.

.....

30. In *Jameel Ahmad* [(2003) 9 SCC 673.], this Court has reiterated the above position as under:

"30.....Therefore we notice that the accepted principle in law is that a confessional statement of an accused recorded under Section 15 of the TADA Act is a substantive piece of evidence even against his co-accused provided the accused concerned are tried together."

31. In the instant case, no doubt, the appellant was absconding. That is why, joint trial of the appellant with the other two accused persons could not be held. As noticed above, Section 15 of the TADA Act specifically provides that the confession recorded shall be admissible in trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession. We are of the view, ***that if for any reason, a joint trial is not held, the confession of a co-accused cannot be held to be admissible in evidence against another accused who would face trial at a later point of time in the same case***. We are of the further opinion that if we are to accept the argument of the learned counsel for the respondent-State, it is as good as re-writing the scope of Section 15 of the TADA Act as amended in the year 1993.

(emphasis supplied)

2. *Union of India and Others v. R. Thiyagarajan,2020 SCC OnLine SC 349*

Decided on : -03.04.2020

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

(For payment of deputation allowance it must be shown that the services of the employee had been transferred to another department/cadre/7candalizes7 and the control over the employee now vests with the transferee department/cadre/7candalizes7.)

Facts

The respondent is employed with the Central Industrial Security Force (CISF). He was recruited as a constable in the year 1999. The appellant enacted the Disaster Management Act, 2005 (for short 'the Act') and the same was notified on 26.12.2005. Section 44 of the Act provides that a National Disaster Response Force (NDRF) shall be constituted for the purpose of 7candalizes response to threatening disaster situations or disasters. The Ministry of Home Affairs approved the constitution of the NDRF on 19.01.2006. The Disaster Management (National Disaster Response Force) Rules, 2008 (for short 'the Rules') were made by the Central Government under Section 75 of the Act and notified on 13.02.2008. The Rules were, in fact, enforced with effect from 11.09.2009.

The NDRF was initially constituted by drawing Battalions from the Central Police Forces, Border Security Force (BSF), Central Railway Police Force (CRPF), Indo Tibetan Border Police (ITBP) and Central Industrial Security Force (CISF). The entire Battalions were sent to the Director General, NDRF. Prior to the enforcement of the Rules i.e. on 11.09.2009, the personnel belonging to the various Central Para Military Forces continued to remain under the control and command of their respective police forces. They also continued to receive their pay and allowances from their parent organisation. After the Rules were enforced on 11.09.2009, the Battalions of the Central Para Military Forces which were sent to the NDRF were renamed as NDRF Battalions and their control has from that date vested with the NDRF. They also drew their pay and allowances from 11.09.2009 from the NDRF.

On 13.01.2010, an office memorandum was issued by the Director General, NDRF which provided that the Battalions of the NDRF had been renamed and renumbered in the NDRF to give the force a separate identity. *The tenure of the respondent who had been sent to the NDRF on 18.04.2008 came to an end on 07.10.2011 when he was relieved of his duties in NDRF and repatriated to the CISF. He submitted a representation to the Director General, NDRF requesting that he be granted 10% deputation allowance and 25% special allowance with effect from 18.04.2008*. Vide communication dated 23.07.2011 the respondent was informed that his case for grant of deputation allowance had been taken up with the Ministry of Home Affairs. On 31.07.2011, the respondent filed a writ petition in the High Court of Madras in which the prayer was that

the respondent in the writ petition i.e. Union of India, Director General, NDRF and Director General, CISF be directed to pass orders on his representation dated 20.07.2020.

In the meantime, on 14.01.2013 the Ministry of Home Affairs sent a letter that the competent authority had agreed that deputation allowance be paid to the personnel of the Central Para Military Forces deputed with the NDRF @ 5% if they are deputed in the same station and @ 10% if deputed outside the station subject to certain conditions. On the basis of this letter, the Director General, NDRF issued an order on 18.02.2013 on the above lines. However, the deputation allowance was made payable with effect from 14.01.2013. This was also clarified by the Government of India in its letter dated 25.03.2014.

In the meantime, the Delhi High Court vide judgment dated 11.08.2015 in Writ Petition © No. 2532 of 2012, *Brij Bhushan* v. *Union of India*, which was a case of another employee of CISF deputed with the NDRF with effect from 24.07.2008, held that the petitioner therein would be entitled to deputation allowance for the period he remained in service with the NDRF.

Coming to the instant case, the respondent filed writ petition in the Madras High Court. The learned Single Judge of the Madras High Court allowed the writ petition filed by the respondent herein relying upon the judgment of the Delhi High Court in the matter of *Brij Bhushan* (supra) referred to above. The learned Single Judge not only granted deputation allowance but also granted special allowance to the respondent.

Aggrieved by the aforesaid judgment, an appeal was filed before the Division Bench of the High Court by the Union of India. The Division Bench partly allowed the appeal of the Union of India and held that the respondent was only entitled to deputation allowance and not to any special allowance. However, the Division Bench further went on to hold that not only the respondent but all other personnel of the NDRF drawn from other forces from 19.01.2006 up to 13.01.2013 would be entitled to be paid deputation allowance and the Central Government was directed to ensure that this amount was paid within a maximum period of six months. This judgment is under challenge before the Apex Court.

Arguments advanced by the parties

The main argument raised on behalf of the appellant is that the O.M. granting deputation allowance makes it clear that the said allowance is to be paid from 14.01.2013 in which the Court could not have directed payment of the said allowance from the date of the constitution of the force on 19.01.2006. In the alternative, it is submitted that the personnel of the various Central Para Military Forces who were sent to the NDRF could not be said to be on deputation at least till 13.01.2010 when the NDRF constituted its own Battalions. It is urged by Ms. Madhavi Divan that it was not one personnel who was deputed from the Central Para Military Forces to the NDRF but entire Battalions. These Battalions remained under the administrative and disciplinary control of the Central Para Military Forces to

which they belonged and the basic requirement of deputation that the master should change did not happen.

On the other hand, the respondent placed reliance on the reasoning given by the Delhi High Court in *Brij Bhushan case* (supra) and the various communications and it is submitted that right from the constitution of the NDRF in terms of Rule 3(1) of the Rules[1] all personnel deputed from the Central Para Military Forces would be deemed to be deputed in the NDRF. Rule 3(2) also provided for deputation of such employees to the NDRF.

Decision and Observations

The Apex court elaborated on the term deputation by relying upon the decision in ***Umapati Choudhary v. State of Bihar*** wherein it was held as follows:

> "8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled...."

Further, the Apex Court referred to ***Prasar Bharti v. Amarjeet Singh***wherein it has been held as follows :

> "13. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same

[1]The judgment of the Delhi High Court was based on interpretation of the sub-rule 3(1) and 3(2) of the Rules which read as follows:

"3. Constitution of Force:

(1) The personnel deputed from the Central Para Military Forces by the Central Government in the Ministry of Home Affairs vide Order number 1/15/20002DM/ NDMIII(A), dated the 19th January, 2006 shall be deemed to have been deputed in the National Disaster Response Force under these Rules."

"(2) The Central Government may, in consultation with the National Authority, depute, as and when required, such number of personnel from the Central Para Military Forces to the National Disaster Response Force for the purposes of disaster management, having skills, capabilities and qualifications and experience of handling disaster and their management and such other technical qualifications as prescribed by the Central Government in this behalf.

Provided that in the case of nonavailability of personnel with the required technical qualification and experience, the Central Government may appoint such personnel through deputation from other organizations."

cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications.

17. It has not been disputed that the functions of the Central Government have been taken over by the Corporation in terms of Section 12 of the Act, when the Corporation has started functioning on and from the appointed day. It requires manpower for managing its affairs. It has been doing so with the existing staff. They are being paid their salaries or other remunerations by the Corporation. They are subjected to effective control by its officers. The respondents, for all intent and purposes, are therefore, under the control of the Corporation.

20. The concept of control implies that the controlling officer must be in a position to dominate the affairs of its subordinate. It unless otherwise defined would be synonymous with superintendence, management or authority to direct, restrict or regulate. It is exercised by a superior authority in exercise of its supervisory power. It may amount to an effective control, which may either be de facto or remote...."

Coming back to the instant case, the Apex Court said:

16. As far as the present case is concerned, as we have noticed above, till 11.09.2009 the respondent continued to be under the control of his parent 10candalizes10 i.e. CISF and was also getting his pay and allowances from the said authority. Therefore, though he as a member of his Battalion may have been serving the NDRF, it cannot be said that he was on deputation to the NDRF. His 10candalizes10 had agreed to deploy some of its Battalions with the NDRF. However, the administrative and disciplinary control over such employees remained with the CISF. The emoluments were also paid by the CISF and, therefore, it cannot be said that the NDRF was the employer or master of the respondent. ***In such circumstances, up to 10.09.2009 the respondent could not be said to be on deputation even though as per the Rules he may have been described as a deputanionist***. ***This term has been very loosely used but for payment of deputation allowance it must be shown that the services of the employee had been transferred to another department/cadre/10candalizes10 and the control over the employee now vests with the transferee department/cadre/10candalizes10.*** However, on 11.09.2009, the date when the Ministry of Home Affairs conferred the command and control of the Battalions drawn from the various Central Para Military Forces with the Director General, NDRF and from which date these personnel drew their pay from the NDRF they would be deemed to be on deputation with the NDRF.

3. *P. Gopinathan Pillai v. University of Kerala and Others,2020 SCC OnLine SC 360*

Decided on : -08.04.2020

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan

2. Hon'ble Mr. Justice M.R. Shah

(Whether the appellant working as Assistant Director in CACEE was entitled to continue till 60 years of age which was the age of retirement of Teacher of the Kerala University Held: The appellant having never been appointed as Teacher he is not covered by the definition of Teacher of the University)

Facts

This appeal has been filed by the appellant for quashing the judgment of Kerala High Court dated 08.07.2016 by which Writ Petition ©No.12179 of 2016 filed by the appellant claiming to continue in service till he attains the age of 60 years has been dismissed.

The appellant was appointed as Project Officer in the Centre for Adult Continuing Education and Extension (hereinafter referred to as "CACEE"). The appellant joined at the CACEE with effect from 26.12.1989. By letter dated 01.02.1990 of the Deputy Registrar of the University of Kerala, University accorded sanction to the appointment of the appellant as Project Officer against the post at the CACEE. The University of Kerala has also implemented the University Grants Commission (UGC) scale of pay to the CACEE staff. The appellant was also given the UGC pay scale. The Centre has issued various certificates to the appellant that he has been teaching various courses like the Post Graduate Diploma etc. On 07.12.2012, the appellant was promoted as Assistant Director in the CACEE. The University Grants Commission revised the scale of pay of the CACEE at par i.e. Director, Assistant Director and Project Officer corresponding to the pay scale of Associate Professor, Assistant Professor, Reader, Lecturer. ***Writ Petition © No.12179 of 2016 was filed by the appellant before the High Court of Kerala seeking a declaration that the appellant is a Teacher of the University of Kerala and entitled to continue in service upto the age of 60 years.***

The appellant's case was that he cannot be retired at the age of 56 years. The appellant in his writ petition relied on earlier judgments of the Kerala High Court including judgment delivered by the High Court with regard to the post of Director and Assistant Director of CACEE itself. The appellant also filed certificates issued by the Centre to the appellant that he while working in the Centre has been associated with Teaching Research Extension and other activities. When the writ petition came for consideration before a learned Single Judge, noticing a conflict between two judgments i.e. in (1) W.A. 1099 of 1988 and (2) W.A. 180 of 1992, the learned Single Judge referred the matter to be heard by a Division Bench.

The Division Bench after scanning the two judgments with regard to which conflict was noticed, observed that the said judgments were delivered in the peculiar facts and circumstances arising in each case and there was no justification for reference. The Division Bench proceeded to consider the merits of the controversy and held that the appellant is not a Teacher of the University and is not entitled to continue till the age of 60 years. The writ petition was consequently dismissed. Aggrieved by the judgment of the Division Bench, this appeal has been filed by the appellant.

Issue

Whether the appellant working as Assistant Director in CACEE was entitled to continue till 60 years of age which was the age of retirement of Teacher of the Kerala University or he was to retire at the age of 56 years?

Decision and Observations

The claim in the writ petition was that he is a Teacher of the University within the meaning of Kerala University Act, 1974. Hence, he was entitled for the benefit of retirement of the age as prescribed for the Teachers of the University.

Chapter 3 of the Kerala University First Statutes, 1977 deals with "Teachers of the University". Statute 10 under Chapter 3 is as follows:

"10. Applicability of certain Rules to University Teachers.- Subject to the provisions of the Kerala University Act, 1974 and the Statutes issued thereunder, the Kerala Service Rules, the Kerala State and Subordinate Service Rules, and the Kerala Government Servant's Conduct Rules for the time being in force as amended from time to time shall mutatis mutandis apply to the teachers of the University, with such modifications as the context may require and the expression "Government" in those Rules shall be construed as a reference to the "University".

Provided that the age of retirement of teachers of the University shall be 60."

The Apex Court mentioned Section 2 of the Kerala University Act, 1974. The relevant provisions dealing with the definition of teacher are as follows:

> "2(27) "teacher" means a principal, professor, associate professor, assistant professor, reader, lecturer, instructor, or such other person imparting instruction or supervising research in any of the colleges or 12candalize institutions and whose appointment has been approved by the University;
>
> 2(28)."teacher of the University" means a person employed as teacher in any institution maintained by the University."

College and recognised institution have been defined in Section 2(7) and 2(19) as follows:

"2(7). "college" means an institution maintained by, or affiliated to the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations;

2(19). "recognised institution" means an institution for research or special studies, other than an affiliated college recognised as such by the University;"

The Apex Court held as follows:

26. The Centre is not a College within the meaning of Section 2(7) since as per the pleadings of the University, Centre is neither maintained nor affiliated to the University. There are no materials on record also to indicate that the Centre is an institution 13candalize by the University within the meaning of Section 2(19). It is true that the Centre is being run as a Centre under the administrative control of the University. The definition of Teacher of University in Section 2(28) also refers to a person employed as Teacher in any institution maintained by the University. The High Court in the impugned judgment has held that the appellant was never employed as Teacher hence he is not covered by Section 2(28). From the pleadings on the record and the materials which are brought on the ***record it is apparent that the appellant is not covered by definition of Teacher or the Teacher of the University under Section 2(27) and 2(28) of the Kerala University Act, 1974. When the appellant does not fulfil the requirement of definition of Teacher or Teacher of University, he cannot claim applicability of Statute 10 of Chapter 3 of the Statutes***.

27. Much emphasis has been laid down by the learned counsel for the appellant on different certificates issued by the Centre where it has been mentioned that the appellant is imparting instruction in various courses like Post Graduate Diploma in Extension and Field Outreach, Diploma in Non-Formal Education, Master of Human Resource Management and PG Certificate Courses etc. Even if it is assumed that the appellant is imparting instruction in different courses in the Centre that itself cannot make the appellant Teacher within the meaning of Section 2(27) and 2(28). ***The appellant having never been appointed as Teacher he is not covered by the definition of Teacher of the University.***

4. *Rajasthan State Road Transport Corporation Ltd. and Others v. Mohani Devi and Another, 2020 SCC OnLine SC 368*

Decided on : -15.04.2020

Bench :- 1. Hon'ble Ms. Justice R. Banumathi

2. Hon'ble Mr. Justice A.S. Bopanna

Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well.

Facts

The respondent herein was the Petitioner in S.B Civil Writ Petition No. 2839/2012 filed before the Rajasthan High Court. The brief facts that led to the filing of the Writ Petition is that respondent herein had claimed the retiral benefits of her late husband who was appointed in the post of conductor on 15.03.1979 at Alwar Depot of the Appellant Road Transport Corporation. The benefits were claimed on the basis that her husband be deemed to have voluntarily retired from service instead of having resigned.

In the course of service, respondent's husband had moved an application seeking voluntary retirement from service on 28.07.2005 indicating health reasons. No order was passed on the said application for voluntary retirement and the respondent's husband continued to remain in service. Subsequently, the respondent's husband on 03.05.2006 submitted his resignation as he claimed to be under depression and his health condition had further deteriorated. The resignation was accepted by the authorities on 31.05.2006, he was relieved of his duties and the benefits were paid.

Thereafter, the respondent's husband is stated to have immediately submitted an application pointing out that he had erred in mentioning 'resignation' and he desired to retire in view of his earlier application for voluntary retirement. The application also mentioned that no decision had been taken by authorities on his first application dated 28.07.2005 and therefore he should be treated as having voluntarily retired with consequent retiral benefits. The respondent after her husband's death approached the High Court with such prayer. The learned Single Judge held that the respondent's husband had moved an application indicating deteriorating health and forcing such employee to work would be an act of oppression. It held that the respondent's husband would be deemed to have retired even though he had moved another application terming his retirement as resignation in view of the law laid down in *Sheel Kumar Jain* v. *The New India Assurance Co. Ltd.*, 2012 (1) SLR 305. Thus, the appellants were directed to treat respondent's husband as having voluntarily retired and release the retiral benefits to which he was entitled.

Aggrieved, an appeal was filed by the appellants herein in D.B Special Appeal Writ No. 1261/2018. However, no infirmity was found by the Division Bench in the reasoning of the learned Single Judge and the learned Division Bench dismissed the appeal. The same has been assailed by the appellants herein in this appeal.

Issue

Whether the husband of the respondent had acquired an indefeasible right to seek for voluntary retirement from service and in that light whether the High Court was justified in arriving at the conclusion that the subsequent resignation dated 03.05.2006 submitted by the husband of the respondent be considered as an application for voluntary retirement and treat the cessation of the jural relationship of employer/employee under the provision for Voluntary Retirement?

Decision and observations

> **11.** Having heard the learned counsel for the parties, we find that the factual aspects which were relevant for decision making in the instant case has not been referred by the High Court during the course of its order but has merely assumed that the voluntary retirement application should be deemed to have been accepted when there was no rejection. As noticed from the objection statement filed by the respondent herein herself, the right to seek for voluntary retirement is stipulated in Rule 50 of Rajasthan Civil Services Pension Rules, 1996. As indicated above, since the same provides for 20 years of qualifying service, the respondent's husband had qualified to apply. However, what is relevant to take note is that sub-Rule(2) thereof provides that the notice of voluntary retirement given by the employee shall require acceptance by the appointing authority. In the instant case, the undisputed position is that there was no acceptance and in that circumstance the husband of the respondent had submitted his resignation on 03.05.2006. Though the High Court has indicated deemed acceptance, the same would not be justified in the instant facts since the position which has not been taken note by the High Court is that as on the date when the husband of the respondent had made the application for voluntary retirement on 28.07.2005 the husband of the respondent had already been issued Charge-Sheets bearing No.7352 dated 16.12.2004 and bearing No.4118 dated 11.07.2005 alleging misconduct. Though the respondent, through the objection statement seeks to contend that the charge alleged against her husband was not justified, that aspect of the matter would not be germane to the present consideration since the position of law is well established that pending disciplinary proceedings if an application for voluntary retirement is submitted there would be no absolute right seeking for acceptance since the employer if keen on proceeding with the inquiry would be entitled not to consider the application for voluntary retirement. Hence there would be no obligation to accept. In the instant facts the proceedings relating to the charge sheet was taken forward and completed through the final order dated 03.09.2005. The punishment of withholding of the increment was imposed. In such circumstance the non-consideration of the application for voluntary retirement would be justified.
>
> **12.** Be that as it may, as noted the inquiry had been completed and thereafter when the respondent's husband submitted the resignation on 03.05.2006, the same was processed, accepted, he was relieved on 31.05.2006 and the payment of terminal

benefits were made which had been accepted by him. During his lifetime up to 14.04.2011 the husband did not raise any issue with regard to the same. It is only thereafter the respondent has filed the writ petition before the High Court. Primarily it is to be noticed that when the application for voluntary retirement was filed on 28.07.2005 and had not been favourably considered by the employer, instead of submitting the resignation on 03.05.2006, if any legal right was available the appropriate course ought to have been to seek for acceptance of the application by initiating appropriate legal proceedings. ***Instead the respondent's husband had yielded to the position of nonacceptance of the application for voluntary retirement and has thereafter submitted his resignation. The acceptance of the resignation was acted upon by receiving the terminal benefits. If that be the position, when the writ petition was filed belatedly in the year 2012 and that too after the death of the employee who had not raised any grievance during his life time, consideration of the prayer made by the respondent was not justified.*** The High Court has, therefore, committed an error in passing the concurrent orders.

5. *Sushilaben Indravadan Gandhi and Another v. New India Assurance Company Limited and Others, 2020 SCC OnLine SC 367*

Decided on : 15.04.2020

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

2. Hon'ble Mr. Justice S. Ravindra Bhat

The early 'control of the employer' test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed

Facts

On 09.06.1997, the husband of the Appellant No. 1, who was a surgeon, was travelling in a mini-bus that was owned by the Rotary Eye Institute, Navsari (the Respondent No. 3 herein) along with other medical staff of the said Institute. The mini-bus had been driven with excessive speed, as a result of which at around 8.30 P.M the driver of the mini-bus lost control and the vehicle turned turtle. The husband of Appellant No.1 was seriously injured and ultimately succumbed to his injuries. On 17.04.1997, the Respondent No. 3 had entered into a comprehensive Private Car 'B' Policy from the New India Assurance Company Limited (the Respondent No. 1 herein). The aforesaid Insurance Policy was valid from 24.04.1997 till 20.04.1998.[2]

[2]The limitation of liability clause which has been relied upon by the impugned judgment of the High Court is set out as follows:

"SECTION II LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person including occupants carried in the motor car (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."

In addition, endorsement IMT-5 states:

"I.M.T.5. Personal Accidental cover to unnamed passengers other than the insured and his paid driver or cleaner.

In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger other than the insured and/or his paid driver attendant or cleaner and/or a person in the employ of the insured coming within the scope of the Workman Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into dismounting from or travelling in but not driving the motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in:

The husband of the Appellant No.1, Dr. Alpesh I. Gandhi, had entered into a contract for services, dated 04.05.1996, as an Honorary Ophthalmic Surgeon at the aforesaid Respondent No. 3 institute. The Appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988, being MACP No.1326 of 1997, against the driver, the Respondent No. 3 and the Respondent No.1, in which they claimed compensation for the death of Dr. Alpesh I. Gandhi at INR 1 crore. The petition stated that Dr. Gandhi was 28 years old at the time of his death and was earning a monthly income of INR 13,000.

By way of findings of fact, the Tribunal found that the driving license in favour of the driver was valid, and that the driver was rash and negligent in driving the vehicle, which led to the death of Dr. Alpesh Gandhi. The Tribunal then arrived at a total compensation figure of INR 37,63,100 which had to be paid together with interest at 8% per annum. Importantly, all three Respondents were made jointly and severally liable to pay the aforesaid amount. *This was on the basis that on an analysis of the contract entered into between the Respondent No. 3 and Dr. Alpesh Gandhi, the contract was a contract for service, as a result of which the deceased could not have been held to have been in the employment of the Respondent No. 3.*

The impugned judgment of the High Court dated 26.07.2018, after analyzing the provisions of the contract for services dated 04.05.1996 between the Respondent No. 3 and Dr. Gandhi came to the opposite conclusion, stating that since the contract was a contract of service, the Insurance Company could not be held liable except to the extent of INR 50,000.

a) Death only	Scale of Compensation 100%
b) Total and irrecoverable loss of: i) Sight of both eyes or of the actual loss by physical separation of the two entire hands or two entire feet or of one entire hand and one entire food or of such loss of one eye and such loss of one entire hand or of one entire foot ii) Use of two hands or two feet, or of one hand and one foot or of such loss of sight of one eye and such loss of use of one hand or one foot.	 100% 100%
c) Total and irrecoverable loss of: i) the sight of one eye or the actual loss by physical separation of one entire hand or one entire foot ii) Use of a hand or a foot without physical separation	 100% 100%

There is no dispute that additional premium was paid for endorsement IMT-5, which will therefore be applicable in the facts of this case. It is also undisputed that endorsement IMT-16, which deals with a general liability to employees of the insured who may be travelling in the employer's car, other than paid drivers, may also be covered on payment of an additional premium. It is undisputed on the facts of this case that as far as endorsement IMT-16 is concerned, no such additional premium was paid.

Issue

Whether Dr. Alpesh Gandhi could have been said to have been in the employ of the Respondent No. 3 on the date of the accident, as a result of which the limitation of liability provision in favour of the Respondent No. 1 would kick in.

Decision and Observations

The Apex Court cited a plethora of judgments in relation to the test to be adopted for differentiating between a contract of service and contract for service. These are the following judgments:

- *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*, 1957 SCR 158
- *Birdhichand Sharma* v. *First Civil Judge*, (1961) 3 SCR 24
- *Shankar Balaji Waje* v. *State of Maharashtra*, 1962 Supp (1) SCR 24
- *D.C. Dewan Mohideen Sahib and Sons* v. *Secretary, United Beedi Workers' Union*, (1964) 7 SCR 646
- *Silver Jubilee Tailoring House* v. *Chief Inspector of Shops & Establishments*, (1974) 3 SCC 498
- *Hussainbhai* v. *Alath Factory Thezhilali Union*, (1978) 4 SCC 257
- *Shining Tailors* v. *Industrial Tribunal II, U.P.*, (1983) 4 SCC 464,
- *P.M. Patel & Sons* v. *Union of India*, (1986) 1 SCC 32
- *Indian Banks Assn.* v. *Workmen of Syndicate Bank*, (2001) 3 SCC 36
- *Indian Overseas Bank* v. *Workmen*, (2006) 3 SCC 729,

Para 64-69 of the recent judgment of the English Court of Appeal in *E* v. *English Province of Our Lady of Charity*, 2012 EWCA Civ 938was also quoted . The relevant extract are:

> **65.** That leaves control as an important distinguishing factor. The example is often given of the difference between the chauffeur and the taxi driver but it is not always as easy as that. As times have changed so control has become an unrealistic guide. It may have been more meaningful when work was done by labourers under the direction of employers who had the same or greater technical skills than their workmen. Now that one is frequently dealing with a professional person or a person of some particular skill and experience, for example a brain surgeon, there can be no question of the employer telling him how to do his work for in truth the skilled person is engaged for the very reason that he possesses skills which the employer lacks. The emphasis placed on control has thus been reduced.....
>
> **68.** To much the same effect is an earlier Privy Council case, *Montreal* v. *Montreal Locomotive Works Ltd*, [1947] 1 DLR 161, where Lord Wright said, at p 169:

"In earlier cases a single test, such as the presence or absence of control, was often relied on to determine whether the case was one of master and servant, mostly in order to decide issues of 20candali liability on the part of the master or superior. In the more complex conditions of modern industry, more complicated tests have to be applied. It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving (1) control; (2) ownership of the tools; (3) chance of profit; (4) risk of loss. Control in itself is not always conclusive."

He went on to say that:

"it is in some cases possible to decide the issue by raising as the crucial question whose business is it, or in other words by asking whether the party is carrying on the business, in the sense of carrying it on for himself or on his own behalf and not merely for a superior."

69. There being no single test, what one has to do is marshal various tests which should cumulatively point either towards an employer/employee relationship or away from one. .....

After referring to a large number of decisions the Apex Court said:

24. A conspectus of all the aforesaid judgments would show that in a society which has moved away from being a simple agrarian society to a complex modern society in the computer age, the earlier simple test of control, whether or not actually exercised, has now yielded more complex tests in order to decide complex matters which would have factors both for and against the contract being a contract of service as against a contract for service. ***The early 'control of the employer' test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed***. A variety of cases come in between cases which are crystal clear – for example, a master in a school who is employed like other employees of the school and who gives music lessons as part of his employment, as against an independent professional piano player who gives music lessons to persons who visit her premises. Equally, a variety of cases arise between a ship's master, a chauffeur and a staff reporter, as against a ship's pilot, a taxi driver and a contributor to a newspaper, in order to determine whether the person employed could be said to be an employee or an independent professional. The control test, after moving away from actual control of when and how work is to be performed to the right to exercise control, is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service. The test as to whether the person employed is integrated into the employer's business or is a mere accessory thereof is another important test in order to determine on which side of the line the contract falls. The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases. The test of who owns the assets with which the work is to be done and/or who ultimately makes a profit or a loss so that one may determine whether a business is being run for the employer or on one's own account, is another important test when it comes to work to be performed by independent contractors as against piece-rated labourers. Also, the economic reality test laid down by the U.S

decisions and the test of whether the employer has economic control over the workers' subsistence, skill and continued employment can also be applied when it comes to whether a particular worker works for himself or for his employer. The test laid down by the Privy Council in *Lee Ting Sang* v. *Chung Chi-Keung*, [1990] 2 A.C. 374, namely, is the person who has engaged himself to perform services performing them as a person in business on his own account, is also an important test, this time from the point of view of the person employed, in order to arrive at the correct solution. ***No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service***. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight***. Ultimately, the Court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case.***

25. Given the fact that this balancing process may often not yield a clear result in hybrid situations, the context in which a finding is to be made assumes great importance. Thus, if the context is one of a beneficial legislation being applied to weaker sections of society, the balance tilts in favour of declaring the contract to be one of service, as was done in *Dharangadhara* (supra), *Birdhichand* (supra), *D.C.Dewan* (supra), *SilverJubilee* (supra), *Hussainbhai* (supra), *Shining Tailors* (supra), *P.M. Patel* (supra), and *Indian Banks* (supra). On the other hand, where the context is that of legislation other than beneficial legislation or only in the realm of contract, and the context of that legislation or contract would point in the direction of the relationship being a contract for service then, other things being equal, the context may then tilt the balance in favour of the contract being construed to be one which is for service.

The Apex Court then drew a list of factors which would establish it as a contract of service and another list in the favour of contract for service.

28. If the aforesaid factors are weighed in the scales, it is clear that the factors which make the contract one for service outweigh the factors which would point in the opposite direction. First and foremost, the intention of the parties is to be gathered from the terms of the contract. The terms of the contract make it clear that the contract is one for service, and that with effect from the date on which the contract begins, Dr. Gandhi shall no longer remain as a regular employee of the Institute, making it clear that his services are now no longer as a regular employee but as an independent professional. Secondly, the remuneration is described as honorarium, and consistent with the position that Dr. Gandhi is an independent professional working in the Institute in his own right, he gets a share of the spoils as has been pointed out hereinabove. Thirdly, he enters into the agreement on equal terms as the agreement is for three years, extendable only by mutual consent of both the parties. Fourthly, his services cannot be terminated in the usual manner of the other regular employees of the Institute but are terminable on either side by notice.

> The fact that Dr. Gandhi will devote full-time attention to the Institute is the obverse side of piece-rated work which, as has been held in some of the judgments hereinabove, can yet amount to contracts of service, being a neutral factor. Likewise, the fact that Dr. Gandhi must devote his entire attention to the Institute would not necessarily lead to the conclusion that de hors all other factors the contract is one of service. Equally important is the fact that it is necessary to state Dr. Gandhi will be governed by the Conduct Rules and by the Leave Rules of the Institute, but by no other Rules. And even though the Leave Rules apply to Dr. Gandhi, since he is not a regular employee, he is not entitled to any financial benefit as might be applicable to other regular employees. Equally, arbitration of disputes between Dr. Gandhi and the Institute being referred to the Managing Committee of the Institute would show that they have entered into the contract not as master and servant but as employer and independent professional. A conspectus of all the above would certainly lead to the conclusion, applying the economic reality test, that the contract entered into between the parties is one between an Institute and an independent professional.

The judgment of the Gujarat High Court was set aside and that of the Motor Accident Claims Tribunal was restored.

6. *Pravakar Mallick & Anr. v. The State of Orissa & Ors., 2020 SCC OnLine SC 375*

Decided on – 17.04.2020

Bench : - 1. Hon'ble Mr. Justice Mohan M. Shantanagoudar

2. Hon'ble Mr. Justice R. Subhash Reddy

"While it is open for the State to confer benefit even through an executive order by applying mandatory requirements as contemplated under Article 16(4A) but the Resolution dated 20.03.2002 is merely issued by referring to the instructions of the Union of India without examining the adequacy of representation in promotional posts, as held by this Court."

Facts

In view of the instructions issued in Office Memorandum dated 21.01.2002, by the Government of India, Ministry of Personnel, Public Grievances and Pensions, the Government of Orissa passed Resolution dated 20.03.2002. By the aforesaid Resolution, while withdrawing the earlier instructions, for fixation of seniority of Scheduled Caste/Scheduled Tribe (SC/ST) government servants on promotion by virtue of rule of reservation, the State Government issued instructions to the effect that the "Catch Up Principle" adopted earlier by the State Government in General Administration Department Resolution No. 39374 dated 02.11.2000 shall not be followed any longer. It was further ordered that the government servants belonging to SCs/STs shall retain their seniority in the case of promotion by virtue of rule of reservation. In the said G.O. it was further clarified that the government servants belonging to general/OBC category promoted later will be placed junior to the SC/ST government servants promoted earlier, by virtue of rule of reservation.

The High Court allowed the abovementioned writ petition and the connected writ petitions and quashed the aforesaid G.O. and Gradation List dated 03.03.2008 mainly on the ground that, unless and until the State Government makes a law for conferring the benefit of promotion with consequential seniority to SC/ST candidates, they are not entitled to claim seniority in the promoted categories over the general category candidates.

Decision and Observations

> **12.** In view of the judgments as referred above, in this case, it is to be noticed that after Constitution (Eighty-Fifth) Amendment Act, 2001, amending Article 16(4A) of the Constitution which enabled the State to extend the benefit of promotion with consequential seniority by examining the adequacy of representation to scheduled castes and scheduled tribes in the State services, the State of Orissa has not made any provision, either by way of legislation or by an executive order, to extend such benefit in the Class-I Services. The advocate for State specifically admitted that the Govt. has not issued any executive order or has passed any legislation. The Government Resolution dated 20.03.2002 is issued merely based on the instructions issued by the Government of India, without examining the adequacy of representation in posts. As is evident from the order of the High Court, the State in its counter affidavit has taken the stand that there is no

necessity for bringing out any law to extend the benefit of seniority for those who are promoted in reserved vacancies. Government Resolution dated 20.03.2002 can neither be termed as law made in exercise of enabling power of the State under Article 16(4A), nor does it satisfy the parameters laid down in the various decisions of this Court. The Resolution has no legal basis. The Seniority/Gradation List dated 16.05.2001 of OAS-I (JB) was prepared correctly by following the ratio laid down by this Court and in absence of any law or decision by way of executive order based on acceptable material for conferring additional benefit of consequential seniority, the Gradation List dated 03.03.2008 was prepared by altering the positions which were maintained in the List dated 16.05.2001. While it is open for the State to confer benefit even through an executive order by applying mandatory requirements as contemplated under Article 16(4A) but the Resolution dated 20.03.2002 is merely issued by referring to the instructions of the Union of India without examining the adequacy of representation in promotional posts, as held by this Court.

13. Further, the submission of the learned counsel – Sri A. Subba Rao – that the benefit of reservation in promotion is given in the services of OAS-I for scheduled caste and scheduled tribe officers as per Section 10 of Orissa Act 38 of 1975, but same cannot be countenanced for the reason that such Act was enacted by the State of Orissa in the year 1975 but no provision is brought to our notice in such Act for giving the benefit of seniority for the 24candali who were promoted in reserved vacancies. In absence of any provision in the said Act for conferring the benefit of seniority, and in absence of any amendment after Constitution (Eighty-Fifth) Amendment Act of 2001, by which Article 16(4A) was amended, benefit of seniority cannot be extended relying on Section 10 of the Act. In view of the stand of the respondent-State in the counter affidavit filed in the writ petition and further in view of the submission made by the learned counsel for the State of Orissa that no benefit of seniority was extended by any State Act or by any executive order by examining adequate representation in terms of Article 16(4A) of the Constitution, we do not find any merit in this appeal so as to interfere with the well reasoned judgment of the High Court. The judgment of this Court rendered in the case of *Jarnail Singh*[7] relied on by the learned counsel for the appellants also would not take any further the case of the appellants. In the said judgment also for giving the benefit of promotion with consequential seniority, the need to examine adequate representation in posts in terms of the judgment of this Court in the case of *M. Nagaraj*[1] is maintained. As such, the said judgment would not render any assistance for the case of appellants.

14. For the aforesaid reasons, the appeal is dismissed with no order as to costs.

7. *Anjuman E Shiate Ali & Anr. v. Gulmohar Area Societies Welfare Group & Ors., 2020 SCC OnLine SC 373*

Decided on – 17.04.2020

Bench : - 1. Hon'ble Mr. Justice Mohan M. Shantanagoudar
2. Hon'ble Mr. Justice R. Subhash Reddy

"It is well known that such development plans are prepared by showing various zones such as residential, commercial, industrial etc. Merely because in such development plan prepared, in the area shown for residential purpose, authorities have not indicated the open spaces/garden, which were already left in the approved layout in such residential area, appellants cannot claim the benefit of making constructions in the plots which were left towards open space/garden. It is fairly well settled that the open spaces/garden left in an approved layout, cannot be allowed for the purpose of constructions."

Facts

Both these civil appeals arise out of a common judgment dated 19.07.2017, passed by the High Court of Judicature at Bombay, in writ petition Nos. 2476 of 2015 and 1130 of 2017, as such, they are heard together and disposed of by this common Order. The said writ petitions are filed by way of Public Interest Litigation, for protecting two plots which are the subject matter of the writ petition, originally left towards open spaces, in the layout, approved in the year 1967.

The writ petition No. 2476 of 2015, was filed by four petitioners. Petitioner No. 1, is a Trust, registered under the Bombay Public Trust Act, 1950 petitioner No. 2 is an Architect, involved in the planning, design and maintenance of public open spaces in the City of Mumbai, petitioner No. 3 is a filmmaker and petitioner No. 4 is an NGO. So far as the second petition is concerned, petitioner Nos. 2, 3 and 4 were common as in the earlier petition. Petitioner No. 1 is a Co-operative Housing Society. The subject matter of the 2015 writ petition is a plot of land, ad-measuring 2,000 sq. meters (2500 square yards), forming part of plot No. 6, CTS No. 29 of Survey No. 287 situated on 9th Wireless Road, JVPD Scheme, Juhu, whereas the subject matter of the 2017 writ petition, is a plot of land admeasuring 1687.18 sq. yards, forming part of old plot No. 3, CTS No. 196-A, North-South, 10th Road, JVPD Scheme, Juhu, Mumbai.

Primarily, it was the case of the writ petitioners before the High Court that, as these two plots were shown as open spaces/garden in the sanctioned layout, in the year 1967, as such, they cannot be used for constructions. It was alleged that the Anjuman Trust, taking advantage of development plan submitted in 1999 by MHADA, in which the area covered by these two plots also, was shown as residential area, was trying to make constructions. It was further alleged that the 2nd respondent, in collusion with the Anjuman Trust, has allotted the said plots to its nominees. It was pleaded on behalf of the writ petitioners that the usage of the area, as residential purpose, in the development plan of 1999, has nothing to do with the reservations shown in the approved layout of 1967. It was pleaded that as per the Development Control Rules for Greater Bombay, 1967, 15 per cent of the area was to be

shown as open space, as such these two plots were shown/ reserved for open space. The writ petitioners have also questioned the authority of 2nd respondent for passing any Order, on the application filed by the 4th respondent, for granting lease in favour of its nominees.

Issue

Whether the two sub-plots bearing Nos. 3/14 and 6/11, which are shown as open spaces/garden in the approved layout of 1967, can be allowed to be utilized for constructions, in view of the subsequent development plan prepared by MHADA.

Decision and Observations

19. For dividing the total land allotted for the use of Dawoodi Bohra Community, covered by plot Nos. 1, 3, 5 and 6, admeasuring 46850 sq. yards, the Architect of the appellants has prepared the layout and submitted it for sanction to the Municipal Corporation. In such layout, an area ad-measuring 1687 sq. yards in plot No. 3 and the area of 2500 sq. yards in plot No. 6 were shown as open spaces/garden. Since then, the said two plots were kept open for being used for garden purpose only. Subsequently, MHADA has prepared a development plan for the entire JVPD scheme covering more than 5,80,000 sq. yards. The crux of the appellants' case is that in such development plan, the area covered by these two small plots, which are shown as open spaces/garden in the approved layout, was shown as residential area, as such, they are entitled to make constructions in such two plots also.

20. As rightly held by the High Court, we are also of the view that the two plots, which are shown as open spaces/garden, in the approved layout, cannot be allowed to be used for the purpose of construction. A large area of 46,850 sq. yards was allotted for the purpose of allotting small plots to the members of Dawoodi Bohra Community. The entire area of 46,850 sq. yards was covered by four big plots, bearing nos. 1, 3, 5 and 6. For utilizing such large area, by dividing the same into smaller plots, the Architect of the Anjuman Trust has prepared layout and submitted to competent authority, showing these two small plots as open spaces/garden. It is not in dispute, such layout is approved and all the plots, except these two plots, which are left towards open space/garden were utilized for construction. Having had the benefit of such approved layout, and after making constructions in all the plots, except these two plots, which are left towards open space/garden, the appellants cannot claim that they are entitled to make constructions, based on development plan prepared by MHADA, for the entire JVPD Scheme, which covers more than 5,80,000 sq. yards. It is the case of the appellants that such layout of 1967 was prepared as a temporary measure. There is no such concept as temporary layout in the Scheme of the MMC Act and Regulations made thereunder.

22. The development plan which is prepared by MHADA for entire area of more than 5,80,000 sq. yards, indicates broadly the usages in different zones. It is well known that such development plans are prepared by showing various zones such as residential, commercial, industrial etc. Merely because in such development plan prepared, in the area shown for residential purpose, authorities have not indicated the open spaces/garden, which were already left in the approved layout in such residential area, appellants cannot claim the benefit of making constructions in the plots which were left towards open space/garden. It is fairly well settled that the open spaces/garden left in an approved layout, cannot be allowed for the purpose of constructions. However, it is to be noticed

that if one wants to utilize a big plot within the area of residential usage as indicated in the development plan, it is mandatory to sub-divide such big plots into smaller plots for utilizing them for the purpose of construction. When the layout is to be approved, certain percentage of area is required to be left towards roads, open plots, garden etc. The development Plan prepared by MHADA, cannot be confused with the layout which is approved confining to four big plots, on the application made by the appellants. It is not necessary for only the owner to apply for such layout. In any event, having applied for layout which was approved and after utilizing the 59 plots out of total of 61 plots, it is not open for the appellants to plead that it was not the obligation of the appellants to submit layout. In the layout sanctioned and obtained in the year 1967, the open spaces were rightly reserved as provided under Regulation 39 of 1967 DCR. Further, it is clear from perusal of 1991 DCR that for different layouts or sub divisions of different sizes in residential and commercial zones, different areas of open spaces are required to be provided. The development plan which was submitted by MHADA and approved on 15.10.1999, is with regard to the entire area covered by JVPD scheme. It appears that while submitting the development plan, the details of internal layouts sanctioned by BMC were not shown. The sub-division of bigger plots, as per the layout sanctioned by BMC, were also not shown in such development plan. Merely on such basis, the appellants cannot claim that the sub-plots which are covered by approved layout, left towards open spaces/garden, can also be used for constructions. The Chief Officer, in his communication, has made it clear that the mandatory open spaces in the approved plan are to be leased out to neighbouring societies for recreation purposes. Further, communication made by MHADA also shows that they have sent the proposal to MCGM for rectification of development plan, submitted in the year 1999, for showing these two plots as garden plot. It is totally erroneous on the part of 2nd respondent-MHADA in passing the order which is impugned in the writ petition, by recording a finding that Anjuman Trust has complete and absolute right in respect of sub-plot No. 14 of Plot No. 3. It is clear from the material placed on record that the authorities have mixed up the issue of reservation/usage as shown in the development plan and the open spaces as required to be kept in the layout as per the 1967 DCR and 1991 DCR.

23. It is also to be noticed that the open spaces are required to be left for an approval of layout or for the purpose of creating lung space for the owners of other plots where constructions are permitted. The 4 plots bearing Nos. 1, 3, 5 and 6, were sub-divided at the instance of the appellant-Society in its entirety and approval was taken for dividing such land into 61 plots. It is not open to claim for construction in the two plots which are reserved for open spaces/garden spaces also. It is fairly well settled that in an approved layout, the open spaces which are left, are to be continued in that manner alone and no construction can be permitted in such open spaces. The Development Plan which was submitted in the year 1999, as per the 1991 DCR, will not divest the utility of certain plots which are reserved for open spaces in the approved layout. The appellants cannot plead that such a layout was only temporary and as a stop gap arrangement, the said two plots were shown as open spaces/garden and now they be permitted to use for construction.

24. For the aforesaid reasons and in view of the reasons assigned by the High Court in the judgment under appeal, we are of the view that there is no merit in these appeals, accordingly, these appeals are dismissed, with no order as to costs.

8. *West UP Sugar Mills Association v. The State of Uttar Pradesh, 2020 SCC OnLine SC 380*

Decided on – 22.04.2020

Bench : - 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice M.R. Shah
5. Hon'ble Mr. Justice Aniruddha Bose

"By virtue of Entries 33 and 34 List III of seventh Schedule, both the Central Government as well as the State Government have the power to fix the price of sugarcane. The Central Government having exercised the power and fixed the "minimum price", the State Government cannot fix the "minimum price" of sugarcane. However, at the same time, it is always open for the State Government to fix the "advised price" which is always higher than the "minimum price", in view of the relevant provisions of the Sugarcane (Control) Order, 1966, which has been issued in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953."

Issues

Having noted that there is a clear conflict between the two decisions of the Hon'ble Supreme Court, one in the case of *Ch. Tika Ramji, Etc.* v. *The State of Uttar Pradesh* [AIR 1956 SC 676 : 1956 SCR 393 : 1956 SCJ 625] and another subsequent decision in the case of *U.P. Cooperative Cane Unions Federations* v. *West U.P. Sugar Mills Association* [(2004) 5 SCC 430], a three Judge Bench of the Supreme Court referred the matter to a larger Bench proposing the following questions of law to be considered by the larger Bench, preferably of a Bench consisting of seven Judges of the Court:

(1) Whether by virtue of Article 246 read with Schedule VII List III Entry 33 of the Constitution the field is occupied by the Central legislation and hence the Central Government has the exclusive power to fix the price of sugarcane?

(2) Whether Section 16 or any other provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers any power upon the State Government to fix the price at which sugarcane can be bought or sold?

(3) If the answer to this question is in the affirmative, then whether Section 16 or the said provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is repugnant to Section 3(2)© of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966 [hereinafter referred to as "1966 Order"]? And if so, the provisions of the Central enactments will prevail over the provisions of the State enactment and the State enactment to that extent would be void under Article 254 of the Constitution of India.

(4) Whether the SAP fixed by the State Government in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is arbitrary, without any application of mind or rational basis and is therefore, invalid and illegal?

(5) Does the State Advised Price (for short "SAP") constitute a statutory fixation of price? If so, is it within the legislative competence of the State?

(6) Whether the power to fix the price of sugarcane is without any guidelines and suffers from conferment of arbitrary and uncanalised power which is violative of Articles 14 and 19(1)(g) of the Constitution of India?

Decision and Observations

18. Thus, from the above, it is clear that the factual matrix and the relevant provisions which fell for consideration before this Court in the case of *Tika Ramji* (Supra) and which fell for consideration by this Court in the case of *U.P. Coop. Cane Unions Federations* (supra) were altogether different. As observed hereinabove, Clause 3 of 1955 Order empowered the Central Government to fix "the price or the minimum price". The aforesaid Clause 3 of 1955 Order was under consideration by this Court in the case of *Tika Ramji* (supra). However, subsequently, 1955 Order has been repealed by 1966 Order and Clause 3 of 1966 Order provides that the Central Government may fix "the minimum price" of the sugarcane. Therefore, when the legislature consciously deleted the word "the price" and retained the power with the Central Government to fix "the minimum price", some meaning has to be given to such a deletion. The intention of the legislature is also required to be considered when certain words in the provisions of a statute are deleted or added and/or substituted. In the case of *Tika Ramji* (supra), this Court though specifically observed and held that in the field of sugar and sugarcane, both, the Parliament and the State legislature would have the concurrent Jurisdiction as the same will fall under Entry 33 in the Concurrent List of seventh Schedule. Considering the fact that the State Government did not exercise the power of fixing the price, though the powers were available and the Central Government fixed the price/minimum price which came to be adopted by the State Government, this Court in *Tika Ramji's case* (supra) held that in such a situation there is no conflict and the question of repugnancy does not arise. Therefore, we are of the opinion that as such there is no apparent conflict between the decisions in *Tika Ramji's case* and *U.P. Coop. Cane Unions Federations*, which require to be referred to a larger Bench of seven Judges.

19. Under clause 3 of the 1966 order, the minimum price can be fixed. Under clause 3A of the said order, as amended in 1978, the agreed price is to be mentioned in the agreement, which can be higher than the minimum price and not less than that. Under clause 3(2), no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane at a price lower than that fixed under sub-clause (1). Thus, the price fixed under clause 3(1) has to be treated as a minimum price. Under clause 3(A), as inserted on 2.2.1978, agreement in writing is required, and the price has to be paid as agreed to within 14 days.

20. Even otherwise and on merits and for the reasons stated hereinbelow, we are in complete agreement with the view taken by this Court in the case of *U.P. Coop. Cane Unions Federations*, which lays down that **the inconsistency or repugnancy will**

arise if the State Government fixed a price which is lower than that fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of Sub-clause (2) of Clause 3 of 1966 Order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy.

(emphasis in original)

.....

21. As held by this Court in the case of *U.P. Cooperative Cane Unions Federations* (supra), the State has the competence to determine and fix the State Advised Price fixed under section 16 and therefore fixation of SAP by the State Government cannot be said to be beyond the purview of legislative competence. Once the fixation of State Advised Price has been done, the Cane Commissioner can direct the parties to follow the same as held in *U.P. Cooperative Cane Growers Federation* (supra). It cannot be said that fixation of price under the regulatory measure provided in section 16 suffers from arbitrariness, nor can it be termed to be uncanalised power. Thus, we are of the considered opinion that the decision in *Tika Ramji* (supra) is not in conflict with the decision in *U.P. Cooperative Cane Unions Federations* (supra) and the decision in the latter case is not required to be revisited by a larger Bench of seven Judges.

22. Thus, considering the entire scheme of 1966 Order, it provides for "the minimum price" and "the additional price" or "the advised price". Considering the aforesaid provisions under 1966 Order, there cannot be any sugarcane price (advised price) below "the minimum price". As per the agreement entered into the "advised price" necessarily had to be higher than the "minimum price". Thus, there is a difference between "the price" and the "the minimum price". As per Clause 3 of 1966 Order, it empowers the Central Government to fix the "minimum price" and the State Government is authorized to fix the Advised Price which as observed hereinabove is always higher than the "minimum price" fixed by the Central Government. Therefore, as rightly observed by this Court in the case of *U.P. Coop. Cane Unions Federations*, there is no conflict in exercise of powers by the Central Government in fixing the "minimum price" and in fixing the "advised price" by the State Government which is higher than the "minimum price" fixed by the Central Government. Therefore, as rightly observed by this Court in the case of *U.P. Coop. Cane Unions Federations*, there is no inconsistency or repugnancy in fixing the "advised price" or "remunerative price" by the State Government and the "minimum price" fixed by the Central Government. As rightly held, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them.

23. Thus, it is held that the view taken by the Constitution Bench of this Court in the subsequent decision in the case of *U.P. Coop. Cane Unions Federations* (supra) is the correct law. There is no conflict between the two decisions of this Court in the case of *Tika Ramji* and in the case of *U.P. Coop. Cane Unions Federations* and therefore, there is no

necessity to refer the matter to the larger Bench consisting of seven Judges. Therefore, our final conclusions are as under:

a. By virtue of Entries 33 and 34 List III of seventh Schedule, both the Central Government as well as the State Government have the power to fix the price of sugarcane. The Central Government having exercised the power and fixed the "minimum price", the State Government cannot fix the "minimum price" of sugarcane. However, at the same time, it is always open for the State Government to fix the "advised price" which is always higher than the "minimum price", in view of the relevant provisions of the Sugarcane (Control) Order, 1966, which has been issued in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953;

b. The Sugarcane (Control) Order, 1966 which has been issued under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers power upon the State Government to fix the remunerative/advised price at which sugarcane can be bought or sold which shall always be higher than the minimum price fixed by the Central Government;

c. Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is not repugnant to Section 3(2)© of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966 as, as observed hereinabove, the price which is fixed by the Central Government is the "minimum price" and the price which is fixed by the State Government is the "advised price" which is always higher than the "minimum price" fixed by the Central Government and therefore, there is no conflict. It is only in a case where the "advised price" fixed by the State Government is lower than the "minimum price" fixed by the Central Government, the provisions of the Central enactments will prevail and the "minimum price" fixed by the Central Government would prevail. So long as the "advised price" fixed by the State Government is higher than the "minimum price" fixed by the Central Government, the same cannot be said to be *void* under Article 254 of the Constitution of India.

d. The view taken by the Constitution Bench of this Court in the case of *U.P. Cooperative Cane Unions Federations* v. *West U.P. Sugar Mills Association* is the correct law.

24. The Reference is answered accordingly. Now the Registry to notify all these matters before the Court taking up such matters forthwith, for disposal.

9. *Chebrolu Leela Prasad Rao & Ors. v. State of A.P. & Ors., 2020 SCC OnLine SC 383*

Decided on – 22.04.2020

Bench : - 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice M.R. Shah
5. Hon'ble Mr. Justice Aniruddha Bose

100% reservation to Scheduled Tribes or Scheduled Castes is not permissible and is unfair and unreasonable.

Issues

In the reference, the validity of the Government Office Ms. No.3 dated 10.1.2000 issued by the erstwhile State of Andhra Pradesh providing 100% reservation to the Scheduled Tribe candidates out of whom 33.⅓% shall be women for the post of teachers in the schools in the scheduled areas in the State of Andhra Pradesh, was under challenge.

Several questions have been referred for consideration in the order dated 11.1.2016. We have renumbered question nos. 1(a)(b)(c) and (d) based on interconnection. The questions are as follows:

"(1) What is the scope of paragraph 5(1), Schedule V to the Constitution of India?
(a) Does the provision empower the Governor to make a new law?
(b) Does the power extend to subordinate legislation?
(c) Can the exercise of the power conferred therein override fundamental rights guaranteed under Part III?
(d) Does the exercise of such power override any parallel exercise of power by the President under Article 371D?
(2) Whether 100% reservation is permissible under the Constitution?
(3) Whether the notification merely contemplates a classification under Article 16(1) and not reservation under Article 16(4)?
(4) Whether the conditions of eligibility (i.e., origin and cut-off date) to avail the benefit of reservation in the notification are reasonable?"

Decision of the High Court

On 18.12.1998, the Government issued a fresh notification vide GOMs. No. 3 dated 10.1.2000 effectively providing for 100% reservation in respect of appointment to the posts of teachers in the scheduled areas. The tribunal set aside the GOMs. Aggrieved thereby, writ petitions were filed in the High Court, a 3-Judge Bench by majority upheld the validity of G.O. Aggrieved by the same, the appeals have been preferred.

The majority view opined that historically scheduled areas were treated specially, and affirmative action taken was in the constitutional spirit. The notification was a step for increasing literacy in the scheduled areas and also aimed at providing the availability of teachers in every school in the scheduled areas. 100% reservation can be sustained on the ground that it was based on intelligible differentia, and the classification has nexus with the object sought to be achieved. The G.O. became necessary considering the phenomenal absenteeism of the teachers in the schools situated in the scheduled areas and was a step in aid to promote educational developments of tribals. In extraordinary situations, reservation can exceed 50%. The Governor possessed the power to issue the impugned notification under Schedule V, para 5(1) of the Constitution. The same overrides all other provisions of the Constitution, including Part III of the Constitution of India.

The High Court in the minority view opined that providing 100% reservation for Scheduled Tribes in scheduled areas offends the spirit of Articles 14 and 16 of the Constitution of India. The Governor is not conferred power to make any law in derogation to Part III or other provisions of the Constitution of India in the exercise of his power under Clause I, Para 5 of Schedule V. It was also held that G.O.Ms. No. 3 is discriminatory as the same adversely affects not only the open category candidates but also other Scheduled Castes, Scheduled Tribes, and backward classes. It also opined that the reservation under Article 16(4) should not exceed 50%. However, little relaxation was permissible. The rules made under Article 309 of the Constitution could not be treated as an Act of Parliament or State Legislature.

Decision and Observations of the Supreme Court

154. We answer the questions referred to us thus:

Question No. 1: The Governor in the exercise of powers under Para 5(1), Fifth Schedule of the Constitution, can exercise the powers concerning any particular Act of the Parliament or the legislature of the State. The Governor can direct that such law shall not apply to the Scheduled Areas or any part thereof. The Governor is empowered to apply such law to the Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and can also issue a notification with retrospective effect.

Question No. 1(a): The Governor is empowered under Para 5(1), Fifth Schedule of the Constitution, to direct that any particular Act of Parliament or the Legislature of the State, shall not apply to a Scheduled Area or apply the same with exceptions and modifications. The Governor can make a provision within the parameters of amendment/modification of the Act of Parliament or State legislature. The power to make new laws/regulations, is provided in Para 5(2), Fifth Schedule of the Constitution for the purpose mentioned therein, not under Para 5(1) of the Fifth Schedule to the Constitution of India.

Question No. 1(b): The power of the Governor under Para 5(1), Fifth Schedule to the Constitution does not extend to subordinate legislation, it is with respect to an Act enacted in the sovereign function by the Parliament or legislature of the State which can be dealt with.

Question No. 1©: The Governor's power under Para 5(1) of the Fifth Schedule to the Constitution is subject to some restrictions, which have to be observed by the Parliament or the

legislature of the State while making law and cannot override the fundamental rights guaranteed under Part III of the Constitution.

Question No. 1(d): In exercise of power under Para 5(1) of the Fifth Schedule to the Constitution of India, the Governor cannot override the notification issued by the President in the exercise of powers under Article 371D. The power has to be exercised harmoniously with such an order issued under Article 371D, not in conflict thereof.

Question No. 2: G.O.Ms. No. 3/2000 providing for 100 per cent reservation is not permissible under the Constitution, the outer limit is 50 per cent as specified in *Indra Sawhney* (supra).

Question No. 3: The notification in question cannot be treated as classification made under Article 16(1). Once the reservation has been provided to Scheduled Tribes under Article 16(4), no such power can be exercised under Article 16(1). The notification is violative of Articles 14 and 16(4) of the Constitution of India.

Question No. 4: The conditions of eligibility in the notification with a cut-off date, i.e., 26.1.1950, to avail the benefits of reservation, is unreasonable and arbitrary one.

RELIEF:

As a sequel to the quashing of G.O. Ms. No. 3 of 2000, the appointments made in excess of the permissible reservation cannot survive and should be set aside. However, on behalf of State and other respondents, it was urged that appointments may not be set aside. In the peculiar circumstances, the incumbents, who have been appointed, cannot be said to be at fault and they belong to Scheduled Tribes.

We cannot ignore the fact that a similar G.O. was issued by the erstwhile State Government of Andhra Pradesh in the year 1986, which was quashed by the State Administrative Tribunal, against which an appeal was preferred in this Court, which was dismissed as withdrawn in the year 1998. After withdrawal of the appeal from this Court, it was expected of the erstwhile State of Andhra Pradesh not to resort to such illegality of providing 100% reservation once again. But instead, it issued G.O. Ms. No. 3 of 2000, which was equally impermissible, even if the A.P. Regulation of Reservation and Appointment to Public Services Act, 1997 would have been amended, in that event also providing reservation beyond 50% was not permissible. It is rightly apprehended by appellants that the State may again by way of mis-adventure, resort to similar illegal exercise as was done earlier. It was least expected from the functionary like Government to act in aforesaid manner as they were bound by the dictum laid down by this Court in *Indra Sawhney* (supra) and other decisions holding that the limit of reservation not to exceed 50%. There was no rhyme or reason with the State Government to resort to 100% reservation. It is unfortunate that illegal exercise done in 1986 was sought to be protected by yet another unconstitutional attempt by issuing G.O.Ms. No. 3 of 2000 with retrospective effect of 1986, and now after that 20 years have passed. In the peculiar circumstance, we save the appointments conditionally that the reorganised States *i.e.* the States of Andhra Pradesh and Telangana not to attempt a similar exercise in the future. If they do so and exceed the limit of reservation, there shall not be any saving of the appointments made, w.e.f. 1986 till date. We direct the respondents-States not to exceed the limits of reservation in future. Ordered accordingly.

Resultantly, we allow the appeals, and save the appointments made so far conditionally with the aforesaid riders. The cost of appeal is quantified at Rupees Five Lakhs and to be shared equally by the States of Andhra Pradesh and Telangana.

10. Hira Singh v. Union of India, 2020 SCC OnLine SC 382

Decided on – 22.04.2020

Bench : - 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice M.R. Shah

"In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001"

Issues

Not agreeing with the view taken by this Court in the case of *E. Micheal Raj* v. *Intelligence Officer, Narcotic Control Bureau*, (2008) 5 SCC 161 taking the view that when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance/s, for the purpose of imposition of punishment it is the content of the narcotic drug or psychotropic substance which shall be taken into consideration (paragraphs 15 and 19), the following questions were referred to a three Judge Bench, vide order dated 3.7.2017:

(a) Whether the decision of this Court in *E. Micheal Raj* (supra) requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") with Section 21?

(b) Does the impugned notification issued by the Central Government entail in redefining the parameters for constituting an offence and more particularly for awarding punishment?

© Does the NDPS Act permit the Central Government to resort to such dispensation?

(d) Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?

(e) Whether Section 21 of the NDPS Act is a stand along provision or intrinsically linked to the other provisions dealing with "manufactured drug" and "preparation" containing any manufactured drug?

Decision and Observations

6. Having heard the learned advocates for the respective parties and considering the reference order, the question which is posed for consideration of this Court is whether the NDPS Act envisages mixture of narcotic drugs and seized material/substance should be considered as a preparation in totality or on the basis of actual drug content of the specific narcotic drugs? In other words, the question as to whether while determining the small or commercial quantity in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s), the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity? At this stage, it is required to be noted that as such and after the decision of this Court in the case of *E.Micheal Raj* (supra) by Notification No.S.O.2942(E) dated 18.11.2009, "Note 4" has been added to Notification S.O.1055(E) dated 19.10.2001 specifying the "small quantity and commercial quantity" of the narcotic drugs or psychotropic substances covered under the NDPS Act.....

6.1 At the outset, it is pertinent to note that as such prior to the decision of this Court in the case of *E.Micheal Raj* (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance that one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity", a consistent view was that for the purpose of determining a "small quantity or commercial quantity" the weight of entire manufactured drug/preparation/mixture seized including that of the neutral substance is required to be taken into consideration. However, for the first time in the case of *E. Micheal Raj* (Supra), a contrary view is taken solely on considering Narcotic Drugs and Psychotropic Substances (Amendment) Act,2001, by which Section 21 of the NDPS Act came to be amended.

6.2 Therefore, first of all we would like to consider the reasoning given by this Court in the case of *E. Micheal Raj* (Supra). The facts indicate that what was seized in *E.Micheal Raj* (supra) was 4 kgs of Heroin, which would fall in Entry 56 of the Notification dated 19.10.2001. As per the Notification dated 19.10.2001 in case of *Heroin 5gms* is a small quantity and 250 gm is a commercial quantity. However, this Court considered the substance seized –Heroin as Opium derivative and hence a manufactured drug and therefore, treating the seized drug as opium derivative, this Court held the seized material as small quantity and awarded punishment accordingly. While holding so, this Court considered the Statement of Objects and Reasons concerning the Amendment Act, 2001 and thereafter observed in para 12 to 15 as under:

.....

6.3. On considering the aforesaid reasoning given by this Court in the case of *E.Micheal Raj* (supra), we are of the opinion that while holding that in the mixture of a narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance is not to be taken into consideration and it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity", this Court has not at all considered the relevant entry in the Notification dated 19.10.2001. As observed herein above, what was seized was heroin which falls in Entry 56. What was seized was not opium and/or opium derivative. There is no specific finding even given by this Court that it would fall under Entry 239 namely any mixture or preparation that of with or without the neutral material.

Therefore, the case of mixture of narcotic drugs or psychotropic substance was not at all in direct consideration of this Court.

6.4. Even it does not appear that this Court took into consideration Note 2 of the Notification dated 19.10.2001, which reads as follows:

> *"The quantities shown against the respective drugs listed above also apply to the preparations of the drug and the preparations of substances of note 1 above."*

If note 2 would have been considered by this Court and seized material was "Heroin" in that case and what was seized was 4.5 kg heroin, the Court would have considered the same as a "commercial quantity" as considering Entry 56, 5gms is "small quantity" and 250 gms and above is a "commercial quantity". Therefore, as such, we are not in agreement with the view taken by this Court in the case of *E.Micheal Raj* (supra) taking the view that in mixture of a narcotic drug or psychotropic substance with one or more neutral substance, the quantity of neutral substance is not to be taken into consideration and it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute "small quantity or commercial quantity".

7. Even considering the reasons while arriving at aforesaid conclusion, it appears to us that the Statement of Objects and Reasons concerning the Amendment Act, 2001 has not been properly appreciated and/or considered and/or properly construed. Considering the statement of objects and reasons concerning the Amendment Act of 2001, by which, two tier punishment was provided one for small quantity and another for commercial quantity, it cannot be said that intention of the legislature was to consider only the actual content by weight of offending drug for the purpose of determining whether it would constitute small quantity or commercial quantity. The Statement of Objects and Reasons of the Amendment Act, 2001 is as follows:

.....

8. On merits whether any mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", the Statement of Objects and Reasons of NDPS Act is required to be considered. As per the preamble of NDPS Act, 1985, it is an Act to consolidate and amend the law relating to **Narcotic Drugs**, to make stringent provisions for the control and regulation of operation relating to **Narcotic Drugs and Psychotropic Substances**. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of objects and reasons and the preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same Act as deterrents.

8.5. The problem of drug addicts is international and the mafia is working throughout the world. It is a crime against the society and it has to be dealt with iron hands. Use of drugs by the young people in India has increased. The drugs are being used for weakening of the nation. During the British regime control was kept on the traffic of dangerous drugs by enforcing the Opium Act, 1857. The Opium Act, 1875 and the Dangerous Drugs Act, 1930. However, with the passage of time and the development in the field of illicit drug traffic and during abuse at national and international level, many deficiencies in the existing laws have come to notice. Therefore, in order to remove such deficiencies and difficulties, there was urgent need for the enactment of a comprehensive legislation on Narcotic Drugs and Psychotropic Substances, which led to enactment of NDPS Act. As observed herein above, the Act is a special law and has a laudable purpose to serve and is intended to combat

the menace otherwise bent upon destroying the public health and national health. The guilty must be in and the innocent ones must be out. The punishment part in drug trafficking is an important one but its preventive part is more important. Therefore, prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 came to be introduced. The aim was to prevent illicit traffic rather than punish after the offence was committed. Therefore, the Courts will have to safeguard the life and liberty of the innocent persons. Therefore, the provisions of NDPS Act are required to be interpreted keeping in mind the object and purpose of NDPS Act; impact on the society as a whole and the Act is required to be interpreted literally and not liberally which may ultimately frustrate the object, purpose and preamble of the Act. Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener that quantity of neutral substance (s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute "small quantity or commercial quantity", cannot be accepted.

10. In view of the above and for the reasons stated above, Reference is answered as under:

(I) The decision of this Court in the case of *E. Micheal Raj* (supra) taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II) In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

(III) Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No.S.O.2942(E) dated 18.11.2009 and Notification S.O 1055(E) dated 19.10.2001;

(IV) Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not *ultra vires* to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed.

3. The Reference is answered accordingly. The Intervener Application stands disposed of. Now, respective Appeals be placed before the appropriate Court taking up such matters for deciding the appeals in accordance with law and on merits and in light of the observations made hereinabove and our answer to the Reference, as above.

11. Union of India v. UAE Exchange Centre, 2020 SCC OnLine SC 402

Decided on – 24.04.2020

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

2. Hon'ble Mr. Justice Ajay Rastogi

"No income as specified in Section 2(24) of the 1961 Act is earned by the liaison office in India and more so because, the liaison office is not a PE in terms of Article 5 of DTAA (as it is only carrying on activity of a preparatory or auxiliary character). The concomitant is – no tax can be levied or collected from the liaison office of the respondent in India in respect of the primary business activities consummated by the respondent in UAE."

Issue

Whether the stated activities of the respondent-assessee would qualify the expression "of preparatory or auxiliary character"? Having regard to the nature of activities carried on by the respondent-assessee, as held by the Authority, it would appear that the respondent was engaged in "business" and had "business connections", for which, by virtue of deeming provision and the sweep of Sections 2(24), 4 and 5 read with Section 9 of the 1961 Act including the exposition in *Anglo-French Textile Co. Ltd.* (supra) and *R.D. Aggarwal & Company* (supra), it would be a case of income deemed to accrue or arise in India to the respondent.

Decision and Observations

The Hon'ble Court opined that the matter in issue will have to be answered on the basis of the stipulations in DTAA notified in exercise of powers conferred under Section 90 of the 1961 Act and further observed that the position is no more *res integra* in view of the dictum in *Azadi Bachao Andolan* (supra) and the efficacy of Section 90 of the 1961 Act has been delineated by the Court after adverting to the decisions in *Commissioner of Income Tax, AP-I* v. *Vishakhapatnam Port Trust*, *Commissioner of Income Tax* v. *Davy Ashmore India Ltd.*, *Leonhardt Andra Und Partner, GmbH* v. *Commissioner of Income Tax*, *Commissioner of Income Tax* v. *R.M. Muthaiah* and *Arabian Express Line Ltd. of United Kingdom* v. *Union of India*.

The Hon'ble Court also referred to the provisions of Section 90 and of Section 9 of the Income Tax Act and the explanations to sub-section 1 thereof along with the Articles of the DTAA (Double Taxation Avoidance Agreement) between the UAE and India. The Hon'ble Court, after the discussions, held as follows :-

> **8. .....**
>
> Keeping in view the finding recorded by the High Court, we may proceed on the basis that the respondent-assessee had a fixed place of business through which the business of the respondent was being wholly or partly carried on. That, however, would not be conclusive until a further finding is recorded that the respondent had a PE situated in

India, so as to attract Article 7 dealing with business profits to become taxable in India, to the extent attributable to the PE of the respondent in India. For that, we may have to revert back to Article 5, which deals with and defines the "Permanent Establishment (PE)". A fixed place of business through which the business of an enterprise is wholly or partly carried on is regarded as a PE. The term "Permanent Establishment (PE)" would include the specified places referred to in clause 2 of Article 5. It is not in dispute that the place from where the activities are carried on by the respondent in India is a liaison office and would, therefore, be covered by the term PE in Article 5(2). However, Article 5(3) of the DTAA opens with a *non-obstante* clause and also contains a deeming provision. It predicates that notwithstanding the preceding provisions of the concerned Article, which would mean clauses 1 and 2 of Article 5, it would still not be a PE, if any of the clauses in Article 5(3) are applicable. For that, the functional test regarding the activity in question would be essential. The High Court has opined that the respondent was carrying on stated activities in the fixed place of business in India of a preparatory or auxiliary character. Indeed, the expression "business" has been defined in the 1961 Act.....

.....

The expression "business connection" can be discerned from Section 9(1), as also, the meaning of expression "business activity". We will advert to those provisions a little later and for the time being, assume that the stated activities of the respondent are business activities. However, since the stated activities of the liaison offices of the respondent in India are of preparatory or auxiliary character, the same would fall within the excepted category under Article 5(3)(e) of the DTAA. Resultantly, it cannot be regarded as a PE within the sweep of Article 7 of DTAA. The expression "preparatory" is not defined in the 1961 Act or the DTAA. The dictionary meaning of that expression can be traced to term "preparatory work" and "travaux preparatoires", which in the Black's Law Dictionary (Eleventh Edition), read thus.....

The crucial activities in the present case are of downloading particulars of remittances through electronic media and then printing cheques/drafts drawn on the banks in India, which, in turn, are couriered or dispatched to the beneficiaries in India, in accordance with the instructions of the NRI remitter. While doing so, the liaison office of the respondent in India remains connected with its main server in UAE and the information residing thereat is accessed by the liaison office in India for the purpose of remittance of funds to the beneficiaries in India by the NRI remitters. These are combination of virtual and physical activities unlike the virtual activity of funds being remitted by telegraphic transfer through banking channels. As regards the latter, it is not the case of the Department that the same would be covered and amenable to tax liability by virtue of deeming provision in the 1961 Act.

9. While answering the question as to whether the activity in question can be termed as other than that "of preparatory or auxiliary character", we need to keep in mind the limited permission given by the RBI to the respondent under Section 29(1)(a) of the 1973 Act, on 24.9.1996. From paragraph 2 of the stated permission, it is evident that the RBI had agreed for establishing a liaison office of the respondent at Cochin, initially for a period of three years to enable the respondent to (i) respond quickly and economically to enquiries from correspondent banks with regard to suspected fraudulent drafts; (ii) undertake reconciliation of bank accounts held in India; (iii) act as a communication

centre receiving computer (via modem) advices of mail transfer T.T. stop payments messages, payment details etc., originating from respondent's several branches in UAE and transmitting to its Indian correspondent banks; (iv) printing Indian Rupee drafts with facsimile signature from the Head Office and counter signature by the 41candalize signatory of the Office at Cochin; and (v) following up with the Indian correspondent banks. These are the limited activities which the respondent has been permitted to carry on within India. This permission does not allow the respondent-assessee to enter into a contract with anyone in India, but only to provide service of delivery of cheques/drafts drawn on the banks in India. Notably, the permitted activities are required to be carried out by the respondent subject to conditions specified in clause 3 of the permission, which includes not to render any consultancy or any other service, directly or indirectly, with or without any consideration and further that the liaison office in India shall not borrow or lend any money from or to any person in India without prior permission of RBI. The conditions make it amply clear that the office in India will not undertake any other activity of trading, commercial or industrial, nor shall it enter into any business contracts in its own name without prior permission of the RBI. The liaison office of the respondent in India cannot even charge commission/fee or receive any remuneration or income in respect of the activities undertaken by the liaison office in India. From the onerous stipulations specified by the RBI, it could be safely concluded, as opined by the High Court, that the activities in question of the liaison office(s) of the respondent in India are circumscribed by the permission given by the RBI and are in the nature of preparatory or auxiliary character. That finding reached by the High Court is unexceptionable.

11. Having said thus, it must follow that the respondent was not carrying on any business activity in India as such, but only dispensing with the remittances by downloading information from the main server of respondent in UAE and printing cheques/drafts drawn on the banks in India as per the instructions given by the NRI remitters in UAE. The transaction(s) had completed with the remitters in UAE, and no charges towards fee/commission could be collected by the liaison office in India in that regard. To put it differently, no income as specified in Section 2(24) of the 1961 Act is earned by the liaison office in India and moreso because, the liaison office is not a PE in terms of Article 5 of DTAA (as it is only carrying on activity of a preparatory or auxiliary character). The concomitant is – no tax can be levied or collected from the liaison office of the respondent in India in respect of the primary business activities consummated by the respondent in UAE. The activities carried on by the liaison office of the respondent in India as permitted by the RBI, clearly demonstrate that the respondent must steer away from engaging in any primary business activity and in establishing business connection as such. It can carry on activities of preparatory or auxiliary nature only. In that case, the deeming provisions in Sections 5 and 9 of the 1961 Act can have no bearing whatsoever.

13.....

The meaning of expressions "business connection" and "business activity" has been articulated. However, even if the stated activity(ies) of the liaison office of the respondent in India is regarded as business activity, as noted earlier, the same being "of preparatory or auxiliary character"; by virtue of Article 5(3)(e) of the DTAA, the fixed place of business (liaison office) of the respondent in India otherwise a PE, is deemed to be expressly excluded from being so. And since by a legal fiction it is deemed not to be a PE of the respondent in India, it is not amenable to tax liability in terms of Article 7 of the DTAA.

14. Taking any view of the matter, therefore, we find no substance in this appeal. We uphold the conclusions reached by the High Court for the reasons stated hitherto.

15. Accordingly, the appeal is dismissed with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

12. Union of India v. Exide Industries Ltd., 2020 SCC OnLine SC 399

Decided on – 24.04.2020

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

2. Hon'ble Mr. Justice Hemant Gupta

3. Hon'ble Mr. Justice Dinesh Maheshwari

Clause (f) in Section 43B of the Income Tax Act is constitutionally valid and operative for all purposes.

Issue

In this appeal, the constitutional validity of clause (f)[3] of Section 43B of the Income Tax Act, 1961 arose for the Court's consideration as a result of the decision of the High Court at Calcutta vide order dated 27.06.2007 in APO No. 301 of 2005, wherein it was held that the said clause is arbitrary and violative of Article 14 of the Constitution of India on various counts.

Decision and Observations

Constitutional Validity of Clause (f)

11. The approach of the Court in testing the constitutional validity of a provision is well settled and the fundamental concern of the Court is to inspect the existence of enacting power and once such power is found to be present, the next examination is to ascertain whether the enacted provision impinges upon any right enshrined in Part III of the Constitution. Broadly speaking, the process of examining validity of a duly enacted provision, as envisaged under Article 13 of the Constitution, is premised on these two steps. No doubt, the second test of infringement of Part III is a deeper test undertaken in light of settled constitutional principles. In *State of Madhya Pradesh* v. *Rakesh Kohli*[4], this Court observed thus:

> "17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely **(i) that the appropriate legislature does not have competence to make the law, and (ii) that it does not take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions...**
>
> (emphasis supplied)

[3] **43-B.** Certain deductions to be only on actual payment.- Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

……

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

.....

The above exposition has been quoted by this Court with approval in a catena of other cases including *Bhanumati* v. *State of Uttar Pradesh*[5], *State of Andhra Pradesh* v. *Mcdowell & Co.*[6] and *Kuldip Nayar* v. *Union of India*[7], to state a few.

3. In furtherance of the two-fold approach stated above, the Court, in *Rakesh Kohli* (supra) also called for a prudent approach to the following principles while examining the validity of statutes on taxability:

"32. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles:

3. there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature,

(ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,

(iii) the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence,

(iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law, and

(v) in the field of taxation, the legislature enjoys greater latitude for classification "

13. In the present case, the legislative power of the Parliament to enact clause (f) in the light of Article 245 is not doubted at all. That brings us to the next step of examination i.e. whether the said clause contravenes any right enshrined in Part III of the Constitution, either in its form, substance or effect. It is no more ***res integra*** that the examination of the Court begins with a presumption in favour of constitutionality. This presumption is not just borne out of judicial discipline and prudence, but also out of the basic scheme of the Constitution wherein the power to legislate is the exclusive domain of the Legislature/Parliament. This power is clothed with power to decide when to legislate, what to legislate and how much to legislate. Thus, to decide the timing, content and extent of legislation is a function primarily entrusted to the legislature and in exercise of judicial review, the Court starts with a basic presumption in favour of the proper exercise of such power.

14. Generally, the heads of income to be subjected to taxability under the 1961 Act are enumerated in Section 14 which starts with a saving clause and expressly predicates that profits and gains of business or profession shall be chargeable to income tax. This general declaration of chargeability is followed by Section 145, which prescribes the method of accounting and reads thus:

.....

16. Section 43B, however, is enacted to provide for deductions to be availed by the assessee in lieu of liabilities accruing in previous year without making actual payment to discharge the same. It is not a provision to place any embargo upon the autonomy of the assessee in adopting a particular method of accounting, nor deprives the assessee of any lawful deduction. Instead, it merely operates as an additional condition for the availment of deduction ***qua*** the specified head.

17. Section 43B bears heading ***"certain deductions to be only on actual payment".*** It opens with a non-obstante clause. As per settled principles of interpretation, a non obstante clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by the Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for. Out of the allowable deductions, the legislature consciously earmarked certain deductions from time to time and included them in the ambit of Section 43B so as to subject such deductions to conditionality of actual payment. Such conditionality may have the inevitable effect of being different from the theme of mercantile system of accounting on accrual of liability basis ***qua*** the specific head of deduction covered therein and not to other heads. But that is a matter for the legislature and its wisdom in doing so.

21. Be it noted that the interpretation of a statute cannot be unrelated to the nature of the statute. In line with other clauses under Section 43B, clause (f) was enacted to remedy a particular mischief and the concerns of public good, employees' welfare and prevention of fraud upon revenue is writ large in the said clause. In our view, such statutes are to be viewed through the prism of the mischief they seek to suppress, that is, the *Heydon's case*[8] principle. In *CRAWFORD, Statutory Construction*[9], it has been gainfully delineated that ***"an enactment designed to prevent fraud upon the revenue is more properly a statute against fraud rather than a taxing statute, and hence should receive a liberal construction in the government's favour.***

Non-disclosure of Objects and Reasons

27. In other words, when the textual element of the provision reeks of ambiguity and is susceptible to multiple meanings, the Court enters into a proactive examination to find out the real meaning of the provision. This proactive examination by the Court offers multiple avenues and methods to achieve the ultimate purpose of interpretation. Adverting to the express objects and reasons may be useful for limited purpose to understand the surrounding circumstances at the time of enactment. The Court is not bound by such external elements, as discussed above. Therefore, the presence or absence of objects and reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable the Court to comprehend its true meaning with sufficient clarity.

28. The Division Bench of the High Court, in the present case, plainly glossed over the fundamental presumption of constitutionality in favour of clause (f) and based its judgment upon the absence of objects and reasons as striking at the root of its validity. In our view, this approach is flawed for at least three reasons. *First,* it steers clear from the necessary attempt to discover any constitutional infirmities in the enacted provision. *Second,* it makes no attempt to dissect the text of the provision so as to display the need to go beyond the text. *Third,* it goes into the background of the enactment and ventures into a sphere which is out of bounds for the Court as long as the need for interpretation borne out of any ambiguity arises.

****

Inconsistency of clause (f) and absence of nexus with Section 43B

31. The High Court has supported its finding of invalidity by recording two observations vis-a-vis the previously existing (unamended) clauses of Section 43B – *first,* that clause (f) is inconsistent with other clauses and nature of deduction targeted in clause (f) is distinct from other deductions. *Second*, that clause (f) has no nexus with the objects and reasons behind the enactment of original Section 43B and therefore, the objects and reasons attributed to Section 43B cannot be used to deduce the object and purpose of clause (f).

32. At the outset, we observe that both the grounds are ill- founded. In the basic scheme of Section 43B, there is no direct or indirect limitation upon the power of legislature to include only particular type of deductions in the ambit of Section 43B. To say that Section 43B is restricted to deductions of a statutory nature would be nothing short of reading the provision in a purely imaginative manner. As already discussed above, from 1983 onwards, Section 43B had taken within its fold diverse nature of deductions, ranging from tax, duty to bonus, commission, railway fee, interest on loans and general provisions for welfare of employees. An external examination of this journey of Section 43B reveals that the legislature never restricted it to a particular category of deduction and that intent cannot be read into the main Section by the Court, while sitting in judicial review. Concededly, it is a provision to attach conditionality on deductions otherwise allowable under the Act in respect of specified heads, in that previous year in which the sum is actually paid irrespective of method of accounting.

33. Further, it be noted that the broad objective of enacting Section 43B concerning specified deductions referred to therein was to protect larger public interest primarily of revenue including welfare of the employees. Clause (f) fits into that scheme and shares sufficient nexus with the broad objective, as already discussed hitherto.

****

Defeating the dictum in Bharat Earth Movers case

35. We shall now examine clause (f) on the ground that it defeats the judgment of this Court in *Bharat Earth Movers* (supra). We have carefully analysed the decision in *Bharat Earth Movers* (supra) and note that the Court was sitting in appeal over the nature of liability under the leave encashment scheme and held such liability to be a present liability. Resultantly, it became deductible from the profit and loss account of the assessee in the same accounting year in which provision against the same is made. The Court rejected that leave encashment liability is a contingent one and observed thus:.....

37. It is no doubt true that the legislature cannot sit over a judgment of this Court or so to speak overrule it. There cannot be any declaration of invalidating a judgment of the Court without altering the legal basis of the judgment – as a judgment is delivered with strict regard to the enactment as applicable at the relevant time. However, once the enactment itself stands corrected, the basic cause of adjudication stands altered and necessary effect follows the same. A legislative body is not supposed to be in possession of a heavenly wisdom so as to contemplate all possible exigencies of their enactment. As and when the legislature decides to solve a problem, it has multiple solutions on the table. At this stage, the Parliament exercises its legislative wisdom to shortlist the most desirable solution and enacts a law to that effect. It is in the nature of a 'trial and error' exercise and we must note that a law-making body, particularly in statutes of fiscal nature, is duly empowered to undertake such an exercise as long as the concern of legislative competence does not come into doubt. Upon the law coming into force, it becomes operative in the public domain and opens itself to any review under Part III as and when it is found to be plagued with infirmities. Upon being invalidated by the Court, the legislature is free to diagnose such law and alter the invalid elements thereof. In doing so, the legislature is not declaring the opinion of the Court to be invalid.

****

39. Reverting to the true effect of the reported judgment under consideration, it was rendered in light of general dispensation of autonomy of the assessee to follow cash or mercantile system of accounting prevailing at the relevant time, in absence of an express statutory provision to do so differently. It is an authority on the nature of the liability of leave encashment in terms of the earlier dispensation. In

absence of any such provision, the sole operative provision was Section 145(1) of the 1961 Act that allowed complete autonomy to the assessee to follow the mercantile system. Now a limited change has been brought about by the insertion of clause (f) in Section 43B and nothing more. It applies prospectively. Merely because a liability has been held to be a present liability qualifying for instant deduction in terms of the applicable provisions at the relevant time does not *ipso facto* signify that deduction against such liability cannot be regulated by a law made by Parliament prospectively. In matter of statutory deductions, it is open to the legislature to withdraw the same prospectively. In other words, once the Finance Act, 2001 was duly passed by the Parliament inserting clause (f) in Section 43B with prospective effect, the deduction against the liability of leave encashment stood regulated in the manner so prescribed. Be it noted that the amendment does not reverse the nature of the liability nor has it taken away the deduction as such. The liability of leave encashment continues to be a present liability as per the mercantile system of accounting. Further, the insertion of clause (f) has not extinguished the autonomy of the assessee to follow the mercantile system. It merely defers the benefit of deduction to be availed by the assessee for the purpose of computing his taxable income and links it to the date of actual payment thereof to the employee concerned. Thus, the only effect of the insertion of clause (f) is to regulate the stated deduction by putting it in a special provision.

40. Notably, this regulatory measure is in sync with other deductions specified in Section 43B, which are also present and accrued liabilities. To wit, the liability in lieu of tax, duty, cess, bonus, commission etc. also arise in the present as per the mercantile system, but 47candali used to defer payment thereof despite claiming deductions thereagainst under the guise of mercantile system of accounting. Resultantly, irrespective of the category of liability, such deductions were regulated by law under the aegis of Section 43B, keeping in mind the peculiar exigencies of fiscal affairs and underlying concerns of public revenue. A priori, merely because a certain liability has been declared to be a present liability by the Court as per the prevailing enactment, it does not follow that legislature is denuded of its power to correct the mischief with prospective effect, including to create a new liability, exempt an existing liability, create a deduction or subject an existing deduction to new regulatory measures. Strictly speaking, the Court cannot venture into hypothetical spheres while adjudging constitutionality of a duly enacted provision and unfounded limitations cannot be read into the process of judicial review. A priori, the plea that clause (f) has been enacted with the sole purpose to defeat the judgment of this Court is misconceived.

41. The position of law discussed above leaves no manner of doubt as regards the legitimacy of enacting clause (f). The respondents have neither made a case of non-existence of competence nor demonstrated any constitutional infirmity in clause (f).

42. In view of the clear legal position explicated above, this appeal deserves to be allowed. Accordingly, the impugned judgment of the Division Bench of the High Court is reversed and clause (f) in Section 43B of the 1961 Act is held to be constitutionally valid and operative for all purposes. No order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

13. Shivakumar & Ors. v. Sharanabasappa & Ors., 2020 SCC OnLine SC 385

Decided on – 24.04.2020

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

2. Hon'ble Mr. Justice Hemant Gupta

3. Hon'ble Mr. Justice Dinesh Maheshwari

Scope of remand under Order XLI Rule 23A of the CPC – "It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case."

Facts

By way of this appeal, the plaintiff-appellants challenged the judgment and decree dated 26.10.2007 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No. 910 of 2001 whereby, the High Court reversed the judgment and decree dated 12.09.2001 passed by the Court of Civil Judge (Senior Division), Koppal in Original Civil Suit No. 56 of 1994.

The civil suit aforesaid was filed by the plaintiff-appellants for declaration and injunction, essentially with the submissions that they had acquired ownership rights in the suit properties on the basis of a Will dated 20.05.1991 executed by the owner of the said properties Sri Sangappa son of Pampanna Shettar of Koppal; and that a trust created by the defendants on 28.05.1994, in the name "Shri Sangappa Pampanna Gadagshettar Trust, Koppal" in relation to the suit properties, was illegal, void and not binding on the plaintiffs. The contesting defendants i.e., defendant Nos. 1 to 5 refuted the claim so made by the plaintiffs while questioning the genuineness of the alleged Will dated 20.05.1991. The defendant No. 7, one of the erstwhile trustees of the said trust, however, admitted and endorsed the claim of the plaintiffs.

After framing necessary issues and after taking the oral and documentary evidence adduced by the parties, the Trial Court, in its judgment dated 12.09.2001, decided the principal issue relating to the said Will dated 20.05.1991 in favour of the plaintiffs and, while also returning its findings on other necessary issues in favour of the plaintiffs, proceeded to decree the suit with declaration that the trust created by the defendants on 28.05.1994 was not binding on the plaintiffs, particularly in relation to the suit properties; and that the plaintiffs were owners of the suit properties as claimed. The Trial Court also issued injunction against defendant Nos. 1 to 5 that they shall not interfere with the plaintiffs' peaceful possession and enjoyment of the suit properties.

The judgment and decree so passed by the Trial Court were questioned by the contesting defendants in the High Court by way of the said first appeal. The High Court, in its impugned judgment dated 26.10.2007 proceeded to allow the appeal while reversing the decision of Trial Court on the principal issue relating to the genuineness of the Will in question. The High Court found several unexplained suspicious circumstances as also discrepancies in the Will in question and held that the alleged Will dated 20.05.1991 was not a genuine document. Being aggrieved, the plaintiffs preferred the instant appeal.

Issues

9. In view of the submissions made, the following points essentially arise for determination in this case:

1. As to whether the High Court was right in reversing the decision of the Trial Court and in holding that the contested Will was not a genuine document?
2. As to whether the High Court ought to have considered remanding the case to the Trial Court?

Observations and Decision

WILL – PROOF AND SATISFACTION OF THE COURT

After referring to several judgments related to wills, the Hon'ble Court held as follows :-

11. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:—

1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.
2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.
3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.
4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.
5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion *et cetera* in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may

give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind.'

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder *et cetera* are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.

SUSPICIOUS CIRCUMSTANCES/FEATURES CONCERNING THE WILL IN QUESTION

19. When all the aforesaid abnormal, curious and rather mysterious circumstances are put together, the inescapable conclusion is that the document in question cannot be accepted as the last Will of the testator. The unexplained, unusual and abnormal features pertaining to the document only lead to the logical deduction that the document in question was prepared after the demise of the testator with use of blank signed papers that came in possession of the propounders and their associates. The High Court has stated such deduction after thorough examination of the material on record and, in our view, rightly so. It is noticed that all the features and factors indicated hereinabove are very much available on the face of the record. However, the Trial Court, even while dealing with several contentions in excessive details, either failed to notice some of the features indicated above or simply brushed aside the particular feature carrying abnormality with the observations to the effect that the propounders were not to be expected to remove the suspicions concerning the document when they had no role in its execution. The Trial Court having, obviously, misdirected itself on several of the key and pivotal factors, its decision could not have been approved.

20. Much emphasis is laid on behalf of the appellants on the submissions that execution of the Will in accordance with the requirements of Section 63 of the Succession Act and Section 68 of the Evidence Act has been duly established on record with the testimony of the attesting witnesses as also the witness with whom the Will along with the handwritten draft of the Will had been deposited by the testator. The submissions so made on behalf of the appellants cannot be accepted for the reason that

mere proof of the document in accordance with the requirements of Section 68 of the Evidence Act is not final and conclusive for acceptance of a document as a Will. When suspicious circumstances exist and the suspicions have not been removed, the document in question cannot be accepted as a Will.

23. Having dilated on various major features which, individually and cumulatively, lead only to the conclusion that the document in question cannot be accepted to be the last Will of late Shri Sangappa, it does not appear necessary to discuss several other shortcomings in the case of the plaintiffs, including various other factors like that the plaintiffs never took steps to get the statement of the said Swamiji recorded, who was otherwise referred to by all the material witnesses as being the person before whom the document was allegedly opened.

24. In our view, the document in question falls flat at the very first question indicated in the case of *H. Venkatachala Iyenger* (supra) that is, as to whether the testator signed the Will in question. The answer to this question is only in the negative. This is apart from the fact that the document in question, propounded as a Will, is non-compliant with the requirements of clause (b) of Section 63 of the Succession Act.

24.1. In the ultimate analysis, we are satisfied that the High Court was right in reversing the decision of the Trial Court and in holding that the contested Will was not a genuine document.

WHETHER REMAND WAS CALLED FOR

25. Taking up the other point for determination, the submission of learned counsel for the appellants that the High Court ought to have considered remanding the case by taking recourse to the provision contained in Order XLI Rule 23A CPC, in our view, remains totally bereft of substance; this submission has only been noted to be rejected.

25.1. The procedure relating to appeals from original decrees (usually referred to as 'regular first appeal') is provided in Order XLI of the Code of Civil Procedure, 1908 and therein, various provisions relating to hearing of an appeal, remand of case, remitting of issues for trial, production of additional evidence in Appellate Court etc. are contained in Rules 16 to 29 under the sub-heading *'Procedure on hearing'*.

.....

25.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.

25.4.1. The decision cited by the learned Counsel for the appellants in the case of *Mohan Kumar* (supra) is an apt illustration as to when the Appellate Court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in

respect of the land in question. The Trial Court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the Trial Court was not challenged by the defendants but as against the part of the decision of the Trial Court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the plaintiff-appellant had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to nonexamination of his vendor, the proper course for the High Court was to remand the case to the Trial Court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for re-trial was made out particularly when the Trial Court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where retrial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill- up the lacuna in its case.

25.5. It gets perforce reiterated that the occasion for remand would arise only when the factual findings of Trial Court are reversed and a re-trial is considered necessary by the Appellate Court.

25.6. The present case had clearly been the one where the parties had adduced all their evidence, whatever they wished to; and it had not been the case of the plaintiff-appellants that they were denied any opportunity to produce any particular evidence or if the trial was vitiated because of any alike reason. As noticed, there had been several suspicious circumstances surrounding the Will in question, some of which were noticed by the Trial Court but were brushed aside by it on untenable reasons. The High Court has meticulously examined the same evidence and the same circumstances and has come to a different conclusion that appears to be sound and plausible, and does not appear suffering from any infirmity. There was no reason or occasion for the High Court to consider remanding the case to the Trial Court. The contention in this regard is required to be, and is, rejected.

14. Nisha Priya Bhatia v. Union of India & Anr., 2020 SCC OnLine SC 394

Decided on – 24.04.2020

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

2. Hon'ble Mr. Justice Dinesh Maheshwari

Constitutional validity of Rule 135 of the RAW (Recruitment, Cadre and Services) Rules, 1975 was upheld and the expression "may" occurring in subRule (2) of Rule 135 was held to be read as "shall", for giving true effect to the object of the provision.

Issue

The case pertains to and emanates from the action of compulsory retirement of the appellant under Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 (for short, "the 1975 Rules") on the ground of "exposure".

Facts

On 22.2.1988, the appellant joined the Research & Analysis Wing (for short "the Organisation" or "the Department") as "Directly Recruited" under the Research & Analysis Service (RAS). She was assigned various portfolios during the term of service including the post of Director, Training Institute (Gurgaon) where she remained posted from 2.7.2004 to August, 2007. On 3.8.2007, the appellant was posted as Director at Headquarters in New Delhi. Whilst posted at Gurgaon and Delhi, the appellant had to interact with Shri Ashok Chaturvedi and Shri Sunil Uke respectively, who were working in the Organisation in various capacities at that time.

On 7.8.2007, the appellant filed a complaint of sexual harassment against Shri Ashok Chaturvedi, working as Secretary © – Incharge of the Organisation and Shri Sunil Uke, working as Joint Secretary in the Organisation at that time. The appellant alleged that the charged officers subjected her to harassment by asking her to join the sex racket running inside the Organisation for securing quicker promotions and upon refusal to oblige, she was subjected to persecution. Thus began the series of allegations regarding acts of commission and omission which culminated into litigation continuing upto the present batch of four cases.

The Organisation responded to the allegations of sexual harassment after a gap of almost three months by constituting a Complaints Committee in accordance with the guidelines laid down in *Vishaka* v. *State of Rajasthan* and appointed Ms. Shashi Prabha, a female officer in the Organisation, as Chairperson of a three-member Complaints Committee. The Complaints Committee so constituted did not consist of a "third party as a representative of an NGO or other body who is familiar with the issue of sexual harassment", as predicated by the guidelines given in *Vishaka* (supra). Resultantly, the Committee was re-constituted on

1.11.2007 with the addition of Dr. Tara Kartha, Director, National Security Council Secretariat (NSCS).

It is noteworthy that, despite multiple reminders, the appellant refused to participate in the stated proceedings before the Committee and cited the following reasons for such refusal:

3. Need to constitute the Departmental Committee as per *Vishakha* guidelines; and,

(ii) The committee had no mandate to proceed against Shri Ashok Chaturvedi, as Chairperson of the committee was not senior enough to inquire into allegations against him.

The departmental Complaints Committee, in its *ex-parte* report, concluded that no allegations of sexual harassment could be proved against Shri Sunil Uke. This report was followed by a 'widely reported' incident at the Prime Minister's Office (for short, "the PMO") where the appellant reportedly attempted to commit suicide on 19.8.2008. We are not required to dilate on the factual aspect of this incident at the PMO, but for the purpose of present litigation, suffice it to mention that due to this incident, the name and designation of the appellant was widely reported in the media. Further, the criminal case against the appellant evolving out of this incident came to be dropped vide order dated 21.9.2013 passed by the Metropolitan Magistrate, Patiala House Courts, New Delhi.

It was in the aftermath of this incident that another committee was constituted by the then Prime Minister under the Chairmanship of Ms. Rathi Vinay Jha, a retired officer of the Indian Administrative Service to look into the complaints against Shri Ashok Chaturvedi. The Committee dealt with two aspects of allegations against Shri Ashok Chaturvedi – firstly, allegation of not acting in accordance with the *Vishaka* (supra) Guidelines on receipt of the complaint of the appellant; secondly, allegations of actually indulging in acts falling within the ambit of sexual harassment. For, Rathi Vinay Jha Committee concluded the enquiry with the finding that no case of sexual harassment of the appellant at the hands of her colleagues was made out on the basis of evidence on record. However, the Committee recorded a series of crucial observations. The same shall be adverted to at an appropriate stage in the later part of this judgment.

Furthermore, in the aftermath of the above-mentioned incident at PMO, the Cabinet Secretariat, through the Press Information Bureau, released a press note dated 19.8.2008 carrying the title "*Fact Sheet on Suicide Attempt by Ms. Nisha Priya Bhatid*". This press note carried information pertaining to the incident, her complaints against her colleagues within the Department and the state of her mental health and psychological condition. It is pertinent to note that the observations regarding the disturbed mental state of the appellant were based on an 'informal opinion' sought by Secretary © from the Head of the Department of Psychiatry, All India Institute of Medical Sciences (AIIMS). Notably, this press note dated 19.8.2008 has been quashed by the Supreme Court in W.P. (Crl.) No. 24 of 2012, vide order dated 15.12.2014, as being in gross violation of human rights and individual dignity of the appellant.

The incident dated 19.8.2008 at the PMO had attracted immense media attention across national and international portals and culminated into a series of media reports whereby the appellant's identity, including her association with the Organisation, became a subject of public discourse. This incident acted as the pivot around which subsequent events of exposure took shape, eventually leading to the 'exposure' of the appellant within the ambit of Rule 135. In light of aforementioned developments, the appellant was declared as "exposed". This exposure, furthermore, led the respondents to declare the appellant as unemployable, having regard to the nature of work of the Organisation of which confidentiality and secrecy are inalienable elements.

The declaration of unemployability of the appellant due to exposure as an intelligence officer was made by way of an order of compulsory retirement dated 18.12.2009 passed under Rule 135 of the 1975 Rules. The appellant took exception to this order before the Tribunal in O.A. No. 50/2010 on the grounds of *mala fides* and manifest arbitrariness in the actions of the respondents.

After the decision of the Tribunal, the same was challenged before the High Court, where by an elaborate judgment, the decision of the Tribunal was reversed vide impugned judgment dated 7.1.2019 and the order of compulsory retirement issued under Rule 135 was upheld. The challenge to the constitutional validity of Rule 135 of the 1975 Rules was also examined and 55candali by the High Court.

Decision and Observations

30. The question is: whether the action taken under Rule 135 of the 1975 Rules is in the nature of penalty or a dismissal clothed as compulsory retirement so as to attract the safeguards under Article 311 of the Constitution? The real test for this examination is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct. In the present case, the appellant has been subjected to the order of compulsory retirement simpliciter, and no action in the nature of dismissal, removal or reduction in rank, as envisaged under Article 311, has been taken against the appellant. In *Saubhagchand M. Doshi* (supra), the distinction between an order of dismissal and that of compulsory retirement was expounded in the following terms:.....

32. In the light of the settled legal position governing compulsory retirement referred to above, let us embark upon the width of Rule 135 in order to address the challenge against it under Article 311 read with Article 14. The fundamental source of compulsorily retiring an employee is derived from the "doctrine of pleasure ", as accepted in India, which springs from Article 310 of the Constitution. Rule 135 merely sets out certain grounds to act as quintessence for taking such decision and the source of power vests in Article 309 read with Article 310 of the Constitution. Rule 135 has been carved out as a special provision and is premised on the doctrine of necessity. This stand alone provision forms a small subset of the genus of Article 309 and deals strictly with cases of "exposure" of "intelligence officers" who become unemployable in the Organisation for reasons of security. Sub-rule (1) of Rule 135 indicates that an order of compulsory retirement could be passed only on the exhaustive grounds specified therein, that is – exposure as an intelligence officer or his becoming unemployable in the Organisation due to reasons of security or disability/injuries received by an officer in the performance of his duties. Thus understood, the stipulation is objective, well-articulated and intelligible. Moreover, the stated reason(s) make it amply clear that Rule 135 covers situations, the existence of which would

have an adverse impact, direct or indirect, on the integrity of the Organisation if the officer is exposed as an intelligence officer and becomes unemployable in the Organisation for reasons of security. A priori, it would neither be a case of misconduct or inefficiency or the like so as to attract penal consequences. It is in no way a reflection on the employee regarding his conduct as such but solely on account of public interests in reference to the nature of sensitivity of operations undertaken by the Organisation. Therefore, the order under Rule 135 falls in line with the first proposition expounded in *Shyam Lal* (supra) and does not entail any charge, stigma or imputation against the appellant.

33. To recapitulate, Rule 135 envisages a certain chronology and gets triggered when an intelligence officer stands exposed or is rendered unemployable for reasons of (individual, 56candalizes56on or national) security. The expressions "exposure", "unemployability" and "security" constitute the key ingredients of this Rule and are to be understood in a chronological and natural order to discern their true essence and effect.

34. Further, it is pertinent to note that the grounds referred to in Rule 135 nowhere contemplate it as a consequence of any fault or wrongful action on the part of the officer and unlike penal actions, do not stigmatise the outgoing officer or involve loss of benefits already earned by him and there is no element of punishment. Sub-rules (2), (3) and (4) of Rule 135 reinforce this view as the same provide for appropriate benefits such as pension, gratuity, lump sum amount etc. for the public servant who has been subjected to compulsory retirement. Thus, the employee is not faced with any loss of benefits already earned. We say so because the examination of the characteristics of such a rule is not 56candal around the motive or underlying intent behind its enactment, rather, it lies in the consequence and effect of the operation of such a rule on the outgoing employee. The rule does not result into a deprivation of the retired employee of any benefit whatsoever in lieu of such order of compulsory retirement and thus, attracts no stigma or any civil consequence to the retired employee for his/her future. The invocation of this Rule, therefore, falls in sync with the second proposition in *Shyam Lal* (supra) which looks down upon any loss of profits in a non-stigmatic order of compulsory retirement. Succinctly put, a compulsory retirement without anything more does not attract Article 311(2). We may usefully refer to *Dalip Singh* v. *State of Punjab* and *Union of India* v. *Dulal Dutt* to bring home the stated position of law.

35. To concretize further, we now advert to the third limb of the dictum in *Shyam Lal* (supra) that necessitates the absence of any element of punishment in a just order of compulsory retirement. In order to undertake this examination, we deem it crucial to expound the true scheme and effect of rules governing the employees of the Organisation by making a brief reference to the decision in *Satyavir Singh* v. *Union of India*, wherein this Court upheld the dismissal of two employees of the Organisation on the grounds of misconduct, indiscipline, intimidation and insubordination under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short "CCS (CCA) Rules"), without holding any inquiry under Article 311 by virtue of the proviso attached to the Article. Thus, it becomes amply clear that, at par with other departments, in case of dismissal of an employee of this Organisation also, the CCS (CCA) Rules, coupled with the procedure under Article 311, could be and are expected to be ordinarily resorted to. Therefore, Rule 135 of the 1975 Rules has been enacted as a special provision dealing strictly with the non-penal domain of compulsory retirement and that too against intelligence officer under specific circumstances referred to in clauses (a) and (b) of sub-Rule (1) thereof. Whereas, the cases of dismissal/removal/reduction in rank or any other penal action of termination of service involving 56candalizes56on of the employee is separately covered by the CCS (CCA) Rules, as discussed above.

36. A priori, the irresistible conclusion is that the effect of any action taken under Rule 135 does not entail any penal consequence for the employee and, therefore, it cannot be put at the same pedestal as an action of dismissal or removal, and no inquiry or opportunity of hearing as envisaged

under Article 311 is required while taking an action under this Rule. Equally, it holds merit to note that mere loss of some future career prospects *per se* is no ground for invalidating an order of compulsory retirement as it may be in a given case an inevitable consequence of any such order. What needs to be delineated to attract the vice of invalidity to a statutory order is illegality, at least of a minimum standard to trigger the conscience of the Court. The exposition in *Shyam Lal* (supra) and *Saubhagchand M. Doshi* (supra) would squarely apply.

37. To put it differently, the action under Rule 135 is not governed by Article 311 nor it offends the same – as these two provisions operate in separate spheres and thus an action taken under the impugned Rule (Rule 135 of the 1975 Rules) need not be preceded by the safeguards provided under Article 311 of the Constitution as such. Since the action under Rule 135 is exclusive and is invoked in the specified situations in public interest in reference to the Organization and at the highest level by the head of the Government, the question of violation of Article 14 on account of the denial of equal protection of law does not arise. 38. Assailing the constitutionality of this Rule, the appellant has also contended that the non-application of this Rule to deputationists is discriminatory and falls foul of Article 14. The impugned judgment rejected this submission and observed thus:

.....

39. A deputationist is an employee who has been assigned to another department from his/her parent department. The law regarding employees on deputation is well settled. As regards the matter of disciplinary control, this Court, in *State of U.P.* v. *Ram Naresh Lal* has observed that a deputationist continues to be governed by the rules of his/her parent department and is deemed to be under the disciplinary control of his/her parent department unless absorbed permanently in the transferee department. In *Kunal Nanda* v. *Union of India*, it was further observed that the basic principle underlying deputation is that the person concerned can always and at any time be repatriated back to his parent department. By sending back the person to his parent department, any adverse effect on the Organisation (R&AW) including of reasons of security would be averted. Therefore, a deputationist stands on an altogether different footing than a direct recruit of the Organisation/Department who is exposed as an intelligence officer or his/her becoming unemployable in the Organisation for reasons of security. A deputationist can be repatriated back to his/her parent department and in cases of misconduct, necessary action can also be initiated against him/her as per the conditions of service governing his/her parent department. In that sense, a deputationist and a direct recruit are not *57canda sensu* similarly placed and thus the plea of differential treatment meted out to them is unavailable. It would not entail discrimination nor be violative of Article 14. Accordingly, we must negate the challenge to constitutional validity of Rule 135.

40. We also deem it necessary, at this juncture, to note that the mere fact of non-prescription of inquiry under Rule 135 of the 1975 Rules, before making the order of compulsory retirement, does not go against the constitutionality of the Rule. Additionally, the rule does not prohibit any inquiry and is in general line with the orders of compulsory retirement wherein the right of outgoing employee to participate in the process of formation of such decision is not envisaged in law, as the underlying basis of such action is the larger public interest and security of the Organisation; and not any culpable conduct of the employee. Moreover, Rule 135 incorporates a language that is self-guiding in nature. The usage of words “exposure” and “unemployability for reasons of security” are not insignificant, rather, they act as quintessential stimulants for the competent authority in passing such order. The mandatory determination of what amounts to an exposure or what renders an employee unemployable due to reasons of security under Rule 135, is both a pre-condition and safeguard, and incorporates within its fold the subjective satisfaction of the competent authority in that regard. In order to reach its own satisfaction, the authority is free to seek information from its own sources.

Thus, in cases when the ingredients of Rule 135 stand satisfied in light of the prevalent circumstances, the need for giving opportunity to the officer concerned by way of an inquiry is done away with because the underlying purpose of such inquiry is not the satisfaction of the principles of natural justice or of the concerned officer, rather, it is to enable the competent authority of the Organisation to satisfy itself in a subjective manner as regards the fitness of the case to invoke the rule. Therefore, the procedure underlying Rule 135 cannot be shackled by the rigidity of the principles of natural justice in larger public interest in reference to the structure of the Organisation in question, being a special Rule dealing with specified cases.

41. Reverting to the challenge in reference to Article 309, suffice it to observe that the 1975 Rules fall under the "conditions of service" governing the appellant and have been framed under the proviso to Article 309 of the Constitution. The phrase "conditions of service" is not a phrase of mathematical precision and is to be understood with its wide import. The natural, logical and grammatical meaning of the phrase "conditions of service" would encompass wide range of conditions relating to salary, time period of payment, pay scales, dearness allowance, suspension and even termination of service. The appellant's argument that since Article 311 covers the field of dismissal, removal and reduction in rank of an employee, it automatically implies the exclusion of these matters from Article 309, does not commend us.

44. Let us now address the next ground of challenge against Rule 135 of the 1975 Rules, that is – the expressions "security" and "exposure" used in Rule 135 are of wide import and their usage attracts the vice of vagueness and arbitrariness to the Rule. The appellant has relied upon the prior-quoted extract of *Kartar Singh* (supra) to set up this challenge on the ground of vagueness.

45. It is a settled principle of interpretation of statutes that the words used in a statute are to be understood in the light of that particular statute and not in isolation thereto. The expression used in Rule 135 is "security", as distinguished from the more commonly used expression "security of the State" used in Article 311. This deliberate widening of the expression by the enacting body points towards the inclusive intent behind the expression. The word "security" emanates from the word "secure" which, as per the Law Lexicon, means to put something beyond hazard. It is understood that the exposure of an intelligence officer could be hazardous not only for the Organisation but also for the officer concerned and the expression "security", therefore, is to be understood as securing the Organisational and individual interests beyond hazard and squarely covers the security of the Organisation as well as the security of the State. Similarly, the expression "exposure" refers to the revelation of the identity of an intelligence officer as such to the public, in a manner that renders such officer unemployable for the Organisation for reasons of security.

46. It is noteworthy that in Indian constitutional jurisprudence, a duly enacted law cannot be struck down on the mere ground of vagueness unless such vagueness transcends in the realm of arbitrariness.....

Constitutional compensation for violation of right to life

101. It is, therefore, not in dispute that the petitioner's complaints of sexual harassment were met with incidents showcasing procedural ignorance and casual attitude of her seniors in the department. We also note that, as regards the press note dated 19.8.2008, this Court had taken strong exception to the unwarranted attacks on her psychological status and quashed the note in its entirety vide order dated 15.12.2014 for being violative of the petitioner's dignity, reputation and privacy. Despite such terse finding regarding violation of fundamental rights, no relief of compensation was given to the petitioner and presumably not pursued by her at that time.

102. The scheme of the 2013 Act, Vishaka Guidelines and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) predicates that a non-hostile working environment is the basic limb of a dignified employment. The approach of law as regards the cases of sexual harassment at workplace is not confined to cases of actual commission of acts of harassment, but also covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace. Taking any other view would defeat the purpose of the law. A priori, when inaction or procrastination (intentionally or otherwise) is meted out in response to the attempt of setting the legal machinery in motion, what is put to peril is not just the individual cries for the assistance of law but also the foundational tenets of a society governed by the rule of law, thereby threatening the larger public interests. The denial of timely inquiry and by a competent forum, inevitably results in denial of justice and violation of fundamental right. The factual matrix of the present case is replete with lack of sensitivity on the part of Secretary © qua the complaint of sexual harassment. To wit, time taken to process the stated complaint and improper constitution of the first Complaints Committee (intended or unintended) in violation of the Vishaka Guidelines, constitute an appalling conglomeration of undignified treatment and violation of the fundamental rights of the petitioner, more particularly Articles 14 and 21 of the Constitution.

103. This Court has, over the course of time, evolved the judicial policy of remedying grave violations of the right to life by providing compensation in monetary terms, apart from other reliefs. In S. *Nambi Narayanan* v. *Siby Mathews*, this Court exercised its power to invoke the public law remedy for grant of compensation for the violation of the right to life by observing that life itself commands self-respect. It observed thus:—

> "40 ..... The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy "

Regard may also be had to *Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee)* v. *State of Orissa* and *Rudul Sah* v. *State of Bihar*.

104. In the present case, the petitioner had faced exceedingly insensitive and undignified circumstances due to improper handling of her complaint of sexual harassment. Regardless of the outcome of the inquiry into the stated complaint, the fundamental rights of the petitioner had been clearly impinged. Taking overall view of the circumstances, we consider this to be a fit case to award compensation to the petitioner for the stated violation of her right to life and dignity, quantified at Rs.1,00,000/- (Rupees one lakh only). Had it been a case of allegations in the stated complaint of the petitioner been substantiated in the duly conducted inquiry (which the petitioner had failed to do), it would have been still worst and accentuated violation of her fundamental rights warranting suitable (higher) compensation amount. Be that as it may, the compensation amount specified hereinabove be paid to the petitioner directly or be deposited in the Registry of this Court and in either case, within six weeks from today.

15. Kanwal Tanuj v. State of Bihar & Ors., 2020 SCC OnLine SC 395

Decided on – 24.04.2020

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

2. Hon'ble Mr. Justice Dinesh Maheshwari

The proviso in the notification[4] must operate limited to cases or offences which have been committed within the territory of the State of Bihar. If the specified offence is committed outside the State of Bihar, as in this case in Delhi, the State police will have no jurisdiction to investigate such offence and for which reason seeking consent of the State to investigate the same would not arise. In our opinion, the stated proviso will have no application to the offence in question and thus the Delhi special police force/DSPE (CBI) must be held to be competent to register the FIR at Delhi and also to investigate the same without the consent of the State.

Issue

Whether the proviso in the stated notification dated 19.2.1996 would come in the way of the officials of DSPE to register FIR and carry on investigation of specified offences committed within the Union Territory (National Capital Territory of Delhi), to which the 1946 Act applies?

Decision and Observations

15. The consequence of establishing a special police force under Section 2 is to empower the members of the said police force to exercise all the powers, duties, privileges and liabilities throughout the Union Territory in relation to the investigation of specified offences, which police officers of that Union Territory have in connection with the investigation of offences committed therein. By virtue of sub-Section (3) of Section 2 of the 1946 Act, any member of the said establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in any Union Territory any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders, be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station. Resultantly, specified offences committed within the Union Territories are required to be investigated exclusively by the special police force constituted for that purpose.

[4] Notification dated 19.02.1996 issued by Govt. of Bihar, passed in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1945. The proviso reads as follows :-
Provided that where public servants employed in connection with the affairs of the Government of Bihar and persons employed in connection with the affairs of any local authority subject to the control of the Government of Bihar or any corporation, company or Bank owned or controlled by the Government of Bihar or any institution receiving or having received any financial aid from the Government of Bihar are concerned in offences referred to in items a(i) to (iii) and (b) above, the prior consent of the State Government shall be obtained for the investigation of any such offence by the Delhi Special Police Establishment.

16. The purport of Section 5 of the 1946 Act is to enable the Central Government to extend the powers and jurisdiction of members of the DSPE for the investigation of any offence or class of offences specified in the notification under Section 3, in a State not being a Union Territory. Such extension of powers and jurisdiction of members of the special police force becomes necessary in respect of specified offences "committed outside the jurisdiction of the Union Territory" referred to in Sections 2 and 3 of the 1946 Act. However, in keeping with the federal structure of the Constitution which is fundamental to the Constitution, consent of such a State has been made essential, as predicated in Section 6 of the 1946 Act.....

Such a consent may not be necessary regarding the investigation by the special police force (DSPE) in respect of specified offences committed within Union Territory and other offences associated therewith. That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from State Government, as the case may be. Taking any other view would require the special police force to comply with the formality of taking consent for investigation even in relation to specified offence committed within Union Territory, from the concerned State merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or employed in connection with the affairs of that State. Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and the special police force has been constituted with a special purpose for investigation of specified offences committed within the Union Territory, in terms of notification issued under Section 3 of the 1946 Act.

21. In any case, the respondent-State having granted general consent in terms of Section 6 of the 1946 Act vide notification dated 19.2.1996, it is not open to it to argue to the contrary. The respondent-State cannot be allowed to approbate and reprobate.

22. Indeed, the said notification contains a proviso, which predicates that if any public servant employed in connection with the affairs of the Government of Bihar is concerned in offences being investigated by the special police force pursuant to the notification, prior consent of the State Government *qua* him shall be obtained. This proviso must operate limited to cases or offences which have been committed within the territory of the State of Bihar. If the specified offence is committed outside the State of Bihar, as in this case in Delhi, the State police will have no jurisdiction to investigate such offence and for which reason seeking consent of the State to investigate the same would not arise. In our opinion, the stated proviso will have no application to the offence in question and thus the Delhi special police force/DSPE (CBI) must be held to be competent to register the FIR at Delhi and also to investigate the same without the consent of the State.

23. Even otherwise, the proviso has the effect of differentiating and classifying offenders differently for treatment thereunder, including investigation of offences and prosecution for offences on the basis of being public servant employed in connection with the affairs of the Government of Bihar. The power bestowed on special police force in terms of Sections 2 and 3 of the 1946 Act cannot be undermined by an executive instruction in the form of proviso. Dealing with a similar challenge to a statutory provision – Section 6A of the Act, the Constitution Bench of this Court in *Subramanian Swamy* (supra) held that sub-Section (1) thereof was invalid and violative of Article 14 of the Constitution. .....

The thrust of this exposition is that every person committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The discrimination or differentiation must be founded on pertinent and real differences as distinguished

from irrelevant and artificial ones. In paragraph 70, the Court went on to observe that every public servant against whom there is a reasonable suspicion of commission of a crime or there are allegations of an offence under the PC Act has to be treated equally and similarly under law.

24. Suffice it to observe that the proviso contained in the stated notification dated 19.2.1996 cannot be the basis to disempower the special police force/DSPE (CBI) from registering the offence committed at Delhi to defraud the Government of India undertaking (BRBCL) and siphoning of its funds and having its registered office at Delhi. Allegedly, the stated offence has been committed at Delhi. If so, the Delhi Courts will have jurisdiction to take cognizance thereof. The State police (State of Bihar) cannot investigate the specified offences committed and accomplished at Delhi, being outside the territory of the State of Bihar. It must follow that the consent of the State of Bihar to investigate such offence is not required in law and for which reason, the special police force would be competent to carry on the investigation thereof even if one of the accused allegedly involved in the commission of stated offence happens to be resident of the State of Bihar or employed in connection with the affairs of the Government of Bihar and allegedly committed associated offences in that capacity. In other words, consent of the State under Section 6 cannot come in the way or constrict the jurisdiction of the special police force constituted under Section 2 to investigate specified offences under Section 3 of the 1946 Act committed within the Union Territories. Indeed, when the Court of competent jurisdiction proceeds to take cognizance of offence and particularly against the appellant, it may consider the question of necessity of a prior sanction of the State of Bihar *qua* its official(s) as may be required by law. That question can be considered on its own merits in accordance with law.

25. For the view that we have taken, it may not be necessary for us to analyse the decisions relied upon by the parties, which in our opinion, do not pertain to the question under consideration regarding the effect of the proviso contained in the notification dated 19.2.1996.

26. In view of the above, this appeal must fail and the same is accordingly dismissed. Pending interlocutory applications, if any, shall also stand disposed of.

16. Re: Vijay Kurle and Ors, 2020 SCC OnLine SC 407

Decided on – 27.04.2020

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

2. Hon'ble Mr. Justice Aniruddha Bose

"Healthy and constructive criticism of the judgments cannot amount to contempt of Court. However, if the allegations 63candal go beyond the ambit of criticism and 63candalize the Court then there can be no manner of doubt that such utterances or written words would amount to contempt of Court.When the ability, integrity and dignity of the Judges are questioned, this is an attack on the institution. It is an attack on the majesty of law and lowers the impression of the Courts in the public eye".

Facts

A Bench of the Hon'ble Supreme Court while dealing with Suo Motu Contempt Petition (Criminal) No. 1 of 2019 took note of a letter dated 23.03.2019 received by the office of the Judges of the Bench on 25.03.2019. This was a copy of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society to the President of India, Chief Justice of India and the Chief Justice of the Bombay High Court. In the said letter, reference was made to two complaints – one made by the Indian Bar Association, dated 20.03.2019 through alleged contemnor no. 1, Shri Vijay Kurle, State President of Maharashtra and Goa of the Indian Bar Association, and the second complaint dated 19.03.2019 made by alleged contemnor no. 2, Shri Rashid Khan Pathan, National Secretary of the Human Rights Security Council. It was mentioned that these complaints have not only been sent to the President of India and the Chief Justice of India but also have been circulated in the social media and the complaints were attached as Annexures-1 and 2 to the said letter. The Bench took note of the letter and the complaints attached to the said letter and specifically noted the prayers made in both the complaints and found that both the complaints are substantially similar. The Bench on noting the allegations made in the complaints was of the view that scandalous allegations have been made against the members of the said Bench and, therefore, notice was issued to Shri Vijay Kurle, alleged contemnor no. 1, Shri Rashid Khan Pathan, alleged contemnor no. 2, Shri Nilesh Ojha, alleged contemnor no. 3 and Shri Mathews Nedumpara, alleged contemnor no. 4.

Decision and Observations

Powers of the Supreme Court

After referring to the provisions of Articles 129 and 142 of the Constitution along with the judgments of the Supreme Court, the Hon'ble Court held as follows :-

> **31.** In view of the above discussion we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the constitutional powers to deal with the contempt. Section

15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt – (i) *suo motu* (ii) on the motion by the Advocate General/Attorney General/Solicitor General and (iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General. As far as *suo motu* petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court.

Whether these proceedings can be termed suo motu?

33. The next contention of the alleged contemnors is that the proceedings in the present case are not *suo motu* proceedings and, therefore, should not have been entertained without the consent of the Attorney General or Solicitor General. The alleged contemnors have placed strong reliance on the judgment of this Court in the case of *Biman Basu* v. *Kallol Guha Thakurta*[11] The issue in that case was whether the High Court had issued notice of contempt *suo motu*. In our view, that judgment has no applicability here. The facts of that case were that a contempt petition was filed by the respondents (in the Supreme Court) alleging that the appellant (in the Supreme Court) had made deliberate and 64candal derogatory, defamatory and filthy statements against a Judge of the Calcutta High Court. .....

37. As pointed out above, in the present case the Bombay Bar Association and the Bombay Incorporated Law Society have never been shown as petitioners. The letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society is not addressed to this Court to initiate contempt proceedings. The letters were addressed to the President of India, the Chief Justice of India and the Chief Justice of the High Court of Bombay and the prayer made therein was that the complaints by the Indian Bar Association and Human Rights Security Council should be rejected. There is no prayer for initiating contempt proceedings. These letters were placed in the office of the Judges of this Court and after taking note of the averments made therein they decided to issue notice of contempt. This is nothing but a *suo motu* action on reading the complaints and the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society and hence this cannot be termed to be a contempt petition requiring the consent of the Attorney General.

Judge in their own Cause

39. It is true that the Chief Justice is the master of the roster and in normal course a matter can be listed before a Bench only on the basis of orders issued by the Chief Justice. However, here the situation is totally different. The Bench was already dealing with Suo Motu Contempt Petition (Crl.) No. 1 of 2019. The letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was placed before the Bench. Along with this letter the complaints filed by Shri Vijay Kurle and Shri Rashid Khan Pathan were annexed. The Bench took *suo motu* notice of the allegations made in these two complaints and directed that contempt proceedings be initiated. Thereafter, in accordance with the principles of natural justice and also the principle that the Chief Justice is the master of the roster the Bench directed that the matter may be listed before the Chief Justice for placing it before the appropriate Bench. The Chief Justice, though no doubt, master of the roster, is first amongst the equals and every Judge of the Supreme Court is as much part of this Court as Hon'ble the Chief Justice. The Judges of this Court can exercise their powers under Article 129 of the Constitution which is a constitutional power 64candalizes by any rules or convention to the

contrary. Even so, the Bench in deference to the principle of master of the roster, after taking cognizance of the scandalous allegations made in the complaints of the alleged contemnors and issuing notice to them directed that the matter be placed before Hon'ble the Chief Justice for listing before an appropriate Bench. This, in our view, is the proper procedure. If an article, letter or any writing or even something visual circulating in electronic, print or social media or in any other forum is brought to the notice of any Judge of this Court which *prima facie* shows that the allegation is contemptuous or 65candalizes the court then that Judge can definitely issue notice and thereafter place it before Hon'ble the Chief Justice for listing it before an appropriate Bench.

40. As observed above, the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society was addressed to the President of India, the Chief Justice of this Court, and the Chief Justice of the High Court of Bombay. Presumably, it must have been the Office of the Chief Justice which sent the letters to the Bench. In any event, that will not have any bearing on this case. We are clearly of the view that the Bench was fully justified in taking note of the letter sent by the Bombay Bar Association and the President of the Bombay Incorporated Law Society and the documents annexed thereto which included the complaints sent by Shri Vijay Kurle and Shri Rashid Khan Pathan. After issuing notice the bench directed that the matter be placed before Hon'ble the Chief Justice for placing before the appropriate bench. This is valid and proper procedure and the bench did not act as judge in their own cause. Only notice was issued and thereafter the matter was assigned to this bench.

Freedom to criticize

44. Before dealing with these allegations it would be apposite to set out the law with regard to fair criticism of the judgments of the Court. There can be no manner of doubt that every citizen is entitled to criticise the judgments of this Court and Article 19 of the Constitution which guarantees the right of free speech to every citizen of the country must be given the exalted status which it deserves. However, at the same time, we must remember that clause (2) of Article 19 of the Constitution also makes it clear that the right to freedom of speech is subject to existing laws for imposing reasonable restrictions as far as such law relates to contempt of Court. This right of freedom of speech is made subject to the laws of contempt which would not only include Contempt of Courts Act but also the powers of the Supreme Court to punish for contempt under Article 129 and 142(2) of the Constitution. Similar powers are vested with the High Courts.

45. The purpose of having a law of contempt is not to prevent fair criticism but to ensure that the respect and confidence which the people of this country repose in the judicial system is not undermined in any manner whatsoever. If the confidence of the citizenry in the institution of justice is shattered then not only the judiciary, but democracy itself will be under threat. Contempt powers have been very sparingly used by the Courts and rightly so. The shoulders of this Court are broad enough to withstand criticism, even criticism which may transcend the parameters of fair criticism. However, if the criticism is made in a concerted manner to lower the majesty of the institution of the Courts and with a view to tarnish the image, not only of the Judges, but also the Courts, then if such attempts are not checked the results will be disastrous. Section 5 of the Contempt of Courts Act itself provides that publishing of any fair comment on the merits of any case which has been heard and finally decided does not amount to contempt.

46. In *Dr. D.C. Saxena* v. *Hon'ble the Chief Justice of India*[14] after referring to a large number of judgments to which we need not refer, this Court held that though freedom of speech is an essential part of democracy, it is equally necessary for society to regulate such freedom of speech or expression in terms of the exceptions to Article 19 of the Constitution. *Bonafide* criticism of any institution including the judiciary is always welcome. Healthy and constructive criticism of the judgments cannot

amount to contempt of Court. However, if the allegations 66candal go beyond the ambit of criticism and 66candalize the Court then there can be no manner of doubt that such utterances or written words would amount to contempt of Court. This Court *In Re: Arundhati Roy*[15] while dealing with Section 2 of the Act held as follows:

.....

48. There can be no manner of doubt that any citizen of the country can 66candaliz the judgments delivered by any Court including this Court. However, no party has the right to attribute motives to a Judge or to question the *bona fides* of the Judge or to raise questions with regard to the competence of the Judge. Judges are part and parcel of the justice delivery system. By and large Judges are reluctant to take action under contempt laws when a personal attack is made on them. However, when there is a concerted attack by members of the Bar who profess to be the members of an organization having a large following, then the Court cannot shut its eyes to the slanderous and scandalous allegations made. If such allegations which have not only been communicated to the President of India and the Chief Justice of India, but also widely circulated on social media are permitted to remain unchallenged then the public will lose faith not only in those particular Judges but also in the entire justice delivery system and this definitely affects the majesty of law.

86. We have already extracted large portions of the letters. Both the letters on their face are totally contemptuous in nature. No litigant has a right to attribute motives to a Judge. No litigant has a right to question the integrity of a Judge. No litigant has a right to even question the ability of a Judge. When the ability, integrity and dignity of the Judges are questioned, this is an attack on the institution. It is an attack on the majesty of law and lowers the impression of the Courts in the public eye. The allegations in the complaints are scurrilous and scandalous. Shri Vijay Kurle and Shri Rashid Khan Pathan do not deny that they have sent these letters. They, in fact, justify the sending of these letters. There is not even a word of regret in any of the affidavits filed by them.

90. No doubt, any citizen can comment or 66candaliz the judgment of this Court. However, that citizen must have some standing or knowledge before challenging the ability, capability, knowledge, honesty, integrity, and impartiality of a Judge of the highest court of the land. We are informed that Shri Vijay Kurle has hardly 7 years standing at the Bar. His complaint is full of mistakes and he has not even cared to check the spelling of the name of the Judge who he claims has no knowledge of law. His professional credentials are not known and we fail to understand how can he adorn the robes of a Judge to pass judgment on the Judges of the highest court, that too by using highly intemperate language and language which casts a doubt not only on the ability of the Judges but 66candalizes the Court and lowers the dignity and reputation of this Court in the eyes of the general public. These sort of scandalous allegations have to be dealt with sternly and nipped in the bud. As far as Shri Rashid Khan Pathan is concerned, he professes to be the National Secretary of an NGO. Other than that, it does not even appear that he is a lawyer. What was the public interest in raking up issues with regard to a litigation which had no element of public interest? It deals mainly with quashing of the proceedings initiated by the Bombay High Court against a party under Section 340 of the CrPC. There is no explanation as to what the case of *Aarish Asgar Qureshi* (supra) has got to do with this case. It is not as if somebody has been put behind bars or the human rights of any person had been violated. Shri Rashid Khan Pathan is basically waging a war against the Members of the Bench and against this Court at the instance of Shri Nilesh Ojha, if not Shri Nedumpara because in his complaint he states that Shri Nilesh Ojha was the lawyer for the respondent before the Court and could be the only person who could have supplied the material to Shri Rashid Khan Pathan.

Defence of Truth

95. Though not so much in the oral arguments but in the written arguments the alleged contemnors have also raised the plea of truth as a defence. Truth as a defence is available to any person charged with contempt of Court. However, on going through all the written arguments and the pleadings, other than saying that the Judges had misinterpreted the judgments of this Court or had ignored them or that Justice R.F. Nariman was biased, there is no material placed on record to support this defence. The allegations are also scurrilous and scandalous and such allegations cannot be permitted to be made against the Judges of highest Court of the country.

96. Keeping in view the aforesaid discussion, we hold all three alleged contemnors i.e. Shri Vijay Kurle, Shri Rashid Khan Pathan, and Shri Nilesh Ojha, guilty of contempt.

97. We place on record our appreciation for the valuable assistance rendered by Shri Siddharth Luthra, amicus curiae. We also reject all the baseless allegations levelled against him by the contemnors.

98. The matter be now listed on 01.05.2020 for hearing the contemnors on the issue of sentence, through video conferencing.

17. State of Gujarat v. Mansukhbhai Kanjibhai Shah, 2020 SCC OnLine SC 412

Decided on – 27.04.2020

Bench : - 1. Hon'ble Mr. Justice N.V.Ramana

2. Hon'ble Mr. Mohan M. Shantanagoudar

3. Hon'ble Mr. Justice Ajay Rastogi

A "deemed university" is included within the ambit of the term university" under Section 2(c) (xi) of the PC Act

Facts

An FIR was filed by one Dr. Jasminaben, wife of Dilipbhai Devda, before the Vadodara City A.C.B. Police Station against four accused persons including the present respondent. Broadly, the allegations were that the complainant's elder daughter was admitted to the MBBS Course in the above-mentioned Deemed University in the year 2012. Her daughter's course fee was completely paid up as per the annual fee slab. In the year 2017, her elder daughter while filling up her final examination form, was asked to meet the respondent herein. On meeting, the respondent, in conspiracy with others, had communicated that the complainant's husband had to further pay Rupees Twenty Lakhs for allowing the complainant's daughter to take the examination. Further, it is alleged that the accused-respondent had communicated that they can deposit a cheque and the same would be returned on payment of cash, considering that demonetization had recently taken place. In lieu of the same, cheques were deposited with the accused-respondent herein. Thereafter, the complainant, who was unwilling to pay the amount, filed the FIR.

After following the necessary procedure, phenolphthalein powder was applied to the currency notes and were delivered to accused Vinod alias Bharatbhai Savant (the alleged companion/agent of respondent through whom the demand was facilitated). Thereafter, accused Vinod confirmed the receipt of money to the respondent over the telephone. The aforesaid incriminating conversation stood intercepted in an audio video camera set up by the complainant. Further, separate raids were conducted whereupon several undated cheques drawn in the name of the institution worth more than Rs. 100 crores and certain fixed deposits were recovered.

The chargesheet came to be filed against several accused persons, including the present respondent for various offences under Sections 7, 8, 10 and 13 (1)(b) and 13(2) of the Prevention of Corruption Act, 1988 ***[hereinafter referred to of the*** 'PC Act'] read with Section 109 of Indian Penal Code, 1860 ***[hereinafter referred to of the*** 'IPC'].

The respondent herein filed a discharge application under Section 227 of CrPC before the District and Sessions Court. The District and Sessions Court rejected the application.

Aggrieved by the rejection of the aforesaid application, the respondent herein filed a criminal revision application before the High Court of Gujarat, at Ahmedabad. The High Court, by the impugned judgment and order dated 02.02.2018, allowed the revision and discharged the accused-respondent herein.

Aggrieved by the impugned order, the State of Gujarat was in appeal before the Supreme Court.

Issues

(i) Whether the respondent-trustee is a 'public servant' covered under Section 2(c) of the PC Act?

(ii) Whether the accused-respondent can be discharged under Section 227 of CrPC?

Decision and Observations

Issue 1

20. Simply speaking, any person, who is a Vice-Chancellor, any member of any governing body, professor, reader, lecturer, any other teacher or employee, by whatever designation called, of any University, is said to be a public servant. Further, the definition ***inter alia,*** covers any person whose services have been availed of by a University, or any other public authority in connection with holding or conducting examinations.

21. However, the interpretative necessity arises in this case due to the fact that the ambit of the term 'University', as occurring under Section 2(c)(xi) of the PC Act, has not been clearly defined and the question arises as to whether the same covers 'deemed to be University' as well. In this regard, we need to observe certain ground rules on interpretation, concerning the PC Act.

22. There is no gainsaying that nations are built upon trust. It is inevitable that in a democracy one needs to rely on those with power and influence and to trust them of being transparent and fair. There is no doubt that any action which is driven by the selfinterest of these powerful individuals, rather than the public interest, destroys that trust. Where this becomes the norm, democracy, the economy and the rule of law, all take a beating, ultimately putting the whole nation at risk. Corrupt societies often spring from the examples set at the highest levels of government, but small-scale corruption can be equally insidious. In this regard, the PC Act was formulated to bring about transparency and honesty in public life, as indicated by its objects and reasons. We need to keep the aforesaid legislative intention in mind while interpreting the provisions of the PC Act.

****

24. The golden rule of interpretation for any penal legislation is to interpret the same strictly, unless any constitutional considerations are involved, and in cases of ambiguity, the benefit of the same should enure in favour of the accused. Having said so, we need to clarify that strict interpretation does not necessarily mean literal interpretation in all cases, rather the interpretation should have regards to the genuine import of the words, taken in their usual sense [refer *Commissioner of Customs (Import), Mumbai* v. *Dilip Kumar & Company*, (2018) 9 SCC 1].

25. However, we are concerned herein with interpreting the provisions of the PC Act. There is no dispute that corruption in India is pervasive. Its impact on the nation is more pronounced, due to

the fact that India is still a developing economy. Presently, it can be stated that corruption in India has become an issue which affects all walks of life. In this context, we must state that although anti-corruption laws are fairly stringent in India, the percolation and enforcement of the same are sometimes criticized as being ineffective. Due to this, the constitutional aspirations of economic and social justice are sacrificed on a daily basis. It is in the above context that we need to resolve the issues concerned herein.

****

30. The counsel for the respondent has contended that the term "University" needs to be read in accordance with the Section 2(f), 3 and 23 of the UGC Act, wherein a "deemed University" is different from a "University", ***stricto sensu.*** However, we do not subscribe to such contention for the reasons provided below.

31. The contention of the respondent is that the term "University" needs to be read in accordance with the UGC Act, wherein only those Universities covered under the Section 2(f) of the UGC Act are covered under the PC Act. Such an interpretation, by importing the technical definition under a different Act may not be feasible herein. It is a settled law that technical definitions under one statute should not be imported to another statute which is not ***in pari materia*** with the first. The UGC Act and the PC Act are enactments which are completely distinct in their purpose, operation and object. The preamble of the UGC Act states that it is ***'an Act to make provision for the co-ordination and determination of standards in Universities, and for that purpose, to establish a University Grants Commission***'. On the other hand, the PC Act is an enactment meant to curb the social evil of corruption in the country. As such, the extension of technical definitions used under one Act to the other might not be appropriate, as the two Acts are not ***in pari materia*** with one another.

(emphasis in original)

****

34. On a perusal of Section 2(c) of the PC Act, we may observe that the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him/her. In this regard, the legislative intention was to not provide an exhaustive list of authorities which are covered, rather a general definition of 'public servant' is provided thereunder. This provides an important internal evidence as to the definition of the term "University".

35. The use of 'any' is critical in our understanding as to the term University. We are aware of the line of authorities, wherein this Court has reduced the impact of term 'any' to not mean 'every' [See *Hira Devi* v. *District Board, Shahjahanpur*, (1952) S.C.R. 1122]. However, we cannot accept such a view as the context in which the present dispute emanates, differs from the above.

****

44. As discussed earlier, the object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, as rightly submitted by the learned senior counsel for the appellant-State, it cannot be stated that a "Deemed University" and the officials therein, perform any less or any different a public duty, than those performed by a University simpliciter, and the officials therein.

45. Therefore, for all the above reasons, we are of the opinion that the High Court was incorrect in holding that a "Deemed University" is excluded from the ambit of the term "University" under Section 2(c)(xi) of the PC Act.

Issue 2

54. At this stage, we may note that the jurisdiction of this Court, with regards to Section 227 of CrPC, is limited and should not be excercised by conducting roving enquiries on the aspect of factual inferences. This Court, in *Union of India* v. *Prafulla Kumar Samal*, (1979) 3 SCC 4, had an occasion to consider the scope of Section 227 CrPC and it held as under:

.....

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

****

56. Therefore, in line with the aforesaid proposition, this case is not an appropriate one to have exercised the power under Section 227 to discharge the accused-respondent herein, having regards to the facts and circumstances of the case. However, it should be noted that this judgment is rendered for a limited purpose, and we have not expressed any opinion on the merits of the case. The trial court is directed to proceed with the case expeditiously.

18. CTO v. M/S Bombay Machinery Store, 2020 SCC OnLine SC 415

Decided on – 27.04.2020

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

2. Hon'ble Mr. Justice Aniruddha Bose

On a plain reading of the statute, the movement of the goods, for the purposes of clause (b) of Section 3 of the Central Excise Act would terminate only when delivery is taken, having regard to first explanation to that Section. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practice. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

Facts

The dispute relating to the other three appeals are not identical, but the question of law is the same in all these appeals. Civil Appeal No. 2217 of 2011, was treated as the lead case by the Hon'ble Court, where the period of assessment was 1995-96. The respondent-assessee Bombay Machinery Store had purchased electricity motors and its parts in the said financial year out of the State and sold them to purchasers within the Kota region of the State of Rajasthan. For such sales, they obtained the benefit of exemption under Section 6(2) of the 1956 Act[5]. These goods had remained with the transport company upon arrival in Kota for

[5] "**3. When is a sale or purchase of goods said to take place in the course of interstate trade or commerce**. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1 — Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2 — Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

Explanation 3 - Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

6. Liability to tax on inter-State sales.— [(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette,

appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales [of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.]

[(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.]

[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,—

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made—

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent. (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

[(3) Notwithstanding anything contained in this Act, if—

(a) any official or personnel of—

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of clause (a), purchases any goods for himself or for the purposes of such mission, United Nations or other body, then, the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act."

more than a month. Revenue's case is that after importing these goods into Rajasthan, sale was effected through bilty (transport receipt) on obtaining separate orders. Such sale, it is the revenue's case, constituted sale within the State and hence taxable @12% per annum under the Rajasthan Sales Tax Act, 1954. Civil Appeal No. 2220 of 2011 relates to the same firm but for the assessment year 1994-95. Quantum of sales for the year 1994-95 effected through the same process was Rs. 3,15,639/- and for 1995-96 it was Rs. 2,60,93/-. Claim of benefit under Section 6(2) of the 1956 Act was rejected and tax along with interest and penalty was imposed under the State Act by Commercial Tax Officer, Anti-Evasion Circle-I, Kota after a survey by two orders, both dated 11th December, 1997. The appeals by Bombay Machinery Stores were allowed by the Deputy Commissioner (Appeals), Commercial Taxes, Kota following a decision delivered on 8th March, 1996 by the Rajasthan Tax Board in the case of *CTO* v. *Bhagwandas & Sons* (1996 Tax World 107). The orders of the first appellate authority were passed on interpretation of the first explanation to Section 3B(1) of the 1956 Act. Imposition of tax, interest and penalty under the State Act was quashed. In State Tax authority's appeal before the Tax Board, reliance was placed on two circulars issued by the Commissioner bearing S.No. 1132A: CCT Circular F.11(3)CST/Tax/CCT/1/61 dated 15th April, 1998, clarified by a further circular dated 19th July, 1999. The Board did not take into consideration these two circulars. These were not referred to in the orders of the Tax Assessment Officer. The Board sustained the view of the Deputy Commissioner (Appeals) in a composite order.

This order was challenged by the revenue by filing two revision petitions before the High Court, as two appeals were disposed of by the Board by its order dated 24.11.2004. The High Court, in the judgment delivered on 14th September, 2007 confirmed the Board's order and quashed two circulars bearing S.No. 115B dated 16th September, 1997 and S.No. 1132A dated 15th April, 1998. These circulars sought to impose a time limit on retention of goods in the carrier's godown, beyond which time the revenue was to treat obtaining of constructive delivery of the goods involved. That judgment was under appeal before the Supreme Court.

Decision and Observations

9. We, accordingly, shall test the revenue's case including the question of legality of the said two circulars in the context of the provisions of Sections 3 and 6 of the 1956 Act. The respondent in this case had taken benefit of sub-section (2) on the ground that this was a case involving inter-state sale and the sale took place by way of transfer of documents of title of such goods during their movement from one State to another. It is also the respondents' case that the requisite forms and certificates were duly furnished pertaining to such sales. On the part of the State, barring retention of the goods in the transporters' godown at the destination point for a long period of time, default on no other count by the assesses has been asserted.

---

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

10. In the two appeals in which the respondent is Bombay Machinery Stores, sales pertained to financial years before the circulars came into subsistence. In these instances of sales, the Commercial Tax officer in the respective orders treated retention of goods beyond 30 days in the transporters' godown as the cut-off period. After that date, the assessee was deemed to have had taken constructive delivery of goods and sale beyond that period within the State of Rajasthan was held to be local sales and subjected to sales tax under the State Law. Same reasoning was followed in the respective orders of the tax authorities forming subject-matters of two appeals involving Unicolour Chemicals Company. The Tax Board, while deciding the issue in favour of revenue, referred to the aforesaid two circulars in upholding the concept of constructive delivery.

11. As per the aforesaid circulars, retention of goods by the transporter beyond the time stipulated therein (being 30 days as per the later circular) would imply that constructive delivery of the goods has been made by the transporter to the consignee. In such a situation, the transit status of the goods would stand terminated and the deeming provision in first explanation to Section 3 of the 1956 Act conceiving the time-point of delivery as termination of movement shall cease to operate.

12. In this set of appeals we have already indicated that transfer of documents of title were effected subsequent to the goods reaching the location within destination State. But when the goods are delivered to a carrier for transmission, first explanation to Section 3 of the 1956 Act specifies that movement of the goods would be deemed to commence at the time when goods are delivered to a carrier and shall terminate at the time when delivery is taken from such carrier. The said provision does not qualify the term 'delivery' with any timeframe within which such delivery shall have to take place. In such circumstances fixing of timeframe by order of the Tax Administration of the State in our opinion would be impermissible.

13. Before the High Court, the revenue authorities has relied on Section 51 of the Sale of Goods Act, 1930 (hereinafter referred to as the "1930 Act"). But the said provision also does not aid or assist the revenue. Section 51 of the 1930 Act reads:—

> "**51. Duration of transit**.—.....

14. Sub-clause (1) of the said provision specifies when the goods shall be deemed to be in course of transit and sub-clause (3) thereof lays down the conditions for termination of transit. That condition is an acknowledgment to the buyer or his agent by the carrier that he holds the goods on his behalf. There is no material to suggest such an acknowledgment was made by the independent transporter in these appeals. In such circumstances we do not think the decision of the High Court requires any interference.

15. In the case of *Arjan Dass Gupta* (supra) principle akin to constructive delivery was expounded and we have quoted the relevant passage from that decision earlier in this judgment. In our opinion, however, such construction would not be proper to interpret the provisions of Section 3 of the 1956 Act. A legal fiction is created in first explanation to that Section. That fiction is that the movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier. There is no concept of constructive delivery either express or implied in the said provision. On a plain reading of the statute, the movement of the goods, for the purposes of clause (b) of Section 3 of the 1956 Act would terminate only when delivery is taken, having regard to first explanation to that Section. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. The legislature has eschewed from giving the said word an expansive meaning. The High Court under the judgment which is assailed in Civil Appeal No. 2217 of 2011 rightly held that there is no place for any intendment in taxing statutes. We are of the view that the interpretation of the Division Bench of the Delhi High Court given in the case

of *Arjan Dass Gupta* does not lays down correct position of law. In the event, the authorities felt any assessee or dealer was taking unintended benefit under the aforesaid provisions of the 1956 Act, then the proper course would be legislative amendment. The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

16. For these reasons, we do not want to interfere with the judgments of the High Court in these four appeals. The appeals are dismissed. Any connected applications shall also stand disposed of.

There shall be no order as to costs.

19. Vodafone Idea Ltd. v. Assistant CIT, 2020 SCC OnLine SC 418

Decided on – 29.04.2020

Bench : - 1. Hon'ble Mr. Justice U.U.Lalit

2. Hon'ble Mr. Justice Vineet Saran

Interpretation of Section 143 of the Income Tax Act after the amendment through the Finance Act of 2012

Facts

The appellant-Vodafone Idea Ltd. (earlier known as Vodafone Mobile Services Ltd or VMSL for short) is engaged in providing telecommunication services in different circles.

a) By amalgamation which came into effect on 01.04.2011, four group entities: Vodafone Cellular Ltd., Vodafone Digilink Ltd., Vodafone East Ltd. and Vodafone South Ltd. got merged in VMSL.

b) By second scheme of amalgamation, two other group entities: Vodafone Spacetel Ltd. and Vodafone West Ltd. got merged in VMSL w.e.f. 01.04.2012.

c) While the proceedings in the instant case were pending, by scheme of arrangement[2] between VMSL and Idea Cellular Ltd. Vodafone Idea Ltd. - the resultant company assumed all the rights and liabilities of the amalgamating/transferor companies.

Most of the factual developments in the matter, as set out hereafter, were before said scheme of arrangement.

For AY 2014-15, the appellant filed Income Tax Return (ITR, for short) on 30.09.2014 claiming refund of Rs.1532.09 Crores. On 31.08.2015, a notice under Section 143(2) of the Act[4] was issued to the appellant in respect of AY 2014-15. On 01.11.2015, the appellant filed ITR for AY 2015-16 claiming refund of Rs.1355.51 Crores. A notice under Section 143(2) of the Act was issued by the Department on 16.03.2016 in respect of AY 2015-16. A revised return was filed by the appellant on 31.03.2016 in respect of AY 2014-15. The appellant entered into an Advanced Pricing Agreement with the CBDT[5] under Section 92 CC of the Act. Thereafter, further revised return was filed on 25.11.2016 for AY 2015-16 and a modified return in terms of Section 92 CD of the Act was filed by the appellant on 22.02.2017 for AY 2014-15.

For AY 2016-17, the appellant filed ITR on 30.11.2016 claiming refund of Rs.1128.47 Crores. A notice under Section 143(2) of the Act was issued to the appellant on 03.07.2017 for AY 2016-17.

For AY 2017-18, ITR was filed by the appellant on 25.11.2017 claiming refund of Rs.743 Crores.

Submitting that there was complete inaction on part of the respondents in processing the ITRs filed by the appellant and in issuing appropriate refund to the appellant, Writ Petition was filed by the appellant in the High Court.

On 03.07.2018, the respondent No. 1 filed an affidavit in reply submitting inter alia that the ITRs of the appellant raised multiple issues like Transfer Pricing Adjustment, Capitalization of Licence Fees, 3G Spectrum Fees, Asset Restoration Cost Obligation including the effect of amalgamation of group entities which required thorough scrutiny and determination.

In the meantime, on 13.07.2018 a revised return was filed by the appellant for AY 2017-18 claiming refund of Rs. 744.94 Crores. A notice under Section 143(2) of the Act was issued to the appellant on 10.08.2018 for AY 2017-18.

On 31.08.2018, VMSL merged with Idea Cellular Ltd. and the resultant company was named Vodafone Idea Ltd.

By its judgment and order dated 14.12.2018, the High Court dismissed said Writ Petition.

On 27.12.2018 and 31.12.2018, Draft Assessment Orders in terms of Section 144 C of the Act were passed for AY 2014-15 and AY 2015-16 respectively.

Therefore, the present SLP was filed.

Submissions by the Parties

6. It was submitted by the appellant:

"In the facts of the present case, admittedly, for AYs 2014-15 to 2016-17 (for which provisions of Section 143(1D) of the Act are relevant), the Respondent has neither processed the return of income for the said years by the last date, viz. 31.03.2018 nor did the Respondent exercise the discretion provided under Section 143(1D) of the Act by that. As per the Respondents' own submission, such discretion under Section 143(1D) of the Act was only exercised vide letter/order dated 23.07.2018, which admittedly is beyond the limitation period.

Therefore, the exercise of such discretion, having been made beyond limitation is a nullity in the eyes of law and, hence, no cognizance can be taken of such a letter/order.

Insofar as the Assessment Year 2017-18 is concerned, the Respondents during the course of arguments, before this Hon'ble Court have admitted that order dated 23.07.2018 was without jurisdiction because on that date, neither the return of income was processed, nor a notice under Section 143(2) issued, warranting exercise of powers under Section 241A of the Act. On that ground alone, the Impugned Order insofar as Assessment Year 2017-18 is concerned should be set aside and the refund claimed for that year should be granted with interest.....

Having admitted that the Order dated 23.07.2018 was without jurisdiction, the Respondent set up an alternate case that the time limit for processing the return of income expires on 31.03.2020 and, therefore, the proceedings for AY 2017-18 are inchoate and no direction may be issued for that year. When it was pointed out that processing has already been completed vide intimation dated 09.04.2019, the Respondent changed its stand and argued that a letter dated 14.03.2019 was issued after filing of the counter affidavit before this Hon'ble Court on 06.03.2019, seeking to again exercise

powers under Section 241A of the Act. Admittedly, as per the e-filing portal of the Income Tax Department, and the intimation produced by the Respondent before this Hon'ble Court on 08.01.2020, the processing of the return for AY 201718 was completed only on 09.04.2019 and, therefore, the alleged exercise of power under Section 241A on 14.03.2019 is without jurisdiction since it suffered from the same vice as the Order dated 23.07.2018, i.e. refunds could not have been withheld under Section 241A prior to processing of the return of income.....

Without prejudice to the submission that the Order dated 23.07.2018 issued for the AYs 2014-15 to 201617 was without jurisdiction, having been issued beyond limitation and the Orders dated 23.07.2018 and 14.03.2019 invoking jurisdiction under Section 241A of the Act for the AY 2017-18 have no sanctity of law since the sine qua non for invoking that Section, i.e. processing of return was completed on 09.04.2019, even on merits, neither the Order dated 23.07.2018 nor the order dated 14.03.2019 disclose any grounds on which powers under Section 143(1D) or Section 241A of the Act could have been invoked."

7. The respondents submitted:

"On merits, it is submitted that if the AO issued a Notice u/s 143(2) within the time limit i.e. 6 months from the end of the financial year in which return was filed, then there is no longer a requirement to process the return under Section 143(1). That being the position of law laid down by the Hon'ble Supreme Court, the discretion under Section 143(1D) can be exercised at any point prior to the passing of the final assessment order.

The entire objective of not processing a return after issuance of a scrutiny notice is that in cases where there is a likelihood of substantial demands, there should not be a compulsion on the Revenue to issue refunds. There is no anomaly in the above legislative scheme which warrants dilution of the non-obstante clause and to read into Section 143(1D) a limitation which the legislature has not prescribed.....

It is well settled that a non-obstante clause is a legislative device which is employed to give overriding effect to some or all contrary provisions and as such, the operation of a non-obstante clause cannot be limited in any manner and must be given its full effect.....

The High Court at para 44 has categorically held that since Section 143(1D) begins with a non-obstante clause, it will overbear/override the second proviso to Section 143(1) which contains a limitation period of one year for precession of return.

Without prejudice to the submission that the merits of the order dated 23.07.2018 as well as order dated 14.03.2019 has never been assailed by the Petitioner before any forum, nor any arguments advance during the hearing before the High Court and that the same cannot be raised for the first time before this Hon'ble Court in an SLP, it is submitted that the AO had withheld refund in all these years for cogent and valid reasons, in the interest of the revenue, subject to final scrutiny assessment proceedings. It is submitted that the scope of judicial review against such an order where the AO has exercised his discretion would be limited and any interference can only be done if such an exercise of power is either wholly capricious or without any valid reasons."

Decision and Observations

12. Clause (a) of sub-section (1) of Section 143 has six sub-clauses specifying the kinds of adjustments which are required to be made for computing the total income or loss. Such adjustments are in the nature of *"arithmetical error in the return";* incorrect claim *"apparent from any information in the return";* disallowance of loss if the return of the previous year with respect to which such loss is claimed was furnished *"beyond the due date";* disallowance of expenditure

indicated in the audit report if it has *"not taken into account in computing the total income"*; disallowance of deductions specified in sub-clause if the *"return is furnished beyond the due date";* and addition of income as specified in sub-clause (vi) if it was not *"included in computing the total income"*. All these features deal with matters which are apparent from the return and the inconsistency is evident on the face of it. Upon causing such adjustments after due intimation or notice to the assessee, the element of tax, interest and fee is to be computed in terms of clause (b). Thereafter, in terms of clause (c), due credit to the amount of tax paid and any relief that is allowable is to be given and the net amount payable or to be refunded, is to be computed. The intimation to be generated under clause (d) is on the basis of such exercise and if any refund is due, the same has to be granted in terms of clause (e). Thus, at every stage in sub-section (1) the return submitted by the assessee forms the foundation, with respect to which, if any of the inconsistencies referred to in various sub-clauses of clause (a) are found, appropriate adjustments are to be made.

On the other hand, the exercise of power under sub-section (2) of Section 143 of the Act, leading to the passing of an order sub-section (3) thereof, is to be undertaken, where it is considered necessary or expedient to ensure that the assessee:

- has not understated the income, or
- has not computed excessive loss, or
- has not under-paid the tax in any manner.

The issuance of notice and consequent proceedings are premised on any of the aforesaid three postulates. In other words, the return filed by the assessee itself calls for or requires a further probe and deeper consideration. The guiding principle is to ensure that the income is not under-stated or the loss is not over-stated, or the tax is not under paid in any manner. Upon issuance of notice, the assessee is entitled to produce evidence in support of his case. After hearing the assessee and considering the evidence so produced, by an order in writing, assessment of total income or loss is to be made.

13. The nature of exercise of power under sub-section (1) as against that under sub-sections (2) and (3) is thus completely different. In the former case, the matter is processed, only to check whether any apparent inconsistencies are evident on the face of the return and connected material which may call for any adjustment while in the latter case, the matter is scrutinized after taking into account such evidence as the assessee may produce. The exercise in the latter case is to ensure that there is no understating of income or overstating of loss or underpayment of the tax in any manner. In other words, the veracity of the return is checked threadbare rather than considering mere apparent ainconsistencies from the return. Thus, the nature of power under these two provisions, as found by this Court in *CIT* v. *Gujarat Electricity Board*[6] continues to bear the same distinction.

The power under sub-section (1) of Section 143 of the Act is summary in nature designed to cause adjustments which are apparent from the return while that under sub-sections (2) and (3) is to scrutinize the return and cause deeper probe to arrive at the correct determination of the liability of the assessee.

14. The exercise of power under Sub-sections (2) and (3) of Section 143 of the Act is thus premised on non-acceptance of what is evident from the return itself and to ensure that there is no avoidance of tax in any manner. The dimension of such power is far greater and deeper than mere adjustments to be made in respect of what is available from the return. Once such scrutiny is undertaken and proceedings are initiated by issuance of a notice under sub-section (2) of Section 143, it would be anomalous and incongruent that while such proceedings so initiated are pending, the return be processed under sub-section (1) of Section 143, which may in a given case, entail payment of

refund. Logically, the outcome of the exercise initiated through notice under sub-section (2) of Section 143, must determine whether any refund is due and payable. If the return itself is under probe and scrutiny, such return cannot be the foundation to sustain a claim for refund till such scrutiny is not complete. Considering the nature of power exercisable under these two limbs of Section 143, the inescapable conclusion is that the processing of return under sub-section (1) of Section 143 must await the further exercise of power of scrutiny assessment under sub-sections (2) and (3) of Section 143. If the power under sub-section (2) of Section 143 of the Act is initiated in a manner known to law, there cannot be any insistence that the processing under sub-section (1) of Section 143 be completed and refund be made before the scrutiny pursuant to notice under sub-section (2) of Section 143 is over.

15. The aforestated conclusion is fortified and strengthened by clear stipulation to that effect in sub-section (1D) of Section 143. Irrespective of some change in the text of said provision which was sought to be introduced by Finance Act 2016 and not accepted by Finance Act, 2017, the legislative intent is clear from the expression, "... the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)" and by use of non-obstante clause. Though the period for which it would not be necessary to process the return was sought to be specified by Finance Act, 2016, mere absence of such period in the provision as it stands today, makes no difference. The above quoted portion from the provision and use of non-obstante clause indicate with sufficient clarity the intent of the Parliament that in cases where notice under sub-section (2) is issued and proceedings are initiated, the processing of a return under sub-section (1) shall not be necessary.

16. The expression "shall not be necessary" is used in various statutes and even in the Constitution of India. This expression is used in the first proviso to Article 311(2) and in proviso to Article 320(3) of the Constitution of India. Some of the cases in which similar expression occurring in statutes was taken into account and effect was given to its plain language are:—

i) Proviso to Section 63(3) of the Motor Vehicles Act, 1939 - in *Mohd. Ibrahim* v. *The State Transport Appellate Tribunal, Madras.*[8]

ii) Order XXX Rule 4 of the Code of Civil Procedure in *Sohanlal* v. *Amir Chand and sons*[9], *Upper India Cable Co.* v. *Bal Kishan*[10] and in *Brij Kishore Sharma* v. *Ram Singh and sons*[11].

iii) Proviso to Section 68 of the Indian Evidence Act, 1872 - in *Rasammal Issetheerammal Fernandez etc.* v. *Joosa Mariyam Fernandez*[12].

As against the general principle which mandates an action in a particular manner, when an exception is to be carved out, the relevant provisions stipulate "it shall not be necessary" to adhere to and follow the manner mandated by such general principle; and if the contingency contemplated by such exception arises, the general principle is to stand overridden.

17. The intent to have the general principle emanating from subsection (1) of Section 143 overridden, in case where the proceedings are initiated pursuant to notice under sub-section (2) of the Act, gets more pronounced and emphasized by use of non-obstante clause in sub-section (1D). Recently, while dealing with non-obstante clause in Section 26(1) of the Provincial Small Cause Courts Act, 1887 this Court observed in *Vaishali Abhimanyu Joshi* v. *Nanasaheb Gopal Joshi*[13] as under:

.....

18. In the premises, we hold that in respect of Assessment Years ending on 31st March 2017 or before, if a notice was issued in conformity with the requirements stated in sub-section (2) of Section

143 of the Act, it shall not be necessary to process the refund under subsection (1) of Section 143 of the Act and that the requirement to process the return shall stand overridden.

19. We must now deal with the issue whether any intimation is required to be given to the assessee that because of initiation of proceedings pursuant to notice under sub-section (2) of Section 143 of the Act processing of return in terms of sub-section (1) of Section 143 of the Act, would stand deferred. The processing of return in terms of subsection (1A) of Section 143 of the Act is to be done through centralized processing and as stated earlier, the scope of processing under subsection (1) of Section 143 of the Act is purely summary in character. Once deeper scrutiny is undertaken and the matter is being considered from the perspective whether there is any avoidance of tax in any manner, issuance of notice under sub-section (2) itself is sufficient indication. Sub-section (1D) of Section 143 of the Act does not contemplate either issuance of any such intimation or further application of mind that the processing must be kept in abeyance. It would not, therefore, be proper to read into said provision the requirement to send a separate intimation. In our view, issuance of notice under sub-section (2) of Section 143 is enough to trigger the required consequence. Any other intimation is neither contemplated by the statute nor would it achieve any purpose.

20. Consequently, the submission that the intimation dated 23.07.2018 must be held to be invalid, *inter alia* on the ground that it was issued well after the period within which the return was required to be processed under sub-section (1) of Section 143 of the Act, must be rejected.

21. However, insofar as returns filed in respect of assessment year commencing on or after the 1st April, 2017, a different regime has been contemplated by the Parliament. Section 241-A of the Act requires a separate recording of satisfaction on part of the Assessing Officer that having regard to the fact that a notice has been issued under sub-section (2) of Section 143, the grant of refund is likely to adversely affect the revenue; whereafter, with the previous approval of the Principal Commissioner or Commissioner and for reasons to be recorded in writing, the refund can be withheld.

Since the statute now envisages exercise of power of withholding of refund in a particular manner, it goes without saying that for assessment year commencing after 01.04.2017 the requirements of Section 241-A of the Act must be satisfied.

22. We will, therefore, have to see whether insofar as AY 2017-18 is concerned, the order dated 14.03.2019 satisfies the required statutory parameters or not.

In terms of second proviso to sub-section (1) of Section 143 of the Act, the required intimation under said sub-section must be given before the expiry of one year from the end of the financial year in which the return is made. In respect of AY 2017-18, the return having been filed on 25.11.2017, period available in terms of said second proviso was upto 31.03.2019, without taking into account the fact that revised return was filed on 13.07.2018.

In the present case, the exercise of power on 14.03.2019 was not only after issuance of notice under sub-section (2) of Section 143 and after recording due satisfaction in terms of Section 241-A of the Act, but was also well within the period contemplated by sub-section (1) of Section 143 of the Act for causing due intimation.

Whether the satisfaction recorded in terms of said Section 241-A of the Act was otherwise correct or not and whether case for withholding of refund was made out or not, are not the issues that arise for our consideration. For the present purposes, whether exercise of power is facially in conformity with the statutory provisions is the issue and we are satisfied that there is nothing in the exercise of power that led to the passing of the order dated 14.03.2019 which could be said to have violated any statutory requirements.

23. Insofar as AY 2014-15 is concerned, final assessment order passed under Section 143(3) of the Act indicates that the appellant is entitled to refund of Rs.733 Crores; while for AY 2015-16 there is a demand of Rs.582 Crores. During the course of hearing, it was suggested on behalf of the respondents that demands in respect of earlier assessment years including the liability as a result of order dated 28.12.2019 as referred to in para 5.1 hereinabove being outstanding, the respondents would be entitled to invoke the requisite power under Section 245 of the Act to set off the amount of refund payable in respect of AY 2014-15 against tax remaining payable.

Since the requisite action is not even initiated, we say nothing in that respect. In the premises, we direct that the amount of Rs.733 Crores shall be refunded to the appellant within four weeks from today subject to any proceedings that the Revenue may deem appropriate to initiate in accordance with law. We also direct the respondents to conclude the proceedings initiated pursuant to notice under sub-section (2) of Section 143 of the Act in respect of AY 2016-17 and 2017-18 as early as possible.

24. Except for the directions as indicated above, we see no merit in any of the contentions advanced by the appellant. This appeal is, therefore, dismissed without any order as to costs.

20. Quippo Construction Equipment Limited v. Janardan Nirman Pvt. Limited, 2020 SCC OnLine SC 419

Decided on – 29.04.2020

Bench : - 1. Hon'ble Mr. Justice U.U.Lalit

2. Hon'ble Mr. Justice Vineet Saran

If a party fails to participate in the proceedings before the Arbitrator and does not raise any submission that the Arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the party must be deemed to have waived all such objections.

Issue

16. In the circumstances, it is clear that:—

(i) Though each of the four agreements provided for arbitration, the award rendered by the Arbitrator was a common award; and

(ii) In one of the agreements the venue was stated to be Kolkata and yet the proceedings were conducted at Delhi;

However, at no stage, the aforesaid objections were raised by the respondent before the Arbitrator and the respondent let the arbitral proceedings conclude and culminate in an ex-parte award. Therefore, the question that arises is whether the respondent could be said to have waived the right to raise any of the aforesaid objections.

Decision and Observations

After referring to the provisions of Sections 4 (**Waiver of right to object**), 16 (Competence of arbitral tribunal to rule on its jurisdiction) and 20 (**Place of arbitration**) of the Arbitration and Conciliation Act, the Hon'ble Court held as follows:-

> **20.** While dealing with a case where instead of an odd number of Arbitrators, as is contemplated under Section 10 of the Act, the parties had agreed to arbitration of two Arbitrators and where objection in that behalf was not taken before the Arbitrators, a three Judge Bench of this Court in *Narayan Prasad Lohia* v. *Nikunj Kumar Lohia*[6] considered the amplitude and applicability of Section 4 of the Act.
>
> .....
>
> **21.** In *Duro Felguera*[7] the submission that for convenience of either side the original contract was split into five different contracts and as such there ought to be a composite reference to arbitration covering all the contracts was not accepted by this Court. It was found by this Court:—

[6] (2002) 3 SCC 572.
[7] (2017) 9 SCC 729.

> "42 The case in hand stands entirely on different footing. As discussed earlier, all five different packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the terms and conditions of the Original Package No. 4 TR nor on the MoU, which is intended to have clarity in execution of the work."

Incidentally, it was a case of *International Commercial Arbitration* and in each of those agreements the seat of Arbitration was at Hyderabad. Moreover, the matter had arisen from an arbitration petition preferred under Section 11(6) of the Act.

22. In the present case the arbitration in question is a domestic and an institutional arbitration where CIAA was empowered to and did nominate the Arbitrator. It is not as if there were completely different mechanisms for appointment of Arbitrator in each of the agreements. The only distinction is that according to one of the agreements the venue was to be at Kolkata. The specification of "place of arbitration" may have special significance in an International Commercial Arbitration, where the "place of arbitration" may determine which curial law would apply. However, in the present case, the applicable substantive as well as curial law would be the same.

23. It was possible for the respondent to raise submissions that arbitration pertaining to each of the agreements be considered and dealt with separately. It was also possible for him to contend that in respect of the agreement where the venue was agreed to be at Kolkata, the arbitration proceedings be conducted accordingly. Considering the facts that the respondent failed to participate in the proceedings before the Arbitrator and did not raise any submission that the Arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections.

24. In the circumstances, the respondent is now precluded from raising any submission or objection as to the venue of arbitration, the conclusion drawn by the Court at Alipore while dismissing Miscellaneous Case No.298 of 2015 was quite correct and did not call for any interference. The High Court, in our view, was in error in setting aside said Order. In any case, the fact that the cause title showed that the present appellant was otherwise amenable to the jurisdiction of the Alipore Court, could not be the decisive or determining criteria.

25. We, therefore, allow this appeal, set aside the Judgment and Order under appeal and restore the Order dated 13.08.2018 passed by the Court at Alipore in Miscellaneous Case No. 298 of 2015. No costs.

21. *Dinesh Kumar Gupta & Ors. v. High Court of Judicature of Rajasthan & Ors., 2020 SCC OnLine SC 420*

Decided on – 29.04.2020

Bench : - 1. Hon'ble Mr. Justice U.U.Lalit

2. Hon'ble Mr. Justice Vineet Saran

The reckonable date, for the purposes of seniority, has to be the date when substantive appointment is made and not from the date of the initial ad-hoc appointment or promotion.

Facts

A] Writ Petition (Civil) No. 936 of 2018 filed by four petitioners, prays for appropriate directions that after the promulgation of Rajasthan Judicial Service Rules, 2010 ("2010 Rules", for short), all appointments ought to be in conformity with 2010 Rules and allocation of seniority must be in accordance with the Cyclic Order provided in Schedule VII to 2010 Rules. In terms of 2010 Rules, posts in the cadre of District Judges in the Higher Judicial Service in State of Rajasthan were required to be filled up in accordance with quota of 50% for Promotees, 25% for Direct Recruits and 25% by way of Limited Competitive Examination ("LCE", for short) in keeping with law laid down by this Court in *AH India Judges Association* v. *Union of India*. This Writ Petition filed by candidates who were successful in LCE prays that they be allocated seniority in terms of the Cyclic Order in Schedule VII. In this group fall Writ Petition (Civil) No. 498 of 2018 and Writ Petition Diary No. 13252 of 2019 which pray that the *inter se* seniority between candidates who were successful in LCE must be determined on the basis of their merit in LCE and not by their erstwhile seniority.

B] Writ Petition (Civil) No. 967 of 2018 has been filed by 37 Direct Recruits challenging the Provisional Seniority List dated 16.08.2017 with regard to the cadre of District Judges in the Higher Judicial Service in the State, on the ground that the appointments made after 2010 Rules had come into effect, ought to be in accordance with the Cyclic Order; and the *inter se* seniority and placement of Direct Recruits and Promotees, promoted after 2010 Rules had come into effect must be in accordance with 2010 Rules.

C] Writ Petition (Civil) No. 1471 of 2018 has been filed by Rajasthan Judicial Service Officers Association ("the Association", for short) seeking benefit of ad-hoc/officiating service put in by Promotees who were promoted on ad-hoc basis as Fast Track Court Judges and also prays for re-determination of vacancies of Direct Recruits submitting that the vacancies earmarked for Direct Recruits were in excess of their quota. Writ Petition (C) Nos. 464 of 2019, 895 of 2019, 897 of 2019, 899 of 2019 and 1008 of 2018 are filed by Judicial Officers seeking similar benefit in respect of ad- hoc/officiating service as Fast

Track Court Judges in the State and pray that such candidates be placed above the Direct Recruits in the cadre of District Judges in the State.

Issues

38. In the backdrop of the facts and circumstances on record and the submissions of all the learned Counsel, following questions arise for our consideration:—

(A) Whether the judicial officers promoted on ad-hoc basis as Additional District and Sessions Judges to man the Fast Track Courts in the State and who were substantively appointed to the Cadre of the District Judge, are entitled to seniority from the date of their initial ad-hoc promotion?

(B) Whether the selection process initiated in terms of the Notification dated 31.03.2011 can be said to be in continuation of the process initiated under Notification dated 15.04.2010?

(C) Whether the substantive promotion granted to the 47 Judicial Officers must be taken to be part of the same selection process pursuant to the Notification dated 31.03.2011 and whether the 47 Judicial Officers could be placed en-bloc senior to the candidates selected in said selection process initiated pursuant to the Notification dated 31.03.2011, without applying the Cyclic Order in terms of 2010 Rules?

(D) Whether the *inter se* placement of candidates selected to the Cadre of District Judge in the State through Limited Competitive Examination, in the seniority list must be based on their merit in said examination or should it be based on their initial seniority in the erstwhile cadre?

(E) Whether the Report dated 15.03.2019 and the consequential Final Seniority List, otherwise calls for any modification or correction?

Decision and Observations

39. As regards question No. (A), the law on the point is well settled and though learned Counsel advanced submissions based on various decisions of this Court and the principles emanating therefrom, the following decisions in the context of ad-hoc appointments as Additional District and Sessions Judges to man Fast Track Courts in the country, are sufficient to address the issue.

.....

The decisions in *Debabrata Dash*[8], and *V. Venkata Prasad*[9] were in the context where serving Judicial Officers were granted ad-hoc promotions as Fast Track Court Judges, while in *C. Yamini*[10] the members of the Bar were appointed as Fast Track Court Judges and these decisions thus completely conclude the issue. As has been held in said decisions, the reckonable date has to be the date when substantive appointment is made and not from the date of the initial ad-hoc appointment or promotion. Question (A) is, therefore, answered in the negative.

40. As regards Question No.(B), it is relevant to note that the Notification dated 15.04.2010 had invited application for filling up 36 vacancies by Direct Recruitments and 22 vacancies by Promotion through LCE. This was preceded by determination of vacancies through Notification dated

[8] (2013) 3 SCC 658.
[9] (2016) 11 SCC 656.
[10] (2019) 10 SCALE 834.

31.03.2010. After the process initiated in terms of said Notification dated 15.04.2010 was cancelled, a fresh determination of the vacancies was undertaken and the Notification dated 31.03.2011 now found vacancies for Direct Recruitments, for Promotion through LCE and for Regular Promotion at 37, 32 and 24 respectively. Thus, the vacancies which became available post the Notification dated 15.04.2010 were also taken into account. The Report dated 15.03.2019 shows that some of the selected candidates in the process pursuant to the Notification dated 31.03.2011 had not even participated in the earlier process of 2010. In the premises, if the submission that the process initiated under the Notification dated 31.03.2011 must be held to be in continuation of the earlier selection of 2010 is accepted, it would amount to conferring undue advantages upon persons who either had not participated in the process of 2010 or who were not even eligible in 2010. The Report dated 15.03.2019, therefore, correctly appreciated the fact situation on record and concluded that it would not be in continuation of the earlier process.

41. As regards Question No.(C), it must be noted that as on the date when 2010 Rules came into effect, the Additional District and Sessions Judges manning the Fast Track Courts had rendered service in ad-hoc capacity for almost 07 years. The question whether they be granted promotion on Regular Basis was subject matter of consideration of the High Court. The Report of the Committee of Judges given in 2008 had advised that they be granted Regular Promotion and the matter was getting deferred at the level of the Full Court. It was at this stage that 2010 Rules became effective from 18.01.2010. Even thereafter, the Notification dated 31.03.2010 had published the vacancy situation only in respect of Direct Recruitment and Promotion through LCE. It was obviously so, as the issue regarding grant of Regular Promotion on substantive basis to those Fast Track Court Judges was simultaneously under consideration and on 21.04.2010 a formal Order was passed promoting the 47 Judicial Officers on substantive basis to the Cadre of District Judge. The grant of promotion to the 47 Judicial Officers and selection process pursuant to the Notification dated 15.04.2010 were not part of the same process and were completely independent. None of the 47 Judicial Officers had the occasion to compete in the LCE that was undertaken in terms of the Notification dated 15.04.2010. It is possible to say that the last of the 47 Judicial Officers could as well have been the first in the list of successful candidates through LCE and thus could possibly have been entitled to better placement. In any case, the process initiated pursuant to the Notification dated 15.04.2010 was cancelled for administrative reasons and the appointments in respect of process pursuant to the Notification dated 31.03.2011 could be effected only in the year 2013, i.e. more than 03 years after the 47 Judicial Officers were granted substantive appointment to the Cadre of District Judge. Further, if grant of promotion to the 47 Judicial Officers is taken to be the part of the same process, some of the Direct Recruits may not even be having eligibility in the year 2010 and yet may be placed above some of the 47 Judicial Officers. In the circumstances, the assessment made by the High Court in its Report dated 15.03.2019 is without any infirmity and we have no hesitation in concluding that the substantive promotion granted to the 47 Judicial Officers cannot be taken to be part of the same selection process where Direct Recruits and candidates through LCE were appointed to the Cadre of District Judge on 15.07.2013.

If the substantive appointment of the 47 Judicial Officers to the Cadre of District Judge is separate and distinct from the selection process through which appointment were made after three years on 15.07.2017, there would be no question or occasion to apply the Cyclic Order. It is not the contention of anyone that appointment of the 47 Judicial Officers on the relevant date was either beyond the quota meant for Regular Promotion or that there was any serious infirmity in the process or that any of the candidates was completely ineligible. Since there was a difference of more than 03 years between these two modes of selection, the Report dated 15.03.2019 rightly concluded that the Cyclic Order ought not to get attracted.

It is true that the Cyclic Order and the quota for different streams ensure equitable treatment for three sources. However, the application of the Cyclic Order must depend upon the fact situations. It was precisely for this reason that the expression "as far as possible" has been used in the Rule. Other things being equal, certainly the quotas for different streams and the Cyclic Order must be adhered to. However, if such adherence itself is going to cause incongruous situation and inflict incalculable harm, insistence upon applicability of the Cyclic Order in such cases may not be appropriate. The expression "as far as possible" was, therefore, relied upon by this Court in Para 34 of its decision in *Veena Verma*. It would also be instructive to refer to a decision of this Court in *State of M.P.* v. *Narmada Bachao Andolan*, where the expression "as far as possible" was explained:—

.....

41.4. In the premises, the conclusion is inescapable that the candidates selected through LCE and Direct Recruitment vide Order dated 15.07.2013 cannot claim to be clubbed with the 47 Judicial Officers promoted in substantive capacity on 21.04.2010 and cannot claim appropriate placement in accordance with the Cyclic Order. We accordingly answer Question (C) and find that the 47 Judicial Officers were rightly placed en-bloc senior to all the candidates selected through the process initiated pursuant to the Notification dated 31.03.2011. Writ Petition (Civil) Nos. 936 of 2018 and 967 are, therefore, dismissed.

42. While considering Question (D), it is relevant to notice the emphasis placed by this Court in ***All India Judges Association***[1] while directing that 25 per cent of the posts in the cadre of the District Judge be filled through LCE. It was stated in paragraph 27 that there should be an incentive amongst relatively junior and other officers to improve and to compete with each other so as to excel and get accelerated promotion. In paragraph 28 the relevant direction again stressed that 25 per cent quota for promotion through LCE be "strictly on the basis of merit."

Rule 31(2) of 2010 Rules also uses the expression "strictly on the basis of merit" while dealing with posts to be filled in through LCE. The merit is to be assessed in terms of the scheme laid down in the relevant Schedule. After considering various parameters stated in said Schedule, the successful candidates are selected on the basis of merit. The list of successful candidates becomes the basis for final selection subject to qualifying parameters such as suitability, medical fitness etc.

However, placing reliance on Rule 47(4), the Committee in its Report dated 15.03.2019 held that the *inter se* seniority of persons promoted to the District Judge Cadre in the same year ought to be the same as it was in the posts held by them at the time of promotion.

If the list is to be drawn up according to merit, it is possible that the last person in the list of selectees may be the senior most and going by the Report of the Committee, if all the selectees are promoted in the same year such last person may as well be at the top of the list of promotees through LCE. In that event, the seniority shall become the governing criteria and the excellence on part of a comparatively junior candidate may recede in the background. Instead of giving incentive to comparatively junior and other officers, the entire examination process will stand reduced to a mere qualifying examination rather than a competitive examination affording opportunity to meritorious candidates. The criteria shall then become seniority subject to passing the LCE.

The direction issued in ***AH India Judges Association*** to afford an incentive to meritorious candidates regardless of their seniority would not thus be carried out. The general principle appearing in Rule 47(4) must, therefore, give way to the special dispensation in Rule 31(2) of 2010 Rules.

In our view, the High Court in its Report dated 15.03.2019 completely failed to appreciate the true character of LCE and reservation of certain quota for that category.

We, therefore, accept the submissions made by the learned Advocate for the petitioners in Writ Petition (Civil) No. 498 of 2018 and Diary No. 13252 of 2019 and while answering Question (D) declare that the *inter se* placement of the candidates selected through LCE must be based on merit and not on the basis of the seniority in the erstwhile cadre. Said Writ Petitions are allowed to that extent.

22. *Christian Medical College Vellore Association v. Union of India & Ors., 2020 SCC OnLine SC 423*

Decided on – 29.04.2020

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

Challenge against NEET for Minority Institutions – Rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices. Uniform Entrance Test qualifies the test of proportionality and is reasonable. The same is intended to check several maladies which crept into medical education, to prevent capitation fee by admitting students which are lower in merit and to prevent exploitation, profiteering, and commercialisation of education. The institution has to be a capable vehicle of education. The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions.

Issue

Whether by providing centralised examination system - NEET for admission to MBBS, PG, BDS and MDS by virtue of the provisions made in the Act and regulations, there is a violation of fundamental rights guaranteed under Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution of India?

Decision and Observations

After referring to several judgments of the Supreme Court on the rights of minority institutions and on the administration of such institutions, the Hon'ble Court held as follows :-

> **46.** It was argued that certain colleges have produced doctors of renowned fame, and they are an asset for India. There is no doubt about it that doctors of international fame have been produced by various institutions. They are an asset not only for India but also for the entire humanity. They are pioneers in various fields of medical science such as Oncology, Surgery, and other branches of medical science. But, when it comes to the eradication of the malpractices that have crept into the system, we have to take into consideration arger interest of the education countrywide. The NEET has been rescribed by the Legislature in the larger public interest that has to prevail. We find the provisions to be reasonable conditions of recognition/affiliation are binding for the very existence of all such institution whether they are run by majority or minority failing which they cannot exists

and impart education. The conditions are reasonable and cannot be said to be taking away any of the constitutional rights of minority institutions, they are reasonable, fair and intended to bring transparency in the professional education imparted by institutions. They are applicable for all institutions alike minorities are not placed on a disadvantageous platform.

47. There is no doubt as to the concept of limited Government and least interference is welcomed, but in which field and to what extent balancing with the larger public and national interest is required. The individual autonomy, rights, and obligations are to be free from official interference except where the rational basis for intrusion exists. The Constitution provides a limitation on the power of the State to interfere with life, liberty, and rights, however, the concept of limited government cannot be extended to a level when it defeats the very national interest. The maladies with which professional education suffers in this country are writ large. The regulatory framework created by the MCI/DCI is concomitant of conditions, affiliation and recognition, and providing central examination in the form of NEET annot be said to be violative of the rights under Articles 19(1)(g) and 30. The regulatory framework is not restrictive, but caters to the effective enjoyment of the rights conferred under the aforesaid provisions. The provisions qualify the doctrine of proportionality considered in *Modern Dental College and Research Centre* (supra). What has been held therein for State level examination holds good for NEET also.

48. The *prescription* of NEET is definitely in order to improve the medical education, co-related to the improvement of public health, thus, it is a step-in furtherance of the duty of the State enshrined in the Directive Principles of the State Policy contained in Article 47 of the Constitution of India. Similarly, Article 46 aims at promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. By prescription of one equivalence examination of NEET, the interest of their merit is also equally protected and its aims of preventing various malpractices, which crept into system and prevent economic exploitation by selling seats with which malady the professional medical education system suffered. Article 51A(j) deals with the duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. For that purpose, recognition of merit is necessary, and one has to be iven a full opportunity in pursuit of his/her aim. The prescription of NEET is to provide equal opportunity and level launching platform to an individual to perform his duty as enshrined under Article 51A(j). Thus, we find that there is no violation of the aforesaid provisions as argued by appellants, rather action is in furtherance of the constitutional aims and directions to achieve intendment of Article 51A(j) and is in the national interest.

49. In *Secretary, Malankara Syrian Catholic College* v. *T. Jose*, (2007) 1 SCC 386, Court considered *T.M.A. Pai Foundation* (supra), and held that all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also, but dilution of right under Article 30 is not permissible. The right under Article 30 is not above the law. The regulations or conditions concerning the welfare of the students and teachers should be made applicable to provide a proper academic atmosphere.

50. In *P.A. Inamdar* (supra), the court opined that activities of education are charitable. The educational institutions, both of a nonminority and minority character, can be regulated and controlled so that they do not indulge in selling seats of learning to make money. They can be allowed to generate such funds as would be reasonably required to

run the institute and for its further growth. In *P.A. Inamdar* (supra), this Court noted the difference between professional and non-professional educational institutions. It observed that professional educational institutions constitute a class by themselves and are distinguished from educational institutions imparting nonprofessional education. With respect to unaided minority educational institutions, Article 30 of the Constitution does not come in the way of the State stepping in for the purpose of securing transparency and recognition of merit in the matter of admissions, and the conditions of recognition are binding on such institutions. In *P.A. Inamdar* (supra), the Court opined that the admissions based on merit were in the national interest and strengthening the national welfare.

51. In *Ahmedabad St. Xavier's College Society* (supra), the Court held that minority institutions have a right to admit students of their choice subject to reasonable restriction for the academic qualification and the regulation, which will serve the interest of the students, can be imposed for ensuring efficiency and fairness. Education is vital for the nation; it develops the ethos of the nation. Regulations are necessary to see that there are no divisive or disintegrating forces in administration. It observed that it is not reasonable to claim that minority institutions will have complete autonomy. Some checks may be necessary and will serve the academic needs of the institution. A correlative duty of good administration is attached to the right to dminister educational institution. It was also opined in *Ahmedabad St. Xavier's College Society* (supra) in paragraph 19 quoted above that the State can prescribe regulations to ensure the excellence of the institution that does not militate against the right of the minority to administer the institutions. Such Regulations are not restrictions on the substance of the right, which is guaranteed; they secure the proper functioning of the institution. The institution cannot be allowed to fall below the standards of excellence under the guise of the exclusive right of the management. Minorities are as much part of the nation as the majority, and anything that impinges upon national interest must necessarily in its ultimate operation affect the interests of all.

52. It was further opined in *Ahmedabad St. Xavier's College Society* (supra) in paragraph 94 quoted above that there are conditions of affiliation or recognition of an educational institution, it is implicit in the request for grant thereof that the educational institution would abide by the regulations which are made by the authority granting affiliation or recognition. When Government and MCI/DCI or concerned Universities grant affiliation and recognition, the institutions are bound by the conditions prescribed for affiliation and recognition. It has also been observed that recognition or affiliation creates an interest in the university to ensure that the educational nstitution is maintained for the purpose intended and any Regulation which will subserve or advance that purpose will be reasonable and no minority institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations.

53. In view of the law laid down in *T.M.A. Pai Foundation* (supra), it is apparent that NEET/common entrance test is a devise to standardise and computing equivalence between different kinds of qualifications. It does not interfere with the rights of the unaided minority institutions as it has been imposed in national interest considering the malpractices of granting illegal admission by virtually selling the seats in derogation to rights of meritorious students. The charitable activity of education became a saleable commodity and prerogative of wealthy persons and poor students were forced to get

education funded from Banks making it difficult for them to come out of tentacular octave of interest. They are exploited in bud before they bloom into flower. The ill-reputation developed by MCI forced to change its entire structure. The national interest requires further improvement in the system to eradicate evils from the system. The situation is still grim and require to be dealt with firm hand and steely determination.

54. In *Dr. Preeti Srivastava* v. *State of M.P.*, (supra), it was opined that at super speciality level there cannot be any reservation or lowering of the minimum qualifying marks. In *Modern Dental College and Research Centre* (supra), considering various malpractices, it was observed that education is being used as exploitative financial device. Education is not a commodity to be purchased by money power and deserving one as per merit cannot be deprived of the right to obtain it. The State cannot remain a mute spectator, and it must step in to prevent exploitation.

55. Thus, it is apparent that the provisions in question which have been incorporated in the Act relating to Medical/Dental education, the Government, MCI and DCI cannot be said to be an invasion of the fundamental rights. The intendment is to ensure fairness in the selection, recognition of merit, and the interests of the students. In the national interest, educational institutions are basically for a charitable purpose. By and large, at present education is devoid of its real character of charity, it has become a commodity. To weed out evils from the system, which were eating away fairness in admission process, defeating merit and aspiration of the common incumbent with no means, the State has the right to frame regulatory regime for aided/unaided minority/private institutions as mandated by Directives Principles, Articles 14 and 21 of the Constitution. The first step has been taken to weed out the evils from the system, and it would not be in the national interest to step back considering the overall scenario. If we revert to the old system, posterity is not going to forgive us. Still, complaints are galore that merit is being ignored by private institutions; there is still a flood of litigation. It seems that unfettered by a large number of regulatory measures, unscrupulous methods and malpractices are yet being adopted. Building the nation is the main aspect of education, which could not be ignored and overlooked. They have to cater to national interest first, then their interest, more so, when such conditions can be prescribed for recognition, particularly in the matter of professional education.

56. In *St. Stephen's College* v. *University of Delhi*, (supra), it was held that there has to be balancing of interest of rights of minorities. It was observed that 50% of the annual admission has to be given to the members of communities other than the minority community on the basis of merit. Regulations that serve the interest in standards of education amongst the recognised institutions could validly be made. Such general patterns and standards are the need, and such regulation shall not have the effect of depriving the right of minorities to educate their children in their own institution.

57. The learned counsel argued that it is open to some of the institutions to impose higher standards of merit. Firstly, conditions of affiliation are binding apart from that, we find that when it comes to national standards and the objects sought to be achieved by NEET, to conduct individual examinations by some institutions cannot be permitted. The system is not yet out of clutches of unscrupulous devices and dubious means are adopted to defeat merit, the interest of education would further suffer and very purpose of centralised examination would be defeated. It is not possible to prescribe further examination over and above NEET that cannot be said to be workable, no exemption can be granted from NEET, considering the objective with which it has been introduced. We find that the

uniform Entrance Examination cannot be said to be unreasonable regulatory framework. Considering the terms and conditions for affiliation and recognition for professional medical and such other professional courses are binding, and no relaxation can be permitted in the conditions.

58. Thus, we are of the opinion that rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. It is open to regulating the course of study, qualifications for ensuring educational standards. It is open to imposing reasonable restrictions in the national and public interest. The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices. Uniform Entrance Test qualifies the test of proportionality and is reasonable. The same is intended to check several maladies which crept into medical education, to prevent capitation fee by admitting students which are lower in merit and to prevent exploitation, profiteering, and commercialisation of education. The institution has to be a capable vehicle of education. The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions. In case they have to impart education, they are bound to comply with the conditions which are equally applicable to all. The regulations are necessary, and they are not divisive or disintegrative. Such regulatory measures enable institutions to administer them efficiently. There is no right given to maladminister the education derogatory to the national interest. The quality of medical education is imperative to sub-serve the national interest, and the merit cannot be compromised. The Government has the right for providing regulatory measures that are in the national interest, more so in view of Article 19(6) of the Constitution of India.

59. The rights of the religious or linguistic minorities under Article 30 are not in conflict with other parts of the Constitution. Balancing the rights is constitutional intendment in the national and more enormous public interest. Regulatory measures cannot be said to be exceeding the concept of limited governance. The regulatory measures in question are for the improvement of the public health and is a step, in furtherance of the directive principles enshrined in Articles 47 and 51(A)(j) and enable the individual by providing full opportunity in pursuance of his objective to excel in his pursuit. The rights to administer an institution under Article 30 of the Constitution are not above the law and other Constitutional provisions. Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution. Professional educational institutions constitute a class by themselves. Specific measures to make the administration of such institutions transparent can be imposed. The rights available under Article 30 are not violated by provisions carved out in Section 10D of the MCI Act and the Dentists Act and Regulations framed by MCI/DCI. The regulatory measures are intended for the proper functioning of institutions and to ensure that the standard of education is maintained and does not fall low under the guise of an exclusive right of management to the extent of maladministration. The egulatory measures by prescribing NEET is to bring the education within the realm of charity which character it has lost. It intends to weed out evils from the system and various malpractices which decayed the system. The regulatory measures in no way interfere with the rights to administer the institution by the religious or linguistic minorities.

60. Resultantly, we hold that there is no violation of the rights of the unaided/aided minority to administer institutions under Articles 19(1) (g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India by prescribing the uniform examination of NEET for admissions in the graduate and postgraduate professional courses of medical as well as dental science. The provisions of the Act and regulation cannot be said to be *ultra vires* or taking away the rights guaranteed under the Constitution of India under Article 30(1) read with Articles 19(1)(g), 14, 25, 26 and 29(1). Accordingly, the transferred Cases, appeal, and writ petitions are disposed of.

No costs.