JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(January, 2021)

Prepared by :-

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JUDICIAL ACADEMY JHARKHAND

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Decided on : 05.01.2021
Bench : 1. Hon'ble Mr. Justice Navin Sinha
2.Hon'ble Ms. Justice **Indira Banerjee**

(It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. It can give no room for doubt. The offer and acceptance must be based or founded on three components, that is, certainty, commitment and communication. However, when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition)

Issue

Whether the acceptance of a conditional offer with a further condition results in a concluded contract, irrespective of whether the offerer accepts the further condition proposed by the acceptor?

Observations and Decision

The Hon'ble Court referred to the provisions of Sections 4 and 7 of the Indian Contract Act and the judgments of the Supreme Court and held as follows :-

> **56.** It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute. It can give no room for doubt. The offer and acceptance must be based or founded on three components, that is, certainty, commitment and communication. However, when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition, as held by this Court in *Haridwar Singh* v. *Bagun Sumbrui*[15] An acceptance with a variation is no acceptance. It is, in effect and substance, simply a counter proposal which must be accepted fully by the original proposer, before a contract is made.
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> **57.** In *Union of India* v. *Bhim Sen Walaiti Ram*[16], a three-Judge Bench of this Court held that acceptance of an offer may be either absolute or conditional. If the acceptance is conditional, offer can be withdrawn at any moment until absolute acceptance has taken place.
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> **58.** In *Jawahar Lal Burman* v. *Union of India* (supra), referred to by the High Court, this Court held that under Section 7 of the Contract Act acceptance of the offer must be absolute and unqualified and it cannot be conditional. However, in the facts and circumstances of that case, on a reading of the letter of acceptance as a whole, the Appellant's argument that the letter was intended to make a substantial variation in the contract, by making the deposit of security a condition precedent instead of a condition subsequent, was not accepted.
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> **59.** The High Court also overlooked Section 7 of the Contract Act. Both the Trial Court and the High Court over-looked the main point that, in the response to the tender floated by

the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to inspection being held at the Depot of the Appellant. This condition was not accepted by the Respondent-Port Trust unconditionally. The Respondent-Port Trust agreed to inspection at the Depot of the Appellant, but imposed a further condition that the goods would be finally inspected at the showroom of the Respondent-Port Trust. This Condition was not accepted by the Appellant. It could not, therefore, be said that there was a concluded contract. There being no concluded contract, there could be no question of any breach on the part of the Appellant or of damages or any risk purchase at the cost of the Appellant. The earnest deposit of the Appellant is liable to be refunded.

60. Since we hold that the Appellant was neither in breach nor liable to damages, it is not necessary for us to examine the questions of whether the compensation and/or damages claimed by the Respondent Port Trust was reasonable or excessive, whether claim for damages could only be maintained subject to proof of the actual damages suffered, and whether the Respondent Port Trust had taken steps to mitigate losses. We also need not embark upon the academic exercise of deciding whether prior approval of the Board of Trustees is a condition precedent for creation of a valid contract for supply of goods, or whether post facto ratification by the Board would suffice.

61. The Appellant was entitled to refund of earnest money deposited with the Respondent-Port Trust. The earnest money shall be refunded within four weeks with interest @ 6% per annum from the date of institution of suit No. 450 of 1994 till the date of refund thereof.

2. *Murali v. State , 2021 SCC OnLine 10*

Decided on : 05.01.2021
Bench : 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Aniruddha Bose

(The fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence even in serious non compoundable offences.)

Facts

On 07.08.2005, one Senthil had a verbal altercation with Kumar (original accused no. 3) and Krishnan (original accused no. 5) during a volleyball match. The injured victim (Sathya @ Sathiyajothi) came to the aid of his friend Senthil and opposed both Kumar and Krishnan. Thereafter at about 2:30PM on 09.08.2005, the appellants – Rajavelu and Murali (original accused nos. 1 and 2) along with Muthu, Kumar and Krishnan (original accused nos. 3, 4 and 5) cornered the victim and assaulted him. Murali allegedly struck the victim on his head with a hockey stick and Rajavelu tried to kill him by giving a neck blow with a Veechu Aruval (sharp-edged object), which was fortunately blocked by the victim. In the process, the left hand of the victim and the thumb and finger of his right hand got severed. The victim was able to escape and the matter was reported by his friend, PW1. All five persons were arrested. It further led to registration of Crime No. 531 of 2005 under Sections 147,148,341,352, 323, 324, 307 and 34 of the IPC.

Relying upon the testimony of the victim (PW3), which was held to be unimpeachable and stellar, the Assistant Sessions Judge cum Chief Judicial Magistrate, Cuddalore, vide his judgment dated 28.01.2012 held Murali guilty of wrongfully restraining the victim and voluntarily causing hurt with a dangerous weapon. Based upon the medical evidence and recovery of the Veechu Aruval from Rajavelu, the trial Court further opined that the second-appellant (Rajavelu) had a clear intention to murder the victim and that if not for the victim defending himself, a fatal injury would have been caused to his neck and he would have died instantaneously. Consequently, a concurrent sentence of three months' rigorous imprisonment under Section 324 IPC and onemonth rigorous imprisonment under Section 341 IPC was imposed on Murali, and Rajavelu was awarded five years' rigorous imprisonment under Section 307 IPC and another one month rigorous imprisonment under Section 341 IPC. Muthu, Kumar and Krishnan were acquitted as there was no specific allegation by the victim and no weapon or injury had been attributed to them by the prosecution.

The convict-appellants challenged the aforestated judgment before two forums, both of which unanimously upheld their conviction. The Additional District-cum-Sessions Judge

dismissed the first appeal through an order dated 20.08.2013 and their criminal revision petition before the High Court also met with the same fate vide an order dated 01.11.2018.

Unsatisfied still, the appellants approached the Supreme Court seeking special leave to appeal against the High Court's dismissal of their conviction. However, through an application filed on 22.11.2019, they sought to implead the injured victim and get their offences compounded based on mutual resolution and peaceful settlement between the parties. The Hon'ble Court issued limited notice only on the quantum of sentence.

Observations and Decision

After referring to the provisions of Section 320 of the CrPC and the judgments of the Supreme Court in ***Ram Pujan v. State of UP***, (1973) 2 SCC 456, ***Ishwar Singh v. State of MP,***(2008) 15 SCC 667 and observed and held as follows :-

> **8.** There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.
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> **11.** In later decisions including in *Ram Lal v. State of J&K*, [(1999) 2 SCC 213], *Bankat v. State of Maharashtra*, [(2005) 1 SCC 343], *Mohar Singh v. State of Rajasthan* [(2015) 11 SCC 226], *Nanda Gopalan v. State of Kerala* [(2015) 11 SCC 137], *Shankar v. State of Maharashtra*, [(2019) 5 SCC 166], this Court has taken note of the compromise between parties to reduce the sentence of the convicts even in serious non compoundable offences.
>
> **12.** Given this position of law and the peculiar circumstances arising out of subsequent events, we are of the considered opinion that it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants. We say so because: *first*, the parties to the dispute have mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, this is a fit case for reduction of sentence.
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> **13**. *Second*, at the time of the incident, the victim was a college student, and both appellants too were no older than 2022 years. The attack was in pursuance of a verbal altercation during a sports match, with there being no previous enmity between the parties. It does raise hope that parties would have grown up and have mended their ways. Indeed, in the present case, fifteen years have elapsed since the incident. The appellants are today in their midthirties and present little chance of committing the same crime.
>
> **14.** *Third,* the appellants have no other criminal antecedents, no previous enmity, and today are married and have children. They are the sole bread earners of their family and

have significant social obligations to tend to. In such circumstances, it might not serve the interests of society to keep them incarcerated any further.

15. *Finally*, both appellants have served a significant portion of their sentences. Murali has undergone more than half of his sentence and Rajavelu has been in jail for more than one year and eight months.

16. Considering all these unique factors, including the compromise between the parties, we deem it appropriate to reduce the quantum of the sentence imposed on the appellants. The appeals are, therefore, partly allowed and sentence of both the appellants is reduced to the period already undergone by them. Consequently, they are set free and their bail bonds, if any, are discharged. Any pending applications are disposed of accordingly.

3. *Deputy General Manager (Appellate Authority) and Others v. Ajai Kumar Srivastava, 2021 SCC OnLine SC 4*

Decided on: 05.01.2021

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

(The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of *malafides* or perversity.)

Facts

Dissatisfied with the judgment and order dated 13th September, 2018 passed by the Division Bench of the High Court of Allahabad, the instant appeals have been preferred at the instance of the appellant Bank. The appellant is a statutory body incorporated and constituted under the State Bank of India Act, 1955. The respondent joined service as a Cashier/Clerk in Mumfordganj Branch Allahabad on 07th December, 1981. While on duty, a misconduct was committed by him for which he was placed under suspension in the first place by order dated 14th August, 1995 and later the charge-sheet dated 11th April, 1996 was served upon him detailing seven charges of misappropriation of funds which he had committed in discharge of his duties as an employee of the Bank.

For the self-same misappropriation of bank's money by affording fake credits in his various accounts maintained at the Branch where he was posted, a criminal case was also instituted against him for offences under Sections 420, 467, 468, 471 IPC read with Section 120-B IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

After copy of the detailed report of enquiry was made available, the disciplinary authority took pains to revisit the report of enquiry and while concurring with the finding of fact in reference to Charge Nos. 2-7 proved by the enquiry officer disagreed with the finding recorded by the enquiry officer as of charge no. 1 and assigning his reasons of disagreement held the Charge No. 1 to be proved and served the copy of enquiry report dated 29th June, 1999 along with his finding of disagreement(for charge no. 1) with the prima facie opinion based on the record of enquiry to the respondent delinquent calling for his written explanation.

The reply was submitted by the respondent in reference to communication made by the disciplinary authority dated 29th June, 1999 raising objection to the note of disagreement which was recorded by the disciplinary authority as of Charge no. 1, at the same time, in reference to other Charge Nos. 2 to 7 which were held to be proved and prima facie accepted by the disciplinary authority, no specific objection was raised of any prejudice being caused

during the course of enquiry or defence in rebuttal not been considered by the enquiry officer or of any breach of the procedure prescribed in holding disciplinary enquiry or violation of the principles of natural justice, raised vague objections of general in nature without supporting any documentary/oral evidence and one of the objection of the respondent delinquent was that there was no requirement to hold a disciplinary enquiry when a criminal case was instituted and pending trial/investigation by the CBI and the conclusion of departmental enquiry without awaiting the outcome of the investigation/trial instituted against him in a pending criminal case, has caused great prejudice to him.

Despite no specific objection being raised by the respondent delinquent in reply to the show-cause notice, still the disciplinary authority revisited the record of enquiry including the enquiry report, the explanation furnished by the respondent while affirming the finding by the enquiry officer in its report, confirmed its prima-facie opinion which he has expressed in his communication dated 29th June, 1999 and in terms of Para 521(5)(a) of the Sastry Award read with Para 18, 28 of the Desai Award as modified by the 12th Bipartite Settlement dated 14th February, 1995 between the State Bank of India and All India State Bank of India Staff Federation, confirmed the penalty of dismissal from service by its order dated 24th July, 1999.

The respondent preferred departmental appeal against his dismissal from service. The departmental appeal was examined by the appellate authority and taking note of the record of enquiry, the appellate authority noticed the alleged objections raised by the respondent being so vague with no supporting foundation and finally holding the appeal having no merit and the punishment being commensurate to the charges levelled against him, confirmed the punishment of dismissal which was the subject matter of challenge in a writ petition before the High Court of Allahabad filed at the instance of the respondent delinquent.

Observations and Decisions

The Apex Court opined that *the power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority.*

In this regard, the Apex Court relied on the following decisions: ***State of Tamil Nadu v. T.V. Venugopalan[1], Government of T.N. v. A. Rajapandian[2],B.C. Chaturvedi v. Union of***

[1](1994) 6 SCC 302
[2](1995) 1 SCC 216

India[3]*,Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya*[4]*,Pravin Kumar v. Union of India*[5]

The Apex court stated that it is settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. *It is to ensure fairness in treatment and not to ensure fairness of conclusion*. Further, the Apex court was of the following opinion:

> **26.** When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine : (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.
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> *****
>
> **29.** The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

Coming to the facts of the present case, the Apex Court stated the following:

> **33.** The submission which persuaded the High Court in the impugned judgment is basically for two reasons. Firstly, before the finding of disagreement being recorded by the disciplinary authority in reference to Charge no. 1, fair opportunity of hearing was not afforded to the respondent delinquent and that has caused prejudice to him. Secondly, the disciplinary authority/appellate authority has not examined the record of disciplinary enquiry independently and passed a non-speaking order without due application of mind and this what prevailed upon the High Court in the impugned judgment in setting aside the penalty inflicted upon the respondent delinquent.
>
> **34.** The submission which was made in regard to the note of disagreement not being served upon the respondent delinquent as to Charge no. 1 is concerned, this Court do find substance to hold that the disciplinary authority on receiving the report of enquiry, if was not in agreement with the finding recorded by the enquiry officer, was under an obligation to record its reasons of disagreement and call upon the delinquent for his explanation in the first place before recording his finding of guilt and indisputedly the procedure as prescribed by law was not followed and that has caused prejudice to the respondent and indeed it was in violation of the principles of natural justice. We are of the considered view that so far as the finding

[3](1995) 6 SCC 749
[4](2017) 1 SCC 768
[5](2020) 9 SCC 471

of guilt recorded by the disciplinary authority in reference to Charge No. 1 is concerned, that could not be held to be justified in holding him guilty.

35. But this may not detain us any further for the reason that Charge no. 1 in reference to which the finding recorded by the enquiry officer has been overturned by the disciplinary authority is severable from the other charges(Charge nos. 2-7) levelled against the respondent which were found proved by the Enquiry Officer and the finding of fact was confirmed by the disciplinary/appellate authority after meeting out objections raised by the respondent delinquent in his written brief furnished at different stages.

36. If the order of dismissal was based on the findings of charge no. 1 alone, it would have been possible for the Court to declare the order of dismissal illegal but on the finding of guilt being recorded by the Enquiry Officer in his report in reference to charges nos. 2-7 and confirmed by the disciplinary/appellate authority was not liable to be interfered and those findings established the guilt of grave delinquency which, in our view, was an apparent error being committed by the High Court while interfering with the order of penalty of dismissal inflicted upon the respondent employee.

41. So far as the submission which has prevailed upon the High Court holding that the order passed by the disciplinary/appellate authority was a non-speaking order passed with non-application of mind, in our considered view, is not factually supported by the material available on record.

4. *Bhaven Construction Through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and Another, 2021 SCC OnLine SC 8*

Decided on: 06.01.2021

Bench: 1. Hon'ble Mr. Justice**N.V. Ramana**
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Hrishikesh Roy

(If the Courts are allowed to interfere with the arbitral process beyond the ambit of the Arbitration Act, then the efficiency of the process will be diminished.)

Facts

On 13.02.1991, Respondent No. 1 entered into a contract with the Appellant to manufacture and supply bricks. The aforesaid contract had an arbitration clause. As some dispute arose regarding payment in furtherance of manufacturing and supplying of bricks, the Appellant issued a notice dated 13.11.1998, seeking appointment of sole arbitrator in terms of the agreement. Clause 38 of the agreement provide for arbitration.[6] the Appellant appointed Respondent No. 2 to act as a sole arbitrator for adjudication of the disputes. Respondent No. 1 preferred an application under Section 16 of the Arbitration and Conciliation Act of 1996 (hereinafter referred to as "**the Arbitration Act**") disputing the jurisdiction of the sole arbitrator. On 20.10.2001, the sole arbitrator rejected the application of the Respondent No. 1 and held that the sole arbitrator had jurisdiction to adjudicate the dispute.

[6]**Clause 38 - Arbitration**

All disputes or differences in respect of which the decision has not been settled, shall be referred for arbitration to a sole arbitrator appointed as follows:

Within thirty days of receipt of notice from the Contractor of his intention to refer the dispute to arbitration the Chief Engineer shall send to the Contractor a list of three officers from the list of arbitrator appointment by the Government. The Contractor shall within fifteen days of receipt of this list select and communicate to the Chief Engineer the name of the person from the list who shall then be appointed as the sole arbitrator. If Contractor fails to communicate his selection of name, within the stipulated period, the Chief Engineer, shall without delay select one officer from the list and appoint him as the sole arbitrator. If the Chief Engineer fails to send such a list within thirty days, as stipulated, the contractor shall send a similar list to the Chief Engineer within fifteen days. The Chief Engineer shall then select one officer form the list and appoint him as the sole arbitrator within fifteen days. **If the Chief Engineer fails to do so the contractor shall communicate to the Chief Engineer the name of one Officer from the list, who shall then be the sole arbitrator**.

The arbitration shall be conducted in accordance with the provision of the Indian Arbitration Act, 1940 or any statutory modification thereof. The decision of the sole arbitrator shall be final and binding on the parties thereto. The Arbitrator shall determine the amount of costs of arbitration to be awarded to either parties.

Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owner shall not be withheld, unless they are the subject matter of the arbitration proceedings.

All awards shall be in writing and in case of awards amounting to Rs. 1.00 lakh and above, such awards, shall state reasons for the amounts awards.

Neither party is entitled to bring a claim to arbitration if the Arbitrator has not been appointed before the expiration of thirty days after defect liability period.

Aggrieved by the order of the sole arbitrator, Respondent No. 1 preferred Special Civil Application No. 400 of 2002, under Articles 226 and 227 of the Constitution of India before the High Court of Gujarat. The Single Judgedismissed the Special Civil Application.Aggrieved by the order of the Single Judge, Respondent No. 1 preferred Letters Patent Appeal No. 182 of 2006 in Special Civil Application No. 400 of 2002. The High Court of Gujarat, by the impugned order dated 17.09.2012, allowed the appeal.Aggrieved, the Appellant filed this appeal by way of special leave petition.

Issue

Whether the arbitral process could be interfered under Article 226/227 of the Constitution, and under what circumstance?

Observations and Decision

In the present case, Respondent No. 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Article 226/227 of the Indian Constitution. The Arbitration Act provides for a mechanism of challenge under Section 34. However, the Apex court opined that the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In ***Nivedita Sharma* v. *Cellular Operators Association of India***,[7] it was held, "Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

In the present case, the Apex court said:

> **18.** It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.
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> **19.** In this context we may observe *Deep Industries Limited* v. *Oil and Natural Gas Corporation Limited*, 2019 SCC OnLine SC 1602, wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analyzed as under:
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> > 15. [.....] In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the **High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction**.

[7] (2011) 14 SCC 337

20. In the instant case, Respondent No. 1 has not been able to show exceptional circumstance or 'bad faith' on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No. 1 in a separate Section 34 application, which is pending.

22. If the Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished.

23. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the Appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering the Respondent No. 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the Appellant herein had actually acted in accordance with the procedure laid down without any *mala fides*.

5. *N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. and Others, 2021 SCC OnLine SC 13*

Decided on: 11.01.2021

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

(The ground that allegations of fraud are not arbitrable is a wholly archaic view, which has become obsolete, and deserves to be discarded. However, the criminal aspect of fraud, forgery, or fabrication, which would be visited with penal consequences and criminal sanctions can be adjudicated only by a court of law, since it may result in a conviction, which is in the realm of public law.)

Issues

Whether allegation of the fraudulent invocation of the bank guarantee is an arbitrable dispute?

Observations and Decisions

On the issue of arbitrability of fraud, the Apex court remarked the following:

> **99.** The issue of arbitrability of fraud was subsequently considered by a two-judge bench in *A. Ayyasamy* v. *A. Paramasivam[*(2016) 10 SCC 386]. The Court held that Section 8 mandates reference to arbitration, unless the arbitration agreement is found to be invalid. It has been recognised that certain categories of disputes which are of public nature, are not capable of adjudication and settlement by arbitration, which is a private forum constituted by consent of parties.
>
> **100.** The Court made a distinction between cases where there are allegations of serious fraud and fraud *simplicitor*. Mere allegations of fraud *simplicitor* are not a sufficient ground to decline reference to arbitration. Parties may be referred to arbitration where allegations of fraud pertain to disputes between parties inter se, and have no implication for third parties. The courts may, however, refuse to make a reference to arbitration only in those cases where there are very serious allegations of fraud, which make a virtual case of criminal offence of fraud, or where allegations of fraud are so complicated, that it becomes absolutely essential that such complex issues be decided only by the civil courts on appreciation of voluminous evidence. This would also include those cases where there are serious allegations of forgery or fabrication of documents, or where fraud is alleged with respect to the arbitration clause itself, or where the fraud alleged is of such a nature that it permeates the entire contract, including the agreement to arbitrate. The judicial authority must carefully sift the materials for the purpose of determining whether the defence is merely a pretext to avoid arbitration. It was opined that the Arbitration Act must be interpreted to bring it in consonance with the prevailing arbitration jurisprudence in the common law world.

101. The judgment in *Ayyasamy* (supra) was followed in *Rashid Raza* v. *Sadaf Akhtar[*(2019) 8 SCC 710*]*, wherein the twin test laid down in para 25 of *Ayyasamy* was followed i.e. : (i) does the plea of fraud permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (ii) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain.

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105. In our view, all civil or commercial disputes, either contractual or non-contractual, which can be adjudicated upon by a civil court, in principle, can be adjudicated and resolved through arbitration, unless it is excluded either expressly by statute, or by necessary implication. The Arbitration and Concilliation Act, 1996 does not exclude any category of disputes as being non arbitrable. Section 2(3) of the Arbitration Act however recognizes that certain categories of disputes by law may not be submitted to arbitration. In all jurisdictions, certain categories of disputes are reserved by the legislature, as a matter of public policy, to be adjudicated by a court of law, since they lie in the realm of public law.

106. Traditionally, disputes relating to rights in rem are required to be adjudicated by courts and/or statutory tribunals. A right in rem is a right exercisable against the world at large. Actions in rem refer to actions which create a legal status such as citizenship, divorce, testamentary and probate issues, etc. A lis in rem is not arbitrable by a private tribunal constituted by the consent of parties. Actions in personam determine the rights and interests of parties to the subject matter of the dispute, which are arbitrable.

107. The broad categories of disputes which are considered to be non arbitrable are penal offences which are visited with criminal sanction; offences pertaining to bribery/corruption; matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody and guardianship matters, which pertain to the status of a person; testamentary matters which pertain to disputes relating to the validity of a Will, grant of probate, letters of administration, succession, which pertain to the status of a person, and are adjudicated by civil courts.

108. Certain categories of disputes such as consumer disputes[41]; insolvency and bankruptcy proceedings; oppression and mismanagement, or winding up of a company; disputes relating to trusts, trustees and beneficiaries of a trust[42] are governed by special enactments.

109. This Court in *Booz Allen & Hamilton Inc.* v. *SBI Home Finance Ltd.*[43] has recognized some examples of disputes which are not arbitrable, and held that:

"36. The well recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

110. The civil aspect of fraud is considered to be arbitrable in contemporary arbitration jurisprudence, with the only exception being where the allegation is that the arbitration agreement itself is vitiated by fraud or fraudulent inducement, or the fraud goes to the validity of the underlying contract, and impeaches the arbitration clause itself. Another category of cases is where the substantive contract is "*expressly declared to be void*" under Section 10 of the Indian Contract Act, 1872 where the agreement is entered into by a minor (without following the procedure prescribed under the Guardian and Wards Act, 1890) or a lunatic, which would be with a party incompetent to enter into a contract.

111. The civil aspect of fraud can be adjudicated by an arbitral tribunal. The civil aspect of fraud is defined by Section 17 of the Indian Contract Act, 1872.....

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116. The ground on which fraud was held to be non arbitrable earlier was that it would entail voluminous and extensive evidence, and would be too complicated to be decided in arbitration. In contemporary arbitration practice, arbitral tribunals are required to traverse through volumes of material in various kinds of disputes such as oil, natural gas, construction industry, etc. The ground that allegations of fraud are not arbitrable is a wholly archaic view, which has become obsolete, and deserves to be discarded. However, the criminal aspect of fraud, forgery, or fabrication, which would be visited with penal consequences and criminal sanctions can be adjudicated only by a court of law, since it may result in a conviction, which is in the realm of public law.

117. In the present case, the allegations of fraud with respect to the invocation of the Bank Guarantee are arbitrable, since it arises out of disputes between parties *inter se*, and is not in the realm of public law.

6. *Rakesh Vaishnav v. Union of India, 2021 SCC OnLine 18*

Decided on : 12.01.2021
Bench : 1. Hon'ble Mr. Justice S.A. Bobde
2. Hon'ble Mr. Justice A.S. Bopanna
3. Hon'ble Mr. Justice V.Ramasubramanian

(Stay on the implementation of the three Farm Laws and setting-up of a Committee for the purpose of listening to the grievances of the farmers relating to the Farm Laws and the views of the Government and to make recommendations.)

Facts

Three categories of petitions were filed before the Hon'ble Court, all revolving around the validity or otherwise of three laws, namely : (*1*) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; (*2*) Essential Commodities (Amendment) Act, 2020; and (*3*) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (hereinafter referred to as the "Farm Laws"), and the protest by farmers against these laws.

One category of petitions challenges the constitutional validity of the Farm Laws. Included within this category of petitions, is a petition under Article 32 challenging the validity of the Constitution (Third Amendment) Act, 1954, by which Entry 33 was substituted in List III (Concurrent List) in the Seventh Schedule of the Constitution, enabling the Central Government also to legislate on a subject which was otherwise in the State List.

Another category of petitions are those which support the Farm Laws on the ground that they are constitutionally valid and also beneficial to the farmers. The third category of petitions are those filed by individuals who are residents of the National Capital Territory of Delhi as well as the neighbouring States, claiming that the agitation by farmers in the peripheries of Delhi and the consequent blockade of roads/highways leading to Delhi, infringes the fundamental rights of other citizens to move freely throughout the territories of India and their right to carry on trade and business.

Observations and Decision

The Hon'ble Court, after analyzing different circumstances, submissions and the principles of law, formed a committee and also ordered for the stay of the three laws in following terms :-

> **14.** Having heard the different perspectives, we deem it fit to pass the following interim order, with the hope and expectation that both parties will take this in the right spirit and attempt to arrive at a fair, equitable and just solution to the problems:

14.1. The implementation of the three Farm Laws : (*1*) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; (*2*) Essential Commodities (Amendment) Act, 2020; and (*3*) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, shall stand stayed until further orders.

14.2. As a consequence, the Minimum Support Price System in existence before the enactment of the Farm Laws shall be maintained until further orders. In addition, the farmers' landholdings shall be protected i.e. no farmer shall be dispossessed or deprived of his title as a result of any action taken under the Farm Laws.

14.3. A Committee comprising of : (*1*) Shri Bhupinder Singh Mann, National President, Bhartiya Kisan Union and All-India Kisan Coordination Committee; (*2*) Dr Parmod Kumar Joshi, Agricultural Economist, Director for South Asia, International Food Policy Research Institute; (*3*) Shri Ashok Gulati, Agricultural Economist and Former Chairman of the Commission for Agricultural Costs and Prices; and (*4*) Shri Anil Ghanwat, President, Shetkari Sanghatana, is constituted for the purpose of listening to the grievances of the farmers relating to the Farm Laws and the views of the Government and to make recommendations. This Committee shall be provided a place as well as secretarial assistance at Delhi by the Government. All expenses for the Committee to hold sittings at Delhi or anywhere else shall be borne by the Central Government. The representatives of all the farmers' bodies, whether they are holding a protest or not and whether they support or oppose the laws shall participate in the deliberations of the Committee and put forth their viewpoints. The Committee shall, upon hearing the Government as well as the representatives of the farmers' bodies, and other stakeholders, submit a Report before this Court containing its recommendations. This shall be done within two months from the date of its first sitting. The first sitting shall be held within ten days from today.

15. While we may not stifle a peaceful protest, we think that this extraordinary order of stay of implementation of the Farm Laws will be perceived as an achievement of the purpose of such protest at least for the present and will encourage the farmers' bodies to convince their members to get back to their livelihood, both in order to protect their own lives and health and in order to protect the lives and properties of others.

7. *Mavilayi Service Co-operative Bank Ltd. and Ors v. CIT, Calicut and Anr, 2021 SCC OnLine SC 16*

Decided on : 12.01.2021
Bench : 1. Hon'ble Mr. Justice **R.F.Nariman**
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice K.M. Joseph

(Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction under Section 80P of the Income Tax Act. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication.)

Facts

These appeals have been filed by co-operative societies who have been registered as 'primary agricultural credit societies', together with one 'multi-State co-operative society', and raise important questions as to deductions that can be claimed under section 80P(2)(a)(i) of the Income-Tax Act, 1961 ("IT Act"); and in particular, whether these assessees are entitled to such deductions after the introduction of section 80P(4) of the IT Act by section 19 of the Finance Act, 2006 (21 of 2006) with effect from 01.04.2007. It may be stated at the outset that all these assessees, who are stated to be providing credit facilities to their members for agricultural and allied purposes, have been classified as primary agricultural credit societies by the Registrar of Co-operative Societies under the Kerala Co-operative Societies Act, 1969 ("Kerala Act"), and were claiming a deduction under section 80P(2)(a) (i) of the IT Act, which had been granted to them up to Assessment Year 2007-08.

However, with the introduction of section 80P(4) of the IT Act, the scenario changed. In respect of the assessees before the Supreme Court, the assessing officer denied their claims for deduction, relying upon section 80P(4) of the IT Act, holding that as per the Audited Receipt & Disbursal Statement furnished by the assessees in these cases, agricultural credits that were given by the assessee-societies to its members were found to be negligible - the credits given to such members being for purposes other than agricultural credit. The decisions of the assessing officers were challenged up to the Kerala High Court.

Before the High Court, the assessees relied upon a decision of a Division Bench of the Kerala High Court in *Chirakkal Service Co-operative Bank Ltd.* v. *CIT*, (2016) 384 ITR 490 (Ker.), where in a batch of appeals challenging assessments completed under section 147 read with 143(3)/144 of the IT Act, the High Court, after considering section 80P(4) of the IT Act, various provisions of the Kerala Act, the Banking Regulation Act, 1949, the bye-laws of the

Societies, etc., held that once a Co-operative Society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural credit society, the authorities under the IT Act cannot probe into whether agricultural credits were in fact being given by such societies to its members, thereby going behind the certificate so granted. This being the case, the High Court in *Chirakkal* (supra) held that since all the assessees were registered as primary agricultural credit societies, they would be entitled to the deductions under section 80P(2)(a)(i) read with section 80P(4) of the IT Act.

However, the Department contended that the judgment in *Chirakkal* (supra) was rendered *per incuriam* by not having noticed the earlier decision of another Division Bench of the Kerala High Court in *Perinthalmanna Service Co-operative Bank Ltd.* v. *ITO*, (2014) 363 ITR 268 (Ker.), where, in an appeal challenging orders under section 263 of the IT Act, it was held that the revisional authority was justified in saying that an inquiry has to be conducted into the factual situation as to whether a co-operative bank is in fact conducting business as a co-operative bank and not as a primary agricultural credit society, and depending upon whether this was so for the relevant assessment year, the assessing officer would then allow or disallow deductions claimed under section 80P of the IT Act, notwithstanding that mere nomenclature or registration certificates issued under the Kerala Act would show that the assessees are primary agricultural credit societies. These divergent decisions led to a reference order dated 09.07.2018 to a Full Bench of the Kerala High Court.

The Full Bench of the Kerala High Court, by the impugned judgment dated 19.03.2019, referred to section 80P of the IT Act, various provisions of the Banking Regulation Act and the Kerala Act and held that the main object of a primary agricultural credit society which exists at the time of its registration, must continue at all times including for the assessment year in question. Notwithstanding the fact that the primary agricultural credit society is registered as such under the Kerala Act, yet, the assessing officer must be satisfied that in the particular assessment year its main object is, in fact, being carried out. If it is found that as a matter of fact agricultural credits amount to a negligible amount, then it would be open for the assessing officer, applying the provisions of section 80P(4) of the IT Act, to state that as the co-operative society in question - though registered as a primary agricultural credit society - is not, in fact, functioning as such, the deduction claimed under section 80P(2)(a)(i) of the IT Act must be refused. This conclusion was reached after referring to several judgments, but relying heavily upon the judgment of this Court in *Citizen Co-operative Society Ltd.* v. *Asst. CIT, Hyderabad*, (2017) 9 SCC 364.

Being aggrieved by the Full Bench judgment, the Appellant assessees approached the Supreme Court.

Observations and Decision

The Hon'ble Court referred to the provisions of Sections 2(19), 80P of the Income Tax Act, Sections 3 and 56 of the Banking Regulations Act and the provisions of the Kerala Co-

operative Societies Act, 1969 and related Rules and the decision of the Supreme Court in ***Assam Co-operative Apex Marketing Society Ltd. Assam*** **v.** ***Additional Commissioner of Income Tax, Assam***, 1994 Supp (2) SCC 96, ***Kerala State Co-operative Marketing Federation Ltd. v. CIT,*** (1998) 5 SCC 48, ***Citizen Co-operative Society Ltd. v. Asst. CIT, Hyderabad***, (2017) 9 SCC 364

15. It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture.

17. The expression "engaged in the marketing of the agricultural produce of its members" came up for decision before the Court. The Court held that the object of this provision is that the agricultural produce that is produced by members alone would be entitled to such deduction. It further held that this object cannot extend to traders dealing in agricultural produce, so that if agricultural produce is bought from other agriculturists by members but not produced by such member itself, such produce would not qualify for deduction.

18. Shortly after this judgment, a three-Judge Bench in *Kerala State Co-operative Marketing Federation Ltd.* v. *CIT*, (1998) 5 SCC 48 overruled the aforesaid judgment. The question which arose before the Court in this case was the identical question that arose in *Assam Co-operative Apex Marketing Society Ltd. Assam* (supra), the avatar of the provision, however, having changed to section 80P(2)(a)(iii) of the IT Act. This Court, after setting out the classes of societies covered by section 80P, then held:

.....

19. It was therefore held that the expression "agricultural produce of its members" would really mean agricultural produce belonging to its members, which would include agricultural produce purchased by members from other agriculturists. .....

20. We now come to the judgment of this Court in *Citizen Co-operative Society Ltd.* (supra). This judgment was concerned with an assessee who was established initially as a mutually aided Co-operative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Co-operative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the IT Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:

.....

21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction;

(III) That this Court in *Kerala State Co-operative Marketing Federation Ltd.* (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are Co-operative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

26. Applying the aforesaid decisions, it is clear that the ratio decidendi in *Citizen Co-operative Society Ltd.* (supra) would not depend upon the conclusion arrived at on facts in that case, the case being an authority for what it actually decides in law and not for what may seem to logically follow from it. Thus, the statement of the principles of law applicable to the legal problems disclosed by the facts alone is the binding ratio of the case, which as has been stated hereinabove, is contained in paragraphs 18 to 23 of the judgment. Paragraphs 24 to 26, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the judgment. Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities. On this score alone, the Full Bench's understanding of this judgment has to be faulted and is set aside.

27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of Section 80P of the IT Act. *Firstly*, the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in *K.P. Varghese* v. *Income Tax Officer, Ernakulam*, (1981) 4 SCC 173 as follows:

.....

28. *Secondly*, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the

1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. *Thirdly*, the gross total income must include income that is referred to in sub-section (2).

30. *Fourthly*, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members. As has been rightly pointed out by the learned Additional Solicitor General, the expression "engaged in", as has been held in *Commissioner of Income Tax, Madras* v. *Ponni Sugars and Chemicals Ltd.*, (2008) 9 SCC 337, would necessarily entail an examination of all the facts of the case. This Court in *Ponni Sugars and Chemicals Ltd.* (supra) held:

.....

32. *Fifthly*, as has been held in *Udaipur Sahkari Upbhokta Thok Bhandar Ltd.* v. *CIT*, (2009) 8 SCC 393 at paragraph 23, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P. Therefore, the assessing officer under the IT Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the IT Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so.

33. *Sixthly*, what is important to note is that, as has been held in *Kerala State Co-operative Marketing Federation Ltd.* (supra) the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in Section 80P(2)(a)(i). Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

34. *Seventhly*, section 80P(1)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be

termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under Section 80P, a Co-operative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs. 50,000/- under sub-clause (c).

35. *Eighthly*, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.

39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

45. To sum up, therefore, the ratio decidendi of *Citizen Co-operative Society Ltd.* (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of *Citizen Co-operative Society Ltd.* (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

49. Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in *Citizen Co-operative Society Ltd.* (supra).

50. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment.

8. *Himachal Pradesh Bus Stand Management and Development Authority v. Central Empowered Committee and Ors., 2021 SCC OnLine SC 15*

Decided on : 12.01.2021
Bench : 1. Hon'ble Mr. Justice **D.Y.Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee

(The environmental rule of law calls on the judges to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law.

If MoEF has permitted, within the provisions of law, a forest land to be used for the specific purposes and the purpose is modified without its approval, the same is illegal.)

Facts

The civil appeals in the present case arose under Section 22 of the National Green Tribunal Act, 2010 ("*NGT Act*"). The correctness of a judgment and order dated 4 May 2016 of the National Green Tribunal ("*NGT*") was in issue.

3. The NGT dealt with an original application filed by the second respondent, to challenge a report dated 18 September 2008 of the Central Empowered Committee ("*CEC*"), the first respondent. In its report, the CEC concluded, *inter alia*, that a part of the Bus Stand Complex constructed by the second respondent and the appellant at McLeod Ganj in Himachal Pradesh violates the provisions of the Forest (Conservation) Act, 1980 ("*Forest Act*"). The CEC recommended the demolition of the illegal portions.

The NGT accepted the findings of the CEC, observing that the Bus Stand Complex seriously disturbs the ecology of the area in which it has been constructed. The NGT directed, *inter alia*, that:

i. The structure of the Hotel-cum-Restaurant in the Bus Stand Complex be demolished by the second respondent;
ii. The second respondent shall pay a compensation of Rs. 15 lacs in terms of Sections 15 and 17 of the NGT Act;
iii. The appellant shall pay a compensation of Rs. 10 lacs, while the State of Himachal Pradesh and its Department of Tourism shall pay a compensation of Rs. 5 lacs each; and
iv. The Chief Secretary of the State of Himachal Pradesh shall conduct an enquiry against the erring officers of the appellant, in order to fasten the responsibility for the illegal project.

Observations and Decision

The Hon'ble Court analysed the case on the basis of the following :-

1. **Environmental rule of law**

> **55.** The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal of Environmental Law (2014), Bruce Pardy describes this conundrum in the following terms[6]:
>
> .....
>
> **56.** However, even while using the framework of an environmental rule of law, the difficulty we face is this - when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.
>
> **58.** The point, therefore, is simply this - the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.
>
> **59.** In the case before us, it is not possible for us to determine in quantifiable terms the exact effect of the construction of the Hotel-cum-Restaurant structure by the appellant and the second respondent on the ecology of the area. Both of them have tried to argue that the number of trees felled by them, in the case of the present construction, is what it would have been, had they only built a bus stand and a parking space. However, what we can record a determination on is the way in which the appellant and second respondent have gone about achieving this object. Specifically, the parties have engaged in the construction without complying with the plans drawn by the appellant's third-party consultants, which were agreed to by them in the RFP. The construction proceeded even when the TCP Department tried to halt it, refusing to approve its plans. Even the *post facto* refusal by the MOEF for changing the nature of the diverted forest land was not enough to stop the parties. Ultimately, when they were forced to halt the construction by the CEC, they proceeded with it under the guise of an order of this Court which permitted only legal construction. A combination of these circumstances highlights not only conduct oblivious

> of the environmental consequences of their actions, but an active disdain for them in favour of commercial benefits. While the second respondent was a private entity, they were actively supported in these efforts by the appellant. Hence, it is painfully clear that their actions stand in violation of the environmental rule of law. Whatever else the environmental rule of law may mean, it surely means that construction of this sort cannot receive our endorsement, no matter what its economic benefits may be. A lack of scientific certainty is no ground to imperil the environment.

2. Role of Courts in Ensuring Environmental Protection

The Hon'ble Court referred to the *Bengaluru Development Authority* v. *Sudhakar Hegde,* 2020 SCC OnLine 328, *Lal Bahadur* v. *State of Uttar Pradesh,* (2018) 15 SCC 407, UNEP Report and Global Judicial Handbook on Environmental Constitutionalism by the UNEP and concluded as follows :-

> **64.** The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the 'shield' of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations.

3. Illegal Activities on Forest Land

The Hon'ble Court referred to the cases of *Hospitality Association of Mudumalai* v. *In Defence of Environment and Animals,* 2020 SCC OnLine SC 838, *Goel Ganga Developers India Pvt. Ltd.* v. *Union of India,* (2018) 18 SCC 257, *M.C. Mehta* v. *Union of India, (2018) 18 SCC 397* and concluded as follows :-

> **68.** In the present set of appeals, the forest land was allowed to be used by the MOEF for the specific purposes of constructing a 'parking space' and 'bus stand' in McLeod Ganj. MOEF made a conscious decision not to modify the terms of this permission, even when granted an opportunity to do so. Hence, any construction undertaken by the second respondent, even with the tacit approval of the appellant being a statutory authority under the HP Bus Stands Act, will be illegal.

4. Jurisdiction of the NGT

An ancillary issue was whether the NGT could have adjudicated upon a violation of the TCP Act, which is not an Act present in Schedule I of the NGT Act. The Hon'ble Court referred to the *State of M.P.* v. *Centre for Environment Protection Research & Development,* (2020) 9 SCC 781 and concluded as follows :-

> **70.** The provisions of the TCP Act required the appellant and second respondent to take prior permission from the TCP Department before changing the nature of the land through their construction. Non-conformity with this stipulation led to a violation of their environmental obligations. In any case, this question is academic because the NGT's impugned judgment grounds its decision in the appellant and second respondent's

violation of Section 2 of the Forest Act, which is an Act present within Schedule I of the NGT Act.

The Hon'ble Court finally concluded as follows :-

71. Based on our analysis above, we uphold the directions which have been issued by the NGT in its judgment. By the earlier orders dated 16 May 2016 and 9 September 2016, this court only stayed NGT's direction in relation to the demolition of the Hotel-cum-Restaurant structure. The appellant has tried to argue against the demolition of the Hotel-cum-Restaurant structure in the Bus Stand Complex, submitting that it may be allowed to stand for their use. However, we cannot accept this submission. Doing so would legalise what is an otherwise entirely illegal construction, the reasons for which have been adduced by us in the judgment above.

72. Hence, we direct that the process of demolishing the Hotel-cum-Restaurant structure in the Bus Stand Complex be commenced within two weeks from the date of the judgment and the structure shall be demolished by the second respondent within one month thereafter. In the event of default, the Chief Conservator of Forest along with the administration of district Dharamshala shall demolish the structure and recover the cost and expenses as arrears of land revenue from the second respondent.

73. Further, as directed by the NGT, the State of Himachal Pradesh and the second respondent can utilise the parking space and the bus stand in the Bus Stand Complex, after the demolition of the Hotel-cum-Restaurant structure. However, this has to be in accordance with orders dated 12 November 1997 and 1 March 2001 issued by the MOEF, *i.e.*, it shall not be used for any purpose other than parking of cars and buses, as the case may be.

9. *Anversinh v. State of Gujarat, 2021 SCC OnLine SC 19*

Decided on : 12.01.2021
Bench : 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice S.Abdul Nazeer
3. Hon'ble Mr. Justice **Surya Kant**

(A minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping. A bare perusal of the relevant legal provisions, as extracted above, show that consent of the minor is immaterial for purposes of Section 361 of IPC.

The Supreme Court in *S. Varadarajan* (supra) explicitly held that a charge of kidnapping would not be made out only in a case where a minor, with the knowledge and capacity to know the full import of her actions, voluntarily abandons the care of her guardian without any assistance or inducement on part of the accused. The cited judgment, therefore, cannot be of any assistance without establishing: first, knowledge and capacity with the minor of her actions; second, voluntary abandonment on part of the minor; and third, lack of inducement by the accused.

However, the existence of a consensual love-affair and the consent of the girl would be a relevant factor in determining the quantum of sentence.)

Issues

The Hon'ble Court formulated the following two issues :-

I. Whether a consensual affair can be a defence against the charge of kidnapping a minor?
II. Whether the punishment awarded is just, and ought there be leniency given the unique circumstances?

Observations and Decision

Regarding the first issue, the Hon'ble Court referred to the provisions of Sections 361 and 366 of the IPC and held as follows :-

> **12.** A perusal of Section 361 of IPC shows that it is necessary that there be an act of enticing or taking, in addition to establishing the child's minority (being sixteen for boys and eighteen for girls) and care/keep of a lawful guardian. Such 'enticement' need not be direct or immediate in time and can also be through subtle actions like winning over the affection of a minor girl.[2] However, mere recovery of a missing minor from the custody of a stranger would not ipso-facto establish the offence of kidnapping. Thus, where the prosecution fails to prove that the incident of removal was committed by or at the instigation of the accused,

it would be nearly impossible to bring the guilt home as happened in the cases of *King Emperor* v. *Gokaran*[3] and *Emperor* v. *Abdur Rahman*[4].

13. Adverting to the facts of the present case, the appellant has unintentionally admitted his culpability. Besides the victim being recovered from his custody, the appellant admits to having established sexual intercourse and of having an intention to marry her. Although the victim's deposition that she was forcefully removed from the custody of her parents might possibly be a belated improvement but the testimonies of numerous witnesses make out a clear case of enticement. The evidence on record further unequivocally suggests that the appellant induced the prosecutrix to reach at a designated place to accompany him.

14. Behind all the chaff of legalese, the appellant has failed to propound how the elements of kidnapping have not been made out. His core contention appears to be that in view of consensual affair between them, the prosecutrix joined his company voluntarily. Such a plea, in our opinion, cannot be acceded to given the unambiguous language of the statute as the prosecutrix was admittedly below 18 years of age.

15. A bare perusal of the relevant legal provisions, as extracted above, show that consent of the minor is immaterial for purposes of Section 361 of IPC. Indeed, as borne out through various other provisions in the IPC and other laws like the Indian Contract Act, 1872, minors are deemed incapable of giving lawful consent.[5] Section 361 IPC, particularly, goes beyond this simple presumption. It bestows the ability to make crucial decisions regarding a minor's physical safety upon his/her guardians. Therefore, a minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping.

16. Similarly, Section 366 of IPC postulates that once the prosecution leads evidence to show that the kidnapping was with the intention/knowledge to compel marriage of the girl or to force/induce her to have illicit intercourse, the enhanced punishment of 10 years as provided thereunder would stand attracted.

17. The ratio of *S. Varadarajan* (supra), although attractive at first glance, does little to aid the appellant's case. On facts, the case is distinguishable as it was restricted to an instance of "taking" and not "enticement". Further, this Court in *S. Varadarajan* (supra) explicitly held that a charge of kidnapping would not be made out only in a case where a minor, with the knowledge and capacity to know the full import of her actions, voluntarily abandons the care of her guardian without any assistance or inducement on part of the accused. The cited judgment, therefore, cannot be of any assistance without establishing: first, knowledge and capacity with the minor of her actions; second, voluntary abandonment on part of the minor; and third, lack of inducement by the accused.

18. Unfortunately, it has not been the appellant's case that he had no active role to play in the occurrence. Rather the eye-witnesses have testified to the contrary which illustrates

how the appellant had drawn the prosecutrix out of the custody of her parents. Even more crucially, there is little to suggest that she was aware of the full purport of her actions or that she possessed the mental acuities and maturity to take care of herself. In addition to being young, the prosecutrix was not much educated. Her support of the prosecution version and blanket denial of any voluntariness on her part, even if presumed to be under the influence of her parents as claimed by the appellant, at the very least indicates that she had not thought her actions through fully.

19. It is apparent that instead of being a valid defence, the appellant's vociferous arguments are merely a justification which although evokes our sympathy, but can't change the law. Since the relevant provisions of the IPC cannot be construed in any other manner and a plain and literal meaning thereof leaves no escape route for the appellant, the Courts below were seemingly right in observing that the consent of the minor would be no defence to a charge of kidnapping. No fault can thus be found with the conviction of the appellant under Section 366 of IPC.

For the second issue, the Hon'ble Court referred to *State of Madhya Pradesh* v. *Surendra Singh,* (2015) 1 SCC 222 and opining that there are many factors which may not be relevant to determine the guilt but must be seen with a humane approach at the stage of sentencing, held as follows:-

21. True it is that there cannot be any mechanical reduction of sentence unless all relevant factors have been weighed and whereupon the Court finds it to be a case of gross injustice, hardship, or palpably capricious award of an unreasonable sentence. It would thus depend upon the facts and circumstances of each case whether a superior Court should interfere with, and resultantly enhance or reduce the sentence. Applying such considerations to the peculiar facts and findings returned in the case in hand, we are of the considered opinion that the quantum of sentence awarded to the appellant deserves to be revisited.

27. Given these multiple unique circumstances, we are of the opinion that the sentence of five years' rigorous imprisonment awarded by the Courts below, is disproportionate to the facts of the this case. The concerns of both the society and the victim can be respected, and the twin principles of deterrence and correction would be served by reducing the appellant's sentence to the period of incarceration already undergone by him.

28. In light of the above discussion, we are of the view that the prosecution has established the appellant's guilt beyond reasonable doubt and that no case of acquittal under Sections 363 and 366 of the IPC is made out. However, the quantum of sentence is reduced to the period of imprisonment already undergone. The appeal is, therefore, partly allowed in the above terms and the appellant is consequently set free. The bail bonds are discharged.

10. Tamil Nadu Housing Board v. Abdul Salam Sarkar and Ors., 2021 SCC OnLine SC 23

Decided on : 13.01.2021
Bench : 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Mr. Justice Sanjiv Khanna

(In issue related to the payment of interest on solatium for the acquisition under the Land Acquisition Act, 1894, the test which *Gurpreet Singh* mandates is that interest on solatium would be payable if the reference court has either not referred to it or has not rejected it expressly or by necessary implication. Moreover, the claim can only be made in pending execution proceedings.)

Issue

Whether the respondents are entitled to interest on solatium for the acquisition which took place under the provisions of the Land Acquisition Act 1894? This issue turns on an interpretation of the judgment of the Constitution Bench of this Court in *Gurpreet Singh v. Union of India,* (2006) 8 SCC 457.

Observations and Decision

The Hon'ble Court referred to the judgments in *Sunder v. Union of India,* (2001) 7 SCC 211 and *Gurpreet Singh v. Union of India,* (2006) 8 SCC 457 and held as follows :-

> **7.** In paragraph 54 of the judgment in *Gurpreet Singh* (supra), the above issue was considered specifically in the context of the earlier decision in *Sunder* v. *Union of India*[2]. Dealing with the issue, Justice P K Balasubramanyan speaking for the Constitution Bench observed thus:
>
> > "54.....That question is whether in the light of the decision in *Sunder*, (2001) 7 SCC 211 : 2001 Supp (3) SCR 176], the awardee/decree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the decree. It is well settled that an execution court cannot go behind the decree. **If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on *Sunder* [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of *Sunder* [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] and say that the compensation awarded includes solatium and in such an event interest on the**

> **amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery** from the date of the judgment in *Sunder* [(2001) 7 SCC 211 : 2001 Supp (3) SCR 176] (19-9-2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree-holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."
>
> (emphasis by Court)

8. The test which *Gurpreet Singh* (supra) mandates is that interest on solatium would be payable if the reference court has either not referred to it or has not rejected it expressly or by necessary implication. Moreover, the claim can only be made in pending execution proceedings. In the present case, the claim for interest on solatium had not been rejected by the reference court. In an appeal arising from the decision of the reference court, the High Court, In its judgment dated 12 July 2001, observed that since the matter was pending before a larger bench of this Court, the issue as to whether interest on solatium would be granted would depend on the outcome of those proceedings and it would be open to the claimants to move an application before the Sub Court. It was after the judgment of this Court in *Gurpreet Singh* (supra), which was delivered on 19 October 2006, that the respondents moved an application for the grant of interest on solatium. The High Court by its impugned judgment has come to the conclusion that such an application was tenable in view of the judgment in *Gurpreet Singh* (supra). As a matter of principle, we see no reason to take any other view since it is in accord to the judgment of the Constitution Bench.

9. The submission which has been urged on behalf of the appellant is that in the present case, the claim was made in 2008 after the earlier execution petition was closed and the original award and the enhanced compensation were deposited and appropriated by the claimant. This, in our view, would not disentitle the claimant for the grant of interest on solatium. The claim for interest on solatium was not rejected and was expressly kept open by the High Court in its judgment dated 12 July 2001. The liberty which was granted by the High Court to institute proceedings before the Sub Court after the matter was resolved by the larger bench of this Court was the subject matter of a Special Leave Petition. The judgment of the High Court was affirmed by the dismissal of the Special Leave Petition. The review petition by the Revenue Divisional Officer was also dismissed. Hence, *inter partes*, the claimants were entitled to apply for the grant of interest on solatium, particularly having regard to the fact that the claim had not been rejected at any antecedent stage and had been kept open.

11. Ashok Kumar v. State of Jammu & Kashmir and Ors., 2021 SCC OnLine SC 24

Decided on : 18.01.2021
Bench : 1. Hon'ble Mr. Justice S.A. Bobde (C.J.)
2. Hon'ble Mr. Justice A.S. Bopanna
3. Hon'ble Mr. Justice **V. Ramasubramanian**

(Article 16(1) does not bar a reasonable classification of employees or reasonable test for their selection. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for a post. Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances. It can be the basis not only for barring promotion, but also for restricting the scope of promotion, however, the restriction placed cannot go to the extent of seriously jeopardising the chances of promotion.)

Facts

The contesting private respondents were originally appointed as peons (Class-IV) during the period 1989-1995. They were promoted as Junior Assistants in the year 1997 and as Senior Assistants in 1998-1999. In contrast, the appellants in these appeals were directly recruited to the post of Junior Assistants in the year 1998. They were promoted as Senior Assistants on various dates in the years 2001, 2005, 2006 and 2008.

The High Court of Jammu & Kashmir is a creation of the Constitution of Jammu & Kashmir. Section 108 of the Constitution of Jammu & Kashmir which is similar to Article 229 of the Constitution of India deals with "*Officers and servants of the High Court*". Under Sub-section (1) of Section 108, appointments of officers and servants of the High Court shall be made by the Chief Justice of the Court or such other person as the Chief Justice may direct. The conditions of Service of the officers and servants of the High Court, as per Sub-section (2), shall be such as may be prescribed by the Rules made by the High Court with the approval of the Governor. In exercise of the powers conferred by Sub-section (2) of Section 108, the High Court issued a set of Rules known as the Jammu & Kashmir High Court Staff (Conditions of Service) Rules, 1968, with the approval of the Governor of the State. While Rule 4 stipulates that all appointments of the staff of the High Court including promotions shall be made by the Chief Justice, the power to lay down the qualifications and to determine the mode of recruitment is conferred by Rule 6 upon the Chief Justice.

In exercise of the power conferred by Rule 6, the Chief Justice of the High Court of Jammu & Kashmir issued an Office Order No. 579 dated 24.10.2008, prescribing the qualifications as well as the mode of recruitment for appointment and promotion to various posts in the High Court as follows:—

Post	*Method of recruitment*	*Minimum Educational Qualification*	*Experience, if any*	*Pay Scale*
Head Assistant	By promotion from amongst Senior Assistants on the basis of seniority-cum-merit	Graduate from a recognised University	Two years	5000-8000
Senior Assistant	By promotion from amongst Junior Assistants on the basis of merit-cum-Seniority	Graduate from a recognised University	Two years	4000-6000
Junior Assistant	(A) 75% by direct recruitment (B) 25% by promotion from amongst Class-IV employees on the basis of Seniority-cum-merit	(A) Graduate from a recognised University (B) Matriculation	-	3050-4910

The Office Order No. 579 dated 24.10.2008 issued by the Chief Justice of the State of Jammu & Kashmir, contained a Note towards the end. The Note reads as follows:

"1. If the candidate(s) is/are not available from the relevant feeding cadre then the selection/appointment shall be made from amongst the candidates from other equivalent cadre(s).

2. Since the requirement of graduation for entry into the High Court service was prescribed vide Notification dated 25.4.1987, at that time officials having qualification less than graduation entered the service. Such officials having during this period gained sufficient experience in the working of the administration, the Chief Justice may on his own or on the recommendations of committee, if soconstituted, relax the qualification in cases ofofficers/officials who have made their entry into the service on or before the 25th April, 1987. Further the minimum period of experience can also be relaxed in exceptional and appropriate cases. The officials can get only one relaxation at the time."

On 26.10.2008, persons like the appellants who were directly recruited as Junior Assistants in year 1998 with the qualification of graduation, were promoted as Head Assistants from the post of Senior Assistants. Still some vacancies were available and hence the contesting respondents-*herein* who entered service as Class-IV employees and who had risen upto the position of Senior Assistants, were also promoted as Head Assistants. However, such promotions were intended to fill up the gap till eligible candidates were available.

Challenging the promotions so granted to the contesting respondents-*herein*, on the ground that they were not qualified at the relevant point of time, a writ petition was filed. On 22.04.2010 the writ petition was allowed. The affected parties filed appeals, but those appeals were dismissed. As a consequence thereof, all persons like the appellants-*herein*, who were left out earlier, were promoted on 30.08.2011 as Head Assistants.

Finding that the benefit promotion that came to them was short lived and also finding that this was on account of the office Order dated 24.10.2008 of the Chief Justice, the contesting respondents-*herein* filed a set of writ petitions. By a common Order dated 30.08.2013, the High Court allowed the set of four writ petitions and quashed the Chief Justice's Order dated

24.10.2008. The appeals against this order were dismissed by a Division Bench of the High Court by a final Order dated 16.04.2016. It is against the said Order that the appellants were before the Supreme Court.

Grounds

The impugned Judgment was assailed on the grounds *inter alia*: (i) that a classification is permissible on the basis of educational qualifications, even within a homogenous group, for the purpose of promotion to a higher post; (ii) that an order passed by the Chief Justice in exercise of the power conferred by Rule 6 need not go before the Full Court; (iii) that the order of the Chief Justice dated 24.10.2008 does not curtail the power of relaxation available to the Chief Justice; and (iv) that the order of the Chief Justice was not actually retrospective in nature.

In addition to the above contentions, it was also submitted by the learned Counsel for the appellants that as on date, those contesting respondents who were now in service, have all acquired a degree and that therefore the question that remained to be answered was only one of seniority. Therefore, if no one is reverted and if the power of the Chief Justice to prescribe the qualifications under Rule 6 is upheld, then the long standing lis can be put to an end by fixing seniority on the basis of possession of qualifications at the time of appointment/promotion to the relevant post.

Observations and Decision

The Hon'ble Court referred to the judgments in ***State of Mysore v. P. Narasinga Rao,*** AIR 1968 SC 349, ***State of Jammu & Kashmir v. Triloki Nath Khosa,*** (1974) 1 SCC 19 and ***T.R. Kothandaraman v. Tamil Nadu Water Supply and Drainage Board,*** (1994) 6 SCC 282 and observed as follows :-

> **33.** Way Back in 1968, the Constitution Bench of this Court held in the *State of Mysore* v. *P. Narasinga Rao*[1], that Article 16(1) does not bar a reasonable classification of employees or reasonable test for their selection. It was further held that the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Despite the fact that the competing parties who were before this Court in the said case were employed as Tracers, carrying out the same duties and responsibilities, the Bench held in that case that the classification of Tracers, into two types with different grades of pay, on the basis that one type consisted of matriculates and the other nonmatriculates, is not violative of Articles 14 and 16. Again in State of *Jammu & Kashmir* v. *Triloki Nath Khosa*[2], another Constitution Bench considered the question whether persons drawn from different sources and integrated into one class can be classified on the basis of their educational qualifications for promotion. The Constitution Bench answered the question in the affirmative holding that the Rule providing for graduates to be eligible for promotion to the exclusion of diploma holders is not violative of Articles 14 and 16 of the Constitution.
>
> **34.** In *T.R. Kothandaraman* v. *Tamil Nadu Water Supply and Drainage Board*[3], the legal position in this regard was summarised as follows:— **(i)** Higher educational qualification is

a permissible basis of classification, acceptability of which will depend on the facts and circumstances; **(ii)** Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion; **(iii)** restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion.

35. As pointed out in *T.R. Kothandaraman* (supra), the Court shall have to be conscious about the need for maintaining efficiency in service, while judging the validity of the classification. Though the High Court took note of these decisions, the High Court fell into an error in thinking that in the facts and circumstances of the case, the High Court could not establish the necessity for higher qualification for the efficient discharge of the functions of higher posts. It is apparent from the facts and circumstances of the case that the non graduates have had opportunities to qualify themselves, which they have also done. Therefore, the prescription of graduation as a qualification for promotion to the post of Head Assistant cannot be held as violative of Articles 14 and 16.

Applying the principles of law enumerated in the aforementioned cases and the analyzing the provisions of Jammu & Kashmir High Court Staff (Conditions of Service) Rules, 1968 and the CCA Rules, the Hon'ble Court allowed the appeal and held as follows :-

24. As a matter of fact, the Order of promotion dated 24.11.2008 promoting the contesting respondents as Head Assistants made it clear that their appointments were only till eligible and suitable candidates are posted to these posts and that they can be considered for regularisation/appointment only if they attain the qualification and experience prescribed for the post. But the contesting respondents did not choose to challenge the Order of Chief Justice dated 24.10.2008, until the writ petition filed against their promotion was allowed by the single Judge and the Order also got confirmed in writ appeal by the Division Bench.

25. If we come to the grounds of attack to the impugned order of the Chief Justice, it is clear that the power of the Chief Justice clearly flowed out of Rule 6 of the Jammu & Kashmir High Court Staff (Conditions of Service) Rules, 1968. These Rules were issued by the High Court in exercise of the power conferred by Section 108(2) of the Constitution of Jammu & Kashmir. These Rules had the approval of the Governor also. Therefore, the contention of the respondents that the office order issued by the Chief Justice was *ultra vires*, is completely untenable.

26. The CCA Rules, 1956 will have only limited application to the employees of the High Court. These Rules, by themselves, do not stipulate the qualifications required for appointment to any particular post in the High Court. Rule 18 of the CCA Rules relied upon by the learned Counsel for the contesting respondents reads as follows:

.....

27. But the above Rule has no application to the staff of the High Court, as Section 108(2) of the Constitution of Jammu & Kashmir leaves this issue to the High Court.

28. Similarly Rule 5 of the CCA Rules on which reliance is placed by the learned Counsel for the contesting respondents, also has no application to the case on hand. This Rule 5 reads as follows:

.....

29. In so far as the staff of the High Court are concerned, Rule 5 has no application. When the Rule making power is vested with the High Court (subject to the approval of the

Governor) and when the Chief Justice is specifically empowered to prescribe the qualifications and method of recruitment, the CCA Rules which are general in nature cannot be replicated.

30. The High Court was wrong in thinking that Note-2 of the Order of the Chief Justice curtailed or restricted the power of relaxation available with him. If the authority conferred with the power to relax, chooses to regulate the manner of exercise of his own power, the same cannot be assailed as arbitrary. The notification dated 25.04.1987 prescribed for the first time, graduation as a necessary qualification. This is why, the Chief Justice chose by his Order, to limit his own power of relaxation to cases where appointments were made before the cut off date.

31. The contention that the Order of the Chief Justice affects the staff adversely with retrospective effect, is completely incorrect. The Order dated 24.10.2008 did not at all impact the promotions gained by persons upto 24.10.2008. We are concerned in this case with the competing claims of the appellants and the contesting respondents for promotion to the post of Head Assistant. The entitlement of unqualified candidates to seek promotion to the post of Head Assistant after 24.10.2008, is what was impacted by the Order of the Chief Justice.

32. The High Court erred in thinking that the impugned action of the Chief Justice violated Article 14 by creating a distinction between graduates and non graduates among the same category of persons who constituted a homogenous class.

36. In view of the above, the appeals are allowed and the judgment of the Division Bench of the High Court is set aside. However, in view of the fact that the contesting respondents have been working in the post of Head Assistants for quite some time and have also acquired the necessary qualifications, they need not be reverted at this stage. But the seniority of the appellants vis a vis the contesting respondents shall be based on the dates of acquisition of such qualification and the length of service taken together. In other words, the seniority of the contesting respondents will be decided not on the basis of the date of their promotion but on the basis of the date of their acquiring the qualification while occupying the promoted posts. There will be no order as to costs.

37. In so far as the Contempt Petitions are concerned, no further orders are necessary in view of the Orders passed in the appeals and the directions issued therein. Hence they are closed.

12. Lakhvir Singh Etc. v. State of Punjab and Another , 2021 SCC OnLine SC 25

Decided on: 19.01.2021

Bench: 1. Hon'ble Mr. Justice **S.K. Kaul**
2. Hon'ble Mr. Justice Hrishikesh Roy

(The benefit of probation under the Probation of Offenders Act, 1958 Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC)

Facts

The appellants were youngsters aged 20 and 19 years when they fell foul of the law. On 14.02.2003, at around 7.30 p.m., the appellants alongwith co-accused Gurpreet Singh approached the complainant - PW1 to hire a taxi to go to a village. Enroute, when at their behest the car was stopped, Gurpreet Singh caught hold of the complainant and the appellant Jagdeep Singh took a dagger and inflicted 6-7 injuries on PW1's forehead. Appellant Lakhvir Singh inflicted 2-3 injuries on his abdomen and 1 injury on his neck using a knife. The complainant was thrown out of his taxi and the three people fled with the taxi. In pursuance to the reporting of the crime by complainant, an FIR was registered on 15.02.2003 under Section 382 and Section 307 read with Section 34 IPC. Knife and dagger were recovered alongwith the taxi and the trial Court framed charges under Section 397 IPC. Post trial, the appellants were convicted by the trial Court vide judgment dated 8.1.2005 and sentenced to undergo Rigorous Imprisonment of 7 years each.

The appellants approached the Court by a special leave petition. Annexed thereto, the compromise deed arrived at between the complainant Amrik Singh and the appellants, in terms whereof the complainant has stated that he did not want to pursue any action against the appellants and has no objection to their release on bail or acquittal. The appellants have already served about 50% of their sentence while in custody.

On 3.12.2020, this Court while recording the aforesaid plea, issued notice on the SLP and on the prayer for interim relief of bail while simultaneously impleading the complainant as the 2nd respondent. On 18.12.2020, counsel for the State and respondent no. 2 entered appearance and counsel for respondent no. 2 confirmed that the dispute had been amicably resolved. However, counsel for respondent no. 1 submitted that the minimum sentence provided by the statute under Section 397 is 7 years and the same cannot be reduced below that period. On this submission, learned counsel for the appellants sought benefit under the Probation of Offenders Act, 1958, hereinafter referred to as 'the Act'.

Observations and Decisions

Regarding the application of section 4 of the Probation of Offenders Act, 1958,[8] the Apex court stated the following:

> **9.** In the case of the appellants, Section 3 would have no application taking into consideration nature of offence. However, Section 4 could come to the aid of the appellants as the offence committed, of which they have been found guilty, is not punishable with death or imprisonment for life. However, the trial court opined against the appellants. We may also note that the "notwithstanding" contained in Section 4 permits, despite anything contained in any other law for thetime being in force, the court to release a person on bond, with or without sureties, for a period of 3 years instead of sentencing him in order to ensure that he keeps peace and good behaviour.
>
> **13.** The legal position insofar as invocation of Section 4 is concerned has been analysed in *Ishar Das* v. *State of Punjab*[(1973) 2 SCC 65]elucidating that nonobstante clause in Section 4 of the Act reflected the legislative intent that provisions of the Act have effect notwithstanding any other law in force at that time. The observation in *Ramji Missar* (supra) was cited with approval to the effect that in case of any ambiguity, the beneficial provisions of the Act should receive wide interpretation and should not be read in a restricted sense.
>
> **14.** The aforesaid aspect is confirmed by the wording of the said Act which reads as under:

[8] **4. Power of court to release certain offenders on probation of good conduct.**—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

"**18. Saving of operation of certain enactments**. — Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), or of any law in force in any State relating to juvenile offenders or Borstal Schools."

15. Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the PC Act') prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In *Ishar Das* (supra), this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in *CCE* v. *Bahubali*[(1979) 2 SCC 279]. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. It is in this context, it was observed in *State of Madhya Pradesh* v. *Vikram Das* (Supra) that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case. In fact, the observation made in *Joginder Singh* v. *State of Punjab*[ILR 1981 P&H 1]are in the same context.

Coming to the facts of the present case, the Apex Court opined:

16. The facts of the present case are that the appellants have not served out the minimum sentence of 7 years though they have served about half the sentences. They were aged under 19 & 21 years of age as on the date of offence but not on the date of sentence. The redeeming feature in their case is that the person who suffered, appears to have forgiven them, possibly with the passage of time. There is no adverse report against them about their conduct in jail otherwise the same would have been brought to our notice by learned counsel for the State. Faced with the aforesaid legal position, this is a fit case that the benefit of probation can be extended to the appellants under the said act in view of the provisions of Section 4 of the said Act on completion of half the sentence.

17. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.

13. Manish Kumar v. Union of India and Ors., 2021 SCC OnLine SC 30

Decided on : 19.01.2021
Bench : 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice **K.M. Joseph**

(Constitutional validity of Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 – upheld)

Issues

The petitioners approached the Supreme Court under Article 32 of the Constitution of India challenging Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 (hereinafter referred to as 'the impugned amendments', for short). Section 3 of the impugned amendment, amends Section 7(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code', for short). Section 4 of the impugned amendment, incorporates an additional Explanation in Section 11 of the Code. Section 10 of the impugned amendment inserts Section 32A in the Code.

Observations and Decision

Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act 2020

242. These provisions were unsuccessfully challenged before this Court as evident from the decision in the *Pioneer* (supra). As pointed out on behalf of the Union, in the said case the challenge was mounted by the promoters of real estate projects. These provisions have been accepted by creditors like the petitioners covered by sub-section 6A. The impact of the insertion of sub-section 3A in Section 25A is to be noticed. As already seen section 25A, *inter alia*, deals with the exercise of rights and the liabilities of authorised representative of creditors like debenture holders and allottees. After the insertion of sub-section 3A in section 25A, the majority of the creditors of a class is permitted to call the shots. It's view, in other words, will hold sway. This is subject to the Code otherwise. The legislative understanding is clear that in regard to such creditors bearing the hallmark of large numbers they are required to be treated differently. If they are not treated differently it would spell chaos and the objects of the Code would not be fulfilled. It is an extension of this basic principle which has led to the insertion of the impugned proviso. Insisting on a threshold in regard to these categories of creditors would lead to the halt to indiscriminate litigation which would result in an uncontrollable docket explosion as far as the authorities which work the Code are concerned. The debtor who is apparently stressed is relieved of the last straw on the camel's back, as it were, by halting individual creditors whose views are not shared even by a reasonable number of its peers rushing in with applications. Again, as in the case of the allottees, this is not a situation where while treating them as financial creditors they are totally deprived of the right to apply under Section 7 as part of the legislative scheme. The legislative policy reflects an attempt at shielding the corporate debtor from what it considers would be either for frivolous or avoidable applications. What we mean by avoidable applications is a decision which would not be taken by similarly placed creditors keeping in mind the consequences that would ensue not only in regard to persons falling in the same category but also the generality of creditors and other stakeholders. All that the amendment is likely to ensure is that the

filing of the application is preceded by a consensus at least by a minuscule percentage of similarly placed creditors that the time has come for undertaking a legal odyssey which is beset with perils for the applicants themselves apart from others. As far as the percentage of applicants contemplated under the proviso it is clear that it cannot be dubbed as an arbitrary or capricious figure. The legislature is not wanting in similar requirements under other laws. The provisions of the Companies Act, 2013 and its predecessors contained similar provisions. Allowing what is described as 'lone Ranger' applications beset with extremely serious ramifications which are at cross purposes with the objects of the code. This is apart from it in particular spelling avoidable doom for the interest of the creditors falling in the same categories. The object of speed in deciding CIRP proceedings would also be achieved by applying the threshold to debenture holders and security holders. The dividing line between wisdom or policy of the legislature and limitation placed by the Constitution must not be overlooked.

243. The contention based on the applicability of the Absurdity Doctrine on the Principle that the result which, 'all mankind without speculation would unite in rejecting' can have no application to the provision. The Code and object of the Code and the unique features which set apart the creditors involved in this case from the generality of the creditors, the challenge being to an economic measure and the consequential latitude that is owed to the legislature renders the Principle of Absurdity wholly inapposite.

244. There is no scope also having regard to their identification in paragraph-49 of *Pioneer* (supra) with reference to their numerosity. They cannot be heard to complain about their inclusion within the terms of the 1st proviso. Also Section 21(6A)(a) read with Section 25(A) puts the matter beyond the pale of doubt.

245. There is no basis for the petitioners to draw any support from the decision of this Court in (2019) 12 Scale 579. The facts in the said case presented a clear situation which invited the application of the Principle.

Section 4 of the Insolvency and Bankruptcy Code (Amendment) Act 2020

265. Now, let us consider finally the impugned Explanation. The impugned Explanation came to be inserted by the impugned amendment. Apparently, interpreting Section 11, there appears to have been some cleavage of opinion. This is apparent from the case set up on behalf of the petitioners and the case set up on behalf of the Union of India. The intention of the Legislature was always to target the corporate debtor only insofar as it purported to prohibit application by the corporate debtor against itself, to prevent abuse of the provisions of the Code. It could never had been the intention of the Legislature to create an obstacle in the path of the corporate debtor, in any of the circumstances contained in Section 11, from maximizing its assets by trying to recover the liabilities due to it from others. Not only does it go against the basic common sense view but it would frustrate the very object of the Code, if a corporate debtor is prevented from invoking the provisions of the Code either by itself or through his resolution professional, who at later stage, may, don the mantle of its liquidator. The provisions of the impugned Explanation, thus, clearly amount to a clarificatory amendment. A clarificatory amendment, it is not even in dispute, is retrospective in nature. The Explanation merely makes the intention of the Legislature clear beyond the pale of doubt. The argument of the petitioners that the amendment came into force only on 28.12.2019 and, therefore, in respect to applications filed under Sections 7, 9 or 10, it will not have any bearing, cannot be accepted. The Explanation, in the facts of these cases, is clearly clarificatory in nature and it will certainly apply to all pending applications also.

266. We may notice that these are petitions filed under Article 32 of the Constitution of India, essentially, complaining of violation of Fundamental Right under Article 14 of the Constitution insofar as the challenge to the Explanation is concerned, a strained effort is made to describe this amendment as manifestly arbitrary. To build up this argument, an attempt is made to contend that an Explanation cannot widen the provisions or whittle down its scope. We are afraid, that this venture of attempting to persuade us to hold that an Explanation would be trespassing the limits of its province, should it widen the scope of the main provisions, itself has no legs to stand on, as explained earlier. We are unable to understand how it could be described as being arbitrary for the Legislature to clarify its intention through the device of an Explanation. The further attempt to persuade us to overturn the provision on the score that the Explanation attempts to achieve the result of a repeal of Sections 11(a) and 11(d), is totally meritless. We are clear in our mind that on a proper understanding of Sections 11(a) and 11(d), it does nothing of the kind. Sections 11(a) and 11(d) remain intact in the manner we have propounded.

267. We must record our understanding of the efforts of the petitioner in the light of the application which is pending and the appeal also which is preferred by the petitioner in NCLAT. We are really concerned and can be called upon only to pronounce on the vires of the Statute on the score that it is unconstitutional on any ground known to law. The only ground which is urged before us is the violation of Article 14. This ground does not merit acceptance. The challenge is repelled.

Section 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 which introduced Section 32A in the Code

280. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.

281. It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. The new management cannot be the subject matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto. These ingredients are also insisted upon for claiming exemption of the bar from actions against the property. Significantly every person who was associated with the corporate debtor in any manner and who was directly or

indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor. The corporate debtor and its property in the context of the scheme of the code constitute a distinct subject matter justifying the special treatment accorded to them. Creation of a criminal offence as also abolishing criminal liability must ordinarily be left to the judgment of the legislature. Erecting a bar against action against the property of the corporate debtor when viewed in the larger context of the objectives sought to be achieved at the forefront of which is maximisation of the value of the assets which again is to be achieved at the earliest point of time cannot become the subject of judicial veto on the ground of violation of Article 14. We would be remiss if we did not remind ourselves that attaining public welfare very often needs delicate balancing of conflicting interests. As to what priority must be accorded to which interest must remain a legislative value judgment and if seemingly the legislature in its pursuit of the greater good appears to jettison the interests of some it cannot unless it strikingly ill squares with some constitutional mandate suffer invalidation.

282. There is no basis at all to impugn the Section on the ground that it violates Articles 19, 21 or 300A.

14. X v. State of Jharkhand and Ors., 2021 SCC OnLine SC 32

Decided on : 20.01.2021
Bench : 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(Relying on the judgment of *Nipun Saxena v. Union of India,* directions were issued for the rehabilitation of a rape victim who was facing not only mental trauma but also discrimination from the society.)

Facts

The petitioner approached the Supreme Court under Article 32 of the Constitution of India. The petitioner's case in the writ petition is that she being the rape victim, whose identity was disclosed by the media and after knowing that the petitioner is a rape victim, no one is ready to give her accommodation even on rent. The petitioner in the writ petition invoked jurisdiction of the Supreme Court in the matter of rehabilitation of the petitioner. The petitioner also prayed for direction to the respondent to protect the petitioner and her children's life. The petitioner after divorce from her first husband got married to one Rajesh Kujur with whom a son was also born. The petitioner has also lodged criminal case being No. 56 of 2004 against her husband Rajesh Kujur which resulted in acquittal. The petitioner also filed a copy of the legal notice dated 9-8-2019 which was sent by the landlord of the petitioner asking the petitioner to vacate the premises on the ground of non-payment of rent. The petitioner sent a letter dated 5-12-2019 stating that the landlord had sealed the house on 4-12-2019. In the counter-affidavit by the State, the State gave a tabular chart containing status of 7 criminal cases which were initiated by the petitioner. In para 7 one of the cases mentioned in the chart was the case filed against Mohd. Ali. Mohd. Ali was convicted on 15-2-2014 under Section 376(2)(*g*) IPC and Section 3(1)(*xii*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In other criminal cases either the accused were acquitted or trial was pending in some cases. In two FIRs lodged by the petitioner, in the year 2018 under Section 354-A(*ii*) as well as under Sections 376, 448 and 506 IPC, respectively the investigation was said to be going on.

Observations and Decision

The Hon'ble Court referred to the provisions of Section 228A of the IPC and the judgments in ***Nipun Saxena v. Union of India***, (2019) 2 SCC 703 and held as follows :-

> **16.** There can be no denial that the petitioner is a rape victim. Even if we do not take into consideration other criminal cases filed by the petitioner under Section 376 IPC, in Case No. 162 of 2002 where allegation of rape was made on 8-6-2002 the accused, Mohd. Ali has been convicted under Section 376(2)(*g*) IPC for 10 years' RI. The petitioner being a rape victim deserves treatment as rape victim by all the authorities.

17. A rape victim suffers not only mental trauma but also discrimination from the society. We may refer to the judgment of this Court in *Nipun Saxena* v. *Union of India* [*Nipun Saxena* v. *Union of India*, (2019) 2 SCC 703 : (2019) 1 SCC (Cri) 772] , wherein the following observations were made by this Court: (SCC p. 712, para 12)

> "*12.* A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being."

22. This Court in *Nipun Saxena* [*Nipun Saxena* v. *Union of India*, (2019) 2 SCC 703 : (2019) 1 SCC (Cri) 772] has occasion to consider Section 228-A wherein this Court in para 50.1 has issued the following directions: (SCC p. 723)

> "*50.1.* No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large."

23. The law with regard to Section 228-A is well established, all including the media, both print and electronic have to follow the law.

27. In view of the foregoing discussion, we dispose of this writ petition with the following directions:

> **27.1.** The Deputy Commissioner, Ranchi is directed to take measure to ensure that minor children of the petitioner are provided free education in any of the government institutions in District Ranchi where the petitioner is residing till they attain the age of 14 years.
>
> **27.2.** The Deputy Commissioner, Ranchi may also consider the case of the petitioner for providing house under Prime Minister Awas Yojna or any other Central or State scheme in which the petitioner could be provided accommodation.
>
> **27.3.** The Senior Superintendent of Police, Ranchi and other competent authority shall review the police security provided to the petitioner from time to time and take such measures as deemed fit and proper.
>
> **27.4.** The District Legal Services Authority, Ranchi on representation made by the petitioner shall render legal services to the petitioner as may be deemed fit to safeguard the interest of the petitioner.

15. State of Uttarakhand and Ors. v. Sureshwati, 2021 SCC OnLine SC 34

Decided on : 20.01.2021
Bench : 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice **Indu Malhotra**

(Where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

An order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947.)

Facts

The Respondent was initially engaged as an Assistant Teacher in Jai Bharat Junior High School, Haridwar (hereinafter referred to as "the School") during the period July, 1993 to 21.5.1994. Subsequently, she worked as a Clerk from 1.7.1994. On 25.3.1996, the District Basic Education Officer granted approval to the appointment of the Teachers, Clerk and Peon in the School, including the Respondent herein w.e.f. 1.7.1994. During this period, the School was an unaided private institution. From 24th May, 2005 the School started receiving grants-in-aid from the State, and came to be governed by the Uttaranchal School Education Act, 2006.

It was the case of the Appellants that the Respondent had abandoned her service as a clerk in the School since 1.7.1997 when she got married, and shifted to Dehradun. After a period of 9 years, on 15.7.2006, the Respondent filed a complaint before the School contending that she had worked continuously upto 07.03.2006. She alleged that on 8th March, 2006 her services were illegally retrenched without granting her any hearing, or payment of retrenchment compensation. The School *vide* letter dated 21.08.2006 requested the Additional District Education Officer (Basic), Haridwar to conduct an inquiry on the complaint made by the Respondent.

The Basic School Inspector vide his detailed report dated 24th August, 2006 stated that he had inspected the records of the School in the presence of both parties. He found that the Respondent had tampered and manipulated the date of appointment, by mentioning two different dates. The enquiry revealed that the employment of the Respondent was illegal, since the father of the respondent was a member of the Managing Committee, and her mother was the Chairman employed by the School. The records revealed that the

Respondent had not worked in the School from July 1997 onwards, nor was there any leave application received from her on the record. On account of her continuous absence, the School engaged another clerk-Mrs. Sneh Lata in her place, who was appointed on 17.07.2002. The Respondent never made any grievance about her alleged termination till 2006, which was made only after the School started receiving grants-in-aid from the State and became a Government School.

The Directorate School Education, Internal Audit Division, Uttarakhand, Dehradun prepared an Audit Report of the School. The Audit Report dated 19.2.2008 has been placed on record. The Audit Report records the names of the 6 employees of the School, which comprised of the Principal, three Assistant Teachers, Smt. Snehlata-clerk, and Sh. Ram Kumar Saini-Peon. The name of the Respondent was not mentioned in the Report of February, 2008.

The Respondent filed a Complaint before the Labour Commissioner, Haridwar. The Complaint was referred to the Additional Labour Commissioner to determine whether the alleged termination of the services of the workman was proper and/or valid. An ex-parte award was passed by the Labour Court on 05.02.2010 in favour of the employee. The said Award was challenged before the High Court in Writ Petition. The High Court allowed the Writ Petition, and remanded the case to the Labour Court to decide the matter *de novo* in accordance with law

The Labour Court answered the reference against the Claimant/Respondent herein. It was held that the claimant was not entitled to get any relief as there was sufficient evidence adduced by the Management to prove her continued absence from the School since 01.07.1997. The claimant failed to produce any evidence to prove that she had been terminated on 08.03.2006. The onus to prove the alleged illegal termination was on the workman. The applicant failed to summon the Attendance Register and the Accounts Books of the School to prove that she had been continuously working till 08.03.2006. Consequently, she failed to discharge the onus of her employment till 8.3.2006. After the School started receiving grants-in-aid, she filed the present application after over 9 years. The contention of the claimant that her appointment had been illegally terminated on 08.03.2006 was unreliable, and devoid of any truth. It was held that the claimant had concealed material facts, and had not approached the Court with clean hands.

Aggrieved by the Judgment of the Labour Court, the Respondent filed a writ petition before the High Court. The learned Single Judge of the High Court allowed the Writ Petition on the singular ground that the employer had admitted in the cross-examination that no enquiry was conducted, or disciplinary proceedings initiated regarding the abandonment of service by the employee. Even though the School had submitted in the written statement that the employee had abandoned her job in 1997, there was no such plea to the contrary with respect to the dispensation of her service on 08.03.2006. The State of Uttarakhand filed the present SLP to challenge the Judgment passed by the High Court of Uttarakhand in W.P. No. 3439

(M/S) of 2016, whereby the High Court reversed the Award passed by the Labour Court, and directed reinstatement of the Respondent.

Observations and Decision

The Hon'ble Court referred to the judgments rendered in ***Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory,*** AIR 1965 SC 1803, ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh,*** (1972) 1 SCC 595, ***Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. The Management of Firestone Tyre & Rubber Co. of India (P) Ltd.,*** (1973) 1 SCC 813, ***Bhavnagar Municipal Corpn. v. Jadeja Govubha Chhanubha,*** (2014) 16 SCC 130, and, allowing the appeal, held as follows :-

> **22.** This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.
>
> **26.** We have perused the Award passed by the Labour Court, and find that a full opportunity was given to the parties to lead evidence, both oral and documentary, to substantiate their respective case. The High Court has not even adverted to the said evidence, and has disposed of the Writ Petition on the sole ground that the School had not conducted a disciplinary enquiry before discharging the respondent from service. The School has led sufficient evidence before the Labour Court to prove that the Respondent had abandoned her service from 01.07.1997 when she got married, and moved to another District, which was not denied by her in her evidence. The record of the School reveals that she was not in employment of the School since July 1997.
>
> **27.** The initial employment of the Respondent as a teacher from July 1993 to 21.5.1994 was itself invalid, since she was only inter-mediate (as reflected in the letter dated 25.3.1996 issued by the District Basic Education Officer, Haridwar), and did not have the B.Ed. degree, which was the minimum qualification to be appointed as a teacher.
>
> **28.** The Respondent has failed to prove that she had worked for 240 days during the year preceding her alleged termination on 8.3.2006. She has merely made a bald averment in her affidavit of evidence filed before the Labour Court. It was open to the Respondent to have called for the records of the School i.e. the Attendance Register and the Accounts, to prove her continuous employment till 8.3.2006. Since the School was being administered by the Government of Uttarakhand from 2005 onwards, she could have produced her Salary Slips as evidence of her continuous employment upto 08.03.2006. However, she failed to produce any evidence whatsoever to substantiate her case.
>
> **29.** The reliance placed by the Respondent on the letter dated 20.6.2013 from the Block Development Officer, Roorkee cannot be relied upon. The letter acknowledges that the Respondent was on leave when the Government took over the School, and started receiving grants in aid. The Block Development Officer's recommendation to the Chief Education Officer, Haridwar to act in compliance with the Order dated 5.2.2010 passed by the Labour Court cannot be relied on, as the Award dated 5.2.2010 was set aside by the High Court.

30. On the basis of the evidence led before the Labour Court, we hold that the School has established that the Respondent had abandoned her service in 1997, and had never reported back for work.

31. The Respondent has failed to discharge the onus to prove that she had worked for 240 days' in the preceding 12 months prior to her alleged termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge.

16. HARSAC and Anr. v. Pan India Consultants Pvt. Ltd., 2021 SCC OnLine SC 33

Decided on : 20.01.2021
Bench : 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Ms. Justice **Indu Malhotra**
3. Hon'ble Mr. Justice Ajay Rastogi

(Section 12(5) read with the Seventh Schedule is a mandatory and nonderogable provision of the Act. Section 12(5) of the Arbitration Act, 1996 (as amended by the 2015 Amendment Act) provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, or counsel, falls within any of the categories specified in the Seventh Schedule, shall be ineligible to be appointed as an arbitrator.)

Facts

As per HARSAC, the Respondent failed to complete the work assigned within the period specified i.e. 31.12.2011, and was delaying the entire project. Even though two extensions were granted till 31.07.2012, and later extended upto 31.12.2013, the Respondent failed to complete the work. This led to the invocation of the Performance Bank Guarantee by HARSAC vide letter dated 18.03.2014.

The Respondent challenged this action by filing Civil Suit before the Delhi High Court. The High Court disposed of the Suit, directing the Respondent-Contractor to keep the bank guarantees alive, and HARSAC was directed not to encash the bank guarantees, pending resolution of the disputes amicably or by an arbitral tribunal constituted by the parties.

HARSAC invoked the arbitration clause contained in the Service Level Agreement, and appointed Shri. Anurag Rastogi, IAS, Principal Secretary to Government of Haryana as their nominee arbitrator. The Respondent appointed Justice Rajive Bhalla (Retd.) as their nominee arbitrator on 14.09.2016. On 14.09.2016, the arbitral tribunal stood constituted.

The Respondent/Pan India Consultants filed an Application for appointment of the presiding arbitrator under Section 10(1) of the Arbitration and Concilliation Act, 1996 before the arbitral tribunal. The tribunal vide Order dated 22.05.2017 declined the request for appointment of the third arbitrator at this stage, and reserved its right to nominate the third arbitrator in case of disagreement between the two arbitrators.

On 03.08.2018, the arbitral tribunal in its 28th sitting, recorded in the proceedings that the arguments were heard, and the matter was reserved for passing the Award.

The Appellant addressed letter dated 07.01.2019 to the arbitral tribunal wherein it was stated that the arbitration proceedings had been pending for more than 1½ years since the date of first hearing on 07.11.2016. That vide Order dated 25.01.2018, the tribunal had extended the period of arbitration by 3 months. Since the proceedings were not completed even within the extended period, time was again extended on 15.05.2018 for a further period of 3 months.

The extended period also expired on 15.08.2018. The tribunal had even then not pronounced the Award till date. Since, the arbitral proceedings were not completed within the statutory period of 1 year as prescribed by the Arbitration and Concilliation Act, 1996 or the extended period of 6 months, the mandate of the arbitral tribunal would stand terminated.

On 08.02.2019, Justice Rajive Bhalla (Retd.), one of the arbitrators, in a letter addressed to the Respondent stated that after arguments were concluded, the Award was in the process of preparation, when a letter dated 07.01.2019 was received from the Director Land Record, Haryana, Panchkula, stating that the mandate of the tribunal stood terminated. However, this letter did not make reference to the clarification sought by the Respondents regarding the fee of the tribunal. It was stated by the arbitrator that:"*The tribunal is ready to pronounce the award forthwith*."

The Respondent/Contractor filed an Application under Section 29A(4) of the Arbitration Act being Arb. Case No. 431 of 2019 before the Additional District Judge, Chandigarh, wherein it was stated that the Award was ready to be pronounced, and the entire fee had been paid to the tribunal. It was contended that the Director Land Records had not paid their share of the fee, but were delaying the matter, and had erroneously claimed that the mandate of the tribunal stood terminated. It was prayed that the period for passing the arbitral award be extended.

The Appellant herein opposed the Application and submitted that the Application under Section 29A(4) be dismissed since sufficient cause for granting extension had not been made out. The District Judge vide its Order dated 08.11.2019 granted an extension of time of 3 months to the tribunal to conclude the arbitration proceedings, and pronounce the Award.

The Appellant herein filed Civil Revision Petition under Article 227 of the Constitution before the Punjab and Haryana High Court for setting aside the Order dated 08.11.2019 passed by the Additional District Judge, whereby an extension of time had been granted for passing the Award. It was submitted that the extension of time had been mutually agreed by both parties upto 15.08.2018. However, the tribunal failed to pronounce the Award even within this extended period, and did not show any inclination of doing so even on 07.01.2019, when the letter terminating the mandate of the tribunal was sent. The tribunal failed to pronounce the Award in a period of over 28 months from the date of constitution of the tribunal.

The learned Single Judge of the High Court passed an Interim Order dated 31.07.2020 wherein it was observed that since the period of 3 months granted by the District Court had already elapsed, both parties were directed to obtain instructions for grant of a period of 3 months on account of the prevailing Pandemic. The tribunal would conduct the proceedings either virtually or physically.

The Petition was heard on 24.08.2020, when the learned Additional Advocate General, Haryana opposed the extension of time. The High Court, in light of the current Pandemic,

granted an extension of 4 months to enable the parties to conclude their arguments within 3 months, and a period of 1 month for the tribunal to pass the Award.

Aggrieved by the said Order, HARSAC filed the present SLP.

Observations and Decision

The Hon'ble Court referred to the provisions of Section 12 (5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule of the Act and held as follows :-

> **20.** We are of the view that the appointment of the Principal Secretary, Government of Haryana as the nominee arbitrator of HARSAC which is a Nodal Agency of the Government of Haryana, would be invalid under Section 12(5) of the Arbitration and Concilliation Act, 1996 read with the Seventh Schedule. Section 12(5) of the Arbitration Act, 1996 (as amended by the 2015 Amendment Act) provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, or counsel, falls within any of the categories specified in the Seventh Schedule, shall be ineligible to be appointed as an arbitrator.
>
> **22.** Section 12(5) read with the Seventh Schedule is a mandatory and nonderogable provision of the Act. In the facts of the present case, the Principal Secretary to the Government of Haryana would be ineligible to be appointed as an arbitrator, since he would have a controlling influence on the Appellant Company being a nodal agency of the State.
>
> **23.** The Counsel for both parties during the course of hearing have consented to the substitution of the existing tribunal, by the appointment of a Sole Arbitrator to complete the arbitral proceedings.
>
> **24.** In exercise of our power under Section 29A(6) of the Arbitration and Concilliation Act, 1996 (as amended), we hereby appoint Justice Kurian Joseph (Retd.), former judge of this Court, as the substitute arbitrator, who will conduct the proceedings in continuation from the stage arrived at, and pass the Award within a period of 6 months from the date of receipt of this Order. The Arbitrator may direct the parties to address final arguments and take him through the entire record of the case.
>
> **25.** The appointment of the Sole Arbitrator is subject to the declarations being made under Section 12 of the Arbitration and Concilliation Act, 1996 with respect to independence and impartiality, and the ability to devote sufficient time to complete the arbitration within the period of 6 months.
>
> **26.** The arbitrator will charge fees in accordance with the Fourth Schedule of the Arbitration and Concilliation Act, 1996. We direct both parties to equally share the fees payable to the Sole Arbitrator. The proceedings will be conducted either virtually, or at the seat of arbitration in the State of Haryana.

17. Rekha Sengar v. State of Madhya Pradesh, 2021 SCC OnLine SC 173

Decided on: 21.01.2021

Bench: 1. Hon'ble Mr. Justice **M. M. Shantanagoudar**
2. Hon'ble Mr. Justice Vineet Saran
3.Hon'ble Mr. Justice Ajay Rastogi

(PC & PNDT Act: In non-bailable cases, the primary factors the court must consider while exercising the discretion to grant bail are the nature and gravity of the offence, its impact on society, and whether there is a prima facie case against the accused)

Facts

The gravamen of the allegations against the petitioner pertain to violation of the provisions of the PC&PNDT Act. Section 6 prohibits the use of pre-natal diagnostic techniques, including ultrasonography, for determining the sex of a fetus. Section 23 provides that any violation of the provisions of the Act constitutes a penal offence. Additionally, Section 27 stipulates that all offences under the said Act are to be non-bailable, non-compoundable and cognizable.

The record shows that an FIR was registered against the Petitioner and another person on 26.9.2020 in PS City Kotwali Morena, Madhya Pradesh alleging their involvement in pre-natal sex determination and abortion of female fetuses at their residence, without the required registration or license under law. The petitioner has been in custody since September 2020. Her first application for bail (Bail Application No. 1203/2020) was rejected by the learned IV Addnl. Sessions Judge, Morena on 01.10.2020, and her subsequent bail application before the High Court (MCRC-39649-2020) was dismissed as withdrawn on 14.10.2020. Chargesheet was filed against the petitioner and the co-accused on 6.11.2020, for offences under the certain relevant provisions of Indian Penal Code, Medical Termination of Pregnancy Act, 1971 and under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 ('PC&PNDT Act'). Trial is pending.

In the meanwhile, the petitioner again approached the High Court for grant of bail under Section 439, Cr.P.C. The High Court, vide impugned order dated 7.12.2020, has denied bail on facts. Aggrieved, the petitioner has approached this Court seeking bail.

Observations and Decisions

The Apex Court was of the opinion that in non-bailable cases, the primary factors the court must consider while exercising the discretion to grant bail are the nature and gravity of the offence, its impact on society, and whether there is a *prima facie* case against the accused. Coming to the facts of the present case, the Apex Court said:

> **6.** The charge sheet *prima facie* demonstrates the presence of a case against the petitioner. A sting operation was conducted upon the order of the Collector, by the member of the

PC&PNDT Advisory Committee, Gwalior; the Nodal Officer, PC&PNDNT; and lady police officers. The team used the services of an anonymous pregnant woman, who approached the petitioner seeking sex-determination of the fetus and sex-selective abortion. The petitioner accepted Rs. 7,000 for the same whereupon the team searched her residence. From the residence, an ultrasound machine with no registration or license, adopter and gel used in sex-determination, and other medical instruments used during abortion and sex-determination were seized. This constitutes sufficient evidence to hold that there is a *prima facie* case against the petitioner.

In order to understand the severity of the offence, the Court found it imperative to note the legislative history of the PC&PNDT Act and then said the following:

12. We may also refer with benefit to the observations of this Court in *Voluntary Health Association of India* v. *State of Punjab*, (2013) 4 SCC 1, as follows:

> "6…Above statistics is an indication that the provisions of the Act are not properly and effectively being implemented. There has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide.
>
> 7…Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the violators of the law only to repeat the crime. Hardly few cases end in conviction. The cases booked under the Act are pending disposal for several years in many courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known to the violators of law…"

*****

13. In the present case, contrary to the prevailing practice, the investigative team has seized the sonography machine and made out a strong *prima-facie* case against the petitioner. Therefore, we find it imperative that no leniency should be granted at this stage as the same may reinforce the notion that the PC&PNDT Act is only a paper tiger and that clinics and laboratories can carry out sex-determination and feticide with impunity. A strict approach has to be adopted if we are to eliminate the scourge of female feticide and iniquity towards girl children from our society. Though it certainly remains open to the petitioner to disprove the merits of these allegations at the stage of trial.

15. Thus, in view of the presence of *prima facie* evidence against the petitioner and other factors as referred to supra, we find ourselves compelled to uphold the impugned order of the High Court denying bail to the petitioner. However, in light of this Court's directions in *Voluntary Health Association of India* (supra) mandating speedy disposal of such cases it is open for the petitioner to request the Trial Court to expedite her trial and decide it within a period of 1 year.

18. Assam Industrial Development Corporation Ltd. v. Gillapukri Tea Company Limited and Others, 2021 SCC OnLine SC 44

Decided on :28.01. 2021
Bench: 1. Hon'ble Mr. Justice **S. Abdul Nazeer**
2. Hon'ble Mr. Justice Sanjiv Khanna

(Once the award has been approved, compensation has been paid thereunder and possession of the land has been handed over to the Government, acquisition proceedings could not have been reopened, including by way of re-notification of the already acquired land under Section 4 of the Land Acquisition Act,1894 by the Government.)

Facts

In order to set up a plastic park, the Government of Assam decided to acquire a portion of the land belonging to the first respondent situated at Gillapukri Tea Estate, Village Gillapukri, Tinsukia, Assam. The Government of Assam, in exercise of the power vested in it under Section 4 of the Land Acquisition Act, 1894 (for short 'L.A. Act') issued a notification dated 04.08.2008, which was published in the Assam Gazette on 08.08.2008, expressing its intention to acquire 1,166 biggas, 1 katha, 14 lessas of land of the aforesaid Gillapukri Tea Estate. The proceedings being L.A Case No. 1 of 2008 were also initiated for the purpose of acquisition before the District Collector, Tinsukia and, for that purpose, declaration dated 17.06.2009 in terms of Section 6(1) of the L.A. Act was published in the Assam Gazette. The appellant was appointed as the nodal agency to deal with the acquisition proceedings vide appointment letter dated 24.06.2009.

The Deputy Commissioner and Collector, District Tinsukia, addressed a letter dated 30.01.2010 to the Principal Secretary to the Government of Assam, Revenue Department to seek approval of the award and the land acquisition estimate which were enclosed therewith in the prescribed Form No. 15 and Form No. 5 respectively. In response, the Commissioner and Secretary to the Government of Assam, Revenue Department, addressed a letter dated 05.03.2010 to the Deputy Commissioner whereby approval, as sought vide the aforesaid letter dated 30.01.2010, was granted. The controversy between the parties before is whether this letter was approval of both the award and the estimate or only the estimate. Thereafter, the owner of the land, i.e. the first respondent herein, addressed a letter dated 05.05.2010 to the Commissioner seeking reference of the matter to the District Judge, Tinsukia, under Section 18 of the L.A. Act for reassessment of the compensation awarded to it. It is contended that other similar applications were also received from different families at different levels. It is further contended that in the letter dated 05.05.2010, the first respondent admitted that it had received a sum of Rs. 4.95 crores on 08.04.2010 by a crossed cheque immediately after the letter for approval dated 05.03.2010 was passed by the Commissioner. It is also contended that vide possession certificate dated 21.05.2010, possession was delivered to the Deputy

Commissioner, and thereafter on 11.06.2010, possession of the land was handed over to the appellant by the Deputy Commissioner.

The first respondent has not disputed the issuance of the preliminary and final notification. However, it is contended that no award was approved pursuant to the letter dated 05.03.2010. It is the first respondent's case that vide this letter, only the land acquisition estimate was approved and not the award. This, in the first respondent's view, led to lapsing of the proceedings and initiation of fresh acquisition proceedings in 2012 which culminated in approval of the award for the first time on 04.01.2014. For this purpose, a fresh notification under Section 4 of the L.A. Act was published on 07.08.2012 and a declaration was also issued on 20.11.2012. Thereafter, the Commissioner issued a notice purportedly under Section 9 of the L.A. Act to the persons interested in the land to submit their objections and claims. On 04.01.2014, a fresh award was passed and the Deputy Secretary, Government of Assam, Revenue Department addressed a letter dated 06.01.2014 to the Deputy Commissioner conveying approval of the said fresh award. The first respondent contends that a comparison of this approval letter dated 06.01.2014 with the approval letter dated 05.03.2010 under the original acquisition proceedings would clearly indicate that under the letter dated 05.03.2010, only the estimate was approved and not the award. Since the award under the fresh proceedings was approved and made after coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'), the first respondent approached the Deputy Commissioner to seek a fresh award by determining the compensation payable in terms of Section 24(1)(a) of the 2013 Act.

Issue

Whether an award in respect of the first respondent's land was approved by the State Government on 05.03.2010? If the award was not approved on 05.03.2010, but rather on 06.01.2014 as contended by the first respondent, then the 2013 Act will be applicable and the first respondent will be eligible to receive compensation in accordance therewith.

Observations and Decisions

The relevant extracts from the judgment are as follows:

> **15.** It is undisputed that the award amount was indeed made available to the Deputy Commissioner and the awarded sum was duly paid to and received by the first respondent. Not only did the first respondent receive compensation pursuant to the award, it in fact sought enhancement of the same vide its reassessment petition dated 05.05.2010 u/s 18 of the L.A. Act addressed to the Deputy Commissioner. It is also not contested that vide possession certificate dated 21.05.2010, the first respondent handed over possession to the Deputy Commissioner and that on 11.06.2010 possession of the land was ultimately handed over to the appellant by the Deputy Commissioner. What clearly emerges from the above is that after the letter dated 05.03.2010, it was the common belief of the State Government, the appellant as well as the first respondent that the award had been approved and that now actions subsequent thereto viz. payment and receipt of compensation, handover of

possession, seeking reassessment of the compensation were needed to be undertaken.

17. In the above scenario, the arguments of the first respondent are untenable. Once the award has been approved, compensation has been paid thereunder and possession of the land has been handed over to the Government, acquisition proceedings could not have been reopened, including by way of re-notification of the already acquired land under Section 4 of the L.A. Act by the Government. Contrary to the first respondent's contention, the question of lapsing under Section 24 of the L.A. Act could not have arisen in this case once the award was approved on 05.03.2010.

18. So far as the second set of acquisition proceedings are concerned, without addressing the factual veracity of the State Government's contention that the second award was meant to be only in respect of landowners not covered by the original award, we are of the opinion that it would not have been possible for the State Government to initiate acquisition proceedings in respect of already acquired land such as that of the first respondent herein. This position has been affirmed by this Court in *D. Hanumanth SA* v. *State of Karnataka[*(2010) 10 SCC 656*]* in the following terms:

"17. Even otherwise, if land already stands acquired by the Government and if the same stands vested in the Government there is no question of acquisition of such a land by issuing a second notification for the Government cannot acquire its own land. The same is by now settled by various decision of this Court in a catena of cases.

18. In State of Orissa *v.* Brundaban Sharma,[1995 Supp (3) SCC 249] *this Court has held that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition This position was reiterated in a subsequent decision of this Court in* Meher Rusi Dalal *v.* Union of India[(2004) 7 SCC 362] *in paras 15 and 16 of the said judgment, this Court has held that the High Court clearly erred in setting aside the order of the Special Land Acquisition Officer declining a reference since it is settled law that in land acquisition proceedings the Government cannot and does not acquire its own interest. While laying down the aforesaid law, this Court has referred to its earlier decision in* Collector of Bombay *v.* NusserwanjiRattanjiMistri[AIR 1955 SC 298]*"*

19. The recent decision of the Constitution Bench of this Court in *Indore Development Authority* v. *Manoharlal* [(2020) 8 SCC 129]has also affirmed that once possession is taken by the State, the land vests absolutely with the State and the title of the landowner ceases. We find no reason to deviate from this settled position of law and thus are unable to agree with the High Court's reliance on the letters dated 21.07.2012 and 06.01.2014 to nullify the original award and allow fresh acquisition proceedings in respect of the first respondent's land which had already been acquired and has been under the possession of the appellant since 11.06.2010.