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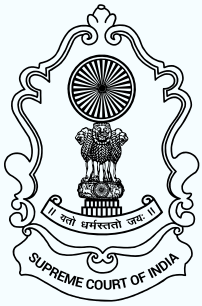

DIGITAL SUPREME COURT REPORTS

The Official Law Report
Fortnightly

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Contents

[2025] 1 S.C.R. 313 : 2025 INSC 36

The Municipal Corporation of Greater Mumbai & Ors.
v.
Century Textiles and Industries Limited & Ors.

(Civil Appeal No. 6667 of 2023)

07 January 2025

[Vikram Nath* and Prasanna B. Varale, JJ.]

Issue for Consideration

Issue arose whether the appellant-Corporation was bound to convey the lease in favour of the respondent in terms of s.51 of the Bombay Improvement Trust Transfer Act, 1925; and whether writ petition filed before the High Court sufferred from delays and laches and was liable to be dismissed as the cause of action had arisen in 1955 whereas the writ petition was filed in 2016 after a delay of 61 (sixty-one) years.

Headnotes†

Bombay Improvement Trust Transfer Act, 1925 – ss.48, 51 – Mumbai Municipal Corporation Act, 1888 – s.527 – City of the Bombay Improvement Act, 1898 – s.32B – Poorer Classes Accommodation Scheme-PCAS – Default and determination of lease – Execution of conveyance – In 1918, PCAS approved for respondent no. 1 which provided for construction of 44 Blocks of poorer class dwellings containing a total of 980 rooms and 20 shops as a pre-condition for execution lease u/s.32G – Scheme duly notified – Respondent no. 1 constructed 476 dwellings and 10 shops till 1925, as a part of the pre-condition for execution of lease – 1898 Act repealed by the Act of 1925 – Respondent no.1 applied to the Improvement Trust under the 1925 Act for alteration of the notified Scheme and the same was granted – According to the resolution, Block-B and Block-C was to be excluded – Block-B was conveyed to the respondent no.1 – Lease of Block-A for a period of 28 years granted to the company, which was to expire in 1955 – For 51 years, neither the appellant nor respondent no.1 initiated any proceedings against each other – In 2006, respondent No.1 served notice u/s.527 of the 1888 Act on the

* Author

appellant that after expiry of lease period of 28 years, the said property ought to be conveyed to the respondent No.1 and, on failure to do so the respondent No.1 would be constrained to file a suit – However, no suit ever filed – Respondent no.1 requested to execute formal deed of conveyance in 2014 and 2016, however, no action taken – Respondent No.1 then filed writ petition in 2016 – High Court allowed the same directing the appellant to execute formal conveyance of plot in favour of the respondent No.1 – Sustainability:

Held : Not sustainable – Terms and conditions of the lease agreement reveal no stipulation that on the expiry of the lease, after completion of 28 years, the appellants would be bound to convey the said land to respondent no.1 – Neither the Board Resolution nor the lease deed and neither the statutory framework in force imposed any obligation upon the appellant to execute a conveyance in favour of the respondent no.1 – High Court misinterpreted the same to be a condition incorporated in the lease deed for conveyance, on expiration of 28 years – Harmonious and contextual interpretation of ss.48(a) and 51(2) of the 1925 Act, as well as the clear absence of any covenant to that effect in the lease deed, unequivocally demonstrates that no vested right to conveyance arose on the expiration of the lease – Rather than insisting that "shall convey" in s.51(2) invariably means an unconditional obligation, it is more appropriate to understand that it calls for conveyance only where the arrangement and compliance align with the statutory prerequisites – Absent any express statutory mandate or contractual stipulation, the claim for compulsory conveyance at the end of the lease term must fail – Respondent no.1 failed to take any active step in furtherance of getting such a conveyance executed at the end of the lease term – Thus, the appellants neither bound nor were under any legal obligations to convey the premises to the respondent no.1 – As regards delay and laches, no merit in the conduct of the respondent no. 1 where it deliberately chose to sit still on its rights for a long period of fifty-one years – Writ petition filed before the High Court in 2016 clearly a route adopted to subvert the long delay of sixty-one years which cannot be condonable – View taken by the High Court in treating the petition to be not suffering from any delay and laches cannot be sustained – Furthermore, the preamble to the 1925 Act states that enactment was for constructing new

sanitary dwellings for certain classes of the inhabitants of the city to secure tangible benefits for the poorer sections of society – Lease deed did not confer any rights to convert the usage of the lands for commercial purposes – Land allocated under a special scheme, on "poorer classes" accommodation, when sought to be commercially exploited, represents a direct affront to the spirit of the enactment – Such conduct amounts to abuse of beneficial legislation – Public trust reposed in the private entity to serve a greater good is thus betrayed – This not only harms the class of beneficiaries whom the legislation and agreement designed to protect and imperils the broader public interest – Impugned judgment of the High Court set aside [Paras 36, 37, 38, 44, 53-55, 58, 63, 64-69, 70].

Bombay Improvement Trust Transfer Act, 1925 – ss.48 and 51 – s.48 providing the general conditions of the lease given under the Poorer Classes Accommodation Scheme-PCAS placing restrictions on the lessee as to how it would use and how the rent etc. would be determined for letting out the tenements, whereas s.51 provides for default, and determination of the lease – Interpretation of ss.48 and 51:

Held : s.48(a) and s.51(2) must be read harmoniously so that the duty to restore the premises at the end of the lease remains intact, unless a clear contrary intention emerges, and the right to conveyance u/s.51(2) thereof is recognized as contingent, not automatic – Such a reading is consistent with the accepted principle that statutory provision should not be construed in a manner that would reduce another provision to a "dead letter – By employing a harmonious construction, the 1925 Act's provisions are allowed to complement rather than contradict one another – This approach upholds the integrity of the legislative scheme, ensures that none of its components are undermined, and maintains a balance between the obligations imposed on a lessee and any rights that may accrue at the end of the lease's tenure – If there is default, then u/s.51(1), the Board has a right to re-enter upon the demised premises whereas under sub-Section (2) thereof provides that where no default is made, the Board shall convey the premise to the lessee at his cost – It is neither necessary nor desirable to treat s.51(2) as an absolute mandate that would override or negate s.48(a) thereof – Interplay between ss.48(a) and 51(2) is resolved

through a construction that acknowledges the necessity of leaving the premises in good condition at the expiration of lease, while recognizing that conveyance can be contemplated only where such a course is unequivocally aligned with the lease terms and the statutory framework as a whole – This reconciliation preserves the intention of the legislature, avoids destructive interpretations, and provides coherent, just, and practical reading of the statute. [Paras 46-52]

Interpretation of statutes – Principles of statutory interpretation – Explanation:

Held : Principles of statutory interpretation demand that no provision of a statute should be rendered nugatory or superfluous – Statute must be construed as a coherent whole, ensuring that each part has meaningful content and that the legislative scheme remains workable – Where two provisions appear to be in tension, a construction that reconciles them is to be allowed, allowing both to operate and giving effect to the underlying legislative intent. [Para 48]

Case Law Cited

Shri Vallabh Glass Works Ltd. v. Union of India [1984] 3 SCR 180 **: (1984) 3 SCC 362;** *CIT v. Hindustan Bulk Carriers* [2002] Supp. 5 SCR 387 **: (2003) 3 SCC 57;** *Aflatoon v. Lt. Governor of Delhi* [1975] 1 SCR 802 **: (1975) 4 SCC 285;** *SS Rathore v. State of MP* [1989] Supp. 1 SCR 43 **: (1989) 4 SCC 582;** *Sainik Motors v. State of Rajasthan* [1962] 1 SCR 517**;** *Sultana Begum v. Prem Chand Jain* [1996] Supp. 9 SCR 707 **: (1997) 1 SCC 373 : AIR 1997 SC 1006;** *Lachoo Mal v. Radhey Shyam* [1971] 3 SCR 693 **: (1971) 1 SCC 619;** *Sita Ram Gupta v. Punjab National Bank* [2008] 4 SCR 636 **: (2008) 5 SCC 711;** *HR Basavaraj v. Canara Bank* [2009] 15 SCR 504 **: (2010) 12 SCC 458;** *Murlidhar Agarwal and Anr. v State of Uttar Pradesh and Others* [1975] 1 SCR 575 **: (1974) 2 SCC 472;** *Devkaran Nenshi Tanna v. Manharlal Nenshi* [1994] Supp. 1 SCR 679 **: (1994) 5 SCC 681;** *PTC (India) Financial Services Ltd. v. Venkateswarlu Kari* [2022] 9 SCR 1063 **: (2022) 9 SCC 704;** *Managing Director Chattisgarh State Co-Operative Bank Maryadit v. Zila Sahkari Kendriya Bank Maryadit and Ors.* [2020] 5 SCR 307 **: (2020) 6 SCC 411;** *J.K. Spinning and Weaving Mill Co Ltd. v. State of*

Uttar Pradesh & Others [1961] 3 SCR 185 **: SCC Online SC 16;** *Rameshwar and Others v. Jot Ram and Another* [1976] 1 SCR 847 **: (1976) 1 SCC 194;** *State of Maharashtra vs. Digambar* [1995] Supp. 1 SCR 492 **: (1995) 4 SCC 683;** *Hari Singh v. State of U.P.* **(1984) 2 SCC 624;** *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.* [1996] Supp. 5 SCR 551 **: (1996) 11 SCC 501;** *New Okhla Industrial Development Authority v. Harkishan* [2017] 1 SCR 572 **: (2017) 3 SCC 588 – referred to.**

List of Acts

Companies Act, 2013; City of Bombay Improvement Act, 1898; Bombay Improvement Trust Transfer Act, 1925; Mumbai Municipal Corporation Act, 1888.

List of Keywords

Conveyance of lease; Delays and laches; Harmonious and contextual interpretation; Shall convey; Claim for compulsory conveyance; Suit for specific performance or mandatory injunction; Limitation; Constructing new sanitary dwellings for certain classes of inhabitants of the city; Tangible benefits for the poorer sections of society; Lease deed; Beneficial legislation; Public trust; Destructive interpretations; Principles of statutory interpretation; Poorer Classes Accommodation Scheme; Construction of poorer class dwellings; Lease; Municipal Corporation of Greater Mumbai; Legal notice; Harmonious Construction; Reduce any provision to dead letter; No provision rendered nugatory; Delay of 51 years; Delay of 61 years; Delay not condonable; Writ petition to escape limitation; Public welfare; Abuse of beneficial legislation.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6667 of 2023

From the Judgment and Order dated 14.03.2022 of the High Court of Judicature at Bombay in WP No. 295 of 2017

Appearances for Parties

Neeraj Kishan Kaul, Dhruv Mehta, Darius J. Khambatta, Shyam Divan, Ranjit Kumar, Sr. Advs., Ashish Wad, Manoj Wad, Mrs. Tamali Wad, Siddharth Dharmadhikari, Sandeep Mohan Patil, Ajeyo

Sharma, Ms. Akriti Arya, Keith Verghese, Ms. Ira Mahajan, M/s. J S Wad And Co, Ms. Nina R. Nariman, J. N. Mistry, Ms. Namrata Parikh, Aditya Panda, Sudipto Sardar, Saswat Pattnaik, Aniruddha Deshmukh, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

1. The Municipal Corporation of Greater Mumbai[1] and its officers have filed this appeal assailing the correctness of judgment and order dated 14.03.2022 passed by the Bombay High Court allowing the Writ Petition No. 295 of 2017 filed by the Respondent No.1 directing the appellant (Respondent No.1 therein) to execute formal conveyance of plot bearing C.S. No.1546 of Lower Parel Division, Mumbai in favour of the Respondent No.1 (Petitioner no.1 therein) within a period of eight weeks.

2. Brief facts giving rise to the present appeal are summarised hereunder:

   2.1. Century Textiles and Industries Limited (Respondent No.1) is a company incorporated under the Companies Act running a cotton mill. Under the provisions of the City of Bombay Improvement Act, 1898,[2] Respondent No.1 applied to the Improvement Trust under Section 32B thereof under the Poorer Classes Accommodation Scheme (in short, "PCAS") to provide dwellings to the poorer class workers. The said application was filed on 12.04.1918.

   2.2. The Improvement Trust Board, *vide* Resolution no. 121, in its meeting dated 16.04.1918, approved the PCAS of the Respondent No.1 which provided for construction of 44 Blocks of poorer class dwellings containing a total of 980 rooms and 20 shops as a pre-condition for execution of the lease under Section 32G of the 1898 Act (as amended in 1913), with other consequences to follow.

1 MCGM

2 The 1898 Act

2.3. It would be worthwhile to mention here that the construction was to take place on a piece of land measuring 50,000 sq. yds. sub-divided into three plots A, B and C. However, at present, the dispute relates only to plot A admeasuring 23,000 sq. yds.

2.4. The above scheme, as approved by the Board, was duly notified on 01.05.1918 as Scheme No. 51. The Special Collector handed over the charge of the property/plot bearing C.S. No. 1546 of Lower Parel Division to the Improvement Trust, pursuant to the aforesaid Resolution No. 121 and the notification of Scheme No. 51, sometime in August, 1919. The possession of the said plot was, later on, handed over by the Improvement Trust to the Respondent No.1, whereupon, they started the construction and constructed 476 dwellings and 10 shops till the year 1925, as a part of the pre-condition for execution of lease under Section 32G of the 1898 Act.

2.5. In the year 1925, the 1898 Act was repealed by The Bombay Improvement Trust Transfer Act, 1925.[3] On 10.03.1927, Respondent No.1 applied to the Improvement Trust under Section 37(2) of the 1925 Act for alteration of the notified Scheme No. 51. Again, on 20.05.1927, Respondent No.1, through their solicitors M/s C.N. Wadia and Company applied to the Improvements Committee making the same request for modification of the notified Scheme No. 51 requesting the committee to accept the 476 rooms instead of 980 rooms and 10 shops instead of 20 shops, as required under the notified scheme. The Improvement Trust/Board, *vide* Resolution No. 325 dated 31.05.1927, granted alteration of the notified Scheme No. 51. According to the said resolution, Block-B and Block-C would be excluded from Estate Agent's plan, lease of Block-A for a period of 28 years to be granted to the company on the terms mentioned in paragraphs 2 and 4 of the letter dated 20.05.1927, Block-B to be conveyed to the Respondent No.1 on terms and conditions stated in paragraph 5 of the letter dated 20.05.1927 and Block-C to remain the property of the Improvement Trust/Board.

3 The 1925 Act

2.6. Pursuant to the said Resolution No. 325, Block-B was conveyed to the Respondent No.1 on 10.01.1928 for which the Respondent No.1 paid Rs.1,20,000/- as sale consideration.

2.7. Later on, a lease was granted by the Board in favour of Respondent No.1 on 03.10.1928 with respect to Block-A, which included both the land and buildings for a period of 28 years w.e.f. 01.04.1927 at a yearly rent of Rupee One. The lease was to expire on 31.03.1955 i.e. on completion of 28 years. The Respondent No.1 also paid the expenses of acquisition which had been incurred by the Board.

2.8. For a period of 51 years, neither the appellant nor the Respondent No.1 initiated any proceedings against each other - the Respondent No.1 for getting the conveyance executed, as is being claimed now, and the appellant for eviction of the Respondent No.1 as the lease period had expired. The fact remains that the Respondent No.1 has continued in possession of the land and buildings comprised in Block-A.

2.9. The Respondent No.1, on 14.08.2006, served a legal notice under Section 527 of the Mumbai Municipal Corporation Act, 1888[4] on the appellant stating that as per the lease agreement, after expiry of lease period of 28 years, the said property ought to be conveyed to the Respondent No.1 and, on failure to do so within the specified period, the Respondent No.1 would be constrained to file a suit. However, no suit was ever filed by the Respondent No.1.

2.10. In 2009, an application was filed by the Respondent No.1 for redevelopment of the land in question to the appellant as, according to the Respondent No.1, they had closed the mill in 2008 and they wanted to shift the mill industry out of the land in question.

2.11. Another communication dated 21.04.2009 was sent by the Respondent No.1 to the appellant, requesting for conveyance of Block-A as per the lease deed. The MCGM apparently approved an integrated development scheme on 17.03.2011 with respect to Block-A Plot bearing C.S. No.1546. The

4 The 1888 Act

Assistant Commissioner (Estate) of the appellant was of the opinion that Block-A should not be conveyed to the Respondent No.1 which is apparent from the internal report dated 17.06.2013.

2.12. A meeting between the parties was held in March, 2014 after which, once again, the Respondent No.1 requested, *vide* letter dated 27.03.2014, to execute a formal deed of conveyance. The Respondent No.1, *vide* letter dated 30.11.2016, again called upon the appellant to execute a formal deed of conveyance in view of Section 51(2) of the 1925 Act. When no action was taken by the appellant, the Respondent No.1 filed writ petition before the Bombay High Court in December, 2016 which was registered as W.P. No. 295 of 2017. The reliefs claimed by means of the said petition are reproduced hereunder :

> "29. …The Petitioners therefore pray :
>
> a) For a Writ of mandamus or a writ in the nature of mandamus or for any appropriate writ, order or direction ordering and directing Respondent Nos. 1 and 2 (and their servants, officers and agents) to recognize and proceed on the basis that the said Premises being plot bearing C.S.No.1546 of Lower Parel Division and the buildings standing thereon vest in Petitioner No. 1 by virtue of the provisions of the Improvement Acts and as the absolute owners thereof.
>
> b) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.1 (and its servants, officers and agents) to do all such acts and things as may be necessary for formalizing the vesting of the said Premises in Petitioner No.1 herein including by executing and thereafter registering with the Sub Registrar of Assurances a Deed of Conveyance of the said Premises.
>
> c) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions under Article 226 of the Constitution

of India ordering and directing the Respondent No.2 (and its servants, officers and agents) to do all such acts and things as may be necessary for reflecting the name of Petitioner No.1 in the records of the Collector of Mumbai in respect of the said plot of land bearing C. S. No. 1546 of Lower Parel Division;

d) That pending the hearing and final disposal of this Petition this Hon'ble Court be pleased to direct the Respondents by themselves their servants, agents, officers and sub-ordinates to consider all applications from Petitioner No.1 as emanating from the owner of the said Premises and deal with them in all matters relating to the said Premises as if Petitioner No.1 were the owner thereof.

e) for ad-interim reliefs in terms of prayer (d) above;

f) for costs of this Petition; and

g) for such other and further relief as the nature and circumstances of the case may require be passed."

2.13. During the pendency of the petition, the Respondent No.1 moved two amendments to the writ petition. The first one in June, 2017, challenging the Directions note prepared on the internal file of the appellant recommending to stop the ongoing work and the approval granted under the integrated scheme to be recalled and cancelled. Further relief seeking ad interim relief against the said action was also sought.

2.14. The appellant issued a show cause notice dated 28.03.2018 as to why the amended IDS lay out should not exclude Block-A Plot bearing C.S. No.1546. Upon receipt of the said notice, the Respondent No.1 moved the second amendment to the writ petition to challenge the said show cause notice. Under orders of the Bombay High Court dated 12.04.2018, the appellant was directed

not to proceed to adjudicate on the show cause notice until further orders.

2.15. After hearing the learned counsel for the parties and based on material on record, the High Court by the impugned judgment dated 14.03.2022, allowed the writ petition and issued appropriate directions to the appellant to execute the conveyance of the plot in question. Aggrieved by the same, MCGM is in appeal. While issuing notice dated 13.07.2022, this Court granted an order of *status quo* to be maintained by the parties. Pleadings have been exchanged.

3. We have heard Shri Dhruv Mehta and Shri Neeraj Kishan Kaul, learned senior counsels for the appellants; Shri Darius J. Khambatta, Shri Ranjit Kumar and Shri Shyam Divan, learned senior counsels appearing for the respondents and, also perused the material on record.

4. The submissions of the learned counsels appearing for the appellants are briefly summarized hereunder :

A. Delay and Laches in filing the Writ Petition

5. The term of the lease dated 03.10.1928 in favour of the Respondent No.1 expired on 31.03.1955. According to the Respondent No.1, it was purportedly entitled to a deed of conveyance on expiry of the aforesaid period. As such, the cause of action would arise immediately after the expiry of the term of the lease. Respondent No.1 took no legal action before any court of law, right from 1955 till the end of 2016 i.e. for 61 years when it filed the writ petition before the High Court on 23.12.2016. Thus, it was submitted that the petition was highly barred by laches and ought to have been dismissed on such grounds.

6. It was also submitted that in 2006, a legal notice dated 14.08.2006 under Section 527 of the 1888 Act was issued by Respondent No.1, requiring the appellant to execute the conveyance deed. The limitation provided for filing a suit under Section 527 of the 1888 Act is six months. But Respondent No.1 took no action thereafter for more than 10 years. No suit was ever filed by the Respondent No.1. Knowing fully well that the limitation under Section 527 of the 1888 Act had

expired long back, they chose to file the writ petition in December, 2016. The submission is that preferring a writ petition could not do away with the issue of limitation which would arise while availing the statutory remedies available. In such circumstances, the High Court fell in error in entertaining the writ petition and holding that the filing of the writ petition even after 61 years would not suffer from delay or laches. In support of the said submissions, the following two judgments are relied upon :

i) Shri Vallabh Glass Works Ltd. v. Union of India,[5]

ii) SS Rathore v. State of MP[6]

B. Effect of Section 51(2) read with Section 48 of the 1925 Act thereof

7. Section 51(2) which talks about default and determination of lease uses the expression "shall convey" that in a situation where there is no default in complying with the obligations under the lease document, the Board shall convey the premises in favour of lessee on expiration of the lease. Whereas, Section 48(a) states that the lessee would keep the demised premises together with its fixtures in good and substantial repair and condition during the term of the lease and leave at the end thereof. The submission is that while reading both the provisions together and in order to give a harmonious construction, the expression "shall convey" must be read as "may convey". It is also submitted that in case Section 51(2) is read with the expression "shall convey", then the expression used in Section 48(a) that the lessee would leave at the end of the term of the lease, would have no meaning and would be rendered as otiose or superfluous. In support of the said submissions, the following decisions are relied upon by the appellants :

i) CIT v Hindustan Bulk Carriers,[7]

ii) Sultana Begum v. Prem Chand Jain,[8]

iii) Sainik Motors v. State of Rajasthan[9]

5 [1984] 3 SCR 180 : (1984) 3 SCC 362

6 [1989] Supp. 1 SCR 43 : (1989) 4 SCC 582

7 [2002] Supp. 5 SCR 387 : (2003) 3 SCC 57

8 [1996] Supp. 9 SCR 707 : (1997) 1 SCC 373

9 [1962] 1 SCR 517 : (1962) 1 SCR 517

C. Concept of contracting out of the obligations and waiving of the statutory rights by either of the parties to a contract.

8. Highlighting the concept of contracting out of obligations arising out of a contract and waiving the statutory rights, it has been submitted that by now, it is well-settled that the party can legally do so and such principle has been duly recognised by this Court in the following decisions:

i) Lachoo Mal vs. Radhey Shyam[10]

ii) Sita Ram Gupta v. Punjab National Bank[11]

iii) HR Basavaraj v. Canara Bank[12]

The appellants would be entitled to the benefit of said concept in the facts and circumstances of the case.

D. Misreading by the High Court

9. According to the appellant, the High Court committed serious error by misreading some of the relevant documents and reading something which is not stated in such documents. Details of the same would be discussed while analysing the said arguments. However, in particular, we may note that the pleadings have referred to the Resolution of the Board dated 31.05.1927 as having been misread and secondly the lease deed dated 03.10.1928 as also having been misread.

E. Relevancy of the internal notings and communications *inter se* officers of the Corporations

10. The submission is that until and unless the order is approved by the Competent Authority of the Corporation and issued by its Authorised Officer, Respondent No.1 could not derive any advantage of any internal noting or communications of the Corporation. The High Court committed error in relying upon such noting and internal communications without there being a decision of the Competent Authority duly communicated to the parties. In support of the said

10 [1971] 3 SCR 693 : (1971) 1 SCC 619

11 [2008] 4 SCR 636 : (2008) 5 SCC 711

12 [2009] 15 SCR 504 : (2010) 12 SCC 458

submissions, reliance is placed upon the judgment in the case of **Shanti Sports Club vs. Union of India**.[13]

F. No legal rights accrued to the Respondent No.1 for vesting of lease/conveyance of Block-A in terms of the 1925 Act

11. The 1925 Act replaced the 1898 Act, which stood repealed. Referring to the Section 32I(2) of the 1898 Act which stood replaced by Section 51 of the 1925 Act, it was argued that under the 1898 Act, it was mentioned that where no default is made in the conditions of the lease, then on determination of the lease, all the right, title, and interest of the Board shall vest in the employer free from all liabilities. Whereas, under Section 51 of the 1925 Act, under sub-Section (1) on default being made, the Board had the right to re-enter, and under sub-Section (2), where no default is made, then on determination of the lease, the Board shall convey the premises to the lessee at his cost and free of all restrictions and liabilities imposed under the lease. It was, thus, submitted that under the 1925 Act, there was no automatic vesting but a separate deed of conveyance to be executed at the cost of the lessee. This is the provision where the submission that the word "shall convey" may be read as "may convey" read with Section 48(a) of the 1925 Act. It was also submitted that the word used "at his cost" in Section 51(2) clearly meant that for a conveyance by the Board, the lessee would be required to make a separate payment for such a conveyance.

G. Payment of cost of Scheme does not entitle Respondents to any rights in the land itself.

12. The claim of the Respondent No.1 that it had incurred huge expenditure as cost of the Scheme at the time of acquisition of the land by the Board entitled it to a conveyance without any further payment of cost of the land, is misplaced. The benefits admissible to the Respondent No.1 under the lease deed were in return of the bearing of the cost of the Scheme. It only envisaged a lease for 28 years, subject to terms and conditions recorded thereunder, but no conveyance. For conveyance, separate costs were required to be

13 [2009] 13 SCR 710 : (2009) 15 SCC 705

paid at the time of conveyance as per the scheme of the 1925 Act. It was submitted that the Respondent No.1 filed writ petition only to make huge profits under the public welfare scheme by usurping land valued at around Rs. 1200 crores without paying a penny.

13. On such submissions, it was prayed that the appeal be allowed, the impugned judgement of the High Court be set aside and the writ petition be dismissed.

14. On the other hand, the learned senior counsels for the Respondent No.1 prayed for dismissal of the appeal by making the following submissions:

A. The lease confers the right to conveyance on Respondent No.1

15. It is submitted that as the lease deed dated 03.10.1928 stated that the Board agreed to alter Scheme No.51 'pursuant to the lessee's request', as such, the lessee's request which contained the following expression 'convey to the lessees the said portion of land at the expiration of the said term', clearly indicates that the appellant was obliged to execute the conveyance on expiration of the lease. Even if no specific mention of the conveyance is mentioned in the lease deed, since the appellant agreed to alter the Scheme No. 51, they were now estopped from denying the right of Respondent No.1 to conveyance.

B. Board Resolution No. 325 and lease cannot be used to contract out of Section 51(2) of the 1925 Act

16. The application dated 20.05.1927 submitted by Respondent No.1 for alteration of the Scheme No.51, is reproduced in the Board Resolution No. 325 which accepted paragraph nos. 2 and 4 thereof. There was no occasion for the appellant today to claim that they have contracted out of Section 51(2) of the 1925 Act. Neither the lease deed mentioned specifically that they were contracting out of Section 51(2) of the 1925 Act, nor at any stage thereafter have the appellants taken this plea of contracting out.

C. Section 108(q) of the Transfer of Property Act, 1882

17. It is submitted that the appellants never raised this plea before the High Court relying on Section 108(q) of the Transfer of Property Act, 1882 being expressly excluded in the lease deed and therefore,

giving them the right to re-possession may not and should not be entertained by this Court.

D. Vesting and execution of conveyance is mandatory and cannot be contracted out

18. The submission is that the provisions of Section 51(2) of 1925 Act as also the provisions of Section 32I(2) of the 1898 Act are mandatory in nature as the word used is 'shall' and therefore, there is no justification for the appellant to raise a plea of contracting out of the terms of the lease or the statutory provisions. In support of the said submission, the following judgments are relied upon:

i) Murlidhar Agarwal and Anr. v State of Uttar Pradesh and Others[14]

ii) Devkaran Nenshi Tanna v. Manharlal Nenshi[15]

iii) PTC (India) Financial Services Ltd. v Venkateswarlu Kari[16]

E. Obligations of lessee/employer, recompense and composite nature of scheme

19. Our attention has been drawn to the Scheme as spelled out in the 1925 Act, counsels for Respondent No.1 referred to various provisions and have submitted that once the lessee discharges all his obligations, there is no reason why under the statutory scheme, the land and building should not be conveyed to it. It was further submitted that under the 1925 Act, the conveyance referred to is akin to the vesting provided under Section 32I(2) of the 1898 Act.

F. Section 51 of the 1925 Act, a special provision prevails over Section 48(a) of the said Act which is a general provision

20. Referring to the provision under Section 48(a) and Section 51 of the 1925 Act, it has been vehemently argued that Section 48, being a general provision, deals with standard conditions of the lease to be granted under the scheme. It only postulates that at the end of the term of the lease, the lessee shall leave the demised premises

14 [1975] 1 SCR 575 : (1974) 2 SCC 472

15 [1994] Supp. 1 SCR 679 : (1994) 5 SCC 681

16 [2022] 9 SCR 1063 : (2022) 9 SCC 704

and their fixtures "in good and substantial repair and condition". It does not deal with as to what would happen during the period of lease where there is a default or at the end of the lease where there has been no default. It is Section 51 of the 1925 Act which deals with the above two situations and, as such, this would be a special provision. Relying upon the following two judgments, it was submitted that the special provision would prevail over the general provision and, therefore, there was no option but for the appellant to execute the conveyance.

i) Managing Director Chattisgarh State Co-operative Bank Maryadit v Zila Sahkari Kendriya Bank Maryadit and Ors.[17]

ii) J.K. Spinning and Weaving Mill Co Ltd. v State of uttar Pradesh & Others[18]

G. Meaning of the word "premises"

21. Submission on behalf of the Respondent No.1 is that the word "premises" would include both land and building, as defined in Section 3(gg) of the 1888 Act, which clearly means that the word "premises" would include both, buildings and land. Since the word "premises" is not defined in the 1925 Act, Section 5 of the 1925 Act provides that the words used in the 1925 Act but not defined therein would have the same meaning as it does under the 1888 Act.

H. Public-Private Partnership

22. The Scheme as envisaged under the 1898 Act and the 1925 Act was an early example of the Public-Private Partnership principle, by which the Board was able to procure private funding for purposes of providing housing to economically weaker section of the society in exchange for vesting or conveying the land used for the Scheme. The Respondent No.1 having discharged its obligations without a single default, was entitled to the benefit of vesting/conveyance at the end of the Scheme or the lease in the present case.

17 [2020] 5 SCR 307 : (2020) 6 SCC 411

18 [1961] 3 SCR 185 : SCC Online SC 16

I. A vested right cannot be divested by subsequent conduct

23. The submission is that once Respondent No.1 had a right to conveyance at the end of the term of the lease, and which was an indefeasible right, any amount of delay, laches, or other conduct would not result in divesting of such rights. Reliance was placed upon the judgement in the case of ***Rameshwar and Others vs. Jot Ram and Another***.[19]

J. The appellants recognized and acknowledged the ownership rights of Respondent No.1

24. On the above aspect, the internal correspondence and noting of the Corporation have been referred to by the learned senior counsel at different stages, which shall be dealt with appropriately at a later stage by analysing the arguments raised by both the sides as to whether such noting and internal communications within the Corporation could be relied upon.

K. Alleged Delay

25. In trying to explain the delay for approaching the Court after 61 years, it was submitted on behalf of the Respondent No.1 that the possession of the Respondent No.1 has continued without any obstruction by the appellant. At no stage during this entire period of 61 years, neither did the appellant sought possession of the Block-A nor did they demand any rent for the same. The Respondent No.1, for the first time, came to know that the Assistant Commissioner (Estate) of the appellant had issued an opinion in June, 2013 that the premises should not be conveyed to Respondent No.1. However, even that opinion was never communicated to the Respondent No.1. The High Court has dealt with this aspect of the matter and has found that there was no delay on part of the Respondent No.1 in approaching the Court. Reliance has been placed on the judgment in **State of Maharashtra vs. Digambar**.[20]

26. Before proceeding to deal with the respective submissions, it would be appropriate to refer to the relevant statutory provisions along with

19 [1976] 1 SCR 847 : (1976)1 SCC 194

20 [1995] Supp. 1 SCR 492 : (1995) 4 SCC 683

the scheme of those enactments. The 1898 Act was promulgated with the preamble stating *inter alia* improvement and future expansion of city of Bombay by constructing new sanitary dwellings for certain classes of inhabitants by laying out vacant lands and by reclaiming and laying out parts of the foreshore of the island of Bombay.

27. In the 1898 Act, a substantial amendment came in the year 1913 whereby Section 32B to Section 32I were added. This is referred to as the Amendment Act of 1913. Under the said amended provision, the scheme had come whereby land would be acquired by the Board constituted under the 1898 Act and, thereafter, given out for development and construction to private parties on such terms and conditions as the Improvement Trust, constituted under the 1898 Act, may determine and as also spelled out in the aforesaid provisions. Sections 32B to 32I of the 1898 Act are reproduced hereunder:

> **"Section 32B. Application by employer for Poorer Classes Accommodation Scheme :** (1) Any person employing members of the poorer classes in the course of his business may make an application to the Board stating that he wishes to provide poorer classes' dwellings for the use of all or some of such members and desiring the Board to make a scheme for such purpose. Such person shall hereinafter be called 'the employer', which term shall include his heirs, executors, administrators, assigns and successors.
>
> (2) The Board on consideration of the said application, if they are of opinion that it is expedient to provide the said poorer classes' dwellings, may pass a resolution to that effect and proceed to make a scheme for that purpose.
>
> (3) The poorer classes accommodation scheme shall provide for –
>
> (a) the construction of poorer classes' dwellings
>
> i) by the Board or
>
> ii) by the employer under the supervision of the Board and in accordance with plans and specifications prepared by the Board, and

(b) the letting on lease to the employer of the dwellings so constructed (hereinafter called 'the dwellings').

(4) Such scheme may provide for all matters incidental to the scheme, including the acquisition, raising, lowering or levelling of land required for the execution of the scheme and the construction of accessory dwellings of any description that may be necessary for the purposes of the scheme.

Section 32C – Land on which dwellings may be constructed : The Poorer Classes accommodation scheme may provide for the construction of the dwellings on land: -

a) acquired by the Board or vesting in the Board either absolutely or for sufficient number of years or

b) vesting in the employer either absolutely or for a sufficient number of years;

Provided that the scheme shall not provide for the construction of dwellings on land alleged to vest in the employer until the employer has proved to the satisfaction of the Board that he has such title to the land as shall be good and sufficient for the purposes of the scheme.

Section 32D. **Procedure on completion of scheme :** Upon the completion of a poorer classes accommodation scheme, the provisions of sections 27, 28 and 29 shall, with all necessary modifications, be applicable to the scheme in the same manner as if the scheme were an improvement scheme.

Section 32E : Procedure when dwellings are to be constructed on Schedule C or D land : When such scheme provides for the construction of dwellings upon lands forming part of any of the lands specified in Schedule C or Schedule D Government or the Corporation, as the case may be, shall, on the scheme being sanctioned, forthwith resume the land. The Board shall thereupon pay in cash to Government or to the Corporation, as the case may be, a sum equal to the market value of the land as

determined by the Collector under the Land Acquisition Act, 1894; and such sum shall be deemed to be part of the cost of the scheme to the Board. The land shall thereupon vest in the Board.

Section 32F.- Deposit and Notice : (1) The construction of dwellings shall not be commenced: -

a) where the land vests in or is acquired by the Board, until the employer has deposited with the Board as security a sum equal to twenty percent of the cost of the scheme;

b) where the land vests in the employer, until the employer has submitted to the Board a proposal that the land shall be transferred to the Board for the purpose of Poorer Classes Accommodation Scheme and until the board shall have served a notice in writing upon the employer signifying their acceptance of such proposal; provided further that if in the opinion of the Board the value of the land falls short of twenty percent of the estimated cost of the scheme, the shortage shall be made good by a deposit in cash or securities.

(2) On the service upon the employer of the notice referred to in sub-section (1), clause (b), all the estate, right, title and interest of the employer in and to the land referred to in the proposal shall forthwith vest in the Board.

(3) The employer shall be entitled to the gradual refund of his deposit by annual payments equal to the annual Sinking Fund Charges on all moneys spent by the Board on the scheme, which shall be calculated in the manner described in sub-section (2) of section 32G.

Section 32G.- Term of lease and amount of rent : (1) The Board shall proceed with the Scheme and on completion of the building shall lease the same with the site to the employer for 28 years.

(2) The lessee shall during the said term pay to the Board as annual rent a sum equal to the total of –

(a) the annual interest payable by the Board on all moneys which they have spent on the scheme, and

(b) Sinking Fund charges so calculated that at the end of the term of the lease the aggregate in the Sinking Fund shall amount to the total sum spent on the scheme.

Such total sum shall include –

(i) all moneys spent on Interest and Sinking Fund Charges up to the date of the commencement of the lease,

(ii) if and so far as the land included in the scheme has not been provided by the employer, the cost of such land,

(iii) preliminary expenses and an allowance for management and supervision up to the date of the commencement of the lease.

(3) The cost of such land for the purposes of this section shall be deemed to be –

(a) if and so far as the land has been acquired for the scheme, the actual cost of its acquisition;

(b) if and so far as the land is vested in the Board as being part of the lands specified in Schedule C or Schedule D, the sum paid by the Board under section 32C;

(c) in all other cases the market value of the land at the date of the declaration of the scheme.

Section 32H.- Provisions as to lease : (1) Every lease under a poorer classes accommodation scheme shall commence from such date subsequent to the completion of the dwellings as may be fixed by the Board.

(2) The following conditions shall be expressed or implied in every lease, namely : -

a) that the lessee shall be liable for repairs and insurance;

b) that the lessee shall be liable for the payment of all rates and taxes;

c) that the lessee shall sub-let the dwellings (except such portions thereof as contain shops, care-takers' quarters and the like) only to persons employed by him in the course of his business or their families except in so far as there may not be sufficient numbers of such persons willing to

occupy the dwellings and in any case only to members of the poorer classes;

d) that the lessee shall not demand or receive in respect of any room or tenement in the dwellings any rent in excess of the amount fixed as next hereinafter provided;

e) That the maximum rent of each room or tenement in the dwellings (except such portions thereof as contain shops and the like as hereinbefore set out) shall be fixed by the Board after consulting the lessee and that such maximum rent shall be written or painted up by the lessee in a conspicuous position in each such room or tenement. Such maximum rent shall not be subject to alteration save with the consent of the Board.

Section 32I.- Default and determination of lease (1)(a) On default being made by the lessee in any of the conditions of the lease, all the right, title and interest of the employer to the dwellings and in and to the land on which the dwellings are constructed and any deposit or other moneys paid by the employer to the Board whether before or after the commencement of the lease shall be dealt with in the following manner: -

i) The deposit by the employer shall be credited to the Board, and

ii) The Board shall put the said right, title and interest of the employer to the auction.

(b) The Board shall then have the option either of transferring the right, title and interest to the highest bidder at the auction or of themselves taking over the right, title and interest on payment to the employer of the highest sum bid at the auction.

(c) If no sum is bid at the auction but some person is willing to take over the right, title and interest, on receiving payment of any sum, the Board shall have the option either of making such payment and transferring the right, title and interest to that person or of themselves taking it over. The Board shall be entitled to recover the sum in question from the defaulting lessee for non-fulfilment of the contract.

(d) If no sum is bid at the auction but some person is willing to take over the right, title and interest without either paying or receiving payment of any sum, the Board shall have the option either of transferring the right, title and interest to that person or of themselves taking it over without either receipt or payment of any sum.

(2) Where no default is made in the conditions of the lease, then on the determination of the lease all the right, title and interest of the Board in and to the dwellings and in and to the land on which the dwellings are constructed shall vest in the employer free from all liabilities created by this Act."

28. In the meantime, the 1925 Act was promulgated which replaced the 1898 Act. Under this Act, the powers conferred upon the Board of Trustees under the 1898 Act were to be transferred to the appellant-Corporation and this Act further postulates that its purpose was to improve the city of Bombay by constructing new sanitary dwellings for certain classes. Section 48 of the 1925 Act provided for lease conditions. Section 51 provided for dealing with the lessee where he committed default in the terms and conditions by way of a right of re-entry to the Corporation and further, if there is no default on the part of lessee, it would have a right of conveyance in favour of the lessee at his cost. Sections 48 to 51 of the 1925 Act are reproduced hereunder :

"48. The lease shall commence from such date subsequent to the completion of the execution of the scheme as may be fixed by the Committee and shall be subject to the following among other conditions: -

(a) The lessee shall keep during the term of the lease and leave at the end thereof the demised premises together with their fixtures in good and substantial repair and condition.

(b) The lessee shall insure the demised premises against loss or damage by fire.

(c) The lessee shall be liable for the payment of all rates and taxes.

(d) The lessee shall sublet the rooms and tenements prescribed by the Committee to be used as dwellings only

to persons employed by him in the course of his business or their families except in so far as there may not be sufficient numbers of such persons willing to occupy the same and in any case only to members of the poorer classes. No such room or tenement shall be used otherwise than as a dwelling except with the previous consent in writing of the Committee.

(e) The maximum rent of each room or tenement shall be fixed by the Committee after consulting the lessee and such maximum rent shall be written or painted up by the lessee in a conspicuous position in each such room or tenement. Such maximum rent shall not be subject to alternation save with the consent of the Committee.

(f) The lessee shall not demand or receive in respect of any such room or tenement any premium or any rent in excess of the maximum rent fixed and in force for the time being.

(g) The lessee shall not assign or sublet the demised premises or any part thereof without the previous consent in writing of the Committee. Any assignee or sub-lessee shall be bound by the conditions contained in this Act and in the lease.

49. Lessee may commute the rent : The lessee may at any time with the consent of the Committee commute the rent payable under the lease and in such event the rent shall be Rs.1 per annum for the remainder of the term.

50. Lessee not to make alterations so as to reduce the accommodation : The Committee shall not without the previous sanction of the Board and of Government permit the lessee to make any substantial variation in the user of the premises so as to reduce the accommodation prescribed by the Committee to be used as dwellings.

51. Default and determination of the lease:

(1) On default being made by the lessee in any of the conditions of the lease, the Board may re-enter upon the demised premises or any part thereof in the name

of the whole and immediately thereupon the lease shall absolutely determine.

(2) Where no default is made by the lessee in the conditions of the lease, then on determination of the lease at the end of the term thereof, the Board shall convey the premise to the lessee at his cost and free of all restrictions and liabilities imposed by the lease and by this Act or by the City of Bombay Improvement Act, 1898.

29. There is another enactment by the name of Mumbai Municipal Corporation Act, 1888. Section 527 of the said Act provided for statutory legal notice as a pre-condition for filing a suit against the appellant Corporation and also the limitation for filing a suit once such a notice is given. Section 527 of the Act, 1888 is reproduced hereunder: -

"527. (1) No suit shall be instituted against the corporation or against [the Commissioner, the General Manager] [or the Director] or a Deputy Commissioner, or against any municipal officer or servant, in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act,-

(a) Until the expiration of one month next after notice in writing has been, in the case of the corporation, left at the chief municipal office and, in the case of [the Commissioner, the General Manager] [or the Director] or of a Deputy Municipal Commissioner or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent if any, for the purpose of suit; nor

(b) Unless it is commenced within six months next after the accrual of the cause of action.

(2) At the trial of any such suit –

(c) The plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid;

(d) The claim, if it be for damages shall be dismissed if tender of sufficient amount shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum of money is paid into Court with costs.

(3) When the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any sum payable by him in or in consequence of the suit whether in respect of cost, charges, expenses, compensation for damage or otherwise, may be made, with the [previous] sanction of the [Standing Committee or the Brihan Mumbai Electric Supply and Transport Committee] from the municipal fund or the [Brihan Mumbai Electric Supply Transport Fund] as the case may be."

30. The core issues to be considered are two:

(i) Whether the appellant-Corporation was at all bound to convey the lease land, on completion of the terms of the lease, in favour of the Respondent No.1 free from all restrictions and liabilities or not. If the answer is that there was no compulsion for the appellant either under the statute or under the terms of the lease deed to convey, then the Respondent No.1 would have no case at all. If the answer is positive that they were required to convey the lease land, then the interpretation of the words "at his cost" in Section 51(2) of the 1925 Act would be required.

(ii) The other question would be whether the writ petition filed before the Bombay High Court suffered from delay and laches and was liable to be dismissed on that ground alone as the cause of action had arisen in the year 1955 whereas the writ petition was filed in the year 2016 after a delay of 61 (sixty-one) years. Related issue to be considered is that a Notice under Section 527 of the 1888 Act was given in the year 2006 and, thereafter, no steps were taken for a period of ten years for filing a suit even though the limitation prescribed was six months as per the above provisions. The Respondent No.1 instead of filing a suit preferred a writ petition in the year 2016. Another inter-linked issue would be whether a writ petition ought to have been entertained at all where the actual and real remedy was by way of a civil suit for specific performance or for mandatory injunction.

31. Under Resolution No. 121 dated 16.04.1918, the Respondent No.1 was required to construct 44 Blocks of poorer classes dwellings consisting 980 rooms and 20 shops, as a pre-condition to be fulfilled for execution of the lease under Section 32G of the 1898 Act. The Respondent No.1 after receiving possession of land, constructed only 476 dwellings and 10 shops till the year 1925. As provided under the 1925 Act, the earlier schemes already approved under the 1898 Act were saved and were to be executed by the Board under the 1925 Act.

32. The Respondent No.1 applied for alteration of Scheme No. 51 notified on 01.05.1918 *vide* their application dated 10.03.1927. Later on, *vide* letter of their solicitors- M/s C.N. Wadia dated 20.05.1927, a request was made that the Board may accept 476 rooms instead of 980 rooms and 10 shops instead of 20 shops required under the old scheme. They also requested for conveyance of Block-B and for 28 years lease of Block-A and eventual conveyance of Block-A on completion of the lease period. As the contents of this letter of M/s C.N. Wadia and Co. dated 20.05.1927 have been referred to in the subsequent Board resolution, it would be appropriate to reproduce paragraphs 2,4, 5 and 6 of the said letter, which read as follows: -

> **"2. We also request that the Committee will now grant to the Company a Lease of Block A, for a period of 28 years at a nominal rent of one rupee per annum as provided in the Act and a conveyance of Block B.**
>
> **4. We agree to keep a strip 5 feet in width along the eastern boundary of Block A, open and unbuilt upon, to permit the board to lay a sewer therein should they find it necessary to do so. The Conveyance in respect of this land to be granted on the expiration of the lease will also make provision for this.**
>
> 5. As regards Block B, we agree to the following conditions:-
>
> (a) The layout of the land and the plans, etc., of the buildings to be erected thereon shall be subject to the Board's approval.
>
> (b) The height of the buildings shall not exceed a ground and three floors.

(c) The user of the buildings and land shall be confined to shops, chawls, offices, residences, godowns and a wireless and broadcasting station.

(d) All buildings to be set back 15 feet from the road on the south and the same distance between the points F and G from the 40 ft. road on the west.

(e) An open space 10ft. in width if ground floor buildings are erected, or 15 feet in the case of higher buildings, to be left along the south side of the boundary D.E.

(f) An open space 15 feet in width to be left along and within the boundaries Blocks A and B:

(g) Cost of and incidental to the conveyance and stamp duty to be paid by the Company.

6. It is understood that at the end of period of lease Block A is to be conveyed to us as freehold land."

33. The Board passed Resolution No. 325 on 31.05.1927 and granted alteration of the old scheme. While passing the resolution, it considered the Chief Officer's note dated 21.05.1927 recommending the Board to accept the request. The relevant extract of the Chief Officer's note dated 21.05.1927 is reproduced hereunder: -

> ""…3. Owing to the construction by the Development Department of a very large number of rooms in the immediate vicinity more than sufficient accommodation has been provided and there is no necessity for the Company to complete the full number of rooms. They, therefore, ask the Committee to alter the Scheme in the manner proposed in their letter and there is no objection to this being done especially as the Company has refunded to the Board the amount, with interest, spent on the acquisition of the land.""

34. The Board Resolution No. 325 dated 31.05.1927 reads as follows : -

> "Resolution 325 – The Scheme should be and the same is hereby altered by the exclusion of Blocks B & C on the Estate Agent's plan No.98…
>
> 2. a lease of Block A for a period of 28 years should be granted to the Company on the terms mentioned in paras 2 & 4 of Messrs. C.N. Wadia's letter, dated 20th May, 1927.

3. Block B should be conveyed to the Company on terms and conditions mentioned in para 5 of the Company's letter.

4. Block C will remain the property of the Board."

35. Pursuant to the above resolution, Block-B was conveyed to Respondent No.1 for sale consideration of Rs.1,20,000/- on 10.01.1928 and later, lease of Block-A was executed on 03.10.1928 for a period of 28 years effective from 01.04.1927 at a yearly rent of Re.1/-(Rupee One). As such, the lease was to expire on 31.03.1955. The lease deed dated 03.10.1928, filed as Annexure-P2 before us, incorporates in its initial part the facts including the details about the Scheme no. 51, which was approved in 1918, with regard to the entire land comprising of parcels A, B and C with total land admeasuring 57,758 sq. yds. It, thereafter, refers to the partial construction by Respondent No.1 and the request made by Respondent No.1 on 10.03.1927 and 20.05.1927 for alteration in the scheme. Thereafter, it goes on to mention the approval of the alteration of said scheme by the Board Resolution dated 31.05.1927 and, then states the terms and conditions thereof. Under the terms and conditions, lease of Block-A was granted for a period of 28 years effective from 01.04.1927 with a yearly rent of Re.1/- (Rupee One only) to be paid without any deduction on first day of each April.

36. A perusal of the terms and conditions stated in the lease agreement would reveal that there is no such stipulation that on the expiry of the period of the lease on 31.03.1955, after completion of 28 years, the appellants would be bound to convey the said land to Respondent No.1. Based on the above resolution dated 31.05.1927 and the terms as incorporated in the lease deed, the submission on behalf of the appellants is that there was neither any decision taken by the Board to convey the land in question on expiration of the lease nor does the lease agreement contain any such clause that the appellants were bound to convey the land.

37. It is also vehemently submitted that the High Court completely fell in error in reading the Board's resolution as agreeing to convey the land on the expiration of the lease and by interpreting the lease agreement to have a clause that the Board would convey the land on the expiration of the lease. Insofar as the lease deed is concerned, the High Court read the narration of the facts relating to the application

filed by Respondent No.1 for alteration dated 20.05.1927 to be a term of the lease to mean that on expiration of the lease, there would be a conveyance. In fact, there is no such stipulation in the terms and conditions of the lease deed regarding the conveyance. This was a clear misreading by the High Court.

38. The lease deed dated 03.10.1928, nowhere recites that the land comprising in Block-A would be conveyed at the expiration of the lease term of 28 years provided there was no default on the part of the lessee as provided in Section 51(2) of the 1925 Act. The High Court, while referring to the narration of facts in the initial part of the lease deed, has misinterpreted the same to be a condition incorporated in the lease deed for conveyance at the end of the period of lease i.e. on expiration of 28 years.

39. Insofar as the resolution of 31.05.1927 is concerned, the proceedings of the said meeting have been filed as Annexure-P1 before us, which is reproduced hereunder :

"Annexure P-1

Exhibit 'F'
Bombay Improvement Trust
SECRETARY OFFICE,
ESPLANADE ROAD

Excerpt from the Proceedings of a Meeting of the Improvements Committee held on the 31st May 1927.

1. Re : Scheme No. 51 - Century Mills Housing Scheme alteration in

Considered the. following ;.

(a) Letter from Messrs. C.N. Wadia & Co., dt. 20th May 1927.

"With reference to the Committee's Resolution No. 165, dated the 24th March last, we beg to request that as we have paid to the Board the sums due under Section 46(3) of the Act, the Committee may be moved to alter the Scheme under Section 37(2) by the omission therefrom of Blocks B and C on the accompanying plan."

2. We also request that the Committee will now grant to the Company a lease of Block A for a period of 28 years

at a nominal rent of one rupee per annum as provided in the Act and a conveyance of Block B.

3. It was arranged in 1923 that plot C should revert to the Trust.

4. We agree to keep a strip 5 feet in width along the eastern boundary of Block A, open and unbuilt upon, and to permit the Board to lay a sewer therein should they find it necessary· to do so. The conveyance in respect of this land to be granted on the expiration of the lease will also make provision for this.

5. As regards Block B, we agree to the following conditions:-

(a) The lay out of the land and the plans, etc., of the buildings to be erected thereon shall be subject to the Board's approval.

(b) The height of the buildings shall not exceed a ground and three floors.

(c) The user of the buildings and land shall be confided to shops, chawls, offices, residences, godowns and a wireless and broadcasting station.

(d) All buildings to be set back 15 feet from the road on the south and the same distance between the points F and G from the 40 ft. road on the west.

(e) An open space 10 ft. in width if ground floor buildings are erected, or 15 feet in the case of higher buildings, to be left along the south side of the boundary D. E.

(f) An open space 15 feet in width to be· left along and within the boundaries Blocks A and B.

(g) Cost of and incidental to the conveyance and stamp duty to be paid by the Company.

6. It is understood that at the end of the period of lease, Block A is to be conveyed to us as freehold land".

(b) Chief Officer's note, dated 21st May 1927.

"This Scheme was sanctioned in 1919 and provided for the acquisition of the land by the Board and the filling in

of the site and the construction of the buildings by the Century. Spinning and Manufacturing Co., Ltd.

2. The Company originally Intended to erect 44 blocks of buildings containing 980 rooms and 20 shops and have in fact complete 476 rooms and 10 shops.

3. Owing to the construction by the Development Department of a very large number of rooms in the immediate vicinity more than sufficient accommodation has been provided and there is no necessity for the Company to complete the full number of rooms. They, therefore, ask the Committee to alter the Scheme in the manner proposed in their letter and there is no objection to this being done especially as the Company has refunded to the Board the amount, with interest, spent on the acquisition of the land."

Resolution 325 - The Scheme should be and the same is hereby altered by the exclusion ·of Blocks B & C on the Estate Agent's plan No. 98, dated 17th May 1927.

2. A lease of Block A for a period of 28 years should be granted to the Company on the terms mentioned in paras 2 & 4 of Messrs. C.N. Wadia's letter, dated 20th May 1927.

3. Block B should be conveyed to the Company on the terms and conditions mentioned in para 5 of the Company's letter.

4. Block C will remain the property of the Board.

True Excerpt,
C.P. GORWALLA
Secretary"

40. A careful reading of the above excerpts reflects that the letter from M/s C.N. Wadia dated 20.05.1927 is reproduced as it is in the beginning which runs into 6 paragraphs. Thereafter, it considered the Chief Officer's note dated 21.05.1927 which we have briefly referred to in earlier part of this judgment. Thereafter, it records that the Respondent No.1 originally intended to erect 980 rooms with 20 shops. As per the said note, it gave details of the original

scheme, the alteration requested for and further the reasons that because of construction by the development department, sufficient accommodation is now available and there may not be any necessity for company to complete the full number of rooms, as such the request for alteration may be considered. Thereafter, the Resolution No. 325 is recorded which reflects that the scheme stands altered by excluding Block-B and Block-C, the lease of Block-A for a period of 28 years to be granted on the terms mentioned in paragraphs 2 and 4 of letter dated 20.05.1927 of M/s C.N. Wadia, Block-B to be conveyed to the company in terms of paragraph 5 of the aforesaid letter and Block-C to remain property of the Board.

41. Based on the above reading of the resolution dated 31.05.1927, first and foremost, it must be noted that paragraph 6 of the letter dated 20.05.1927 is not approved by the Board which states that at the end of the period of lease, Block-A is to be conveyed to the company as freehold land. Secondly, it approves granting of lease on the terms mentioned in paragraphs 2 and 4 of the said letter dated 20.05.1927. Paragraph 2 does not refer to any conveyance of Block-A. Paragraph 4 states about leaving strip of five feet along eastern boundary open and unbuilt to permit the Board to lay the sewer. It further stipulates that the conveyance in respect of "this land" to be granted on the expiration of the lease will also make provision for this. "This land" means the strip of five feet and not Block-A.

42. The High Court's recording that, once paragraph 4 refers to conveyance in respect of "this land", it is to be treated as Block-A, is actually misreading and misinterpreting paragraph 4 of the communication dated 20.05.1927. It only says the conveyance, if made, on the expiration of the lease will take into consideration provision for this land. The main request of the Respondent No.1 in its communication dated 20.05.1927 with regard to conveyance of Block-A is stated in paragraph 6 which the Board Resolution No. 325 does not approve or accept. The High Court, thus, fell in error in reading paragraph 4 of the communication dated 20.05.1927 to understand that the Board minutes approved the conveyance of Block 'A'.

43. The conveyance as stated in paragraph 4 is with respect to five feet strip of land on the eastern side and the same would become effective and applicable only if paragraph 6 of their letter was accepted. In the absence of approval of paragraph 6 of the said

letter dated 20.05.1927, it cannot be held that the Board approved the conveyance of Block-A after expiration of the period of lease.

44. From the above analysis, it is more than clear that neither the Board Resolution No. 325 dated 31.05.1927 nor the lease deed anywhere states about conveyance of Block-A on the expiration of the lease deed. The High Court, thus, fell in error in interpreting both the documents otherwise.

45. Further arguments on behalf of Respondent No.1 with respect to conveyance being executed rest on Section 51(2) of 1925 Act. In this respect, it would be appropriate to first deal with Section 48(a) of the 1925 Act and read Section 51(2) of the said Act along with the said provision. Under Section 48(a) of the 1925 Act on the expiration of the lease period, the lessee shall leave the demised premises in good and substantial repair conditions along with fixtures, if any, whereas Section 51(2) of the said Act provides that where no default is made by the lessee in the conditions of the lease, then on determination of the lease at the end of the term, the Board shall convey the premise to the lessee at his cost and such conveyance to be free of all restrictions and liabilities imposed under the lease deed and also by the 1898 Act. The submission on behalf of the appellants is that Section 48(a) of the 1925 Act would be rendered otiose and meaningless, if Section 51(2) of the said Act is read and interpreted as submitted by the counsel for Respondent No.1 which is to the effect that, Section 51(2) of the said Act being a special provision whereas Section 48(a) thereof is a general provision, the special provision will prevail over the general provision. We may not agree with the above submission of Respondent No.1 as submitted but would rather read both the provisions and test whether they could co-exist and be construed harmoniously.

46. Both the provisions, Section 48(a) and Section 51(2) of the 1925 Act, have to be read in the context in which they have been incorporated. Section 48 of the 1925 Act provides the general conditions of the lease given under the PCAS placing restrictions on the lessee as to how it would use and how the rent etc. would be determined for letting out the tenements. Whereas, Section 51 of the said Act provides for default, and determination of the lease. If there is default, then under Section 51(1) of the 1925 Act, the Board has a right to re-enter upon the demised premises whereas under sub-Section

(2) thereof provides that where no default is made, the Board shall convey the premise to the lessee at his cost.

47. If Section 48(a) and Section 51(2) of the 1925 Act are to be interpreted harmoniously, the net result is that under general provisions, the lessee has to leave the premise on completion of the period of lease, however, it will have a right to get the conveyance executed at the end of the lease, provided there has been no default, after paying the cost of the said premise.

48. Well-settled principles of statutory interpretation demand that no provision of a statute should be rendered nugatory or superfluous. A statute must be construed as a coherent whole, ensuring that each part has meaningful content and that the legislative scheme remains workable. Where two provisions appear to be in tension, the proper course is to adopt a construction that reconciles them, allowing both to operate and giving effect to the underlying legislative intent. It is neither necessary nor desirable to treat section 51(2) of the 1925 Act as an absolute mandate that would override or negate Section 48(a) thereof. Instead, they must be read harmoniously so that the duty to restore the premises at the end of the lease remains intact, unless a clear contrary intention emerges, and the right to conveyance under Section 51(2) thereof is recognized as contingent, not automatic.

49. Such a reading is consistent with the accepted principle that a statutory provision should not be construed in a manner that would reduce another provision to a "dead letter." The reference in Section 48(a) of the 1925 Act leaving the premises in good repair is not a mere formality but a substantive condition governing the lessee's obligations. Simultaneously, Section 51(2) thereof contemplates a conveyance only where the conditions of the lease have been duly met and the terms of the governing arrangement so permit. By interpreting Section 51(2) of the said Act as a provision that confers a right to conveyance contingent upon the terms of the lease and the broader legislative context, rather than as an unqualified command, the overall scheme of the Act is preserved. This ensures that the statute remains fully operative, logical, and internally consistent.

50. Interpreting Section 51(2) in this calibrated manner ensures that no non-obstante clause or hierarchical superiority is artificially read into the statute. Nothing in the language of Section 51(2) of the 1925 Act suggests that it must prevail to the exclusion of other provisions,

nor does Section 48(a) thereof state that its conditions are subject to displacement by Section 51(2) of the said Act. Each provision, on a proper reading, retains its respective field of operation. The terms and intentions underlying the lease itself become the primary determinant of whether the eventual conveyance is warranted or not. Thus, rather than insisting that "shall convey" invariably means an unconditional obligation, it is more appropriate to understand that it calls for conveyance only where the arrangement and compliance align with the statutory prerequisites.

51. By employing a harmonious construction, the 1925 Act's provisions are allowed to complement rather than contradict one another. This approach upholds the integrity of the legislative scheme, ensures that none of its components are undermined, and maintains a balance between the obligations imposed on a lessee and any rights that may accrue at the end of the lease's tenure. These principles were reiterated by a three-Judge Bench of this Court in **CIT** (supra). The relevant paragraphs are reproduced hereunder:

> "14.A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]
>
> 15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See Whitney v. IRC [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)], AC at p. 52 referred to in CIT v. S. Teja Singh [AIR 1959 SC 352 : (1959) 35 ITR 408] and Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1].)
>
> 16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though

there may be some inexactitude in the language used. (See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408].)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)].) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1].

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81].) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006].)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that

> they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.
>
> 21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy."

52. Therefore, in our considered opinion, the interplay between Sections 48(a) and 51(2) of the 1925 Act is resolved through a construction that acknowledges the necessity of leaving the premises in good condition at the expiration of lease, while recognizing that a conveyance can be contemplated only where such a course is unequivocally aligned with the lease terms and the statutory framework as a whole. This reconciliation preserves the intention of the legislature, avoids destructive interpretations, and provides a coherent, just, and practical reading of the statute.

53. In light of the above discussion, it becomes evident that neither the statutory framework in force nor the terms of the lease deed imposed any obligation upon the appellant to execute a conveyance in favour of the Respondent No.1. While the Respondent No.1 has sought to rely upon selective readings of the statutory provisions and the Board's resolutions, a harmonious and contextual interpretation of Sections 48(a) and 51(2) of the 1925 Act, as well as the clear absence of any covenant to that effect in the lease deed, unequivocally demonstrates that no vested right to conveyance arose on the expiration of the lease. Absent any express statutory mandate or contractual stipulation, the claim for compulsory conveyance at the end of the lease term must fail.

54. Even if in arguendo, we agree to the Respondent No.1's contention that the lease conferred a right to conveyance in their favour, the fact that cannot be overlooked is that Respondent No.1 failed to take any active step in furtherance of getting such a conveyance executed at the end of the lease term. A major reliance has been placed by the Respondent No.1 on Section 51(2) of the 1925 Act, which clearly states that the Board shall convey the premises to the lessee at his cost. The term "at his cost" shall include the charges involved in

conversion of lease hold property into free hold property and would routinely comprise of registration charges, stamping charges etc. It is evident that the Respondent No.1, after the expiry of term of the lease, has neither paid any such charges towards the cost in an effort to seek conveyance nor availed any alternative remedy by filing a suit for specific performance or mandatory injunction. Therefore, the Respondent No.1's reliance on Section 51(2) will also not come to their rescue when it is apparent that they have not fulfilled their part of the obligation under the said provision.

55. From the above discussion and analysis, the first core question stands answered in favour of the appellants that they were neither bound nor were under any legal obligations to convey the premises comprising Block-A to the Respondent No.1.

56. Now we come to the second core issue regarding the writ petition before the High Court suffering from serious delay and laches and as such liable to be dismissed on that ground alone. Admittedly, the term of the lease came to an end on 31.03.1955. It is also uncontested that thereafter the Respondent No.1 never claimed execution of conveyance at any point of time till 2006, when for the first time they issued a legal notice dated 14.08.2006 purported to be under Section 527 of the 1888 Act requiring the appellant to execute the conveyance deed. Thus, for a period of 51 years, the Respondent No.1 did not raise any demand whatsoever for execution of the conveyance deed. Their contention that they were in constant communication with the officers of the Corporation, though orally, the fact remains that no legal proceedings were undertaken during this period. Even after giving the notice under Section 527 of 1888 Act, the Respondent No.1 took no steps for a period of 10 years by filing a suit or approaching the Court even though the period of limitation prescribed under the above provision was six months. Ten years after the legal notice, they preferred the writ petition, i.e. after 61 years of the cause of action having arisen.

57. We find that the High Court has cursorily dealt with this aspect and held that the writ petition does not suffer from laches. The High Court actually held that there was inaction on the part of the appellant in not executing the conveyance deed. On the contrary, Respondent No.1 never approached the appellant requiring them either to provide the details of the stamp duty, registration charges etc. so that the conveyance deed could be typed out on such stamp papers and

thereafter to be presented for registration. The Respondent No.1 has neither made any pleadings nor has led any evidence to the above effect.

58. The view taken by the High Court in treating the petition to be not suffering from any delay and laches cannot be sustained. Reference may be made to the following judgments wherein delay and laches being non-condonable while filing petition, especially under land acquisition matters, has been elaborately dealt with and has been the consistent view of this Court that such belated petitions are liable to be dismissed.

59. In **Aflatoon v. Lt. Governor of Delhi**,[21] it was held that:

> "9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in Munshi Singh v. Union of India [(1973) 2 SCC 337, 342 : (1973) 1 SCR 973, 975, 984], it was observed : [SCC p. 344, para 10]
>
> > "In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage."
>
> We do not think that the appellants were vigilant.
>
> 10. That apart, the appellants did not contend before the High Court that as the particulars of the public purpose

21 [1975] 1 SCR 802 : (1975) 4 SCC 285

were not specified in the notification issued under Section 4, they were prejudiced in that they could not effectively exercise their right under Section 5-A. As the plea was not raised by the appellants in the writ petitions filed before the High Court, we do not think that the appellants are entitled to have the plea considered in these appeals.

11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110 : [1969] 2 SCR 824] and Rabindranath Base v. Union of India [(1970) 1 SCC 84 : [1970] 2 SCR 697])."

60. Similarly, in **Hari Singh v. State of U.P.**,[22] it was observed that:

"4. At the outset we are of the view that the writ petition filed in July 1982 questioning the notification issued in January 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no doubt true that the appellants have pleaded that they did not know anything about the notifications which

22 (1984) 2 SCC 624

had been published in the Gazette till they came to know of the notices issued under Section 9(3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings are challenged is Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a short while and it is difficult to believe that the appellants who are residents of that place would not have known till July 1982 that the impugned notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone."

61. Likewise, in **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.**,[23] with regards to the question of delay and laches, it was held that:

"29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into

23 [1996] Supp. 5 SCR 551 : (1996) 11 SCC 501

consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

62. More recently, this Court in **New Okhla Industrial Development Authority v. Harkishan**,[24] had held that:

> "12. More importantly, when the respondents made the representation, it was dealt with and rejected by the State Government vide order dated 3-12-1999. At that time, award had been passed. However, in the second round of writ petitions preferred by the respondents, they chose to challenge only Office Order dated 3-12-1999 vide which their representation under Section 48 of the Act had been rejected and it never dawned on them to challenge the validity of the award on the ground that the same was not passed within the prescribed period of limitation. As noted above, in the second round of litigation also, the respondents failed in their attempt, inasmuch as, this Court put its imprimatur to the rejection order dated 3-12-1999 vide its judgment dated 12-3-2003 [Ved Prakash v. Ministry of Industry (2003) 9 SCC 542]. At that time, even the possession of land had been taken. If the respondents wanted to challenge the validity of the award on the ground that it was passed beyond the period of limitation, they should have done so immediately and, in any case, in the second round of writ petitions filed by them. Filing fresh writ petition challenging the validity of the award for the first time in the year 2004 would, therefore, not only be barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908, but would also be barred on the doctrine of laches and delays as well."

63. There is yet another aspect of the matter to be considered. The Respondent No.1 had a statutory remedy of filing a suit under

24 [2017] 1 SCR 572 : (2017) 3 SCC 588

Section 527 of the 1988 Act which they could have availed. In fact, the Respondent No.1 proceeded in that direction by giving a notice to file a suit but never filed the suit although limitation for the same was six months. The Respondent No.1 apparently chose to file the writ petition in 2016 after 10 years only in order to escape from the clutches of the limitation. In this regard, it was held in **Shri Vallabh Glass Works Ltd.** (supra), that:

> "9. …Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc. In the instant case, the appellants had in fact approached the High Court on September 28, 1976 itself by filing Special Civil Application No. 1365 of 1976 for directing repayment of the excess duty paid by them. But no relief could be granted in that petition in view of the provisions of Article 226 of the Constitution as it stood then and the petition had to be withdrawn. Hence even granting that on the date of making each payment of excise duty in excess of the proper duty payable under law, the appellants should be deemed to have discovered the mistake, all such excess payments made on and after September 28, 1973 which would fall within the period of three years prior to the

> date on which Special Civil Application No. 1365 of 1976 was filed should have been ordered to be refunded under Article 226 of the Constitution. But the High Court declined to do so on grounds of estoppel and acquiescence. While we do agree that the appellants should not be granted any relief in respect of payment made between October 1, 1963 and September 27, 1973 which would fall beyond three years from the date of the first writ petition filed in this case we do not find it proper and just to negative the claim of the appellants in respect of excess payments made after September 28, 1973. In the instant case the appellants had made excess payments on being assessed by the Department and such payments cannot be treated as voluntary payments precluding them from recovering them. (See Sales Tax Officer v. Kanhaiya Lal Mukundlal Saraf [AIR 1959 SC 135 : [1959] SCR 1350 : 9 STC 747].) We do not also find that the conduct of the appellants is of such a nature as would disentitle them to claim refund of excess payments made in respect of goods other than wired glass."

Therefore, the writ petition ought to have been dismissed on this ground of delay and laches alone. We find no merit in the conduct of the Respondent No. 1 where it deliberately chose to sit still on its rights for a long period of fifty-one years. Even after such a belated delay and sending a notice to the appellant in 2006, the Respondent No.1 again failed to exhibit any diligence and chose not to file a suit within the period of limitation under the 1888 Act. Instead, the Respondent No.1 has shown utmost craftiness and lack of bona fide in preferring the writ petition before the High Court in 2016 as it is clearly a route adopted to subvert the long delay of sixty-one years, which we do not find condonable, given the conduct of the Respondent No.1 throughout.

64. Further, it must also be observed that Respondent No.1 had submitted plans in 2009 for altering the use of Plot A for commercial purposes and would no longer be providing for Poorer Classes Accommodation as was agreed in the lease deed of 1928. Clause 2(VIII) of the lease deed has been reproduced below which explicitly states the purpose of the lease deed:

> "VIII To use the demised premises (except such portions thereof as contain shops, caretakers' quarters, and the like) exclusively as dwellings for the members of the poorer classes, being persons employed by the Lessees in the course of their business, and the families of such persons, except in so far as there may not be sufficient numbers of such persons willing to occupy the same, and in any case only for members of the poorer classes. And in particular not to use the demised premises or any part thereof, or permit the same to be used as a public house, refreshment room, booth, or shop for the sale for consumption either on or off the demised premises of intoxicating liquors, whether country or foreign, and whether by retail or wholesale, or for any other purpose whatsoever otherwise than as dwellings, except with the previous consent in writing of the Board, and not at any time to permit stables, factories, workshops, or workplaces on the demised land. And not to do or suffer to be done on the said premises anything which may be or become noisome, injurious, or offensive to the Board or the owners or occupiers of this or any other property in the neighbourhood."

65. Moreover, the Preamble to the 1925 Act also clearly states that it *"was enacted with a view to make provision for the improvement and for the future expansion of the City of Bombay by forming new and altering streets, by removing or altering insanitary buildings in certain areas, by providing open spaces for better ventilation and for recreation, by constructing new sanitary dwellings for certain classes of the inhabitants of the said city and for the Bombay City police, by laying out vacant lands and by divers other means;".* While the Respondent No.1 would have been allowed to use it for commercial purposes had the land been duly conveyed to them, it has already been shown that conveyance was never granted in the sale deed dated 1928, nor was any "cost" paid for the conveyance. The lease deed, by itself, did not confer any rights to convert the usage of the lands for commercial purposes.

66. It is clear that the protective and welfare-oriented character of the arrangement is integral to the statutory objective. The inclusion of Clause 2(VIII) in the lease deed was not a casual insertion; it was intended to ensure that the property would serve as an instrument of

social betterment by housing those who are economically vulnerable. This provision, coupled with the Preamble's emphasis on "constructing new sanitary dwellings for certain classes of the inhabitants," reflects a deliberate legislative policy to secure tangible benefits for the poorer sections of society. The statutory and contractual framework is not merely concerned with property rights and transactions in the abstract; it aims to harness urban development to serve the pressing social needs of the community. By seeking to redirect the property towards commercial exploitation, Respondent No.1 threatens to erode the very foundation upon which the original agreement stood. The contractual language and statutory purpose are both premised on ensuring that the "demised premises" remain dedicated to providing adequate housing to those otherwise struggling to find decent living conditions in a rapidly expanding metropolis. To ignore or circumvent these conditions would nullify the intended social function of the property and transform a carefully crafted scheme of public welfare into a mere instrument of private profit.

67. Such a departure from the intended purpose is not only a breach of the lease conditions but also a subversion of the policy that animated the entire statutory regime. The legislation and the contract work in tandem to ensure that urban improvement aligns with the welfare of weaker segments. When land allocated under a special scheme, particularly one centred on "poorer classes" accommodation, is sought to be commercially exploited, it represents a direct affront to the spirit of the enactment. Rather than addressing housing inadequacies and improving urban life for those in need, the resource would be diverted to profit-making ventures that do nothing to alleviate the conditions of the underserved.

68. This conduct amounts to an abuse of beneficial legislation. The 1925 Act was clearly intended to secure broader societal goals—better sanitation, improved living standards, and well-planned urban growth that includes and benefits marginalized communities. Allowing Respondent No.1 to disregard these obligations would open the door to hollowing out the protections and advantages established by the statute. It would set a precedent where statutory schemes designed to uplift vulnerable groups could be co-opted for purely commercial ends, undermining the trust and faith that must exist between public authorities, private actors, and the most vulnerable segments of the population.

69. In essence, the entire arrangement is anchored on a quid pro quo : the property is leased on special terms, with minimal rent and under carefully prescribed conditions, to ensure that the less-privileged receive tangible benefits. When the lessee attempts to convert this arrangement into a vehicle for commercial gain, it repudiates the fundamental bargain. The public trust reposed in the private entity to serve a greater good is thus betrayed. This not only harms the class of beneficiaries whom the legislation and agreement were designed to protect, but also imperils the broader public interest by allowing beneficial legislative frameworks to be distorted and exploited contrary to their genuine purpose.

70. For all the reasons recorded above, the judgment of the High Court cannot be sustained. Accordingly, the appeal is allowed, the impugned judgment of the High Court is set aside, and the writ petition is dismissed.

71. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed

†*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 362 : 2025 INSC 43

Om Prakash @ Israel @ Raju @ Raju Das
v.
Union of India and Another

(Criminal Appeal No. 4229 of 2024)

08 January 2025

[M.M. Sundresh* and Aravind Kumar, JJ.]

Issue for Consideration

Issue arose as regards plea of juvenility raised u/s.9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Headnotes†

Juvenile Justice (Care and Protection of Children) Act, 2015 – s.9(2) – Plea of juvenility – Appellant charged for the offence of culpable homicide amounting to murder, for incident occurred in 1994 – On recording of statements in 2001, the appellant stated his age as 20 years – After conviction, the appellant raised the plea of juvenility during the hearing on sentence that he was around 17 years at the time of occurrence – Trial court, relying upon his statement regarding the bank account, presumed that he was major and sentenced him to death – Upheld by the High Court as also Supreme Court – Review Petition thereagainst also dismissed – Mercy Petition before the Governor also rejected – Thereafter, Writ Petition u/Art.32 as also Curative Petition dismissed – Mercy Petition filed before Hon'ble the President of India – During the pendency, 2007 Rules came into effect – Ossification test done and the Medical Age Certificate indicated that the appellant was aged around 14 years at the time of the occurrence – By Presidential Order, death sentence of the appellant commuted to life imprisonment, with caveat that he shall not be released until the attainment of 60 years of age – Subsequent Curative Petition rejected – Appellant then filed Writ Petition before the High Court challenging the Presidential Order and also for seeking relief u/s.9(2) – Writ Petition dismissed holding that the power of judicial review over an executive order passed in exercise of Art. 72 is limited, and the proceedings against the appellant had attained finality – Challenge to:

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* Author

**Om Prakash @ Israel @ Raju @ Raju Das v.
Union of India and Another**

Held: No dispute that the appellant was only 14 years old at the time of the commission of the offence – At every stage, injustice has been inflicted by the Courts, either by ignoring the documents or by casting a furtive glance – Appellant, despite being illiterate, raised this plea one way or another, right from the trial court up to the conclusion of the Curative Petition before this Court – Approach of the Courts in the earlier round of litigation cannot be sustained in the eye of law – Statement given by the appellant at the time of the hearing on his sentence, also pale into insignificance, as even then he would have been a minor at the time of commission of the offence, under both the 2000 and the 2015 Acts – Procedural mandate contemplated under the 1986 Act not followed by the courts below – Curative petition dismissed without according any reason – Even the then existing State Rules not duly followed – When the plea of juvenility was raised, it should have been dealt with under the existing laws at the relevant point of time, especially when there exists a tacit and clear admission as to the age of the appellant – This Court could have dealt with the writ petition filed u/Art.32, as it raised independent prayer for the enforcement of a right conferred under a social welfare legislation – In the subsequent writ petition filed before the High Court, two different prayer made, the determination of the appellant's plea of juvenility and consequent release, or alternatively judicial review of the decision of the President or the Governor and consequent release – Executive cannot be construed to have undertaken an adjudication on the determination of the age of the accused and first prayer being a distinct one invoking s.9(2), the High Court erred in its reasoning – Appellant has been suffering due to the error committed by the Courts – His conduct in the prison is normal, with no adverse report – He lost an opportunity to reintegrate into the society – Time which he has lost, for no fault of his, can never be restored – Thus, the sentence imposed in excess of the upper limit prescribed under the relevant Act set aside, while maintaining the conviction rendered – It is not a review of the Presidential Order, but a case of giving the benefit of the provisions of the 2015 Act – State Legal Services Authority to identify welfare scheme of the State/Central Government, facilitating the appellant's rehabilitation and smooth reintegration into the society upon his release, with emphasis on his right to livelihood, shelter and sustenance guaranteed u/Art.21. [Paras 44-54]

Justice delivery system – Concept of truth – Duty of Court – Explanation:

Held: Justice is nothing but a manifestation of the truth, which transcends every other action – Primary duty of the Court is to make a single-minded endeavour to unearth the truth hidden beneath the facts – Court is a search engine of truth, with procedural and substantive laws as its tools – When procedural law stands in the way of the truth, the Court must find a way to circumvent it – When substantive law does not facilitate the emergence of the truth, it is the paramount duty of the Court to interpret the law in light of its teleos – Such exercise warranted in a higher degree, while considering a social welfare legislation – Court must discern the truth, primarily from the material available on record in the form of pleadings, and arguments duly supported by documents – Entire judicial system meant for the discovery of the truth, it being the soul of a decision – Presiding Officer expected to play an active role, rather than a passive one. [Paras 4-6]

Juvenility – Juvenile justice – Rights of juvenile – Role of juvenile courts and Constitutional Courts:

Held: Deviant behaviour of a child in conflict with law should be a concern of the society as a whole – Child not responsible for an act of crime, but rather victimized by it – Behaviour of a child can be attributed to environment, the child grows in, and genetics – Remedial measures may be employed for the benefit of the child since the child does not choose the environment in which it grows, deviant behaviour which is a result of exposure to a given environment is evidence of rampant inequality – Thus, a child who lives in a discriminatory environment, requires equitable treatment on the touchstone of Arts. 14, 15(3) rw Art. 39 (e) and (f), Arts. 45 and 47 – Court expected to play the role of parens patriae by treating a child not as a delinquent, but as a victim, viewed through the lens of reformation, rehabilitation and reintegration into the society – Juvenile Court is a species of a parent – Delinquent, who appears before the Court, is to be protected and re-educated, rather than be judged and punished – Court to press into service the benevolent provisions for rehabilitation introduced by the Legislature – Juvenile Court assumes the role of an institution rendering psychological services – Juvenile Court must don the robes of a correction home for a deviant child – Furthermore, since the need for taking care of a juvenile in conflict with law is

mandated by the Constitution, the role of the constitutional Courts is significant – Even after the dismissal of a Special Leave Petition/ Statutory Criminal Appeal followed by incidental proceedings before Supreme Court, where the plea of juvenility was not consciously considered, there would be no bar on the constitutional Courts to consciously take a deeper look – It is not an exercise of the powers conferred u/Arts 32, 136 or 226, but an act in fulfilment of a mandated duty enjoined upon the Courts, to give effect to the laudable objective of a social welfare legislation – Constitution of India, 1950 – Arts. 14, 15(3), 39(e), 39(f), 45, 47. [Paras 8-11, 23]

Juvenile Justice (Care And Protection Of Children) Act, 2015 – s.9(2) – Special homes – Plea of juvenility vis-à-vis final disposal – Words "even after the final disposal of the case" in s.9(2) – Significance:

Held: s. 9(2) being the heart and soul of the entire Act, must be given its fullest meaning and interpretation – If the offence is committed by a child, it cannot be treated otherwise than as provided under the 2015 Act – After finding out the truth, necessary consequences must follow – Sufficient opportunities must be given to the child in conflict with law to get the benefit of the 2015 Act – Merely because a casual adjudication has taken place does not mean that a plea of juvenility cannot be raised subsequently – So long as the right of a party subsists, one can never say that finality has been attained – In a case where a plea has been raised, but not adjudicated upon, the decision rendered thereunder would not amount to attaining finality – In a case where the plea was not treated as an application u/s.9(2) and, the procedure mandated thereunder was not followed, the principle stated would apply as right of raising the plea of juvenility has not ceased and, thus, subsists. [Paras 21-22]

Juvenile Justice (Care and Protection of Children) Rules, 2007 – r.12, 12(3) – Procedure to be followed in determination of age – Hierarchy of documents:

Held: While there is no difficulty in the application of the principal Act inclusive of the procedural part, even for a juvenile in conflict with law who has attained majority on or after 2001, r.12 must be applied retrospectively even to those cases, especially where no exercise was undertaken under any of the State Rules or the erstwhile Acts, on earlier occasions – Sub-rule (3) of r.12 is a rule

of evidence, which merely provides a hierarchy of documents in the order of priority, to be taken note of and considered while determining the age of a juvenile in conflict with law, in an ongoing inquiry – Where a matriculation certificate is very much available, a date of birth certificate from the school or a birth certificate given by a local authority shall never be looked into – Only if none of the said documents is available, can one go for a medical opinion – It should not be misunderstood that even in those cases where due inquiry was undertaken under the erstwhile enactments and the relevant rules, one can seek a fresh inquiry u/r.12. [Paras 24-25]

Juvenility – Juvenility as an admitted fact – Rules of Evidence:

Held: Admission is a rule of evidence, it is a relevant fact – It becomes relevant qua a fact in issue – When an admission is clear, unambiguous, continuous and unequivocal, it becomes the best form of evidence, and transforms itself into fact in issue – When a party makes an admission, either by way of oral statement or acknowledging a document authored by them, the Court must proceed on that basis – Resultant relief, which is axiomatic, cannot be denied on anvil of procedural law – Any contra view would result in grave injustice – On an issue where there is no dispute, denying a rightful relief would be an affront to fair play and justice – However, the Court cannot construe a statement as an admission and proceed on that basis – There is a subtle difference between an unequivocal admission as against a statement which could be construed to be so – Former can be the basis for a relief, latter meant for adjudication vis-a-vis the facts of the case. [Para 27]

Maxim – Actus curiae neminem gravabit – Meaning:

Held: No one shall be prejudiced by an act of the Court – Mistake committed by the Court cannot stand in the way of one's rightful benefit – It is not the party which commits a mistake, but rather the Court itself – Such a mistake cannot act as a barrier for the party to get its due relief – However, mistake must be so apparent that it does not brook any adjudication on the foundational facts. [Para 28]

Constitution of India – Arts. 72, 161 – Power of the President and the Governor to grant pardon – Presidential order – Judicial review:

Held: Power of pardon u/Art.72 and 161 is sovereign – It is power of compassion and empathy, meant to remove or reduce all pains,

penalties and punishment suffered by a convict – Exercise of this sovereign power by either the State or the Centre, is a final grace given under the Constitution for the convict to reintegrate into the society – Power u/Art.72 and 161 is not appellate or revisional in nature, it is an executive power travelling on a different channel – Challenge to the exercise of power u/Arts. 72 and 161 would involve limited judicial review – Courts will have to exercise adequate caution and circumspection while dealing with an executive order passed in exercise of the power conferred u/Arts. 72 or 161 – When challenge is made to executive order, with an independent prayer for exercising the power u/s.9(2), they being distinct and independent, refusal of judicial review of the former will not obliterate the mandatory duty pertaining to the latter. [Paras 29-32]

Case Law Cited

Jasraj Inder Singh v. Hemraj Multanchand [1977] 2 SCR 973 : **(1977) 2 SCC 155;** *Mohan Singh v. State of M.P.* [1999] 1 SCR 276 : **(1999) 2 SCC 428;** *Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* [2012] 4 SCR 74 : **(2012) 6 SCC 430;** *Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeira* [2012] 3 SCR 841 : **(2012) 5 SCC 370;** *Sugandhi v. P. Rajkumar* **(2020) 10 SCC 706;** *Munna Pandey v. State of Bihar* [2023] 11 SCR 1005 : **2023 SCC OnLine SC 1103;** *Aruna Ramachandra Shanbaug v. Union of India* [2011] 4 SCR 1057 : **(2011) 4 SCC 454;** *Pratap Singh v. State of Jharkhand* [2005] 1 SCR 1019 : **(2005) 3 SCC 551;** *Jethanand and Sons v. State of Uttar Pradesh* [1961] 3 SCR 754 : **1961 SCC OnLine SC 193 : AIR 1961 SC 794;** *Mohan Lal Magan Lal Thacker v. State of Gujarat* [1968] 2 SCR 685 : **1967 SCC OnLine SC 137 : AIR 1968 SC 733;** *Lily Thomas v. Union of India* [2000] 3 SCR 1081 : **(2000) 6 SCC 224;** *A.R. Antulay v. R.S. Nayak* [1988] Supp. 1 SCR 1 : **(1988) 2 SCC 602;** *Kehar Singh v. Union of India* [1988] Supp. 3 SCR 1102 : **(1989) 1 SCC 204;** *State of Haryana v. Jagdish* [2010] 3 SCR 716 : **(2010) 4 SCC 216;** *Shatrughan Chauhan v. Union of India* [2014] 1 SCR 609 : **(2014) 3 SCC 1;** *Ram Narain v. State of Uttar Pradesh* [2015] 9 SCR 200 : **(2015) 17 SCC 699;** *Hari Dutt Sharma v. The State of Uttar Pradesh, Order of the Supreme Court dated 07.02.2022 in* **Writ Petition (Crl.) 367 of 2021;** *Hari Ram v. State of Rajasthan* [2009] 7 SCR 623 : **(2009) 13 SCC 211;** *Abdul Razzaq v. State of Uttar Pradesh* **(2015) 15 SCC 637;** *T Barai v. Henry Ah Hoe and Another*

[1983] 1 SCR 905 : **(1983) 1 SCC 177;** *Ram Deo Chauhan v. Bani Kanta Das* [2010] 15 SCR 957 : **(2010) 14 SCC 209;** *Vinay Sharma v. Union of India* [2020] 10 SCR 393 : **(2020) 4 SCC 391;** *Pawan Kumar Gupta v. State (NCT of Delhi)* [2020] 4 SCR 1055 : **(2021) 13 SCC 249 – referred to.**

United Australia Limited v. Barclay's Bank Ltd **[1941] A.C. 1 – referred to.**

List of Acts

Constitution of India; Juvenile Justice Act, 1986 (Act No. 53 of 1986); Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000); Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016); Juvenile Justice (Care and Protection of Children) Rules, 2007; Code of Criminal Procedure, 1973; Right to Information Act, 2005.

List of Keywords

Plea of juvenility; Special homes; Juvenility; Birth certificate issued by School; Review Petition; Mercy Petition before the Governor; Mercy Petition before Hon'ble the President of India; Ossification test; Medical Age Certificate; Presidential Order; Death sentence; Life imprisonment; Curative Petition; Executive order; Social welfare legislation; State Legal Services Authority; Rehabilitation and reintegration into the society upon release; Right to livelihood, shelter and sustenance guaranteed u/Art.21; Justice delivery system; Concept of truth; Duty of Court; Procedural law; Substantive law; Judicial system; Juvenile justice; Rights of juvenile; Role of juvenile courts; Role of Constitutional Courts; Deviant behaviour of a child; Inequality; Environment; Plea of juvenility vis-à-vis final disposal; Even after the final disposal of the case; Determination of age; Hierarchy of documents; Matriculation certificate; Birth certificate from school; Birth certificate by local authority; Juvenility as an admitted fact; Rules of Evidence; Maxim; Actus curiae neminem gravabit; Power of the President to grant pardon; Power of the Governor to grant pardon; Presidential order; Judicial review; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990; Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, 1993.

Om Prakash @ Israel @ Raju @ Raju Das v.
Union of India and Another

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4229 of 2024

From the Judgment and Order dated 23.08.2019 of the High Court of Uttarakhand at Nainital in WPCRL No. 1531 of 2017

Appearances for Parties

Dr. S. Muralidhar, Sr. Adv., Prateek K Chadha, Ms. Ninni Susan Thomas, M.A. Karthik, Maitreya Subramaniam, Ms. Pallak Bhagat, Yash S Vijay, Ms. Sakshi Jain, Ms. Pooja B Mehta, Sreekar Aechuri, Aniket Chauhaan, Arjun Nayyar, Advs. for the Appellant.

K M Nataraj, A.S.G., Shailesh Madiyal, Sr. Adv., Digvijay Dam, Raghav Sharma, Ms. Mrinal Elker Mazumdar, Vinayak Sharma, Arvind Kumar Sharma, Ms. Vanshaja Shukla, Ms. Ankeeta Appanna, Ms. Rachna Gandhi, Siddhant Yadav, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

M. M. Sundresh, J.

1. Heard the Learned Senior Counsel Dr. S. Muralidhar for the Appellant, and Learned Additional Solicitor General Mr. K.M. Nataraj and Learned Counsel Ms. Vanshaja Shukla for the Respondents. We have also carefully perused the written arguments along with the documents, filed by both the sides in respect of their respective contentions.

2. We are dealing with a case where grave injustice has been perpetrated, on account of the consistent failure on part of the judicial machinery to recognise and act upon the constitutional mandate vis-a-vis the plea of juvenility. Lord Atkin's words of wisdom in **United Australia Limited v. Barclay's Bank Ltd., [1941] A.C. 1 at p.29** become relevant in the aforementioned context**:**

> "…**When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred.**"
>
> (emphasis supplied)

3. We are further reminded of the words of V.R. Krishna Iyer J., on the laudable ideals of truth and justice in **Jasraj Inder Singh v. Hemraj Multanchand** (1977) 2 SCC 155:-

> "**8.** ...**Truth, like song, is whole and half-truth can be noise; Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution....**"
>
> (emphasis supplied)

TRUTH AND THE COURT

4. Justice is nothing but a manifestation of the truth. It is truth which transcends every other action. The primary duty of a Court is to make a single-minded endeavour to unearth the truth hidden beneath the facts. Thus, the Court is a search engine of truth, with procedural and substantive laws as its tools.

5. When procedural law stands in the way of the truth, the Court must find a way to circumvent it. Similarly, when substantive law, as it appears, does not facilitate the emergence of the truth, it is the paramount duty of the Court to interpret the law in light of its teleos. Such an exercise is warranted in a higher degree, particularly while considering a social welfare legislation.

6. In its journey, the Court must discern the truth, primarily from the material available on record in the form of pleadings, and arguments duly supported by documents. It must be kept in mind that the entire judicial system is meant for the discovery of the truth, it being the soul of a decision. For doing so, a Presiding Officer is expected to play an active role, rather than a passive one.

7. We shall now place on record the views expressed and judgments rendered on the concept of truth. Justice V.R. Krishna Iyer, at the 18th Annual Conference of the American Judges Association at Seattle, Washington State. (1979) 1 SCC J-7, stated thus-

> "**Our profession is totally committed to Justice—individual, social and spiritual. Truth, holistic truth, is the basis of Justice and thus the great question of history, What is Justice, is also the perennial interrogation, What is Truth? Once we awaken to this profound core, our attitude to pathological crime and therapeutic punishment, to inner harmony and societal peace, will be transformed into a high pursuit of truth beyond "the madding crowd's ignoble strife."…**
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> …The progressive manifestation of the divinity in man is the recognition of the dignity and worth of the human person and this curative process is the healing hope of decriminalization—not stone walls nor iron bars nor other subtle barbarities. This know-how of humanization alone can dissolve the dilemma."
>
> (emphasis supplied)

Mohan Singh v. State of M.P. (1999) 2 SCC 428

> "**11.** …**Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth.**…"
>
> (emphasis supplied)

Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam (2012) 6 SCC 430

> ***"Entire journey of a Judge is to discern the truth***
>
> **24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments**

of the parties. Truth is the basis of the justice delivery system…."

(emphasis supplied)

Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeira (2012) 5 SCC 370

*"***33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.**

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44. **Malimath Committee on Judicial Reforms** heavily relied on the fact that in discovering truth, the Judges of all courts need to play an active role. The Committee observed thus:

'2.2. … **In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral Judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt….**

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…The Judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court.

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2.15. The adversarial system lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the inquisitorial system. **When the investigation is perfunctory or ineffective,**

Judges seldom take any initiative to remedy the situation. During the trial, the Judge does not bother if relevant evidence is not produced and plays a passive role as if he has no duty to search for truth….

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2.16.9. **Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the criminal justice system. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore, truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth**."

(emphasis supplied)

Sugandhi v. P. Rajkumar (2020) 10 SCC 706

"**9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute.** Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

(emphasis supplied)

Munna Pandey v. State of Bihar, 2023 SCC OnLine SC 1103

"**68**. The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. **In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case. No doubt he has to remain very vigilant, cautious, fair and impartial, and not to give even a slightest of impression that he is biased or prejudiced either due to his own personal convictions or views in favour of one or the other party. This, however, would not mean that the Judge will simply shut his own eyes and be a mute spectator, acting like a robot or a recording machine to just deliver what stands feeded by the parties**.

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70. **This Court has condemned the passive role played by the Judges and emphasized the importance and legal duty of a Judge to take an active role in the proceedings in order to find the truth to administer justice and to prevent the truth from becoming a casualty**…."

(emphasis supplied)

JUVENILE JUSTICE

8. A child is a product of the present, in need of being moulded, to thrive in the future. Therefore, deviant behaviour of a child in conflict with law should be a concern of the society as a whole. One must not lose sight of the fact that the child is not responsible for an act of crime, but is rather victimized by it. Such a child is nothing but an inheritor of crime, a legacy which it does not wish to imbibe. The behaviour of a child can be attributed, possibly to two counts, namely, the environment that the child grows in, and genetics. On the second count, there is abundant research and literature available. However, we do not wish to venture much into this, particularly in light of the

innumerable permutations and combinations that could arise out of the interaction between these two counts.

9. On the first count, various factors such as socio-economic, political and cultural background, and life experience, amongst others, become relevant. Thus, remedial measures may be employed for the benefit of the child. Since the child does not choose the environment in which it grows, deviant behaviour which is a result of exposure to a given environment is evidence of rampant inequality. Therefore, a child who lives in such a discriminatory environment, requires equitable treatment on the touchstone of Article 14 of the Constitution of India, 1950 (hereinafter referred to as "**the Constitution**"). Article 15(3) read with Article 39 (e) and (f), Article 45 and Article 47 of the Constitution, in the form of the Fundamental Rights and the Directive Principles of State Policy, emphasise on the need for special care for children. The relevant provisions in the Constitution which form the foundation of juvenile justice are as under:

Article 15 of the Constitution

> **"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**.—
>
> xxx xxx xxx
>
> **(3) Nothing in this article shall prevent the State from making any special provision for women and children."**
>
> (emphasis supplied)

Article 39 of the Constitution

> **"39. Certain principles of policy to be followed by the State**.—The State shall, in particular, direct its policy towards securing—
>
> (*a*) that the citizens, men and women equally, have the right to an adequate means to livelihood;
>
> (*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> (*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(*d*) that there is equal pay for equal work for both men and women;

(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(*f*) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

(emphasis supplied)

Article 45 of the Constitution

"45. Provision for early childhood care and education to children below the age of six years.—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

(emphasis supplied)

10. In view of the said constitutional mandate, the Court is expected to play the role of *parens patriae* by treating a child not as a delinquent, but as a victim, viewed through the lens of reformation, rehabilitation and reintegration into the society.

11. Thus, a Juvenile Court is a species of a parent. A delinquent, who appears before the Court, is to be protected and re-educated, rather than be judged and punished. It is for this purpose, that the Court will have to press into service the benevolent provisions for rehabilitation introduced by the Legislature. A Juvenile Court assumes the role of an institution rendering psychological services. It must forget that it is acting as a Court, and must don the robes of a correction home for a deviant child. In **Aruna Ramachandra Shanbaug v. Union of India (2011) 4 SCC 454,** this Court recognised the need for Courts to assume the role of *parens patriae* and stated thus**:**

"86. …As stated by Balcombe, J. in J. (*A Minor*) (*Wardship: Medical Treatment*), *In re* [(1990) 3 All ER 930 (CA)],

the Court as representative of the Sovereign as parens patriae will adopt the same standard which a reasonable and responsible parent would do. The *parens patriae* (father of the country) jurisdiction was the jurisdiction of the Crown, which, as stated in *Airedale* [1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (CA and HL)], could be traced to the 13th century. **This principle laid down that as the Sovereign it was the duty of the King to protect the person and property of those who were unable to protect themselves. The Court, as a wing of the State, has inherited the *parens patriae* jurisdiction which formerly belonged to the King.**

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Doctrine of parens patriae

126. The doctrine of *parens patriae* (father of the country) had originated in British law as early as in the 13th century. It implies that the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. **The idea behind *parens patriae* is that if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the State is best qualified to take on this role.**

127. In the Constitution Bench decision of this Court in *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613] the doctrine has been explained in some detail as follows: (SCC p. 648, para 35)

> "35. … In the '*Words and Phrases*' Permanent Edn., Vol. 33 at p. 99, it is stated that ***parens patriae* is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King and are used *to designate the State***

> ***referring to its sovereign power of guardianship over persons under disability. Parens patriae*** **jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on [the] sovereign, in public interest, to protect persons under disability who have no rightful protector.** The connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability."
>
> (emphasis in original)

The duty of the King in feudal times to act as *parens patriae* (father of the country) has been taken over in modern times by the State.

128. In Heller v. DOE [125 L Ed 2d 257 : 509 US 312 (1992)] Mr Kennedy, J. speaking for the US Supreme Court observed: (US p. 332)

> " '… **the State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable … to care for themselves'** [Ed.: As observed in *Addington* v. *Texas*, 441 US 418 at p. 426.]".

129. In *State of Kerala* v. *N.M. Thomas* [(1976) 2 SCC 310 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906], SCR at p. 951 Mr Mathew, J. observed: (SCC p. 343, para 64)

> "64. … the Court also is 'State' within the meaning of Article 12 (of the Constitution)…."

130. **In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight."**

(emphasis supplied)

JUVENILE JUSTICE LEGISLATIONS IN INDIA:

THE JUVENILE JUSTICE ACT, 1986 (Act No. 53 of 1986)

12. We now touch upon the first Central enactment introduced way back in the year 1986, in the form of the **Juvenile Justice Act, 1986 (Act No. 53 of 1986) (**hereinafter referred to as the **"1986 Act")**. This was the maiden attempt by the Central Legislature for a comprehensive and uniform set of national rules for juveniles, recognising the need to treat them separately from adults. The term 'Juvenile' has been defined under Section 2(h) of the 1986 Act as under:

Section 2(h)

> **"2. Definitions**.—In this Act, unless the context otherwise requires-
>
> xxx xxx xxx
>
> (*h*) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years"

13. Though the 1986 Act did not specifically take into consideration the mandate of the Constitution, the Legislature's concern for juveniles is evident from its provisions, including Section 32 of the 1986 Act, which made it obligatory on the part of the Competent Authority to make due inquiry as to the age of the person brought before it.

Section 32

> **"32. Presumption and determination of age**.—(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the **competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be**.
>
> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof

that the person in respect of whom the order has been made is not a juvenile, **and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person."**

(emphasis supplied)

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 (Act No. 56 of 2000)

14. A much more comprehensive and modern exercise undertaken by the Central Legislature, taking due note of Article 15(3), clauses (e) and (f) of Article 39, Article 45 and Article 47 of the Constitution, mandating stakeholders to ensure that all the needs of children are fulfilled by elevating them to the status of basic human rights, is the enactment of the **Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000)** (hereinafter referred to as the **"2000 Act**"). While doing so, certain ideas were borrowed from international conventions and covenants including the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985** (hereinafter referred to as *"***the Beijing Rules***"*), and the **United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990***,* amongst other instruments. Section 2(k) and 2(l) of the 2000 Act as amended by Act No. 33 of 2006 defines a juvenile as under:

Section 2 (k) and (l)

"2. Definitions- In this Act, unless the context otherwise requires-

xxx xxx xxx

(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;

(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence."

(emphasis supplied)

The differential age qualification for boys and girls, in order to be treated as juveniles, as was prevalent under the 1986 Act, was rightly done away with in the 2000 Act.

15. The 2000 Act consciously made itself applicable to all pending cases, both procedurally and substantively, which has in turn given it an element of retrospectivity. One clear omission in the 2000 Act is the absence of a specific duty upon the Investigating Agency *qua* a juvenile during investigation, which was highlighted under the Beijing Rules.

Rule 6 of the Beijing Rules

> "**6 – Scope of discretion**
>
> 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions."

16. Section 7A, along with the Explanation to Section 20 of the 2000 Act, were introduced into the statute by an amendment vide Act No. 33 of 2006, to overcome the ratio of the judgment rendered by the Constitution Bench of this Court in **Pratap Singh vs. State of Jharkhand (2005) 3 SCC 551**, wherein it was declared that the benefit of juvenility cannot be extended to a person who had completed 18 years of age as on 01.04.2001 – i.e. the date of enforcement of the 2000 Act.

Section 7A

> **"7A. Procedure to be followed when claim of juvenility is raised before any Court.-**
>
> (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a court shall be deemed to have no effect."

(emphasis supplied)

Section 20

"20. Special provision in respect of pending cases-

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. **In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this**

> **Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.**"
>
> (emphasis supplied)

17. While Section 7A of the 2000 Act deals with the procedure to be followed when a claim of juvenility is raised before any Court, Section 20 of the 2000 Act is a special provision in respect of pending cases. Under both these provisions, it has been made abundantly clear that the 2000 Act and the relevant rules would also be applicable to a juvenile who ceased to be so on or before the commencement of the 2000 Act. Thus, a retrospective application has been facilitated under the 2000 Act.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 (Act No. 2 of 2016)

18. The **Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016)** (hereinafter referred to as the "**2015 Act**") is an improved version of the earlier legislations. **The Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, 1993**, has also been factored into. The 2015 Act undertook the exercise of classifying offences into different categories. It defines the word 'Court' under Section 2(23), as one having original jurisdiction. This definition is only illustrative in nature, in tune with the importance of the enactment.

Section 2

> "**2. Definitions-** In this Act, unless the context otherwise requires:
>
> xxx xxx xxx
>
> (23) "court" means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts;"

19. Thus, any Court which is competent to decide the issue of juvenility would come within the purview of the definition clause, which includes both the appellate and the revisional forums as well as the Constitutional Courts. In other words, every Court of competence shall assume the role of a Juvenile Court. We say so as, giving

effect to the provisions of the 2015 Act is imperative in view of the constitutional mandate.

Section 5

> **"5. Placement of person, who cease to be a child during process of inquiry**-Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child."

Section 6

> **"6. Placement of persons, who committed an offence, when person was below the age of eighteen years**-
>
> (1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.
>
> (2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.
>
> (3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act."
>
> Sections 5 and 6 of the 2015 Act reiterate the principle that even a juvenile who has attained majority during the course of inquiry should be treated as a juvenile.

20. Section 9 of the 2015 Act is the very substance of the entire enactment and sub section (2) is *pari materia* to Section 7A of the 2000 Act.

Section 9

> **"9. Procedure to be followed by a Magistrate who has not been empowered under this Act**-

(1). When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

(emphasis supplied)

Under sub-section (2), it is the fundamental duty of the Court to make an inquiry, and take such evidence as may be necessary for the purpose of determining the age of the person brought

before it. The proviso to sub-section (2) is a rather interesting one. In fact, this proviso throws some light on the main provision, giving an extended leverage to the plea of juvenility. Thus, the plea of juvenility can be raised before any Court, meaning thereby that there is no question of finality in this regard until and unless an application filed, invoking this provision, is determined in accordance with the 2015 Act and the relevant rules. When such a plea is raised, it shall be recognised and cannot be brushed aside in a casual or whimsical manner. A due determination must be made by judiciously considering the material available on record. The Court is expected to travel an extra mile to satisfy its conscience as to whether the case on hand would attract the provisions of the 2015 Act and, for the aforesaid purpose, the process enumerated thereunder will have to be necessarily followed. The proviso further clarifies that the 2015 Act and the relevant rules are applicable even if a person who has been accused of an offence, has ceased to be a child on or before the date of the commencement of the 2015 Act.

PLEA OF JUVENILITY VIS-A-VIS 'FINAL DISPOSAL'

21. We place emphasis on the words "even after the final disposal of the case" in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul of the entire Act, must be given its fullest meaning and interpretation. If the offence is committed by a child, it cannot be treated otherwise than as provided under the 2015 Act. After finding out the truth, necessary consequences must follow. In a country like ours, where society is fragmented due to various reasons including, but not limited to illiteracy and poverty, the role which is assigned to the Court assumes great significance. Sufficient opportunities must be given to the child in conflict with law to get the benefit of the 2015 Act.

22. Merely because a casual adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently. This is for the simple reason that the plea of juvenility has not attained finality. So long as the right of a party subsists, one can never say that finality has been attained. In a case where a plea has been raised, but not adjudicated upon, the decision rendered thereunder would not amount to attaining finality. Likewise, when such a plea is

not treated as one under Section 9(2) of the 2015 Act in compliance with the procedural mandate specified thereunder, an order rejecting such a plea would not be termed as a final one. To put it differently, even assuming a plea of juvenility was raised but not considered appropriately at the time of disposal of a Special Leave Petition/ Statutory Criminal Appeal, a Review Petition, or a Curative Petition thereafter, it would not bar a competent Court from deciding the said issue by following due procedure. We make it clear that if an adjudication is based on due determination, then there may not be any room for another round of litigation. But, in a case where the plea was not treated as an application under Section 9(2) of the 2015 Act and, the procedure mandated thereunder was not followed, the principle as aforesaid would certainly apply as the right of raising the plea of juvenility has not ceased and, therefore, subsists.

23. Since the need for taking care of a juvenile in conflict with law is mandated by the Constitution, the role of the constitutional Courts is significant. Even after the dismissal of a Special Leave Petition/ Statutory Criminal Appeal followed by incidental proceedings before this Court, where the plea of juvenility was not consciously considered, there would be no bar on the constitutional Courts to consciously take a deeper look. Doing so is not an exercise of the powers conferred under Articles 32, 136 or 226 of the Constitution, but an act in fulfilment of a mandated duty enjoined upon the Courts, to give effect to the laudable objective of a social welfare legislation. We shall now place on record the views expressed and judgments rendered on the aspect of finality, and why a different view can be taken by this Court, notwithstanding its earlier decision, in exercise of the powers conferred under the Constitution:

Jethanand and Sons v. State of Uttar Pradesh, 1961 SCC OnLine SC 193 : (1961) 3 SCR 754 : AIR 1961 SC 794

> **"7.** In our view, the order remanding the cases under Section 151 of the Civil Procedure Code is not a judgment, decree or *final order* within the meaning of Article 133 of the Constitution. By its order, the High Court did not decide any question relating to the rights of the parties to the dispute. The High Court merely remanded the cases for retrial holding that there was no proper trial of the petitions filed by the appellants for setting aside the awards. Such

an order remanding the cases for retrial is not a final order within the meaning of Article 133(1)(*c*). **An order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding. If after the order, the civil proceeding still remains to be tried and the rights in dispute between the parties have to be determined, the order is not a final order within the meaning of Article 133….**"

(emphasis supplied)

Mohan Lal Magan Lal Thacker v. State of Gujarat, 1967 SCC OnLine SC 137 : (1968) 2 SCR 685 : AIR 1968 SC 733

"**4. The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions; yet no single general test for finality has so far been laid down.** The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. **However, generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply** [*Halsbury's Laws of England* (3rd Edn.) Vol. 22, 742-43]. **In some of the English decisions where this question arose, one or the other of the following four tests was applied.**

***1*. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?**

***2*. Was it made upon an application upon which the main dispute could have been decided?**

***3*. Does the order as made determine the dispute?**

***4*. If the order in question is reversed, would the action have to go on?**"

(emphasis supplied)

Lily Thomas v. Union of India (2000) 6 SCC 224

> **"56.** It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. **However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."**
>
> (emphasis supplied)

HIERARCHY OF DOCUMENTS

24. Rule 12 of the **Juvenile Justice (Care and Protection of Children) Rules, 2007** (hereinafter referred to as the "**2007 Rules**") must be understood and appreciated in tune with the principal Act.

Rule 12 of the 2007 Rules

> **"12. Procedure to be followed in determination of age.**
>
> xxx xxx xxx
>
> (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-
>
> (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b)and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

While there is no difficulty in the application of the principal Act inclusive of the procedural part, even for a juvenile in conflict with law who has attained majority on or after 01.04.2001, Rule 12 of the 2007 Rules must be applied retrospectively even to those cases, especially where no exercise was undertaken under any of the State Rules or the erstwhile Acts, on earlier occasions.

25. Sub-rule (3) of Rule 12 is nothing but a rule of evidence. It merely provides a hierarchy of documents in the order of priority, to be taken note of and considered while determining the age of a juvenile in conflict with law, in an ongoing inquiry. Sub-rule (3), apart from making a reference to specified documents, debars resorting to the subsequently mentioned document, except in a case where the earlier document(s) is/are not available. Therefore, where a matriculation

certificate is very much available, a date of birth certificate from the school or a birth certificate given by a local authority shall never be looked into. Only if none of the aforementioned three documents is available, can one go for a medical opinion. While interpreting this Rule, we make it clear that it should not be misunderstood that even in those cases where due inquiry was undertaken under the erstwhile enactments and the relevant rules, one can seek a fresh inquiry under Rule 12 of the 2007 Rules.

26. Section 94(2) of the 2015 Act is a reiteration of Rule 12 of the 2007 Rules, and both should be read in consonance with each other.

Section 94 of the 2015 Act

> **"94. Presumption and Determination of age**
>
> xxx xxx xxx
>
> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:
>
> Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

JUVENILITY AS AN ADMITTED FACT

27. Admission is a rule of evidence. It is a relevant fact. It becomes relevant *qua* a fact in issue. When an admission is clear, unambiguous,

continuous and unequivocal, it becomes the best form of evidence, and transforms itself into a fact in issue. When a party makes an admission, either by way of an oral statement or by acknowledging a document authored by them, the Court must proceed on that basis. The resultant relief, which is axiomatic, cannot be denied on the anvil of procedural law. Any contra view would result in grave injustice. On an issue where there is no dispute, denying a rightful relief would be an affront to fair play and justice. Here, we may add a word of caution. The Court cannot construe a statement as an admission and proceed on that basis. There is a subtle difference between an unequivocal admission as against a statement which could be construed to be so. It must be seen contextually. While the former can be the basis for a relief, the latter is one meant for adjudication *vis-a-vis* the facts of the case.

ACTUS CURIAE NEMINEM GRAVABIT

28. No one shall be prejudiced by an act of the Court. A mistake committed by the Court cannot stand in the way of one's rightful benefit. It is not the party which commits a mistake, but rather the Court itself. Hence, such a mistake cannot act as a barrier for the party to get its due relief. However, we make it clear that the mistake must be so apparent that it does not brook any adjudication on the foundational facts.

A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602

> **"82.** Lord Cairns in *Rodger* v. *Comptoir D'escompte De Paris* [(1869-71) LR 3 PC 465, 475 : 17 ER 120] observed thus:
>
> > **"Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case.**

It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court."

83. This passage was quoted in the Gujarat High Court by D.A. Desai, J., speaking for the Gujarat High Court in *Soni Vrajlal* v. *Soni Jadavji* [AIR 1972 Guj 148 : (1972) 13 Guj LR 555] as mentioned before. It appears that in giving directions on February 16, 1984, this Court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar case* [1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510] which was not adverted to by this Court. **The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiac*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."**

(emphasis supplied)

JUDICIAL REVIEW OF THE PRESIDENTIAL ORDER

29. The power of pardon, as conferred under Article 72 and 161 of the Constitution, is sovereign. It is a power of compassion and empathy. It is meant to remove or reduce all pains, penalties and punishment suffered by a convict. The exercise of the aforementioned sovereign power by the highest constitutional authority, either of the State or the Centre, is a final grace given under the Constitution for the convict to reintegrate into the society.

30. Power under Article 72 and 161 of the Constitution is not appellate or revisional in nature. It is an executive power travelling on a different channel, which cannot be termed as a power of appeal or review.

31. A challenge to the exercise of power under Article 72 and 161 of the Constitution would involve limited judicial review on grounds such as inadequate application of mind, amongst others.

Kehar Singh v. Union of India (1989) 1 SCC 204

> **"10.** We are of the view that it is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinise the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused. In doing so, the **President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it…."**
>
> (emphasis supplied)

State of Haryana v. Jagdish (2010) 4 SCC 216

> **"28**. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the executive as an unbridled power of reprieve. **Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially.**

The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon….”

(emphasis supplied)

Shatrughan Chauhan v. Union of India (2014) 3 SCC 1

“242. In the aforesaid batch of cases, we are called upon to decide on an evolving jurisprudence, which India has to its credit for being at the forefront of the global legal arena. **Mercy jurisprudence is a part of evolving standard of decency, which is the hallmark of the society.**

xxx xxx xxx

244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time. **However, when the delay caused in disposing of the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every constitutional duty must be fulfilled with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values.**

245. Remember, retribution has no constitutional value in our largest democratic country. In India, even an accused has a de facto protection under the Constitution and it is the Court’s duty to shield and protect the same. Therefore, we make it clear that when the judiciary interferes in such matters, it does not really interfere with the power exercised

under Articles 72/161 but only to uphold the de facto protection provided by the Constitution to every convict including death convicts."

(emphasis supplied)

32. Suffice it is to state that Courts will have to exercise adequate caution and circumspection while dealing with an executive order passed in exercise of the power conferred under Article 72 or 161 of the Constitution. We make it clear that when a challenge is made to an executive order, with an independent prayer for exercising the power under Section 9(2) of the 2015 Act, they being distinct and independent, refusal of judicial review of the former will not obliterate the mandatory duty pertaining to the latter.

FACTUAL MATRIX

33. The Appellant stood charged for the offence of culpable homicide amounting to murder. The incident occurred way back on 15.11.1994. A statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC, 1973**") was recorded by the trial Court. Under the format of the statement, the Appellant gave his name, his father's name, his age and other particulars. He had given his age as 20 years, as on 07.03.2001. In reply to Question No. 26, he stated that it was correct that he had opened a bank account and that a cheque book had been issued. This statement is irrelevant in the context of juvenility.

34. After his conviction, he raised the plea of juvenility during the hearing on sentence by stating that he was about 17 years of age at the time of occurrence. It is not in dispute that he was illiterate. The trial Court, while relying upon his statement regarding the bank account, presumed that he was a major and sentenced him to death, overwhelmed by the nature of the crime. On an appeal to the High Court, the Appellant was represented by an Amicus Curiae. An attempt was again made to raise the plea of juvenility, by stating that the Appellant was required to be tried by a Juvenile Court and be given the benefit of being a juvenile. Once again, the bank account and the cheque book were relied upon. In tune with the thinking of the trial Court, the High Court was also persuaded by the offence committed.

35. The matter reached this Court. This time, the Appellant placed reliance upon the birth certificate issued by the Dariya Para Bodinath Board School dated 28.04.2001. This Court, having found that the reasoning of the High Court cannot be faulted with, dismissed the appeal. Thus, the views expressed by the trial Court and confirmed by the High Court were duly concurred with. Undeterred and undaunted, the Appellant filed a Review Petition, reiterating the fact that he was a minor at the time of the offence. It was also pointed out that it was his deceased employer who filled the details to open the bank account. The Review Petition was dismissed. After the said dismissal, a Mercy Petition filed before the Governor of the State of Uttarakhand, was also rejected.

36. Thereafter, a Writ Petition was filed before this Court, by the Appellant's parents along with a social worker, enclosing a copy of the school certificate dated 19.06.2003 from the headmaster and a transfer certificate dated 28.04.2001. This Writ Petition filed invoking Article 32 of the Constitution, was dismissed on 16.02.2005 with liberty to invoke the curative jurisdiction of this Court. Accordingly, a Curative Petition was filed. It is interesting to note that by way of a counter affidavit to the Curative Petition, Respondent No. 2 herein, after verifying the school certificate, produced another certificate dated 07.01.2006 issued by the Dariya Para Bodinath Board School, which reiterated the fact that the Appellant was 14 years of age on the date of the occurrence. Unfortunately, this Curative Petition was also dismissed by an order of this Court dated 06.02.2006.

37. After the amendment incorporating Section 7A into the 2000 Act, the Appellant's mother filed a Mercy Petition before Hon'ble the President of India. During the pendency of the said Mercy Petition, the 2007 Rules, came into effect. Incidentally, an ossification test was also done by a Medical Board constituted by the Meerut Jail, on a request made by the Appellant by way of an application. The Medical Age Certificate issued therein also indicated that the Appellant was aged around 14 years at the time of the occurrence.

38. By the Presidential Order dated 08.05.2012, the death sentence of the Appellant was commuted to life imprisonment, with a caveat that he shall not be released until the attainment of 60 years of age. An application under the Right to Information Act, 2005 was filed thereafter by the Appellant, through which information was obtained

from the bank that any minor above 10 years of age can have an independent bank account, provided he knew how to read and write, and also that no cheque book was issued for the bank account opened in the name of the Appellant.

39. A subsequent Curative Petition filed by him was rejected by the Registry as not maintainable. In the year 2019, the Appellant filed a Writ Petition before the High Court invoking Article 226 of the Constitution, laying a challenge to the Presidential Order while seeking yet another relief on the basis of Section 9(2) of the 2015 Act. By a comprehensive judgment, the Writ Petition was dismissed by the High Court *inter alia* holding that the power of judicial review over an executive order passed in exercise of Article 72 of the Constitution is limited, and the proceedings against the Appellant had attained finality. Suffice it is to state that merits were not gone into in view of the clear stand of the State on the age of the Appellant. Aggrieved, the Appellant is before us.

SUBMISSIONS

40. Dr. S. Muralidhar, learned Senior Counsel appearing for the Appellant submitted that the High Court committed an error in not considering the independent prayer sought for by the Appellant. It is not in dispute that the age of the Appellant was 14 years at the time of commission of the offence. There is no judicial finality attained and the phrase "any stage" used in Section 9(2) of the 2015 Act must be given an extended meaning. There is no contrary finding given against the Appellant vis-à-vis the plea of juvenility, which he has raised at every stage. It is a case where grave injustice has been meted out, as can be demonstrated by the lack of adjudication and, therefore, the Appellant is entitled for immediate release. As the Appellant has been unfairly kept under incarceration including the earlier solitary confinement, which is obviously untenable and illegal, while granting the relief of releasing the Appellant forthwith, he should be adequately compensated for the loss of formative years suffered by him in the prison.

41. To buttress his submissions, the Learned Senior Counsel has placed reliance upon the following decisions:

(i). **Section 9(2) of the Juvenile Justice Act, 2015 can be invoked even after the final disposal of the case**

- Ram Narain v. State of Uttar Pradesh (2015) 17 SCC 699.
- Hari Dutt Sharma v. The State of Uttar Pradesh, Order of the Supreme Court dated 07.02.2022 in Writ Petition (Crl.) 367 of 2021.

(ii). **Beneficial and retrospective applicability of change in law post the dismissal of the Curative Petition on 06.02.2006**

- Hari Ram v. State of Rajasthan (2009) 13 SCC 211.
- Abdul Razzaq v. State of Uttar Pradesh (2015) 15 SCC 637.
- T Barai v. Henry Ah Hoe and another (1983) 1 SCC 177.

(iii). **Claim of juvenility can be raised and considered even after the President has exercised powers under Article 72, Constitution of India**

- Kehar Singh v. Union of India (1989) 1 SCC 204.
- Ram Deo Chauhan v. Bani Kanta Das (2010) 14 SCC 209.

42. Per contra, Mr. K.M. Nataraj, learned Additional Solicitor General, and learned Counsel Ms. Vanshaja Shukla appearing for the Respondents submitted that this is an attempt to reopen and re-hear an issue which has attained finality. There was indeed an adjudication by this Court on the earlier occasion. The Mercy Petition was considered under the constitutional mandate and, therefore, it does not require any interference. The Special Leave Petition, as filed, is not maintainable. The bone ossification test cannot be the sole basis for declaring the appellant as the minor. While summing up, the Learned Additional Solicitor General submitted that without prejudice to the other contentions, if this Court comes to the aid of the Appellant, it should be clarified that it shall not stand as a precedent. In any case, there is due compliance of Rule 12(3) of the 2007 Rules, which is not in dispute, as can be seen even from the present affidavit filed by the Respondent No.2.

43. To buttress her submissions, the Learned Counsel for Respondent No. 2 has placed reliance upon the following decisions:

- Vinay Sharma v. Union of India (2020) 4 SCC 391.
- Pawan Kumar Gupta v. State (NCT of Delhi) (2021) 13 SCC 249.

DISCUSSION

44. During the course of the hearing, we directed Respondent No.2 to obtain fresh instructions on the admission made in the counter affidavit filed by it in the Curative Petition filed earlier by the Appellant. This was pertaining to the certificate produced by the Appellant and the validity of the ossification test. An affidavit has been filed by Respondent No. 2 reiterating its earlier stand as regards the certificate. Therefore, on facts, there is no dispute that the Appellant was only 14 years old at the time of the commission of the offence.

45. The facts as narrated above, speak for themselves. At every stage, injustice has been inflicted by the Courts, either by ignoring the documents or by casting a furtive glance. The Appellant despite being illiterate, raised this plea one way or another, right from the trial Court up to the conclusion of the Curative Petition before this Court.

46. The approach of the Courts in the earlier round of litigation cannot be sustained in the eye of law. There can be no reliance on the statement recorded under Section 313 of CrPC, 1973 particularly when the Appellant was asked to give his particulars for the purpose of recording his statement. Even the said statement shows that he was 20 years of age at the time of making his deposition, which could only mean that he was 14 years of age at the time of the commission of the offence. The bank account has no relevance under the Acts and the relevant rules, and in any case, it is to be proved, though not contemplated under Rule 12 of the 2007 Rules. The statement given by the Appellant at the time of the hearing on his sentence, would also pale into insignificance, as even then he would have been a minor at the time of commission of the offence, under both the 2000 and the 2015 Acts.

47. Though the 2000 Act was already enacted before the Appellant's conviction, even assuming that only the 1986 Act was in vogue, the procedural mandate contemplated thereunder was also not followed by the trial Court and the High Court. Before this Court, the Appellant had relied upon the school certificate in the Criminal Appeal. It was once again relied upon in the Review Petition. Thereafter, additional documents were relied upon by the Appellant in the Writ Petition and also in the Curative Petition which was subsequently filed. In the Curative Petition, a counter affidavit was filed by the State certifying

the documents furnished by the Appellant to be true. Nonetheless, the said petition was dismissed without according any reason.

48. We are taking note of these facts only for the purpose of dealing with the case as these discussions are not even relevant in view of the clear statement in writing made on two occasions by the Respondent No. 2. We may further add that even the then existing State Rules were not duly followed, and if followed, the same would have enured to the benefit of the Appellant.

49. We would only say that when the plea of juvenility was raised, it should have been dealt with under the existing laws at the relevant point of time, especially when there exists a tacit and clear admission as to the age of the Appellant. In fact, there is no need for such an inquiry in view of the aforesaid position. In our considered view, this Court could have dealt with the Writ Petition filed under Article 32 of the Constitution, as it raised an independent prayer for the enforcement of a right conferred under a social welfare legislation.

50. In the subsequent Writ Petition filed before the High Court, two different prayers had been made, namely, the determination of the Appellant's plea of juvenility and consequent release, or alternatively, judicial review of the decision of the President or the Governor and consequent release. As the Executive cannot be construed to have undertaken an adjudication on the determination of the age of the accused, and with the first prayer being a distinct one invoking Section 9(2) of the 2015 Act, we feel that the High Court has committed an error in its reasoning. We would only state that this is a case where the Appellant has been suffering due to the error committed by the Courts. We have been informed that his conduct in the prison is normal, with no adverse report. He lost an opportunity to reintegrate into the society. The time which he has lost, for no fault of his, can never be restored.

51. As we find that the Appeal deserves to be allowed in view of the conclusion arrived at, we are inclined to set aside the sentence imposed in excess of the upper limit prescribed under the relevant Act, while maintaining the conviction rendered. It cannot be construed that the Presidential Order is interfered with, as the issue that we are concerned with, is the failure of the Court in not applying the mandatory provisions of the 2015 Act with specific reference to the plea of juvenility. Therefore, it is not a review of the Presidential

Order, but a case of giving the benefit of the provisions of the 2015 Act to a deserving person.

52. From the custody certificate filed on record, it appears that the Appellant has undergone imprisonment for almost 25 years, during which time, the society has undergone significant transformation which the Appellant might be unaware of and find difficult to adjust with.

53. In view of the same, we direct the Uttarakhand State Legal Services Authority (for short "**the State Authority**") to play a proactive role in identifying any welfare scheme of the State/Central Government, facilitating the Appellant's rehabilitation and smooth reintegration into the society upon his release, with particular emphasis on his right to livelihood, shelter and sustenance guaranteed under Article 21 of the Constitution. We further direct the State Authority to assist him in availing any such scheme under which he is found eligible and wishes to avail, and such assistance may be effected through the concerned District Legal Services Authority, if the State Authority finds the same expedient and necessary. The Registry is directed to forthwith communicate this order to the State Authority.

54. The Appeal is allowed. The impugned judgment stands set aside. The sentence imposed against the Appellant in excess of the upper limit prescribed under the relevant Act, shall stand set aside, while making it clear that the conviction shall continue. The Appellant shall be released forthwith, if not required in any other case.

55. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 403 : 2025 INSC 48

State of Uttar Pradesh and Another
v.
R.K. Pandey and Another

(Civil Appeal No. 10212 of 2014)

09 January 2025

[Sanjiv Khanna,* CJI, Sanjay Kumar and R. Mahadevan, JJ.]

Issue for Consideration

Matter pertains to the enforceability of the ex-parte awards against the employer-State Government and the principal of the medical college, when the employer objected the authenticity of the arbitration agreement relied on by the employee.

Headnotes†

Arbitration and Conciliation Act, 1996 – Ex-parte arbitral awards – Enforcement by employee, when denial of the authenticity of the arbitration agreement by employer – Service dispute by the employee against the State Government and the government hospital where he was employed as regards age of superannuation – Writ petition remained pending for 12 years, thereafter was withdrawn – Year before, the employee initiated arbitration proceedings against the State Government and the principal of the medical college – Suit for reference filed which was later withdrawn without any decision on merits with the two sole arbitrators appointed by the employee, suo moto taking up the arbitration proceedings and pronouncing the two awards, for an amount of around Rs.46 lakhs with interest against the State and the Principal of the Medical College – Thereafter, employee sought enforcement of ex-parte awards – Employer objected the authenticity of the arbitration agreement relied on by employee – However, the courts below dismissed the objections – Correctness:

Held: Arbitration agreement is sine qua non for arbitration proceedings, as arbitration fundamentally relies on the principle of party autonomy-right of parties to choose arbitration as an alternative to court adjudication – Existence of the arbitration agreement is a prerequisite for an award to be enforceable in the eyes of law –

* Author

On facts, arbitration proceedings were a mere sham and a fraud played by employee, by self-appointing/nominating arbitrators, who have passed ex-parte and invalid awards – Clear case of lack of subject matter jurisdiction – So-called arbitration agreement nowhere available on the records of either the Municipal Corporation or the State – Employee did not file the original agreement since he was not in possession of the same, nor is he a signatory and party to the arbitration agreement – Hospital and the Governor did not endorse any such agreement – Arbitration Agreement is not referred to in the indenture of the transfer executed – No evidence to show the existence of the arbitration agreement, except a piece of paper, which is not even a certified copy or authenticated copy of the official records – Notwithstanding that the claims made by employee were ex-facie and clearly barred by limitation as per s.3 of the Limitation Act 1963 rw s.43 they have been allowed – Thus, ex parte awards set aside and to be treated as null and void and non-enforceable in law – Impugned judgment set aside. [Paras 20-25]

Case Law Cited

Bilkis Yakub Rasool v. Union of India and Others **[2024] 1 SCR 743 : (2024) 5 SCC 481;** *Central Organisation of Railway Electrification v. ECI PIC SMO MCPL (JV), a Joint Venture Company,* **2024 INSC 857 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996; Code of Civil Procedure, 1908; Limitation Act 1963.

List of Keywords

Enforceability of ex-parte awards; Authenticity of the arbitration agreement; Ex-parte arbitral awards; Age of superannuation; Arbitration proceedings; Arbitration agreement; Lack of jurisdiction; Certified copy or authenticated copy of official records; Unilateral appointment of arbitrator by employee; Barred by limitation; Jurisdiction; Execution proceedings.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10212 of 2014

From the Judgment and Order dated 28.02.2012 of the High court of Judicature at Allahabad in FAFO No. 352 of 2012

State of Uttar Pradesh and Another v. R.K. Pandey and Another

Appearances for Parties

Ankit Goel, Vikas Bansal, Nikhil Sharma, Advs. for the Appellants.

Mrs. Deepika Mishra, Abhishek Misra, Ms. Abha Jain, Jaivir Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjiv Khanna, CJI

Delay condoned.

2. This appeal arises from an order dated 28.02.2012 passed by a Division Bench of the High Court of Judicature at Allahabad in First Appeal from Order Defective No. 352/2012.

3. The facts, in brief, are – Respondent no. 1, R.K. Pandey, was appointed as a Lab Assistant/ Technician in the T.B. Section of Dina Nath Parbati Bangla Infectious Disease[1] Hospital located at Kanpur. The Municipal Board of Kanpur set up this hospital on the land given by the Kanpur Improvement Trust in 1944-45.

4. On 17.07.1956, DNPBID Hospital was taken over by the State Government, that is, the Government of Uttar Pradesh, to establish a new medical college at Kanpur pursuant to a Resolution dated 17.07.1956 passed by the Administrator of the Municipal Board of Kanpur and six members of the Board of the hospital. On 29.03.1957, the State Government accepted the proposal dated 17.07.1956.

5. On 20.06.1961, a transfer deed was executed between the Nagar Mahapalika of the City of Kanpur and the Governor of the State of Uttar Pradesh. The said deed has been placed on the record. It states that in terms of the G.O. dated 29.03.1957, the entire municipal staff of the hospital, as per the list attached to the indenture, will stand transferred to the State Government service. The staff will not be unfavourably placed as regards emoluments or other service conditions, nor shall they suffer in the matter of emoluments, leave, age of retirement, and other benefits as compared to the terms of service of the Board.

1 Hereinafter, "DNPBID."

6. After the settlement was executed, the hospital became a unit of Ganesh Shanker Vidayarthi Memorial[2] Medical College, Kanpur. Thereupon, it is apparent that the employees working in DNPBID Hospital opted for service under the State Government and had sent their consent which was accepted. Thereafter, their service records were sent to the State Government. It was agreed that the concessions and privileges enjoyed by the staff before the aforesaid hospital were provincialized and will continue in future and they will not be put to a disadvantage by the take-over. The Board agreed to pay Rs.50,000/- keeping in view the liability of the Municipal Board.

7. *Vide* letter dated 09.01.1997, the Chief Medical Superintendent of the hospital, now a State Government hospital, informed Respondent No. 1, R.K. Pandey that he would be superannuating on 31.03.1997. He was requested to contact the office along with pension papers and submit the same within one week so that the process can be initiated.

8. In March 1997, Respondent No. 1, R.K. Pandey, filed a writ petition before the High Court of Judicature at Allahabad claiming that he should retire at the age of 60 years instead of 58 years, relying upon the service rules as applicable to the employees of the Municipal Board of Kanpur.

9. Pursuant to the filing of the writ petition, Respondent No.1, R.K. Pandey was directed to make a representation. While a representation was indeed made, it was subsequently rejected observing that the respondent had been in service of the State Government for 42 years and was availing all pay and allowances, as per the State Government rules.

10. The State Government filed an affidavit opposing the writ petition *inter alia,* stating that Respondent No. 1, R.K. Pandey, having acquired the status of State Government service was bound and governed by the rules and regulations of the State Government. It was also stated that the minimum age for entering the government service is 18 years, and if a government servant retires at the age of 58 years, he would have completed 40 years of service. In the present case, Respondent No. 1, R.K. Pandey had completed service of 42 years of service. In other words, he would be 60 years of age.

2 Hereinafter, "GVSM."

11. No interim order was passed in the writ petition, which remained pending till it was withdrawn by Respondent No. 1, R.K. Pandey on 22.04.2009. Consequently, the prayers made in the writ petition were not granted.

12. Notwithstanding the pendency of the writ petition, on 11.01.2008, Respondent No. 1, R.K. Pandey, filed an arbitration suit before the District Judge, Kanpur Nagar, Kanpur, relying upon an alleged arbitration agreement dated 01.04.1957 between the then Administrator of the DNBPID Hospital and the Governor of Uttar Pradesh. The prayer sought was for the dispute regarding Respondent No. 1, R.K. Pandey's age of superannuation and the rejection of his representation dated 03.04.1997 by the Principal of GVSM Medical College be referred to arbitration. However, the arbitration agreement was not mentioned either in the writ petition or in the application for its withdrawal. Subsequently, on 15.02.2008, Respondent No. 1, R.K. Pandey, withdrew the suit seeking to refer the disputes to arbitration.

13. On 29.11.2008, Respondent No. 1, R.K. Pandey, filed two execution petitions before the District Judge in Kanpur, seeking to enforce two separate *ex parte* awards issued on 15.02.2008 and 25.06.2008 by Advocates Pawan Kumar Tewari and Indivar Vajpayee. These proceedings were initiated by Respondent No. 1 against the State Government and the Principal of GSVM Medical College, Kanpur.

14. The first *ex-parte* award dated 15.02.2008 decreed the claim of Respondent No. 1, R.K. Pandey for an amount of Rs.26,42,116/- with interest at the rate of 18 % per annum from 21.01.2008 against the State of Uttar Pradesh and the Principal GSVM Medical College, Kanpur. The award states that Respondent No. 1, R.K. Pandey had appointed/ nominated the Arbitrator and there was non-appointment by the opposite party and, therefore, Pawan Kumar Tewari, Advocate had acted as the sole Arbitrator.

15. The second *ex parte* Award dated 25.06.2008 passed by Indivar Vajpayee awarded an amount of Rs.20,00,000/- along with interest at the rate of 9% per annum with effect from 11.02.2008 in favour of Respondent No. 1, R.K. Pandey, and against the opposite party, viz. the State of Uttar Pradesh and the Principal of GSVM Medical College, Kanpur. The Award states that Respondent No. 1 had appointed Indivar Vajpayee as an Arbitrator on 25.06.2008, *albeit* the opposite party had not appointed an Arbitrator and, hence Indivar Vajpayee acted as the sole Arbitrator.

16. The appellant on receiving notice in the execution petition filed *viz.* the Award given by Indivar Vajpayee, filed objections against the two awards under Section 34 of the Arbitration and Conciliation Act, 1996.[3] One of the issues raised before the executing court concerned the existence of the arbitration agreement, purportedly dated 01.04.1957, which Respondent No. 1, R.K. Pandey, relied upon. This agreement was claimed to have been executed and signed on behalf of the Administrator of the Municipal Board and the Additional Secretary of the Government of Uttar Pradesh.

17. The authenticity of this document was denied. Notably, this document or the arbitration agreement is not reflected in the transfer deed executed on 20.06.1961. Furthermore, the purported arbitration agreement was neither mentioned in the writ petition filed by Respondent No. 1, R.K. Pandey, in March 1997, nor referenced in any correspondence or related documents until Respondent No. 1, R.K. Pandey, filed a petition under Section 11 of the A&C Act, for the appointment of an arbitrator on 11.01.2008. By this petition, Respondent No. 1, R.K. Pandey, had prayed for the appointment of an arbitrator. As recorded above, the said petition was dismissed as withdrawn on 15.02.2008, which was also the date on which the first award for Rs.20,00,000/- with interest at the rate of 18 % per annum was passed by Pawan Kumar Tewari, Advocate. The second Award by Indivar Vajpayee dated 25.06.2008 is also pursuant to the appointment of an arbitrator by Respondent No. 1, R.K. Pandey without recourse to court proceedings.

18. The objections filed by the appellants under Section 34 of the A&C Act were dismissed by the trial court on the ground that they were barred by limitation and had been filed beyond the condonable period. Interestingly, during the pendency of the said objections, a query had been raised as to the existence of the arbitration agreement dated 01.04.1957, which was relied upon by Respondent No. 1, R.K. Pandey. In a reply given by the Municipal Corporation/Mahanagar Palika to the Advocate appointed by District Government Counsel (Civil), Kanpur Nagar, it was stated that the photocopy furnished of the agreement was not clear and there was no such agreement available on the record. Hence, it was

3 Hereinafter, "A&C Act."

not possible to verify the said document. The purported agreement dated 01.04.1957 is not signed and executed by Respondent No. 1, R.K. Pandey, and a copy of the agreement is not marked to him. The authenticity of the agreement cannot be established as it is not available on the record of the Municipal Board. The State Government, as is evident, has denied the existence of any such agreement.

19. The impugned judgment passed by the Division Bench of the High Court of Judicature at Allahabad dismissed the *intra court* appeal on the grounds that the objections itself were barred by limitation and beyond the condonable period.

20. We have narrated the facts in detail as they are peculiar, and intervention by this Court is necessary to prevent any attempt to enforce the so-called awards, which are null and void ab initio for several reasons. This Court in its decision in ***Bilkis Yakub Rasool v. Union of India and Others***,[4] observes that fraud and justice never dwell together, and a litigant should not be able to benefit from a fraud practiced with an intention to secure him an illegal benefit. In the present case, the so-called arbitration agreement is nowhere available on the records of either the Municipal Corporation or the State of Uttar Pradesh. Respondent No. 1, R.K. Pandey, did not file the original agreement since he was not in possession of the same, nor is he a signatory and party to the arbitration agreement. An arbitration agreement is *sine qua non* for arbitration proceedings, as arbitration fundamentally relies on the principle of party autonomy; - the right of parties to choose arbitration as an alternative to court adjudication. In this sense, 'existence' of the arbitration agreement is a prerequisite for an award to be enforceable in the eyes of law. No doubt, Section 7 of the A&C Act, which defines the 'arbitration agreement', is expansive and includes an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other party, albeit the existence of the arbitration agreement is not accepted by either the Municipal Corporation or the Appellant, the State of Uttar Pradesh. The Arbitration Agreement is not referred to in the indenture of the transfer executed later

4 [2024] 1 SCR 743 : (2024) 5 SCC 481

on 20.06.1961. There is no evidence to show the existence of the arbitration agreement, except a piece of paper, which is not even a certified copy or an authenticated copy of the official records. How and from where RK Pandey, Respondent No. 1, got a copy of the agreement, and that too nearly 10 years after his retirement and filing of a writ petition remains unknown.

21. The arbitration agreement, as propounded, is between the Municipal Corporation and Development Board, Kanpur, and the appellant, the Governor of the State of Uttar Pradesh. For the sake of reference, the arbitration agreement is reproduced:

> "This Arbitration Agreement made on the First April, One Thousand Nine Hundred Fifty Seven between the Municipal and Development Board Kanpur (hereinafter called the Board) of the one part and the Governor of Uttar Pradesh (hereinafter, called the Government) of the other part.
>
> It is mutually agreed by the and between the parties as follows:
>
> All disputes or difference whatsoever which shall if any time arise between the parties including the employees of Provincialized DN Bangla I.D. Hospital, Kanpur, hereto touching or concerning the resolution passed by the Managing Committee of the said Hospital at the meeting held on 17.07.1956, which was accepted by the Government, shall be referred to the Arbitrators nominated by the Principal GSVM Medical College, Kanpur and the administrator of the Board or employees of the said provincialized Hospital for arbitration under the Arbitration Act. Any statutory modification of re-enactment thereof and the rules made thereunder for the time being enforced shall apply to the Arbitration proceedings. If one party nominates the arbitrator and refers the dispute to the nominated arbitrator for adjudication in writing notice to the other party and the other party fails to nominate the arbitrator within 10 days then the arbitrator nominated by the First Party shall be final and act as a sole arbitrator. The award of the arbitrators/sole arbitrator shall be final and binding on the parties.

> This agreement signed by the administrator on behalf of the Board and the Additional Secretary of the Government of UP on behalf of the Government.
>
> M.A. Quraishi, I.C.C.
> Administrator
> Municipal & Development Board
> Kanpur
>
> G.P. Pandey, Addl. Secretary to the Govt. of UP"

The agreement postulates that each party, that is, the Municipal and Development Board, Kanpur, and the Governor of Uttar Pradesh, may nominate an arbitrator for adjudication by giving written notice to the other party. In the event the other party fails to nominate an arbitrator within ten days, the arbitrator nominated by the first party shall act as the sole arbitrator. It was not the case of Respondent No. 1, R.K. Pandey that the Municipal and Development Board, Kanpur, or the Governor of Uttar Pradesh has invoked the arbitration clause. The unilateral appointment of the arbitrator by Respondent No. 1, R.K. Pandey is, therefore, contrary to the arbitration clause as propounded by him.

22. Another intriguing aspect is the delay in relying on the arbitration agreement and initiating arbitration proceedings. Respondent No. 1, R.K. Pandey, himself filed the writ petition in 1997 concerning the same dispute. The writ petition had remained pending till 22.04.2009, when it was withdrawn. It is during the pendency of the petition, that the steps for initiation of arbitration were taken on 11.01.2008 by Respondent No.1, R.K. Pandey, by filing a suit for reference in terms of Section 11 of the A&C Act. However, the petition was later withdrawn without any decision on merits with the two sole arbitrators appointed by Respondent No. 1, R.K. Pandey, *suo moto* taking up the arbitration proceedings and pronouncing the two awards, the first dated 15.02.2008 for an amount of Rs.26,42,116/- with interest at the rate of 18% per annum, and the second dated 25.06.2008 for an amount of Rs.20,00,000/- along with interest at the rate of nine percent per annum with effect from 11.02.2008, against the Appellants, the State of Uttar Pradesh and the Principal of GSVM Medical College, Kanpur. Notwithstanding that the claims made by Respondent No. 1, R.K. Pandey, were *ex-facie* and clearly barred

by limitation as per Section 3 of the Limitation Act 1963 read with Section 43 of the A&C Act, they have been allowed.

23. A 5-Judge Constitution Bench of this Court in ***Central Organisation of Railway Electrification v. ECI PIC SMO MCPL (JV), a Joint Venture Company***[5] has observed that equity applies at the stage of appointment of arbitrators, though the A&C Act recognizes the autonomy of parties to decide on all aspects of arbitration. The enactment lays down a procedural framework to regulate the composition of the arbitral tribunal and conduct of arbitration proceedings. It is only then that the arbitral tribunals, which have the backing of courts, can act objectively and exercise their discretion in a judicial manner, without caprice and in accordance with the principles of law and rules of natural justice. This is the core of the alternate dispute redressal mechanism, which is also the core of Section 18 of the A&C Act and is a non-derogable and mandatory provision. It is only then the arbitrators are vested with the power to resolve the dispute under the law. This judgment also observed that the unilateral appointment of arbitrators has a direct effect on the conduct of arbitral proceedings. Arbitration, which is *quasi-judicial*, requires a standard of behaviour of arbitrators, which is impartial and independent, no less stringent than that demanded of judges. In fact, arbitrators are expected to uphold a higher standard, as court decisions are subject to the collective scrutiny of an appeal, while an arbitration award typically enjoys greater acceptability, recognition, and enforceability.

24. We have made our observations in the context of Section 47 of the Code of Civil Procedure, 1908, which even at the stage of execution, permits a party to object to the decree, both on the grounds of fraud, as well as lack of subject matter jurisdiction. It is apparent that the arbitration proceedings were a mere sham and a fraud played by Respondent No.1, R.K. Pandey, by self-appointing/nominating arbitrators, who have passed *ex-parte* and invalid awards. To reiterate, Respondent No. 1, R.K. Pandey, is not a signatory to the purported arbitration agreement. Moreover, the parties thereto, DNPBID Hospital and the Governor of Uttar Pradesh, do not endorse any

5 2024 INSC 857

such agreement. From the cumulative facts and reasons elucidated above, this is a clear case of lack of subject matter jurisdiction.

25. Accordingly, we allow the present appeal and set aside the two *ex parte* Awards dated 15.02.2008 and 25.06.2008. Both the Awards shall be treated as null and void and non-enforceable in law. Resultantly, the judgment passed, and the subject matter of the appeal shall be treated as set aside. The execution proceedings shall stand dismissed. The appellants will be entitled to costs of the entire proceedings as per the law.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 414 : 2025 INSC 70

Dr. Sharmad
v.
State of Kerala and Others

(Civil Appeal No. 13422 of 2024)

10 January 2025

[Dipankar Datta* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the High Court was justified in interfering with the order granting promotion to the appellant to the post of Associate Professor, Department of Neurosurgery, Medical Education Service, Health and Family Welfare Department, Kerala on 06.02.2013.

Headnotes†

Service Law – Promotional appointment – Post-qualification experience, when not required – Vacancy for the post of Associate Professor arose on 13.11.2012 – Appellant had acquired M.Ch degree on 31.07.2008 – Completed 5 years as Assistant Professor on 30.07.2013 (was promoted as Assistant Professor on 11.01.2007) – In the meanwhile, he was Promoted as Associate Professor on 06.02.2013 – Challenged by respondent no.3, application dismissed by Kerala Administrative Tribunal – High Court set aside the promotion of the appellant to the post of Associate Professor holding that he lacked 5 years physical teaching experience as Assistant Professor after acquiring the degree of M.Ch.– Sustainability:

Held: Not sustainable, set aside – A plain and literal reading of the G.O. dated 07.04.2008, the executive order governing the recruitment in question does not show that 5 years' experience of physical teaching as an Assistant Professor after acquiring M.Ch. degree was one of the requisite qualifications – The G.O., read as a whole, evinces the view of the Government that where the experience had to be gained posterior to the acquisition of qualification, it had directly stated so – Government did not demand such post-qualification experience for the posts under consideration – Although, normally, experience gained after acquiring a particular qualification could justifiably be insisted upon by the employer, there could be

* Author

exceptions and the present case is one such exception – On the date of occurrence of vacancy i.e. 13.11.2012, the appellant had physical teaching experience of more than 5 years as Assistant Professor (having joined on 11.01.2007) and thus was eligible, in terms of the recruitment rules i.e., G.O. dated 07.04.2008 – High Court erred in placing reliance on r.28(b)(1A) – Judgment of the Tribunal restored – Impugned judgment in Civil Appeal No. 13423 of 2024 also set aside – Kerala State and Subordinate Services Rules, 1958 – Note to r.28(b)(1A). [Paras 14, 26, 23, 29]

Kerala State and Subordinate Services Rules, 1958 – Part – II, Rule 10(ab), Rule 10(a)(i) – Promotional appointments – Whether Rule 10(ab) has application to the promotional appointment in question – 'Recruitment Rules' if not defined, can mean executive Government orders where Special Rules are absent:

Held: 'Recruitment Rules' is used in Rule 10(ab) as an alternative to Special Rules, without the same being defined – Without 'Recruitment Rules' being defined, it can take colour from Rule 10(a)(i) and mean and include executive orders of the Government where Special Rules are absent – Even if the 1958 Rules were applicable, nothing turns on it because Rule 10(ab) itself consciously uses the expression "unless otherwise specified" – Rule 10 is entirely irrelevant and immaterial for appointment on promotion in the Administrative and Teaching Cadres of the Medical Education Services – The recruitment rules, i.e., G.O. dated 07.04.2008 was issued superseding all existing rules and orders in force on the method of appointment of the faculties under medical education service – The executive must, therefore, be deemed to be aware of what the 1958 Rules, which are the general rules, provided– Notwithstanding the same, G.O. dated 07.04.2008 was issued governing recruitment in two branches i.e. Administrative and Teaching Cadres – G.O. dated 07.04.2008 is, thus, a special rule as distinguished from a general rule like the 1958 Rules – Thus, the distinction in the qualifications for posts in Branch-I and Branch-II in G.O. dated 07.04.2008 would constitute the specification which is excluded from the purview of Rule 10(ab) and such rule had/ has no application to the promotional appointment in question. [Paras 17-20]

Maxims – "expressio unius est exclusio alterius" – Whatever has not been included has impliedly been excluded –

Applicability – Exclusion of the words "after acquiring postgraduate degree", if was deliberate in recruitment rules, i.e., G.O. dated 07.04.2008 for appointments on promotion to posts in Branch II i.e. Teaching Cadre:

Held: Yes – In G.O. dated 07.04.2008, the words "after acquiring postgraduate degree" were specifically included in the column for experience qua eligibility criteria for appointment on the posts of Director of Medical Education and Joint Director of Medical Education/Principals of Medical Colleges, i.e., posts in Branch I i.e. Administrative Cadre – If, indeed, it were the intention of the executive that aspirants for the post of Associate Professor were also required to have physical teaching experience in the feeder posts for specified number of years "after acquiring postgraduate degree", it defies reason as to why the same qualification was not included for appointments on promotion to posts borne in Branch II i.e. Teaching Cadre but included for the posts borne in Branch I i.e. Administrative Cadre. [Para 22]

Case Law Cited

Shesharao Jangluji Bagde v. Bhaiyya s/o Govindrao Karale, 1990 INSC 288 : [1990] Supp. 1 SCR 521 : **(1991) Supp. 1 SCC 367 – referred to.**

Arun Kumar Agarwal (Dr.) v. State of Bihar, 1991 INSC 115 : [1991] 2 SCR 491 : **(1991) Supp. 1 SCC 287;** *Indian Airlines Ltd. v. S Gopalakrishnan,* 2000 INSC 590 : [2000] Supp. 5 SCR 548 : **(2001) 2 SCC 362;** *Sirajudheen v. Public Service Commission,* **1999 (1) LLN 408;** *Rabi v. State of Kerala,* **2007 SCC OnLine Ker 418;** *A. Basheer v. Saiful Islam A.,* **2014 SCC OnLine Ker 18469 – distinguished.**

List of Acts

Kerala State and Subordinate Services Rules, 1958; Administrative Tribunals Act, 1985.

List of Keywords

Promotional appointment; Post-qualification experience; Associate Professor; Assistant Professor; Department of Neurosurgery; Medical Education Service, Health and Family Welfare Department, Kerala; 5 years physical teaching experience as Assistant Professor; Degree of M.Ch.; Executive order; Requisite qualifications; Kerala

Administrative Tribunal; Experience posterior to the acquisition of qualification; Medical education service; Administrative and Teaching Cadres, Branch-I and Branch-II; Recruitment rules; General rules; Special rules; Specified number of years; "After acquiring postgraduate degree"; Experience; Eligibility criteria; Feeder posts; "Expressio unius est exclusio alterius"; Maxims; Lecturer; Senior Lecturer; Paediatrics; Post Graduate (PG) qualification.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13422 of 2024

From the Judgment and Order dated 20.01.2017 of the High Court of Kerala at Ernakulam in O.P. No. 1360 of 2013

With

Civil Appeal No. 13423 of 2024

Appearances for Parties

V Giri, Sr. Adv., K. Rajeev, Rahul Narang, Ms. Niveditha R Menon, Pranav Krishna, Aditya Verma, Tarun Kumar, Advs. for the Appellant.

V Chitambaresh, Sr. Adv., C. K. Sasi, Ms. Meena K Poulose, M Gireesh Kumar, Ankur S. Kulkarni, Ms. Puspita Basak, Tarun, Advs. for the Respondents.

Romy Chacko, Sr. Adv., Anup Kumar, Ashwin Romy, Mrs. Neha Jaiswal, Ms. Shruti Singh, Ms. Pragya Chaoudhary, Akshat Singh, Advs. for the Intervenor.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

CIVIL APPEAL NO. 13422 of 2024

1. This appeal, by special leave, carried by the appellant[1] to this Court takes exception to the judgment and order dated 20th January, 2017 of a Division Bench of the High Court of Kerala at Ernakulam[2] allowing

1 Dr. Sharmad

2 High Court

a writ petition[3] presented by the third respondent[4]. The High Court set aside the judgment and order dated 15th March, 2013 of the Kerala Administrative Tribunal at Thiruvananthapuram[5], which dismissed the original application[6] of Dr. Jyothish filed under Section 19 of the Administrative Tribunals Act, 1985 *in limine*.

2. A short question arises for decision in the appeal. It is, whether the High Court was justified in interfering with the order granting promotion to Dr. Sharmad to the post of Assistant Professor, Department of Neurosurgery, Medical Education Service, Health and Family Welfare Department, Kerala[7] on 06th February, 2013.

3. For the purpose of a decision on this appeal, it would be appropriate to note the respective profile of Dr. Sharmad and Dr. Jyothish. The same is indicated in a tabular form hereunder:

Dr. Sharmad	Dr. Jyothish
Appointed as Lecturer (with MBBS) on 22.10.1999.	Appointed as Lecturer, with M. Ch degree, on 09.03.2005.
Promoted as Assistant Professor on 11.01.2007.	Promoted as Assistant Professor on 22.07.2008.
Acquired M. Ch degree on 31.07.2008.	-------
Completed 5 years on the post of Assistant Professor, after acquisition of M. Ch degree, on 30.07.2013.	Completed 5 years on the post of Assistant Professor on 21.07.2013.
Promoted as Associate Professor on 06.02.2013.	Promoted as Associate Professor in May, 2023.
Promoted as Professor on 09.05.2023.	Promoted as Professor on 11.11.2024.
To retire on 31.05.2029.	To retire on 30.04.2031.

3 OP (KAT) No.1360 of 2013

4 Dr. Jyothish

5 Tribunal

6 OA 476 of 2013

7 the said post

4. It is not in dispute that the vacancy on the said post of Associate Professor, which is the bone of contention in this appeal, arose on 13th November, 2012. For recruitment in the Medical Education Service under the Health and Family Welfare Department, Govt. of Kerala, rules under the proviso to clause (2) of Article 309 of the Constitution of India have not been framed. However, recruitment from time to time has been made in terms of Government Orders issued by the relevant department. At the time of occurrence of the vacancy on the said post of Assistant Professor, Government Order[8] dated 07th April, 2008 was in force. It was issued in *"supersession of all existing rules and orders in force regarding qualification and method of appointment of the faculties under Medical Education Services"*. The said G.O. provided qualifications for appointment in Branch – I i.e. Administrative Cadre and Branch – II i.e. Teaching Cadre. The discipline of neurosurgery was included under Head 'C' of Branch - II i.e. medical (super specialties). The categories of faculties covered by the said G.O. were (i) Professor, (ii) Associate Professor, and (iii) Assistant Professor.

5. Insofar as Branch – I i.e. Administrative Cadre is concerned, the same bore two posts i.e. Director of Medical Education and Joint Director of Medical Education/Principals of Medical Colleges. Under the column experience, we find the requirement for appointment on the posts of Director of Medical Education and Joint Director of Medical Education/Principals to be common. The same reads as under:

> "Minimum 10 years of Physical Teaching Experience in Government Medical Colleges (under Medical Education Department in Kerala) after acquiring postgraduate degree".
>
> (emphasis supplied)

6. For recruitment and appointment on the posts of Professor, Associate Professor and Assistant Professor, the educational qualifications appear to be the same. An aspirant must have the degree of M. Ch in Neurosurgery or DNB (Neurosurgery). The experience criteria required for the said three posts, however, vary. The same are set out hereunder:

8 G.O.

Professor	Associate Professor	Assistant Professor
One year Physical Teaching experience as Associate Professor.	Five years Physical Teaching experience as Assistant Professor.	Three years Physical Teaching experience as Senior Lecturer/ Lecturer.

7. If the experience criteria required for appointment on the posts under Branch - I i.e. – Administrative Cadre are juxtaposed with the experience criteria required for appointment on the teaching posts of Professor/Associate Professor/Assistant Professor, what stands out is that in case of posts in the teaching cadre, the words *"after acquiring postgraduate degree"* are conspicuous by its absence under the column 'experience'.

8. Dr. Jyothish claimed before the High Court that notwithstanding absence of such words under the column experience for Branch - II i.e. Teaching Cadre, the said requirement has to be read into it. Reference was made by him to Rules 10 and 28, Part II of the Kerala State and Subordinate Services Rules, 1958[9] to contend that Dr. Sharmad did not possess the requisite experience to satisfy the mandatory eligibility qualifications and was illegally appointed on promotion to the said post of Associate Professor by the official respondents. On the contrary, Dr. Sharmad claimed, in light of the criteria for experience for appointment in Branch - I i.e. Administrative Cadre, that it is not the requirement of G.O. dated 07th April, 2008 that an aspirant ought to have 5 (five) years physical teaching experience as an Assistant Professor (regular) after acquiring postgraduate degree. In such view of the matter, the official respondents did not commit any illegality in promoting Dr. Sharmad as an Associate Professor even before efflux of 5 (five) years since acquisition of the degree of M. Ch.

9. The official respondents sought to defend the promotion of Dr. Sharmad to the said post of Associate Professor by referring to G.O. dated 14th December, 2009 issued by the Health and Family Welfare Department on the subject of pay and allowances, *inter alia,* of the members of the Kerala Medical Education Service. According to them, G.O. dated 14th December, 2009 abrogated G.O dated 07th

9 KS and SSR

April, 2008 and in terms of the former, Dr. Sharmad did satisfy the eligibility criteria for promotion to the said post of Associate Professor. While providing for revised scale of pay for Associate Professors, G.O. dated 14th December, 2009 laid down as follows:

> 1.5 Revised scale of Associate Professors
>
> a) Medical & Dental
>
> i) ***
>
> ii) Incumbent Assistant Professors with five years (for teachers with Super specialty degree in the concerned discipline this will be two years after acquiring Superspeciality degree) teaching experience as Assistant Professor in the current pay scale of Rs. 12000-18300 including Time Bound Higher Grade service and a total service of 8 years after acquiring Post Graduate Degree (5 years for Superspeciality degree holders) in all grades put together will be promoted and placed in the pay band of Rs.37,400-67,000 with Academic Grade Pay of Rs.9,000 and shall be redesignated as Associate Professors; however they will have to publish two Research papers within a period of two years promotion in Peer Indexed/National Journals as per MCI/DCI regulations; however for teachers of Dental Colleges, as per the Dental Council of India regulations, only Post PG teaching experience will be reckoned as eligible service for placement as Associate Professor.
>
> iii) Incumbent Assistant Professors who have not completed 5 years teaching service (or having less than 2 years service for superspeciality degree holders) in the cadre of Assistant Professor (including TBCP/CAP grade) as on 01.01.2006 will be placed in the appropriate stage in the pay band of Rs.15,600-39,100 and Academic Grade Pay of Rs.8,000/-, till they complete the required period of 5/2 years respectively. Thereafter on completion of 5 years service as Assistant Professor, including Time Bound Cadre Promotion grade in pre-revised scale (2 years

> for superspeciality degree holders) and a total service of 8 years after acquiring Post graduate Degree (5 years for superspeciality degree holders) in all grades put together, they will be promoted and placed in the appropriate stage in the Pay band of Rs.37,400-67,000 with Academic Grade pay of Rs.9,000/- and redesignated as Associate Professor, subject to fulfilling academic performance requirements to be specified. However they will have to publish two Research papers within a period of two years in Peer Indexed/National Journals as per MOI regulations; provided that for Dental College teachers, only post PG teaching experience will be reckoned as per Dental Council of India norms for promotion."

10. Though the claim of Dr. Jyothish failed before the Tribunal, as noticed above, he succeeded before the High Court which went on to hold that reliance placed by the official respondents on G.O. dated 14th December, 2009 was absolutely misplaced. The High Court further held that Dr. Sharmad lacked 5 years physical teaching experience as Assistant Professor after acquiring the degree of M. Ch. and, therefore, ought not to have been promoted ahead of others who did satisfy the eligibility criteria. Arguments of Dr. Jyotish relying on Rules 10 and 28 of the KS and SSR were accepted. Accordingly, the High Court set aside the appointment on promotion of Dr. Sharmad to the said post of Associate Professor and directed the official respondents to convene a review Departmental Promotion Committee meeting for the purpose of drawing an appropriate select list to fill up the said post of Associate Professor. It was also observed that while preparing the select list, the relevant recruitment rules in force, namely, G.O. dated 07th April, 2008 and the relevant provision of Rule 28 of Part II, KS and SSR shall be looked into while excluding G.O. dated 14th December, 2009 from consideration.

11. We have heard Mr. Giri and Mr. Chitambaresh, learned senior counsel representing Dr. Sharmad and Dr. Jyotish, respectively. We have also heard Mr. C.K. Sasi, learned counsel for the official respondents.

12. The eligibility criteria for appointment on posts borne in Branch – I i.e. Administrative Cadre and in Branch – II i.e. Teaching Cadre, in the absence of recruitment rules framed under Article 309 of the

Constitution, are provided by G.O. dated 07th April, 2008 which is the executive order governing recruitment. That is a position, which is accepted even by Dr. Jyotish. According to him, Dr. Sharmad does not qualify in terms thereof.

13. Law is settled that in the absence of rules, recourse to recruitment based on executive orders could be taken. Even without examining whether G.O. dated 14th December, 2009 had any application to the promotional appointment in question, it would be just and proper to focus on the requirements of G.O. dated 07th April, 2008.

14. The contents under the column 'experience' in G.O. dated 07th April, 2008, extracted supra, have been read. A plain and literal reading does not lead to the conclusion that 5 years' experience of physical teaching as an Assistant Professor after acquiring M. Ch. degree is one of the requisite qualifications.

15. Strong reliance has been placed by Mr. Chitambaresh on Rule 10(ab) of Part – II, KS and SSR. A perusal of certain provisions of the KS and SSR would be of profit:

> **2 (15)** "Service" means a group of persons classified by the State Government as a State or a Subordinate Service as the case may be.
>
> **2 (16)** "Special Rules" shall mean the rules in Part III applicable to each service or class of service.
>
> **10. Qualifications** - (a)(i) The educational or other qualifications, if any, required for a post shall be as specified in the Special Rules applicable to the service in which that post is included or as specified in the executive orders of Government in cases where Special Rules have not been issued for the post/service.
>
> (ii) Notwithstanding anything contained in these rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post, in the Special Rules or found acceptable by the Commission as per rule 13(b)(i) of the said rules in cases where acceptance of equivalent qualifications is provided for in the rules and such of those qualifications which pre-suppose the

> acquisition of the lower qualification prescribed for the post, shall also be sufficient for the post.
>
> ***

16. Turning to Rule 10(ab), it appears to have been incorporated in 1993 by an amendment. The text of Rule 10(ab) reads:

> "Where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and casual labourers in Central or State Government service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification for the post:
>
> Provided that the experience gained as factory workers on daily wages of a permanent nature may be accepted, if the service is continuous and not of a casual nature."

17. 'Recruitment Rules' is used in Rule 10(ab) as an alternative to Special Rules, without the same being defined. To understand what 'Recruitment Rules' would mean in the context, one may simultaneously read Rule 10(a)(i) extracted supra.

18. Thus, without 'Recruitment Rules' being defined, it can take colour from Rule 10(a)(i) and be understood to mean and include executive orders of the Government in a case where Special Rules are absent.

19. Even if the KS and SSR were applicable, nothing turns on it because Rule 10(ab) itself consciously uses the expression *"unless otherwise specified"*. The Tribunal briefly assigned a reason as to how such expression was material for dislodging the argument of Dr. Jyotish. While we concur with the Tribunal, we wish to elaborate a little further for the sake of clarity.

20. Our reading of Rule 10 of the KS SSR, as originally framed in 1958, together with the amendments incorporated in it from time to time, including Rule 10(ab), leads us to the irresistible conclusion that Rule 10 is entirely irrelevant and immaterial for appointment on promotion in the Administrative and Teaching Cadres of the Medical Education Services. The recruitment rules with which we are concerned, i.e., G.O. dated 07th April, 2008, was issued at a point of time when

Rule 10(ab) had already found its way in the KS and SSR by an amendment. G.O. dated 07th April, 2008 was issued superseding all existing rules and orders in force on the method of appointment of the faculties under medical education service. The executive must, therefore, be deemed to be aware of what the KS and SSR, which are the general rules, provided. Notwithstanding the same, G.O. dated 07th April, 2008 was issued governing recruitment in two branches i.e. Administrative and Teaching Cadres. G.O. dated 07th April, 2008 is, thus, a special rule as distinguished from a general rule like the KS and SSR. Rule 10(ab), on its own showing, having referred to the expression *"unless otherwise specified"*, the same has to be given some meaning or else it would be rendered redundant. It is well settled that no word, no phrase and no expression used in a legislation should be excluded as surplusage, while the courts embark on a course of interpretation. In our reading, the distinction in the qualifications for posts in Branch-I and Branch-II in G.O. dated 07th April, 2008 would constitute the specification which is excluded from the purview of Rule 10(ab) and such rule had / has no application to the promotional appointment in question. The Tribunal was quite right in its observation.

21. We also propose to assign one other reason, in continuation of the one discussed above, to support the view of the Tribunal that the original application of Dr. Jyotish did deserve *in limine* dismissal.

22. This is a case where the maxim *expressio unius est exclusio alterius* (meaning whatever has not been included has impliedly been excluded) would apply. In G.O. dated 07th April, 2008, the words *"after acquiring postgraduate degree"* are specifically included in the column for experience *qua* eligibility criteria for appointment on the posts of Director of Medical Education and Joint Director of Medical Education/Principals of Medical Colleges, i.e., posts in Branch – I i.e. Administrative Cadre. If, indeed, it were the intention of the executive that aspirants for the said post of Associate Professor, or, for that matter, for the post of Professor were required to have physical teaching experience in the feeder posts for specified number of years *"after acquiring postgraduate degree"*, it defies reason as to why the same qualification was not included for appointments on promotion to posts borne in Branch – II i.e. Teaching Cadre but included for the posts borne in Branch – I i.e. Administrative Cadre. The submission on behalf of Dr. Jyotish that posts borne

in the Administrative Cadre have responsibilities different from those borne in the Teaching Cadre, though attractive at first blush, pales into insignificance primarily for the reason that insistence of physical teaching experience of a specified number of years with a particular postgraduate or super speciality degree would seem to be more required and demanding for appointment on posts in the Teaching Cadre rather than those in the Administrative Cadre. We are, thus, minded to hold that the exclusion of the words *"after acquiring postgraduate degree"* is deliberate and conscious and the contentions advanced by Mr. Chitambaresh, to the contrary, do not commend acceptance.

23. Note to Rule 28(b)(1A) of Part – II, KS and SSR also does not come to the rescue of Dr. Jyotish. The provision therein would apply if on the relevant date there is no qualified candidate for promotion. That is not the case here. As on the date of occurrence of vacancy i.e. 13th November, 2012, Dr. Sharmad had physical teaching experience of more than 5 years as Assistant Professor (he having joined on 11th January, 2007). He being eligible, in terms of the recruitment rules, there was no occasion for invoking the said note. The High Court erred in placing reliance on Rule 28(b)(1A).

24. It is now time to consider the decisions cited by Mr. Chitambaresh.

25. ***Shesharao Jangluji Bagde v. Bhaiyya s/o Govindrao Karale***[10] was relied on for the proposition that experience gained has to be subsequent to the acquisition of qualification. What this Court in paragraph 3 held is this:

> "3. *** Normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification. However, in the case of a promotion the same interpretation may not be just or warranted. It would depend on the relevant provisions as also the particular type of experience which is required. ***"
>
> (emphasis supplied)

10 [1990] Supp. 1 SCR 521 : (1991) Supp. 1 SCC 367

26. It is clear as daylight that what this Court held and what is argued as a proposition of law are at variance. The particular type of experience required by G.O. dated 07th April, 2008 was possessed by Dr. Sharmad; hence, this decision does not come to the rescue of Dr. Jyotish. Furthermore, an examination of the ratio of the decision favours the case of Dr. Sharmad. Not only does the passage begin with '(N)ormally' leaving room for cases which are other than normal, this Court also qualified that experience required should be deemed to be experience gained after acquiring the minimum qualifications, unless the context otherwise demands. This is crucial. Also, such a general interpretation may not arise in case of promotional appointments. G.O. dated 07th April, 2008, read as a whole, evinces without any ambiguity the view of the Government that where the experience had to be gained posterior to the acquisition of qualification, it had directly stated so. Thus, in the context of this case, absence of such a stipulation gives rise to but one conclusion, that the Government did not demand such post-qualification experience for the posts under consideration here. Although, normally, experience gained after acquiring a particular qualification could justifiably be insisted upon by the employer, there could be exceptions and the present case is one such exception. It is well settled that the intention of the rule framer has to be assessed on both parameters i.e. the words used and that of necessary implication. The requisite of post-qualification experience being present in Branch – I, and absent from Branch – II, necessarily implies that it was not a requirement for appointments on promotion to posts borne in Branch – II.

27. The next decision cited is ***Arun Kumar Agarwal (Dr.) v. State of Bihar***[11] for the proposition that if a candidate is available with super speciality, he should be given preference. We need to read paragraph 12 of the decision to understand what precisely was held by this Court. The relevant sentence reads:

> "12. *** Thus the appellant having a degree in superspeciality and also having research work or working experience has been rightly given preference in the matter of appointment to the post of Assistant Professor in Neurosurgery over respondent 5 who did not have a degree in superspeciality."

11 [1991] 2 SCR 491 : (1991) Supp. 1 SCC 287

28. ***Arun Kumar Agarwal (Dr.)*** (supra) is distinguishable on facts. Since 'preference' has been referred to, it goes without saying that the ratio thereof could apply where other qualifications / things being equal, preference is given to an aspirant having higher qualification. In the case before us, although both Dr. Sharmad and Dr. Jyotish were holders of M. Ch. degrees, as on date of occurrence of the vacancy on the said post of Associate Professor i.e. 13th November, 2012, Dr. Jyotish did not have the requisite experience of 5 years physical teaching as an Assistant Professor (he admittedly having been promoted to such post only on 22nd July, 2008). Question of preferring Dr. Jyotish to Dr. Sharmad did not arise at all since the former was deficient insofar as experience on the post of Assistant Professor is concerned.

29. The upshot of the aforesaid discussion leaves us with no option but to hold that the impugned judgment and order of the High Court is unsustainable. The same is set aside and the judgment and order of the Tribunal restored, with the result that the original application of Dr. Jyotish shall stand dismissed.

30. Civil Appeal No. 13422 of 2024 is, thus, allowed. Parties shall, however, bear their own costs.

31. Pending application, if any, stands disposed of.

Civil Appeal No. 13423 of 2024

32. The High Court, vide the impugned judgment and order dated 4th April, 2017, modified the order dated 9th January, 2015 of the Tribunal under challenge before it and disposed of the original petition[12] preferred by Dr. R. Jayaprakash. This appeal, by special leave, is directed against the said judgment and order.

33. Promotion from the post of Senior Lecturer to the post of Assistant Professor in Paediatrics was the subject matter of consideration in the original application before the Tribunal. Whether three years' physical teaching experience gained after acquisition of Post Graduate (PG) qualification is the prescribed condition that an aspirant was required to fulfil, fell for examination. The Tribunal held that experience gained only after acquiring PG qualification would count.

12 O.P. (KAT) No.148 of 2015

34. The operative part of the High Court's order reads as follows:

> "In the said circumstances, the impugned order passed by the Tribunal in T.A. No.4858/12 to the extent it held that Rule 10(ab) of the General Rules is applicable in the matter of promotion to the post of Assistant Professor in the Medical Education Department is confirmed. However, the consequential direction issued by the Tribunal to the first respondent to review promotion of the applicant and respondent Nos.4 to 6 and assign the dates of promotion to the post of Assistant Professor, having due regard to the date of occurrence of the vacancy and the date of acquisition of Post Graduate qualification in the feeder category, stand set aside."

35. The decisions cited by Mr. Romy Chacko, learned senior counsel for the impleading applicants have been considered.

36. ***Indian Airlines Ltd. v. S Gopalakrishnan***[13] laid down the law upon consideration of the general information instructions which clearly indicated that the experience would be computed after the date of acquiring necessary qualifications. That is not the case here. The requirements in ***Indian Airlines Ltd.*** (supra) are strikingly dissimilar to the recruitment rules governing promotional appointments, which are under consideration. This decision, therefore, is of no assistance to Mr. Chacko.

37. The decisions of the High Court, viz., ***Sirajudheen v. Public Service Commission***,[14] ***Rabi v. State of Kerala***[15] and ***A. Basheer v. Saiful Islam A.***,[16] once again did not have the occasion to consider G.O. dated 07th April, 2008 since the recruitment in question in all three cases were in different departments of the Govt. of Kerala. The said decisions having been rendered upon examination of rules governing appointments on the posts of Assistant Motor Vehicle Inspector, Reader in Political Science and Assistant Professor in the Kerala Dental Education Service, respectively, which are at variance with

13 [2000] Supp. 5 SCR 548 : (2001) 2 SCC 362

14 1999 (1) LLN 408

15 2007 SCC OnLine Ker 418

16 2014 SCC OnLine Ker 18469

G.O. dated 07th April, 2008, these three decisions of the High Court also do not help Mr. Chacko.

38. Having regard to the findings and conclusions that we have recorded while allowing Civil Appeal No. 13422 of 2024, the judgment and order under challenge dated 4th April, 2017 cannot be sustained in law. The same is set aside with the result that the original application of Dr. R. Jayaprakash shall stand dismissed.

39. Thus, Civil Appeal No. 13423 of 2024 too stands allowed.

40. Pending application, if any, stands disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 1 S.C.R. 431 : 2025 INSC 38

Principal Commissioner of Income Tax-4 & Anr.
v.
M/s Jupiter Capital Pvt. Ltd.

(Special Leave Petition No. 63 of 2025)

02 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Whether reduction in share capital is covered under "sale, exchange or relinquishment of the asset" used in Section 2(47) of the Income Tax Act, 1961.

Headnotes†

Income Tax Act, 1961 – s.2(47) – "sale, exchange or relinquishment of the asset" – Reduction in share capital, if covered within the expression "sale, exchange or relinquishment of the asset":

Held: Yes – Reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the assessee, is squarely covered within the ambit of the expression "sale, exchange or relinquishment of the asset" used in s.2(47) – s.2(47) is an inclusive definition, inter alia, providing that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset – While the taxpayer continues to remain a shareholder of the company even with the reduction of share capital, it could not be accepted that there was no extinguishment of any part of his right as a shareholder qua the company – When as a result of the reducing of the face value of the preference share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital – Such a reduction of the right of the capital asset amounts to a transfer within the meaning of s.2(47) – In the present case, the face value per share remained the same before the reduction of share capital and after the reduction of share capital – However, as the total number of shares were reduced

from 15,35,05,750 to 10,000 and out of this the assessee was holding 15,33,40,900 shares prior to reduction and 9988 shares after reduction, it can be said that on account of reduction in the number of shares held by the assessee in the company, the assessee extinguished its right of 15,33,40,900 shares, and in lieu thereof, it received 9988 shares at Rs. 10 each along with an amount of Rs. 3,17,83,474 – No error committed by High Court in passing the impugned order dismissing the appeal filed by the Revenue and affirming the order passed by the ITAT. [Paras 9, 10, 12, 14, 18]

Case Law Cited

Kartikeya V. Sarabhai v. Commissioner of Income Tax **[1997] Supp. 3 SCR 746 : (1997) 7 SCC 524 – relied on.**

Commissioner of Income Tax v. Vania Silk Mills (P.) Ltd. **(1977) 107 ITR 300 (Guj) : 1976 SCC OnLine Guj 92;** *Commissioner of Income-Tax v. Jaykrishna Harivallabhdas* **(1998) 231 ITR 108 : 1997 SCC OnLine Guj 255;** *Anarkali Sarabhai v. CIT* **[1997] 1 SCR 500 : (1997) 3 SCC 238 : – referred to.**

List of Acts

Income Tax Act, 1961; Companies Act, 2013.

List of Keywords

Section 2(47) of the Income Tax Act, 1961; Reduction in share capital; Transfer of a capital asset; Sale; 'transfer'; "sale, exchange or relinquishment of the asset"; Relinquishment of an asset; Extinguishment of any right; Subsidiary company; Subsequent proportionate reduction in the shareholding of the assessee; Inclusive definition, Preference share; Right of the preference shareholder; Reducing of the face value of the preference share.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 63 of 2025

From the Judgment and Order dated 20.02.2023 of the High Court of Karnataka at Bengaluru in ITA No. 299 of 2019

**Principal Commissioner of Income Tax-4 & Another v.
M/s Jupiter Capital Pvt. Ltd.**

Appearances for Parties

N. Venkataraman, A.S.G., Raj Bahadur Yadav, Suyash Pandey, Navanjay Mahapatra, V. Chandrashekhara Bharathi, Chinmayee Chandra, Advs. for the Petitioners.

Judgment / Order of the Supreme Court

Order

1. Delay condoned.

2. This petition is at the instance of the Revenue, seeking leave to appeal against the judgement and order dated 20.02.2023 passed by the High Court of Karnataka at Bengaluru in Income Tax Appeal (ITA) No. 299 of 2019 by which the appeal filed by the Revenue against the judgement and order passed by the ITAT Bengaluru came to be dismissed and thereby the judgement and order passed by the ITAT came to be affirmed.

3. The appeal was admitted by the High Court on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Tribunal is right in law in setting aside the disallowance of capital loss claimed by the assessee of Rs.164,48,55,840/- by holding that there is extinguishment of rights of 153340900 shares when no such extinguishment of rights is made out by the assessee as required under section 2(47) of the Act and there is no reduction in the face value of share."*

4. It appears from the materials on record that the respondent-assessee is a company engaged in the business of investing in shares, leasing, financing and money lending. The assessee had made an investment in Asianet News Network Pvt. Ltd., an Indian company engaged in the business of telecasting news, by purchasing 14,95,44,130 shares having face value of Rs 10/- each. Thereafter, the assessee purchased 38,06,758 shares from other parties, thereby increasing its shareholding to 15,33,40,900 shares which constituted 99.88% of the total number of shares of the company, i.e., 15,35,05,750.

5. The said company incurred losses, as a result of which the net worth of the company got eroded. Subsequently, the company filed a petition before the Bombay High Court for reduction of its share capital to set off the loss against the paid-up equity share capital. The High Court ordered for a reduction in the share capital of the company from 15,35,05,750 shares to 10,000 shares. Consequently, the share of the assessee was reduced proportionately from 15,33,40,900 shares to 9,988 shares. However, the face value of shares remained the same at Rs. 10 even after the reduction in the share capital. The High Court also directed the company for payment of Rs. 3,17,83,474/- to the assessee as a consideration.

6. During the year, the assessee claimed long term capital loss accrued on the reduction in share capital from the sale of shares of such company. However, the Assessing Officer while disagreeing with the assessee's claim held that reduction in shares of the subsidiary company did not result in the transfer of a capital asset as envisaged in Section 2(47) of the Income Tax Act, 1961. The Assessing Officer took the view that although the number of shares got reduced by virtue of reduction in share capital of the company, yet the face value of each share as well as shareholding pattern remained the same. The relevant observations from the assessment order are extracted hereinbelow:

> *"10. [...] However, the question of extinguishment of rights with relation to the shareholders does not arise. It was only reduction of shares by way of extinguishing the number of shares and not extinguishing the rights of the shareholders. For the reason that the word "extinguished" is mentioned in the Petition or the Court Order, it does not amount to translate the meaning of the word "extinguishment of rights" as per section 2(47) of the Act.*
>
> *xxx xxx xxx*
>
> *Extinguishment of Rights would mean that the assessee has parted with those shares or sold off those shares to a second party. Here, the assessee has not sold off any shares or has not parted with the shares as the it still holds the proportionate percentage which he initially held is still shown as an investment."*

7. In appeal the CIT(A) *vide* order dated 14.12.2017 while distinguishing the facts of the present case from those involved in the decision of this Court in ***Kartikeya V. Sarabhai v. Commissioner of Income Tax*** reported in (1997) 7 SCC 524 held that any extinguishment of rights would involve parting the sale of percentage of shares to another party or divesting rights therein. The relevant observations made by the CIT(A) are reproduced as follows:

> *"6.6(ii) The factual position of and the applicability of the judicial decisions in the present case, clearly reveals that the Assessee's claim of capital loss, is not acceptable in view of certain crucial questions, emerging for consideration in the present case. The AO has analysed the Assessee's shareholding pattern, in the impugned order, which has been perused. A comparative-analysis of the opening / closing balances of ANNPL shares and the consequent reduction in numbers / face value and the percentage ratio of share- holding, reveals a clear position that there was no effective transfer, resulting in Long Term Capital Loss…*
>
> *(iii) [...] It clearly emerges, that there was no effective transfer, which could result in any real Long Term Capital Loss as claimed by the appellant in the present case. It transpires that the appellant company invested in total equity share of Rs. 153340900/- at face value of (Rs. 10) on different dates, in its subsidiary company (ANNPL). The total number of shares of ANNPL was 153505750 out of which the assessee's shareholding was 99.88%. Pursuant to the share reduction scheme there was reduction in share capital of ANNPL from 153340900 to 10000 and thus the shares of the Assessee were reduced from 153505750 to 9988. The face value of the shares-reduced remained unchanged at Rs. 10, even after the reduction. The shareholding ratio of the assessee company also remained constant even after implementation of the share-reduction scheme. This percentage continued to be at the previous shareholding figures of 99.88%."*

8. However, the ITAT reversed the order passed by the CIT(A) and allowed the appeal filed by the assessee observing that the decision of this Court in ***Kartikeya V. Sarabhai*** *(supra)* is squarely applicable to the facts of the present case. The relevant observations from the order of the ITAT order are extracted hereinbelow:

> *"6. [...] In the present case, the face value per share remains same i.e. Rs. 10 per share before reduction of share capital and after reduction of share capital but the total number of shares has been reduced from 153505750 to 10000 and out of this, the present assessee was holding prior to reduction 153340900 shares and after reduction 9988 shares. In addition to this reduction in number of shares held by the assessee company in ANNPL, the assessee received an amount of Rs. 3,17,83,474/- from ANNPL. Hence it is seen that in the facts of present case, on account of reduction in number of shares held by the assessee company in ANNPL, the assessee has extinguished its right of 153340900 shares and in lieu thereof, the assessee received 9988 shares at Rs. 10/- each along with an amount of Rs. 3,17,83,474/. As per this judgment of Hon'ble Apex Court rendered in the case of Kartikeya V. Sarabhai Vs. CIT (supra), there is no reference to the percentage of share holding prior to reduction of share capital and after reduction of share capital and hence, in our considered opinion, the basis adopted by the CIT(A) to hold that this judgment of Hon'ble Apex Court is, not applicable in the present case is not proper and in our considered opinion, this is not proper. In our considered opinion, in the facts of present case, this judgment of Hon'ble Apex Court is squarely applicable and by respectfully following this judgment of Hon'ble Apex Court, we hold that the assessee's claim for capital loss on account of reduction in share capital in ANNPL is allowable. We hold accordingly."*

9. The Revenue went in appeal before the High Court. The High Court while dismissing the appeal filed by the Revenue and affirming the order passed by the ITAT observed in para 8 as under:

> *"Undisputed facts are, pursuant to the order passed by the High Court of Bombay, number of shares has been reduced to 9988. It is significant to note that the face value of the share has remained same at Rs. 10/- even after the reduction. The AO's view that the voting power has not changed as the percentage of assessee's share of 99.88% has remained unchanged is untenable because if the shares are transferred at face value, the redeemable value would be Rs.99,880/- whereas the value of 14,95,44,130 number of shares would have been Rs.1,49,54,41,300/-. In our considered view, the ITAT has rightly followed authority in Kartikeya V. Sarabhai v. The Commissioner of Income Tax : 1998 2 ITR 163 SC with regard to meaning of transfer by holding that there was no transfer within the meaning of that expression contained in Section 2(47) of the Income Tax Act, 1961."*

10. Having heard Mr. N. Venkataraman, learned ASG appearing for the Revenue, and having gone through the materials on record, we are of the view that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order.

11. Whether reduction of capital amounts to transfer is no longer *res integra* in view of the decision of this Court in ***Kartikeya V. Sarabhai*** *(supra)* wherein this Court while elaborating upon Sections 2(47) and 45 of the Income Tax Act, 1961 respectively observed as under:

> *"**9.** It is not possible to accept the contention of Shri Ganesh, learned counsel that reduction does not amount to a transfer of the capital asset. Section 2(47) of the Act reads as follows:*
>
> > *"2. (47) 'transfer' in relation to a capital asset, includes,*
> >
> > *(i) the sale, exchange or relinquishment of the asset; or*
> >
> > *(ii) the extinguishment of any rights therein; or*
> >
> > *(iii) the compulsory acquisition thereof under any law; or*

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade or a business carried on by him, such conversion or treatment; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53-A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.—For the purposes of sub-clauses (v) and (vi), 'immovable property' shall have the same meaning as in clause (d) of Section 269-UA;"

10. *Section 45 of the Act reads as follows:*

"45. Capital gains.—(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 53, 54, 54-B, 54-D, 54-E, 54-F and 54-G, be chargeable to income tax under the head 'Capital gains' and shall be deemed to be the income of the previous year in which the transfer took place."

11. *Section 2(47) which is an inclusive definition, inter alia, provides that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. While, it is no doubt true that the appellant continues to remain a shareholder of the company even with the reduction of share capital but it is not possible to accept the contention that there has been no extinguishment of any part of his right as a shareholder qua the company. It is not necessary that for a capital gain to arise there*

must be sale of a capital asset. Sale is only one of the modes of transfer envisaged by Section 2(47) of the Act. Relinquishment of the asset or the extinguishment of any right in it, which may not amount to sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed under Section 45 of the Act.

12. *When as a result of the reducing of the face value of the shares, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Whereas the appellant had a right to dividend on a capital of Rs 500 per share that stood reduced to his receiving dividend on Rs 50 per share. Similarly, if the liquidation was to take place whereas he originally had a right to Rs 500 per share, now his right stood reduced to receiving Rs 50 per share only. Even though the appellant continues to remain a shareholder his right as a holder of those shares clearly stands reduced with the reduction in the share capital.*

13. *The Gujarat High Court had in another case reported as Anarkali Sarabhai v. CIT [(1982) 138 ITR 437 (Guj)] followed the judgment under appeal. That was a case where there had been redemption of preference share capital by the company and money was paid to the shareholders. It was held therein that difference between the face value received by the shareholder and the price paid for preference shares was exigible to capital gains tax. In coming to this conclusion, the Gujarat High Court had followed the judgment under appeal in the present case.*

14. *The aforesaid decision of the Gujarat High Court in Anarkali case [(1982) 138 ITR 437 (Guj)] was challenged and this Court in Anarkali Sarabhai v. CIT [(1997) 3 SCC 238 : (1997) 224 ITR 422] upheld the High Court's decision. It had been contended in Anarkali case*

[(1997) 3 SCC 238 : (1997) 224 ITR 422] on behalf of the assessee that reduction of preference shares was not a sale or relinquishment of asset and, therefore, no capital gains tax was payable. Repelling this contention, this Court considered the definition of the word "transfer" occurring in Section 2(47) of the Act and reading the same along with Section 45, it came to the conclusion that when a preference share is redeemed by a company, what the shareholder does in effect is to sell the share to the company. The company redeems its preference shares only by paying the preference shareholders the value of the shares and taking back the preference shares. It was observed that in effect the company buys back the preference shares from the shareholders. Further, referring to the provisions of the Companies Act, it held that the reduction of preference shares by a company was a sale and would squarely come within the phrase "sale, exchange or relinquishment" of an asset under Section 2(47) of the Act. It was also held that the definition of the word "transfer" under Section 2(47) of the Act was not an exhaustive definition and that sub-section (I) of clause (47) of Section 2 implies that parting with any capital asset for gain would be taxable under Section 45 of the Act. In this connection, it was noted that when preference shares are redeemed by the company, the shareholder has to abandon or surrender the shares, in order to get the amount of money in lieu thereof.

15. *In our opinion, the aforesaid decision of this Court in Anarkali case [(1997) 3 SCC 238 : (1997) 224 ITR 422] is applicable in the instant case. The only difference in the present case and Anarkali case [(1997) 3 SCC 238 : (1997) 224 ITR 422] is that whereas in Anarkali case [(1997) 3 SCC 238 : (1997) 224 ITR 422] preference shares were redeemed in entirety, in the present case, there has been a reduction in the share capital inasmuch as the company had redeemed its preference shares of Rs 500 to the extent of Rs 450 per share. The liability of the company in respect of the preference share which was*

previously to the extent of Rs 500 now stood reduced to Rs 50 per share."

12. The following principles are discernible from the aforesaid decision of this Court:

    a. Section 2(47) of the Income Tax Act, 1961, which is an inclusive definition, *inter alia*, provides that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. While the taxpayer continues to remain a shareholder of the company even with the reduction of share capital, it could not be accepted that there was no extinguishment of any part of his right as a shareholder *qua* the company.

    b. A company under Section 66 of the Companies Act, 2013 has a right to reduce the share capital and one of the modes which could be adopted is to reduce the face value of the preference share.

    c. When as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend or his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such a reduction of the right of the capital asset clearly amounts to a transfer within the meaning of section 2(47) of the Income Tax Act, 1961.

13. As observed in ***Commissioner of Income Tax v. Vania Silk Mills (P.) Ltd.*** reported in (1977) 107 ITR 300 (Guj), the expression "extinguishment of any right therein" is of wide import. It covers every possible transaction which results in the destruction, annihilation, extinction, termination, cessation or cancellation, by satisfaction or otherwise, of all or any of the bundle of rights - qualitative or quantitative - which the assessee has in a capital asset, whether such asset is corporeal or incorporeal.

14. In the present case, the face value per share has remained the same before the reduction of share capital and after the reduction of share capital. However, as the total number of shares have been reduced from 15,35,05,750 to 10,000 and out of this the assessee was holding 15,33,40,900 shares prior to reduction and 9988 shares

after reduction, it can be said that on account of reduction in the number of shares held by the assessee in the company, the assessee has extinguished its right of 15,33,40,900 shares, and in lieu thereof, the assessee received 9988 shares at Rs. 10 each along with an amount of Rs. 3,17,83,474. This Court in the case of ***Kartikeya V. Sarabhai*** *(supra)* has not made any reference to the percentage of shareholding prior to reduction of share capital and after reduction of share capital.

15. This Court in the case of ***Kartikeya V. Sarabhai*** (supra) observed that reduction of right in a capital asset would amount to 'transfer' under Section 2(47) of the Act, 1961. Sale is only one of the modes of transfer envisaged by Section 2(47) of the Income Tax Act, 1961. Relinquishment of any rights in it, which may not amount to sale, can also be considered as transfer and any profit or gain which arises from the transfer of such capital asset is taxable under Section 45 of the Income Tax Act, 1961.

16. A Division Bench of the Gujarat High Court in the case of ***Commissioner of Income-Tax v. Jaykrishna Harivallabhdas*** reported in (1998) 231 ITR 108 further clarified that receipt of some consideration in lieu of the extinguishment of rights is not a condition precedent for the computation of capital gains as envisaged under Section 48 of the Income Tax Act, 1961. The relevant observations made by the High Court are reproduced hereinbelow:

> *28. The contention that this provision should apply to actual receipts only also cannot be accepted for yet another reason, because acceptance of that would lead to an incongruous and anomalous result as will be seen presently. The acceptance of this view would mean whereas even in a case where a sum is received, howsoever negligible or insignificant it may be, it would result in the computation of capital gains or loss, as the case may be, but in a case where nothing is disbursed on liquidation of a company the extinction of rights, would result in total loss with no consequence. That is to say on receipt of some cost, however insignificant it may be, the entire gamut of computing capital gains for the purpose of computing under the head "Capital gains" is to be gone*

into, computing income under the head "Capital gains", and loss will be treated under the provisions of Act, but where there is nil receipt of the capital, the entire extinguishment of rights has to be written off, without treating under the Act as a loss resulting from computation of capital gains. The suggested interpretation leads to such incongruous result and ought to be avoided, if it does not militate in any manner against object of the provision and unless it is not reasonably possible to reach that conclusion. As discussed above, once a conclusion is reached that extinguishment of rights in shares on liquidation of a company is deemed to be transfer for operation of section 46(2) read with section 48, it is reasonable to carry that legal fiction to its logical conclusion to make it applicable in all cases of extinguishment of such rights, whether as a result of some receipt or nil receipt, so as to treat the subjects without discrimination. Where there does not appear to be ground for such different treatment the Legislature cannot be presumed to have made deeming provision to bring about such anomalous result.

(Emphasis supplied)

17. This Court in the case of ***Anarkali Sarabhai v. CIT*** reported in (1997) 3 SCC 238 observed that the reduction of share capital or redemption of shares is an exception to the rule contained in Section 77(1) of the Companies Act, 1956 that no company limited by shares shall have the power to buy its own shares. In other words, the Court held that both reduction of share capital and redemption of shares involve the purchase of its own shares by the company and hence will be included within the meaning of transfer under Section 2(47) of the Income Tax Act, 1961. The relevant observations are reproduced hereinbelow:

"21. The Bombay High Court in Sath Gwaldas Mathuradas Mohata Trust v. CIT [(1987) 165 ITR 620 (Bom)] dealt with the question which has now arisen in this case. There the question was whether the amount received by the assessee on redemption of preference shares was liable to tax under the head "capital gains". After referring to the

meaning given to "transfer" by Section 2(47) of the Income Tax Act, the Court held:

> *"Here, a regular 'sale' itself has taken place. That is the ordinary concept of transfer. The company paid the price for the redemption of the shares out of its fund to the assessee and the transaction was clearly a purchase. As rightly observed by the Tribunal, if the company had purchased a valuable right, the assessee had sold a valuable right. 'Relinquishment' and 'extinguishment' which are not in the normal concept of transfer but are included in the definition by the extended meaning attached to the word are also attracted in the transaction. The shares were assets and they were relinquished by the assessee and thus relinquishment of assets did take place. The assessee by virtue of his being a holder of redeemable cumulative preference shares had a right in the profits of the company, if and when made, at a fixed rate of percentage. Quite obviously, this was a valuable right and this right had come to an end by the company's redemption of shares. Thus, the transaction also amounted to 'extinguishment' of right. Under the circumstances, viewed from any angle, there is no escape from the conclusion that Section 2(47) was attracted and that the amount of Rs 50,000 received by the assessee was liable to be taxed under the head 'Capital gains'."*

22. The view taken by the Bombay High Court accords with the view taken by the Gujarat High Court in the judgment under appeal. In the judgment under appeal, it was pointed out that the genesis of reduction or redemption of capital both involved a return of capital by the company. The reduction of share capital or redemption of shares is an exception to the rule contained in Section 77(1) that no company limited by shares shall have the power to buy its own shares. When it redeems its preference shares, what in effect and substance it does is to purchase preference

shares. Reliance was placed on the passage from Buckley on the Companies Acts, 14th Edn., Vol. I, at p. 181:

> *"Every return of capital, whether to all shareholders or to one, is pro tanto a purchase of the shareholder's rights. It is illegal as a reduction of capital, unless it be made under the statutory authority, but in the latter case is perfectly valid."*

(Emphasis supplied)

18. In view of the aforesaid, we are of the view that the reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the assessee would be squarely covered within the ambit of the expression "sale, exchange or relinquishment of the asset" used in Section 2(47) the Income Tax Act, 1961.

19. As a result, this petition fails and is hereby dismissed.

Result of the case: Petition dismissed.

†*Headnotes prepared by:* Divya Pandey

[2025] 1 S.C.R. 446 : 2025 INSC 34

Sanjay Dutt & Ors.
v.
The State of Haryana & Anr.

(Criminal Appeal No. 11 of 2025)

02 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

According to the Range Forest Officer, the appellants (director and office bearers of the company) had illegally uprooted trees with JCB, destroyed them, and violated the section 4 of the Punjab Land Preservation Act, 1900. The question that arises for consideration is whether vicarious liability that can be attached to any of the directors or any office bearers of the company.

Headnotes†

Punjab Land Preservation Act, 1900 – s.4 r/w. s.19 – A license/necessary permission for development of the land in the specified area was granted in favour of a company – Complaint lodged by the Range Forest Officer – It was alleged that the appellants (director and office bearers of the company) had illegally uprooted trees and violated provisions of the Act, 1900 – The Presiding officer-cum-JMIC, Special Environment Court took cognizance of the complaint and issued process for the offence punishable u/s.19 of the Act, 1900 – Correctness:

Held: In the Scheme of the Act, 1900, there is no vicarious liability that can be attached to any of the directors or any office bearers of the company – It is the individual liability or the act that would make the person concerned liable for being prosecuted for the offence punishable u/s.19 of the Act, 1900 – Having regard to the nature of the allegations, it is difficult to take the view that the appellants herein are responsible for the alleged offence – There are no allegations worth the name in the complaint that the three appellants herein are directly responsible for uprooting of the trees with the aid of Bulldozers or JCB machines or causing damage to the environment – The

persons who were actually found at the site felling the trees have not been arrayed as accused in the complaint – Although the license/necessary permission for development of the land in the specified area had been granted in favour of the company, yet for the reasons best known to the complainant the company has not been arrayed as an accused in the complaint – While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic – It depends on specific circumstances, particularly the interplay between the director's personal actions and the company's responsibilities – A director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability – Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable – In the instant case, the allegations which find place against the appellants herein in their personal capacity are absolutely vague – No case could be said to have been made out for putting the three appellants to trial for the alleged offence – The Court concerned could not have issued process for the alleged offence – Thus, the impugned complaint and order taking cognizance of the said complaint is hereby quashed. [Paras 10, 11, 18]

Principle – Vicarious Liability – Provision in statute – Requirement of:

Held: It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so – Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent – The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable – For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question. [Para 13]

Case Law Cited

Maharashtra State Electricity Distribution Company Limited and Anr. v. Datar Switchgear Limited and Ors. [2018] 1 SCR 733 : **(2010) 10 SCC 479 – referred to.**

List of Acts

Punjab Land Preservation Act, 1900; Code of Criminal Procedure, 1973.

List of Keywords

Vicarious Liability; Directors; Personal Capacity; Wrongful act of employees; Criminal Liability of officer of company; Specific Provision in Statute; Criminal Intent; Specific Act.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 11 of 2025

From the Judgment and Order dated 08.12.2022 of the High Court of Punjab & Haryana at Chandigarh in CRMM No. 55268 of 2022

Appearances for Parties

Ms. Meenakshi Arora, Sr. Adv., Sumesh Malhotra, Vikas Singh, Pawan Bhardwaj, Jayesh Yadav, Yashvi, Ms. Russai Sidhu, Ms. Chitra Singh, Lokesh Kumar Choudhary, Advs. for the Appellants.

Akshay Amritanshu, Ms. Drishti Saraf, Ms. Pragya Upadhyay, Ms. Swati Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 08-12-2022 in CRMM No.55268 of 2022 by which the High Court rejected the petition filed by the appellants herein invoking Section 482 of the Code of Criminal Procedure for the purpose of

quashing of complaint no. 41 of 2022 lodged by the Range Forest Officer for the alleged offence under Section 4 of the Punjab Land Preservation Act, 1900 (for short "the Act, 1900") punishable under Section 19 of the Act, 1900.

3. We have heard Ms. Meenakshi Arora, the learned senior counsel appearing for the appellants and Mr. Akshay Amritanshu, the learned counsel appearing for the respondents.

4. The short point that falls for our consideration is whether the plain reading of the complaint lodged by the Range Forest Officer discloses commission of any offence alleged to have been committed under Section 4 read with Section 19 of the Act, 1900.

5. The complaint reads thus:-

"PC No.1G/2022-23
Case No.41/22
7-9-22

IN THE COURT OF HON'BLE PRESIDING OFFICER
SPECIAL ENVIRONMENT COURT, FARIDABAD

IN THE MATTER OF
Range Forest Officer Gurugram .....Applicants

Vs.

(1) Satpal Singh Project Manager

(2) Kamal Sehgal General Manager

(3) Sanjay Dutt Director, Sec-113

Bajgera Gurugram

.....Respondents

INDEX

S.No.	Particular	Page No.
1.	Report of Forest etc.	1-2
2.	Notice issued to Forest Criminals	3-4
3.	Form No.21	5-6

4.	Form No.22	7-8
5.	Notification	9-10
6.	Statement of Forest Guard	11-12
7.	Statement of Forest Inspector	13-14
8.	Site plan of Forest crime scene	15-16
9.	Reply of forest criminal	17-19

xxxx xxxx xxxx xxxx

Sd/-
Range Forest Officer,
Gurugram
Forest Crime Report

Forest Department, Government of Haryana

FOR Book No.0495 FOR No.079

Forest Division	Gurugram
Range/Bloc/Beat	Gurugram/Mullanpur/Jhadsa
Reach/Name of the place	Sec-113-Gate vida GGM
FOR No. (Date, Day & Time)	079/10495-02/09/2021
Name of the report issuing officer	Hansraj
Source of information about the crime	Self patrolling/~~informer/complaint~~
Date/Day/Time of the commission of the crime	
Name and designation of the Investigating Officer	Sh. Virender Kumar Sr. Inspector
Description of the crime/ incident	No/If yes then No.
Act violated	Section
Indian Forest Act, 1927	

<table>
<tr><td colspan="2">Wild Life (Protection) Act, 1972</td><td colspan="5"></td></tr>
<tr><td colspan="2">Punjab Land Conservation Act, 1900</td><td colspan="5">Sec-4</td></tr>
<tr><td colspan="2">Indian Penal Code</td><td colspan="5"></td></tr>
<tr><td rowspan="4">Description of criminal</td><td>Name</td><td>Father's Name</td><td>Age</td><td>Caste</td><td colspan="2">Address</td></tr>
<tr><td>(1) Satpal Singh</td><td>Project Manager</td><td colspan="4" rowspan="3">Sec-113, Gate Vida Bajgeda Gurugram</td></tr>
<tr><td>(2) Kamal Sehgal</td><td>General Manager</td></tr>
<tr><td>(3) Sanjay Dutt</td><td>Director</td></tr>
<tr><td colspan="7">Description of confiscated articles</td></tr>
<tr><td rowspan="4">Details of confiscated forest produce</td><td>Type</td><td>Type/ Size</td><td>Numbers</td><td>Dead</td><td colspan="2">Compensation amount</td></tr>
<tr><td colspan="6">(1) Kikkar =7 (iv) (3) _____small plants = 62</td></tr>
<tr><td colspan="6">(2) Kikkar = 5 (iv) (4) _____ (iv) = 46</td></tr>
<tr><td colspan="6">(5) ,, ,, (v) = 72</td></tr>
<tr><td></td><td colspan="6">(6) Misc. (u/s) = 126</td></tr>
<tr><td rowspan="6">Details of vehicle seized</td><td>Type</td><td>Regd. No.</td><td>Color</td><td>Model</td><td colspan="2">Manufacture date</td></tr>
<tr><td>xxxxx</td><td colspan="5">Total=ABSTRFC</td></tr>
<tr><td>xxxxxx</td><td>U/s</td><td>V</td><td>IV</td><td colspan="2">Total</td></tr>
<tr><td></td><td>--</td><td>7</td><td>5</td><td colspan="2">12</td></tr>
<tr><td></td><td>126</td><td>72</td><td>46</td><td colspan="2">244</td></tr>
<tr><td>Total</td><td>126</td><td>79</td><td>51</td><td colspan="2">256</td></tr>
<tr><td>Tools/ Weapons</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxx</td><td colspan="2">xxxxxx</td></tr>
<tr><td>Others, if any</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxx</td><td colspan="2">xxxxxx</td></tr>
<tr><td>Mark the correct</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxxx</td><td>xxxxx</td><td colspan="2">xxxxxx</td></tr>
</table>

Signature of Informer/ Complainant/ Witness Sd/-		Beat Incharge Sd/-
Signature/Thumb Impression of accused		F.R.O. Name Rank Dated

PC No.1G/2022-23

Notice No.219.G
Dated: 2/9/2021

Notice
Indian Forest Act, 1900 Sec-4

Name : (1) Satpal Singh Project Manager

Address: (2) Kamal Sehgal General Manager

(3) Sanjay Dutt Director,
Sec-113, Gate Vida
Bajgera Gurugram

Forest Damage Report No.079/495 has been received against you. Due to the forest crime committed by you, the environment has been harmed. According to damage report you have illegally uprooted trees situated in the area of Sec-113 Gate Vida, Gurugram, with JCB, destroyed them, and have violated the Sec-4 of the Indian Forest Act PLPA, 1900. You are hereby informed through this notice that you should appear before the undersigned on or before 7-9-2021 and explain your position that why a complaint should not be filed against you in the Environment Court, Faridabad as per the above said Indian Forest Act.

Forest Block Officer

Forest Area: Sultanpur

Range: Gurugram

PC No.1G/2022-23

Case No…… Description of incident Range…. Police Station….District

1	2	3
Name and address of witnesses	Regarding which matter	Description of statement, which the witnesses have hope for.
Hansaraj Sr. I I/C Gurugram and Jhadsa Beat Virender Singh I/C Sultanpur Block Forest Officer I/C Gurugram Range	According to FOR No.79/495, the accused have committed violation of Section 4 of the PLPA, 1900 by uprooting 256 trees of Kikkar- and xxxx and 62 plants of xxxxx with JCB from Sec-113, Gate Vida, Gurugram.	(1) Forest Guard will depose according to FOR (2) Forest Inspector will depose according to FOR (3) Forest Officer will depose according to FOR
No.I Description of case, which is to be written on all		
Sd/- Sd/-		

Notification issued under Section 4 of the Act, 1900

Government of Haryana

Forest Department

Order

Dated, January 4, 2013

No.S.O.8/P.A.2/1900/S.4/2013-Whereas the Governor of Haryana is satisfied after due inquiry, that for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900 (Punjab Act 2 of 1900), the regulations, the conditions and the prohibition set out hereinafter are necessary.

Therefore, now, in exercise of the powers conferred under Section 4 of the above said Act, the Governor of Haryana, hereby in the Schedule given below, specifically prohibits the following works in the specified areas, for a period of fifteen years from the date of publication of this Order in the Official Gazette, which has been notified under Section 3 of the above said rule by the Government of Haryana, Forest Department vide Notification No. S.O.81/ P.A.2/1900/S.3/2012 dated 19th December, 2012.

a. The cutting of trees or timber other than Safeda, Popular, Bacain, Bass, Toot and Alanthak, and the collection or removal of flowers, fruits and any produce of different forest, except for the actual domestic or any manufacturing process. Provided that the land owner may sell trees or timber after obtaining a permit from the concerned Divisional Officer before doing so. Such permit shall prescribe such conditions for any sale as may be deemed necessary from time to time in the interest of forest conservation and 11 state farmers will be free to sell their trees to any person/Agency/ Haryana and Development Corporation Limited at their will. So as to enable them to get remunerative price for their produce, provided that the land owner may sell their trees after obtaining permission to do so from the concerned Divisional Forest Officer.

P.C. No.1G/2022-23

FOR No.79/495

Dated 2-9-2021

Statement of Forest Guard

Sir,

The spot was inspected. The accused has uprooted the tress standing on the inspected spot through JCB, the dt. of which has been recorded.

Sd/-

Sd/-

Certified to be true translation

Advocate

P.C. No.1G/2022-23

FOR No.79/495

Dated 2-9-2021

Statement of Forest Inspector

Sir,

I do hereby solemnly affirm that upon receiving FOR No.79/495 dated 2-9-2021, the spot was inspected. Wherein on the spot at Sec-113, Gate Vida, Bajgera, Kikkar and different types of trees were found to be uprooted with the JCB and small plants of different types were destroyed. According to FOR, the damage is found to be correct. The accused were issued notice for violating Section 4 of the PLPA, 1900. But the accused did not give any satisfactory answer. In this FOR, after preparing PC case of the accused, the same was given to Forest Range Office, Gurugram for presenting before the Environment Court, Faridabad. This is my statement

Sd/-

6. It appears from the materials on record that the Presiding Officer-cum-JMIC, Special Environment Court Faridabad took cognizance of the complaint, referred to above and issued process for the offence punishable under Section 19 of the Act, 1900. The order issuing process reads: -

> "DFO Vs Satpal etc
>
> Present Sh Gordhan Das, Forester; Gurugram on behalf of the complainant
>
> Heard on the point of summoning of accused In the challan and the documents attached thereto, it is alleged by the complainant that on 02.09.2021, in the area of sector 113 Gate Vida Gurugram, (this area has been notified under the Forest Act, so, same belongs to the Forest Department), the accused destroyed 256 trees using JCB It is also

claimed by the complainant that the illegal act committed by the above named accused, has caused a loss to the tune of Rs 90580/- (Rupees Ninty Thousand Five Hundred Eighty Only) to the Forest Department.

In view of the allegations leveled against the accused in the challan and perusal of original documents appended herewith, this court is of the opinion that a prima-facie case is made out against the accused for indulging in said illegal activity which led to the commission of an offence, punishable u/s 19 of the Punjab Land Preservation Act, 1900.

Accordingly, accused is hereby ordered to be summoned on 07.09.2022 and same is directed to appear in person in the court.

(Seema)
PO Spl Env Court,
Faridabad UID HR0387
02.05.2022"

7. We are informed that the aforesaid complaint bearing CIS No.COMA-134-2024 has now been transferred to the district Court of Judicial Magistrate-1st Class, Gurugram.

8. It is not in dispute that so far as the appellant no.1 is concerned he is the Managing Director and Chief Executive Officer of a company namely TATA Realty and Infrastructure Limited and Tata Housing Development Co. Ltd. So far as the appellant no.2 is concerned, he at the relevant point of time was the General Manager and is currently the Assistant Vice President of Tata Realty and Infrastructure Limited in its Corporate Relations Group and so far as the appellant no.3 is concerned he at the relevant point of time was the erstwhile employee/Senior Manager of the company namely 'Sector 113 Gatevida Developers Private Limited' (formerly known as Lemon Tree and Developers Private).

Relevant Provisions of Law:

9. Section 4 of the Act, 1900 reads thus:-

"4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.— In

respect of areas notified under section 3 generally or the whole or any part of any such area, the Provincial Government] may, by general or special order temporarily regulate, restrict or prohibit—

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;

(b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3;

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bonafide domestic or agricultural purposes [of rightholder in such area];

(d) the setting on fire of trees, timber or forest produce;

(e) the admission, herding, pasturing or retention of sheep,[goats or camels];

(f) the examination of forest-produce passing out of any such area; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom, or to pasture sheep,[goats or camels] or to cultivate or erect buildings therein and the production and return of such permits by such persons."

Section 19 of the Act, 1900 reads thus:-

"19. Penalty for offences.— Any person who, within the limits of any area notified under section 3, commits any breach of any regulation made, [restriction or prohibition imposed, order passed or requisition made under sections 4, 5, 5-A, or 7-A] shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both"

10. We take notice of the fact that having regard to the Scheme of the Act, 1900, there is no vicarious liability that can be attached to any of the directors or any office bearers of the company. It is the individual liability or the act that would make the person concerned liable for being prosecuted for the offence punishable under Section 19 of the Act, 1900. Having regard to the nature of the allegations, it is difficult for us to take the view that the appellants herein are responsible for the alleged offence. There are no allegations worth the name in the complaint that the three appellants before us are directly responsible for uprooting of the trees with the aid of Bulldozers or JCB machines or causing damage to the environment. The persons who were actually found at the site felling the trees have not been arrayed as accused in the complaint. Although the license / necessary permission for development of the land in the specified area had been granted in favour of the company, yet for the reasons best known to the complainant the company has not been arrayed as an accused in the complaint.

11. It appears that the Courts below proceeded on the erroneous assumption that the three appellants herein being responsible officers of the company are liable for the alleged offence. While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic. It depends on specific circumstances, particularly the interplay between the director's personal actions and the company's responsibilities. A director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company's liability. Mere authorization of an act at the behest of the company or the exercise of a supervisory role over certain actions or activities of the company is not enough to render a director vicariously liable. There must exist something to show that such actions of the director stemmed from their personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties. Thus, where the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. There has to be a specific act attributed to the director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.

12. At the same time, wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. When it comes to penal provisions, vicarious liability of the managing director and director would arise provided any provision exists in that behalf in the statute. Even where such provision for fastening vicarious liability exists, it does not mean that any and all directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.

13. It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question.

14. The allegations which find place against the appellants herein in their personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegations to constitute the vicarious liability.

15. When jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the Court concerned should remain vigilant & apply its mind carefully before taking cognizance of a complaint of the present nature.

16. The High Court failed to pose unto itself the correct question i.e., as to whether the complaint even if given face value and taken to be correct in its entirety would lead to the conclusion that the appellants herein were personally liable for the offence under

Section 4 of the Act, 1900 made punishable under Section 19 of the Act, 1900.

17. In Maharashtra State Electricity Distribution Company Limited and Anr., v. Datar Switchgear Limited and Ors., as reported in (2010) 10 SCC 479, wherein, the Chairman of the Maharashtra State Electricity Board was made an accused for the offence under Sections 192 and 199 respectively read with Section 34 of the IPC, this Court observed thus:

> "30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh: (SCC p.667, para 19)
>
> > "19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself."
>
> (Emphasis supplied)

18. In such circumstances, referred to above, no case could be said to have been made out for putting the three appellants to trial for the alleged offence. The Court concerned could not have issued process for the alleged offence.

19. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned complaint and order taking cognizance of the said complaint is hereby quashed.

20. We clarify that if it is the case of the department that the company has committed any breach or violation of any of the conditions imposed at the time of grant of license, then it is always open for authority concerned to proceed against the company for violation of such terms and conditions.

21. Pending application(s), if any, stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 1 S.C.R. 462 : 2025 INSC 55

Rina Kumari @ Rina Devi @ Reena

v.

Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another

(Criminal Appeal No. 161 of 2025)

10 January 2025

[Sanjiv Khanna, CJI and Sanjay Kumar,* JJ.]

Issue for Consideration

Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4), Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home.

Headnotes†

Code of Criminal Procedure, 1973 – s.125(4) – Disqualification under, when not attracted – Wife's right to maintenance u/s.125, CrPC – Hindu Marriage Act, 1955 – s.9 – Decree for restitution of conjugal rights obtained by respondent No.1-husband – Non-compliance therewith by the appellant-wife – If would be sufficient to attract the disqualification u/s.125(4):

Held: No – Mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification u/s.125(4) or be determinative straightaway of her right to maintenance – It would depend on the facts of each case to be decided, on the evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree – Restitution decree was passed on 23.04.2022 – Admittedly, there was no attempt made at reconciliation after 2017 – However, having secured the restitution decree, respondent No.1 did nothing – He neither sought execution of the decree or a decree of divorce – The stalemate created by Respondent No.1 reflects his lack of bonafides and demonstrates his attempt to disown all responsibility towards his wife – His conduct in completely ignoring the appellant after she suffered the miscarriage of their child added to her suffering due to the ill-treatment in her matrimonial home – Respondent No.1's admission that he did not bear the expenditure

* Author

for her treatment and her unrebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her – Therefore, she had just cause to not return to her matrimonial home, despite the restitution decree – Appellant had more than sufficient reason to stay away from the society of Respondent No.1 – Hence, her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights cannot be held against her – The disqualification u/s.125(4), CrPC was thus, not attracted – High Court erred in applying the same holding that the appellant was not entitled to the maintenance granted to her by the Family Court – Impugned judgment set aside – Order of the Family Court restored. [Paras 29, 35, 37-39]

Code of Criminal Procedure, 1973 – Maintenance proceedings – Nature:

Held: Even if non-compliance with an order for payment of maintenance entails penal consequences, like other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings – Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings. [Para 30]

Code of Criminal Procedure, 1973 – Maintenance – Statutory scheme – Discussed. [Paras 8, 9]

Words and Phrases – Mental cruelty; "Judgments in rem"; "Judgments in personam" – Evidence Act, 1872 – ss.40-43 – Bharatiya Sakshya Adhiniyam, 2023 – ss.34-37 – Discussed. [Paras 32, 33, 36]

Case Law Cited

Chaturbhuj v. Sita Bai, 2007 INSC 1190 **:** [2007] 12 SCR 577 **: (2008) 2 SCC 316;** *Bhuwan Mohan Singh v. Meena and Others,* 2014 INSC 490 **:** [2014] 8 SCR 858 **: (2015) 6 SCC 353;** *Badshah v. Urmila Badshah Godse and Another,* 2013 INSC 703 **:** [2013] 10 SCR 259 **: (2014) 1 SCC 188;** *Rajnesh v. Neha and Another* 2020 INSC 631 **:** [2020] 13 SCR 1093 **: (2021) 2 SCC 324;** *Shamima Farooqui v. Shahid Khan,* 2015 INSC 283 **:** [2015] 4 SCR 137 **: (2015) 5 SCC 705;** *Kirtikant D. Vadodaria v. State of Gujarat and Another* [1996] Supp. 2 SCR 45 **: (1996) 4 SCC 479;** *Amrita*

Singh v. Ratan Singh and Another **(2018) 17 SCC 737;** *Shanti Kumar Panda v. Shakuntala Devi,* 2003 INSC 596 **:** [2003] Supp. 5 SCR 98 **: (2004) 1 SCC 438***; Mst. Jagir Kaur and Another v. Jaswant Singh* [1964] 2 SCR 73 **: AIR 1963 SC 1521;** *Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another* [2005] 2 SCR 708 **: (2005) 4 SCC 370;** *K.G. Premshankar v. Inspector of Police and Another* [2002] Supp. 2 SCR 350 **: (2002) 8 SCC 87;** *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others* [1978] 3 SCR 782 **: (1978) 4 SCC 70;** *Parveen Mehta v. Inderjit Mehta* **(2002) 5 SCC 706;** *Rohtash Singh v. Ramendri (Smt.) and Others,* 2000 INSC 115 **:** [2000] 2 SCR 58 **: (2000) 3 SCC 180 – referred to.**

K. Narayana Rao v. Bhagyalakshmi, **1983 SCC OnLine Kar 190 : (1984) 1 Kant LJ 451 : 1984 Cri LJ 276 (Kant);** *Fakruddin Shamsuddin Saiyed v. Bai Jenab,* **AIR 1944 Bom 11;** *Sampuran Singh v. Gurdev Kaur and Another,* **1985 Cri LJ 1072 (P&H);** *Amina Mohammedali Khoja v. Mohammedali Ramjanali Khoja and Another,* **1985 SCC OnLine Bom 99 : 1985 Cri LJ 1909;** *Kavungal Kooppakkattu Zeenath v. Mundakkattu Sulfiker Ali,* **2008 SCC OnLine Ker 78 : (2008) 3 KLJ 331;** *Subal Das v. Mousumi Saha (Das) and Another,* **2017 SCC OnLine Tri 175;** *Babita v. Munna Lal,* **2022 SCC OnLine Del 4933;** *Shri Mudassir v. Shirin and Others Criminal Revision Application No. 268 of 2022, decided on 09.02.2023; Smt. S.R. Ashwini v. G. Harish,* **NC: 2024: KHC: 14466 : RPFC No.104 of 2018;** *Girishbhai Babubhai Raja v. Smt. Hansaben Girishchandra and Another,* **1985 SCC OnLine Guj 161 : (1986) GLH 778;** *Hem Raj v. Urmila Devi and Others,* **1996 SCC OnLine HP 116 : (1997) 1 HLR 702;** *Ravi Kumar v. Santosh Kumari,* **1997 SCC OnLine P&H 529 : (1997) 3 RCR (Cri) 3 (DB) – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Hindu Marriage Act, 1955; Evidence Act, 1872; Civil Procedure Code, 1908; Bharatiya Sakshya Adhiniyam, 2023.

List of Keywords

Decree for restitution of conjugal rights; Non-compliance; Maintenance; Absolved; Section 125 of the Code of Criminal Procedure, 1973; Wife's right to maintenance; Disqualification

under Section 125(4) of the Code of Criminal Procedure, 1973; Family Court; Suit for restitution; Refusal to live with husband; Refusal/desertion; Reconciliation; Lack of bonafides; Matrimonial home; Mental cruelty; Responsibility towards his wife; Miscarriage; Ill-treatment; Just cause; More than sufficient reason; Stay away from the society of husband; Maintenance proceedings; Nomenclature; Criminal proceedings; Mental cruelty; "Judgments in rem"; "Judgments in personam".

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 161 of 2025

From the Judgment and Order dated 04.08.2023 of the High Court of Jharkhand at Ranchi in CRR No. 440 of 2022

Appearances for Parties

Ms. Mohini Priya, Ms. Sayesha Gambhir, Advs. for the Appellant.

Anup Kumar, Ms. Pragya Choudhary, Mrs. Neha Jaiswal, Shivam Kumar, Ms. Shruti Singh, Vaibhav Prasad Deo, Vishnu Sharma, Ms. Madhusmita Bora, Shiv Ram Sharma, Pawan Kishore Singh, Dipankar Singh, Mrs. Anupama Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J.

1. Leave granted.

2. *Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4) of the Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home?*

3. This intriguing question was answered in the affirmative by a learned Judge of the Jharkhand High Court, *vide* order dated 04.08.2023 in Criminal Revision No. 440 of 2022. Aggrieved, Rina Kumari @ Rina Devi @ Reena, the wife, is in appeal.

4. The appellant, Reena, and respondent No. 1, Dinesh Kumar Mahto @ Dinesh Kumar Mahato, were married on 01.05.2014. They parted ways in August, 2015, and Reena started living at her parental home. Original (MTS) Suit No. 495 of 2018 was instituted by Dinesh on 20.07.2018 before the Family Court, Ranchi, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Reena contested the suit by filing her written statement on 25.04.2019. Dinesh claimed that Reena left the matrimonial home on 21.08.2015 and did not return thereafter. According to him, attempts were made during August and October, 2017, to bring her back but she refused to come. He stated that his parents were very old and needed to be taken care of but Reena was not there to do so. On the contrary, Reena asserted that she was subjected to torture and mental agony by Dinesh, who demanded ₹5 lakh to purchase a four-wheeler. She alleged that he had extramarital relations. Further, she stated that she suffered a miscarriage on 28.01.2015 but Dinesh did not even come to see her from his workplace at Ranchi and it was her brother who took her to Dhanbad for medical care. She claimed that it was Dinesh who persuaded her to go to her parental home in August, 2015, on the occasion of Raksha Bandhan and he never truly tried to bring her back thereafter. She claimed that it was she who had gone to her matrimonial home in the year 2017 along with her relations but they were forced to return as Dinesh and his family members treated them badly. She stated that she was ready to return to her matrimonial home if Dinesh did not demand money to purchase a car and if she was not ill-treated by him and his family members. Her further conditions were that she should be allowed to use the washroom/toilet in the house, as she was not allowed to do so earlier, and she should also be allowed to use an LPG stove to prepare food, as she had to do so by using wood and coal hitherto. She concluded her written statement by asserting that the suit for restitution filed by Dinesh was nothing but a tool to save himself from the effect of laws which were put in place for women's safety and prayed that the suit be dismissed with costs. Reena, despite filing the above written statement, failed to appear thereafter before the Family Court.

5. By judgment dated 23.04.2022, the learned Additional Principal Judge-II, Additional Family Court, Ranchi, decreed Dinesh's suit for restitution of conjugal rights. Therein, it was noted that Dinesh

had attempted to bring his wife back only once but, relying on the evidence of his witnesses, the Family Court concluded that he wanted to live with her as husband and wife. As no evidence was adduced by Reena, the Family Court held against her as regards her allegation that Dinesh demanded ₹5 lakh to purchase a car and her allegation of ill treatment and torture by him and his family members. As to her two conditions, the Family Court noted that Dinesh was a Junior Lineman in Jharkhand State Electricity Board and observed that he would be expected to provide an LPG stove to his wife to prepare food. Opining that there must be something more serious than the ordinary wear and tear of married life for a wife to withdraw from the society of her husband, the Family Court held in Dinesh's favour. He was, however, directed to ensure the respect and dignity of his wife and to see that her conditions with regard to cooking and toilet facilities were complied with. Reena was directed to resume conjugal life with Dinesh within two months. Admittedly, Reena did not abide by this decree.

6. Significantly, in the meanwhile, on 10.08.2018, Reena lodged a complaint under Section 498A IPC against Dinesh, in C.P. Case No. 3270 of 2018. As a result of this, he was sent to prison and was consequently suspended from service for some time. The case is stated to be pending. Thereafter, on 03.08.2019, Reena instituted Original Maintenance Case No. 454 of 2019 against Dinesh seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.'). This case was allowed by the learned Principal Judge, Family Court, Dhanbad, *vide* order dated 15.02.2022, i.e., before the decretal of Dinesh's suit for restitution. Therein, the Family Court noted Dinesh's stand that he was ready and willing to keep Reena with full dignity but held, on the evidence adduced, that she was entitled to maintenance. Dinesh's pay-slip (Ex-3) revealed that he was working as a Junior Engineer in the Electricity Board and his net salary, after deductions from the gross salary of ₹62,000/-, was ₹43,211/-. The Family Court held that Dinesh, despite having sufficient means, had neglected to maintain his wife, who was unable make ends meet on her own. The petition was accordingly allowed and Dinesh was directed to pay ₹10,000/- per month to Reena towards maintenance. Such maintenance was held payable from the date of the application, i.e., 03.08.2019, and the arrears were directed to be paid within two months.

7. Challenging this order, Dinesh filed Criminal Revision No. 440 of 2022 before the Jharkhand High Court. A learned Judge allowed the revision by the impugned judgment dated 04.08.2023. Therein, the learned Judge noted that Reena, who deposed as PW-1, was not even cross-examined by Dinesh. Similarly, the other two witnesses who appeared on her behalf were also not subjected to cross-examination. In her deposition, Reena asserted that she was not working and this was confirmed by her brother, Dilip Kumar Mahato (PW-3), who stated that she was completely dependent upon him. Dinesh, in his own cross-examination, denied that it was due to his assault that his wife suffered a miscarriage. He also denied that he had demanded ₹5 lakh in dowry. He, however, admitted that Reena suffered an abortion and that he did not bear any expense in that regard. It was submitted on behalf of Dinesh, that he was ready to pay ₹5,000/- per month to Reena, but not from the date of filing of the maintenance petition, as he was suspended from service during that period owing to his being in judicial custody in relation to the Section 498A IPC case instituted by her. The learned Judge, however, noted that there was a specific finding in the judgment dated 23.04.2022 in Original (MTS) Suit No. 495 of 2018 that Reena had withdrawn from her husband's society without reasonable excuse and that she had not returned to the matrimonial home despite the said decree for restitution of conjugal rights, which she had not even chosen to challenge by way of appeal. The learned Judge, therefore, reasoned that Section 125(4) Cr.P.C. would come to Dinesh's aid and, in consequence, Reena would not be entitled to maintenance. Hence, the learned Judge allowed the revision.

8. Before proceeding to consider the matter on merits, it would be apposite to take note of the statutory scheme. Chapter IX of the Code of Criminal Procedure, 1973, is titled 'Order for Maintenance of Wives, Children and Parents' and comprises Sections 125 to 128. Section 125(1) Cr.P.C. provides to the effect that, if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate children, falling in the prescribed categories, or his parents, who are all unable to maintain themselves, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to pay a monthly allowance, as thought fit, for their maintenance. Notably, Section 125 Cr.P.C. is not of recent origin. It

is analogous to and in continuance of Section 488 of the erstwhile Code of Criminal Procedure, 1898.

9. In its 41st Report submitted on 24th September, 1969, the Law Commission of India, while adverting to Section 488 of the Code of Criminal Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which is a civil matter, in the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them. The Law Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.

10. On the same lines, in ***Chaturbhuj vs. Sita Bai***,[1] this Court observed that the object of maintenance proceedings is not to punish a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy. It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight of destitute wives, children and now, parents, who are left to fend for themselves.

11. In ***Bhuwan Mohan Singh vs. Meena and others***,[2] this Court observed that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. It was held that the concept of sustenance did not necessarily mean 'to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else' and the wife would be entitled in law to lead a life in a similar manner as she would have lived in the house of her husband. This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of the

1 [2007] 12 SCR 577 : (2008) 2 SCC 316

2 [2014] 8 SCR 858 : (2015) 6 SCC 353

benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on legally permissible grounds.

12. Earlier, in ***Badshah vs. Urmila Badshah Godse and another***,[3] this Court held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour. More recently, in ***Rajnesh vs. Neha and another***,[4] this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In ***Shamima Farooqui vs. Shahid Khan***,[5] this Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity. Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he does not have a job or his business is not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, is an absolute right.

14. Such disqualification, by way of an exception, was envisaged under Section 488(4) of the old Code, which is replicated, almost verbatim, in Section 125(4) Cr.P.C. It reads thus:

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3 [2013] 10 SCR 259 : (2014) 1 SCC 188

4 [2020] 13 SCR 1093 : (2021) 2 SCC 324

5 [2015] 4 SCR 137 : (2015) 5 SCC 705

> "Section 125
>
> (4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001)] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

15. The issue, presently, turns upon the applicability of Section 125(4) Cr.P.C. to the case on hand. The question as to whether non-compliance with a decree for restitution of conjugal rights by a wife would be sufficient in itself to deny her maintenance, owing to Section 125(4) Cr.P.C, has been addressed by several High Courts but no consistent view is forthcoming, as their opinions were varied and conflicting.

16. In ***K. Narayana Rao vs. Bhagyalakshmi,***[6] the Karnataka High Court observed that the Court dealing with a maintenance claim under Section 125 Cr.P.C. has to carefully examine and take into consideration the decree for restitution of conjugal rights which has not been complied with by the wife but it would not be bound by all the findings therein, including findings on questions, such as, whether the wife withdrew from the society of the husband; desertion on her part; or her leading an adulterous life. Reference was made to ***Fakruddin Shamsuddin Saiyed vs. Bai Jenab,***[7] wherein the Bombay High Court had held that the Magistrate should not 'surrender his own discretion' simply because the husband was armed with a decree for restitution of conjugal rights.

17. In ***Sampuran Singh vs. Gurdev Kaur and another,***[8] the Punjab & Haryana High Court observed that a wife can still claim maintenance in the presence of a decree for restitution of conjugal rights if the conduct of the husband is such that it obstructs her from obeying the decree.

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6 1983 SCC OnLine Kar 190 = (1984) 1 Kant LJ 451 : 1984 Cri LJ 276 (Kant)

7 AIR 1944 Bom 11

8 Criminal Revision No. 1562 of 1983, decided on 17.01.1985 : 1985 Cri LJ 1072 (P&H)

18. In ***Amina Mohammedali Khoja vs. Mohammedali Ramjanali Khoja and another,***[9] the Bombay High Court noted that an order of maintenance can always be passed in favour of a wife even if her husband obtained a decree for restitution of conjugal rights, unless it is established that she willfully deserted her husband and was not willing to stay with him without reasonable cause or sufficient reason. On facts, it was found that the record did not show that the wife had deserted the husband and was unwilling to stay with him without reasonable cause or sufficient reasons. It was further noted that, after obtaining the decree, the husband had not taken any effective steps to get the decree satisfied as he had made no genuine, honest and sincere efforts to see that his wife comes back to him. It was, therefore, held that he was only interested in a paper decree for restitution of conjugal rights, which he had gotten *ex parte*.

19. In ***Kavungal Kooppakkattu Zeenath vs. Mundakkattu Sulfiker Ali,***[10] the Kerala High Court noted that the expression used in Section 125(4) Cr.P.C. is 'refusal' and not 'failure' to live with the husband and that there is evidently some difference between the two. It was held that 'failure' would mean not doing something that one is expected to do but 'refusal' would mean saying or showing that one would not do or accept something which is offered. In effect, if a husband says he is willing to do something for the wife but she states or shows that she does not want or accept that something which is offered to her, then only there is refusal.

20. In ***Subal Das vs. Mousumi Saha (Das) and another,***[11] the Tripura High Court held that a wife who refuses to comply with a decree for restitution of conjugal rights cannot be deprived of maintenance under Section 125(4) Cr.P.C. It was observed that it would be incongruent to assume that a wife against whom a decree for restitution has been passed is disentitled to maintenance while a wife who has been divorced can still claim the same. It was further observed that the Civil Court's judgment for restitution can only be treated as relevant evidentiary material but the conduct of the wife, i.e., whether she had sufficient reason to refuse to live with the husband,

9 985 SCC OnLine Bom 99 : 1985 Cri LJ 1909

10 2008 SCC OnLine Ker 78 : (2008) 3 KLJ 331

11 2017 SCC OnLine Tri 175 : Criminal Revision Petition No. 89 of 2016, decided on 25.07.2017

has to be assessed by the Magistrate and only thereafter, it could be decided whether she would be entitled to maintenance or not. It was concluded that the restriction imposed by Section 125(4) Cr.P.C. had been substantially diluted, if not virtually negated.

21. In ***Babita vs. Munna Lal,***[12] the Delhi High Court opined that an *ex parte* decree for restitution of conjugal rights would not automatically put an end to the wife's right to maintenance under Section 125 Cr.P.C. It was held that, even if such a case is contested by the wife and is decided in the husband's favour, non-compliance therewith could be taken to be a ground to deny maintenance, provided the Court is satisfied on the strength of evidence that the wife had no justifiable grounds to stay away from the husband. The mere presence of a decree for restitution of conjugal rights was, therefore, held insufficient to disentitle a wife from claiming maintenance, if the conduct of the husband is such that she is unable to obey such a decree or if the husband creates such circumstances that she cannot stay with him. It was noted that even a divorced wife is entitled to maintenance under Section 125 Cr.P.C. and it would be improper and unfair to deny maintenance to a wife merely because she refused to cohabit with the husband, despite having sufficient grounds therefor.

22. In ***Shri Mudassir vs. Shirin and others,***[13] the Bombay High Court noted that mere readiness and willingness on the part of the husband to cohabit with the wife would not be sufficient to absolve him of the liability to pay maintenance, by projecting that the wife left his company without sufficient reason. It was held that if the grounds justified the wife and children staying away from the husband, Section 125(4) Cr.P.C. would have no application.

23. In its recent judgment in ***Smt. S.R. Ashwini vs. G. Harish,***[14] the Karnataka High Court held that there is nothing in law to bar the grant of maintenance under Section 125 Cr.P.C. even if a decree for restitution of conjugal rights is secured by the husband. It was noted that, at the most, such a decree would enable the husband to take that defence in the maintenance proceedings initiated by the wife but, for the Court, it would not be the sole factor to refuse maintenance

12 2022 SCC OnLine Del 4933 : Criminal Revision Petition No. 1001 of 2018, decided on 22.08.2022

13 Criminal Revision Application No. 268 of 2022, decided on 09.02.2023

14 NC: 2024: KHC: 14466 : RPFC No.104 of 2018, decided on 23.02.2024

to her. In the result, it was held that a petition under Section 125 Cr.P.C. could be considered on its own merits independently, without being influenced by the decree for restitution of conjugal rights. It was further held that, even if there is a decree for restitution of conjugal rights, and the wife still does not choose to join the matrimonial home that would not amount to voluntary refusal/desertion which would bar her claim to maintenance under Section 125 Cr.P.C.

24. On the other hand, the Gujarat High Court, in ***Girishbhai Babubhai Raja vs. Smt. Hansaben Girishchandra and another,***[15] observed that when the Civil Court orders the wife to go and stay with her husband and fulfil her marital obligations, it presupposes that she has no justification to be away from the husband and refuse to perform her corresponding marital obligations.

25. A similar view was taken by the Himachal Pradesh High Court in ***Hem Raj vs. Urmila Devi and others,***[16] wherein it was held that, once a Civil Court found in a contested proceeding that the wife had no just or reasonable cause to withdraw her society from the husband, she cannot claim maintenance under Section 125 Cr.P.C. It was observed, on facts, that the wife had not pleaded any subsequent event or circumstance which justified her staying away from her husband in spite of the decree for restitution of conjugal rights passed against her.

26. On the same lines, in ***Ravi Kumar vs. Santosh Kumari,***[17] a Division Bench of the Punjab & Haryana High Court held that a wife against whom a decree for restitution of conjugal rights has been passed by the Civil Court would not be entitled to claim maintenance under Section 125 Cr.P.C. if, in the proceedings of restitution, a specific issue was framed as to whether the wife refused to live with her husband without sufficient reason and the parties were given an opportunity to lead evidence, whereupon specific findings were recorded by the Civil Court against the wife on the issue. It was, however, added that in the event the husband got an *ex parte* decree for restitution, such a decree would not be binding on the Criminal Court exercising jurisdiction under Section 125 Cr.P.C. It was also clarified that if the

15 1985 SCC OnLine Guj 161 : (1986) GLH 778

16 1996 SCC OnLine HP 116 : (1997) 1 HLR 702

17 1997 SCC OnLine P&H 529 : (1997) 3 RCR (Cri) 3 (DB)

decree for restitution of conjugal rights was obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree would not *ipso facto* disentitle the wife to her right to maintenance and the husband would have to approach the Magistrate to get the order granting maintenance cancelled.

27. Now, turning to the decisions of this Court on the point, in ***Kirtikant D. Vadodaria vs. State of Gujarat and another,***[18] it was held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a decree for restitution of conjugal rights against the wife would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was further observed that the mere 'failure' of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance from him, especially as the crucial word carefully chosen in the relevant provision is 'refusal'.

28. In ***Amrita Singh vs. Ratan Singh and another,***[19] this Court held, on facts, that the plea of the husband that his wife had deserted him without reasonable cause and that he was ready to take her back was falsified by the fact that the wife was treated with cruelty and subjected to persistent demands for dowry, resulting in her being ousted from the matrimonial house, whereupon she was compelled to file a criminal complaint under Section 498A IPC ending in the conviction of the husband and his father. The wife was held to have reasonable grounds not to join the husband, thereby entitling her to maintenance.

29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr.P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr.P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree.

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18 [1996] Supp. 2 SCR 45 :(1996) 4 SCC 479

19 (2018) 17 SCC 737

There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr.P.C.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C, as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in ***Shanti Kumar Panda vs. Shakuntala Devi,***[20] this Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in ***Mst. Jagir Kaur and another vs. Jaswant Singh,***[21] a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.

31. Further, in ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another,***[22] while dealing with the contention that an effort should be made to avoid conflict of findings between Civil and Criminal

20 (2004) 1 SCC 438

21 [1964] 2 SCR 73 : AIR 1963 SC 1521

22 [2005] 2 SCR 708 : (2005) 4 SCC 370

Courts, a Constitution Bench pointed out that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

32. The Indian Evidence Act, 1872, distinguishes between judgments in *rem* and judgments in *personam* and Sections 40 to 43 therein stipulates the relevance of existing judgments, orders or decrees in subsequent proceedings in different situations. The relevant provisions are extracted hereunder for ready reference:

> **40. Previous judgments relevant to bar a second suit or trial: -**
>
> The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of a such suit, or to hold such trial.
>
> **41. Relevancy of certain judgments in probate, etc., jurisdiction: -**
>
> A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.
>
> Such judgment, order or decree is conclusive proof—
>
> that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;
>
> that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41: -

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration:

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant. -

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and

the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B, is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A had obtained a decree for the possession of land against B, C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

33. Sections 34 to 37 of the Bharata Sakshya Adhiniyam, 2023, correspond to Sections 40 to 43 of the Indian Evidence Act, 1872, with some modifications. Section 41, as is clear from the extraction hereinabove, specifically deals with instances where an earlier judgment, order or decree constitutes conclusive proof whereas Section 42 provides that an earlier judgment is relevant if it relates to matters of public nature relevant to the inquiry, but such judgments,

orders or decrees are not conclusive proof of that which they state. These provisions were considered in detail by a 3-Judge Bench of this Court in ***K.G. Premshankar vs. Inspector of Police and another***,[23] in the context of when a judgment in a civil proceeding, on the same cause of action, would be relevant in a criminal case, and it was observed thus:

> "30. What emerges from the aforesaid discussion is – (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2)..; (3)..; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.
>
> 31. Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. … Hence, in each and every case, the first question which would require consideration is – whether judgment, order or decree is relevant, if relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

Decisions of this Court manifest that judgments passed on merits in civil proceedings have been accepted as sufficient cause to discharge or acquit a person facing prosecution on the same grounds. This dictum is applied especially in cases where civil adjudication proceedings, like in tax cases, lead to initiation of prosecution by the authorities. Such cases are, however, different as there is a direct connect between the civil proceedings and the prosecution which is launched. The facts and allegations leading to the prosecution directly arise as a result of the civil proceedings. Moreover, the standard

23 [2002] Supp. 2 SCR 350 : (2002) 8 SCC 87

of proof in civil proceedings is a preponderance of probabilities whereas, in criminal prosecution, conviction requires proof beyond reasonable doubt. We do not think the said principle can be applied *per se* to proceedings for maintenance under Section 125 Cr.P.C. by relying upon a judgment passed by a Civil Court on an application for restitution of conjugal rights. Further, the two proceedings are altogether independent and are not directly or even indirectly connected, in the sense that proceedings under Section 125 Cr.P.C. do not arise from proceedings for restitution of conjugal rights.

34. Long ago, in ***Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others***,[24] this Court noted that it is valid to assert that a final determination of a civil right by a Civil Court would prevail against a like decision by a Criminal Court but held that this principle would be inapplicable when it comes to maintenance granted under Section 24 of the Hindu Marriage Act, 1955, as opposed to maintenance granted under Section 125 Cr.P.C. It was noted that the latter provision was a measure of social justice specially enacted to protect women and children falling within the constitutional sweep of Article 15(3) reinforced by Article 39.

35. Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have given such undue weightage to the said judgment and the findings therein. In the process, certain crucial factors were overlooked. Particularly, the fact that the witnesses who appeared on behalf of Reena in the Section 125 Cr.P.C. proceedings were not even cross-examined. It was clear therefrom that Dinesh did not even contest or rebut what they had stated. The fact that Reena was fully dependent on her brother was thus admitted. Further, documents were placed on record in proof of Reena's abortion in January, 2015. In that regard, Dinesh's admission that he did not bear the expenditure for her treatment and her unrebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her. The fact that she was not allowed to use the toilet in the

24 [1978] 3 SCR 782 : (1978) 4 SCC 70

house or avail proper facilities to cook food in the matrimonial home, facts which were accepted in the restitution proceedings, are further indications of her ill-treatment.

36. Pertinently, in ***Parveen Mehta vs. Inderjit Mehta,***[25] this Court held that mental cruelty is a state of mind and feeling of one of the spouses due to the behavioral pattern by the other and, unlike physical cruelty, mental cruelty is difficult to establish by direct evidence. It was observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on cumulatively assessing the attending facts and circumstances in which the two spouses have been living. In a case of mental cruelty, *per* this Court, it would not be the correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the spouse has been subjected to mental cruelty due to the conduct of the other.

37. Applying this standard, Dinesh's conduct in completely ignoring his wife, Reena, after she suffered the miscarriage of their child would have been the proverbial last straw adding to her suffering due to the ill-treatment in her matrimonial home. She, therefore, had just cause to not return to her matrimonial home, despite the restitution decree. Further, the events thereafter or rather, the lack thereof, is relevant. The restitution decree came to be passed on 23.04.2022. Admittedly, there was no attempt made at reconciliation after 2017. However, having secured the said restitution decree, Dinesh did nothing! He neither sought execution of the decree under Order XXI Rule 32 CPC nor did he seek a decree of divorce under Section 13(1A)(ii) of the Hindu Marriage Act, 1955.

38. The reason for this is not far to gather. In ***Rohtash Singh vs. Ramendri (Smt.) and others,***[26] this Court clarified that a wife, who suffered a decree of divorce on the ground of deserting her husband, would not be entitled to maintenance under Section 125 Cr.P.C. as long as the marriage subsisted, but she would be entitled to such

25 (2002) 5 SCC 706

26 [2000] 2 SCR 58 : (2000) 3 SCC 180

maintenance once she attained the status of a divorced wife, in the light of the definition of a 'wife' in Explanation (b) to Section 125(1) Cr.P.C. Dinesh, therefore, sought to protect himself from a claim by Reena for maintenance by projecting the disobeyed restitution decree as a defence and as long as she did not attain the status of a divorced wife, that protection would endure to his benefit. This stalemate of sorts created by Dinesh clearly reflects his lack of *bonafides* and demonstrates his attempt to disown all responsibility towards his wife, Reena. These factors, taken cumulatively, clearly manifest that Reena had more than sufficient reason to stay away from the society of her husband, Dinesh, and her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights, therefore, cannot be held against her. In consequence, the disqualification under Section 125(4) Cr.P.C. was not attracted and the High Court erred grievously in applying the same and holding that Reena was not entitled to the maintenance granted to her by the Family Court.

39. The appeal is accordingly allowed, setting aside the judgment dated 04.08.2023 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 440 of 2022. In consequence, the order dated 15.02.2022 passed by the learned Principal Judge, Family Court, Dhanbad, in Original Maintenance Case No. 454 of 2019 shall stand restored. In furtherance thereof, Dinesh, respondent No. 1 herein, shall pay maintenance @ ₹10,000/- per month to Reena, the appellant, on or before the 10th day of each calendar month. Such maintenance would be payable from the date of filing of the maintenance application, i.e., 03.08.2019. Arrears of the maintenance shall be paid by Dinesh in three equal installments, i.e., the first instalment by 30.04.2025, the second instalment by 31.08.2025 and the third and final instalment by 31.12.2025.

In the circumstances, parties shall bear their own costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 1 S.C.R. 484 : 2025 INSC 71

Ram Pyarey
v.
The State of Uttar Pradesh

(Criminal Appeal No. 1408 of 2015)

09 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Correctness of the order of conviction against the brother-in-law for the offences punishable u/ss.306, 498-A IPC and s.4 of the Dowry Prohibition Act, 1961, in the absence of any cogent evidence.

Headnotes†

Evidence Act, 1872 – s.113A – Presumption as to abetment of suicide by a married women – Invocation of s.113A – When – Deceased died on account of severe burn injuries, by setting herself on fire – Order of conviction and sentence of the appellant-brother-in-law u/ss.306 and 498 IPC and s.4 of the Dowry Prohibition Act, however, acquitted for the offence punishable u/s.304B IPC – Correctness:

Held: When the courts below want to apply s.113A, the condition precedent is that there has to be first some cogent evidence as regards cruelty and harassment – In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightway invoke s.113A and presume that the accused abetted the commission of suicide – No evidence on the basis of which it could be said that the brother-in-law abetted the commission of suicide – Judgment and order of conviction passed by courts below set aside – Penal Code, 1860 – ss.306, 498-A – Dowry Prohibition Act, 1961 – s.4. [Paras 11, 13, 14]

List of Acts

Penal Code, 1860; Dowry Prohibition Act, 1961; Code of Criminal Procedure, 1973; Evidence Act, 1872.

List of Keywords

Abetment to suicide; Presumption as to dowry death; Presumption as to abetment to suicide; Cogent evidence as regards harassment or abetment.

Ram Pyarey v. The State of Uttar Pradesh

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1408 of 2015

From the Judgment and Order dated 06.08.2013 of the High Court of Judicature at Allahabad, Lucknow Bench in CRLA No. 401 of 1993

Appearances for Parties

Bharat Bhushan, Keshav Bansal, Advs. for the Appellant.

K. Parmeshwar, Sr. Adv/A.A.G., Shaurya Sahay, Aditya Kumar, Ms. Ruchil Raj, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. This appeal arises from the judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench dated 6th August, 2013 in Criminal Appeal No. 401 of 1993 by which the High Court dismissed the appeal filed by the appellant herein and three other co-accused and thereby affirmed the judgment and order of conviction passed by the trial court for the offence punishable under Sections 306 and 498-A of the Indian Penal Code, 1860 (for short the "IPC") and Section 4 of the Dowry Prohibition Act, 1961.

2. It appears from the materials on record that the appellant herein is the brother-in-law (Jeth) of the deceased. The deceased was married to one Ram Sajeevan.

3. It is the case of the prosecution that there was harassment at the end of the husband, in-laws and the appellant (Jeth) herein to the deceased.

4. The deceased doused herself with kerosene and set herself on fire on 27-09-1990. She died on account of severe burn injuries. The father of the deceased lodged a First Information Report with the Ajgain Police Station, District Unnao on the very same day. The gist of the complaint lodged by the father of the deceased reads thus:-

"To,
SHO, Police Station Ajgain,
District Unnao:

Sir,

It is respectfully submitted that the complainant Shiv Prasad Sahu, S/o. Laxman Sahu is resident of Village Bhakat, P.S. Kotwali, District Unnao. That the father in law Lal Bahadur., S/o. Jugnu, Village Sambhar Kheda, Majra Nana Tikur, P.S. Ajgain, Distt. Unnao took my daughter Kusum with him on 25.09.1990. That in the intervening night of 26.09.1990 and 27.09.1990 my daughter was killed by burning by her in-laws. Before this they were demanding the buffalo and gold chain in dowry after marriage. And told my daughter Kusum Devi if you will not give the dowry then we will kill you. They threatened her. On that I did not send her to her matrimonial house for one year and on 25.09.1990 my daughter was went to her matrimonial house alongwith her father in law Lal Bahadur, Son of Jugnu. They said that she is our responsibility. However, in the intervening night of 26.09.1990 and 27.09.1990 at about 2.00 A.M. Lal Bahadur, S/o. Jugnu, Ram Sajeevan, S/o. Lal Bahadur, Ram Pyare, S/o. Lal Bahadur, Sonawati, W/o. Lal Bahadur killed my daughter Kusum Devi by burning after pouring kerosene oil on her.

The complaint of the complainant is against all the four accused. Action may kindly be taken under law after reporting the case. Will be highly greatful.

Written by Nand Kishore Sahu,
S/o. Ram Nath, village Rajepur,
P.S. and P.O. Marvi, Distt. Unnao.

Complainant Shiv Prasad Sahu
S/o. Laxman Sahu R/o. Village
Bakhat, Distt. Unnao
27.09.1990"

5. On conclusion of the investigation, charge-sheet was filed for the offence of dowry death punishable under Section 304B of the IPC, against four accused persons which included the appellant herein. The offence being exclusively triable by the Sessions Court was committed under the provisions of Section 209 of the Code of Criminal Procedure. Charges were framed against four accused persons including the appellant herein.

6. It appears that although the original charge framed by the trial court was one for dowry death punishable under Section 304B of the IPC yet, the trial court acquitted all the accused persons for the offence punishable under Section 304-B, however convicted them for the offence of abetment of suicide punishable under Sections 306 and 498A of the IPC respectively.

7. We are informed that the father-in-law and mother-in-law passed away while the appeal before the High Court was pending. So far as, the husband is concerned he has already undergone the sentence as imposed by the trial court. In fact, he did not file any appeal against his conviction.

8. The present appellant who is the brother-in-law of the deceased is here before us with this appeal.

9. We have heard Mr. Bharat Bhushan, the learned counsel appearing for the appellant and Mr. K. Parmeshwar, the learned senior counsel appearing for the State of Uttar Pradesh.

10. We have looked into the oral evidence on record. We have also looked into the nature of the allegations levelled against the appellant herein.

11. We are of the view that there is practically no evidence on the basis of which it could be said that the appellant herein as brother-in-law abetted the commission of suicide. We need not say anything further in the matter.

12. The law as regards the abetment of suicide punishable under Sections 306 of the IPC is now well settled. It appears that the Courts below laid much emphasis on Section 113B of the Evidence Act, 1872 (for short, “the Evidence Act”). Sections 113A & 113B of

the Evidence Act talks about presumption. Sections 113A and 113B respectively read thus:-

> "113A. Presumption as to abetment of suicide by a married woman.— When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
>
> Explanation.— For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).
>
> 113B. Presumption as to dowry death.— When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.
>
> Explanation.— For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

13. It is relevant to note that under Section 113B, the Court shall presume dowry death unlike Section 113A where the provision says that Court may presume abetment of suicide. This is the vital difference between the two provisions which raises presumption as regards abetment of suicide. When the Courts below want to apply Section 113A of the Evidence Act, the condition precedent is that there has to be first some cogent evidence as regards cruelty & harassment. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightway

invoke Section 113A and presume that the accused abetted the commission of suicide.

14. In view of the aforesaid, this appeal succeeds and is hereby allowed. The judgment and order of conviction passed by the trial court as confirmed by the High Court is hereby set aside.

15. The appellant is already on bail. His bail bonds stand discharged.

16. Pending application(s), if any, stands disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 490 : 2025 INSC 72

Dharmendra Kumar Singh & Ors.
v.
The Hon'ble High Court of Jharkhand & Ors.

(Civil Appeal No. 299 of 2025)

15 January 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Issue arose as regards the promotion of the Civil Judges (Senior Division) to Jharkhand Superior Judicial Service.

Headnotes†

Judiciary – Superior judiciary – Jharkhand Superior Judicial Service – Promotion/appointment – Notification for appointment in the Jharkhand Superior Judicial Service – Quota for promotion based upon merit-cum-seniority and passing of suitability test is 65% – Appellants-promotee in the cadre of Civil Judge (Senior Division) participated in the selection process, however not selected – Appellants obtained more than the cut off marks for determining suitability of the candidate, however, persons junior to them, who had secured more marks promoted by preparing merit list – Writ petition by appellants – Dismissed by the High Court on the ground that appellants scored lower than the last selected candidate – Correctness:

Held: Suitability of each candidate has to be tested on his own merit and a comparative assessment cannot be made and the promotion cannot be solely based upon merit list – Appellants successfully qualified the suitability test, they could not have been deprived of their legitimate right of promotion only on account of lower placement in the merit list – Appellants have been subsequently promoted – Appellants entitled for notional promotion from the same date the other officers from the select list prepared by the High Court have been appointed to the post of District Judge in terms of the Notification – Orders passed by

* Author

the High Court set aside – Jharkhand Superior Judicial Services (Recruitment, Appointment and Condition of Service) Rules, 2001 – rr.4, 5. [Paras 4-6]

Case Law Cited

Ravikumar Dhansukhlal Maheta and Another v. High Court of Gujarat and Others [2024] 5 SCR 1074 **: 2024 SCC Online SC 972 – relied on.**

List of Acts

Jharkhand Superior Judicial Services (Recruitment, Appointment and Condition of Service) Rule, 2001.

List of Keywords

Promotion; Civil Judges (Senior Division); Jharkhand Superior Judicial Service; Superior judiciary; Notification for appointment; Quota for promotion based upon merit-cum-seniority; Suitability test; Cadre of Civil Judge (Senior Division); Selection process; Last selected candidate; Comparative assessment; Legitimate right of promotion; Lower placement in merit list; Notional promotion; Post of District Judge; Merit list; Select list; Limited Competitive Examination; Suitability of candidate for promotion; Seniority.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 299 of 2025

From the Judgment and Order dated 29.06.2022 of the High Court of Jharkhand at Ranchi in WPS No. 3771 of 2019

Appearances for Parties

Vijay Hansaria, Sr. Adv., Akhilesh Kumar Pandey, Mrs. Shalini Chandra, Abhishek Kumar Pandey, Ms. Kavya Jhawar, Ms. Nandini Rai, Mrs. Nandita Mishra, Advs. for the Appellants.

Ajit Kumar Sinha, Sr. Adv., Ashwarya Sinha, Saurabh Jain, Ms. Tulika Mukherjee, Beenu Sharma, Venkat Narayan, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Satish Chandra Sharma, J.

1. The present appeal is arising out of judgment dated 29.06.2022 passed by High Court of Jharkhand in Writ Petition (C) No. 3771/2019, by which the High Court has declined to entertain the relief for quashment of notification dated 30.05.2019 whereby the private respondents have been appointed to the post of District Judge in the Jharkhand Superior Judicial Service on promotion in the State of Jharkhand.

2. The facts of the case reveal that appellant No. 1 was initially appointed as Munsif [Civil Judge (Junior Division)] and was promoted on 23.07.2014 in the cadre of Civil Judge (Senior Division) and appellant Nos. 2 and 3 who were initially appointed as Civil Judge (Junior Division) were promoted to the cadre of Civil Judge (Senior Division) on 20.04.2016. In the combined gradation list of judicial officers in the State of Jharkhand, the names of appellant Nos. 1, 2 and 3 find place at serial Nos. 141, 195 and 204 respectively. The High Court of Jharkhand issued a notification dated 19.05.2018 for appointment in the Jharkhand Superior Judicial Service and the appellants participated in the selection process. The rules governing the field known as Jharkhand Superior Judicial Services (Recruitment, Appointment and Condition of Service) Rule, 2001, provides for a process of appointment to the service and Rules 4 and 5 of the said Rules, read as under:

> *"4. APPOINTMENT TO THE SERVICE: Appointment to the Service, which shall in the first instance ordinarily be to the post of Additional District Judge, shall be made by the Governor, in consultation with High Court:*
>
> *(a) by direct recruitment of persons as recommended by the High Court for such appointment under clause (2) of Article 233 of the Constitution of India;*
>
> *(b) by promotion from amongst the Sub-Judges (Civil Judge, Senior Division) on the basis of merit-cum-seniority and passing a suitability test and;*

(c) by promotion on the basis of Limited Competitive Examination of club Judges (Civil Judge, Senior Division) having not less than 5 years service in the same cadre.

5. Of the total post in the cadre of service:-

(i) 65% shall be filled in by promotion from amongst the Sub Judges (Civil Judge, Senior Division) on the basis of merit-cum-seniority and passing a suitability test as may from time to time be prescribed by the High Court.

(ii) 10% shall be filled in by promotion (by way of selection) strictly on the basis of merit through a limited Competitive examination of Sub Judges (Civil Judge, Senior Division) having not less than 5 years service and also having due regard to his service records in the past.

Provided, if candidates are not available for 10% quota, or are not able to qualify in the examination, then vacant post shall be filled up by regular promotion.

(iii) 25% shall be filled in by direct recruitment from the Bar on the basis of written test and viva-voce conducted by the High Court.

(iv) The suitability test as provided in Clause (i) above shall comprise of:-

(a) Interview of 20 Marks,

(b) 60 Marks shall be earmarked on the basis of Service Profile depending on the remarks earned by the Officer in his A.C.R. during last 10 (ten) years of service, which may include the Service as Civil Judge (Junior Division).

The marking pattern shall be as follows for this section:-

Outstanding	-	*6 Marks.*
Very Good	-	*5 Marks.*
Good	-	*4 Marks.*
Satisfactory	-	*3 Marks.*
Average	-	*2 Marks.*
Poor	-	*1 Mark.*

(c) Evaluation of Judgement - 10 Marks.

(d) Maximum of 10 Marks shall be earmarked on the basis of 1 mark against each year of completion of Service as Civil Judge (Senior Division) by the Officer.

The candidate obtaining minimum 40 Marks in aggregate shall be treated suitable for appointment on promotion. However, the intense seniority in the Cadre of Superior Judicial Service of such suitable candidates/Officers shall be determined in terms of Rules 8(b) of these Rules."

3. The aforesaid rules provide for promotion by Limited Competitive examination, promotion from Civil Judge (Senior Division) and by Direct Recruitment. The quota for Direct Recruitment is 25%, the quota for promotion based upon merit-cum-seniority and passing of suitability test is 65% and the remaining is to be filled up by Limited Competitive examination. It is undisputed fact that the cut off marks for determining suitability of a candidate for promotion was fixed as 40 marks and undisputedly appellants have obtained more than 40 marks, however, the persons junior to them were promoted by preparing a merit list and by promoting those who have more marks than the appellants. The appellants' writ petition was dismissed by the High Court on the ground that the appellant No. 1 got 50 marks, appellant No. 2 got 50 marks and appellant no. 3 got 43 marks and the last selected candidate got 51 marks.

4. At the outset, learned counsel for the appellant has straight away drawn the attention of this Court towards the judgment delivered by a Three Judge Bench of this Court in the case of ***Ravikumar Dhansukhlal Maheta and Another Vs. High Court of Gujarat and Others*** 2024 SCC Online SC 972 to contend that in similar circumstances in respect of similar criteria, this Court has held that the suitability of each candidate has to be tested on his own merit and a comparative assessment cannot be made and the promotion cannot be solely based upon merit list. Para 141 of the judgment delivered by this Court reads as under:

*"**141.** We summarise our final conclusion as under:—*

***(A)** What has been conveyed, in so many words, by this Court in All India Judges' Association (3) (supra) is that*

the suitability of each candidate should be tested on their own merit. The aforesaid decision does not speak about comparative merit for the 65% promotional quota. In other words, what is stipulated is the determination of suitability of the candidates and assessment of their continued efficiency with adequate knowledge of case law.

***(B)** For the 65% promotional quota this Court in All India Judges' Association (3) (supra) did not state that after taking the suitability test, a merit list should be prepared and the judicial officers should be promoted only if they fall in the said merit list. It cannot be said to be a competitive exam. Only the suitability of the judicial officer is determined and once it is found that candidates have secured the requisite marks in the suitability test, they cannot be thereafter ignored for promotion.*

***(C)** However, we clarify that for the 65% promotional quota, it is for a particular High Court to prescribe or lay down its own minimum standard to judge the suitability of a judicial officer, including the requirement of comparative assessment, if necessary, for the purpose of determining merit to be objectively adjudged keeping in mind the statutory rules governing the promotion or any promotion policy in that regard.*

***(D)** We find no fault with the promotion process adopted by the High Court of Gujarat as the same fulfils the twin requirements stipulated in paragraph 27 of All India Judges' Association (3) (supra) being : -*

(I) The objective assessment of legal knowledge of the judicial officer including adequate knowledge of case law and;

(II) Evaluation of the continued efficiency of the individual candidates.

***(E)** The four components of the Suitability Test as prescribed under the recruitment notice dated 12.04.2022 comprehensively evaluate (i) the legal knowledge including knowledge of the case law through the objective*

*MCQ - based written test **AND (ii)** the continued efficiency by evaluation of the ACRs, average disposal and past judgments of the concerned judicial officer.*

***(F)** We are of the view that if the contention of the petitioners were to be accepted then it would completely obliterate the fine distinction between the two categories of promotion in the cadre of District & Sessions Judge by way of 65% promotion on the basis of 'Merit-cum-Seniority' and 10% promotion strictly on the basis of merit. In other words, the 65% quota for promotion will assume the character of the 10% quota for promotion by way of a departmental competitive examination which is distinct in its nature since the latter is strictly based on merit.*

***(G)** Deviating from the process of promotion duly followed by the High Court of Gujarat since 2011 would cause grave prejudice to those judicial officers who lost out in the previous selections to the Higher Judicial Service despite having scored higher marks in the suitability test since, judicial officers who were relatively senior were promoted to the cadre of District & Sessions Judges. Accepting the argument of the petitioners would completely flip the process and displace the respondents once again, for a contrary reason."*

5. In light of the aforesaid judgment, as the appellants have successfully qualified the suitability test, they could not have been deprived of their legitimate right of promotion only on account of lower placement in the merit list. At this juncture, it has been brought to the notice of this Court that the appellants have been subsequently promoted and the issue now remains in respect of their seniority alone. In view of the judgment rendered by this Court in the case of ***Ravikumar Dhansukhlal Maheta and Another*** (supra), the appellants are certainly entitled for promotion from the same date the other officers from the select list prepared by the High Court of Jharkhand have been appointed to the post of District Judge in terms of notification dated 30.05.2019.

6. Resultantly, the Civil Appeal is allowed and the orders passed by the High Court of Jharkhand is set aside. The appellants shall be

entitled for notional promotion from the date other officers have been promoted to the post of District Judge in terms of notification dated 30.05.2019. They shall also be entitled for all consequential service benefits, including, seniority, increments, notional pay fixation etc., however, they shall not be entitled for any back wages.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 498 : 2025 INSC 51

Inspector, Railway Protection Force, Kottayam
v.
Mathew K Cherian & Anr.

(Criminal Appeal No. 4169 of 2024)

09 January 2025

[Dipankar Datta* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Whether the act of creating fake/multiple user IDs by an individual, who may or may not be an authorized railway agent, with the intention to procure and supply online tickets through IRCTC portal would constitute an offence under Section 143 of the Railways Act, 1989.

Headnotes†

Railways Act, 1989 – s.143 – In the first of the appeal (lead appeal), M was accused of creating fraudulent user IDs with the Indian Railway Catering and Tourism Corporation web portal to procure and peddle railway tickets for profit, without being an agent authorised to procure and supply railway tickets and, therefore, operating an unauthorised business for procurement and supply of railway tickets – Crime case u/s.143 of the 1989 Act was registered – M filed application u/s.482 CrPC – The High Court, vide the impugned order, quashed the criminal proceedings – In the another connected appeal, the offence alleged against R, an authorised agent, was that he has been supplying e-tickets to various customers, and that these e-tickets had been booked through multiple user IDs – Crime case u/s.143 of the 1989 Act was registered – R filed application u/s.482 before the High Court – The High Court refused to quash the criminal proceedings – Correctness:

Held: S.143, on its plain language, prohibits any person, other than a railway servant or an authorised agent, to conduct the business of procurement and supply of railway tickets – The provision does not specify the modalities of the procurement and supply – Hence, if the natural and ordinary meaning is given to the section, keeping in mind the objective and purpose of the legislation, it admits of no doubt that this provision criminalises unauthorised procurement and supply, irrespective of the mode of procurement

* Author

and supply – The mere fact of the system of e-reservation and e-tickets being introduced after the enactment of the Act does not render the provision in s.143 toothless to combat the illegal sale of e-tickets – S.143, importantly, makes no distinction between physical and online sale of tickets – The mischief that the provision seeks to remedy is that there should not be illegal and unauthorised procurement and sale of tickets, whatever be the mode-physical or online – In the lead appeal, the facts of the case prima facie reveal the commission of an offence u/s.143 of the Act – M, without the authorisation of the railways, was carrying on a business of procurement and supply of railway tickets – The allegations against M taken at face value fulfil the elements required u/s.143(1)(a) of the Act – In the connected appeals, R was an authorised agent of the railways carrying on the business of procurement and supply of railway tickets – S.143 only deals with the actions of unauthorised persons and does not mandate a procedure to be followed by the authorised agents for procuring or supplying tickets to its customers – The nature of allegations against R in the connected appeal, though serious, s.143 would not be attracted insofar as he is concerned – To sum up, M not being an authorised agent has to face the proceedings against him while R, being an authorised agent, cannot be proceeded against u/s.143 of the Act for alleged breach of any of the terms and conditions of the contract – Thus, criminal proceedings against M are restored and the proceedings against R are hereby quashed. [Paras 27, 28, 34, 35, 37, 38, 40]

Interpretation of Statutes – Statutory provision – Subsequent developments:

Held: Statutory interpretation has to follow certain principles which have been formulated through legal precedents – No court can refuse to enforce a provision on the sole basis of the provision predating any subsequent development regarding the ticketing process – If it can be demonstrated that a statutory provision is broad enough to envelop the subsequent developments, even if the developments were not envisioned by the legislature, the provision would stay operational. [Para 21]

Interpretation of Statutes – Language of statute – Addition or deletion of words:

Held: It is settled that if the language of the particular statute under consideration is clear and unambiguous, it is not for the courts

to add to or delete any words from the statute in the guise of ascertaining what could have been the legislative intent. [Para 26]

Case Law Cited

Senior Electric Inspector v. Laxminarayan Chopra [1962] SCR 3 146 : **AIR 1962 SC 159;** *Dharani Sugars and Chemicals Ltd. v. Union of India* [2019] 6 SCR 307 : **(2019) 5 SCC 480;** *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* [1955] 1 SCR 1369 : **AIR 1955 SC 376;** *Ansal Properties & Industries Ltd. v. State of Haryana* [2009] 1 SCR 553 : **(2009) 3 SCC 553 – relied on.**

R.P. Kapur v. State of Punjab [1960] 3 SCR 311 : **1960 SCC OnLine SC 21;** *State of W.B. v. Swapan Kumar Guha* [1982] 3 SCR 121 : **(1982) 1 SCC 561;** *State of Haryana v. Bhajan Lal* [1992] Supp. 3 SCR 735 : **(1992) Supp. 1 SCC 335;** *Pepsi Foods Ltd. v. Special Judicial Magistrate* [1997] Supp. 5 SCR 12 : **(1998) 5 SCC 749;** *Amit Kapoor v. Ramesh Chander* [2012] 7 SCR 988 : **(2012) 9 SCC 460 – referred to.**

Comdel Commodities Ltd. v. Siporex Trade S.A. (No. 2) **(1990) 2 All ER 552 (HL) – referred to.**

List of Acts

Railways Act, 1989; Code of Criminal Procedure, 1973.

List of Keywords

Unauthorized Business; Procure; Supply; Railway e-tickets; Fraudulent Activity; Fake and Multiple User-Ids; Interpretation of Statutes; Authorized Agents; Statutory Interpretation; Disciplinary Control; Modalities of Procurement and Supply; Sale of Valueless Tickets.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4169 of 2024

From the Judgment and Order dated 22.09.2016 of the High Court of Kerala at Ernakulam in CRLMC No. 1991 of 2016

With

Criminal Appeal Nos. 139-140 of 2025

**Inspector, Railway Protection Force, Kottayam v.
Mathew K Cherian & Anr.**

Appearances for Parties

Mrs. Aishwarya Bhati, A.S.G., P. N. Prakash, Sr. Adv., Namit Saxena, Amrish Kumar, Mrs. Shivika Mehra, Mrs. Sonia Mathur, Merusagar Samantray, Sushil Kumar Dubey, Ms. Priyanka Terdal, Ms. Riddhi Jad, Advs. for the Appellant.

Amrish Kumar, A. Raghunath, Alim Anvar, Nishe Rajen Shonker, Mrs. Anu K. Joy, Ajith Anto Perumbully, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

Introduction

1. Common question of law touching interpretation of Section 143 of the Railways Act, 1989[1] is involved in these appeals by special leave; hence, we propose to decide the same by this common judgment.

2. In the first of the two sets of appeals,[2] the judgment and order[3] of the High Court of Kerala at Ernakulum[4] is assailed whereby criminal proceedings under Section 143 of the Act launched against the first respondent – Mathew K. Cheriian[5] – was quashed.

3. In the connected appeals, the appellant - J. Ramesh[6] – has assailed the judgment and order[7] of the High Court of Judicature at Madras[8] refusing to quash the criminal proceedings launched against Ramesh under Section 143 of the Act.

Factual Matrix

4. The factual scenario of the two sets of appeals are not too complicated. The facts which are germane are noted as a precursor to our discussion.

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1 the Act

2 the lead appeal

3 in Criminal Miscellaneous Case No. 1991/2016 dt. 22.09.2016

4 Kerala High Court

5 Mathew

6 Ramesh

7 In CRL. O.P. No.18701/2020 18703/2020 and Crl. MP. Nos.7328/2020 and 7329/2020

8 Madras High Court

5. The prosecution case in the lead appeal is that on 11.03.2016, on reliable information being disclosed to the Inspector, Railway Protection Force,[9] that unauthorised business of procuring and supplying railway e-tickets was being carried out in the office of Mathew, Crime Case No. 524/2016 under Section 143 of the Act was registered and a search conducted thereat. During the search and seizure operation, one employee named Joby Jose of Kosamattam Finance, a non-banking finance company (of which Mathew happened to be the managing director) was arrested and 17 pieces of evidence were seized. In his confessional statement, Joby Jose stated he was working under the supervision of Mathew. On the basis of this statement, Mathew was made co-accused in Crime Case No. 524/2016. He was accused of creating fraudulent user IDs with the Indian Railway Catering and Tourism Corporation[10] web portal to procure and peddle railway tickets for profit, without being an agent authorised to procure and supply railway tickets and, therefore, operating an unauthorised business for procurement and supply of railway tickets. Aggrieved, Mathew moved the Kerala High Court under Section 482, Code of Criminal Procedure, 1973[11] seeking quashing of the proceedings. The Kerala High Court, *vide* the impugned order, quashed the criminal proceedings emanating from Crime Case No. 524/2016. Dissatisfied thereby, the Inspector, RPF is in appeal.

6. The connected appeals arise out of Case Crime No. 3116/2019 and Case Crime No. 600/2020. The case of the prosecution is that Ramesh and his son are the owners of "Big Top Travels" which is an authorised agent for railway e-tickets. On 05.12.2019, Case Crime No. 3116/2019 came to be registered against Ramesh under Section 143 of the Act on the basis of a search and seizure operation conducted by a special team of the RPF in the shop premises of Ramesh. The offence alleged against him is that he has been supplying e-tickets to various customers, and that these e-tickets had been booked through multiple user IDs. Case Crime No. 600/2020 was registered against Ramesh, also under Section 143(1)(a) of the Act for his involvement in fraudulent activities such as supply of

9 RPF

10 IRCTC

11 Cr.PC

Tatkal e-tickets by creating multiple personal-user IDs and issuing unauthorised e-tickets procured through IRCTC website, contrary to IRCTC Rules. Ramesh, feeling aggrieved by initiation of criminal action by the respondent-authorities, approached the Madras High Court under Section 482, Cr. PC with a prayer to quash the criminal proceedings. The Madras High Court, however, refused to quash the criminal proceedings. Dissatisfied with the impugned order of the Madras High Court, Ramesh has questioned the same in the connected appeals.

SUBMISSIONS

7. For the sake of brevity, the submissions advanced by the parties in both sets of the appeals are noted together. Arguments of the prosecution can be summarised as follows:

I. Section 143 of the Act does not permit authorised agents to carry out unauthorised actions under the façade of authorisation. When an authorised agent carries out unauthorised transactions using the personal IDs of other individuals, the cloak of authorisation cannot be used as a ruse. Therefore, to be exempt from the application of Section 143, both the status of the person and the nature of the action must be considered.

II. Section 143 is part of the overall scheme to promote the efficacy of the railway system and its operations. Therefore, the Court must interpret the provision in line with the object of the statute.

III. Mathew, as the Managing Director of a finance company, created hundreds of user IDs to sell railway tickets at a premium which constitutes an offence under Section 143.

IV. Section 143 makes no distinction between physical tickets and e-tickets and only contemplates penal action against unauthorised carrying on of the business of procuring and supplying railway tickets.

V. Offence under Section 143 is a social crime. The mischief is sought to be addressed by limiting the number of tickets that an individual can purchase using his personal ID and, thereby, touting of railway tickets is prevented.

VI. The Kerala High Court has erred in quashing the criminal proceedings at this stage as a bare perusal of the complaint

reveals that all the ingredients under Section 143 are *prima facie* attracted.

VII. The Madras High Court has correctly refrained from following the erroneous decision of the Kerala High Court.

VIII. While upholding the decision of the Madras High Court, the decision of the Kerala High Court ought to be reversed and the prosecution allowed to lead its evidence before the relevant trial courts for the proceedings to be taken to its logical conclusion.

8. The submissions on behalf of the accused – Mathew and Ramesh – in favour of quashing of the proceedings, as advanced before us, are these:

I. The plain and unambiguous words of Section 143 of the Act make it clear that the creation of multiple user IDs is not an offence under Section 143, and Section 143 must be construed strictly as it is a penal provision.

II. The materialisation of e-ticketing scheme could not have been conceptualised by the legislature at the time of passing the Act, as the scheme as well as the internet did not exist at that time.

III. Section 143(1)(a) was intended to penalise the sale of tickets by persons other than railway servants and authorized agents.

IV. Ramesh is an authorised agent and, thus, could not have been proceeded against under Section 143(1), on its own terms; and, if at all, there has been a breach or violation of the terms and conditions of the contract by Ramesh, the remedy of the railways/RPF is to approach the civil court.

V. The decision of the Madras High Court ought to be reversed and the decision of the Kerala High Court upheld, thereby bringing down the curtain on both the criminal proceedings.

IMPUGNED ORDERS

9. Now, let us have a look at the orders impugned before us. A thorough examination thereof would enable us to arrive at an appropriate conclusion.

10. In the lead appeal, the Kerala High Court has quashed the criminal proceedings against the first respondent. The reasons assigned therefor are reproduced below:

> "5. The Act was enacted much before the advent of e-ticket system. The object of Section 143 is to prevent procurement of ticket for travelling on railway or in a reserved compartment or journey in a train by any person with the ticket not being issued by railway servant or by an authorised agent. It appears that Railway wants to ensure the authenticity of the tickets issued to the travellers on a travel in a railway. It appears that many travellers were travelling on railway in a ticket not being issued to them and issued in the name of third parties. The Railways Act wants to ensure that the ticket is issued by railway servant or agent authorised on this behalf as the case may be to a genuine travellers (sic, "traveller").
>
> 6. …The use of internet medium registered in the name of a person, to issue tickets to a third party is not one contemplated under Section 143 for the purpose of considering it as an offence. … There is no sale of ticket by the petitioner as even admitted in the counter, the sale is being conducted by IRCTC. The use of computer or use of printer for printing ticket purchased by a traveller cannot be deemed as sale effected by the owner of the computer or printer. Procuring tickets has to be understood as providing or giving tickets to the travellers. Admittedly tickets are procured by the genuine travellers. When legislature considered an actionable wrong in a particular manner in a brick and mortar business, it cannot be applied to an online business unless all elements constituting the offence-are present in the online business. The offence is not attracted even if one has to assume that action of the accused would amount to revision clearly mandates that tickets have to be procured by the offender."

11. The view taken by the Kerala High Court appears to be that Section 143 is somewhat outdated in the age of purchasing tickets using the internet. It has, in essence, read down Section 143 to state that one can conduct a business of procuring and supplying tickets without the authorisation of the railways as long as it is done through the internet. The order also observes that as the tickets were procured in the name of genuine passengers, it cannot be said that Mathew had contravened Section 143.

12. In the connected appeals, the Madras High Court refused to quash the criminal appeal and ratiocinated its view in the following words:

> "9. …This Court is of the considered view that the decision held by the High Court of Kerala holding that the said provision was enacted much prior to the creation of e-tickets and the petitioner therein was not carrying a business of procuring and supplying of tickets for travel on the Railway reserved tickets through internet and therefore online was not prohibited, whereas in the case on hand, the offence committed by the petitioner is completely different from the aforesaid case. The petitioner himself created more than 200 user IDs, procured tickets and supplied to the passengers. Further, in the said business of procuring and purchasing tickets on Railways were for the benefit of Rs.150/- for sleeper and Rs.250/- for A/C per head in addition to ticket fare as service charge from his customers, prohibited by the provisions under Section 143 of the Act. In fact, recommendation of the e-tickets scheme no way alters the position of purchase of tickets, as agent or the customer can book e-tickets by creating ID in their name. But the authorized agent cannot create other user IDs for the purpose of procuring tickets for illegal gain. Therefore, judgement cited by the learned counsel for the petitioner is not applicable to the case on hand. That apart, the crime is under investigation and only after investigation, the respondent can unearth the truth."

13. The Madras High Court acknowledged that Ramesh was an authorised agent under Section 143; however, it refused to quash the criminal proceedings on the ground that such authorisation did not empower the appellant to create multiple user IDs for the purpose of procuring tickets for illegal gain. On the ground that Ramesh was only authorised to sell tickets through his own account and was not specifically authorised to create multiple user IDs, the Madras High Court dismissed Ramesh's petition seeking quashing of the criminal proceedings.

ANALYSIS

14. The appeals before us, although have different factual matrices, involve a common question of law. Having bestowed serious

consideration and thought, we find ourselves in a curious position where our interference seems to be warranted in both sets of appeals.

15. In order to settle the controversy in the present *lis*, the ambit and scope of Section 143 of the Act has to be noticed and comprehended. The question before us is whether the act of creating fake/multiple user IDs by an individual, who may or may not be an authorized railway agent, with the intention to procure and supply online tickets through IRCTC portal would constitute an offence under Section 143 of the Act? In addition to the scope of Section 143, we need to analyse whether the two criminal proceedings in question did merit quashing by the respective High Court.

16. At this stage, it would be beneficial to read Section 143 of the Act. It reads:

> 143. Penalty for unauthorised carrying on of business of procuring and supplying of railway ticket-
>
> (1) if any person, not being a railway servant or an agent authorised in this behalf,-
>
> (a) carries on the business of procuring and supplying tickets for travel on a railway or from reserved accommodation for journey in a train; or
>
> (b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person,
>
> he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he do so procures, supplies, purchases, sells or attempts to purchase or sell:
>
> Provided that in the absence of special and adequate reasons to the contrary to be mentioned in judgment of the court, such punishment shall not be less than imprisonment for a term-of one month or a fine of five thousand rupees.

> (2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.
>
> (emphasis supplied)

17. The purport and objective of Section 143 of the Act is to restrict entities which are not under the disciplinary control of or are not authorised by the railways to conduct the business of procurement and supply of railway tickets. Railway servants and authorised agents stand apart since, on its own terms, Section 143 has no application to them.

18. The whole scheme of e-ticketing was introduced for the convenience and betterment of the passenger's experience of travelling on a train, due to which the procurement and supply of these e-tickets, rightfully so, is highly regulated. In the additional affidavit of the appellant in the lead appeal, Rules and Regulations for Reserved Bail e-Ticketing Service Providers (PSPs/RSPs) have been annexed which reflect the idea of protecting the consumer and strictly prohibit using personal/ fraudulent IDs to book tickets for commercial purposes. These rules, further, bar sharing of the credentials by these authorised agents. Also, the perils of hoarding of resources by a select few are widely known and has to be kept in mind while adjudicating the present *lis.*

19. IRCTC has limited the number of tickets which can be reserved on one personal user ID at 12 per month (24 per month with a user ID which is Aadhaar verified). Mathew, it is alleged, had created hundreds of fake user IDs to sell tickets without any authorisation from the railways. Although the internet and e-tickets were unknown in India when the Act was brought into force, this conduct of Mathew (who is neither a railway servant nor an authorised agent) nevertheless attracts criminality under Section 143(1)(a) of the Act.

20. The Kerala High Court allowed the quashing petition filed by Mathew on the ground that the Act was enacted before the advent of internet and e-tickets and the lawmakers could not have envisioned sale of tickets, online. We find this line of reasoning of the High Court to be plainly erroneous.

21. Statutory interpretation has to follow certain principles which have been formulated through legal precedents. No court can refuse to enforce a provision on the sole basis of the provision predating any

subsequent development regarding the ticketing process. If it can be demonstrated that a statutory provision is broad enough to envelop the subsequent developments, even if the developments were not envisioned by the legislature, the provision would stay operational. This principle was expounded by this Court in **Senior Electric Inspector v. Laxminarayan Chopra**[12] in the following words:

> "…This Court in construing the words 'sale of goods' in Entry 48, List II of the Seventh Schedule to the Government of India Act, 1935, accepted the aforesaid principle in State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd. [(1959) SCR 379] and restated it at p. 416 thus:
>
> > 'The principle of these decisions is that when, after the enactment of a legislation, new facts and situations arise which could not have been in its contemplation, the statutory provisions could properly be applied to them if the words thereof are in a broad sense capable of containing them.'
>
> The legal position may be summarized thus: The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes, but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to

12 [1962] 3 SCR 146 : AIR 1962 SC 159

> govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. We cannot, therefore, agree with the learned Judges of the High Court that the maxim *contemporanea expositio* could be invoked in construing the word 'telegraph line' in the Act."
>
> (emphasis supplied)

22. The aforenoted decision has been followed in a relatively recent decision of this Court in ***Dharani Sugars and Chemicals Ltd. v. Union of India***.[13] This Court, further, noticed an English decision in ***Comdel Commodities Ltd.*** v. ***Siporex Trade S.A. (No. 2)***[14] distilling the principle as follows:

> '… When a change in social conditions produces a novel situation, which was not in contemplation at the time when a statute was first enacted, there can be no a *priori* **assumption that the enactment does not apply to the new circumstances. If the language of the enactment is wide enough to extend to those circumstances, there is no reason why it should not apply.'**

23. Bearing in mind the above principles, we may now proceed to consider a couple of decisions of this Court on the rule of literal interpretation.

24. In ***Jugalkishore Saraf v. Raw Cotton Co. Ltd.***,[15] Hon'ble S.R. Das J. (as His Lordship then was), speaking for the Court, held as follows:

> "6…The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt

13 [2019] 6 SCR 307 : (2019) 5 SCC 480

14 (1990) 2 All E R 552 (HL)

15 [1955] 1 SCR 1369 : AIR 1955 SC 376

> the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

25. A reference can also be made to the decision of not too distant an origin. In ***Ansal Properties & Industries Ltd. v. State of Haryana***,[16] the rule of literal construction has been reiterated in the following words:

> "39. If the legislature had intended that the licensee is required to transfer the land and also to construct the buildings on it or to make payment for such construction, the legislature would have made specific provisions laying down such conditions explicitly and in clear words in which event the provisions would have been worded in altogether different words and terms. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute."
>
> (emphasis supplied)

26. From the above decisions, it is quite clear that if the language of the particular statute under consideration is clear and unambiguous, it is not for the courts to add to or delete any words from the statute in the guise of ascertaining what could have been the legislative intent.

27. Section 143, on its plain language, prohibits any person, other than a railway servant or an authorised agent, to conduct the business of procurement and supply of railway tickets. The provision does not specify the modalities of the procurement and supply. Hence, if we read the section and give its contents the natural and ordinary meaning, keeping in mind the objective and purpose of the legislation,

16 [2009] 1 SCR 553 : (2009) 3 SCC 553

as discussed above, it admits of no doubt that this provision criminalises unauthorised procurement and supply, irrespective of the mode of procurement and supply.

28. We are further of the considered opinion that the mere fact of the system of e-reservation and e-tickets being introduced after the enactment of the Act does not render the provision in Section 143 toothless to combat the illegal sale of e-tickets. Section 143, importantly, makes no distinction between physical and online sale of tickets. The mischief that the provision seeks to remedy is that there should not be illegal and unauthorised procurement and sale of tickets, whatever be the mode – physical or online. The Kerala High Court seems to have missed this aspect.

29. There has been a major technological development in the last three decades by reason whereof a significant number of services provided by the Governments are available online. Electronic and internet services have not only become indispensable but offer significant advantages to the public. Having regard to the comprehensive phraseology employed in Section 143, the net of its coverage is wide enough to encompass regulation of the conduct of ticketing agents and to protect the public from unscrupulous elements trying to defraud them by sale of valueless tickets.

30. The Kerala High Court made the distinction between "procure" and "purchase". It held that the tickets were "purchased" by genuine passengers. The tickets were not sold by Mathew, rather, the tickets were sold by IRCTC in the names of the passengers. Hence, it cannot be said that Mathew was procuring the tickets. This reasoning, in our view, is flawed and unsustainable. Travel agents, by and large, do not purchase tickets in their own name and then sell it to the passengers. Tickets are procured in the name of the passengers by these agents *in lieu* of a commission on the price thereof. Taking active steps, however faithfully, in order to acquire and provide tickets to third parties but without being a railway servant or an authorised agent would attract the expression 'procure and supply' as in Section 143.

31. We agree with the prosecution that Section 143, a penal provision, has been enacted to tackle a social crime. The Indian Railways is a keystone of our country's infrastructure. It carries around 673 crore passengers annually and has a tremendous impact on the economy

of this country. Any effort to disrupt the integrity and stability of the ticketing system has to be stopped on its tracks.

32. The second issue before us is whether these criminal proceedings in the two appeals should be quashed. This Court has dealt with the issue of quashing numerous times. Reference in this connection may be made to the decisions in ***R.P. Kapur v. State of Punjab***,[17] ***State of W.B. v. Swapan Kumar Guha***,[18] ***State of Haryana v. Bhajan Lal***,[19] ***Pepsi Foods Ltd. v. Special Judicial Magistrate***,[20] and ***Amit Kapoor v. Ramesh Chander***.[21]

33. The principles which can be extrapolated from these precedents are that quashing of a criminal proceeding can take place, *inter alia*, if the first information report does not reveal a crime or if the fact situation be such that continuance of the criminal proceedings would result in abuse of the process causing injustice to the accused. This power of quashing, however, is not unfettered or unlimited and as the old adage goes - "judicial discretion has to be exercised judiciously".

34. In the lead appeal, the facts of the case *prima facie* reveal the commission of an offence under Section 143 of the Act. Mathew, without the authorisation of the railways, was carrying on a business of procurement and supply of railway tickets. The allegations against Mathew taken at face value fulfil the elements required under Section 143(1)(a) of the Act; hence, the threshold for quashing has not been met in this case.

35. In the connected appeals, Ramesh was an authorised agent of the railways carrying on the business of procurement and supply of railway tickets. Section 143 only deals with the actions of unauthorised persons and does not mandate a procedure to be followed by the authorised agents for procuring or supplying tickets to its customers. The nature of allegations against Ramesh in the connected appeal, though serious, Section 143 would not be attracted insofar as he is concerned.

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17 [1960] 3 SCR 311 : 1960 SCC OnLine SC 21

18 [1982] 3 SCR 121 : (1982) 1 SCC 561

19 [1992] Supp. 3 SCR 735 : (1992) Supp. 1 SCC 335

20 [1997] Supp. 5 SCR 12 : (1998) 5 SCC 749

21 [2012] 7 SCR 988 : (2012) 9 SCC 460

36. That apart, Section 143 does not criminalise creating multiple user IDs. Penal provisions have to be read strictly and narrowly as a general rule. Section 143, by being completely silent on creation of multiple user IDs, penalises the actions of only the unauthorised agents and not unauthorised actions of the authorised agents. Thus, even if the facts disclosed in the first information report are taken at face value, commission of an offence cannot be attributed to Ramesh. Any breach has to be remedied by civil action and not criminal action.

37. To sum up, Mathew not being an authorised agent has to face the proceedings against him while Ramesh, being an authorised agent, cannot be proceeded against under Section 143 of the Act for alleged breach of any of the terms and conditions of the contract. If, at all, he would be liable to face civil action.

38. In our view, for the foregoing reasons, the lead appeal deserves to be allowed and consequently, the criminal proceedings against Mathew need to be restored. It is ordered accordingly.

39. The proceedings against Mathew shall be taken to its logical conclusion, in accordance with law. Observations made by us hereinabove are for the purpose of a decision on the lead appeal and may not be construed as an expression of opinion on the merits of the prosecution's case.

40. The connected appeals are allowed as well, but the criminal proceedings against Ramesh are hereby quashed.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 1 S.C.R. 515 : 2025 INSC 33

Geetha V.M. & Ors.
v.
Rethnasenan K. & Ors.

(Civil Appeal No(s). 3994-3997 of 2024)

03 January 2025

[J.K. Maheshwari* and Rajesh Bindal, JJ.]

Issue for Consideration

Whether the option exercised by Directorate of Health Services (DHS) employees to join Directorate of Medical Education (DME) pursuant to a policy decision of the State of Kerala ought to be considered as an option for absorption or a request for transfer under proviso to Rule 27(a) of Kerala State and Subordinate Service Rules, 1958 and in that situation, the inter-se seniority of such employees in the DME shall be reckoned from which date.

Headnotes†

Kerala State and Subordinate Service Rules, 1958 – Proviso to r.27(a) – Kerala Service Rules, 1959 – r.36 – Transfer of the appellants-absorbed employees by way of absorption as per the policy decision of the Government of Kerala, if would attract the proviso to r.27(a):

Held: No – The proviso of r.27(a) is merely an exception to the said Rule of maintaining the seniority from the date of appointment in the cases of 'on request' and mutual transfer – The exception is not attracted in a case of transfer by way of absorption made in public interest or in administrative exigencies – Transfer of an employee is an incidence of service if it is in public interest – Government is the best judge to decide how to distribute and utilise the services of an employee – However, if employee makes a request due to some hardship and if the authority or the Government on being satisfied, posts such employee as per request, such transfer is not a transfer in public interest as it is on the request of the employee and not in the exigencies of the public administration – In the present case, the transfer was made by way of absorption on the basis of option and not on the basis of request which was in furtherance to a policy decision of the Govt. to abolish the dual control system enhancing the efficiency

* Author

of the administration of medical colleges and attached hospitals thereto giving it to DME withdrawing from DHS – Therefore, the transfer by way of absorption on exercise of option as specified in Appendix I and II contained in G.O. dtd. 25.10.2008 does not attract the proviso to r.27(a) which only deals with the transfer on request or on mutual request – Thus, the action taken in public interest due to administrative exigency even on option is different than the action done on request – Appellants exercised the option for absorption by transfer from DHS to DME in line with the policy decision and thus, it cannot be considered as a case of transfer based on their own request, volition or voluntary choice – Proviso to r.27(a) is not attracted in case of a transfer by way of absorption done by the Department in furtherance to the policy decision of the Govt. – Transfer by way of absorption in public interest cannot be equated with the transfer on request in contingencies as specified in proviso to r.27(a) or applied mutually – Further, seniority of the absorbed employee cannot be disturbed applying the proviso of r.27(a) – Their seniority and inter-se seniority be maintained as per r.27(a) and 27(c) of Part II of 1958 Rules r/w clarificatory letter dated 24.04.2010 with reference to r.8 of Appendix I to G.O. dated 25.10.2008 – Impugned judgment set aside. [Paras 37, 39, 47, 51-53]

Words and Phrases – 'Transfer'; 'option'; 'absorb'; 'absorption' – Discussed.

Case Law Cited

K.P. Sudhakaran and Another v. State of Kerala and Others **(2006) 5 SCC 386 – held inapplicable.**

Kartar Singh v. State of Punjab, **1989 SCC OnLine P&H 482 – approved.**

Books and Periodicals Cited

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List of Acts

Kerala State and Subordinate Service Rules, 1958; Kerala Service Rules (KSR), 1959.

List of Keywords

Transfer; Transfer by way of absorption; Exercise of option; Absorbed employees; Request for transfer; Transfer on request; Mutual request; Seniority; Inter-se seniority; Directorate of Health Services (DHS); Administrative control of DHS; Directorate of Medical Education (DME); State of Kerala; Primary Health Centres (PHCs); Community Health Centres (CHCs); Taluk Hospitals; District Hospitals; Specialty Hospitals; Policy decision; Public interest; Transfer in public interest; Dual control system; Hospitals; Administration of medical colleges; Administrative exigency; public administration; Clarificatory letter; transfer applied mutually; 'Option'; 'Absorb'; 'Absorption'.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3994-3997 of 2024

From the Judgment and Order dated 13.03.2019 of the High Court of Kerala at Ernakulam in WA Nos. 1418, 1525, 1527 and 1652 of 2010

Appearances for Parties

V. Giri, Jayanth Muth Raj, Sr. Advs., Krishna Dev Jagarlamudi, Alim Anvar, Harshed Sundar, Mohammed Sadique T.A., Advs. for the Appellants.

Jaideep Gupta, Raghenth Basant, Sr. Advs., C. K. Sasi, Ms. Meena K Poulose, Riddhi Bose, Ms. Racheeta Chawla, Ms. Rishi Agarwal, Ms. Sampriti Bakshi, Siddharth Banerjee, Dileep Poolakkot, Ms. Hima Bhardwaj, K. Rajeev, Arvind Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

1. The present appeals have been filed impugning the order passed by High Court of Kerala at Ernakulam on 13.03.2019 in W.A. Nos. 1418, 1525, 1527 and 1652 of 2010, reversing the judgments dated 29.06.2010 and 30.06.2010 passed by learned Single Judge

in W.P. (C) Nos. 4599, 12381 and 14091 of 2010 and W.P. (C) No. 20269 of 2010 respectively.

2. Appellants herein are the employees who were working in the Directorate of Health Services (the **"DHS"**), later absorbed on furnishing option as demanded, in the Directorate of Medical Education (the **"DME"**) on account of abolition of dual control system of the staff in medical colleges under the policy decision of the State of Kerala. The rival claims of *inter-se* seniority between the original employees of DME (hereinafter referred as **'original employees'**) and absorbed employees from DHS in the respective categories of DME (hereinafter referred to as **'absorbed employees'**) made by both were decided by the order impugned.

3. Writ Petition No. 4599/2010 was filed by the absorbed employees contending that they are entitled to retain their existing seniority even on absorption in the DME in terms of Rule 8 of Appendix I of the G.O. (P) No. 548/2008/H&FWD dated 25.10.2008. Since the *inter-se* seniority of the absorbed employees was yet to be finalized, during the pendency of the said Writ Petition, promotions made to the post of Junior Superintendent and Upper Division Clerks in the DME were cancelled.

4. In the meantime, the Government of Kerala issued clarificatory letter No. 8195/K1/10/H&FWD dated 24.04.2010 (the **"clarificatory letter"**) indicating that seniority of the absorbed employees shall be reckoned from the date of order of promotion for the promotees and from the date of first effective advice in case of direct recruits. The said clarificatory letter was assailed by filing Writ Petitions Nos. 12381 and 14091 of 2010 by the original employees. The case set out was that once the absorbed employees were transferred after exercising their 'option', in terms of G.O. (P) No. 548/2008/H&FWD dated 25.10.2008, to join DME, they must rank junior and be placed at the bottom of the seniority list and their seniority be reckoned from the date of joining in the DME as per Rule 27(a) and Rule 27(c) of 'Kerala State and Subordinate Service Rules, 1958 (in short **"KS&SS Rules"**).

5. Learned Single Judge decided the writ petitions of the original and absorbed employees by passing the common judgment and relying upon Rule 8 of Appendix I of G.O. dated 25.10.2008 opined that seniority of staff who opted to join DME will be maintained as per Rule 27(a) and 27(c) of Part II, KS&SS Rules and the clarificatory letter

dated 24.04.2010. The Writ petition filed by the absorbed employees was allowed and the Writ Petitions of the original employees were dismissed holding that absorbed employees would be entitled to retain their past service rendered in DHS and their seniority in DME shall be reckoned from the date of initial appointment in DHS.

6. On filing Writ Appeal by the original employees of DHS, the Division Bench by the order impugned set-aside the judgment of learned Single Judge and observed that once absorbed employees had joined DME on their own request opting for inter-departmental transfer, proviso to Rule 27(a) of Part II of KS&SS Rules, would attract and the seniority of the absorbed employees will be determined with reference to their date of joining in the DME. The said order is under challenge in these appeals.

Factual Background

7. Prior in time, DME was formed w.e.f. 10.05.1983, to manage and coordinate Medical Colleges and Collegiate Hospitals in the State of Kerala. Hospitals attached to medical colleges were under the control of the DME, while Primary Health Centres (PHCs), Community Health Centres (CHCs), Taluk Hospitals, District Hospitals and Specialty Hospitals were under the control of DHS. Before formation of the DME, medical colleges were operated independently but under the administrative control of DHS and the 'Principal' was the head of the department. After formation of DME, the authority of Principal was transferred to DME, however, the 'nursing, paramedical, and ministerial staff' associated with hospitals and affiliated institutions continued to remain under the administrative control of DHS which also included the power of appointment. This resulted in 'dual control', where even though administrative authority of the medical colleges and collegiate hospitals was shifted to DME, but the staff continued to remain under the control of DHS, due to which significant delay and administrative difficulties were being faced in ensuring timely assignment/posting of Staff Nurses, Nursing Assistants, Technicians, Attendants, Cleaning Staff, and other categories of Paramedical Staff at Medical College Hospitals and affiliated institutions. Additionally, Superintendents of Medical Colleges and Heads of Clinical Departments were encountering tremendous hardship to maintain discipline amongst staff *inter-se* departments. Resultantly, it posed as an extreme impediment for the Government of Kerala to ensure smooth functioning of both the Departments.

8. Elaborating on further challenges, particularly regarding appointments, majority of the hospital staff was appointed either by the DHS or the District Medical Officer. Although Hospital Superintendents had the power to initiate disciplinary action, yet the power for appointments, transfers, promotions, and discipline for these employees continued to remain with the DHS or District Medical Officer. Identifying the issues, the Government of Kerala formed several committees that recommended elimination of dual control system in Medical Colleges as a corrective measure, aimed for benefiting the public at large. To cite few examples, as per Indian Medical Council regulations, "All the teaching hospitals shall be under the academic, administrative and disciplinary control of Dean / Principals of Medical Colleges or Medical Institutions"; as per State Planning Board's Working Group report on Health, Nutrition and Sanitation on 10th Five Year Plan (2002 – 2007), the Principals / Superintendent of Medical Colleges have no administrative or disciplinary control over the staff. Therefore, all the above categories of paramedical and ministerial staff in Medical College Hospitals and attached other hospitals have to be appointed directly by DME and the existing staff must be given freedom to opt for either DHS or DME and all new appointments must be done separately.

9. Further, the 'Estimates Committee' (1998 – 2000) of Kerala Legislature in its 28th Report recommended that the employees working in the Medical Colleges such as Nurses, Paramedical Staff are to be bifurcated from DHS and are to be brought under the control of DME and the existing staff should be given an opportunity to exercise option. Subsequent thereto, 'Estimates Committee' (2001 – 2004) of the Kerala Legislature reiterated that employees working in medical colleges shall be brought under the control of DME and staff which at present is in existing control of DHS should be afforded an opportunity to furnish options either of DHS or DME. The State Government after examining the recommendations in public interest accorded sanction to abolish the dual control system for the Staff attached to the Medical Colleges and Hospitals and brought them out from the administrative and disciplinary control of DHS by issuing the G.O. (MS) No. 124/2007/H&FWD dated 01.06.2007.

10. While according sanction, the State decided to ask for the options from existing employees of the DHS to move to the posts which stood transferred to DME. The relevant clauses of the said G.O. for understanding are quoted herein below –

"1. The sanctioned posts of all categories of staff (except doctors in Primary Health Centres who are appointed by the Health Services Department) such as Nursing, Paramedical and Ministerial Staff in the hospitals under the Director of Medical Education will stand shifted to the service of Directorate of Medical Education w.e.f. 01.06.2007.

2. The employees of the Health Services Department now working against these shifted posts shall be treated as on deputation to the Directorate of Medical Education, until further orders.

3. The existing employees of Health Services Department will be given an opportunity to exercise opinion (sic) to move to the posts transferred to the Director of Medical Education. A committee will be constituted under the Chairmanship of Secretary (Health), with Director of health Services, as Convener for discussions with service organizations regarding rules for exercising of option, the arrangements to be made in the Health Service Department due to the transfer of these posts, promotion and other service matters and for submitting recommendations to Government.

4. The appointing authority of the transferred categories of posts (except last grade service posts) will be Director of Medical Education. The Principal will be the appointing authority of last grade service posts.

5. (i) The appointment to the category / post of Nursing Assistant now transferred to Directorate of Medical Education shall be made by direct recruitment and the special rules will be changed accordingly. The Director of Medical Education will submit proposals for qualification for direct recruitment to the post of Nursing Assistant.

(ii) However, the existing vacancies of Nursing Assistants are to be filled up by promoting the eligible Hospital attendants after giving them training. Direct recruitment as per 5 (i) above shall be done only to

the remaining vacancies, after giving promotion to all the eligible Hospital – Attendants.

(iii) Considering the acute shortage of staff, the Last grade service special rules shall be deemed to be modified in the public interest in the case of Directorate of Medical Education only and the Principals are permitted to make temporary appointment through Employment Exchange to all the vacant posts in the categories of Nursing Assistant and Hospital Grade – I and II, except the vacancies to be kept apart for promotion of eligible hands in these posts.

(iv) The Secretary (Health) is authorized to obtain remarks from PSC if required for the implementation of any of the above decisions and submit proposals.

(v) The steps to transfer of budget allotment for salary and other items from Director of Health Services to Director of Medial (sic) Education will be taken up in consultation with Finance Department."

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11. From the aforementioned G.O., it is also evident that State actively intended to identify the issues and decided to address them involving all the stakeholders. After extensive deliberations with all, the Government of Kerala by G.O. (Ms.) No. 163/07/H&FWD, dated 16.07.2007, constituted a Committee under the Chairmanship of Additional Secretary (Health) to resolve the issues related to abolition of dual control system. A meeting was convened on 10.10.2007 with all the stakeholders inviting their views and suggestions. During the meeting, highlighting the recommendations of the Estimates Committee (1998-2000) and Estimates Committee (2001-2004), consensus was reached to implement the same. After extensive discussions, the committee framed the 'Draft Rules' for options, 'Draft Option form', and the qualifications required and method of appointment for the categories other than the common categories in DHS and DME, which were required to be absorbed.

12. The Government of Kerala vide G.O. (Rt.) No. 1273/08/H&FWD, dated 07.04.2008, and G.O. (Rt.) No. 2321/08/H&FWD, dated 05.07.2008, also nominated Administrative Officer, Kerala Heart Foundation along

with Nodal Officers from DHS and DME to coordinate and oversee the implementation of abolition of dual control system. Based on the aforesaid, the Committee submitted the 'Draft Rules' and also the 'Draft Form of option' to the Government for consideration and approval.

13. Having considered these recommendations, the State Government issued G.O. (P) No. 548/2008/H&FWD dated 25.10.2008, partially modifying the G.O. dated 01.06.2007 and directed that all the ministerial staff, nurses, paramedical staff, including last grade staff under the establishment of DHS working with the DME, shall be brought under the administrative control of the DME, subject to furnishing options as specified in the rules contained in 'Appendix I' and form contained in 'Appendix II'.

14. Appendix I of the G.O. dated 25.10.2008 is titled as 'Rules for filing option by the staff, on abolition of dual control systems'. Rule 8 therein governs the seniority of staff who have opted for the DME. This Rule is central to the present dispute and extracted for ready reference below –

> *"…..8. The seniority of the staff opted to Department of Medical Education will be maintained as per Rule 27(a) and Rule 27(c) of Part II, KS & SS Rules."*

15. Appendix II of the said G.O. was for option which is in shape of a form required details of the employee and declaration. The declaration is relevant, which is extracted hereinbelow for ready reference –

> *"* *DECLARATION*
>
> *I, …. hereby opt to be absorbed / continued in the Department of Medical Education and if my option is accepted, I will not put forth any claim in future to return to Health Services Department under any provisions.*
>
> *Place:* *Signature:*
>
> *Date:* *Name and Designation"*

xx xx xx xx

16. In furtherance of the G.O. dated 01.06.2007 and G.O. dated 25.10.2008, an 'Option Cell' with officers from DHS and DME both was constituted to scrutinize the option forms submitted by the existing

employees from DHS. After scrutiny, 3072 options against 6022 transferred posts were found valid, and the list of 3072 employees 'seniority wise' and 'category wise' was forwarded by DHS for switching them to DME. In continuance, State Government *vide* G.O. (P) No. 56/2009/H&FWD dated 27.02.2009, directed that 6022 posts under DHS establishment will be 'shifted' to DME. It was also made clear *vide* Order No. PLA1-2462/05/DHS dated 28.02.2009 that lien of the employees whose names were forwarded shall stand transferred from DHS to DME.

17. In the meantime, since the model code of conduct for the General Elections of 2009 came into effect from 02.03.2009, therefore, the said two G.O.s mentioned above could not be implemented. After elections and on formation of new Government, in supersession of the previous G.O.s dated 27.02.2009 and 28.02.2009, the G.O. (P) No. 167/2009/H&FWD dated 17.06.2009 was issued directing that 3096 posts in 57 categories will be forthwith transferred to the DME, and the DHS will issue orders transferring those employees category wise and station wise. As such, the employees of DHS included in the list be continued in DME, as per their options. The employees of DHS not included in the list of DME were allowed to continue on deputation as per G.O. 01.06.2007 until further orders.

18. In the meantime, clarifications were sought by the DME about fixation of seniority of staff who opted for DME from DHS. The State Government *vide* its clarificatory letter dated 24.04.2010 clarified that the seniority of the staff who opted for DME, will be reckoned as per Rules 27(a) & 27(c) of Part II, KS&SS Rules, i.e., as per date of order of promotion in case of promotees and as per date of first effective advice in case of direct recruits (entry cadre) in the respective categories in the DHS.

Relevant Rules

19. In reference to the various G.O.s, the KS&SS Rules referred above are also relevant, therefore, extracted here as under –

> ***"27. Seniority – (a)*** *Seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade.*

Explanation *– For the purposes of this sub-rule, "appointment" shall not include appointment under rule 9 or appointment by promotion under Rule 31.*

This amendment shall be deemed to have come into force with effect on and from the 17th December, 1958, but shall not affect the seniority of any member of a service settled prior to the date of publication of this amendment in the Gazette:

Provided *that the seniority of persons on mutual or inter-unit or inter-departmental transfer from one Unit to another within the same Department or from one Department to another, as the case may be, on requests from such persons shall be determined with reference to the dates of their joining duty in the new Unit or Department. In the case of more than one person joining duty in the same grade in the same Unit or Department on the same date, seniority shall be determined, –*

(a) if the persons who join duty belong to different unit or different departments, with reference to their age, the older being considered as senior, and

(b) if the persons who join duty belong to the same category of post in the same department, in accordance with their seniority in the Unit or Department from which they were transferred…….

(b) **(This sub-rule is not relevant for the case)**

(c) *Notwithstanding anything contained in clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relatives seniority shall be fixed according to the order in which their names are arranged in the advice list:*

> ***Provided*** *that the seniority of candidates who have been granted extension of time to join duty beyond three months from the date of the appointment order, except those who are undergoing courses of study or training which are prescribed as essential qualification for the post to which they are advised for appointment, shall be determined by the date of their joining duty:……"*

20. From contextual perusal of Rule 27(a), the seniority of a person will be determined from the date of the order of his first appointment to such service, class, category or grade. Proviso to it deals with the contingency where an employee asks for transfer mutually or inter-unit or inter-departmental from one unit to another within the same Department or from one Department to another as the case may be. On such transfers, the seniority of the person who requested, shall be determined from the date of joining and as per clause (a) and (b) of the said proviso.

21. Thus, accompanying proviso only contemplates determination of seniority when transfer as specified therein has been sought mutually and on request. It is relevant to clarify that the language of the proviso does not deal with the transfers of employees due to administrative exigencies or their transfer by way of absorption under the policy decision of the Government bifurcating the dual control system of the staff.

22. So far as Rule 27(c) is concerned, it deals with the relative seniority of the employees, by which the *inter-se* seniority of the employees appointed to a class, category or grade shall be fixed according to the order in which their names are arrayed in the first advice list for his appointment to such class, category or grade. For clear understanding, we can say the order of recommendations in the selection list by Commission or Selection Board, at the time of their selection, shall be relevant for maintaining the relative seniority as specified in the final advice memo of the Commission or Board as the case may be.

Findings recorded by learned Single Judge reversed by the Division Bench

23. The absorbed employees succeeded before learned Single Judge. The Court referring to Rule 8 of Appendix I of the G.O. dated

25.10.2008, held that seniority of the staff opted for joining DME will be maintained as per Rules 27(a) and 27(c) of Part II, KS&SS Rules and they will be entitled to get seniority including their past service under the DHS in terms of the aforementioned rules. The relevant findings are reproduced for ready reference as under –

> *"5. It was thereupon that WP(C) No. 12381/10 and 14091/10 were filed by persons, who were employees of the DME. According to them, on exercising option and coming over to DME, the optees should rank junior most in seniority, and therefore, the clarification, as contained in Ext. P5 referred to above is illegal. Therefore, the only question that arises is whether the optees of DHS who have come over to DME are entitled to retain their seniority for their prior service in DHS.*
>
> *6. In my view, the issue can be answered with reference to Clause 8 of Appendix I of Ext. P1 order dated 25/10/2008, which provides that seniority of staff opted to Department of Medical Education will be maintained as per Rule 27(a) and Rule 27(c) of Part II KS&SSR. This precisely is what is reiterated in Ext. P5 and this order does not introduce anything which is not provided in Ext. P1. Clause 8 of Appendix 1 of Ext. P1 is also not under challenge in WP (C) Nos. 12381/10 or 14091/10. If that be so, necessarily, optees like the petitioners in WP(C) No.4599/10 and the additional party respondents in WP(C) No. 14091/2010 are entitled to seniority for their prior services under the DHS in terms of Rules 27(a) and (c) of Part II KS&SSR.*
>
> *xx xx xx xx*
>
> *9. In view of the above, the challenge against Ext. P5 order referred to above dated 24.04.2010 raised in WP(C) Nos. 12381/10 and 14091/2010 will stand repelled. The claim of the petitioners in WP(C) No. 4599/10 for maintaining seniority for their service prior to exercising option, is upheld, in view of Clause 8 of Appendix 1 of Ext. P1 Government Order dated*

25/10/2008 and Ext. P5 dated 24.4.2010 referred to above. The Directorate of Medical Education is directed to finalise the inter se seniority list of the optees and the existing employees of the Department in accordance with law and as expeditiously as possible.

24. Being aggrieved, the original employees filed Writ Appeal, which was allowed and the Division Bench vide impugned judgment set aside the order of the Single Bench. The findings as returned by Division Bench are reproduced below for ready reference –

"The dual control system of hospital staff attached to the Directorate of Medical Education and Directorate of Health Services was abolished by Government Order dated 25.10.2008 and clause 8 of Appendix I of thereto is as follows:

"8. The seniority of the staff opted to Department of Medical Education will be maintained as per Rule 27(a) and Rule 27(c) of Part II, KS&SSR".

2. Many employees in the Department of Health Services opted for transfer to the Department of Medical Education and necessarily therefore the proviso to Rule 27(a) of Part II of KS&SSR extracted below applies:

"Provided that the seniority of persons of mutual or inter unit or inter departmental transfer from one unit to another within the same department or from one department to another, as the case may be, on request from such persons shall be determined with reference to the dates of their joining duty in the new unit or department". (emphasis supplied)

3. The seniority of those employees who have opted from the Department of Health Services can only be determined with reference to the dates of their joining duty in the Department of Medical Education. The fact that they have given their option for an inter-departmental transfer indicates that it was on their request attracting the proviso to Rule 27(a) of Part II of KS&SSR.

4. The learned Single Judge has obviously overlooked the rigour of the proviso to Rule 27(a) of Part II of KS&SSR which springs into action the moment there is an inter-departmental transfer on request. We therefore direct that the seniority of the optees aforesaid shall be determined with reference to the proviso to Rule 27(a) of Part II of KS&SSR and the inter se seniority list finalised….."

25. The Division Bench held that once an employee has furnished his/her option, it should be termed as 'inter-departmental' transfer on 'request', hence, proviso to Rule 27(a) of Part II of KS&SS Rules will be attracted. The said proviso contemplates that seniority of such employees can be determined with reference to his/her date of joining duty in DME, which was not duly considered by the learned Single Judge. These findings of the Division Bench have been assailed before us in these Appeals.

Rival Contentions

26. We may now refer the submissions of the parties. Learned Senior Advocate Mr. V. Giri appearing on behalf of absorbed employees submitted as follows –

26.1 In the present case, the State by a 'policy decision' abolished the 'dual control' system of the 'hospital staff' between DHS and DME. The administrative control was given to DME, however, certain categories such as 'Nursing, Paramedical and Ministerial Staff' were under the governance of DHS. To do away with the anomaly, State by G.O. dated 25.10.2008 directed that all ministerial staff, nurses, paramedical staff (including last grade staff) working under DHS shall be brought under the administrative control of the DME. The G.O. specifically stipulated that seniority of the persons who opt for absorption in DME will be maintained and their 'lien' will be shifted.

26.2 Pursuant thereto, out of 12044 posts, as many as 6022 posts (50%) were 'shifted' to DME. DHS employees were given an option either to retain their post with DHS or opt for DME on the very same post which they occupied in DHS. After examination, options of 3072 employees were found to be valid.

26.3 State *vide* G.O. dated 27.02.2009, directed that the Director of Heath Service will issue orders transferring the 'lien' of

those 3072 employees at the disposal of DME. Further, it was submitted that, essentially, it was never an 'inter-departmental' transfer of the employees on their 'request'. They were given a 'choice' to exercise an 'option' by the State in furtherance of a policy decision. Making such a choice would not fall within the ambit of 'request' as stipulated in the proviso to Rule 27(a) of KS&SS Rules and seniority of the absorbed employees cannot be reckoned from the date, they joined DME.

26.4 The entire exercise was carried out by a committee set up by the State after due consultation and by transferring lien to DME, the service of the absorbed employees rendered in DHS was specifically protected.

27. Learned Senior Counsel Mr. Raghenth Basant appearing on behalf of the original employees straight away drew our attention to the proviso to Rule 27(a) of KS&SS Rules and contended that when any inter-departmental transfer is made on the 'request' of an employee, then in such case, his/her seniority must be reckoned from the date of joining the new department. To further buttress, he submitted that –

27.1 Out of 6022 posts that stood transferred to DME from DHS, only 3072 posts were filled by transferring absorbed employees from DHS to DME. The remaining posts were filled on deputation. Even though the inter-departmental transfer was an administrative decision of the State, the Appendix II – 'Form of Option' annexed with G.O. dated 25.10.2008 reveals that the absorbed employees had to give a declaration as to 'Stations requested for posting' before getting transferred.

27.2 Once it is settled that it is a case of inter-departmental transfer subject to filling up of request for posting, proviso to Rule 27(a) of KS&SS Rules will automatically attract for determining seniority of the transferred employees and as provided, it shall be from the date of joining duty in the new Unit. Rule 27(c) has no applicability in the *lis* at hand.

27.3 This Hon'ble Court in ***'K.P. Sudhakaran and Another Vs. State of Kerala and Others[1]'*** while dealing with issue of seniority and applicability of Rule 27(a) of KS&SS Rules, has categorically

1 (2006) 5 SCC 386

held that on transfer, the employee has to forego his past service and his seniority will be determined from the date of his joining duty in the new department/unit.

27.4 Lastly, if the seniority of the original employees vis-à-vis absorbed employees is reckoned from the date of initial appointment of absorbed employees, then it will cause grave prejudice since original employees were never given an option.

28. Learned Senior Counsel Mr. Jaideep Gupta appearing on behalf of the State, argued in support of the appellants – absorbed employees and at the outset submitted that there is no question of prejudice being caused to original employees for the reason that, after the abolition of dual control system, the original posts in DHS along with their promotional posts in respective category were transferred to DME. In other words, effectively additional posts as they existed in DHS were shifted to DME. The options were exercised by the absorbed employees only on the premise of assured seniority and on absorption to DME, if they are placed at the bottom of seniority list in the respective category, they will have to forego their previous service. This was never the intention of the Government of Kerala while taking the policy decision.

29. Generally, in inter-departmental transfers, only the employee is transferred to the respective post, however, in the present case, the post itself along with the employee have been shifted. DHS employees were given an option to switch to DME after policy decision and transfer of posts to DME. The said option was never in the nature of request as contemplated under proviso to Rule 27(a) of KS&SS Rules. Hence, the said proviso has no bearing on the inter-se seniority between the original employees and absorbed employees.

Analysis of contentions and reasonings

30. After hearing learned counsel for the parties at length, in our view the short question which falls for consideration is *'whether the option exercised by DHS employees to join DME pursuant to a policy decision of the State of Kerala ought to be considered as an option for absorption or a request for transfer under proviso to Rule 27(a) of KS&SS Rules and in that situation, the inter-se seniority of such employees in the DME shall be reckoned from which date?'*

31. Having perused the material placed, it is luculent that in furtherance to the policy decision of the Government and on account of abolition of the dual control system, employees of the DHS were required to be transferred by way of absorption to DME in public interest looking to the administrative exigency. In furtherance as per G.O. (Ms.) No. 124/07/H&FWD dated 01.06.2007, existing staff of DHS were required to be switched to DME for implementation of the said decision. In this connection, the Government first decided to identify the issues and invited the stakeholders to deliberate. A meeting was convened under the Chairmanship of the Additional Secretary, Health, on 10.10.2007 and taking note of the recommendations of the Estimates Committees 1998-2000 and 2001-2004, it was decided to abolish the dual control system to increase the efficiency of public administration. In furtherance, the Committee framed the 'Draft Rules for Option' and 'Draft Option Form.' As per the Government order vide G.O. (Rt.) No. 1273/08/H&FWD dated 07.04.2008 and G.O. (Rt.) No. 2321/08/H&FWD dated 05.07.2008, the Government nominated nodal officers of the DHS and DME and the Administrative Officer from the Kerala Heart Foundation to coordinate the activities in connection with the implementation of abolition of dual control system. They prepared the list of such staff of various categories and grade working under their control and also the list of employees along with the posts for transfer to the DME. On receiving the information, the Government examined those in detail and was of the view that the existing qualification and method of appointment for the posts in DHS will be followed for appointment to the post after shifting them to DME and modification, if any, shall be considered separately.

32. In consequence, the Government after partial modification in G.O. (Ms.) No. 124/07/H&FWD dated 01.06.2007, issued the G.O. (P) No. 548/2008/H&FWD dated 25.10.2008, and the recommendations made therein are enumerated as under –

> *(i) All the ministerial staff, nurses, paramedical staff including the last grade staff under the establishment of Director Health Services and now working in the Medical Education Department will be brought under the administrative control of Director of Medical Education subject to filing of option in accordance with the Rules for option. The Rules of option is given in Appendix-I and Form of option is given in*

Appendix II. The category-wise list and number of post as above is given in Appendix III. The persons who opt for the Medical Education Department from the Health Services Department will be allotted to the Medical Education Department based on the seniority in service. The option will be applicable only for the staff of Health Services Department. The staff of Health Services Department now working under Director of Medical Education also will have to file option if they wish to continue in the Medical Education Service.

(ii) The staff of Health Services Department will file option in the prescribed form in Appendix-II. If the number of persons in a particular category who opt to the Medical Education Department is in excess of the sanctioned strength of that category in Medical Education Service, the senior most among such persons will be shifted to Medical Education Service as per Rule 27(a) and 27(c) of Part II KS & SSRs, subject to their option. If sufficient options are not received for a particular post, the junior most person will be shifted to the Medical Education Department from the Health Services Department making mandatory posting according to seniority. If staff is in surplus in that category in Health Services Department, such mandatory posting will continue till such time Director of Health Services has no surplus staff under any category.

(iii) The employees will file option in the prescribed form in Appendix II duly recommended by the head of office, to the Senior Administrative Officer (Dual Control Option Cell), Office of the Director of Health Services, Thiruvananthapuram. The employees shall file option within a period of 45 days from the date of this order.

(iv) The option form will be scrutinized by a Cell, with the following staff, within a period of one month thereafter, that is by 15.1.2009. The Cell will function in the office of the Director of Health Services.

(1) The Senior Administrative Officer, Health Services Department, Thiruvananthapuram (Convener).

(2) The Administrative Officer, Medical Education Department, Thiruvananthapuram.

(3) The Administrative Officer, Kerala Heart Foundation, Medical College, Thiruvananthapuram.

(4) The Administrative Assistant, Health Services Department, Thiruvananthapuram.

(5) The Administrative Assistant, Medical Education Department, Thiruvananthapuram.

(6) 2 Clerks each from the Medical Education Department and Health Services Department, Thiruvananthapuram.

(v) The Director of Health Services will issue orders transferring the employees on the basis of options received, subject to the Draft Rules in Appendix I, before 31.01.2009. The Director of Health Services and Director of Medical Education will identify the surplus staff thereafter, if any, after completion of the process, to Government and Director of Medical Education will identify the surplus staff in all categories and report to Government after 31.1.2009.

By order of the Governor,
Dr. Vishwas Mehta,
Secretary (Health)"

33. From the above, it can clearly be spelt out that by the mechanism carved out, the employees of the DHS were required to be transferred along with the posts to DME by way of absorption in the exigency of public administration and necessity. The factum of absorption by way of transfer is clear from the declaration of Appendix II of G.O. dated 25.10.2008, i.e., the form prescribing details of the employees and attached declaration, by which it is clear that the employees have opted for absorption in DME and wish to continue and do not intend to return to DHS as referred in paragraph 15 of the judgment.

34. After receiving the declaration and Appendix II, the Committees of the officials of DHS and DME made recommendations for transferring 3096 posts of 57 categories and accordingly, the Government of Kerala issued G.O. (P) No. 167/2009/H&FWD dated 17.06.2009, including the names and posts of those employees whose options were found valid. After passing such order, the issue arose regarding seniority of the employees absorbed in DME. In this regard, a clarificatory letter was issued by the Government on 24.04.2010, specifying that the seniority of the staff who opted for DME shall be reckoned as per Rule 8 of Appendix I of G.O. dated 25.10.2008 in terms of Rules 27(a) and 27(c) of Part II of KS&SS Rules. It was clarified that in case of promotion the seniority shall be reckoned from the date of promotion and in case of direct recruit (entry cadre) as per the date of first effective advice issued at the time of appointment.

35. The reference of above Rule 8 of Appendix I is in paragraph 14 of the judgment whereby, the seniority of the staff who opted for absorption to DME will be maintained as per Rule 27(a) and 27(c) of Part II, KS&SS Rules. The word 'maintained' used for seniority has its own significance and be further referred for *inter-se* seniority of the absorbed employees in terms of the said Rules.

36. The Rule 27(a) as quoted in paragraph 19 of judgment above emphasizes that seniority of a person in service in any class, category or grade shall be determined from the date of order of first appointment to the service unless he has been reduced to lower rank by way of punishment. Its proviso only deals with the contingencies wherein an employee seeks transfer on request as specified or applied mutually. Therefore, the proviso applies only for the contingencies of mutual or inter-unit or inter-departmental transfer from one unit to another within the same department or from one department to another as the case may be on request by such employee. It does not apply to the cases in which transfer is made by the Government in administrative exigency or the transfer by way of absorption under policy decision of the Government.

37. In our view, the intent of Rules 27(a) and 27(c) is clear that seniority be reckoned from the order of his first appointment and the inter-se seniority be determined as per the date of first effective advice made for his appointment in service, class, category or grade as the case may be. The proviso of Rule 27(a) is merely an exception to the

said Rule of maintaining the seniority from the date of appointment in the cases of 'on request' and mutual transfer. The said exception does not attract in a case of transfer by way of absorption made by the Government in public interest or in administrative exigencies. Thus, proviso to Rule 27(a) is an exception to the transfer on administrative grounds in public interest. The said fact is also clear from the Rules framed in Appendix I, and Option Form of Appendix II and its declaration as contained in G.O. dated 25.10.2008, by which the employee has furnished option for absorption without making any request for transfer.

38. The whole dispute revolves around the interpretation of the words transfer on request, transfer applied mutually and transfer by way of absorption. In the said context, it is necessary to lay emphasis on the definition of transfer as given in Kerala Service Rules (KSR), 1959, which reads as under: -

> ***"(36) 'Transfer' –*** *means the movement of an officer from one headquarter station in which he is employed to another to such station, either,*
>
> *(a) to take up the duties of a new post, or*
>
> *(b) in consequence of a change of his headquarter."*

The said definition postulates the change of headquarter or station to another either to take up the duties of a new post or in consequence of change of headquarter. Indeed, the said change may be on request as prescribed in proviso to Rule 27(a) of KS&SS Rules or on his/her mutual request based on the needs of the employees who have applied or for administrative reason in public interest. As discussed, the said proviso only deals with first two contingencies and not the last one, i.e., transfer in public interest for administrative reason.

39. The transfer of an employee is an incidence of service if it is in public interest. It cannot be disputed that the Government is the best judge to decide how to distribute and utilise the services of an employee. Simultaneously, if employee makes a request due to some hardship and if the authority or the Government as the case may be is satisfied, it may post such employee as per request, but such transfer cannot be termed as transfer in public interest because it is on the request of the employee and not in the exigencies of the public administration.

40. Here, it is a case of transfer by way of absorption. Now, to deal with the meaning of absorption, we can profitably refer to the different glossaries. As per *P. Ramanatha Aiyar's Advanced Law Lexicon, 7th Edition*, 'absorption' means *'to take in. On absorption, the employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees of the department.'*

41. In *Corpus Juris Secundum (CJS),* 'absorb' is defined as *'to suck up; to drink in, to imbibe; to draw in as a constituent part; and it has been said to be also a synonym of "consume".*

42. On perusal of the above, it is clear that if transfer is by absorption, then such employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees. In other words, absorb clearly indicates to suck up, to imbibe to draw as a constituent part and consume.

43. In addition, the words option and request have different meanings which require further emphasis. In colloquial usage, *Merriam-Webster* defines *'option'* as – *'an act of choosing; the power or right to choose: freedom of choice; something that may be chosen'*, whereas, *'request'* is defined as – *'by asking for something, usually in a formal way'*.

44. In legal usage, *Black's Law Dictionary* defines *'option'* as – *'right or power to choose; something that may be chosen'*. On the other hand, it defines *'request'* as – *'an asking or petition; the expression of a desire to some person for something to be granted or done'*.

45. In *P. Ramanatha Aiyar's Advanced Law Lexicon, 7th Edition*, 'option' is defined as – *'simply choice or freedom of choice. The essential requisites of an option or election is that a party opting should be cognizant of his right. The party must have the knowledge of his or* her *right and of those circumstances which will influence the exercise of option. The person to whom an option is given in regard to any matter must be left to his own free will to take or do one thing or another.'* and *'request'* is defined as *'a demand or requirement'*.

46. After going through the definitions, it is clear that option gives a right to choose with freedom of choosing amongst the choices presented to the person concerned, whereas a request is the desire of a person to be granted something by asking or is a demand or requirement of the employee.

47. In the present case, the transfer has been made by way of absorption on the basis of option and not on the basis of request. The said absorption was in furtherance to a policy decision of the Government to abolish the dual control system enhancing the efficiency of the administration of medical colleges and attached hospitals thereto giving it to DME withdrawing from DHS. Therefore, the transfer by way of absorption on exercise of option as specified in Appendix I and Appendix II contained in G.O. dated 25.10.2008 does not attract the proviso to Rule 27(a) of KS&SS Rules, which only deals with the transfer on request or on mutual request. Thus, the action taken in public interest due to administrative exigency even on option is different than the action done on request. In our view, the proviso to Rule 27(a) does not attract in case of a transfer by way of absorption done by the Department in furtherance to the policy decision of the Government. Therefore, transfer by way of absorption in public interest cannot be equated with the transfer on request in contingencies as specified in proviso to Rule 27(a) or applied mutually.

48. In the fact situation of the present case, the judgment of Full Bench of the Punjab and Haryana High Court in the case of ***'Kartar Singh v. State of Punjab, 1989 SCC OnLine P&H 482',*** is relevant. The Full Bench in a similar situation while dealing with the issue of seniority of Patwaris working in the State's Consolidation Department who were absorbed into the Revenue Department held that the employees of Consolidation Department after absorption into the Revenue Department, will have the benefit of length of service in the Consolidation Department, on the new post. While concurring the view, in the separate note, Justice M.M. Punchhi, expressed his view that absorption is akin to amalgamation, in the sense that, an employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees of the department, classified as promotees, direct appointees or transferees. In the facts discussed in detail above, definition of absorption which was based on option and the definition of request discussed above, we concur with the view taken by the Punjab and Haryana High Court by the said Full Bench.

49. At this stage, the judgment relied upon by the learned Senior Counsel Mr. Raghenth Basant representing private respondents in the case of ***K.P. Sudhakaran and Anr. (supra)*** is also relevant to refer wherein interpretation of Rule 27 of KS&SS Rules was expressly made in the

context of the transfers of employees on request and maintaining the seniority. This Court dealt the proviso to Rule 27(a) in paragraph 11 and observed as thus:

> ***"11.*** *In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is, however, governed by the relevant service rules."*

In the case, Court dealing with clause (a) and (c) of Rule 27 of the said Rules further observed as under –

> **"*16.*** *A careful reading of clause (c) shows that it did in no way affect the contents of proviso to clause (a) of Rule 27 inserted by amendment by GO dated 13-1-1976. Clause (a) of Rule 27 provided that seniority of a person in a service, class, category or grade shall be determined by the date of the order of his first appointment to such service, class, category or grade. Clause (b) provides that the appointing authority shall, at the time of passing an order appointing two or more persons simultaneously to a service, fix the order of preference among them, and seniority shall be*

determined in accordance with it. Clause (c) made it clear that notwithstanding anything contained in clauses (a) and (b), where a person is appointed to a class, category or grade in a service on the advice of the Commission, the seniority of such person shall be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list. The effect of clause (c) is to clarify the date with reference to which seniority should be reckoned when they are initially appointed on the advice of the PSC. It only means that where the appointments are from the selection list published by PSC, their seniority will be reckoned/ determined by the first effective advice made for such appointment by PSC and not by the actual date of his appointment by the appointing authority. Clause (c) has therefore no effect or application over the proviso which regulates subsequent "own-request" transfers."

50. The Court with said observations concluded that if the request is made for transfer by an employee and accepted by the authority, then on joining the transferred post, seniority be counted from the date of his joining at new place foregoing the previous service and advantage of clause (c) of Rule 27 is not available to such employee. The said judgment is of no help to private respondents – original employees since the transfer in the present case is in the administrative exigencies by way of absorption. As discussed above, the absorption based on option is completely different than the transfer on request and the said judgment rather fortifies the discussions made above and favours the case of the absorbed employees.

51. In conclusion, we can observe that in furtherance to the conscious policy decision of the Government, abolition of dual control system was inevitable, therefore, bifurcation of DHS and DME was directed based on the recommendations. The employees existing in DHS were absorbed in DME along with posts and lien. In the present case, in terms of the G.O. (P) No. 548/2008/H&FWD dated 25.10.2008, particularly Rule 8 of Appendix I, seniority of the absorbed employee cannot be disturbed applying the proviso of Rule 27(a) of KS&SS

Rules. Learned Senior counsel representing the State has supported the said view pointing out that while forming the policy for transfer by way of Appendix I, II and III, the Government never intended to forgo the seniority of the employees in any class, category and grade existing in service of DHS and absorbed in DME. Therefore, the Government has specifically mentioned in Rule 8 of Appendix I that the seniority of such employee shall be 'maintained' as per Rule 27(a) and 27(c) of Part II of KS&SS Rules giving due weightage to the service rendered by them in DHS while absorbing in DME.

52. In totality of facts as discussed, the inescapable conclusion that can be drawn is that the transfer of appellants – absorbed employees was by way of absorption as per the policy decision of the Government of Kerala and it would not fall within the purview of proviso to Rule 27(a) of KS&SS Rules. The appellants exercised the option for absorption by transfer from DHS to DME in line with the policy decision taken by Government of Kerala and not on their own volition. Such being the situation, it cannot be considered as a case of transfer based on voluntary choice or own request. Their seniority and *inter-se* seniority shall be maintained as per Rule 27(a) and 27(c) of Part II of KS&SS Rules read with clarificatory letter dated 24.04.2010 with reference to Rule 8 of Appendix I to G.O. dated 25.10.2008. The question as framed by us in paragraph 30 is answered accordingly.

53. In view of the foregoing discussion, we are of the considered opinion that the findings recorded by the Division Bench reversing the judgment of learned Single Judge are without due consideration of the material placed and based on wrong interpretation of rules. Therefore, such findings and the judgment stand set-aside.

54. Resultantly, the present appeals are allowed. The State of Kerala is directed to draw the seniority list of DME employees, including original and absorbed employees, reckoning the seniority of the absorbed employees as directed in paragraph 52 above. Pending interlocutory applications (if any) stand disposed-of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey

[2025] 1 S.C.R. 542 : 2025 INSC 42

Indian Evangelical Lutheran Church Trust Association
v.
Sri Bala & Co.

(Civil Appeal No. 1525 of 2023)

08 January 2025

[B.V. Nagarathna* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Whether the plaint in the subsequent suit for specific performance filed by the plaintiff, i.e., O.S. No. 49/2007, is liable to be rejected in terms of Order VII Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that the said suit is barred by the law of limitation.

Headnotes†

Code of Civil Procedure, 1908 – Or. VII, r.11(d) – Limitation Act, 1963 – Arts. 54 and 113 – The plaintiff filed an unnumbered suit in the year 1993 for specific performance of the agreement to sell dated 26.04.1991 – The said suit was rejected vide order dated 12.01.1998 due to non-payment of requisite court-fees by the plaintiff – Thereafter, plaintiff filed second suit O.S. No. 49/2007 in the year 2007 for specific performance of agreement to sell dated 26.04.1991 – The defendant sought rejection of the second suit by filing I.A. u/Or. VII, r.11(d) of the CPC, which was dismissed by the Trial Court – The High Court confirmed the order passed by the Trial Court – Correctness:

Held: In the instant case, the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself – The plaint in the said suit was rejected on 12.01.1998 – The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it – This is on the basis of Or. VII, r.13 of the Code – However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007 – The cause of action by then faded and paled into oblivion – The right to sue stood extinguished – The suit was barred in law as being filed beyond the prescribed period of limitation of three years as per Article 113 to the Schedule to the Limitation Act – Hence the second suit is barred u/Or. VII, r.11(d) of the Code – Therefore, the plaint in O.S No. 49/2007 filed by the

* Author

respondent herein is rejected – There is absence of any evidence being recorded on the issue of limitation – This is on the admitted facts – Thus, on the basis of Or. VII, r.11(d) of the Code r/w. Art.113 of the Limitation Act, the impugned orders of the High Court and the Trial Court are set aside and the application filed u/Or. VII, r.11(d) of the Code is allowed. [Para 9.12]

Limitation Act, 1963 – Nature and scope:

Held: The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith – The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond – The Limitation Act therefore does not confer any substantive right, nor defines any right or cause of action – The law of limitation is based on delay and laches – Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action unless there is a person who can sue and a person who can be sued. [Para 9]

Law of Limitation – Right of plaintiff:

Held: The barring of the remedy under the law of limitation on the expiry of the limitation period would not imply plaintiff's right being extinguished – Only the possibility of obtaining a judicial remedy to enforce the right is taken away – However, in certain cases, the expiry of the period of limitation would extinguish the plaintiff's right to seek remedy entirely. [Para 9.2]

Limitation Act, 1963 – Art. 113 – Residuary Article – Omnibus Article:

Held: If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article – The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act – The residuary article is applicable to every variety of suits not otherwise provided for under the Limitation Act – It prescribes a period of three years from the date when the "right to sue" accrues – Under Article 120 of the erstwhile Limitation Act, 1908, it was six years, which has been reduced to three years under Article 113 of the present Act – Article 113 of the Limitation Act is an omnibus Article

providing for a period of limitation not covered by any of the specific Articles. [Paras 9.4, 9.6]

Limitation Act, 1963 – Art. 113 – When the 'right to sue' accrues:

Held: The right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit – Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion – When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought – It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue – The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. [Para 9.8]

Limitation Act, 1963 – Arts. 54 and 113 – The second suit was filed after rejection of the plaint in the earlier suit for seeking specific performance of a contract – What is the period of limitation of filing second suit:

Held: In the present case, the earlier suit was filed by the respondent/plaintiff in July, 1993 on the basis of Article 54 and the plaint in the said suit was rejected on 12.01.1998 – The second suit being O.S. No. 49/2007 was filed on the strength of Order VII Rule 13 of the Code for the very same cause of action and for seeking the very same relief of specific performance of the agreement dated 26.04.1991 as the plaint in the earlier suit was rejected on 12.01.1998 – Therefore, it cannot be said that the second suit namely O.S. No. 49/2007 was filed as per Article 54 of the Limitation Act – Since this is a suit filed for the second time after the rejection of the plaint in the earlier suit, in view of this Court, Article 54 of the Limitation Act does not apply to a second suit filed for seeking specific performance of a contract – Then, the question is, what is the limitation period for the filing of O.S. No. 49/2007 – One have to fall back on Article 113 of the Limitation Act – Article 113 of the Limitation Act is an omnibus Article providing for a period of limitation not covered by any of the specific Articles –

Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues. [Paras 9.6, 9.7, 9.9]

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List of Acts

Charitable and Religious Trust Act, 1921; Limitation Act, 1963; Limitation Act, 1908; Code of Civil Procedure, 1908.

List of Keywords

Specific Performance; Rejection of plaint; Cause of Action; Barred by Limitation; Res-Judicata; Order VII Rule 11 of Code of Civil Procedure, 1908, Order VII Rule 13 of Code of Civil Procedure, 1908; Article 54 of Limitation Act, 1963; Article 113 of Limitation Act, 1963; Right to sue; Residuary Article; Omnibus Article; Right of plaintiff.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1525 of 2023

From the Judgment and Order dated 15.03.2022 of the High Court of Judicature at Madras at Madurai in CRPMD No. 1116 of 2011

Appearances for Parties

P.V. Balasubramaniam, Sr. Adv., Anish R. Shah, Ankit Sahu, Advs. for the Appellant.

V. Giri, Sr. Adv., Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Ms. S. Lakshmi Iyer, Ms. Sukriti Bhatnagar, Shaswat Singh, E. C. Agrawala, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Nagarathna, J.

This appeal has been filed by assailing the order dated 15.03.2022 passed by the Madras High Court, Madurai Bench in C.R.P. (MD) No.1116 of 2011 dismissing the Civil Revision Petition filed by the appellant.

1.1. For the sake of convenience, the parties in the present appeal are being referred to as per their status and positions before the trial court.

Factual Background:

2. According to the plaintiff/respondent herein, the present dispute pertains to land measuring 5.05-acre being a portion of a 6.48-acre property known as Loch End at Kodaikanal, originally purchased by American missionaries of the Lutheran Church Missouri Synod and Missouri Evangelical Lutheran India Mission in 1912. The Kodaikanal International School (seeking to implead in the suit) is located across the road from Loch End. In 1975, an agreement was made between the American missionaries and the India Evangelical Lutheran Church Trust Association (defendant/ appellant herein) to transfer various properties, including the Kodaikanal property, to the defendant. This agreement was formalized through the joint filing of O.P. No.101/1975 under Section 7 of the Charitable and Religious Trust Act, 1921 before the District Judge, Madurai, leading to a decree dated 26.11.1975, appointing the defendant as the trustee of those properties for the objects of the Trust stated thereunder.

   2.1. According to the plaintiff, the defendant being in need of funds decided to sell a part of those properties, including the 5.05 acres of Loch End, consisting of 12 out of 15 buildings (hereinafter referred to as "suit scheduled property"). An agreement to sell was executed on 26.04.1991 between the defendant and the plaintiff, i.e., M/s. Sri Bala & Co., for the suit scheduled property, on a total sale consideration fixed at Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) was made. Partial possession of the property is said to have been handed over to the plaintiff. At that time, the impleading party was allegedly in possession of three of the twelve buildings on Loch End in the capacity of a tenant.

   2.2. The plaintiff filed an unnumbered suit in the year 1993 before the Court of the Subordinate Judge, Dindigul Anna District for specific performance of the agreement to sell dated 26.04.1991, by seeking execution of the sale deed in respect of the suit scheduled property and for placing the plaintiff in possession of the property. The said suit was subsequently transferred to the Court of the Subordinate Judge, Palani. But the said suit was rejected *vide* order dated 12.01.1998 passed by the Court of Subordinate Judge, Palani due to non-payment of requisite court-fees by the plaintiff.

2.3. The plaintiff thereafter filed O.S. No.49/2007 before the Court of the Principal District Judge, Dindigul District, seeking specific performance of the sale agreement dated 26.04.1991, with a direction to the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration for the suit scheduled property.

2.4. The defendant sought rejection of the second suit by filing I.A. No.233/2007 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short, "Code"), on the ground that the subsequent suit for specific performance is barred by the principle of *res judicata* as the plaintiff had not filed any appeal against the rejection of the plaint in the previous suit. The defendant also contended that the subsequent suit for specific performance was barred by the law of limitation since it was filed after a gross delay of almost nine years and beyond the period stipulated under Article 54 of the Limitation Act, 1963 ("Limitation Act", for short).

2.5. The plaintiff filed its objections to the defendant's application for rejection of plaint and placed reliance on Order VII Rule 13 of the Code to argue that a rejection of a plaint does not preclude the presentation of a fresh plaint for the same cause of action. It was further contended by the plaintiff that as per the sale agreement, the Kodaikanal International School, which is in possession of part of the suit scheduled property in the capacity of a tenant, has to be evicted and the vacant possession ought to be handed over to the plaintiff. Since the tenants had not been vacated from the property, the suit for specific performance of the sale agreement is not barred by Article 54 of the Limitation Act. Reliance was placed by the Plaintiff on an extension letter dated 15.07.1991 executed by the defendant's Secretary-cum-Treasurer namely Reverent A. Sundaram in favour of the plaintiff, which had extended the period of the sale agreement in light of multiple pending litigations with the impleading party.

2.6. The said application, i.e., I.A. No.233/2007, was dismissed by the trial court *vide* order dated 16.09.2010, on the grounds that the previous suit was not decided on merits and therefore the principle of *res judicata* would not apply and further, the

issue of limitation period being extended to file the suit for specific performance in light of the pending litigations with the impleading party was a question of fact and the said issue had to be adjudicated only after examination of proper witnesses and documents during trial. Thus, the trial court refused to reject the plaint at such an early stage.

2.7. Being aggrieved by the order of the trial court, defendant preferred a civil revision petition before the High Court being C.R.P. (MD) No.1116/2011. However, the High Court on 15.03.2022 dismissed the said Civil Revision Petition. The High Court observed that the previous suit was neither registered nor numbered and since the issues were not finally decided, it was not hit by the principle of *res judicata.* Further, the question of extension of the limitation period is a mixed question of fact and law which can be decided only after the recording of evidence and not at the stage of rejection of plaint. Thus, the High Court confirmed the order dated 16.09.2010 passed by the trial court on the application filed by the defendant for rejection of the plaint. The said order of the High Court in C.R.P. (MD) No.1116/2011 is under challenge in this appeal.

2.8. Two more orders arising out of the same set of facts were passed by the Madras High Court, Madurai Bench on the same date as that of the impugned order. The issues in those matters dealt with impleadment and beneficiary rights of the impleading party with respect to the suit scheduled property. This Court granted leave in those matters as well and had tagged them with the present matter. However, since the present appeal deals with an issue more germane to the suit and the relevance of those two appeals rests on the fate of the present appeal, the present appeal was de-tagged by this Court from the other two connected matters *vide* order dated 24.10.2024.

Submissions:

3. We have heard Sri P.V. Balasubramaniam, learned senior advocate for the appellant/defendant and learned senior advocate Sri V. Giri for the respondent/plaintiff and perused the material on record.

3.1. Sri Balasubramaniam, at the outset submitted that both the High Court as well as the trial court were not right in dismissing the

application filed by the appellant/defendant in the suit under Order VII Rule 11(d) of the Code. No doubt, the respondent/ plaintiff in the suit had the right to file another suit on the same cause of action after rejection of the plaint in the earlier unnumbered suit filed by it in the year 1993 for the relief of specific performance of the agreement to sell dated 26.04.1991 on the strength of Order VII Rule 13 of the Code. However, the said suit had to be on the same cause of action as the earlier suit and within the period of limitation as prescribed under the Limitation Act, 1963. Thus, the rejection of the plaint in the earlier suit filed by the respondent/plaintiff was not a bar to file a fresh suit on the same cause of action. The law provides for another opportunity to a plaintiff to reagitate on an identical cause of action despite the rejection of the plaint in the earlier suit filed by a plaintiff on the basis of Order VII Rule 13 of the Code. However, the second suit which is on the same cause of action must be maintainable in law and not hit by Order VII Rule 11(d) of the Code.

3.2. Elaborating on the aforesaid contention, learned senior counsel submitted that in the instant case, the first suit was filed in the year 1993 to seek specific performance of the agreement to sell dated 26.04.1991 which suit was filed within the period of limitation as prescribed under Article 54 of the Limitation Act. The plaint of the said suit was rejected *vide* order dated 12.01.1998 owing to non-payment of the requisite court-fees by the plaintiff. If another suit had to be filed by the very same plaintiff on the very same cause of action, then the second suit had to be within the prescribed period of limitation and otherwise not barred by law. In the instant case, the respondent/ plaintiff filed the second suit only in the year 2007 for specific performance of agreement to sell dated 26.04.1991, when the cause of action accrued to the respondent/plaintiff in the year 1993 itself, i.e., when the earlier suit was filed. Even if the period of the pendency of the said earlier suit till the rejection of the plaint on 12.01.1998 is excluded for the purpose of computing the limitation period which had commenced as early as in the year 1993, there is no explanation as to why the second suit i.e., O.S. No.49/2007 was filed only in the year 2007. At best, the limitation period could have extended for a period of three

years from 12.01.1998 for the filing of the second suit by the respondent/plaintiff. That, the aforesaid facts are all admitted by the respondent/plaintiff in the plaint itself and hence, on that basis the trial court as well as the High Court ought to have exercised their jurisdiction in rejecting the plaint in O.S. No.49/2007 as the filing of the second suit in the year 2007 is way beyond the prescribed period of limitation.

3.3. It was contended that when the earlier suit was filed by the respondent/plaintiff, it was on the basis of the cause of action that had accrued to the plaintiff. If the plaint in the earlier suit was rejected on 12.01.1998, then the second suit ought to have been filed immediately thereafter so as to maintain a continuity in the cause of action or possibly within three years from the date of the rejection of the plaint, which would mean that the suit ought to have been filed by 12.01.2001. But, in the instant case, the filing of the suit in the year 2007 gives rise to an inference that the respondent/plaintiff had acquiesced to the rejection of the plaint and thus had waived its right to seek specific performance of the agreement to sell dated 26.04.1991. Therefore, the filing of the second suit in the instant case is only an afterthought, a chance and being speculative in nature, ought to have resulted in rejection of the plaint on the basis of Order VII Rule 11(d) of the Code as being hit by Article 54 of the Limitation Act and therefore, barred in law.

3.4. It was therefore submitted that the plaint in O.S. No.49/2007 may be rejected by setting aside the impugned order and allowing this appeal.

3.5. *Per contra*, learned senior counsel Sri Giri supported the impugned orders rejecting the application filed by the appellant herein under Order VII Rule 11(d) of the Code and contended that there is no merit in this appeal. Elaborating on this submission, Sri Giri contended that on the basis of Order VII Rule 13 of the Code, the second suit, namely, O.S. No.49/2007 was filed. In the plaint of the aforesaid suit, it has been categorically averred that the letter dated 15.07.1991 which was executed by the Secretary-cum-Treasurer Reverend, namely, A. Sundharam in favour of the plaintiff clearly extended the period of limitation owing to multiple litigations pending between the parties and the

party seeking to implead in the said suit. Further, the question of a suit being barred under Article 54 of the Limitation Act is a mixed question of law and fact which cannot be decided on mere averments made in the plaint. Hence, the trial court as well the High Court rightly rejected the application filed by the appellant herein for seeking rejection of the plaint. It was contended that owing to the pendency of litigation between the parties, the time for performance under the agreement dated 26.04.1991 was automatically extended and therefore, it was only when the other litigation between the parties herein and the impleading party in the suit concluded that the cause of action for filing the second suit in the year 2007 resurfaced as till then it was dormant and hence, there is no merit in this appeal. It was contended that there was in fact no basis to file the application under Order VII Rule 11(d) of the Code by the appellant herein as the issue of limitation could have been adjudicated upon on conclusion of the trial and along with the other issues which arise in the suit. It was submitted that there is no merit in this appeal and the same may be dismissed.

3.6. By way of reply, learned senior counsel for the appellant contended that there is a contradiction in the submission of the respondent/plaintiff inasmuch as when the earlier suit was filed in the year 1993 it was on the basis of a cause of action which had accrued to the plaintiff and there was no reference to letter dated 15.07.1991 extending the time for performance under the agreement or for that matter, resulting in extension of time for the filing of the suit akin to Section 18 of the Limitation Act. There is no reference to the letter dated 15.07.1991 in the earlier suit filed by the respondent/plaintiff and the same is also not admitted by the appellant herein. Even otherwise, the pendency of other litigations *vis-à-vis* the suit scheduled property could not have been a reason for filing the second suit as late as in the year 2007 for seeking specific performance of the agreement to sell dated 15.07.1991. On a comparison of the earlier suit and the present suit and on a holistic reading of the plaint in the second suit, the trial court as well as the High Court ought to have allowed the application filed by the appellant herein and rejected the plaint as being barred in law, hit by the Limitation Act and thus, coming within the scope and

ambit of Order VII Rule 11(d) of the Code. Therefore, learned senior counsel submitted that the present appeal may be allowed with costs.

Points for Consideration:

4. The short issue before this Court in this appeal is, whether the plaint in the subsequent suit for specific performance filed by the plaintiff, i.e., O.S. No.49/2007, is liable to be rejected in terms of Order VII Rule 11(d) of the Code on the ground that the said suit is barred by the law of limitation. What order is to be passed?

5. The detailed narration of facts and contentions would not call for a reiteration.

5.1. The undisputed facts of the case are that on 26.04.1991, the appellant/defendant entered into an agreement to sell the suit scheduled property to the respondent/plaintiff for a total consideration of Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs.10,00,000/- (Rupees Ten Lakhs only) was made. There was a time schedule for the payment of the balance in sale consideration within a period of twenty-seven months from 26.04.1991 which is also extracted in paragraph 4 of the plaint. Thus, within a period of twenty-seven months from the date of the agreement, the entire balance of sale consideration had to be paid by the respondent/plaintiff to the appellant herein. However, as early as in 1993 itself, the suit for specific performance of the agreement to sell was filed by the respondent/plaintiff, which was an unnumbered suit, but the plaint in the said suit was rejected *vide* order dated 12.01.1998 passed by the trial court due to non-payment of the requisite court fees by the respondent/plaintiff.

5.2. Thereafter, it was only in the year 2007 that the respondent/plaintiff filed O.S. No.49/2007 seeking the very same relief of specific performance of the sale agreement on receipt of the balance sale consideration. This suit was filed on the strength of Order VII Rule 13 of the Code. It is in this suit that the appellant/defendant filed an application under Order VII Rule 11(d) of the Code on the ground that the said suit was barred by the law of limitation since it was filed after a gross delay of almost nine years from the date of rejection of the plaint in the

earlier suit and the said suit not being maintainable as barred in law. Consequently, the plaint was subject to rejection. The trial court dismissed the application filed for seeking rejection of the plaint by its order dated 16.09.2010 and the said order has been sustained by the High Court by the impugned order.

Legal Framework:

Order VII Rule 11 of the Code:

6. Since the issue in this appeal pertains to the correctness or otherwise of the impugned orders refusing rejection of the plaint, at this stage, we deem it necessary to refer to Order VII Rule 11 of the Code which deals with the grounds for rejection of a plaint:

> **"11. Rejection of plaint. -** The plaint shall be rejected in the following cases-
>
> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law:
>
> (e) where it is not filed in duplicate;
>
> (f) where the plaintiff fails to comply with the provision of rule 9:
>
> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the

case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

6.1. In the instant case, an application was filed under Order VII Rule 11(d) of the Code where the ground of rejection of the plaint was that the suit appears from the statement in the plaint to be barred by any law. In this regard, our attention was drawn to various decisions of this Court with regard to rejection of plaint under Order VII Rule 11 of the Code which are as follows:

(i) In ***T. Arivandandam vs. T.V. Satyapal*** ***(1977) 4 SCC 467***, this Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code, as observed by Krishna Iyer, J.

(ii) The object of the said provision was laid down by this Court in ***Sopan Sukhdeo Sable vs. Assistant Charity Commissioner*** ***(2004) 3 SCC 137.*** Similarly, in ***Popat and Kotecha Property vs. State Bank of India Staff Association*** ***(2005) 7 SCC 510*****,** this Court has culled out the legal ambit of Order VII Rule 11 of the Code.

(iii) It is trite law that not any particular plea has to be considered, but the whole plaint has to be read. As was observed by this Court in ***Roop Lal Sathi vs. Nachhattar Singh Gill*** ***(1982) 3 SCC 487*****,** only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Similarly, in ***Raptakos Brett & Co. Ltd. vs. Ganesh Property*** ***(1998) 7 SCC 184,*** it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order VII of the Code is applicable.

(iv) It was further held with reference to Order VII Rule 11 of the Code in ***Saleem Bhai vs. State of Maharashtra (2003) 1 SCC 557*** that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

(v) In ***R.K. Roja vs. U.S. Rayudu (2016) 14 SCC 275*****,** it was reiterated that the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case the entire plaint comes under the situations covered by Order VII Rules 11(a) to (f) of the Code, the same has to be rejected.

(vi) In ***Kuldeep Singh Pathania vs. Bikram Singh Jaryal (2017) 5 SCC 345*****,** this Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

(vii) In an application under Order VII Rule 11 of the Code, a plaint cannot *be rejected in part*. This principle is well established and has been continuously followed since the 1936 decision in ***Maqsud Ahmad vs. Mathra Datt & Co. AIR 1936 Lah 1021***. This principle is also explained in another decision of this Court in ***Sejal Glass Ltd. vs.***

***Navilan Merchants Private Ltd.* (2018) 11 SCC 780** which was again followed in ***Madhav Prasad Aggarwal vs. Axis Bank Ltd.* (2019) 7 SCC 158**.

(viii) In ***Biswanath Banik vs. Sulanga Bose* (2022) 7 SCC 731**, this Court discussed the issue whether the suit can be said to be barred by limitation or not, and observed that at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) of the Code on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole.

Order VII Rule 13 of the Code:

7. Order VII Rule 13 of the Code reads as under:

> **"13. Where rejection of plaint does not preclude presentation of fresh plaint.-** The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

7.1. This Court in ***Delhi Wakf Board vs. Jagdish Kumar Narang* (1997) 10 SCC 192** was dealing with a case where an earlier suit had been rejected under Order VII Rule 11 of the Code in the year 1984 and a fresh suit was instituted on the same cause of action in the year 1986. The second suit was not allowed by the trial court as well as by the High Court. This Court set aside the orders of the trial court and the High Court and held that a suit filed on the same cause of action subsequent to rejection of the plaint in the previous suit under Rule 11 is not liable to be dismissed on the ground of being barred by order rejecting the plaint in the earlier suit.

7.2. In ***A. Nawab John vs. V.N. Subramaniyam* (2012) 7 SCC 738**, this Court examined the applicability of Order VII Rule 11 of the Code which requires a plaint to be rejected, *inter alia*, where the relief claimed is undervalued and/or the plaint is written on a paper insufficiently stamped, and, in either case, the plaintiff

fails to either correct the valuation and/or pay the requisite court fee by supplying the stamp paper within the time fixed by the court. Rule 13 categorically declares that the rejection of a plaint shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. It was also observed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13, such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected under Order VII Rule 11 of the Code and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of the suit. If it is to be found by the court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 clause (d).

7.3. However, Section 149 of the Code, as interpreted by this Court in ***Mannan Lal vs. Mst. Chhotaka Bibi, (Dead) by LRs. (1970) 1 SCC 769***, confers power on the court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation.

7.4. The case of ***Patil Automation Private Ltd. vs. Rakheja Engineers Private Ltd. (2022) 10 SCC 1*** further discussed that under Order VII Rule 11 of the Code, the plaint can be rejected on six grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. Order VII Rule 12 of the Code provides that when a plaint is rejected, an order to that effect with reasons must be recorded. Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII of the Code deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints. By virtue of Order IV Rule 1(3), a plaint is to

be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. It was therefore held that rejection of earlier suit under Order VII Rule 11 does not bar fresh suit on the same cause of action provided the right of action is not barred by the law of limitation.

Averments in the plaint:

8. Since the plaint has to be read holistically in order to ascertain whether it is barred by limitation and consequently, to decide if the suit itself is not maintainable, we now embark on a meaningful reading of the plaint in O.S. No.49/2007 which is sought to be rejected by the appellant herein, as under:

(i) Paragraphs 1 and 2 of the plaint give details of the plaintiff and defendant.

(ii) In paragraph 3 of the plaint, it has been averred that there was a written agreement of sale executed on 26th April, 1991 with regard to the suit scheduled property by the defendant/vendor as the absolute owner of the property with the plaintiff/purchaser. The sale price mutually agreed upon was Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance amount of Rs.10,00,000/- (Rupees Ten Lakhs only) was paid earlier on 26th March, 1991, a month prior to the written agreement being executed, wherein a payment of Rs.9,00,000/- (Rupees Nine Lakhs only) was made by demand draft of Canara Bank dated 23.03.1991 payable at Nagerkoil and Rs.1,00,000/- (Rupees One Lakh only) by way of an account payee cheque of City Union Bank, Madras.

(iii) Paragraph 4 of the plaint gives the time schedule for receipt balance sale consideration of Rs.2,92,00,000/- (Rupees Two Crores ninety-two lakhs only) in the following manner:

"(a) Rs.10,00,000/-, (Rupees Ten lakhs only) to be paid within 3 months from the date this agreement subject to the condition that the vacant possession of the properties occupied by tenants are handed over to the plaintiff on or before 1.6.1991.

(b) Rs.20,00,000/- (Rupees Twenty lakhs) to be paid within 9 months from the date of the agreement.

(c) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 9 months from the date of the agreement.

(d) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 12 months from the date of the agreement.

(e) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.

(f) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.

(g) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 21 months from the date of the agreement.

(h) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 24 months from the date of the agreement..

(i) Rs.42,00,000/- (Rupees Forty two lakhs) paid within 27 Months from the date of the agreement. The true copy of the sale deed is submitted herewith and it may be read as part of the plaint allegations."

(iv) Paragraph 5 of the plaint avers that the entire balance consideration has to be paid within 27 months, i.e., before 25.07.1993 but time is not the essence of the contract. Further, there is a condition precedent that the vacant possession of the properties occupied by the tenant are to be handed over to the plaintiffs on or before 01.06.1991.

(v) In paragraph 6 it is stated that the suit scheduled property and the adjacent property are popularly known as Loch End property wherein there are 15 buildings in an extent of 6.48 acres, out of which the defendant agreed to sell 5.05 acres consisting of 12 buildings. That at the time of agreement the tenant was in occupation of three buildings and on the date of the agreement the plaintiff was put in possession of nine buildings detailed therein.

(vi) Paragraph 7 of the plaint states that at the time of the agreement to sell, one Rev. J. Isaac Moon was the President of the defendant company and the Board of Directors by its

Resolution/Proceedings, authorised the Secretary Treasurer Rev. A. Sundharam to execute the agreement to sell and the same was later ratified by the Board of Directors of the defendant company.

(vii) Paragraphs 8 to 16, 18 and 20 of the plaint are extracted as under:

"8. Rev. J. Isaac Moon for the reasons best known to him did not like the suit property being sold to the plaintiff. Therefore, he whipped up the religious sentiments. As per the agreement to sell, the plaintiff was put in the possession of the tenanted premises also on 1.7.1991 by the defendant. Bin Rev. J. Isaac Moon instigated the tenant to proffer a false complaint against the personnel of the defendant and the plaintiff and her husband before the police as though the tenant was evicted by force Therefore proceedings were initiated u/s 145 of the code of Criminal Procedure in M.C. No. 1/1991 on the file of the Sub-Divisional Magistrate-Cum-Revenue Divisional Officer Kodaikanal.

9. The plaintiff was forced to file a suit for permanent injunction against the tenant to protect possession in O.S.No.66 of 1991 on the file of the District Munsif Court Kodaikkanal and obtained ad-interim orders in I.A.No.75/1991 also. Again the tenant file a Writ petition before Hon'ble High Court in W.P.No.9551/ 1991 seeing protection further against the ad interim order in I.A.No.75/1991 the tenant also filed Revision before Hon'ble High Court in C.R.No.1846/1991 and obtained stay of operation of the order. In the meantime, the Sub Divisional Magistrate-cum-Revenue Divisional Office Kodaikanal on 9.12.1991 found possession only with the plaintiff and against which also the tenant filed a Revision before the Hon'ble High Court in Court in Crl. R.C. No.113/1992.

10. Since the defendant's president Rev. J. Issac Moon, without any authority was acting against the decisions / resolutions / proceedings of the Board of Directors, the defendant extended the time for performance of the contract till the disposal of the all litigations on 15.07.1991. The true

of copy, of the letter extending the time for performance is also submitted herewith for better appreciation of facts.

11. In the meantime, the plaintiff also filed a suit with deficit court fee for specific performance of the contract and the same was allowed to be rejected for non-payment of dealt court fee by the Hon'ble sub-court Palani. In the meantime the tenant also filed several applications in O.P.No. 101/1975 in 1.A.No. 1500/92 and 1.A.No. 1501/92 on the file of the District Court Dindigul questioning the validity of the agreement to sell and also filed various suits in O.S.No 13/93 and in O.S.No. 108/93 on the file of the District Munsif court Kodaikkanal for taking inventory and for permanent injunction against the defendant from alienating the suit property. In view of multiplicity of proceedings initiated by the tenant, the plaintiff was advised not to proceed with the suit for specific performance on the file of the Sub-Court Palani at that time. It is needless to submit that under order 7. Rule 13 of C.P.C. rejection of earlier plaint is not a bar to the suit.

12. Subsequently the Hon'ble High Court passed a common order setting aside the ad-interim orders passed in I.A. No. 75/91 in O.S.No. 66/91 on the file of District Munsif Court Kodaikanal and the order passed by SDK cum RDO/ Kodaikkanal in MC 1/1991 in C.R.P, No. 1846/91 and Crl.R.C.No. 113/92 respectively, In view of the order of the High court, the tenant with the help of police took possession of not only the three tenanted premised but also the other 9 buildings in the occupation of the plaintiff, on 24.07.1997 with the help of Rev. Isaac Moon and the local police.

13. The plaintiff preferred special Leave Petitions against the orders of the Hon'ble High Court in W.P. No. 9551/1991, C.R.P. No. 1846/1991 and Cri. R.C.No, 113/1992: The Hon'ble Supreme Court in SI.O. (Crl) No.2037/97 (C) No. 2038/97 and 2039/97 set aside the order of the Hon'ble High Court and remanded the same an 24.3.1998.

14. In the meantime, the tenant not pressed that suit in O.S.No.13/93 and 108/96 on the file of the District:

Munsif Court Kodaikkanal besides 1.A. No.1501/92 in O.P.101/1975 on the file of the District Court Dindigul.

15. Again, SUM Cum RDO Kodailcanal found the tenant to be in possession in M.C.No. 1/1991 after remand of the matter by the Hon'ble Supreme court of India, without hearing the plaintiff. Against which the plaintiff also preferred a Revision before Hon'ble High Court in Crl. R.C.No.511/1999. The Hon'ble High Court dismissed the Revision and titt7-51aintiff has also preferred, a special Leave Petition before Hon'ble supreme Court of India in SLP.No.1239/2005 and the same is still, pending along with other SLPs filed by the plaintiff arising out of orders dated 29.04.2003 in CRP.No.232/2003 by the Hon'ble High Court against the orders in I.A. No. 59/2002 in O.S.No. 66/1991 on the file of the District Munsif Court Kodaikanal and against the orders in CRP No.649/2003 which was filed against taking on file IA.55/2003 in O.S. No.66 of 1991 on the file of the District Munsif Court Kodaikkanal.

16. In the meantime, on 25.4.2003 the Hon'ble District Judge Dindigul dismissed I.A.No. 1500/1992 in O.P.No. 101/1975 holding that the agreement to sell dated 26.4.1991 between the plaintiff and the defendant is valid and enforceable. The tenant also filed a memo exonerating, the plaintiff and the tenant even filed I.A.No. 1500/2012 to delete the name of the plaintiff from the decretal and orders in I.A. No. 1500/1992 after its dismissal. The Hon'ble District, Judge dismissed 1.A. No.1575/2005 on 5.4.2007.

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18. Further, there were various litigations over the election of conveners of three Synods, and board of Directors to the defendant company froth July 1992. An advocate - Commissioner was appointed by the Hon'ble High Court to conduct election to the defendant company. Therefore, the plaintiff could not negotiate or deal with the defendant for enforcement of the contract for sale as there was confusion in the part of the plaintiff filing this suit. Even

not there is no clear picture as to the election of Directors to the Board of the defendant company, and the secretary of the company.

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20. As for as the suit for permanent injunction in O.S. No. 66 of 1991 on the file of the District Munsif Court Kodaikkanal now stands transferred to the file of the District Munsif chuft Dindigul and the same is still pending in O.S. No. 76/2005."

The aforesaid paragraphs refer to various proceedings initiated in the years 1991, 1992, 1993 and give the details of those proceedings, some of which had been disposed while other/s were pending on the date of the filing of the plaint or suit.

(viii) Paragraph 17 of the plaint reads as under:

"17. In view of the cantankerous attitude of the tenant and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of contract earlier. The plaintiff was always ready and willing to perform her part of the contract."

(ix) Paragraphs 19 and 21 of the plaint are extracted as under with regard to the filing of the suit for specific performance and cause of action for the same.

"19. Any how, the plaintiff has not been advised to file this suit for specific performance. The plaintiff has paid urban land Tax to the tune of Rs.35,670/- and property Tax for Rs.6652/-.for the suit property. Further, the suit property had been attached for the Income Tax due to the govt. by the plaintiff.

xxx

21. Cause of action for the suite arose on 26.4.1991 when the plaintiff and the Defendant entered into an agreement of sale with regard to the schedule mentioned property herein under on 15.07.1991 when the time for performance of contract is extended till the disposal of litigations launched at the instance of the president of the company through the tenant, on 25.4.2003 when the Hon'ble District Judge

upheld the validity of the sale agreement dated 26.4.1991 and on 5.4.2007 when I.A.No.1515/2003 was dismissed to delete the name of the plaintiff and at Kodaikanal Township where the suit property situate within the jurisdiction of this Hon'ble Court."

8.1. What is significant to note is that in paragraphs 10 and 21, there is a reference to a letter dated 15.07.1991 said to have been issued by the defendant which is contended to be for the purpose of extending the time for performance of the contract till the disposal of litigation launched at the instance of the President of the defendant through the tenant. Hence, it is averred that the plaintiff was not advised to file the suit for specific performance which was ultimately filed in the year 2007, being the second suit for the same cause of action, when initially, (on the very same cause of action,) the unnumbered suit was filed on 21.07.1993 wherein the plaint was rejected on the ground that the court fee had not been tendered despite several opportunities being given.

8.2. Further, in paragraph 17 of the plaint, it has been averred that due to the cantankerous attitude and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of the contract earlier, although the plaintiff was ready and willing to perform her part of the contract. This averment is totally alien to the filing of the second suit and has no bearing on the relief sought inasmuch as the tenant is not a party to the agreement dated 26.04.1991 and the filing and pendency of litigation *vis-à-vis* the tenant was not an impediment at all to file the earlier suit for specific performance of the aforesaid agreement.

8.3. We are conscious and mindful of the fact that while considering the question of rejection of the plaint, it is the plaint alone which has to be read meaningfully and not any averment in the written statement. It is also necessary sometimes to consider the documents annexed to the plaint for a holistic and comprehensive reading of the plaint in order to decide whether the plaint ought to be rejected or not. But the present case is not a case where there is only one suit which has been filed by the respondent/plaintiff on the same cause of action and therefore, only a single plaint ought to be considered while deciding the

issue of rejection of the plaint. This is a case where a second suit has been filed after the rejection of the plaint in the earlier suit filed on the very same cause of action and for the very same relief of seeking specific performance of agreement to sell dated 26.04.1991. In order to ascertain whether the plaint in the second suit ought to be rejected on the ground that it is barred by law such as the suit being filed beyond the prescribed period of limitation and therefore, is barred within the meaning of Order VII Rule 11(d) of the Code, we think it is useful to consider the fact that an earlier suit was filed by the respondent/plaintiff on the very same cause of action in the year 1993 itself which resulted in the rejection of the plaint in the said suit owing to non-payment of the court fee. This fact is pertinent when the contention of the defendant/appellant herein is that the second suit filed on the basis of Order VII Rule 13 of the Code is barred as it has been filed beyond the prescribed period of limitation.

8.4. It is nobody's case that the earlier suit was not filed in time. The said suit was filed on 21.07.1993, on the basis of the cause of action that arose for seeking the relief of specific performance of the agreement to sell dated 26.04.1991. According to the appellant/defendant, if the cause of action had occurred in the year 1993 and therefore, the earlier suit was filed in time, without any reference to the so-called letter dated 15.07.1991 (on the basis of which extension of time for performance of the contract is pleaded in the second suit), the rejection of the plaint in the earlier suit, at best, could have extended the limitation period by three years from the date of the rejection of the plaint in the earlier suit so as to maintain a continuity in the cause of action for filing the second suit. Significantly, in the earlier suit, the plaintiff did not aver that time for performance of the contract had been extended on the basis of the letter dated 15.07.1991 said to have been issued by the defendant. In fact, the stand of the respondent/plaintiff was to the contrary. It was to the effect that in the absence of performance of the agreement to sell dated 26.04.1991 by the defendant, the plaintiff had a cause of action to seek specific performance of the said agreement. Therefore, the earlier suit was filed in July, 1993 itself on the basis that the plaintiff had a cause of action to seek specific performance of the agreement to sell dated 26.04.1991. But owing to non-

payment of requisite court fee, the plaint in the said suit was rejected on 12.01.1998. There was also no reference to any of the litigations which were pending between the parties prior to the filing of the earlier suit which is said to have resulted in postponement of the performance of the contract.

8.5. Thus, if really, the cause of action had arisen for the plaintiff to file the earlier suit on 01.07.1993 and the plaint in the said suit was rejected on 12.01.1998 owing to non-payment of the requisite court fee, then, at best, a second suit on the very same cause of action could have been filed by 12.01.2001 which would have been within three years from the date of rejection of the plaint in the earlier suit. Therefore, the second suit, namely O.S. No.49/2007, could not have been filed in the year 2007 i.e., nine years after the rejection of the plaint in the earlier suit. The second suit not having been filed within a period of three years from 12.01.1998, which could be construed to be within the meaning of the Limitation Act, we are of the view that the second suit filed by the respondent/plaintiff is barred by the law of limitation and is thus not maintainable.

8.6. To get over this lacuna, the respondent/plaintiff has introduced the so-called communication/letter dated 12.07.1991 said to have been issued by the defendant by stating that time for performance of the contract had been extended till the conclusion of all other litigations between the parties herein and with the tenant. If reliance is now placed on the said letter by the respondent/plaintiff so as to seek a continuity in the cause of action, then the earlier suit could not have been filed at all in the year 1993 as then no cause of action had arisen to the plaintiff to file the earlier suit! But the fact remains that the plaintiff/respondent herein did file the earlier suit in the year 1993 on the ground that they had a cause of action to do so and for the very same relief of specific performance of the agreement to sell dated 26.04.1991 was sought but the plaint in the earlier suit came to be rejected owing to non-payment of the requisite court fee. Even after the rejection of the plaint in the earlier suit, steps were not taken on time, i.e., prior to 12.01.2001 to file the second suit on the basis of Order VII Rule 13 of the Code. Instead, the second suit has been filed only in the year 2007 belatedly and possibly only to keep the

litigation alive between the parties which, in our view, is to make an unlawful gain from the speculative second suit by a settlement or in any other manner.

8.7. We do not appreciate the conduct of the respondent/plaintiff in filing of the second suit belatedly in the year 2007 when they could have done so prior to 12.01.2001, if they were really serious in seeking enforcement of the agreement to sell dated 26.04.1991. We say so on the basis of the action of the plaintiff in seeking the relief of specific performance of the agreement to sell dated 26.04.1991 by filing the earlier suit in the year 1993 itself. In the said suit there was no reference to the letter dated 26.07.1991. Moreover, litigation concerning the suit scheduled property was not an impediment to file the earlier suit in the year 1993. Then, we ask, how could it become an impediment for postponing the filing of the second suit till the year 2007? We think that the reliance placed on the letter dated 26.07.1991 in the second suit filed in the year 2007 (and the glaring omission of any reference to the said letter in the earlier plaint filed in the year 1993) is mischievous and cannot be considered to hold that there was an extension of time for performance of the contract. Therefore, the second suit filed by the respondent in the year 2007 is not within the prescribed period of limitation and not as sought to be contended by the plaintiff.

8.8. Thus, on a holistic reading of the plaint it could be rejected as being barred by law of limitation. However, it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule. We wish to discuss the relevant Article under the Limitation Act applicable to the facts of the present case which is Article 113 for the second suit with a preface on the law of limitation.

9. The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond. The Limitation Act therefore does not confer any

substantive right, nor defines any right or cause of action. The law of limitation is based on delay and laches. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action unless there is a person who can sue and a person who can be sued. There is also another important principle under the Law of Limitation which is crystallized in the form of maxim that *"when once the time has begun to run, nothing stops it".*

9.1. In "Limitation Periods" by Andrew McGee, Barrister of Lincoln's Inn, published in 2002, the author says that, -

> "Once time has begun to run it will run continuously, except in certain situations. Time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that the bringing of an action stops the running of time for the purposes of that action only."

9.2. It is further observed that the barring of the remedy under the law of limitation on the expiry of the limitation period would not imply plaintiff's right being extinguished. Only the possibility of obtaining a judicial remedy to enforce the right is taken away. However, in certain cases, the expiry of the period of limitation would extinguish the plaintiff's right to seek remedy entirely. Further, according to Andrew McGee, the policy and justification for having a statute of limitation has been explained in the following words:

> "Policy issues arise in two major contexts. The first concerns the justification for having statutes of limitation at all and the particular limits that presently exist. The second concerns the procedural rules that apply after an action has been commenced. Arguments with regard to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as "statutes of peace". The second looks at the matter from a more objective point of view. It

> suggests that a time-limit is necessary because with the lapse of time, proof of a claim becomes more difficult-documentary evidence is likely to have been destroyed and the memories of witnesses will fade. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts."

9.3. Further, to say that a suit is not governed by the law of limitation runs foul of the Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must, subject to the provisions of Sections 4 to 24, be dismissed, although limitation has not been set up as a defence. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Limitation Act. The court's function on the presentation of plaint is simply to examine, whether, on the assumed facts, the plaintiff is within time. The court has to find out when the "right to sue" accrued to the plaintiff.

9.4. Further, if a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for under the Limitation Act. It prescribes a period of three years from the date when the "right to sue" accrues. Under Article 120 of the erstwhile Limitation Act, 1908, it was six years, which has been reduced to three years under Article 113 of the present Act. According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit

is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted ***[State of Punjab vs. Gurdev Singh (1991) 4 SCC 1].***

9.5. This Court in ***Shakti Bhog Food Industries Ltd. vs. Central Bank of India (2020) 17 SCC 260,*** stated that the expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas Article 113, being a residuary clause, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

9.6. Article 113 of the Limitation Act reads as under:

"PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

	Description of suit	**Period of limitation**	**Time from which period begins to run**
113.	Any suit for which no period of limitation is provided elsewhere in the Schedule.	Three years	When the right to sue accrues."

Article 113 of the Limitation Act is an omnibus Article providing for a period of limitation not covered by any of the specific Articles. No doubt, Article 54 of the Schedule to the Limitation Act is the Article providing for a limitation period for filing a suit for specific performance of a contract. For immediate reference, the said Article is extracted as under:

	Description of suit	**Period of limitation**	**Time from which period begins to run**
54.	For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

9.7. In the present case, the earlier suit was filed by the respondent/ plaintiff in July, 1993 on the basis of Article 54 referred to above and the plaint in the said suit was rejected on 12.01.1998. The second suit being O.S. No.49/2007 was filed on the strength of Order VII Rule 13 of the Code for the very same cause of action and for seeking the very same relief of specific performance of the agreement dated 26.04.1991 as the plaint in the earlier suit was rejected on 12.01.1998. Therefore, it cannot be said that the second suit namely O.S. No.49/2007 was filed as per Article 54 of the Limitation Act. Since this is a suit filed for the second time after the rejection of the plaint in the earlier suit, in our view, Article 54 of the Limitation Act does not apply to a second suit filed for seeking specific performance of a contract. Then, the question is, what is the limitation period for the filing of O.S. No.49/2007. We have to fall back on Article 113 of the Limitation Act.

9.8. Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract which is on the happening of an event. No doubt, the second suit which is the present suit filed by the respondent/ plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue by means of a fresh suit was only after 12.01.1998. The expression "when the right to sue accrues" in Article 113 of the Limitation Act need not always mean "when the right to sue first accrues". For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same *vide* ***M.V.S. Manikyala Rao vs. M. Narasimhaswami, AIR 1966 SC 470***. Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit. Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him

and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue. The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.

9.9. Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act.

9.10. In the facts and circumstances of the present case, it is also necessary to apply Section 9 of the Limitation Act while applying Article 113 thereto. Section 9 reads as under:

> **"9. Continuous running of time.—**
>
> Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:
>
> Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues."

Section 9 is based on the general principle that when once limitation has started to run, it will continue to do so unless it is arrested by reason of any express statutory provision. Period of limitation can be extended, *inter alia*, when cause of action was cancelled such as by dismissal of a suit. Ordinarily, limitation runs from the earliest time at which an action can be brought and after it has commenced to run, there may be revival of a right to sue where a previous satisfaction of a claim is nullified with the result that the right to sue which has been suspended is reanimated [***Pioneer Bank Ltd vs. Ramdev Banerjee (1950) 54 Cal WN 710***]. In that case, the court distinguished between suspension and interruption of limitation period.

9.11. Once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that bringing an action stops running of time for the purpose of that action only [*Andrew McGee, Limitation Periods, 4th Edn., Sweet & Maxwell, chapter 2, para1*]. The Indian law also follows the English law ***[James Skinner vs. Kunwar Naunihal Singh ILR (1929) 51 All 367, (PC)].*** Intervention of court in proceedings would prevent the period of limitation from running and date of courts' final order would be the date for start of limitation [***N Narasimhiah vs. State of Karnataka (1996) 3 SCC 88***].

[Source: Tagore Law Lectures, U N Mitra, Law of Limitation and Prescription, Sixteenth Edition, Volume 1, Sections 1-32 & Articles 1-52]

9.12. Applying the aforesaid dictum to the facts of the present case, it is observed that the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself. The plaint in the said suit was rejected on 12.01.1998. The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it. This is on the basis of Order VII Rule 13 of the Code. However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007. The cause of action by then faded and paled into oblivion. The right to sue

stood extinguished. The suit was barred in law as being filed beyond the prescribed period of limitation as per Article 113 to the Schedule to the Limitation Act. Hence the second suit is barred under Order VII Rule 11(d) of the Code. We therefore have no hesitation in rejecting the plaint in O.S No.49/2007 filed by the respondent herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts. Thus, on the basis of Order VII Rule 11(d) of the Code read with Article 113 of the Limitation Act by setting aside the impugned orders of the High Court and the trial court and by allowing the application filed under Order VII Rule 11(d) of the Code. Consequently, this appeal is allowed.

Parties to bear their respective costs.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan

[2025] 1 S.C.R. 576 : 2025 INSC 44

Chief Revenue Controlling Officer Cum Inspector General of Registration, & Ors.
v.
P. Babu

(Civil Appeal No(s). 75-76 of 2025)

03 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Matter referred by Joint Sub-Registrar to the Special Deputy Collector (Stamps) for determining the correct market value of the property. When both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide the market value of the property, by the expression 'reason to believe', then whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property; what is meant by 'reason to believe'; when the Registering Officer holds that the sale consideration in the sale deed is not correct and the sale is undervalued, whether it is obligatory for the Registering Authority to assign reason for arriving at such conclusion before referring the sale deed to the Collector; High Court whether justified in setting aside the order of the authorities below w.r.t the stamp valuation.

Headnotes†

Stamp Act, 1899 – 47-A – Instruments of conveyance etc., undervalued how to be dealt with Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 – rr.3, 4, 6, 7 – Reference made by the Registering Authority under Section 47A for determination of the market value of the property in question without following the procedure – Market value enhanced, additional stamp duty demanded – High Court allowed the appeals filed by the respondent-purchaser and set aside the orders passed by the authorities below – Correctness:

Held: Impugned order is correct – The Registering Officer, after registration of the document, can refer the same for adjudication before the Collector, if he has reason to believe that there was

deliberate undervaluation of the property – Such a reference is not a mechanical act, but the Registering Officer should have a basis for coming to prima facie finding of undervaluation of the property – Enquiry by the Registering Authority is a pre-condition for making reference to the Collector for determination of market value of the property – The determination of market value without Notice of hearing to parties is liable to be set aside – The expression 'reason to believe' is not synonymous with subjective satisfaction of the officer – The belief must be held in good faith, it cannot be merely a pretence – It is open to the Court to examine the question whether the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section – The word 'reason to believe' means some material on the basis of which the department can re-open the proceedings – However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably – Registering Officer cannot undertake a roving enquiry for ascertaining the correct market value of the property – If the Registering Officer is bona fide of the view that the sale consideration shown in the sale deed is not correct and the sale is undervalued, then it is obligatory on the part of the Registering Authority as also the Special Deputy Collector (Stamps) to assign some reason for arriving at such a conclusion – If the document in question is straightway referred to the Collector without recording any prima facie reason, the same would vitiate the entire enquiry and the ultimate decision – In the present case, the Form I notices prescribed under the Rules did not contain any reason – Also, the Collector (Stamps) in his order failed to indicate the basis on which the sale consideration shown in the two sale deeds was undervalued – Furthermore, the Collector is obligated to communicate the provisional order to the parties concerned in respect of fixation of the correct value of the property and also the duty payable in Form II – Form II was issued however, after the issue of Form II, the parties have to be given an opportunity to submit their representation in respect of determining the market value of the subject property – Thereafter, as contemplated in Rule 7 the Collector, after considering the representation if received in writing and the submissions that might have been urged at the time of hearing or even in the absence of

any representation from the parties concerned, proceed to pass the final order – However, the Collector (Stamps) directly issued the final order without complying with sub-rules (2), (3) and (4) respectively of Rule 4 and also without following Rule 6 – Appeals dismissed. [Paras 18-21, 27, 31, 32, 34]

Words and Phrases – 'reason to believe' – Meaning – Discussed.

Case Law Cited

Mohali Club, Mohali v. State of Punjab, **AIR 2011 P&H 23; *G. Karmegnam v. The Joint Sub-Registrar, Madurai,* 2007 (5) CTC 737 – referred to.**

Dawsons Ltd. v. Bonnin, **1922 (2) AC 413 – referred to.**

List of Acts

Stamp Act, 1899; Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

List of Keywords

Stamp valuation; Market value of the property; Joint Sub-Registrar; Special Deputy Collector (Stamps); Registering Officer; Registering Authority; Chief Revenue Controlling Officer-cum-the Inspector General of Registration; Sale consideration; Sale deeds; Mechanical act; Purchaser; Sale undervalued; Form I notices; Form II; Enquiry; Pre-condition; Market value enhanced; Additional stamp duty; Provisional order; Duty payable; Final order; determination of market value; Notice of hearing; 'reason to believe'; Subjective satisfaction of the authorities; Objective determination.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 75-76 of 2025

From the Judgment and Order dated 02.09.2015 of the High Court of Judicature at Madras in CMA No. 973 of 2010 and CMA No. 2534 of 2012

Appearances for Parties

Sabarish Subramanian, Vishnu Unnikrishnan, Danish Saifi, Advs. for the Appellants.

Ms. Rohini Musa, Adv. for the Respondent.

Chief Revenue Controlling Officer Cum Inspector General of Registration, & Ors. v. P. Babu

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. These appeals are at the instance of the Chief Revenue Controlling Officer-cum-the-Inspector General of Registration and two other Revenue Officers, seeking to challenge the judgment and order passed by the High Court of Judicature at Madras dated 2-9-2015 in CMA Nos.973/2010 & 2534/2012 respectively by which the High Court allowed the civil miscellaneous appeals filed by the respondent – herein under Section 47-A(10) of the Indian Stamp Act, 1899 (for short, "the Stamp Act") and thereby quashed and set aside the order passed by the Chief Revenue Controlling Officer-cum-the-Inspector General of Registration with respect to the stamp valuation.

3. The subject matter of this litigation is the valuation shown in the two Sale Deeds registered as DOC No.487/02 dated 5-9-2002 and 488/02 dated 2-9-2002 respectively.

4. The respondent – herein is the purchaser. He got the two sale deeds executed through the original owner of the property in question. The market value of the entire property covered in both the sale deeds is Rs.1,20,000/- and Rs.1,30,000/- respectively. It appears that the Joint Sub-Registrar, Tindivanam on receipt of the two registered sale deeds declined to release the documents on the premise that the sale consideration shown in the two sale deeds was under-valued.

5. The matter was accordingly referred by the Joint Sub-Registrar to the Special Deputy Collector (Stamps) under Section 47-(A)(10) of the Act for the purpose of determining the correct market value of the property. It also issued notice in Form-I fixing the value of the properties in DOC No.487/2002 at Rs.45,66,660/- and property in DOC No.488/2002 at Rs.12,94,900/- respectively.

6. The Special Deputy Collector (Stamps) on conclusion of the inquiry fixed the market value of the property covered under DOC No.488/2002 at Rs.10,36,937/- and the property covered under DOC No.487/2002 at Rs.51,16,600/-.

7. The respondent – herein being dissatisfied with the order passed by the Special Deputy Collector (Stamps) preferred a statutory appeal

before the Inspector General of Registration. The appeal came to be dismissed.

8. In such circumstances, referred to above, the respondent – herein went before the High Court by filing Civil Miscellaneous Appeals under Section 47(A)(10) of the Stamp Act.

9. The High Court allowed both the appeals and thereby quashed and set aside the orders passed by the authorities below.

10. The appellants feeling dissatisfied with the impugned judgment and order passed by the High Court have come up before this Court with the present appeals.

11. We have heard Mr. Sabarish Subramanian, the learned counsel appearing for the appellants and Ms. Rohini Musa, the learned counsel appearing for the respondent.

12. We take notice of the fact that the High Court while allowing the Civil Miscellaneous Appeals has observed in paras 20 and 21 respectively as under:-

> *"20. That being the legal position, if the contention raised on the side of the learned counsel appearing for the Appellant is appreciated in the legal proposition, as above laid down by the Supreme Court, Full Bench, Division Bench and Single Judges of our High Court, it would compel this court to hold that the proceedings referring the documents for determination of the market value, without recording any reason to say that the document is undervalued, thus without performing the statutory obligation, cast upon the third Respondent Registering Officer, to record such reasons to arrive at a decision that the documents are undervalued and the same are required to be referred to the authority concerned to determine the actual market value of the property is contrary to the procedure laid down under law and is ex facie, illegal. Furthermore, no material is made available to show that the third Respondent/ Registering Officer, on the basis of such material, arrived at the conclusion that the true value is not set forth in the documents. In the absence of one such material, the proceedings initiated under Sec.47A is legally unsustainable, as such, the*

proceedings initiated for determination of the market value and the out come of such proceedings, fixing the value of the property covered under Doc Nos.487 and 488/2002 at Rs.498/- per sq.ft. and Rs.95/- per sq.ft respectively and demanding additional stamp duty, on the basis of such exorbitant value fixed, is hence arbitrary bad in law and null and void.

21. In this case, the documents were registered on 05.09.2002, and 02.09.2002, whereas Form-I notice was issued on 25.09.2002 and 12.09.2002 respectively. However, Form-I notices did not reflect the reasons, for which, the value mentioned in the documents was treated as undervalued and the material based on which the value mentioned in the documents was enhanced. Further, the orders of the second Respondent Special Deputy Collector (Stamps) dated 12.10.2004 did indicate the basis on which the value mentioned in the documents in question was enhanced. The reading of the same would reveal that his valuation was 'based on spot inspection and local enquiry. But what was the manner of local enquiry and what was the material collected in the course of such local enquiry to arrive at higher valuation at Rs.400/- per sq.ft and 76/- sq.ft. for the property covered in both the documents, and made available before this court. It is stated in the orders passed in respect of both the documents that the property at Sakkarapuram was situated at 150 feet from Chengi Bus stand and was on the north of the street leading to MP Nagar. When the property covered in both the documents is stated to be situated in the same village more or less adjacently, how the value was fixed at Rs.40/- per sq.ft. for one property and Rs. 76 /- per sq.ft. for other property is remained unexplained in the orders passed by the second Respondent. Further, the Appellant was not given any notice either for spot inspection or for local enquiry as contemplated under the relevant rules and their failure to do so is contrary to the procedure laid down under law and is in violation of the principles of natural justice."

13. The High Court concluded by observing the following in para 23 which reads thus:-

> *"23. Thus, the discussion held above would only reveal that the determination of the market value of the property in question is in pursuance of the reference made by the third Respondent Registering Authority under Section 47A of the Stamp Act, without following the procedure laid down under the Act and without performing the statutory obligation cast upon the third Respondent and the impugned orders of the Respondents 1 and 2, in enhancing the market value and demanding the additional stamp duty, based enhancement, are without any basis and based on irrelevant consideration and assumption and presumption and without application of mind. Further, as onus to prove that the instrument was undervalued, is on the department and the same has not been satisfactorily discharged by the Respondents, the impugned orders of the Respondents are liable to be set aside."*

14. Thus what weighed with the High Court is the fact that the Form I notices failed to assign any reasons as to why the documents could be said to be undervalued. In other words, what was the basis for the Special Deputy Collector (Stamps) to say that sale consideration shown in the two sale deeds was not correct. According to the High Court, there was no basis or any relevant materials on record to take the view that the two documents were undervalued except the spot inquiry and local inspection.

15. The only contention raised by the learned counsel appearing for the appellants is that it is not mandatory to assign reasons in the notice issued in Form I.

16. Section 17 of the Stamp Act reads as under:-

> *"17. Instruments executed in India. – All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution."*

17. Section 47-A of the Stamp Act reads thus:-

> *"47-A. Instruments of conveyance etc., undervalued how to be dealt with.— (1) If the Registering Officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement, has*

reason to believe that the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-Section (2). The difference, if any in the amount of duty, shall be payable by the person liable to pay the duty."

18. Under Section 47-A(1) and under Section 47-A(3), if the Registering Authority has reason to believe that the instrument of conveyance did not reflect the correct market value of the property, then the Registering Authority has the power to refer the same to the Collector for determination of market value of the property and the Collector, on reference, under Section 47-A(1), may determine the market value of

such property in accordance with the procedure prescribed. Enquiry by the Registering Authority is a pre-condition for making reference to the Collector for determination of market value of the property. The determination of market value without Notice of hearing to parties is liable to be set aside. When the Registering Authority finds that the value set forth in an instrument was less than the minimum value determined in accordance with the Rules, in that event, the Registering Authority is empowered to refer the instrument to the Collector for determination of market value of such property and the Stamp Duty payable thereon.

19. When both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide regarding the market value of the property, by the expression 'reason to believe', then whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property? What is meant by 'reason to believe' is the issue to be considered.

20. Availability of material is the foundation or the basis, for any authority to arrive at any decision whatsoever. The basis of a thing is that on which it stands, and on the failure of which it falls and when a document consisting partly of statements of fact and partly of undertakings for the future is made the basis of a contract of insurance, this must mean that the document is to be the very foundation of the contract, so that if the statements of fact are untrue, or the promissory statements are not carried out, the risk does not attach. This has been interpreted in the case of *Dawsons Ltd. v. Bonnin*, 1922 (2) AC 413.

21. It has been rightly held in the case of *Mohali Club, Mohali v. State of Punjab*, reported in AIR 2011 P&H 23, that the Registering Officer, after registration of the document, can refer the same for adjudication before the Collector, if he has reason to believe that there was deliberate undervaluation of the property. Such a reference is not a mechanical act, but the Registering Officer should have a basis for coming to prima facie finding of undervaluation of the property. Duty is enjoined upon the Registering Officer to ensure that Section 47-A(1) does not work as an engine of oppression nor as a matter of routine, mechanically, without application of mind as to the existence of any material or reason to believe the fraudulent intention to evade payment of proper Stamp Duty. The expression 'reason to believe'

is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine the question whether the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. The word 'reason to believe' means some material on the basis of which the department can re-open the proceedings. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably.

22. Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (for short, "the Rules 1968") is as under:-

> *"3. Furnishing of statement of market value.-*
>
> *(1) x x x x x*
>
> *(4) The registering officer may also look into the "Guidelines Register" containing the value of properties supplied to them for the purpose of verifying the market value.*
>
> *Explanation : The "Guidelines Register" supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents."*

23. Form 1 of notice prescribed under the Rules 1968 reads thus:-

> *"Form I [See rule 4] Form of notice prescribed under rule 4 of the Tamil Nadu Stamp (Prevention of Under valuation of Instruments) Rules, 1968 To, Please take notice that under sub-section (1) of section 47-A of the Indian Stamp Act, 1899 (Central Act II of 1899), a reference has been received from the registering officer for determination of the market value of the properties covered by an instrument of conveyance/ exchange/gift/release of benami right/ settlement registered as document No ..... dated the*

..... and the duty payable on the above instrument. A copy of the reference is annexed. 2. You are hereby required to submit your representation, if any, in writing to the undersigned within 21 days from the date of service of this notice to show that the market value of the properties has been truly and correctly set forth in the instrument. You may also produce all evidence in support of your representations within the time allowed. 3. If no representations are received within the time allowed, the matter will be disposed of on the basis of the facts available."

24. Form 2 of notice prescribed under the Rules 1968 reads thus:-

"Form II [See rule 6] Form of notice prescribed under rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 To, Please take notice that in the matter of the reference under sub-section (1) of section 47-A of the Indian Stamp Act, 1899 (Central Act II of 1899) relating to the determination of the market value of the properties covered by an instrument of conveyance/exchange/gift [1][release of benami right/ settlement] registered as document No ..... dated ..... received from the registering officer. I have passed an order provisionally determining the market value of the properties and the duty payable on the instrument. A copy of the order passed in the matter is annexed. Footnote:

1. The above expression was inserted by G.O. Ms. No. 1317, CT & RE, dt. 27.11.1982.

*2. The matter relating to the final determination of the market value of the properties and the duty payable on the instrument will be taken up for hearing on the (date) ... camp .... at ..... a.m/p.m. You are hereby required to lodge before the undersigned before the date of the hearing, your objections and representations, if any, in writing as*to why the market value of the properties and the duty as provisionally determined by me, should not be confirmed to adduce oral or documentary evidence and be present at the hearing. If you fail to avail yourself of this opportunity of appearing before the undersigned or*

adducing such evidence, as is necessary, producing the relevant documents, no further opportunity will be given and the matter will be disposed of on the basis of the facts available."

25. It appears that the High Court followed its Full Bench decision in *G. Karmegnam v. The Joint Sub-Registrar, Madurai* reported in 2007 (5) CTC 737 and other Division Bench decisions on the point in question more particularly the contention that Form I must contain some reasons for saying that the document is undervalued.

26. In the Full Bench decision, the High Court held as follows:-

"7. Registration of document is a sine qua non for referring the matter to the Collector, if the Registering Officer believes that the property is undervalued. No jurisdiction has been conferred on the Registering Officer to refuse registration, even if the document is undervalued. Besides, there is no authority for him to call upon the person concerned to pay additional stamp duty. Collector is the prescribed authority to determine the market value, after affording a reasonable opportunity of hearing the parties. The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. He can neither delay nor refuse registration of the instrument, merely because the document does not reflect the real market value of the property. In order to reach a conclusion, there is no bar for the Registering Officer to gather information from other sources, including official or public record. Valuation guidelines, prepared by the revenue officials periodically, are intended with an avowed object of assisting the Registering Officer to find out prima facie, whether the market value set out in the instrument has been set forth correctly.

x x x x x

26. When the Collector exercises powers under sub-sections (2) and (3), he shall be deemed to be a quasi-judicial authority, as the detailed procedure prescribed in the relevant rules evidently portrays that the Collector's

decision is relatable and verifiable by the materials on evidence, which he beings into record, on making an enquiry after hearing the parties concerned. The Collector has been conferred with such powers by the statute, whereas the Registering Authority is not. The powers of the Registering Officer are remarkably limited i.e. to say, he cannot at all hold any enquiry to ascertain the quantum of Stamp Duty payable on an instrument. As adverted to supra, he shall not undertake a detailed enquiry by examining the parties, which powers are exercisable by the Collector alone. The relevant rules would indicate that the procedures have to be adopted for an enquiry by the Collector. A detailed procedure has been formulated in Rule (4) for the Collector to act on receipt of reference under Section 47-A in Tamil Nadu Stamp (Prevention of Undervaluation of Instrument) Rules, 1968. It does not lay down any procedure as to what are the duties to be performed by a Registering Officer, while ascertaining the market value of the property. The necessary upshot would be, the legislature thought it appropriate to curtail the powers of the Registering Officer, probably for the reason that allowing the Registering Officer to make a roving enquiry would lead to loss of time for registration, resulting in accumulation of documents for registration with him. Further, prescribing an authority for the special purpose of conducting enquiry is very much essential, who shall not be the Registering Authority."

27. We are in complete agreement with the view taken by the Full Bench of the High Court. It is not permissible for the Registering Officer to undertake a roving enquiry for the purpose of ascertaining the correct market value of the property. If the Registering Officer is *bona fide* of the view that the sale consideration shown in the sale deed is not correct and the sale is undervalued, then it is obligatory on the part of the Registering Authority as well as the Special Deputy Collector (Stamps) to assign some reason for arriving at such a conclusion. In such circumstances, if the document in question is straightway referred to the Collector without recording any *prima facie* reason, the same would vitiate the entire enquiry and the ultimate decision. In the case on hand, it is not in dispute that the Form I notices did not

contain any reason. It also appears that the Collector (Stamps) in his order also failed to indicate the basis on which the sale consideration shown in the two sale deeds was undervalued.

28. There is one more aspect of the matter which we should look into. The High Court in its impugned judgment while recording the facts in para 2 stated as under:-

> *"…The third Respondent, having refused to release the documents on the ground that it was undervalued, referred the same to the second Respondent Special Deputy Collector (Stamps), Cuddalore under section 47(A)(1) of the Act for determining the correct market value of the property and also issued notice in Form I, thereby fixing the value of the property in Doc.No. 487/2002 at Rs.45,66,660/- and the other property in Doc.No.488/2002 at Rs.12,94,900/-. Thereafter, the second Respondent also issued Form II notice to the parties to the documents for enquiry before him. The Appellant, who is the purchaser of the property filed his objections. After enquiry, the second Respondent Special Deputy Collector (Stamps) in his proceedings dated 12.10.2004 fixed the market value of the property covered under Doc no.487/2002 at Rs. 51,16,565 @ Rs.51,16,600/- (Rs.400/- per sq.ft for 9170/- sq.ft + building at Rs.14,48,565/-) and fixed the market value of the property covered under Doc.no.488/2002 at Rs.10,36,937/- @ Rs.10,37,000/- (Rs.76/- per sq.ft for 13,577 sq.ft + Well and laying stone at Rs.5,085/-) and accordingly demanded deficit stamp duty payable for the documents. Aggrieved against the same, the purchaser who is the Appellant herein, preferred further appeals before the first Respondent Inspector General of Registration, who by the impugned orders dated 27.01.2009, determined the value of the property covered in Doc No.487/2002 at Rs.498 /- per sq.ft for land and the property covered in Doc No.488/2002 at Rs.95/- per sq.ft. for land and Rs.15,96,999 /- for building.…"*

29. It appears from the aforesaid that the second respondent i.e. the Special Deputy Collector (Stamps) failed to pass any provisional

order as contemplated in Rule 4(4) of the Rules 1968. Rule 4(4) of the Rules 1968 reads as follows:-

> "4. *Procedure On Receipt Of Reference Under Section 47-A*:-
>
> *x x x x x*
>
> *(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."*

30. As per Rule 6 of the Rules 1968, after passing the provisional order, it is obligatory on the part of the Collector to communicate the market value of the property and the duty payable by the parties concerned in Form II. On receipt of the Form II as contemplated under Rule 7 of the Rules 1968, the Collector shall have to pass the final order. It appears that in the case on hand, without following the Rules 4 and 6 respectively, the Collector (Stamps) directly passed the final order under Rule 7 of the Rules 1968.

31. The scheme of the Stamp Act and the relevant rules makes it abundantly clear that the Collector is obligated to communicate the provisional order to the parties concerned in respect of fixation of the correct value of the property and also the duty payable in Form II. In the case on hand, Form II was issued. To that extent, there is no dispute. However, after the issue of Form II, the parties concerned have to be given an opportunity to submit their representation in respect of determining the market value of the subject property. Thereafter, as contemplated in Rule 7 of the Rules 1968, the Collector, after considering the representation if received in writing and the submissions that might have been urged at the time of hearing or even in the absence of any representation from the parties concerned, proceed to pass the final order. It appears from the material on record that in the case on hand, the Collector (Stamps) directly issued the final order without complying with sub-rules (2), (3) and

(4) respectively of Rule 4 and also without following Rule 6 of the Rules 1968. This could be said to be in violation of the Rules 4 and 6 respectively of the Rules 1968.

32. We are of the view that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

33. In the result, these appeals fail and are hereby dismissed.

34. Pending applications, if any, also stand disposed of.

Result of the case: Appeals dismissed.

†*Headnotes prepared by: Divya Pandey*

[2025] 1 S.C.R. 592 : 2025 INSC 93

Sadashiv Dhondiram Patil
v.
The State of Maharashtra

(Criminal Appeal No. 1718 of 2017)

09 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ]

Issue for Consideration

Issue arose whether Village Police Patil is a Police Officer in terms of s. 25 of the Evidence Act; and whether the High Court erred in holding the appellant guilty of the offence of murder.

Headnotes†

Evidence Act, 1872 – ss.25, 106 – Extra judicial confession – Admissibility – Extra judicial confession to Police Patil, if admissible – Appellant-husband charged for the murder of his wife – Extra judicial confession allegedly made by the appellant to the village Police Patil – Trial court acquitted the accused for the offence punishable u/ss.302 and 201 IPC holding that extra judicial confession allegedly made by the appellant to Village Police Patil was inadmissible as per s.25 – High Court set aside the acquittal and held the appellant guilty of the offence of murder – Correctness:

Held: Police Patil of the Village cannot be termed as a Police Officer for the purpose of s.25 – Extra-judicial confession alleged to have been made by the accused before village Police Patil is admissible in evidence and is not hit by s.25 – However, such extra-judicial confession should be found to be true and trustworthy before it is relied upon by the Court to hold the accused guilty – Extra-judicial confession should also be found to be free of any inducement, coercion etc. and should be shown to have been made by the accused on his own free will and volition – What is alleged to have been conveyed cannot be said to be an extra- judicial confession – Very omnibus and vague statement seems to have been made – High Court erred in relying upon the extra-judicial confession even while rightly holding that the

same was admissible in evidence as Village Police Patil cannot be said to be a Police Officer – Panch witnesses did not support the prosecution case – Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved – However, I.O. cannot be said to be proving the contents of the panchnama in accordance with law and the circumstance of discovery cannot be relied upon – Motive cannot be the sole basis for convicting the accused – Prosecution has to prove its case beyond reasonable doubt – Initial burden of proof is always on the prosecution – However, in cases where husband is alleged to have killed his wife in the night hours and that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him – Prosecution has to first lay the foundational facts before it seeks to invoke s.106 – It cannot straightaway invoke s.106 and throw the entire burden on the accused to establish his innocence – In view thereof, the High Court erred in holding the appellant guilty of the offence of murder – Impugned judgment set aside – Penal Code, 1860 – ss.302, 201. [Paras 27, 31, 36-38, 42, 47-49, 50-51, 55, 56, 58]

Case Law Cited

Rajeshwer S/o Hiraman Mohurle v. State of Maharashtra **(2009) Criminal Law Journal 3816;** *C.K. Ravindra v. the State of Kerala* [1999] Supp. 5 SCR 140 **: AIR 2000 SC 369;** *Ram Singh v. the State of Maharashtra & Anr* **(1999) Criminal Law Journal 3763;** *Balwinder Singh v. State of Punjab* **(1995) Supplementary 4 SCC 259 – referred to.**

List of Acts

Evidence Act, 1872; Penal Code, 1860; Code of Criminal Procedure, 1973; Maharashtra Village Police Act, 1967.

List of Keywords

Extra judicial confession; Admissibility of extra judicial confession to Police Patil; Police Patil, if termed as a Police Officer; Panch witnesses; Motive.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1718 of 2017

From the Judgment and Order dated 03.07.2015 of the High Court of Judicature at Bombay in CRLA No. 70 of 1994

Appearances for Parties

Sachin Patil, Geo Joseph, Risvi Muhammed, Rishabh Agarwal, Advs. for the Appellant.

Aniruddha Joshi, Sr. Adv., Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Order

1. This appeal arises from the Judgment and Order passed by the High Court of Judicature at Bombay dated 3-7-2015 in Criminal Appeal No.70/94 by which the High Court allowed the acquittal appeal filed by the State of Maharashtra and thereby set aside the Judgment of the Additional Sessions Judge, Kolhapur dated 13-7-1993 in Sessions Case No.48/91 acquitting the appellant - herein (original accused) for the offence punishable under Sections 302 and 201 respectively of the Indian Penal Code (for short, the "IPC").

2. The case of the prosecution may be summarized as under:-

   The deceased by name Lata was married to the appellant herein. A son was born in the wedlock. However, it appears that marital life was not happy. The appellant – herein was entertaining a doubt in his mind as regards the chastity of his wife. One day all of a sudden, the deceased went missing.

3. In such circumstances, the maternal uncle of the deceased by name – Yashwant Ganpati Patil (PW 5) went to the house of Village Police Patial by name Mr. Vasant Dattu Bhosale & informed him that his niece had gone missing.

4. It appears that on 20-10-1990 at about 9.30 p.m. PW 5 brought to the notice to PW 2 that his niece Lata was missing.

5. The PW – 2, being the Village Police Patil, visited the house of the appellant – herein and found that the dead-body of the deceased lying in one corner of the house. The materials on record further indicate that the brother of the appellant – herein by name Madhukar and his wife Laxmi (PW 4) along with their daughter Mangal (PW 3) were also residing in the same house but separately in one part.

6. Upon recovery of the dead-body of the deceased, the inquest panchnama was drawn. The body of the deceased was sent for postmortem examination. The postmortem examination report noted that the cause of death was asphyxia due to strangulation. It is the case of the prosecution that the appellant – herein strangulated his wife to death with the help of an iron rod.

7. This iron rod is also stated to have been discovered from the place of the incident itself by way of a discovery panchnama drawn by the Investigating Officer in the presence of the panch witnesses.

8. The appellant was arrested in connection with the First Information Report that came to be lodged by the PW-2 himself at the concerned Police Station for the offence of murder.

9. Upon completion of investigation, the Investigating Officer filed charge-sheet for the offence enumerated above.

10. The case being exclusively triable by a Sessions Judge came to be committed to the Court of Sessions.

11. The Trial Court framed charge vide order dated 20.02.1993 which reads thus:

> "CHARGE
>
> I, V. B. Deshmukh, 4th Additional Sessions Judge, Kolhapur hereby charge you accused.
>
> Shri. Sadashiv Dhondiram Patil, Age-33 years, Resident of Takali, Tal. Shirol, Dist. Kolhapur as follows:-
>
> That you accused on or about 25.10.1990 at about 1.00 a.m. at Mouje Sainik Takali, Tal. Shirol, Dist. Kolhapur did commit murder of your wife Sou. Lata Sadashiv Patil, Age-25 years by pressing her neck and thereby committed an offence punishable section 302 of the Indian Penal Code.

Secondly that you on aforesaid date, time and place knowingly that certain offence, to wit that you committed murder of your wife by pressing her neck and offence punishable with death or imprisonment for life has been committed, did cause of certain evidence of the said offence to disappear to wit. that you put the dead body of your wife in a gunny bag and thrown in the (iso) where the food-grains are preserved with an intention to screening yourself from legal punishment and thereby committed an offence punishable under section 201 of the Indian Penal code, and within my cognizance.

And, hereby I direct you that you be tried by me on aforesaid charges.

Today this 20th day of February, 1993 at Kolhapur.

(V.B.Deshmukh),

4th Additional Sessions Judge,

Kolhapur.."

12. In the course of the trial, the prosecution examined the following witnesses:-

    1. Mr. Yeshvant Govind Chavan Exhibit 13
    2. Mr. Vasant Dattu Bhosale (Patil) Exhibit 16
    3. Ms. Mangal Exhibit 19
    4. Ms. Laxmi wife of Madhukar Patil Exhibit 20
    5. Mr. Yashvant Ganapati Patil Exhibit 21
    6. Mr. Yamnappa Bhimrao Murali Exhibit 22
    7. Mr. Amrut Rama Mane Exhibit 24
    8. Dr. Shashikant Lakshman Pawar Exhibit 32

13. The prosecution also relied upon the following pieces of documentary evidence:-

    1. First Information Report (Exhibit 17)
    2. Inquest Panchnama (Exhibit 8)

3. Spot Panchnama (Exhibit 10)
4. Arrest Panchnama (Exhibit 11)
5. Memorandum of the Statement of accused (Exhibit 14)
6. Seizure punchnama of iron-rod, Article No.1 (Exhibit 15)
7. Seizure punchnama of the clothes of the deceased (Exhibit 12)
8. The Memorandum of Post-mortem examination (Exhibit 33)
9. Advance Medical Certificate (Exhibit 9)
10. Seven photographs (Exhibit 37 to 43)

14. Upon closure of the recording of the evidence, the further statement of the appellant – herein was recorded under Section 313 of the Code of Criminal Procedure, 1973

15. In the further statement, the appellant stated as under:-

> Q.75 Do you want to say anything more about your defence?
>
> Answer : I am giving written statement.
>
> WRITTEN STATEMENT OF THE ACCUSED
> UNDER SECTION 313 of Cr. P.C.
>
> Few months prior to death of my wife, I became disciple of Shri Rane of Shirol. He told me not to sleep at home for 6 months. Therefore I use to stay at night generally at Shirol. If I am at Takali, then I use to sleep at Kalleshwar temple. 2-3 days prior to missing of my wife from the home, I was at Shirol. When I returned on Thursday or Friday, I came to know about missing of my wife from the home. I enquired with, her maternal uncle, but she did not go there. I am implicated in the present case only on the basis of doubt.

16. The Trial Court upon appreciation of the oral as well as the documentary evidence on record came to the conclusion that the

prosecution had failed to prove its case beyond reasonable doubt. The Trial Court accordingly acquitted the appellant – herein.

17. It may not be out of place to state that at this stage that the Trial Court looked into only one piece of circumstance, i.e., the extra judicial confession alleged to have been made by the appellant – herein before the (PW 2), i.e., the village Police Patil in the presence of his sister-in-law (PW 4) – Laxmi.

18. It is also important to note that Madhukar (brother of the accused) passed away during the course of trial and he could not have been examined as one of the prosecution witnesses.

19. The Trial Court took the view that the extra-judicial confession alleged to have been by the appellant – herein before (PW 2) could not be said to be admissible in evidence being hit by Section 25 of the Indian Evidence Act.

20. The Trial Court also disbelieved the discovery of the iron rod under Section 27 of the Indian Evidence Act.

21. The State, being dissatisfied with the Judgment and Order of acquittal passed by the Trial Court, went in appeal before the High Court.

22. The High Court reversed the acquittal and held the appellant – herein guilty of the offence of murder and accordingly sentenced him to undergo life imprisonment.

23. In such circumstances, referred to above, the appellant is here before this Court with the present appeal.

24. We have heard Mr. Sachin Patil, the learned counsel appearing for the appellant and Mr. Aniruddha Joshi, the learned Senior counsel appearing for the respondent – State.

25. We take notice of the fact that the entire case hinges on circumstantial evidence. The High Court relied upon the four pieces of incriminating evidence for the purpose of holding the accused guilty of the offence of murder of his wife:-

    (i) extra-judicial confession alleged to have been made by the appellant before (PW 2) on 29-10-1990

    (ii) discovery of the weapon of offence, i.e., the iron rod;

    (iii) motive to commit crime;

(iv) the incident occurred inside the house and, therefore, the appellant could be said to be within the special knowledge as to what had happened on the fateful day of the incident.

26. The High Court while reversing the acquittal invoked Section 106 of the Evidence Act and shifted the burden on the appellant – herein to establish or rather explain what exactly had happened with his wife.

27. It appears that when the Trial Court acquitted the appellant – herein, the position of law as regards the admissibility of an extra-judicial confession said to have been made before the Village Police Patil was something different. A Division Bench of the High Court in "Ram Singh vs. the State of Maharashtra & Anr" (1999) Criminal Law Journal 3763 had held that a village Police Patil is a Police officer and, therefore, any confession made to him is inadmissible in evidence in view of Section 25 of the Evidence Act.

28. In the said Judgment, the Division Bench also looked into & discussed Section 14 of the Maharashtra Village Police Act, 1967, under which a Police Patil is appointed.

29. We quote the relevant observations of the said Judgment as under:-

> 13. Section 14 of the Maharashtra Village Police Act, 1967, provides inter alia:
>
> "(1) The Police Patil shall apprehend any person within the limits of his village who he may have reason to believe has committed any serious offence, and shall forward such person, together with all articles likely to be useful as evidence, to the Station Officer.
>
> (2) Every person so apprehended shall within 24 hours be produced before the nearest Magistrate, excluding the time necessary for the journey from the place where he is apprehended to the Court of the Magistrate."
>
> 14. Sub-section (1) of S. 13 of the Maharashtra Village Police Act, 1967, provides:
>
> "The Police Patil shall forthwith proceed to the place of incident and call upon two or more intelligent persons belonging to the village or neighbourhood, who shall investigate the causes of death and all the circumstances of the case, and

make a written report of the same, which the Police Patil shall cause to be forthwith delivered to the Station Officer."
15. Section 15 of the Maharashtra Village Police Act, 1967, provides inter alia:

"(1) The Police Patil, in making any investigation coming within the scope of his duty, shall have authority to call and examine witnesses, and record their statement, and to search for concealed articles, taking care that no search be made in a dwelling-house between sunset and sunrise without urgent occasion.

(2) The Police Patil shall also have authority, in carrying out any search or any pursuit of supposed criminal, to enter and act within the limits of other villages, being bound however to have immediate information to the Police Patil thereof, who shall afford him all the assistance in his power, and be immediately responsible for continuing the search and pursuit."

16. On plain reading of these provisions under the Maharashtra Village Police Act, 1967, it will be clear that the Police Patil has power to apprehend a person, if he suspects that a person has committed serious offence. He has to send report to the Police Station and the person is required to be produced within 24 hours from the time and Police Patil apprehend such person. Not only that a preliminary investigation with respect to such crime also can be made by the Police Patil and he can even chase the accused and apprehend the accused. So, it is obvious that the observations of the learned Additional Sessions Judge quoted above are made without reading the appropriate provisions. Before making any such observations in the judgment, the Judge, at least, of the cadre of Additional Sessions Judge, is expected to go through the relevant provisions of law. Sweeping observations should not be made just to boost the reasoning which is being given in the judgment.

17. In the light of the provisions of the Maharashtra Village Police Act, 1967, it has to be seen whether any confession made before the Police Patil is hit by Section 25 of the

Evidence Act. The powers of the Police Patil which are referred to above clearly indicate that when any offence takes place, he can act as a Police Officer. He is not a mere spectator or informant. So, for all practical purposes, he is a Police Officer and, therefore, any confession made before the Police Patil would become inadmissible in evidence as being made before a Police Officer.

18. In this respect, we would like to refer two rulings of our High Court. The first is, in the case of Queen Empress v. Bhima ((1894) ILR 17 Bom 485), and the other is in the case of Vistari Narayan Shebe v. The State of Maharashtra 1978 Cri LJ 891. It is observed in the case of Vistari Narayan Shebe by the Division Bench, as follows (at page 895):

"In our opinion, it is fairly well established that the police patil is a police officer within the meaning of Sec. 25 of the Evidence Act. As early as in 1893 this Court held in Queen Empress v. Bhima ((1894) ILR 17 Bom 485), that a police patil is a police officer within the meaning of Ss. 25 and 26 of the Indian Evidence Act. A confession made to a police patil is inadmissible in evidence. It must be remembered that the words "a police officer" found in S. 25 of the Indian Evidence Act should not be read in any strict technical sense but according to its more comprehensive and more popular meaning. Nor is the term confined to a person actually in charge of investigating the offence under the Cr. P.C."

19. Thus, it will be very clear that any confessional statement made by the accused before the Police Patil is not admissible in evidence. If the learned Additional Sessions Judge had considered this aspect in that perspective, he would not have relied upon the evidence of the Police Patil to hold that the extra judicial confession made by the accused before the Police Patil could be sufficient to convict the accused. The deposition of the Police Patil as well as the F.I.R. which include this confessional statement are inadmissible in evidence and, therefore, this evidence brought on record by the prosecution has to be excluded altogether".

30. In the year 2009, a Full Bench of the Bombay High Court, answered a reference titled "Rajeshwer S/o Hiraman Mohurle vs. State of Maharashtra" reported in (2009) Criminal Law Journal 3816. The Full Bench was called upon to answer whether a Village Police Patil is a Police Officer within the meaning of Section 25 of the Evidence Act or not.

31. The Full Bench of the High Court overruled the above referred Division Bench Judgment and took the view that a Village Police Patil is not a Police Officer within the meaning of Section 25 of the Evidence Act and any confession made before him would be admissible in evidence as an extra-judicial confession. We may quote the relevant paragraphs of the said Full-Bench Judgment as under:-

> "18. Upon objective analysis of the principles aforestated, it can be stated with some certainty that merely because a person is appointed to a post which vests him with limited powers of Investigation and inquiry or any power ancillary thereto or empowers him to prevent commission of crime in an area would not per se make him a Police Officer in law so as to attract the bar contained in section 25 of the Evidence Act. We have already noticed in some detail that the powers vested in Police Patil under the Village Police Act are expected to be exercised for performance of duties and functions stated under section 6 of that Act. The duties and functions of the Police Patil are of a very restricted nature and do not vest in him all the powers including the power to file a charge-sheet under section 173 of the Criminal Procedure Code which a Police Officer under the Code possess. On the contrary, he is expected to assist the Police Officers when called upon by them in performance of their duties. He has to act under the orders of the District Magistrate and even is expected to collect and communicate to the Station Officer intelligence affecting the public peace. The basic and primary distinction between the powers of the Police Officer under the Code and the power and duties of the Police Patil under the Village Police Act, is that while the investigating officer or Police Officer in charge of a Police Station is duty bound in, law to conduct inquiry or, investigation in a just, proper and fair manner independently being uninfluenced by

any other facts. There the restricted duties and powers relating to investigation and even otherwise vested in the Police Patil are to be exercised under the supervision of higher authorities as indicated in the provisions of the Village Police Act. Police Patil is required to perform his functions and discharge his duties subject to the orders of the Magistrate and is also required to assist and help the Police Officers in discharge of their duties. In these circumstances, it will be a far fetched submission that the Police Patil has to be treated as a Police Officer in law for all intent and purposes. The consistent view of the Supreme Court as is evident from the above referred judgments is that the officer, other than a police officer, invested with powers of an officer -In-charge of a Police Station is not entitled, to exercise all the powers under Chapter XII of the Code Including the power to submit a report or charge-sheet/challan under section 173 of the Code. This feature has been the hallmark and is held to be determinative factor by the Supreme Court. Once this aspect is missing from the ambit of the powers vested in the officer, he cannot be stated to be a Police Officer for the purposes of section 25 of the Indian Evidence Act. The Police Patil under the Village Police Act is also not a Police Officer on the deeming fiction of law as there is no provision in the Statute which specifically or even otherwise requires the Police Patil to be treated as a Police Officer for all intent and purpose.

19. It will be useful to refer to the reasoning recorded by the Supreme Court in the case of Badku Joti Savant (supra) even at the cost of repetition. In paragraph 9 while discussing section 21 of the Central Excise Act which states that a Central Excise Officer under the Act has all the powers of an officer in-charge of a Police Station under Chapter XIV of the Criminal Procedure Code, the Court rejected the contention that therefore he should be deemed to be a Police Officer within the meaning of section 25 of the Evidence Act. Reference was made to the provisions of section 78(3) of the Bihar and Orissa Excise Act, 1955 and section 77 of that Act which stated that Excise Officer empowered under the provisions shall be deemed to be

the officer in-charge of a Police Station and shall have the power of such officer to investigate a cognizable case. But even there the Supreme Court held that this power does not include the power to submit a charge-sheet under section 173 of the Criminal Procedure Code under the Excise Act unlike the Bihar and Orissa Act and thus held that Central Excise Officer is not an officer deemed to be in-charge of a Police Station. In other words, the Supreme Court declined to accept the applicability of the deemed fiction of law to the extent of terming the Central Excise Officer as a Police Officer for the purpose of section 25 of the Evidence Act.

20. The distinction between the powers of investigation given to a Police Officer under the Code and that of a Police Patil under the Village Police Act is quite obvious from the provisions of the two Statutes. Police Patil has been vested with very limited powers that too under the control and for the benefit of the Executive Magistrate/ Police Officer and his duties are primarily to ensure that offences and public nuisance are not committed in the village and to bring the offenders to justice. The expression "bringing the offenders to justice" appearing in section 6 of the Village Police Act along with its other provisions has to be given its normal and plain meaning. There is no need, keeping in view the scheme of the Act or the legislative intent, to expand the meaning of this expression and enlarge the scope of provisions of this section on certain presumption of law. The powers of the Police Patil as stated under section 13 to 15 of the Village Police Act, are to be read and construed ejusdem generis to the provisions of section 6. The bare reading of these provisions show that Police Patil is not vested with the powers of preparing and filing a charge-sheet before the Court of competent jurisdiction. The powers of Police Patil to investigate and control over the apprehended persons are very limited in contradistinction to powers of a Police Officer under the Code. In terms of section 156 of the Code, a Police Officer is vested with the power to investigate any cognizable case under the provisions of Chapter XIII even without orders of the Magistrate. On the other hand, when a Police Patil

apprehends a person in exercise of his powers vested under section 14(i) of the Village Police Act, he has to forward such person to the Station Officer, who in turn shall produce such person before the Magistrate within twenty four hours. Thus Legislative intent behind section 6 appears to be that Police Patil is a person responsible primarily for village surveillance, prevention of crime and providing his assistance and help to the police in discharge of his duties. Even above all this, his duties and functions have been made subject to orders of the District Magistrate. The Police Patil does not enjoy absolute freedom in relation to investigation, apprehending the suspect and even in exercise of other powers vested in him under law. The powers to be exercised and duties and functions to be performed by him are under the supervisory control of the stated authorities. The duties, functions and powers vested in an authority by a Statute are relatable to the source which prescribes such functions and powers. The ambit, scope and effect of exercise of such power can be tested by two different concepts i.e. quo modo and actio quaelibet it suia via. In what manner the powers are to be exercised as per the prescribed procedure, the performance or action must follow its prescribed procedure. On applying the above stated principles and testing them with reference to the maxims stated (supra), it is not possible for the Court to hold that either the manner of functions and powers of Police Patil or method in which they are to be performed are equitable to the authority, powers and functions of a Police Officer, in law. Therefore, we are unable to contribute to the view that Police Patil is a Police Officer in law for all intent and purpose and confession before him would attract the bar contemplated under section 25 of the Indian Evidence Act, 1872.

21. In view of our above discussion, now we proceed to record the answer to the question of law framed by the Division Bench. Our answer is as follows:-

"We are of the considered view that the Police Patil appointed under the Maharashtra Village Police Act, 1967 is not a 'Police Officer' for the purposes of section 25 of the Indian Evidence Act, 1872".

32. It appears that the High Court while reversing the acquittal relied upon the above-referred Full Bench Decision for the purpose of taking the view that the extra-judicial confession made by the appellant – herein before PW 2 could be said to be admissible in evidence.

33. One interesting question that arises for our consideration at this stage is that at the relevant point of time i.e., in 1993 when the Trial Court acquitted the appellant – herein the position of law was that an extra-judicial confession said to have been made by an accused before a village Police Patil could be said to be inadmissible in evidence being hit by Section 25 of the Evidence Act.

34. In the year 2009, the Full Bench of the Bombay High Court while answering a reference held that a Village Police Patil is not a Police Officer. Therefore, if the accused herein had stood acquitted having regard to the position of law prevailing at the relevant point of time then relying on a subsequent decision taking a contrary view whether the accused could have been held guilty?

35. It could be argued that the Full Bench decision of the Bombay High Court came to be delivered in the year 2009 whereas the appellant was acquitted by the Trial Court sometime in the year 1993. The position of law till 2009 was that a Village Police is a Police Officer and therefore, any confession made to him would be inadmissible in evidence in view of Section 25 of the Evidence Act, more particularly in view of the Division Bench decision of the Bombay High Court rendered in Ram Singh (supra). We do not propose to consider the question whether the High Court could have relied upon the Full Bench decision after the appellant came to be acquitted by the Trial Court in 1993 thereby giving retrospective effect as regards its applicability.

36. We proceed on the footing that PW 2 – Vasant Dattu Bhosale, Police Patil of the Village cannot be termed as a Police Officer for the purpose of Section 25 of the Evidence Act. We also proceed on the footing that the extra-judicial confession alleged to have been made by the accused before PW 2 is admissible in evidence and is not hit by Section 25 of the Evidence Act. However, such extra-judicial confession should be found to be true & trustworthy before it is relied upon by the Court to hold the accused guilty.

37. Besides, the above such extra-judicial confession should also be found to be free of any inducement, coercion etc. and it should be shown to have been made by the accused on his own free will and volition.

38. We requested the learned counsel appearing for the State to show us from the oral evidence on record, more particularly, the deposition of PW 2 as well as the deposition of PW 5, the exact words alleged to have been uttered by the appellant – herein in the form of an extra-judicial confession.

39. We on our own also looked into and are convinced that what is alleged to have been conveyed cannot be said to be an extra-judicial confession. A very omnibus & vague statement seems to have been made as deposed by both the witnesses in their oral evidence.

40. This Court in "C.K. Ravindra vs. the State of Kerala" AIR 2000 SC 369 had held that before placing reliance upon the extra-judicial confession, the Court must be convinced as regards the exact words or even the words as nearly as possible. This Court took the view that it would be difficult to rely upon the extra-judicial confession if the exact words or even the words as nearly as possible have not been reproduced, the said statement cannot be said to be voluntary. In such circumstances, the same may have to be excluded from the purview of consideration.

41. This Court in "Balwinder Singh vs. State of Punjab" (1995) Supplementary 4 SCC 259 had held that an extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and would lose its importance.

42. In such circumstances, referred to above, we are of the view that the High Court fell in error in relying upon the extra-judicial confession even while rightly holding that the same was admissible in evidence as Village Police Patil cannot be said to be a Police Officer.

43. We now come to the second piece of the circumstance relied upon.

44. It is the case of the prosecution that after the arrest of the appellant – herein, he is said to have on his own free will and volition made a statement before the Investigating Officer and he was ready and willing to point out the place where he had concealed the weapon, i.e., the iron rod.

45. Accordingly, the Investigating Officer along with two independent witnesses in the form of panchas went to the place as led by the appellant – herein.

46. The place was the house itself where the incident had occurred. According to the Investigating Officer, the appellant pointed out the iron rod which was lying in one corner of the house. The same was seized in the presence of the panch witnsses and was sent to the Forensic Science Laboratory for chemical analysis.

47. In this regard, we may only say that panch witnesses have not supported the case of the prosecution. They failed to prove the contents of the discovery panchnama.

48. If the panch witnesses are declared hostile then the prosecution is obliged to prove the contents of the said discovery panchnama through the evidence of the Investigating Officer. The question is how is the I.O. expected to prove the contents of the panchnama.

49. The position of law in this regard is very clear. Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved. From the plain reading of the oral evidence of the Investigating Officer if the discovery is believable and inspires confidence, the same can definitely be looked into as one of the incriminating pieces of evidence against the accused.

50. However, unfortunately in the case on hand, all that the I.O. did was to depose that he had drawn the panchnama and in the end identified his signature on the same and that of the panch witnesses. This cannot be said to be proving the contents of the panchnama in accordance with law. In such circumstances, the circumstance of discovery also cannot be relied upon.

51. We are now left with motive. Motive is a double-edged weapon. Motive cannot be the sole basis for convicting the accused and that too for a serious offence like murder. Motive may be considered along with other pieces of reliable evidence in the form of incriminating circumstances.

52. We now come to the last part of the matter.

53. The learned counsel appearing for the State submitted that the dead body of the deceased was recovered from the house itself, i.e., the place where the family was residing. He would submit that in normal circumstances, the husband could be said to be the best person to explain as to what had happened to his wife on the date of the incident.

54. According to the learned counsel, when an offence is committed within the four walls of the house and that too in secrecy, it is difficult for the prosecution to establish its case beyond reasonable doubt and, therefore, under Section 106 of the Evidence Act, it is for the accused to explain what had actually happened and in the absence of any such explanation, it could be said that the accused committed the crime as alleged.

55. The law in the aforesaid regard is well-settled. Prosecution has to prove its case beyond reasonable doubt & that too on its own legs. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours & that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot starightaway invoke the said Section and throw the entire burden on the accused to establish his innocence.

56. In the overall view of the matter, we are convinced that the High Court committed error in holding the appellant guilty of the offence of murder.

57. In the result, this appeal succeeds and is hereby allowed.

58. The impugned Judgment and Order passed by the High Court is hereby set aside.

59. We are informed that the appellant has been enlarged on bail by this Court. His bail bonds stand discharged.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain

[2025] 1 S.C.R. 610 : 2025 INSC 54

NBCC (India) Ltd.
v.
The State of West Bengal & Ors.

(Civil Appeal No. 3705 of 2024)

10 January 2025

[Pamidighantam Sri Narasimha* and Pankaj Mithal, JJ.]

Issue for Consideration

Whether an MSME cannot make a reference to the Facilitation Council for dispute resolution under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 if it is not registered under Section 8 of the 2006 Act before the execution of the contract with the buyer.

Headnotes†

Micro, Small and Medium Enterprises Development Act, 2006 – s.18 – MSME seeks to refer the dispute that it has with the buyer regarding payment of its dues to the Facilitation Council for arbitration u/s. 18 of the Act – The appellant opposes this prayer by contending that 'any party' can only be a 'supplier' and that supplier should have been registered u/s. 8 of the Act even before execution of the contract, if not, the reference is impermissible:

Held: After examining the text, context, and purpose of the Act, this Court arrives at the decision that s.18 is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable 'any party' to refer the dispute to seek redressal – The submission that 'any party to a dispute' is confined to a 'supplier' who has filed a memorandum u/s. 8 of the Act is rejected – The issue(s) that have arisen in the decisions of this Court in Silpi Industries v. Kerala State Road Transport Corporation and Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited were very different from the issue that has arisen for consideration in the instant case – Though it is possible for this Court to follow the precedents to arrive at the

* Author

conclusion that the judgments in the case of Silpi Industries and Mahakali Foods coupled with the subsequent orders in Vaishno Enterprises and M/s Nitesh Estates cannot be considered to be binding precedents on the issue that has arisen for consideration, taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, it is deemed appropriate to refer this appeal to a three Judge Bench. [Paras 1.1, 29]

Interpretation of Statutes – Interpretation of Statutory Remedies by Constitutional Courts:

Held: When a statutory remedy falls for consideration, it is the duty of the Constitutional Court to adopt an interpretation which would not only reduce the hiatus between a right and a remedy, but also to ensure that the remedy is effective – If rights are recognition of a claim, remedies are their actualization – While the rights regime receives broad recognition under constitutional framework, it is imperative that remedies must keep pace and be strengthened – One of the core functions of the higher judiciary is to bridge the gap between rights and remedies, and this would immediately give rise to the legislative, executive and judicial obligations for their provision, implementation, and declaration, respectively. [Para 10]

Justice – Access to justice – Right to an effective judicial remedy:

Held: The right to an effective judicial remedy is an integral part of access to justice – An effective judicial remedy under a constitutional scheme must be (i) accessible, (ii) affordable, (iii) expeditious and (iv) cohesive – Accessibility requires the remedy to be easily available, physically and informationally – Affordability is an aspect that is related to the cost of availing the remedy, it must be at a reasonable price with a provision for legal aid, if need be – The expeditious nature of a remedy is concerned with the quick disposal of the case and abhors unreasonable delays – Yet another facet of effective judicial remedy is its cohesiveness – The cohesiveness of a remedy simply means that a person must have one specified forum for the redressal of grievances. [Para 10.1]

Micro, Small and Medium Enterprises Development Act, 2006 – s.18 – Words employed "any party to a dispute" – Golden Rule of Interpretation:

Held: The text of Section 18 is clear and categoric – The words employed herein are "any party to a dispute" – The age-old principle, referred to as the Golden Rule of Interpretation, is that "words of a statute have to be read and understood in their natural, ordinary and popular sense" – The choice of the words 'any party to a dispute' in Section 18 of the Act is deliberate – If the Parliament had intended that 'any party' must be confined only to a "supplier", or even a buyer, which expression is also defined, it would as well have used that or those very expressions – The Court cannot substitute the expression "any party" with "supplier" and change the text and, consequently, the scope and ambit of Section 18 altogether. [Para 14.1]

Micro, Small and Medium Enterprises Development Act, 2006 – s.18 – Purpose and Object:

Held: Apart from the text and context in which Section 18 of the Act employs the expression "any party to the dispute", it is also to be seen that the section is provisioning a remedy for resolution of disputes – This remedy is provided by the statute, not by an agreement between the parties – It is therefore, necessary to keep it unrestricted and open-ended, enabling any party to a dispute to access the remedy – When statutory provision incorporation remedies for resolution of disputes fall for consideration, constitutional courts must interpret such remedies in a manner that would effectuate access to justice. [Para 14.3]

Micro, Small and Medium Enterprises Development Act, 2006 – s.18 – Whether filing of memorandum u/s.8 is mandatory:

Held: Section 8(1)(a) provides that, "a micro or a small enterprise may, at his discretion" and even a medium enterprise engaged in providing or rendering services, also "may at his discretion" file a memorandum with the authority as may be specified by the Government – Further, sub-section (4) of Section 8 relates to micro or small enterprises, the State Government shall by notification, specify the authority with which such micro or small enterprise

may file a memorandum – Considering the choice and discretion specifically provided to these enterprises, it becomes very clear that there is no mandatory prescription of filing a memorandum. [Para 14.5]

Case Law Cited

Silpi Industries v. Kerala State Road Transport Corporation [2021] 3 SCR 1044 : **(2021) 18 SCC 790;** *Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited* [2022] 19 SCR 1094 : **(2023) 6 SCC 401 – distinguished.**

Kone Elevator India Private Limited v. State of Tamil Nadu [2014] 5 SCR 912 : **(2014) 7 SCC 1;** *Shanti Conductors Private Ltd. v. Assam State Electricity Board* [2019] 1 SCR 489 : **(2019) 19 SCC 529;** *Anita Kushwaha v. Pushap Sudan* [2016] 9 SCR 560 : **(2016) 8 SCC 509;** *State of Andhra Pradesh v. Linde (India) Ltd.* [2020] 5 SCR 838 : **(2020) 16 SCC 335;** *Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys* [2010] 10 SCR 779 : **(2011) 11 SCC 334;** *GE T&D India Ltd. v. Reliable Engg. Projects & Mktg.,* **2017 SCC OnLine Del 6978;** *Re: Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.* [2022] 19 SCR 1094 : **(2023) 6 SCC 401;** *Shanti Conductors (P) Ltd. v. Assam SEB* [2019] 1 SCR 489 : **(2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409;** *Vaishno Enterprises v. Hamilton Medical AG and Anr.* [2022] 1 SCR 771 : **2022 SCC OnLine SC 355;** *M/s Nitesh Estates Ltd. v. Micro and Small Enterprises Facilitation Council of Haryana & Ors.,* **C.A. No. 5276/2022@ SLP (C) No. 26682/2018;** *State of U.P. v. Synthetics and Chemicals Ltd.* [1991] 3 SCR 64 : **(1991) 4 SCC 139;** *Municipal Corporation of Delhi v. Gurnam Kaur* [1988] Supp. 2 SCR 929 : **(1989) 1 SCC 101;** *Arnit Das v. State of Bihar* [2000] Supp. 1 SCR 69 : **(2000) 5 SCC 488;** *Union of India v. All Gujarat Federation of Tax Consultants* **(2006) 13 SCC 473;** *Francis Stanly v. Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram* [2006] Supp. 10 SCR 977 : **(2006) 13 SCC 210;** *Bharat Petroleum Corporation Ltd. v. P. Kesavan* [2004] 3 SCR 811 : **(2004) 9 SCC 772;** *Vishnu Dutt Sharma v. Manju Sharma* [2009] 3 SCR 891 : **(2009) 6 SCC 379;** *Chandigarh Housing Board v. Narinder Kaur Makol* [2000] Supp. 1 SCR 487 : **(2000) 6 SCC 415;** *Allen v. Flood* **(1893) AC 1 – referred to.**

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List of Acts

Small Scale and Ancillary Industrial Undertakings Act, 1993; Micro, Small and Medium Enterprises Development Act, 2006; Small Scale and Ancillary Industrial Undertakings Act, 1993; Arbitration and Conciliation Act, 1996; Limitation Act, 1963; Constitution of India.

List of Keywords

Micro, Small and Medium Enterprises Development Act, 2006; MSME; Facilitation Council; Golden Rule of Interpretation; Interpretation of Statutes; Precedent making; Decision-making; Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006; Article 141 of the Constitution.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3705 of 2024

From the Judgment and Order dated 18.05.2022 of the High Court at Calcutta in APO No. 11 of 2022

Appearances for Parties

Gopal Sankaranarayanan, Sr. Adv., Nagarkatti Kartik Uday, Ms. Shivani Vij, Advs. for the Appellant.

Ms. Madhumita Bhattacharjee, Ms. Debarati Sadhu, Ms. Srija Choudhury, Anant, Sudarshan Rajan, Satyam Dwivedi, Mahesh Kumar, Roshan Santhalia, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

Table of Contents*

* Ed. Note: Pagination as per the original Judgment.

1. ***Introduction:*** The old value of '*Small is beautiful'*[1] has not lost its relevance. Recognising the contribution of micro, small and medium enterprises towards economic development, the United Nations declared June 27th as MSME day. MSMEs are said to be the backbone of many economies, including India. This resonates with the statement of the father of our nation, Mahatma Gandhi, declaring that the '*salvation of India lies in cottage and small scale industries'.* The Parliament enacted the Micro, Small and Medium Enterprises Development Act, 2006[2] *for facilitating the promotion and development of the enterprises* by creating certain rights and duties and establishing a Board, Advisory Committee, and Facilitation Council. Importantly, the Act provided a mechanism for dispute resolution.

   1.1 The MSME before us has a simple prayer. It seeks to refer the dispute that it has with the buyer regarding payment of its dues to the Facilitation Council for arbitration under Section 18 of the Act, which provides that "*any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council"*. The appellant opposes this prayer by contending that 'any party' can only be a 'supplier' and that supplier should have been registered under Section 8 of the Act even before execution of the contract, if not, the reference is impermissible. The High Court did not answer this question. Instead, it permitted the parties to raise such objections before the Arbitral Tribunal. The buyer is in appeal before us, raising the same question as a jurisdictional issue.

   1.2 We have examined the text, context, and purpose of the Act to arrive at the decision that Section 18 is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable 'any party' to refer the dispute to seek

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1 E.F. Schumacher, 'Small Is Beautiful: A Study of Economics as if People Mattered' (1973) *"We need the freedom of lots and lots of small, autonomous units, and, at the same time, the orderliness of large-scale, possibly global, unity and co-ordination. When it comes to action, we obviously need small units, because action is a highly personal affair, and one cannot be in touch with more than a very limited number of persons at any one time.*"

2 Hereinafter referred to as 'the Act'.

redressal. For the reasons to follow, we rejected the submission that 'any party to a dispute' is confined to a 'supplier' who has filed a memorandum under Section 8 of the Act. We have also explained that the issue(s) that have arisen in the decisions of this Court in *Silpi Industries v. Kerala State Road Transport Corporation*[3] and *Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited*[4] were very different from the issue that has arisen for our consideration. However, for clarity and legal certainty, we have directed the appeal be placed before the Hon'ble Chief Justice of India for referring the matter to a bench of three Judges for an authoritative pronouncement.

1.3 We will first state the necessary facts before considering the submissions, followed by our reasons and conclusions.

2. ***Facts:*** The appellant, National Buildings Construction Corporation, granted four work orders between July 2015 to August 2016 to M/s Saket Infra Developers Private Limited, respondent No. 4[5] for undertaking construction work at different places in West Bengal. Pursuant to the work orders, contracts were executed on 27.08.2015, 17.11.2015, 28.07.2016 and 20.08.2016. The Enterprise filed a memorandum under Section 8 of the Act on 19.11.2016 as a '*small enterprise'*. Thereafter, on 15.09.2017, the appellant also executed a fifth contract in favour of the Enterprise.

2.1 Work is said to have commenced on various dates, supplies continued, and bills were raised from time to time by the Enterprise, even after filing of the memorandum under Section 8 of the Act. The Table showing dates of the work orders, contract and particulars of the work awarded and details of bills raised after registration is as under:

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3 [2021] 3 SCR 1044 : (2021) 18 SCC 790, hereinafter referred to, in short as *Silpi Industries*.

4 [2022] 19 SCR 1094 : (2023) 6 SCC 401, hereinafter referred to, in short as *Mahakali Foods*.

5 Hereinafter referred to as the 'Enterprise'.

S. No.	Dates of Work Orders	Dates of Construction Contracts	Bills raised after Registration on 19.11.2016
1.	Contract-I 30.07.2015	27.08.2015 Office Building for National Jute Board, Rajarhat, Kolkata	10 Bills for 34.71 crores
2.	Contract-II 26.10.2015	17.11.2015 Residential Quarters for ISI, Kolkata	8 Bills for 14.18 crores
3.	Contract-III 19.01.2016	28.07.2016 ITI Campus, Darjeeling	10 Bills for 10.49 crores
4.	Contract-IV 19.08.2016	20.08.2016 Regional Centre for Lalit Kala Academy, Kolkata	8 Bills for 12.46 crores
	19.11.2016	Registration of Respondent No. 4 as Small Undertaking	
5.	Contract-V 15.09.2017	11.10.2017 MSTC Office, Rajarhat, Kolkata	5 Bills for 15.72 crores

2.2 During the subsistence of the contract, disputes arose between the parties in connection with all five contracts. It may be mentioned here itself that, with respect to the fifth contract, the Enterprise instituted a commercial suit [(Comm.) No. 229 of 2021] before the High Court of Delhi, which is said to be pending consideration. However, this fact does not have any bearing on the issues before this Court.

2.3 Seeking resolution of disputes, on 28.03.2019, the Enterprise made a reference under Section 18 of the Act for recovery of

the amounts due to it to the West Bengal State Micro and Small Enterprises Facilitation Council[6]. The Facilitation Council initiated action, and with the failure of the conciliation proceedings under Section 18(2) of the Act, the dispute was referred to arbitration under Section 18(3) on 19.01.2021. A further notice of the arbitral proceedings was also issued, and it was received by the appellant on 30.09.2021.

2.4 The appellant objected to the Facilitation Council entertaining the reference, firstly on the ground that the Enterprise was not registered before the execution of the contracts and, as such, the Facilitation Council does not have jurisdiction under Section 18. Secondly, it was also argued that the subject matter of the contract relates to the execution of the works contracts, which falls outside the scope and ambit of the Act. Carrying these objections further, the appellant filed a Writ Petition under Article 226 of the Constitution of India before the High Court of Calcutta, raising the jurisdictional question of the Facilitation Council entertaining the reference.

3. ***Decisions of the Single Judge and the Division Bench:*** The learned Single Judge dismissed the Writ Petition on 16.12.2021 by simply holding that "*the question of jurisdiction can be raised before the Arbitral Tribunal, which shall decide the same before entering into other questions."* The decision of the Single Judge was challenged unsuccessfully before the Division Bench of the High Court by the order impugned before us. The Division Bench also referred the decision of this Court in *Kone Elevator India Private Limited v. State of Tamil Nadu*[7] to hold that a works contract is an indivisible contract and also that the Act, being a special legislation, overrides other statutes. The Division Bench agreed with the finding of the Single Judge that all objections, including those relating to maintainability, can be raised and contested before the arbitrator. Thus, the appellant is in appeal before us.

4. ***Submissions:*** Mr. Gopal Sankaranarayanan, learned senior counsel, appearing for the appellant, challenged the jurisdiction of the Facilitation Council in entertaining the reference under Section 18 of

6 Hereinafter referred to as the 'Facilitation Council'.

7 [2014] 5 SCR 912 : (2014) 7 SCC 1

the Act by the Enterprise for the simple reason that it registered itself after the contracts were executed and not before. His submission is based on the decision of this Court in *Silpi Industries* (supra) and *Mahakali Foods* (supra). Though the impugned decision of the High Court was on 18.05.2022, almost a year after the judgment of this Court in *Silpi Industries* (supra), it has not taken note of the judgment of this Court. Mr. Gopal Sankaranarayanan also referred to certain subsequent orders of this Court, which we will be examining while considering the issue.

4.1 Ms. Madhumita Bhattacharjee and Mr. Roshan Santhalia, learned counsels for respondents, opposed the appellant's arguments and contended that these questions can always be raised before the Arbitral Tribunal as directed by the Single as well as the Division Bench of the High Court.

5. ***Issue for our consideration:*** The question of law for our consideration is whether an MSME cannot make a reference to the Facilitation Council for dispute resolution under Section 18 of the Act if it is not registered under Section 8 of the Act before the execution of the contract with the buyer.

6. Before we examine the provisions of the Act and the ratio of the judgment of this Court in *Silpi Industries* (supra) and *Mahakali Foods* (supra), it is necessary to take note of the statute (repealed Act) that preceded the Act and also the important judgment of this Court in *Shanti Conductors Private Ltd. v. Assam State Electricity Board*,[8] which also has a direct bearing on the decision in *Silpi Industries* (supra) and for interpreting the provisions of the Act.

7. **The repealed *Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993*[9] *and the judgment in Shanti Conductors v. Assam State Electricity Board*** : The decision of this Court in *Shanti Conductors* (supra), a three-Judge Bench Judgment, was necessitated because of the difference of opinion between two Judges. The relevant facts of *Shanti Conductors* (supra) are that the Small-Scale Industry therein entered into a contract for supply of goods and services to the buyer before the said 1993

8 [2019] 1 SCR 489 : (2019) 19 SCC 529, hereinafter referred to, in short as Shanti Conductors.

9 Hereinafter referred to as the repealed statute.

repealed statute came into force. However, the supplies under the contract were rendered after the said statute came into force. Of the seven questions of law that were formulated by the three-judge bench, the first two questions, relevant to our purpose, are extracted for ready reference. It is necessary to mention here that filing of a memorandum by any MSME was never an issue there, as, in fact, there was no such requirement under the repealed statute. The issues in *Shanti Conductors* (supra) are as follows:

> *"34.1.(1) Whether the 1993 Act is not applicable when the contract for supply was entered into between the parties prior to the enforcement of the Act i.e., 23-9-1992?*
>
> *34.2. (2) Whether in the event it is found that the Act is applicable also with regard to contract entered prior to the 1993 Act in pursuance of which contract, supplies were made after the enforcement of the 1993 Act, the 1993 Act can be said to have retrospective operation?"*

7.1 The repealed statute comprised of 11 provisions, of which Section 3 related to the liability of the buyer to make payment, Section 4 related to the date and rate of interest payable, Section 5 related to the liability to pay compound interest, and Section 6 related to the right of recovery of the amount payable to the supplier.

7.2 Having considered the statutory scheme, the Court came to the conclusion that the *incidence of applicability of the liability under that statute is supply of goods or rendering of services.* The Court categorically held that *the liability of the buyer for payment under the Act arises even if the agreement of sale is prior to the Act (repealed) but if the supplies were made after the Act.*

7.3 Answering the first question, this Court held as under: -

> "***61.*** *We have noticed above that the incidence of applicability of the liability under the Act is supply of goods or rendering of service. In event the supply of goods and rendering of services is subsequent to the Act, can liability to pay interest on delayed payment be denied on the ground that agreement in pursuance of which supplies were made were entered prior to enforcement of the Act? Entering into an agreement being not expressly*

or impliedly referred to in the statutory scheme as an incident for fastening of the liability, making the date of agreement as date for imposition of liability does not conform to the statutory scheme. This can be illustrated by taking an example. There are two small scale industries which received orders for supply of materials. 'A' received such orders prior to the enforcement of the Act and 'B' received the order after the enforcement of the Act. Both supplied the goods subsequent to enforcement of the Act and became entitled to receive payment after the supply, on or before the day agreed upon between the supplier and buyer or before the appointed day. Payments were not made both to 'A' and 'B' as required by Section 3. Can the buyer who has received supplies from supplier 'A' escape from his statutory liability to make payment of interest under Section 3 read with Section 4? The answer has to be No. Two suppliers who supply goods after the enforcement of the Act, become entitled to receive payment after the enforcement of the Act one supplier cannot be denied the benefit of the statutory protection on the pretext that the agreement in his case was entered prior to enforcement of the Act. When the date of agreement is not referred as material or incidence for fastening the liability, by no judicial interpretation the said date can be treated as a date for fastening of the liability. The 1993 Act being beneficial legislation enacted to protect small scale industries and statutorily ensure by mandatory provision for payment of interest on the outstanding money, accepting the interpretation as put by the learned counsel for the Board that the day of agreement has to be subsequent to the enforcement of the Act, the entire beneficial protection of the Act shall be defeated. The existence of statutory liability depends on the statutory factors as enumerated in Section 3 and Section 4 of the 1993 Act. Factor for liability to make payment under Section 3 being the supplier supplies any goods or renders services to the buyer, the liability of buyer cannot be denied on the ground that the agreement entered into between the parties for supply was prior to the 1993 Act. To hold that liability of buyer for payment shall arise only when agreement for supply

was entered into subsequent to enforcement of the Act, it shall be adding words to Section 3 which is not permissible under the principles of statutory construction.

62. *We, thus, are of the view that the judgments in Purbanchal Cables & Conductors,[10] Assam Small Scale Industries[11] and Shakti Tubes Ltd.[12] which held that the 1993 Act shall be applicable only when the agreement to sale/contract was entered into prior/subsequent to the enforcement of the Act, does not lay down the correct law. We accept the submission of the learned counsel for the appellants that even if agreement of sale is entered into prior to enforcement of the Act, liability to make payment under Section 3 and liability to make payment of interest under Section 4 shall arise if supplies are made subsequent to the enforcement of the Act*."

(emphasis supplied)

7.4 The ratio of the decision in *Shanti Conductors* can be formulated as follows:

i) Even if contracts are entered into before the commencement of the repealed statute, the liability to make payment under Section 3, and to pay interest thereon under Sections 4 and 5 and to recover the amount under Section 6 will arise if the *supplies* are made subsequent to the enforcement of the statute. The incidence of liability under the repealed statute is 'supply of goods or rendering of services',

ii) when the date of contract is neither referred to nor made an incident for fastening the liability under the statute, by way of judicial interpretation, courts cannot treat the said date as the date for fastening the liability. The existence of the statutory liability depends on the language employed in Sections 3 to 6 of the statute,

iii) to hold that the liability of the buyer to make payment shall arise only when the contract for supply was entered into

10 *Purbanchal Cables & Conductors (P) Ltd. v. Assam SEB* (2012) 7 SCC 462

11 *Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals* (2005) 13 SCC 19

12 *Shakti Tubes Ltd. v. State of Bihar* (2009) 7 SCC 673

subsequent to the enforcement of the Act will defeat the purpose and object of the beneficial legislation intended to protect small-scale and ancillary industrial undertakings.

8. ***The Micro, Small and Medium Industry in our Country:*** After the repeal of the 1993 Act, the present Act came into force with effect from 02.10.2006. The Act is a comprehensive legislation that recognises and seeks to rejuvenate the importance of MSMEs, whose importance and contribution is accepted in contemporary economies across the globe, and accredited by the United Nations[13]. United Nations, commenting on the significance of MSMEs observes that:

> *"MSMEs help reduce levels of poverty through job creation and economic growth; they are key drivers of employment, decent jobs and entrepreneurship for women, youth and groups in vulnerable situations. They are the majority of the world's food producers and play critical roles in closing the gender gap as they ensure women's full and effective participation in the economy and in society".*

8.1 In the statement of object and reasons of the Act, it is mentioned that *"many Expert Groups and Committees appointed by the Government from time to time as well as small scale industry sector itself has emphasised the need for a comprehensive central enactment to provide an appropriate framework for the sector to facilitate its growth and development, emergence of a large service sector assisting the small scale industry in the last two decades also warrants a composite view of the sector encompassing both industrial units and related service entities. The world over, the emphasis has now been shifted from industries to Enterprises."*

8.2 The rights, incentives and remedies provisioned under the Act are the backbone of our economy. Statistics indicate that MSMEs provide employment to 62% of the country's workforce, contribute 30% to India's GDP,[14] and account for around 45% of

13 '2024 Theme: MSMEs and the SDGs' (United Nations) <https://www.un.org/en/observances/micro-small-medium-businesses-day> (2024).

14 'A microscope on small businesses: The productivity opportunity by country' (McKinsey Global Institute) <https://www.mckinsey.com/mgi/our-research/a-microscope-on-small-businesses-the-productivity-opportunity-by-country#/> (May 29, 2024); 'Contribution Of MSMEs to the GDP' (Press Information Bureau) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2035073> (July 22, 2024).

India's total exports[15]. The Indian MSME sector is projected to grow to $1 trillion by 2028[16]. Moreover, MSMEs play a crucial role in promoting rural development, women's employment, and inclusive growth. 19.5% of total MSMEs[17] and 70% of informal micro-enterprises are owned by women[18]. There is undoubtedly a global consensus regarding the indispensable importance of MSMEs.

8.3 However, while the United Nations and even the Expert Groups and Committees appointed by the Government from time to time have underscored the importance of MSMEs, and that has led to the Parliament enacting the present legislation, MSMEs in India have been facing many challenges which are reflected in their performance. A recent report records that, *"MSMEs in India contribute 30% to value-addition and 62% to employment",* as against *"49% and 77%, in other emerging economies".*[19] The 2023-2024 Economic Survey also recorded the concerns faced by MSME's.[20]

9. It is in the above-referenced context that we need to comprehend, interpret and construct the remedies contemplated under the Act.

10. ***Interpretation of Statutory Remedies by Constitutional Courts:*** When a statutory remedy falls for consideration, it is the duty of the Constitutional Court to adopt an interpretation which would not only reduce the hiatus between a right and a remedy, but also to ensure that the remedy is effective. If rights are recognition of a claim,

15 'The MSME Revolution: Transforming India's Economic Landscape' (Press Information Bureau) <https://pib.gov.in/PressReleasePage.aspx?PRID=2087361> (Dec 23, 2024).

16 'MSMEs: The Backbone of India's Economic Future' (Invest India) <https://www.investindia.gov.in/team-india-blogs/msmes-backbone-indias-economic-future> (June 28, 2024).

17 'Women-led Enterprises' (Lok Sabha Digital Library) <https://eparlib.nic.in/bitstream/123456789/2502792/1/AU3648.pdf> (Aug 10, 2023).

18 ''Participation of Females in MSMEs' (Lok Sabha Digital Library) <https://eparlib.nic.in/bitstream/123456789/2974207/1/AU1128.pdf> (Feb 8, 2024).

19 'A microscope on small businesses: The productivity opportunity by country' (McKinsey Global Institute) <https://www.mckinsey.com/mgi/our-research/a-microscope-on-small-businesses-the-productivity-opportunity-by-country#/> (May 29, 2024).

20 'Economic Survey 2023-24' <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf> (2024) *"Licensing, Inspection, and Compliance requirements that MSMEs have to deal with, imposed particularly by sub-national governments, hold them back from growing to their potential and being job creators of substance…Further, many MSMEs struggle to secure the necessary funds to start, operate, or expand their business due to a variety of reasons including lack of collateral or credit history, high interest rates, complex documentation requirements, and long processing times, etc."* (emphasis supplied).

remedies are their actualization. While the rights regime receives broad recognition under our constitutional framework, it is imperative that remedies must keep pace and be strengthened. One of the core functions of the higher judiciary is to bridge the gap between rights and remedies, and this would immediately give rise to the legislative, executive and judicial obligations for their provision, implementation, and declaration, respectively.

10.1 The right to an effective judicial remedy is an integral part of access to justice.[21] An effective judicial remedy under a constitutional scheme must be (i) accessible, (ii) affordable, (iii) expeditious and (iv) cohesive. Accessibility requires the remedy to be easily available, physically and informationally. Affordability is an aspect that is related to the cost of availing the remedy, it must be at a reasonable price with a provision for legal aid, if need be. The expeditious nature of a remedy is concerned with the quick disposal of the case and abhors unreasonable delays. Yet another facet of effective judicial remedy is its cohesiveness. The cohesiveness of a remedy simply means that a person must have one specified forum for the redressal of grievances. This requirement must be understood as an antithesis of fragmentation of remedies, i.e., a litigant ought not to be forced to approach multiple forums for the same cause of action. When a statute provisioning a judicial remedy falls for construction, the choice of interpretative outcome is not governed so much by the power or privileges under the Constitution, but by the constitutional duties to create effective judicial remedies in furtherance of the right to access to justice. A meaningful interpretation that furthers effective judicial access is a constitutional imperative and it is this duty that must inform the interpretative criteria. It is in the above referred context that we will now examine Section 18 of the Act.

11. ***Statutory Scheme of the MSMED Act, 2006*****:** Sections 2(a), (c), (e), (n), 7, 8, 17, 18, 20 and 21, to the extent that they are relevant, are reproduced hereinbelow for ready reference.

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21 See, generally, *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509 *"…Four main facets that, in our opinion, constitute the essence of access to justice are: (i) the State must provide an effective adjudicatory mechanism; (ii) the mechanism so provided must be reasonably accessible in terms of distance; (iii) the process of adjudication must be speedy; and (iv) the litigant's access to the adjudicatory process must be affordable…In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach..."*

"***2. Definitions-*** *In this Act, unless the context otherwise requires, -*

(a) "Advisory Committee" means the committee constituted by the Central Government under sub-section (2) of section 7.

(b) …

(c) "Board" means the National Board for Micro, Small and Medium Enterprises established under Section 3;

(e) "Enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services;

7. Classification of enterprises-*(1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,--*

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as--

> *(i) a micro enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees;*
>
> *(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or*

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) in the case of the enterprises engaged in providing or rendering of services, as--

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

(2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:--

(3) …

(4) The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

15. Liability of buyer to make payment.— *Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:*

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.—*Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound*

interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

"***17. Recovery of amount due.-*** *For any goods supplied or services rendered by the* ***supplier****, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.*

18. Reference to Micro and Small Enterprises Facilitation Council- *(1) Notwithstanding anything contained in any other law for the time being in force,* ***any party*** *to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute

between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

20. Establishment of Micro and Small Enterprises Facilitation Council.*- The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.*

21. Composition of Micro and Small Enterprises Facilitation Council.—

(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely: —…

11.1 First and foremost, Chapter V of the Act deals with delayed payments to micro and small enterprises and specifies the rights, liabilities, recovery, and remedies in favour of micro and small enterprises. The rights and liabilities are based on the incidence of *supply* made by the micro and small enterprise. To this extent, the Act continues the statutory scheme contemplated under the repealed statute and, therefore, the principle laid down in *Shanti Conductors* (supra) that the liability of a buyer commences from the date of supply and not from the date of execution of the agreement or contract, even though the contract was prior to coming into force of the Act, continues to apply. Up to this point, there seems to be no difficulty. The issue in the present case takes a different turn, as explained in the following part.

12. ***Whether registration is a necessary precondition to referring a dispute under Section 18 of the Act*** **:** The question that we are called upon to answer is whether the reference to the Facilitation Council under Section 18 of the Act is impermissible if the Enterprise is not registered by filing a memorandum under Section 8 of the Act before the contract is executed. This issue was not formulated, discussed and decided in any other judgment of this Court, including the two

substantive judgments under the Act, i.e. *Silpi Industries* (supra) or *Mahakali Foods* (supra). In these two judgements, it is worth mentioning, such an issue was neither formulated, nor discussed. We will explain this in detail while discussing the facts and the ratios of these judgements. Apart from the submission of the appellant that the issue arising for our consideration is covered by the decision in *Silpi Industries* (supra), as approved in *Mahakali Foods* (supra), on our specific enquiry as to under which provision of the Act an Enterprise, which has not filed a memorandum under Section 8 would be barred from invoking remedies under Section 18 of the Act, Mr. Gopal Sankaranarayanan made the following submission.

13. According to him, though Section 18 provides that 'any party to a dispute' may make a reference to the Facilitation Council, the said 'dispute' must be *"with regard to any amount due under Section 17"*. This requirement, he would submit, takes us to Section 17, which provides that, *"for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon under Section 16".* Section 16 is the liability of the buyer to pay interest to the '*supplier*' on the amounts payable to it under Section 15 for the supply of goods and rendering of any services. The expression 'supplier' mentioned in Sections 15, 16 and 17 is defined in Section 2(n), as *"a micro or small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8 and includes,…"*. Thus, it was submitted that a 'supplier' can only be an Enterprise that has filed a memorandum under Section 8 of the Act. He would conclude by submitting that for supplies made prior to such registration, Enterprise cannot avail the remedies under Section 18 of the Act.

14. We will now examine the submission in detail, the statutory provisions have already been extracted hereinabove.

    14.1 *Simply the Text*: The text of Section 18 is clear and categoric. The words employed herein are "any party to a dispute". The text, "any party to a dispute", cannot be read as a 'supplier' by adopting a process of interpretation, by first referring to Section 17, then to Sections 15 and 16 and thereafter, in search of the definition of supplier, to Section 2(n) and finally stopping at Section 8 to hold that 'any party to a dispute' will only be an Enterprise which is registered under Section 8 of the Act. This

meaning-making process to metamorphosise the clear text 'any party' to 'a supplier' is not the legal method to understand true meaning of words employed by the legislature. The age-old principle, referred to as the Golden Rule of Interpretation, is that *"words of a statute have to be read and understood in their natural, ordinary and popular sense"*.[22] The choice of the words 'any party to a dispute' in Section 18 of the Act is deliberate. The legislative device of employing different expressions in successive provisions of the same statute is well known and intended to effectuate the desired purpose of the Act. If the Parliament had intended that 'any party' must be confined only to a "supplier", or even a buyer, which expression is also defined, it would as well have used that or those very expressions. The Court cannot substitute the expression "any party" with "supplier" and change the text and, consequently, the scope and ambit of Section 18 altogether.

14.2 *The context*: Mention of Section 17 in Section 18 is only to provide context for a reference of dispute. The contextual relevance of locating Section 17 in Section 18 is only to provide the purpose of reference, not to confine the remedy to a registered Enterprise. This is to clarify that the reference shall be to adjudicate the dispute arising out of a liability of the buyer which is declared under Sections 15 and 16.

14.3 *The purpose and object of Section 18*: Apart from the text and context in which Section 18 of the Act employs the expression "any party to the dispute", it is also to be seen that the section is provisioning a remedy for resolution of disputes. This remedy is provided by the statute, not by an agreement between the parties. It is therefore, necessary to keep it unrestricted and open-ended, enabling any party to a dispute to access the remedy. When statutory provision incorporation remedies for resolution of disputes fall for consideration, constitutional courts must interpret such remedies in a manner that would effectuate access to justice.

22 *State of Andhra Pradesh v. Linde (India) Ltd.* (2020) 16 SCC 335; *Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys* (2011) 11 SCC 334.

14.4 *The definition clause:* We will now examine the sheet anchor of Mr. Gopal Sankaranarayanan's arguments that a supplier is defined under Section 2(n) can only be an Enterprise that has filed a memorandum under Section 8 of the Act. For this purpose, we will extract the entirety of the definition of supplier under Section 2(n) of the Act;

> ***2(n).*** *"supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—*
>
> > *(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);*
> >
> > *(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);*
> >
> > *(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;*

From a plain reading of the Section 2(n), it is clear that the definition of a supplier is relatable only to a micro or a small enterprise and does not encompass a medium enterprise. Supplier not only means a micro or small enterprise, 'which have filed a memorandum with the authority referred to under sub-Section (1) of Section 8', but also includes (i)NSIC, (ii) SIDC, and the (iii) company, cooperative society, trust or a body engaged in selling of goods produced by micro or small enterprise and rendered services which are produced by such enterprise. In other words, a supplier will also be an entity engaged in selling goods or rendering services, produced or provided by a micro or small enterprise. All such entities, irrespective of filing of the memorandum will be suppliers. Thus, the definition of a supplier encompasses not only those who have filed a memorandum,

but also those who have not filed. The reason for keeping the definition is not difficult to imagine. This is still an unorganised industry, growing, evolving and many of them are at start-up levels. The reason for keeping the definition wide is supported by an Expert Committee, whose opinion we will refer to in the next Section.

14.5 *Filing of memorandum under Section 8 is discretionary:* We will now examine Section 8 of the Act relied on by the appellants to contend that filing of a memorandum by micro, small and medium enterprises is mandatory. Section 8 is extracted herein for ready reference:

> *8. **Memorandum of micro, small and medium enterprises**. — (1) Any person who intends to establish, —*
>
> *(a) a micro or small enterprise, **may, at his discretion**, or*
>
> *(b) a medium enterprise engaged in providing or rendering of services **may, at his discretion**; or*
>
> *(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), **shall***
>
> *file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):*
>
> *Provided that any person who, before the commencement of this Act, established—*
>
> > *(a) a small scale industry and obtained a registration certificate, **may, at his discretion**; and*
> >
> > *(b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries*

> *(Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.0.477 (E) dated the 25th July, 1991 filed an Industrial Entrepreneurs Memorandum,* ***shall***
>
> *within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.*
>
> *(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.*
>
> *(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.*
>
> *(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.*
>
> *(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purpose of this section, the procedure notified by the Central Government under sub-section (2).”*
>
> (emphasis supplied)

Section 8(1)(a) provides that, “*a micro or a small enterprise may, at his discretion*” and even a medium enterprise engaged in providing or rendering services, also “*may at his discretion*” file a memorandum with the authority as may be specified by the Government. This important feature of the statute recognising and vesting of the discretion has not been noticed. There is also a logical follow-up to this choice or discretion vested in the micro or small enterprise and the medium enterprise engaged in rendering services for filing a memorandum in sub-

section (4) of Section 8 and also proviso (a) to Section 8(1). As the said sub-section (4) of Section 8 relates to micro or small enterprises, the State Government shall by notification, specify the authority with which such micro or small enterprise ***may file a memorandum***. Considering the choice and discretion specifically provided to these enterprises, it becomes very clear that there is no mandatory prescription of filing a memorandum. Conversely it appears that medium enterprises engaged in manufacture or production of goods, "shall file a memorandum" with such authority as may be specified, and this is reflected in the proviso (b) to Section 8(1). At this stage, it is relevant to note that the definition of supplier under Section 2(n) is confined only to micro or small enterprise and does not encompass a medium enterprise.

14.6 There is a reason for this. The report of the Expert Committee on Micro, Small and Medium Enterprises clarifies the position that filing of memorandum by these enterprises is never mandatory. The relevant portion is as under[23]:

> ***4.5 Formalization of MSMEs***
>
> *As per 73rd round of National Sample Survey (NSS), there are 63.39 million MSMEs in the country. However, a large number of MSEs exist in the informal sector and are not registered with any statutory authority. Reasons for lack of registration are many and varied. For nano/household type of enterprises, in their view, not obtaining registration is an escape from official machinery, paperwork, costs and rent seeking. For them, it is perhaps "the art of not being governed". Registration offers them little by way of tangible benefits. There are other MSEs who, upon reaching a minimum size seek legitimacy and acknowledgement of their existence to seek benefits or credit for instance, but they too struggle. While Udyog Aadhaar offers a simple*

23 Report of the Expert Committee on Micro, Small and Medium Enterprises (June, 2019) <https://dcmsme.gov.in/Report%20of%20Expert%20Committee%20on%20MSMEs%20-%20The%20U%20K%20Sinha%20Committee%20constitutes%20by%20RBI.pdf>

mode of registration, it is usually not enough. Often, more is needed e.g., Shops and Establishments, PAN, GST, etc. Lack of formalization impacts the sector in terms of development and also impacts in availing credit from financial institutions like banks and in terms of policy making as well as development interventions. Registration provides information on nature of business, location, segmentation, etc. In the absence of a robust system of registration for capturing information on operational units, new units and exits, reliance has to be placed on surrogate data or on national census/ surveys, which are infrequent. The various avenues available to the MSMEs for formalization are discussed below:

4.5.1 Registration of Enterprises

i. The Committee deliberated on the lack of formalization of a large number of MSMEs particularly in the micro category. The registration requirements of Indian enterprises is primarily governed by the First Schedule to the Industrial Development and Regulation (IDR) Act, 1951. ***It is mandatory only for a class of Medium enterprises which are engaged in the manufacture of goods. The registration of MSEs and Medium enterprises engaged in services activities is discretionary.*** *However, over a period of time, registration has been an intrinsic part of the development of MSMEs itself. Having a registration certificate entitles an MSME for numerous benefits. Particularly after the MSMED Act, 2006, which came into effect from October 2, 2006, availability of registration certificate has assumed greater importance.*

(emphasis supplied)

14.7 The above-referred extract from the Report of expert committee clearly indicates that MSME still exists as informal sector and it is also recognized that "*registration offers them little by way of tangible benefits".* The committee also recognises that even though simpler modes of registration have been

introduced, they are usually not enough. It further suggests that filing of memorandum provides information on the nature of business, location, and segmentation so that the regulators can capture "information on operational units". Paragraph 4.5.1 also recognises the policy of lack of formalisation and it is expected that over a period of time filing of memorandum could be an intrinsic part of development of MSME itself. The above referred committee report as well as other documents very clearly establish that at no point of time filing of registration of MSME was ever considered to be precondition for availing the dispute resolution remedy under Section 18.

14.8 We have noted three clear features in the statutory regime. To start with, Section 18 does not use the expression supplier, instead employs the phrase, "any party to a dispute, may". We have also noted that the definition of the expression 'supplier' is not confined to a micro or a small enterprise which has filed a memorandum under Section 8(1) but also includes companies or other entities engaged in selling goods or rendering services by an enterprise. Thirdly, Section 8 grants a discretion to a micro or a small enterprise in filing a memorandum with the authority.

14.9 Further, it is noteworthy that a "micro" [section 2(h)], "small" [section 2(m)] or "medium enterprises" [section 2(g)], formation and existence is simply on the basis of their investment as provided in Section 7 relating to classification of an Enterprise. They subsist without any formal "recognition", "consent" or "registration". The Act uses the expression filing of a "memorandum". That is all. That too, at the discretion of the micro and small enterprises. The cumulative account of these four features is compelling and leads us to the conclusion that an application by a micro or a small enterprise to the Facilitation Council under Section 18 cannot be rejected on the ground that the said enterprise has not registered itself in Section 8.

15. Having considered the definition of the expression 'supplier', and also having considered the classification of enterprises into micro, small and medium with respect to each of which there is a separate legal regime to be suggested by the Advisory Committee and notified by the Central and State Governments, and in view

of the discretion specifically vested with the micro and small enterprises for filing a memorandum under Section 8 of the Act, the submission that the Facilitation Council cannot entertain a reference under Section 18 if the enterprise is not registered under Section 8 must be rejected.

16. We will now discuss the cases relied on by the appellant.

17. ***Re: Silpi Industries v. Kerala State Road Transport Corporation:*** This is the lead judgment which has given the impression that this Court has laid down the law that Section 18 cannot be invoked by an Enterprise if it has not filed a memorandum under Section 8 of the Act before entering into a contract. However, the issues that arose for consideration in *Silpi Industries* are in complete contrast with the present case. In that case, there were two appeals, and they involved different facts and circumstances. The short facts in the first appeal was that the appellants referred the matter to the Facilitation Council which made an award in favour of the appellant under the Arbitration and Conciliation Act. The award was challenged under Section 34 and the same was dismissed. During the pendency of the appeal under Section 37, the High Court decided a preliminary issue as to whether the Limitation Act would apply to arbitral proceedings under the MSME. In the other appeal, the issue that arose before the High Court was whether there is a right to file a counterclaim in arbitral proceedings under MSME. The High Court answered both issues in the affirmative, thus the appeal before this Court in *Silpi Industries* (supra). Before considering the appeals, the following two issues were framed.

(i) *Whether the provisions of the Limitation Act, 1963 is applicable to arbitration proceedings initiated under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006*?

(ii) *Whether, counterclaim is maintainable in such arbitration proceedings?*

17.1 On the first issue, this Court held that the Limitation Act applies. The relevant portion of the order is as under;

> *"**27**…Thus, we are of the view that no further elaboration is necessary on this issue and we hold that the provisions of the Limitation Act, 1963 will apply to the arbitrations covered by Section 18(3) of the 2006 Act. We make it*

clear that as the judgment of the High Court is an order of remand, we need not enter into the controversy whether the claims/counterclaims are within time or not. We keep it open to the primary authority to go into such issues and record its own findings on merits."

17.2 On the second issue also, this Court held that the counterclaim is maintainable. The relevant portion is as under:

> "***40.*** *For the aforesaid reasons and on a harmonious construction of Section 18(3) of the 2006 Act and Section 7(1) and Section 23(2-A) of the 1996 Act, we are of the view that counterclaim is maintainable before the statutory authorities under the MSMED Act."*

17.3 In view of the finding that the Limitation Act will apply to MSME arbitration and also that a counterclaim is maintainable in an MSME arbitration, the Court could have disposed of the appeal as nothing further remained for adjudication and determination. However, it appears that the respondent seems to have made an argument that the appellant in the second set of appeals is not entitled to any relief whatsoever. This argument led to the court making the following observation in paragraph 41 of the judgment.

> *"**41**…Though, we are of the view that counterclaim and set-off is maintainable before the statutory authorities under the MSMED Act, the appellant in this set of appeals is not entitled for the relief, for the reason that on the date of supply of goods and services the appellant did not have the registration by submitting the memorandum as per Section 8 of the Act…."*

17.4 This fact led to the Court rejecting the claim of the appellant therein that there were no supplies after the registration under Section 8 of the Act. The relevant portion of the order of the judgment is as under;

> "***42.*** *Though the appellant claims the benefit of provisions under the MSMED Act, on the ground that the appellant*

was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in GE T&D India Ltd.,[24] *but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of the Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under the MSMED Act.*

43. *While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in Shanti Conductors*[25] *has held that date of supply of goods/ services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of the appellant as the unit under the MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006,*

24 *GE T&D India Ltd.* v. *Reliable Engg. Projects & Mktg.*, 2017 SCC OnLine Del 6978.

25 Shanti Conductors (supra).

as an enterprise, to claim the benefit retrospectively from the date on which the appellant entered into contract with the respondent.

44. *The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act, 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation."*

18. In the first place, whether an Enterprise is disabled from seeking a reference before filing a memorandum under Section 8 for registration never arose for consideration in *Silpi* (supra). More importantly, the Court did not examine any provisions of the Act and their implication on the right to seek a reference under Section 18 of the Act. This was natural because the Court did not frame an issue of registration. On the facts, the Court also held that there was no proof whatsoever that the appellant had made any supplies as contemplated in the *Shanti Conductors* (supra) case. Though we are concerned about the interpretation of the Act, we may mention at this very stage that it is an admitted fact that the respondent has, in fact, raised 41 out of 53 bills after its registration on 19.01.2016.[26] Be that as it may, in view of the above referred analysis, we are of the opinion that *Silpi Industries* (supra) is not an authority on the issue that a reference under Section 18 cannot be made by a micro or small enterprise if supplies were made or contracts were executed before filing of the memorandum under Section 8 of the Act.

19. ***Re: Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.***[27] This case considered a batch of appeals which gave rise to the following questions of law, which were formulated as under:

26 The complete details regarding bills raised after registration are indicated in paragraph no. 25, page 13 of the counter affidavit filed by the enterprise.

27 [2022] 19 SCR 1094 : (2023) 6 SCC 401

> *"(i) Whether the provisions of Chapter V of the MSMED Act, 2006 would have an effect overriding the provisions of the Arbitration Act, 1996?*
>
> *(ii) Whether any party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council under sub-section (1) of Section 18 of the said Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the Arbitration Act, 1996?*
>
> *(iii) Whether the Micro and Small Enterprises Facilitation Council, itself could take up the dispute for arbitration and act as an arbitrator, when the Council itself had conducted the conciliation proceedings under sub-section (2) of Section 18 of the MSMED Act, 2006 in view of the bar contained in Section 80 of the Arbitration Act, 1996?"*

20. It is evident from the above that the substantial question for consideration that arose for consideration in *Mahakali Foods* (supra) was whether the MSME Act overrides the Arbitration and Conciliation Act, 1996, and such other incidental questions. There was no issue whatsoever, as has arisen in our case, that is, about the right or rather a disability to seek a reference under Section 18, if the enterprise has not filed a memorandum. Answering the issues that have arisen for consideration, the Court returned the findings in paragraph 52.1 to 52.5 which are as follows:

> *"**52.** The upshot of the above is that:*
>
> ***52.1.** Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.*
>
> ***52.2** No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.*
>
> ***52.3.** The Facilitation Council, which had initiated the conciliation proceedings under Section 18(2) of the MSMED*

Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.

52.4. *The proceedings before the Facilitation Council/ institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996.*

52.5. *The Facilitation Council/institute/centre acting as an Arbitral Tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.*

21. The Court also reached another conclusion in paragraph 52.6, which is as follows:

> ***52.6.*** *A party who was not the "supplier" as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the "supplier" under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.*"

22. Something similar to the decision in *Silpi Industries* (supra) transpired in *Mahakali Foods* (supra) as well. Even though the issue of registration did not arise, a submission was made to the following effect.

> *"**49.** One of the submissions made by the learned counsel for the buyers was that if the party supplier was not the "supplier" within the meaning of Section 2(n) of the MSMED Act, 2006 on the date of the contract entered into between the parties, it could not have made reference of dispute to Micro and Small Enterprises Facilitation Council under Section 18(1) of the MSMED Act, 2006 and in such cases, the Council would not have the jurisdiction to decide the disputes as an arbitrator."*

23. In view of the above submission, the Court proceeded to rely on *Silpi Industries* (supra), and allowed the prayer. The relevant portion is as under: -

> *"**50.** At this juncture, very pertinent observations made by this Court in Silpi Industries case[28] on this issue are required to be reproduced ….*
>
> ***51.** Following the abovestated ratio, it is held that a party who was not the "supplier" as per Section 2(n) of the MSMED Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration is obtained subsequently, the same would have the effect prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an Arbitral Tribunal under the MSMED Act, 2006."*

24. It is evident from the above that even in Mahakali Foods (supra), the issue which has arisen for our consideration never arose. There was neither an issue, discussion, nor analysis on the applicability of Section 18 for enterprises that have not filed a memorandum. The decision in Mahakali Foods (supra) is certainly an authority on the issues that were formulated in paragraph 11 of the said

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28 *"42. … In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act.*
43. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409] has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. … By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent.
44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation."

judgment, which have already been extracted hereinabove. Even the concluding paragraph in *Mahakali Foods* (supra) clearly establishes the fact that the Court was only considering the issue of whether the MSMED Act, being a special legislation, overrides the Arbitration Act or not. The relevant portion of the judgement is as under: -

> *"**77.** The issues raised and the submissions made by the learned counsel appearing for the appellant with regard to the overriding effect of the MSMED Act, 2006 over the Arbitration Act, 1996, jurisdiction of Facilitation Council, the parties autonomy to enter into an agreement qua the statutory provisions, the issue of casus omissus, etc. have been discussed and decided hereinabove which need not be reiterated or repeated. Accordingly, it is held that the reference made to the Facilitation Council would be maintainable in spite of an independent arbitration agreement existing between the parties to whom the MSMED Act, 2006 is applicable, and such Council would be entitled to proceed under sub-section (2) of Section 18 of the MSMED Act, 2006 as also to act as an arbitrator or to refer the disputes to the institution or centre as contemplated under Section 18(3) of the MSMED Act, 2006. As held earlier, such Facilitation Council/Institute/Centre acting as an Arbitral Tribunal would have the jurisdiction to rule over on its own jurisdiction as per Section 16 of the Arbitration Act, 1996. In that view of the matter, the present appeal also deserves to be dismissed and is, accordingly, dismissed."*

25. Apart from *Silpi Industries* (supra), *Mahakali Foods* (supra), Mr. Sankaranarayanan also relied on two orders of this Court in *Vaishno Enterprises v. Hamilton Medical AG and Anr.*[29] and *M/s Nitesh Estates Ltd.* v. *Micro and Small Enterprises Facilitation Council of Haryana & Ors.*[30]. These short orders do not lay down the law but follow the decision of this Court in *Silpi Industries* (supra).

26. In *Vaishno* (supra), the contract was entered into on 24.08.2020, but as the registration was made on 28.08.2020, the Court held that the appellant was not an MSME and, therefore, the Act will not apply. The order seems to have been made in the facts and circumstances of

29 [2022] 1 SCR 771 : 2022 SCC OnLine SC 355

30 C.A. No. 5276/2022@ SLP (C) No. 26682/2018

the case. There was neither an issue about the supply of goods nor a formulation of the question as to whether the filing of a memorandum is mandatory for invocation of reference under Section 18.

26.1 The order in *Nitesh Estates* (supra), also relied on, observed that the issue involved is squarely covered against the respondents in view of the decision in *Silpi Industries* (supra) holding that filing of a memorandum is mandatory for initiation of proceedings under Section 18.

27. A decision where the issue was neither raised nor preceded by any consideration, in *State of U.P. v. Synthetics and Chemicals Ltd.*[31] this Court held, "*the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority*". Further, approving the decision of this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*[32] which held that "*precedents sub-silentio and without argument are of no moment*" this Court held that, "*a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141*". The same approach was adopted in *Arnit Das v. State of Bihar*[33] where it was held that "*a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined*".

28. In this context, it is also important to note that, as an institution, our Supreme Court performs the twin functions of *decision-making* and *precedent-making*. A substantial portion of our jurisdiction under Article 136 is reflective of regular appellate disposition of *decision making*. Every judgment or order made by this Court in disposing of these appeals is not intended to be a binding precedent under Article 141. Though the arrival of a dispute for this Court's consideration, either for *decision-making* or *precedent-making* is at the same tarmac, every judgment or order which departs from this

31 [1991] 3 SCR 64 : (1991) 4 SCC 139

32 [1988] Supp. 2 SCR 929 : (1989) 1 SCC 101

33 [2000] Supp. 1 SCR 69 : (2000) 5 SCC 488

Court lands at the doorstep of the High Courts and the subordinate courts as a binding precedent. We are aware of the difficulties that High Courts and the subordinate courts face in determining whether the judgment is in the process of *decision-making* or *precedent-making,* particularly when we have also declared that even an obiter of this Court must be treated as a binding precedent for the High Courts and the courts below. In the process of *decision making*, this Court takes care to indicate the instances where the decision of the Supreme Court is not to be treated as precedent.[34] It is therefore necessary to be cautious in our dispensation and state whether a particular decision is to resolve the dispute between the parties and provide finality or whether the judgment is intended to and in fact declares the law under Article 141.

29. ***Conclusion and reference to larger Bench***: On the interpretation of the provisions of the Act we have arrived at a clear opinion and have expressed the same. Though it is possible for us to follow the precedents referred to in para 27 to arrive at the conclusion that the judgments in the case of *Silpi Industries* (supra) and *Mahakali Foods* (supra) coupled with the subsequent orders in *Vaishno Enterprises* (supra) and *M/s Nitesh Estates* (supra) cannot be considered to be binding precedents on the issue that has arisen for our consideration, taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, we deem it appropriate to refer this appeal to a three Judge Bench.

30. The Registry is directed to place the appeal paperbooks along with our detailed judgment before the Hon'ble Chief Justice of India for constitution of an appropriate Bench.

Result of the case: Referred to three Judges Bench.

[†]*Headnotes prepared by:* Ankit Gyan

34 *Union of India* v. *All Gujarat Federation of Tax Consultants* (2006) 13 SCC 473; *Francis Stanly v. Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram* (2006) 13 SCC 210; *Bharat Petroleum Corporation Ltd. v. P. Kesavan* (2004) 9 SCC 772; *Vishnu Dutt Sharma v. Manju Sharma* (2009) 6 SCC 379; *Chandigarh Housing Board v. Narinder Kaur Makol* (2000) 6 SCC 415; Also refer to the commentary citing catena of judgements where this Court has enumerated the 'events when decision-making is not to be treated as a precedent' in Durga Das Basu, 'Commentary on Constitution of India' (9th Edition, Vol. IX), page 9858; See also, Allen v. Flood, (1893) AC 1 *"a case is only an authority for what it actually decides"*.