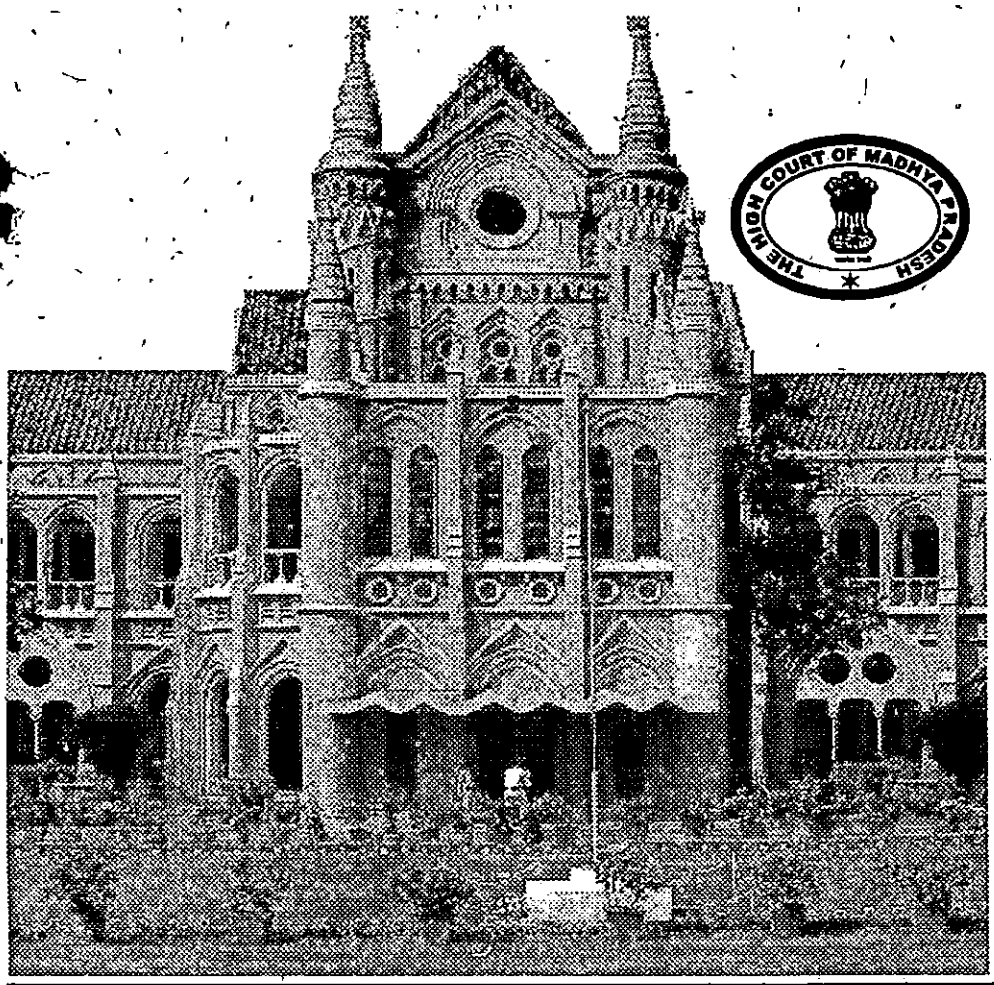
THE INDIAN LAW REPORTS
M. P. SERIES

CONTAINING
CASES DECIDED BY THE SUPREME COURT OF INDIA AND
THE HIGH COURT OF MADHYA PRADESH



August (Price Rs.30) 2008
(pp. 1863 to 2152)

LAW REPORTING COMMITTEE OF ILR, M.P. SERIES
2008

PATRON

Hon'ble The Chief Justice Shri A. K. PATNAIK

PRESIDENT

Hon'ble Justice Shri ARUN MISHRA.

MEMBERS

Shri Ravi Nandan Singh, Advocate General, *(ex-officio)*
Shri Surendra Singh, Senior Advocate
Shri P. R. Bhave, Senior Advocate
Shri Rohit Arya, Senior Advocate
Shri G.S. Ahluwalia, Advocate *(ex-officio)*
Shri Anil Kumar Sharma, Registrar (Judl.), *(ex-officio)*

SECRETARY

Shri G.S. AHLUWALIA, Advocate, Editor, (*Part-time*), *(ex-officio)*

Shri Ramesh Shrivastava, Advocate, Reporter *(Part-time)*
Shri Akhilesh Jain, Advocate, Reporter *(Part-time)*
Shri Girish Prakash Kekre, Advocate, Reporter *(Part-time)*

SHRI J. K. JAIN, REGISTRAR, (ILR)

TABLE OF CASES REPORTED

(Note An asterisk (*) denotes Note number)

Abhineeta Elizabeth Lall (Ku.) v. Barkatullah University, Bhopal	...	1966
Aggyaram & Co. (M/s.) v. M.P. Public Works Department	...	1799
Ajay Arora v. State of M.P.	...	1163
Akbar v. State of M.P.	...	1531
Amar Sharma v. Smt. Seema Sharma	...	2008
Amrutlal v. Sandeep	...	*62
Anil Bansal v. Central Bureau of Investigation	...	1952
Anil Jain v. Managing Director, MPRTC	...	1392
Anil Soni v. State of M.P.	...	1636
Anil v. State of M.P.	...	1469
Anoop Choudhary v. Smt. Usha Bhargava	...	763
Anshul Tomar v. State of M.P.	...	1979
Antu v. State of M.P.	...	1483
Arjun Sahu v. State of M.P.	...	1541
Arora Distilleries Pvt. Ltd. (M/s.) v. M/s. Vijay Associates	...	2130
Arvind Kumar v. State of M.P.	...	1479
Asbestos Janata Mazdoor Union v. Eternit Everest Ltd.	...	1905
Ashish Sahu v. Sushila Devi Chouhan	...	1278
Avinash v. Union of India	...	1725
Ayukt Indore Nagar Palika Nigam, Indore v. Jagdish	...	1125
B. Raman v. To Whom So Ever	...	1177
B.S.N. Joshi & Sons Ltd. v. State of M.P.	...	1671
Baboolal Sharda v. Savitribai	(SC) ...	993
Babu @ Babariya v. State of M.P.	...	1495
Babu Singh v. Mohd. Irfan Khan	...	*30
Bahubal v. Shafi Mohammad	...	2072
Bal Krishna v. Bhagwan Das	(SC) ...	1340
Bansal Stores v. State of M.P.	...	1830
Bhagwan Singh v. State of M.P.	...	1514
Bharat Singh v. State of M.P.	...	2126
Bhivji Through L.Rs v. Rajesh	...	1199
Bhoorelal v. State of M.P.	...	1229
Bhupendra Singh v. State of M.P.	...	1136
Bhure Singh v. State of M.P.	...	*42
Bhuvneshwar Prasad @ Guddu Dixit v. State of M.P.	...	1683
Chandanmal v. Suryakant	...	1554

Chandreshwar Jha (M/s.) v. Northern Coalfields Ltd.	...	2136
Chetanlal Thakur v. State of M.P.	...	1114
Cine Exhibitors Pvt. Ltd. v. The Gwalior Development Authority	...	1872
Colorway Photo Lab v. Union of India	...	1397
Commissioner of Income Tax v. Krishi Upaj Mandi Samiti, Morena	...	1735
Devendra Bapna v. State of M.P.	...	1942
Devendra Kumar Paliwal v. State of M.P.	...	1128
Devidayal Raikwar v. State of M.P.	...	1370
Dheer Singh v. Ravi Kumar	...	*63
Dinesh v. State of M.P.	...	1785
Domudas Dhakate v. State of M.P.	...	1448
Dr. Hari Singh Gaur Vishwavidyalaya Sagar (M.P.) v. Rajeshwar Yadav	...	1599
Dulari Singh (Smt.) v. Tribhuvan Murari Dubey	...	1759
Dulichand v. State of M.P.	...	*31
Durga Prasad v. State of M.P.	...	1475
Executive Engineer (Vigilance), M.P.S.E.B., Khargone v. Jaswant Singh	...	1187
Fanish Kumar Shukla v. Board of Secondary Education, M.P.	...	1132
Gangaprasad v. State of M.P.	...	1774
Ganpat v. State of M.P.	...	1235
Gendlal Patel v. M.P. Public Service Commission	...	1040
Girijabai v. State of M.P.	...	1167
Gopal v. State of M.P.	...	*43
Govind Singh Parmar v. Jai Prakash Mishra	...	*64
Gowardhan Singh v. State of M.P.	...	1183
Gujrati Samaj, Ujjain v. Commissioner of Income Tax, Ujjain	...	1690
Gulab v. State of M.P.	...	1535
Gwalior Citizen Sakh Sahakarita Maryadit v. Union of India	...	2022
Gyasi Lal Napit v. State of M.P.	...	*54
H.K. Kala v. State of M.P.	...	1699
H.S.S. Raghuvanshi v. State of M.P.	...	1569
Harcharan Rajpali v. The Collector, Tikamgarh	...	1702
Hemant Sharma v. Kishorilal Vanshkar	...	*65
Hind Syntex Ltd. v. Dewas Mazdoor Sangh	...	1410
Hindustan Food Products India v. State of M.P.	...	1313
Hitkarini Law College v. Ashish Kumar Pathak	...	1866
In Reference (FB)	...	1035

In Reference v. Radhakrishna	...	1562
Indian Oil Corporation Limited v. Ramesh	...	*66
Jagdish Kumar Shrivastava v. State of M.P.	...	1141
Jaswant Singh v. (Smt.) Dayamani	...	2080
Jeevan Singh v. State of M.P.	...	1650
Jeevan v. State of M.P.	...	1498
Johar v. Mangal Prasad (SC)	...	1333
Jumana Bai v. Mushtaq Ali	...	1839
Junior Doctors Association v. The Chief Commissioner of Income Tax	....	1992
Jwala Prasad Batham v. State of M.P.	...	1590
Jyoti Gupta (Smt.) v. Registrar General, High Court of M.P.	...	1711
Kadir Khan v. State of M.P.	...	1375
Kailashi v. Smt. Bharosi Bai	...	1586
Kailashvan Goswami v. State of M.P.	...	1053
Kalebabu v. State of M.P.	...	*44
Kalyan Singh v. State of M.P.	...	1406
Kamal v. State of M.P.	...	1214
Kamla Bai Patel (Smt.) v. Vidhyawati Patel	...	1809
Kamlesh Kahar v. Ashif Khan	...	*45
Kanhaiyalal Patel v. Union of India	...	1932
Katua Patel v. State of M.P.	...	*32
Kedar Nath Mishra v. Appellate Authority Under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (C)	...	1923
Kishan v. State of M.P.	...	1273
Kishanlal v. Murlidhar	...	1237
Krishna (Smt.) v. Chief Municipal Officer, Nagar Panchayat, Rau	...	*55
Krishnarao Kavdikar (Dead) Through His LRs. Ullas Kavdikar v. Sadhna Khanvalkar	...	1207
Lalla Prasad Burman v. State of M.P.	...	1050
Lavkesh Reddy v. State of M.P.	...	*56
Laxmi Chand (Deceased) Through LRs. v. Bhawati Bai	...	1305
Laxmi Narayan v. State of M.P.	...	2115
LML Ltd. v. Kailash Narain Rai	...	*33
Lords Wear Pvt. Ltd., Nagpur v. M/s. Anandkumar Devendra Kumar	...	1771
M. Balakrishna Reddy v. Director, CBI, New Delhi (SC)	...	1001
M.P. Cement Manufacturers Association v. State of M.P.	...	1665
M.P. Dwivedi v. M.P. Vidhan Sabha Secretariate, Bhopal	...	1622

M.P. Housing Board v. Smt. Jyoti Chitnis ... 1442
Madanlal v. Sub Divisional Officer (Revenue) ... 1425
Madholal v. State of M.P. ... 1282
Mahakal Automobiles (M/s.) v. Kishan Swaroop Sharma (SC)... 1581
Mahant Ram Khilawan Das v. State of M.P. (SC)... 997
Mahavir Grih Nirman Sahkari Sanstha Maryadit v. State of M.P. ... 1603
Mahesh Jatav v. State of M.P. ... 1834
Mahesh Kumar Swarnakar v. State of M.P. ... 2038
Mahesh v. State of M.P. ... *46
Mangilal v. State ... 1549
Manohar Sweets v. Commissioner of Income Tax ... 1465
Manoj Kumar Pandya v. State of M.P. ... 1383
Manoj v. State of M.P. ... 2093
Map Auto Ltd. v. Anil Kumar Jain ... *34
Master Shyam Kishore v. State of M.P. ... *35
Meena Tiwari v. Satya Prakash Capital Investment Ltd. ... *47
Milan v. Sunil ... *36
Mithilesh Kumari v. Pashu Chkikitsa Sahayak Shalya Prabhari, Niwari ... 1196
Mohan @ Munna Pachari v. Jagdish Chandra Dubey ... 1402
Mridula Kalpiwar (Smt.) v. Mridial Pathak ... *67
Muniraj Patel v. State of M.P. ... 1377
Murlidhar v. State of M.P. ... 1814
N.K. Saxena v. State of M.P. ... 1144
Nandlal v. State of Maharashtra ... 1292
Nandu Ahir v. State of M.P. ... 1782
Nar Singh v. State of M.P. ... 1225
Narendra Dhakad v. Anand Kumar ... 1309
Narmadabai Chouhan v. Regional Manager, L.I.C. of India ... 1746
Niraj Pratibha J.V. v. Indore Development Authority ... 2013
Nishant v. Prakash Chand ... *57
Omprakash Lakhwani (Dr.) v. State of M.P. ... 2003
Oriental Insurance Co. Ltd., Bilaspur v. Indrapal ... 2055
Oriental Insurance Company Ltd. v. Anjali Gupta (Ku.) ... 2075
Pitambra Peeth Shiksha Prasarani Samiti v. State of M.P. ... 1063
Prahlad v. State of M.P. ... 2069
Prahladsingh v. State of M.P. ... 1287
Prajapal Singh v. State of M.P. ... 1721

Pramod v. State of M.P. ... 1259
Prashant Kumar Sahu v. M/s. Optel Telecommunications Ltd. ... 1753
Prathmik Mahila Sahakari Upbhokta Bhandar, Shahpura, Distt. Dindori v. State of M.P. ... 1969
Pravin v. State of M.P. (SC) ... 1023
Prem Narayan Bhagel v. Banchandra ... 2041
Premkumari v. Prahlad Dev. (SC)... 985
Priyanka Shrivastava v. State of M.P. ... 1641
R.P. Upadhyaya v. State of M.P. ... 1985
R.S. Mehta (Dr.) v. State of M.P. ... 1912
Radha Mishra v. Secretary, Board of Secondary Education ... 1101
Radha Ujjainkar (Smt.) v. State of M.P. ... 2089
Radhika Bava v. Shailesh Bava ... *48
Radhika Prasad Gupta v. State of M.P. ... *58
Raees Khan v. State of M.P. ... *37
Raja Ram Ahirwar v. State of M.P. ... 1042
Rajendra v. State of M.P. ... *59
Rajesh Nandini Singh v. Rakesh Khare ... *49
Rajneesh Kumar Dwivedi v. M/s. K.P. Enterprises ... 2061
Ram Khiladi Gurjar v. State of M.P. ... 1428
Ram Kishore Shukla v. State of M.P. ... 1364
Ram Prakash Trademen v. State of M.P. ... 1072
Ram Singh v. State of M.P. ... 2110
Ramesh Chandra Vanshkar v. State of M.P. ... *38
Ramesh Chouksey v. Union of India ... 1887
Rameshwar Prasad (d) By. Lrs. v. Basanti Lal (SC) ... 1863
Ramnaresh v. Arjun ... *50
Ramprasad v. Smt. Sudhaben ... *60
Randheer Singh (Dr.) v. State of M.P. ... 2150
Reshma Philip v. State of M.P. ... 1366
Rizwan @ Rijju v. State of M.P. ... 2052
S.K. Verma v. State of M.P. ... 1892
Sachin v. State of M.P. ... 1242
Sagar Machhua Sahakri Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni ... 1080
Sanjay Verma v. State of M.P. ... 1592
Santosh Kumar Sharma v. State of M.P. ... *51

Santosh Singh @Kishanpal v. United India Insurance Co. Ltd. ... *39
Satish Gangrade v. M.P. Madhya Kshetra Vidyut Vitran Company Ltd. ... 1678
Satya Prakashi Parsadia v. State of M.P. ... 1092
Satyanarayan Gupta v. M.P. Housing Board ... 2046
Saubir Bhattacharya v. Jai Prakash Kori ... 1849
Savita Ben Thakur Das Patel (Smt.) v. State of M.P. ... 1731
Secretary, Prime Minister National Relief Fund v. Gopal Das Nayak ... 1352
Shailesh Kumar Sahu v. State of M.P. ... 1138
Shakil v. State of M.P. ... 2102
Shakir @ Govinda v. State of M.P. ... *68
Shakuntala Sharma v. State of M.P. ... 1320
Shambhoo Marketing Pvt. Ltd. v. State of M.P. ... 1104
Shamsher Singh Mangat (Lt. Col.) v. State of M.P. ... 2141
Shanker v. State of M.P. ... *69
Shekhar Seth (Dr.) v. M.P. State Bar Council ... 1974
Shobha v. Krushnakant Pandya ... 1299
Shri Kamla Nehru Balika Uchchatar Madhyamik Vidyalaya v. State of M.P... 1656
Shyam Mohan Srivastava v. State of M.P. ... 1119
Shyama Bai v. Murlidhar ... 1790
Shyamlal v. Durgabai ... 1472
Siddhi Vinayak college, Bhind v. State of M.P. ... 1645
Sittu Patel v. State of M.P. ... *40
Sovaran Singh v. State of M.P. ... 1527
State Bank of India v. M/s. Siddharth Hotel ... *61
State of M.P. v. Ashok ... 1503
State of M.P. v. Ashok ... 1220
State of M.P. v. Bharat Singh ... 1245
State of M.P. v. Gopal Singh ... 1265
State of M.P. v. Hariram ... 1997
State of M.P. v. M/s. Bharat Construction Co. ... 1807
State of M.P. v. Ramesh Chandra Bajpai ... 1350
State of M.P. v. Shankerlal Soni ... *52
State of M.P. v. Shiv Narayan Saxena ... 1356
State of M.P. v. Subhash Chandra Agrawal ... 1900
State of M.P. v. Vinod Mohan Shrivastava ... 1869
Subhash Chandra Jain v. State of M.P. ... *53
Sunil Thakur v. Hindustan Petroleum Corporation ... 1452

Suo Motu Revision State of M.P. v. Vinod Mudgal ... 1817
Surendra v. State of M.P. ... *41
Suresh Goel v. Grasim Industries Ltd. ... 1841
Suresh Kumar Agrawal v. State of M.P. ... 1328
Tej Singh v. Rewa Ram 2145
Tukaram v. State of M.P. ... 2098
V.C. Raam Sukaesh v. State of M.P. ... *70
V.K. Brahamankar v. Special Police Establishment ... 1511
Veerpal Singh Gurjar v. Insurance Ombudsman For M.P.& Chhattisgarh ... 1155
Vidyadhari v. Sukhrana Bai (SC) ... 1575
Vikram Cement v. State of M.P. ... 1660
Vinod Kumar Khare v. State of M.P. 1436
Virendra v. Rajni ... 1191
Yogesh Neema v. State of M.P. ... 1878
Yuva Vyayasayik Shikshan Sansthan v. Jiwaji University, Gwalior ... 1056

Comparative Table

(Note An asterisk (*) denotes Note number)

ILR 2008 [MP]=Other Journals
981=
985=
993=
997=2008 (2) MPJR 300 (SC)
1001=
1023=2008 (2) JLJ 112 (SC)
1035=2008 (3) MPHT 535 (FB)=2008 (2) JLJ 265 (FB)
1040=2008 (2) MPHT 390 (DB)=2008 (2) MPJR 180
1042=2008 (2) MPHT 281 (DB)
1050=2008 (3) MPHT 26 (DB)= 2008 (3) MPLJ 394
1053=2008 (3) MPHT 531=2008 (2) MPLJ 278
1056=
1056=
1063=
1072=2008 (1) MPLJ 353
1080=2008 (1) MPHT 254 (DB) = 2008 (2) MPLJ 194=2008 (1) JLJ 329
1092=2008 (3) MPHT 264=2008 (2) MPLJ 372= 2008 (1) MPJR 308
1101=2008 (2) MPHT 421= 2008 (3) MPLJ 539
1104=2008 (3) MPLJ *9
1114=2008 (2) MPLJ 468
1119=
1125=
1128=2008 (2) MPHT 268=2008 (3) MPHT 62=2008 (2) MPLJ 463
1132=2008 (3) MPHT 492
1136=
1138=
1141=2008 (2) MPLJ 563
1144=2008 (2) MPHT 365 (DB)
1155=2008 (3) MPJR 294

1163=
1167=2008 (3) MPHT 83=2008 (3) MPLJ 407=2008 (3) MPJR 187
1175=
1177=2008 (1) MPHT 267 (DB)
1183=
1187=
1191=
1196=2008 (2) MPLJ 337
1199=
1207=2008 (2) MPHT 529
1214=
1220=2008 (2) MPHT 281 (DB)
1225=
1229=2008 (4) MPHT 163 (DB)
1235=
1237=
1242=
1245=
1259=2008 (3) MPHT 103
1265=
1273=2008 (4) MPHT 214 (DB)
1278=2008 (3) MPHT 158=2008 (3) MPLJ 383=2008 (2) MPJR 310
1282=
1287=2008 (2) JLJ 199
1292=2008 (3) MPHT 50
1299=2008 (2) JLJ 437
1305=
1309=
1313=2008 (3) MPHT 203=2008 (2) MPLJ 63= 2008 (2) MPJR 158
1320=
1328=
1333=2008 (2) MPJR 351
1340=
1350=
1352=2008 (3) MPLJ *7
1356=2008 (3) MPLJ 306=2008 (2) MPJR 91
1360=
1364=
1366=
1370=
1375=2008 (3) MPLJ 236=2008 (2) MPJR 308
1377=
1383=2008 (2) MPLJ 302
1392=2008 (2) MPLJ 507
1397=
1402=
1406=2008 (2) MPJR 239
1410=2008 (2) MPLJ 614
1425=
1428=2008 (3) MPJR *4=2008 (2) JLJ 430=2008 (2) JLJ 184
1436=
1442=2008 (3) MPLJ 507=2008 (3) MPJR 139
1448=2008 (3) MPLJ 654
1452=2008 (3) MPLJ 470
1465=
1469=
1472=
1475=
1479=
1483=
1495=
1498=
1503=2008 (3) MPJR *1=2008 (2) JLJ 152
1511=
1514=
1527=2008 (2) MPLJ 423= 2008 (2) MPJR 147

1531=
1535=
1541=2008 (2) JLJ 237
1549=2008 (3) MPLJ 105= 2008 (2) MPJR 76
1554=
1562=
1569=
1575=2008 (2) MPLJ 351
1581=
1586=2008 (2) MPLJ 218=2008 (2) MPJR 386 (FB)
1590=2008 (3) MPLJ 441=2008 (3) MPLJ *3
1592=
1599=
1603=2008 (2) MPLJ 222
1619=2008 (2) MPLJ 115
1622=2008 (1) MPLJ 564
1636=2008 (3) MPLJ 378
1641=
1645=
1650=
1656=2008 (2) MPLJ 446
1660=
1665=
1671=
1678=2008 (3) MPLJ 373
1683=
1690=
1692=2008 (3) MPJR 203
1699=2008 (3) MPLJ 526
1702=2008 (2) MPJR 243
1711=2008 (2) MPLJ 486
1721=
1725=
1731=
1735=2008 (3) MPLJ 529
1746=
1753=2008 (2) MPLJ 481=2008 (2) MPJR 171
1759=
1763=
1771=
1774=
1782=
1785=
1790=2008 (3) MPLJ 22
1799=2008 (2) MPLJ 390
1807=2008 (2) MPLJ 295
1809=
1814=
1817=
1830=
1834=2008 (3) MPLJ 664
1839=
1841=
1849=
1863=2008 (3) MPJR 1 (SC)
1866=2008 (2) MPLJ 382
1869=
1872=2008 (3) MPLJ 389=2008 (3) MPJR 21=2008 (2) JLJ 172
1878=
1887=
1892=
1900=2008 (3) MPLJ 586=2008 (2) JLJ 320
1905=
1912=2008 (1) MPLJ 590
1923=2008 (2) MPLJ 438
1932=2008 (3) MPLJ 48
1942=2008 (2) MPLJ 406
1952=2008 (3) MPLJ *1=2008 (2) JLJ 281
1966=2008 (2) MPLJ 475
1969=2008 (3)MPLJ 565

Comparative Table

1974=
1979=2008 (2) MPLJ 450
1985=
1992=
1997=2008 (3) MPLJ 517
2003=2008 (3) MPLJ 173
2008=2008 (3) MPJR 218
2013=
2022=
2038=
2041=
2046=2008 (3) MPJR 224
2052=
2055=2008 (2) MPLJ 400
2061=
2069=2008 (2) MPLJ 589=2008 (2) MPJR 321
2072=
2075=
2080=2008 (3) MPJR 284
2089=
2093=
2098=
2102=
2110=
2115=
2126=
2130=
2136=
2141=
2145=2008 (3) MPJR 197
2150=
*30=2008 (3) MPHT 403 (DB)
*31=
*32=2008 (3) MPHT 43=2008 (3) MPLJ 400
*33=2008 (3) MPHT 416=2008 (2) JLJ 62
*34=2008 (2) MPHT 201
*35=
*36=
*37=
*38=2008 (3) MPJR 195
*39=
*40=
*41=
*42=
*43=
*44=
*45=
*46=
*47=
*48=
*49=
*50=2008 (3) MPLJ 96
*51=
*52=
*53=
*54=
*55=
*56=
*57=
*58=
*59=
*60=
*61=2008 (3) MPJR 230
*62=
*63=
*64=
*65=
*66=
*67=
*68=
*69=
*70=

INDEX

(Note An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f), Civil Procedure Code, 1908, Section 11 - *Res judicata - Earlier suit was dismissed on ground that premises was let out for non residential purposes, cannot be evicted for residential purposes - Subsequent suit filed on ground for starting business - Suit & First Appeal dismissed on ground that subsequent suit is barred by Res Judicata - Held - Matter in subsequent suit was not directly and substantially in issue which was in the former suit - Subsequent suit not barred by Res Judicata - Matter sent back to Trial Court to decide suit on merit.* [Mithilesh Kumari v. Pashu Chikitsa Sahayak Shalya Prabhari, Niwari] ...1196

Accommodation Control Act, M.P. (41 of 1961), Section 23-A - ***Bonafide requirement*** - *Application filed for eviction from non-residential premises for opening a cosmetic shop along with her married daughter - Applicant aged about 70 years - Old age ipso facto would not mean that need is not bonafide - Nature of business is required to be seen - No experience is required for doing this type of business - Even if it is held that her business would fail in absence of experience it cannot be a ground to hold that need of applicant is not bonafide.* [Shyama bai v. Murlidhar]...1790

Accommodation Control Act, M.P. (41 of 1961), Section 23-A - ***Bonafide Requirement*** - *Income of applicant - Applicant receiving income from family pension and rent - Bonafide requirement cannot be dismissed merely on the ground that she is receiving some income which is sufficient to satisfy her daily need.* [Shyama bai v. Murlidhar] ...1790

Accommodation Control Act, M.P. (41 of 1961), Section 23-A - *Owner - Tenant admitting that suit shop is of applicant - Ownership of applicant stood proved.* [Shyama bai v. Murlidhar] ...1790

Accommodation Control Act, M.P. (41 of 1961), Section 23-A - ***Perpetual Lease Deed*** - *Application for eviction opposed on the ground that lease was till the pleasure of tenant - Held - There is non-obstante clause which is having meaning to nullify any contract to contrary - Even if any agreement contrary to section is executed between landlord and tenant the same would not have any sanctity - Application for eviction maintainable.* [Shyama bai v. Murlidhar] ...1790

Accommodation Control Act, M.P. (41 of 1961), Section 35, Civil Procedure Code, 1908, Order 47 Rule 1 - *Review - In absence of any specific provision for execution of order, provisions of C.P.C would be applicable - Application for review maintainable.* [Ashish Sahu v. Sushila Devi Chouhan]...1278

Accommodation Control Act, M.P. (41 of 1961), Section 35 (New S. 35 has been substituted for the old one by M.P.A.C. (Amendment Act, 1983) - *Rent Controlling Authority to exercise powers of Civil Court for execution of orders - Provides a complete forum in respect of execution of*

(Note An asterisk (*) denotes Note number)

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ), सिविल प्रक्रिया संहिता, 1908, धारा 11 – पूर्व न्याय – पूर्व वाद इस आधार खारिज हुआ था कि परिसर अनिवासीय प्रयोजन के लिये किराये पर दिया गया था, निवासीय प्रयोजन के लिये खाली नहीं कराया जा सकता है – पश्चातवर्ती वाद व्यापार प्रारंभ करने के आधार पर प्रस्तुत किया – वाद व प्रथम अपील इस आधार पर खारिज की गई कि पश्चातवर्ती वाद पूर्व न्याय से बाधित है – अभिनिर्धारित – पश्चातवर्ती वाद का विषय प्रत्यक्षतः और सारतः वह नहीं था, जो पूर्व वाद में था – पश्चातवर्ती वाद पूर्व न्याय से बाधित नहीं – मामला विचारण न्यायालय को वाद का गुण दोषों पर विनिश्चय के लिये भेजा गया। (मिथलेश कुमारी वि. पशु चिकित्सा सहायक शल्य प्रभारी, निवारी) ...1196

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–क – सद्भावी आवश्यकता – गैर रिहायशी परिसर में अपनी विवाहित पुत्री के साथ श्रृंगार के सामान की दुकान खोलने हेतु बेदखली का आवेदन पेश किया – आवेदक की आयु लगभग 70 वर्ष – अधिक आयु से स्वमेव यह अर्थ नहीं निकलता कि आवश्यकता सद्भावी नहीं है – व्यवसाय की प्र.ति को देखा जाना अपेक्षित – इस प्रकार के व्यापार को करने के लिए किसी तरह का अनुभव अपेक्षित नहीं – फिर भी यदि यह अभिनिर्धारित किया जाता है कि उसका व्यापार अनुभव के अभाव में असफल हो जाएगा, इस आधार पर यह अभिनिर्धारित नहीं किया जा सकता है कि आवेदक की आवश्यकता सद्भावी नहीं है। (श्यामा बाई वि. मुरलीधर) ...1790

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–क – सद्भावी आवश्यकता – आवेदक की आय – आवेदक परिवार पेंशन व किराया प्राप्त कर रही है – सद्भावी आवश्यकता केवल इस आधार पर खारिज नहीं की जा सकती है कि उसे कुछ आय हो रही है जो उसकी दैनिक आवश्यकताओं की पूर्ति के लिए पर्याप्त है। (श्यामा बाई वि. मुरलीधर) ...1790

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–क – स्वामी – किरायेदार ने स्वीकार किया कि वादग्रस्त दुकान आवेदक की है – आवेदक का स्वामित्व साबित हुआ। (श्यामा बाई वि. मुरलीधर) ...1790

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–क – शाश्वत पट्टा विलेख – बेदखली के आवेदन का विरोध इस आधार पर किया गया कि पट्टा (लीज) किरायेदार की इच्छा रहने तक था – अभिनिर्धारित – प्रतिकूल संविदा को अ.त करने के अर्थ वाला सर्वोपरि खण्ड मौजूद है – फिर भी धारा के प्रतिकूल कोई अनुबन्ध मकान मालिक एवं किरायेदार के बीच निष्पादित होता है तो उसकी कोई अहमियत नहीं होगी – बेदखली का आवेदन पोषणीय। (श्यामा बाई वि. मुरलीधर) ...1790

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 35, सिविल प्रक्रिया संहिता, 1908, आदेश 47 नियम 1 – पुर्नविलोकन – आदेश के निष्पादन के संबंध में विर्निदिष्ट उपबन्ध के अभाव में सिविल प्रक्रिया संहिता के उपबन्ध लागू होंगे – पुर्नविलोकन का आवेदन पोषणीय। (आशीष साहू वि. सुशीला देवी चौहान) ...1278

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 35 (म.प्र. स्थान नियंत्रण अधिनियम (संशोधन अधिनियम, 1983) के द्वारा नई धारा 35 पुरानी धारा के स्थान पर प्रतिस्थापित) – किराया नियंत्रण प्राधिकारी आदेशों के निष्पादन के लिये सिविल न्यायालय की शक्तियों का प्रयोग करता है – किराया नियंत्रण प्राधिकारी द्वारा पारित आदेशों के निष्पादन के लिये पूर्ण रूप से फोरम

orders passed by RCA - All questions falling within the purview of Section 47 of CPC are to be dealt with only by RCA and none else. [Ashish Sahu v. Sushila Devi Chouhan] ...1278

Adverse Possession - *In order to establish plea of adverse possession, the defendant ought to have proved his possession and must state that dispossession of rightful owner was actual, exclusive, hostile and continued over the statutory period.* [Jaswant Singh v. Smt. Dayamani] ...2080

Arbitration and Conciliation Act (26 of 1996), Section 11, Civil Procedure Code, 1908, Section 11 - *Res judicata - Application filed u/s 11 of Act for appointment of arbitrator - Application dismissed by ADJ - Order not challenged before higher forum - Fresh application filed u/s 11 of Act before High Court for appointment of arbitrator - Held - At the relevant time, ADJ was having jurisdiction to decide the matter - Order of ADJ ought to have been challenged before higher forum - Once applicant has invoked the jurisdiction of competent Court and application was dismissed - Subsequent application cannot be entertained merely on ground that now the jurisdiction lies with High Court - Subsequent application barred by principle of Res judicata in the light of Supreme Court's judgment in S.B.P. & Co.'s case - Application dismissed.* [Chandreshwar Jha (M/S) v. Northern Coalfields Ltd.] ...2136

Arbitration and Conciliation Act, (26 of 1996), Section 11(5) - *See - Consumer Protection Act 1986, Section 12,.* [Oriental Insurance Co. Ltd. v. Anjali Gupta (Ku.)] ...2075

Arbitration and Conciliation Act (26 of 1996), Sections 16, 34, 37 - ***Territorial Jurisdiction*** - *Arbitrator is under an obligation to decide the plea of jurisdiction - Appellant carrying on business at Nagpur and order was also placed at Nagpur - Objection regarding territorial jurisdiction not decided by Arbitral Tribunal and also by Court - Held - Whole action of Arbitral Tribunal without jurisdiction - Award set-aside - Appellant directed to appear before Arbitral Tribunal - Appeal allowed .*[Lords Wear Pvt. Ltd., Nagpur v.M/s Anandkumar Devendra Kumar] ...1771

Arbitration and Conciliation Act (26 of 1996), Sections 21 & 43 - *Arbitration Tribunal decline to pass award in favour of appellant and held claim to be time barred - Application u/s 34 dismissed - Held - Arbitral proceedings in respect of a particular dispute would commence on the date on which a request for that dispute to be referred to Arbitration is made - Determining factor in computing the limitation is the date when notice was received by the respondent No.1 & 2 raising the arbitral dispute - Appeal allowed.* [Prashant Kumar Sahu v. M/s. Optel Telecommunications Ltd.]..1753

Arbitration and Conciliation Act (26 of 1996), Sections 34 & 36 - *Applicability of the Act - Respondent awarded contract but was not able to*

का उपबन्ध करती है – सभी प्रश्न जो सिविल प्रक्रिया संहिता की धारा 47 के क्षेत्र में आते हैं उनका समाधान केवल किराया नियंत्रण अधिकारी करता है। (आशीष साहू वि. सुशीला देवी चौहान) ...1278

प्रतिकूल कब्जा – प्रतिकूल कब्जे के अभिवचन को स्थापित करने के लिए प्रतिवादी को अपना कब्जा सिद्ध करना होगा और यह कथन करना होगा कि वैध स्वामी की बेदखली वास्तविक, अनन्य, विरोधी और वैधानिक कालावधि में लगातार रही थी। (जसवंस सिंह वि. श्रीमति दयामनी) ...2080

माध्यस्थम् एवं सुलह अधिनियम (1996 का 26), धारा 11, सिविल प्रक्रिया संहिता, 1908, धारा 11 – प्रांग्न्याय – मध्यस्थ की नियुक्ति के लिए अधिनियम की धारा 11 के अन्तर्गत आवेदन पेश – अपर जिला न्यायाधीश ने आवेदन खारिज किया – आदेश को उच्चतर फोरम के समक्ष चुनौती नहीं दी गई – मध्यस्थ की नियुक्ति के लिए अधिनियम की धारा 11 के अन्तर्गत नया आवेदन उच्च न्यायालय के समक्ष पेश किया – अभिनिर्धारित – सुसंगत समय पर अपर जिला न्यायाधीश को मामले के विनिश्चय का क्षेत्राधिकार था – अपर जिला न्यायाधीश के आदेश को उच्चतर फोरम के समक्ष चुनौती देना चाहिए था – एक बार आवेदक ने सक्षम न्यायालय के {ksf/kdkj dk vkgoku (invoke) किया और आवेदन खारिज कर दिया गया – पश्चात्वर्ती आवेदन केवल इस आधार पर प्रवर्तनीय नहीं कि अब उच्च न्यायालय को क्षेत्राधिकार प्राप्त हो गया है – उच्चतम न्यायालय द्वारा एस.बी.पी. एण्ड कम्पनी के मामले में दिये निर्णय के आलोक में पश्चात्वर्ती आवेदन प्रांग्न्याय के सिद्धांत से बाधित है – आवेदन खारिज। (चन्द्रेश्वर झा. (मे.) वि. नार्दन कोल. फील्डस् लि.) ...2136

माध्यस्थम् और सुलह अधिनियम, (1996 का 26) , धारा 11(5) – देखें – उपभोक्ता संरक्षण अधिनियम, 1986, धारा 12, (ओरिएन्टल इंश्योरेन्स कंपनी लि. वि. अंजली गुप्ता (कु.)) ...2075

माध्यस्थम् एवं सुलह अधिनियम (1996 का 26), धारा 16, 34, 37 – क्षेत्रीय क्षेत्राधिकार – मध्यस्थ क्षेत्राधिकार का प्रश्न निर्णीत करने को बाध्य है – अपीलार्थी नागपुर में व्यवसाय कर रहा था एवं आदेश भी नागपुर में दिया गया था – माध्यस्थम् अधिकरण एवं न्यायालय द्वारा क्षेत्रीय क्षेत्राधिकार की आपत्ति निरा.त नहीं की – अभिनिर्धारित – माध्यस्थम् अधिकरण की सम्पूर्ण कार्यवाही अधिकारिता विहीन – अवार्ड अपास्त – अपीलार्थी को माध्यस्थम् अधिकरण के समक्ष उपस्थित होने का निदेश दिया – अपील मंजूर। (लार्डस् वियर प्रा. लि. नागपुर वि. मेसर्स आनन्द कुमार देवेन्द्र कुमार) ...1771

माध्यस्थम् एवं सुलह अधिनियम (1996 का 26), धाराएँ 21 व 43 – माध्यस्थम् अधिकरण ने अपीलार्थी के पक्ष में अधिनिर्णय पारित करने से इंकार किया और दावा समय वर्जित होना अभिनिर्धारित किया – आवेदन अन्तर्गत धारा 34 खारिज – अभिनिर्धारित – माध्यस्थम् कार्यवाहियाँ किसी विशिष्ट विवाद के सम्बन्ध में उस तारीख को प्रारम्भ होंगी जिसको उस विवाद को माध्यस्थम् को निर्देशित करने के लिए प्रार्थना की गई हो – परिसीमा की संगणना करने में नियामक कारक वह दिनांक है जब माध्यस्थम् विवाद का सूचनापत्र प्रत्यर्थी क्रमांक 1 व 2 द्वारा प्राप्त किया गया – अपील मंजूर। (प्रशांत कुमार साहू वि. मेसर्स आप्टेल टेलीकम्यूनिकेशंस लि.) ...1753

माध्यस्थम् एवं सुलह अधिनियम (1996 का 26), धाराएँ 34 व 36 – अधिनियम का लागू होना – प्रत्यर्थी को संविदा दी गई परन्तु उसे वह नियत कालावधि के भीतर पूरा नहीं

complete it within stipulated period and thus a dispute arose - Sole Arbitrator passed an award in favour of respondent - Petitioners challenged the award u/s 34 of the Act before the District Court Gwalior - Application for setting aside the Award dismissed - Respondent filed application u/s 36 for enforcement of the award - Held - As the petitioner has filed an application u/s 34 of the Act for setting aside the award and the respondent filed an application u/s 36 for enforcement of the award the parties have themselves accepted the applicability of the Act by their own conduct - Petition dismissed. [Union of India v. M/s. N.J. Devani Builders Pvt. Ltd.] ...1692

Arms Act (54 of 1959), Sections 4, 25(1-B)(b) - *Licence for acquisition and possession of arms - Applicant found in possession of knife - No notification issued u/s. 4 prohibiting acquisition, possession or carrying of arms of such class or description in the specified area brought on record - Applicant cannot be convicted - Revision allowed.* [Shakir @ Govinda v. State of M.P.] ...*68

Arms Act (54 of 1959), Section 25(1-B)(b) - *Acquisition or possession of arms of specified description in contravention of Section 4 - Knife seized from the possession of appellant not produced before Trial Court and not marked as an article - Oral evidence regarding its size and specification not sufficient - Appellant acquitted - Appeal allowed.* [Kale Babu v. State of M.P.] ...*44

Arms Act (54 of 1959), Section 25(1-B)(b) - *Possession of arms of specified description - Applicant was having Khukri type knife in his hand and was intimidating public - Nothing on record that blade of knife was more than 6" long or 2" wide - Held - Courts below erred in holding that applicant was found in possession of knife having blade of prohibited dimensions as specified in notification issued u/s 4 - Applicant acquitted - Revision allowed.* [Lavkesh Reddy v. State of M.P.] ...*56

Arms Act (54 of 1959), Sections 39 & 25 (1)(a) - *Sanction - Country made revolver seized - Weapon was incapable of firing - Was not sent to D.M. along with record - Sanction not valid - Applicant acquitted for want of valid sanction.* [Raees Khan v. State of M.P.] ...*37

Ashasakiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetano Ka Sandaya) Adhiniyam, M.P. (20 of 1978), Section 5 - *Private aided educational institute getting grant-in-aid - State Govt. issued circular that provident fund with regard to employees of aided institution with effect from 1.8.1982 would be the responsibility of the Management and not of the State Govt. - Circular challenged on the ground that it is ultra vires the provision contained in the Section 5 of Adhiniyam - Held - Denying the liability by the State Government to pay provident fund of the employees is clearly in contravention with the mandatory provisions of Section 5(2) of the Act - Circular declared as ultra vires of the Act and quashed - Petition allowed.* [Shri Kamla Nehru Balika Uchchatar Madhyamik Vidyalaya v. State of M.P.] ...1656

कर सका और इसलिए विवाद उत्पन्न हुआ – एकल मध्यस्थ ने प्रत्यर्थी के पक्ष में अधिनिर्णय दिया – याची ने अधिनिर्णय को अधिनियम की धारा 34 के अन्तर्गत जिला न्यायालय, ग्वालियर के समक्ष चुनौती दी – अधिनिर्णय को अपास्त कराने का आवेदन खारिज – प्रत्यर्थी ने अधिनिर्णय के प्रवर्तन के लिए धारा 36 के अधीन आवेदन पेश किया – अभिनिर्धारित – चूंकि याची ने अधिनियम की धारा 34 में अधिनिर्णय को अपास्त करने का आवेदन दिया और प्रत्यर्थी ने धारा 36 में अधिनिर्णय के प्रवर्तन के लिए आवेदन पेश किया, पक्षकारों ने अपने स्वयं के आचरण से अधिनियम के लागू होने को स्वीकार किया – याचिका खारिज। (यूनियन आफ इंडिया वि. मेसर्स एन.जे. देवानी बिल्डर्स प्रा.लि.) ...1692

आयुध अधिनियम (1959 का 54), धाराएँ 4, 25(1–बी)(बी) – आयुध के अर्जन और कब्जे में रखने के लिए लायसेंस – आवेदक के कब्जे में चाकू पाया गया – धारा 4 के अन्तर्गत जारी अधिसूचना जिसमें विनिर्दिष्ट क्षेत्र में विनिर्दिष्ट किस्म के आयुध का अर्जन, कब्जे में रखना या ले जाना प्रतिबंधित किया उसे अभिलेख पर नहीं लाया गया – आवेदक को दोषसिद्ध नहीं किया जा सकता – पुनरीक्षण स्वीकार। (शाकिर उर्फ गोविंदा वि.म.प्र. राज्य) ---*68

आयुध अधिनियम (1959 का 54), धारा 25(1–बी)(बी) – धारा 4 के उल्लंघन में विनिर्दिष्ट किस्म के आयुध का अर्जन या कब्जे में रखना – अपीलार्थी के कब्जे से अभिगृहीत किया गया चाकू विचारण न्यायालय के समक्ष प्रस्तुत नहीं और उसे वस्तु के रूप में अंकित नहीं किया – उसके आकार ओर उसके विशिष्ट विवरण के बारे में मौखिक साक्ष्य पर्याप्त नहीं – अपीलार्थी दोषमुक्त – अपील मंजूर। (काले बाबू वि. म.प्र. राज्य) *44

आयुध अधिनियम (1959 का 54), धारा 25(1–बी)(बी) –विनिर्दिष्ट किस्म के आयुध का कब्जा – आवेदक के हाथ में खुकरी के प्रकार का चाकू था और वह जनता को डरा रहा था – अभिलेख पर ऐसा कुछ नहीं कि चाकू का फल 6" से अधिक लम्बा या 2" से अधिक चौड़ा था – अभिनिर्धारित – अधीनस्थ न्यायालयों द्वारा यह अभिनिर्धारित करना कि अधिनियम की धारा 4 के अन्तर्गत जारी की गई अधिसूचना में विनिर्दिष्ट प्रतिबन्धित आकार के फल का चाकू आवेदक के कब्जे में पाया गया, त्रुटिपूर्ण है – आवेदक दोषमुक्त – पुनरीक्षण मंजूर। (लवकेश रेड्डी वि. म.प्र. राज्य) ...*56

आयुध अधिनियम (1959 का 54), धारायें 39 एवं 25 (1)(ए) – मंजूरी – देशी कट्टा जब्त–हथियार–फायर करने में अयोग्य था – अभिलेख के साथ जिला मजिस्ट्रेट के पास नहीं भेजा – मंजूरी विधिक नहीं – विधिक मंजूरी के अभाव में आवेदक दोषमुक्त। (रईस खान वि. म.प्र. राज्य) ...*37

अशासकीय शिक्षण संस्था (अध्यापकों तथा अन्य कर्मचारियों के वेतनों का संदाय) अधिनियम, म.प्र. (1978 का 20), धारा 5 – अशासकीय सहायता प्राप्त शिक्षण संस्था को सहायता अनुदान मिल रहा – राज्य शासन ने परिपत्र जारी किया कि सहायता प्राप्त संस्थान के कर्मचारियों के सम्बन्ध में 1.8.1982 से भविष्य निधि प्रबंधन की जिम्मेदारी होगी न कि राज्य शासन की – परिपत्र को इस आधार पर चुनौती दी गयी कि यह अधिनियम की धारा 5 में अन्तर्विष्ट उपबन्धों के अधिकारातीत है – अभिनिर्धारित – राज्य शासन द्वारा कर्मचारियों की भविष्य निधि देने के दायित्व से इंकार करना स्पष्टतः अधिनियम की धारा 5(2) के आज्ञापक प्रावधानों का उल्लंघन है – परिपत्र अधिनियम के अधिकारातीत घोषित और अभिखण्डित – याचिका मंजूर। (श्री कमला नेहरू बालिका उच्चतर माध्यमिक विद्यालय वि. म.प्र. शासन) ...1656

Back wages - *Award of back wages is not automatic and the Courts are required to examine the facts and circumstances of the case - Petitioner willing to work but not permitted to work - Held - Petitioner entitled to arrears of salary and allowances w.e.f.01.12.2005.* [Mahesh Kumar Swarnakar v. State of M.P.] ...2038

Cantonments Act (41 of 2006), Section 29(1) - ***Qualification for being a member of Board*** *- Name of appellant entered in electoral roll - However, his father's name wrongly mentioned - Held - If appellant files his nomination paper, Returning officer will have to apply his mind to aforesaid provision and take a decision thereon - Since nomination paper was not filed, it was premature for Single Judge to express any opinion on merits of claim of the appellant - Observations of Single Judge that returning officer cannot consider nomination of appellant are deleted - Appeal disposed of.* [Ramesh Chouksey v. Union of India] ...1887

Cantonment Electoral Rules, 2007, Rule 13 - ***Objections*** *- Limitation - Rule 13(1) provides that objection to an entry in electoral roll has to be made within a period of 20 days from the date of publication - Rule 13(7) expressly excludes the provision of Section 5 of Limitation Act - Application filed by petitioner beyond period of 20 days for correction of name of his father could not be entertained.* [Ramesh Chouksey v. Union of India] ...1887

Ceiling on Agricultural Holdings Act, M.P. (20 of 1960) - Section 4(1) - *Transfers or partitions made after publication of Bill but before commencement of Act - Sale deed executed between 1.1.71 to 7.3.74 - Civil Court cannot examine the question that whether the sale deed was executed to defeat the provisions of Act - Only competent authority can examine such question.*[Bhivji through LRs. v. Rajesh] ...1199

Cigarettes and Other Tobacco Productions (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act, (34 of 2003), Section 7(5) - *Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products - Section 7(5) of Act, 2003 provides that every package of cigarette or tobacoo product must contain nicotine and tar contents along with maximum permissible limits thereof - Object of Act, 2003 is to create general awareness of ill effects of tobacco products - Object will be frustrated unless provisions of Section 7(5) are enforced by U.O.I. as early as possible.* [Avinash v. Union of India] 1725

Civil Courts Act, M.P. (19 of 1958) (as amended w.e.f. 15-4-1983), Sections 3, 6, 7, 13, 14, 15, 18 & 19 - ***Office of District Judge and Additional District Judge*** *- Although Courts of District Judge and Addl. District Judge have been classified as two separate classes of Court but they belong to one and same cadre - A.D.J. and D.J. exercise almost same judicial powers -*

बकाया वेतन – बकाया वेतन का अवार्ड स्वचालित नहीं है और न्यायालयों से मामले के तथ्यों एवं परिस्थितियों की जांच अपेक्षित है – याची कार्य करने के लिये तत्पर परन्तु उसे कार्य करने की अनुमति नहीं – अभिनिर्धारित – याची 01.12.2005 से बकाया वेतन और भत्ते पाने का हकदार। (महेश कुमार स्वर्णकार वि. म.प्र. राज्य) ...2038

छावनी अधिनियम (2006 का 41), धारा 29(1) – बोर्ड का सदस्य होने के लिए अर्हता – अपीलार्थी का नाम निर्वाचक नामावली में दर्ज – तथापि उसके पिता का नाम गलत ढंग से उल्लेखित – अभिनिर्धारित – यदि अपीलार्थी अपना नामांकन पत्र प्रस्तुत करता है, निर्वाचन अधिकारी को उपरोक्त प्रावधान में अपनी बुद्धि का प्रयोग करना पड़ेगा एवं उस पर निर्णय लेगा – चूंकि नामांकन पत्र प्रस्तुत नहीं किया गया, एकल न्यायाधीश के लिए अपीलार्थी के दावे के गुणदोषों पर कोई विचार व्यक्त करना समयपूर्व था – एकल न्यायाधीश की टिप्पणी कि निर्वाचन अधिकारी अपीलार्थी के नामांकन पर विचार नहीं कर सकता है, हटाया गया – अपील निपटाई गई। (रमेश चौकसे वि. यूनियन आफ इंडिया) ...1887

छावनी निर्वाचन नियम, 2007, नियम 13 – आपत्तियाँ – परिसीमा – नियम 13(1) उपबंधित करता है कि निर्वाचक नामावली में एक प्रविष्टि की आपत्ति प्रकाशन की तिथि से 20 दिवस की कालावधि के अंदर करनी होती है – नियम 13(7) परिसीमा अधिनियम की धारा 5 के प्रावधानों को स्पष्ट रूप से अपवर्जित करता है – याची द्वारा अपने पिता के नाम के सुधार के लिए 20 दिनों की कालावधि के पश्चात् प्रस्तुत आवेदन ग्राह्य नहीं किया जा सकता। (रमेश चौकसे वि. यूनियन आफ इंडिया) ...1887

कृषि जोत अधिकतम सीमा अधिनियम, म.प्र. (1960 का 20) – धारा 4(1) – अंतरण या बटवारा बिल के प्रकाशन के बाद किन्तु अधिनियम के प्रारंभ होने के पूर्व – विक्रय पत्र का निष्पादन 1.1.71 से 7.3.74 के मध्य – सिविल न्यायालय इस प्रश्न की जांच नहीं कर सकता है कि क्या विक्रय पत्र अधिनियम के उपबन्धों को विफल करने के लिये निष्पादित किया गया था – ऐसे प्रश्न की जांच केवल सक्षम प्राधिकारी ही कर सकता है। (भीवजी वि. राजेश) ...1199

सिगरेट और अन्य तम्बाकू उत्पाद (विज्ञापन का प्रतिषेध और व्यापार एवं वाणिज्य, उत्पादन आपूर्ति और वितरण का विनियमन) अधिनियम (2003 का 34), धारा 7(5) – सिगरेट और अन्य तम्बाकू उत्पादों के व्यापार एवं वाणिज्य, उत्पादन, आपूर्ति और वितरण पर निर्बन्धन – अधिनियम, 2003 की धारा 7(5) उपबंध करती है कि सिगरेट या तम्बाकू उत्पाद के प्रत्येक पैकेज पर निकोटिन व टार की मात्रा उनकी अधिकतम अनुमेय सीमाओं के साथ दर्शित होनी चाहिए – अधिनियम, 2003 का उद्देश्य तम्बाकू उत्पादों के दुष्प्रभावों की सामान्य जागरूकता पैदा करना है – यदि भारत संघ द्वारा धारा 7(5) के उपबंध यथाशीघ्र प्रवर्तित नहीं किये जाते हैं तो उद्देश्य निष्फल हो जाएगा। (अविनाश वि. यूनियन आफ इंडिया) ...1725

सिविल न्यायालय अधिनियम, म.प्र. (1958 का 19), (15.4.1983 को यथा संशोधित), धारायें 3,6,7,13,14,15,18,19 – जिला न्यायाधीश और अपर जिला न्यायाधीश – तथापि जिला न्यायाधीश का न्यायालय एवं अपर जिला न्यायाधीश का न्यायालय को दो अलग–अलग न्यायालयों में वर्गीकृत किया गया है किन्तु वे एक ही केडर (संवर्ग) में हैं – अपर जिला न्यायाधीश व जिला न्यायाधीश प्रायः लगभग समान न्यायिक शक्तियों का प्रयोग करते हैं – जिला न्यायाधीश

District Judge has superintendence & control of all Civil Courts and power to distribute business - In absence of D.J., senior most A.D.J. can exercise such powers - W.e.f. 15-4-1983 office of D.J. and office of A.D.J. have been equated in all respects with regard to powers, functions and duties. [N.K. Saxena v. State of M.P.] ...1144

Civil Procedure Code, (5 of 1908), Section 11 - See - *Accommodation Control Act, M.P. 1961, Section 12(1)(f),* [Mithilesh Kumari v. Pashu Chikitsa Sahayak Shalya Prabhari, Niwari] ...1196

Civil Procedure Code, (5 of 1908), Section 11 - See - *Arbitration and Conciliation Act 1996, Section 11.* [Chandreshwar Jha (M/S) v. Northern Coalfields Ltd.] ...2136

Civil Procedure Code (5 of 1908), Section 24 - *Transfer of Case - Husband filed suit for judicial seperation at Bhopal whereas wife resides at Indore - Transfer of case from Bhopal to Indore sought on the ground that her parents on account of physical problems of old age not in a position to accompany with her for defending the case at Bhopal - She is not in a position to afford traveling and other expenses - Husband gave undertaking to pay travel and other expenses - Held - No evidence filed in support of health condition of her parents - Application dismissed with direction to husband to pay traveling and other expenses in advance to wife.* [Radhika Bava v. Shailesh Bava] ...*48

Civil Procedure Code (5 of 1908), Section 34 - *Scope - If a loan is for commercial transaction, appellant is entitled to contractual rate of interest and the court cannot limit rate of interest to 6% p.a. - Held - Appellant is entitled to interest at the rate of contractual rate of interest i.e. 15% p.a. from the date of decree till realization.* [State Bank of India v. M/s. Siddharth Hotel] ...*61

Civil Procedure Code (5 of 1908), Section 80 - *Notice - Object is to enable the State to avoid unwanted litigation - State has not raised the plea of dismissal of suit for want of notice, in W.S. and contested suit on merits - No issue was framed in this regard - Trial Court ought not to have dismissed the suit.* [Gowardhan Singh v. State of M.P.] ...1183

Civil Procedure Code (5 of 1908), Section 100 - ***Substantial Question of Law*** *- Admission of plaintiff - That name of plaintiff not mutated in revenue record - And plaintiff was dispossessed by Collector in the year 1987 - Does not raise any substantial question of law - Matter remitted back to High Court for framing proper question of law.* [Mahant Ram Khilawan Das v. State of M.P.] ...997

Civil Procedure Code (5 of 1908), Section 100 - ***Substantial Question of law*** *- High Court cannot substitute the findings of the Courts below with its own findings unless there is total absence of consideration of material evidence.* [Mahant Ram Khilawan Das v. State of M.P.] ...997

सभी सिविल न्यायालयों पर अधीक्षण व नियंत्रण रखते हैं और कार्य वितरण की शक्ति है – जिला न्यायाधीश की अनुपस्थिति में वरिष्ठतम अपर जिला न्यायाधीश उन शक्तियों का प्रयोग कर सकता है – तारीख 15.4.1983 से जिला न्यायाधीश व अपर जिला न्यायाधीश को शक्तियों, कृत्यों व कर्तव्यों के संबंध में समान कर दिया गया है। (एन.के. सक्सेना वि. म.प्र. राज्य) ...1144

सिविल प्रक्रिया संहिता, (1908 का 5), धारा 11 – देखें – स्थान नियंत्रण अधिनियम, म.प्र. 1961, धारा 12(1)(एफ), (मिथलेश कुमारी वि. पशु चिकित्सा सहायक शल्य प्रभारी, निवारी) ...1196

सिविल प्रक्रिया संहिता, (1908 का 5), धारा 11 – देखें – माध्यस्थम् एवं सुलह अधिनियम 1996, धारा 11. (चन्द्रेशवर झा. (मे.) वि. नार्दन कोल. फील्डस् लि.) ...2136

सिविल प्रकिया संहिता (1908 का 5), धारा 24 – मामले का अंतरण – पति ने न्यायिक पृथक्करण का मामला भोपाल में पेश किया जबकि पत्नी इंदौर में रहती थी – पत्नी ने मामले का भोपाल से इंदौर अंतरण इस आधार पर चाहा कि उसके माता–पिता वृद्धा अवस्था के कारण शारीरिक रूप से परेशान हैं, वह उनके साथ भोपाल आकर मामले की प्रतिरक्षा करने की स्थिति में नहीं है – वह यात्रा व अन्य खर्च वहन करने की स्थिति में नही है – पति ने यात्रा व अन्य खर्च देने का भार अपने ऊपर लिया – अभिनिर्धारित – पत्नी ने उसके माता–पिता की शारीरिक अवस्था के समर्थन में कोई साक्ष्य पेश नहीं किया – आवेदन इस निदेश के साथ खारिज किया कि पति, पत्नी को यात्रा व अन्य खर्च की राशि अग्रिम अदा करे। (राधिका बावा वि. शैलेष बावा) — *48

सिविल प्रक्रिया संहिता (1908 का 5), धारा 34 – विषय क्षेत्र – यदि ऋण वाणिज्यिक संव्यवहार के लिये हो, अपीलार्थी संविदात्मक दर से ब्याज पाने का हकदार है और न्यायालय ब्याज को 6% वार्षिक तक सीमित नहीं कर सकता – अभिनिर्धारित – अपीलार्थी ब्याज की संविदात्मक दर अर्थात् 15% वार्षिक डिक्री की तारीख से वसूली तक ब्याज पाने का हकदार। (स्टेट बैंक आफ इंडिया वि. मे. सिद्धार्थ होटल) ...*61

सिविल प्रक्रिया संहिता (1908 का 5), धारा 80 – नोटिस – उद्देश्य राज्य को अवांछित मुकदमेबाजी से बचाना है – राज्य द्वारा लिखित कथन में यह अभिवचन नहीं उठाया गया कि नोटिस के अभाव में वाद खारिज किया जाये और वाद गुणदोषों पर लड़ा गया – इस संबंध में कोई विवाद्यक विरचित नहीं किया गया था – विचारण न्यायालय को वाद खारिज नहीं करना चाहिये था। (गोर्वधन सिंह वि. म. प्र. राज्य) ...1183

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विधि का सारवान प्रश्न – वादी की स्वीकृति – वादी का नाम राजस्व अभिलेख में दर्ज नहीं – और कलेक्टर ने वादी को वर्ष 1987 में बेदखल किया – विधि का कोई सारवान प्रश्न नहीं – विधि का उचित प्रश्न विरचित करने हेतु मामला पुनः उच्च न्यायालय भेजा गया। (महंत राम खिलावन दास वि. म.प्र. राज्य) ...997

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विधी का सारवान प्रश्न – उच्च न्यायालय अधिनस्थ न्यायालयों के निष्कर्ष को तब तक प्रतिस्थापित नहीं कर सकता जब तक कि अधिनस्थ न्यायालयों ने किसी तात्विक साक्ष्य को अनदेखा नहीं किया हो। (महंत राम खिलावन दास वि. म.प्र. राज्य) ...997

Civil Procedure Code (5 of 1908), Order 1 Rule 8 & Order 23 Rule 3 - *Compromise in representative suit - Suit for injunction filed in representative capacity - During pendency, suit compromised by some plaintiffs - Compromise signed by counsel and not by all plaintiffs - Trial Court rejected application to record compromise - Held - Compromise signed by counsel was valid as nobody raised objection even after publication of notice in newspaper - Trial Court has exercised jurisdiction vested in it improperly and acted illegally or with material irregularity - Order set-aside - Revision allowed.* [Indian Oil Corporation Ltd. v. Ramesh] ...*66

Civil Procedure Code (5 of 1908), Order 1 Rule 10, Order 22 Rule 4, 9 - ***Substitution of Legal Heirs*** - *Application under Order 22 Rule 4, 9 along with application under Section 5 of Limitation Act and setting aside abatement filed - Applications subsequently withdrawn with liberty to file application under Order 1 Rule 10 if law permits - Held - After withdrawal of applications filed under Order 22 Rule 4, 9 & 11, appellant has no authority to bring such heirs on record under Order 1 Rule 10 r/w Order 22 Rule 10 - Application under Order 1 Rule 10 dismissed - Appeal stands abated against dead defendant/respondent.* [Anoop Choudhary v. Smt. Usha Bhargava] ...1763

Civil Procedure Code (5 of 1908) - Order 6 Rule 17 - ***Amendment of Plaint*** - *Suit filed for eviction under Section 12(1)(a) and (c) - By amendment relief for declaration of title and possession sought - Held - By amendment a new case or new cause of action cannot be allowed to be settle - Plaintiff cannot be allowed to convert his original claim into one of different character - Application for amendment rejected.* [Krishnarao Kavdikar (dead) through his L.Rs. Ullas Kavdikar v. Smt. Sadhna Khanvalkar] ...1207

Civil Procedure Code, (5 of 1908), Order 6 Rule 17 - See - *Constitution, Article 226,* [Reshma Philip v. State of M.P.] ...1366

Civil Procedure Code (5 of 1908), Order 9 Rule 13, Limitation Act, 1963, Section 12 Art. 123 - ***Application for setting aside ex-parte decree*** - *Limitation - Application for setting aside ex-parte decree to be filed within 30 days - Provisions of Section 12 and exclusion contained therein will not apply to a proceeding under Order 9 Rule 13 C.P.C.* [Mohan @ Munna Pachari v. Jagdish Chandra Dubey] ...1402

Civil Procedure Code (5 of 1908), Order 20 Rule 18 - ***Final Decree*** - *Preliminary decree passed in a suit for partition - Applicants filed an application for execution of decree - Commissioner was appointed to give effect to preliminary decree - Report submitted by Commissioner and objections were filed by parties - Application for execution may be treated as final decree proceedings.* [Kamla Bai Patel (Smt.)v. Vidhyawati Patel]...1809

Civil Procedure Code (5 of 1908), Order 20 Rule 18 - ***Final Decree proceedings*** - *Limitation - Proceedings for final decree can be initiated at*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 8 व आदेश 23 नियम 3 – प्रतिनिधि वाद में समझौता – प्रतिनिधि की हैसियत में व्यादेश के लिए वाद पेश – लम्बित रहने के दौरान कुछ वादियों द्वारा वाद में समझौता किया गया – समझौता अधिवक्ता द्वारा हस्ताक्षरित न कि सभी वादियों द्वारा – विचारण न्यायालय ने समझौता अभिलिखित करने का आवेदन खारिज किया – अभिनिर्धारित – अधिवक्ता द्वारा हस्ताक्षरित समझौता वैध था क्योंकि समाचार पत्र में प्रकाशन के उपरांत भी किसी व्यक्ति ने आपत्ति नहीं की – विचारण न्यायालय ने उसमें निहित क्षेत्रा धिकार का अनुचित रूप से प्रयोग किया और अवैधानिकता की या सारवान् अनियमितता की – आदेश अपास्त – पुनरीक्षण मंजूर। (इंडियन ऑइल कार्पोरेशन लि. वि. रमेश) ---*66

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10, आदेश 22 नियम 4, 9 – वैध वारिसों का प्रतिस्थापन – आदेश 22 नियम 4, 9 के अधीन आवेदन के साथ धारा 5 परिसीमा अधिनियम के अधीन और उपशमन को अपास्त करने के लिए आवेदन पेश – तत्पश्चात् यदि कानून अनुमति देता है तो आदेश 1 नियम 10 के अधीन आवेदन पेश करने की स्वतंत्रता के साथ आवेदन वापस ले लिये गये – अभिनिर्धारित – आदेश 22 नियम 4, 9 व 11 के अधीन पेश किये गये आवेदनों को वापस लेने के उपरांत अपीलार्थी को ऐसे वारिसों को आदेश 1 नियम 10 सहपठित आदेश 22 नियम 10 के अधीन अभिलेख पर लाने का कोई अधिकार नहीं – आदेश 1 नियम 10 के अधीन आवेदन खारिज – प्रतिवादी/प्रत्यर्थी के विरुद्ध अपील का उपशमन हुआ। (अनूप चौधरी वि. श्रीमति उषा भार्गव) ...1763

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – वाद पत्र में संशोधन – निष्कासन हेतु वाद धारा 12(1)(ए) और (सी) के अंतर्गत प्रस्तुत – संशोधन द्वारा स्वत्व घोषणा और कब्जे का अनुतोष चाहा गया – अभिनिर्धारित – संशोधन द्वारा एक नया मामला या नया वाद कारण व्यवस्थापित करने की मंजूरी नहीं दी जा सकती – वादी को उसके मूल दावे से भिन्न स्वरूप के दावे में परिवर्तित करने की मंजूरी नहीं दी जा सकती है – संशोधन का आवेदन निरस्त। (कृष्णाराव कवडीकर वि. श्रीमति साधना खानवा) ...1207

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 6 नियम 17 – देखें – संविधान, अनुच्छेद 226, (रेशमा फिलिप वि. म.प्र. राज्य), ...1366

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13, परिसीमा अधिनियम, 1963, धारा 12, अनुच्छेद 123 – एक पक्षीय डिक्री अपास्त करने हेतु आवेदन – परिसीमा – एक पक्षीय डिक्री अपास्त करने का आवेदन 30 दिनों के भीतर प्रस्तुत होना चाहिये – धारा 12 के उपबन्ध एवं उसमें समाहित अपवर्जन आदेश 9 नियम 13 सि.प्र.सं. के अधीन कार्यवाही पर लागू नहीं होंगे। (मोहन उर्फ मुन्ना पंछारी वि. जगदीश चन्द्र दुबे) 1402

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 20 नियम 18 – अंतिम डिक्री – विभाजन के लिए वाद में प्रारम्भिक डिक्री पारित – आवेदकगण ने डिक्री के निष्पादन के लिए आवेदन पत्र पेश किया – प्रारम्भिक डिक्री को प्रभावी करने के लिए कमिश्नर नियुक्त किया गया – कमिश्नर द्वारा रिपोर्ट प्रस्तुत की गई और पक्षकारों द्वारा आपत्तियाँ पेश की गईं – निष्पादन के लिए आवेदन अंतिम डिक्री की कार्यवाहियाँ मानी जा सकती हैं।(कमला बाई पटेल (श्रीमति) वि. विद्यावती पटेल) ...1809

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 20 नियम 18 – अंतिम डिक्री की कार्यवाहियाँ – परिसीमा – अंतिम डिक्री के लिए कार्यवाहियाँ किसी भी समय प्रारम्भ की जा सकती

any time - No limitation is provided therefor. [Kamla Bai Patel (Smt.)v. Vidhyawati Patel] ...1809

**Civil Procedure Code (5 of 1908), Order 21 Rules 54, 66 - *Proclamation of Sale by Public Auction - Decree for payment of Rs.5,65,000 with interest passed against appellant/Judgment Debtor - No notice given to Judgment Debtor before attaching their property - Property auctioned without any notice to J.D. - Held - At each stage of execution of decree when property is sold, notice should be served upon person whose property is being sold - Any property sold without notice to the person is a nullity - All actions pursuant thereto are liable to be struck down - No valuation of property was carried out - No proclamation of sale was made as per provisions of M.P. Civil Court Rules and Order 21 Rule 66 - There was no publication of sale - Judgment Debtor directed to deposit Rs.15 lacs apart from the amount which he has already deposited for satisfaction of decree - On payment of amount, title to the property shall vest free of all encumbrances on appellant - Appeal allowed.* [Mahakal Automobiloes (M/s.) v. Kishan Swaroop Sharma]...(SC)1581

Civil Procedure Code (5 of 1908), Order 22 Rule 9 - *Setting aside abatement - Death of principal respondent informed by her Counsel on 94th day from the death - Application for bringing her L.Rs. on record filed on 60th day from the date of information - Application not accompanied by application for setting aside abatement - Appeal dismissed as abated with liberty to file application for setting aside abatement - Application for setting aside abatement, along with condonation of delay filed - Held -Applicant/ appellant filed application for bringing L.Rs. on record within 60 days from receiving information - Bonafides to bring L.Rs is apparent on record - Applications allowed - Abatement set aside - Appeal is restored on its original number.* [Laxmi Chand (deceased) through LRs v. Bhawati Bai] ...1305

Civil Procedure Code, (5 of 1908), Order 26, Rule 10A - See - *Family Courts Act 1984, Section 10.* [Amar Sharma v. Smt. Seema Sharma] ...2008

Civil Procedure Code (5 of 1908), (amendment inserted w.e.f. 1.2.1977), Order 41, Rule 22 - *The decree is entirely in favour of Respondent - Though an issue has been decided against Respondent or a finding in the judgment is against the Respondent - Held - Respondent has right to challenge the findings in an appeal filed by appellant - Even without filing a cross objection or cross appeal.* [Executive Engineer (Vigilance), M.P. State Electricity Board, Khargone v. Jaswant Singh] ...1187

Civil Procedure Code (5 of 1908), Order 41 Rule 27 - *Additional Evidence - No plea that documents sought to be produced by way of additional evidence could not be produced earlier despite efforts diligently made by appellant or such evidence was not within its knowledge - Appellant had sufficient opportunity to bring evidence on record before Trial Court -*

हैं – उसके लिए कोई परिसीमा उपबंधित नहीं है। (कमला बाई पटेल (श्रीमति) वि. विद्यावती पटेल) ...1809

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 54, 66 – लोक नीलाम द्वारा विक्रय की उद्घोषणा – रू0 5,65,000/– ब्याज सहित भुगतान करने हेतु अपीलार्थी/निर्णीत ऋणी के विरुद्ध डिक्री पारित – निर्णीत ऋणी को उनकी सम्पत्ति कुर्क करने के पूर्व कोई सूचना नहीं दी गई – निर्णीत ऋणी को किसी सूचना के बिना सम्पत्ति नीलाम की गई – अभिनिर्धारित – डिक्री के निष्पादन के प्रत्येक प्रक्रम पर जब सम्पत्ति विक्रय की जाती है तब उस व्यक्ति पर, जिसकी सम्पत्ति विक्रय की जा रही है, सूचनापत्र तामील किया जाना चाहिए – व्यक्ति को सूचनापत्र के बिना बेची गई सम्पत्ति अकृत है – उसके अनुसरण में सभी कार्य अभिखंडित किये जाने योग्य हैं – सम्पत्ति का कोई मूल्यांकन नहीं किया गया था – म.प्र. सिविल न्यायालय नियम एवं आदेश 21 नियम 66 के उपबंधों के अनुसार विक्रय की कोई उद्घोषणा नहीं की गई – विक्रय का कोई प्रकाशन नहीं – निर्णीत ऋणी को उसके द्वारा डिक्री के संतुष्टीकरण के लिए पूर्व में जमा राशि के अलावा 15 लाख रू0 जमा करने के निदेश दिये – राशि के भुगतान पर सम्पत्ति पर हक सभी विल्लंगमों से मुक्त अपीलार्थी पर निहित हो जावेगा – अपील मंजूर। (महाकाल आटोमोबाइल्स (मे.) वि. किशनस्वरूप शर्मा) ...(SC) 1581

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 9 – उपशमन को अपास्त करना – मुख्य प्रत्यर्थी की मृत्यु की सूचना उसके अधिवक्ता द्वारा मृत्यु होने से 94 वें दिन दी गई – सूचना होने की तारीख से 60वें दिन उसके विधिक प्रतिनिधियों का नाम अभिलेख पर लाने के लिये आवेदन पेश किया – आवेदन के साथ उपशमन को अपास्त किये जाने का आवेदन पेश नहीं – अपील का उपशमन होने से इस स्वतंत्रता के साथ खारिज की गई कि उपशमन को अपास्त किये जाने के लिये आवेदन पेश कर सकते हैं – उपशमन अपास्त किये जाने का आवेदन विलंब क्षमा किये जाने के आवेदन के साथ प्रस्तुत – अभिनिर्धारित – आवेदक/अपीलार्थी ने सूचना होने से 60 दिन के भीतर विधिक प्रतिनिधियों को अभिलेख पर लाने का आवेदन दिया – विधिक प्रतिनिधियों को अभिलेख पर लाने की सद्भावना अभिलेख से स्पष्ट है – आवेदन मंजूर किये गये – उपशमन अपास्त किया – अपील उसके मूल क्रमांक पर पुर्नस्थापित की गई। (लक्ष्मीचन्द वि. भावती बाई) ...1305

सिविल प्रक्रिया संहिता, (1908 का 5), आदेश 26 नियम 10ए – देखें – कुटुंब न्यायालय अधिनियम 1984, धारा 10. (अमर शर्मा वि. श्रीमति सीमा शर्मा) ...2008

सिविल प्रक्रिया संहिता (1908 का 5) (1.2.1977 से संशोधन जोड़ा गया), आदेश 41, नियम 22 – डिक्री पूर्णतः प्रत्यर्थी के पक्ष में – यद्यपि एक विवाद्यक का विनिश्चिय प्रत्यर्थी के विरूद्ध या निर्णय में एंक निष्कर्ष प्रत्यर्थी के विरूद्ध – अभिनिर्धारित – अपीलार्थी द्वारा प्रस्तुत अपील में प्रति अपील (क्रास अपील) या प्रत्याक्षेप (क्रास आब्जेक्शन) प्रस्तुत किये बिना, प्रत्यर्थी निष्कर्ष को चुनौती देने का अधिकार रखता है। (एग्जीक्यूटिव इंजीनियर (विजीलेंस), म.प्र. राज्य विद्युत मंडल, खरगोन वि. जसवंत सिंह) ...1187

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अतिरिक्त साक्ष्य – इस संबंध में कोई प्रति कथन नहीं कि अतिरिक्त साक्ष्य के रूप में दस्तावेजों को पेश किया जाना है, को पूर्व में अपीलार्थी द्वारा सार्थक प्रयास करने के बावजूद पेश नहीं किया जा सका था या ऐसा साक्ष्य ज्ञान में नहीं था – अपीलार्थी को विचारण न्यायालय के समक्ष साक्ष्य को अभिलेख पर लाने का पर्याप्त अवसर था – मामला पूर्णतः न्यायालय के स्वविवेक पर है जो न्याय सम्मत (ज्यूडीशियसली)

Matter is entirely in discretion of Court, which is to be exercised judiciously and sparingly - Application rejected. [Krishnarao Kavdikar (dead) through his L.Rs Ullas Kavdikar v. Sadhna Khanvalkar] ...1207

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966 - *Collector being an appointing authority promoted the petitioner as Revenue Inspector - Settlement Officer reverted the petitioner from the post of Revenue Inspector to the post of Patwari - Powers of Collector or of disciplinary authority has not been delegated to the Settlement Officer - Order passed by Settlement Officer is without jurisdiction - Void ab initio - Order quashed.* [Chetanlal Thakur v. State of M.P.] ...1114

Civil Services (Classification, Control & Appeal) Rules, M.P. 1966 - *Order of reversion is an outcome of disciplinary action under the rules - The power of the appointing authority or the disciplinary authority may be delegated by the general or special order of the Governor and by the State Government - Therefore, reversion order cannot be passed by the authority subordinate to the appointing authority.* [Chetanlal Thakur v. State of M.P.] ...1114

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 23 - See - *Constitution, Article 226* [S.K. Verma v. State of M.P.]... 1892

Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 29 - *Rule 29 confers the power of review and clearly stipulates that the said power can be exercised only by the authority superior to the authority making the order.* [Anil Soni v. State of M.P.] ...1636

Civil Services (Conduct) Rules, M.P. 1965, Rule 22(1) - ***Bigamous Marriage*** - *Government Servant cannot contract another marriage, without prior permission otherwise it may amount to misconduct - Rule does not disqualify a citizen, who is aspiring to get an employment, it merely puts an embargo to seek prior permission to contract another marriage - Petitioner had performed first marriage in 1964 and second marriage in 1967, prior to entering into employment while he was not Government Servant - No case of misconduct is made out - Order of compulsory retirement is set aside with grant of back wages.* [Kailashvan Goswami v. State of M.P.] ...1053

Civil Services (General Conditions of Services) Rules, M.P. 1961 (as amended w.e.f. 10-3-2000) - Rule 6(5) - ***Disqualification*** - *Provides that no candidate shall be eligible for appointment to a service or post who has married before minimum age fixed for marriage - Appellant appeared in examination conducted by P.S.C. for State Civil Services - He was not called for interview as he solemnized marriage before the minimum age fixed for marriage i.e. 21 years - Held - Though rule is not retrospective - But on the date of marriage appellant was below the age of 21 years - Therefore, not eligible for any service or post - Appeal dismissed.* [Gendlal Patel v. M.P. Public Service Commission] ...1040

एवं कभी.कभार प्रयुक्त किया जाना चाहिये – आवेदन निरस्त। (कृष्णाराव कवडीकर वि. श्रीमति साधना खानवा) ...1207

सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, म.प्र. 1966 – कलेक्टर ने नियुक्ति प्राधिकारी होने के नाते याची को राजस्व निरीक्षक के पद पर पदोन्नत किया – बंदोबस्त अधिकारी ने याची को राजस्व निरीक्षक के पद से पटवारी के पद पर पदावनत किया – कलेक्टर या अनुशासनात्मक प्राधिकारी की शक्तियां बंदोबस्त अधिकारी को प्रत्यायोजित नहीं की गई – बंदोबस्त अधिकारी द्वारा दिया गया आदेश क्षेत्राधिकार के बाहर है – आरंभतः शून्य – आदेश अभिखण्डित। (चेतनलाल ठाकुर वि. म.प्र. राज्य) ...1114

सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, म.प्र. 1966 – पदावनत करने का आदेश नियमों के अंतर्गत अनुशासनात्मक कार्यवाही का परिणाम है – नियुक्त करने वाले प्राधिकारी या अनुशासनात्मक प्राधिकारी की शक्ति राज्यपाल और राज्य सरकार के द्वारा सामान्य या विशेष आदेश से प्रत्यायोजित की जा सकती है – इसलिए पदावनत करने का आदेश नियुक्त करने वाले प्राधिकारी के अधीनस्थ प्राधिकारी द्वारा नहीं दिया जा सकता है। (चेतनलाल ठाकुर वि. म.प्र. राज्य) ...1114

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966, नियम 23 – देखें – संविधान, अनुच्छेद 226 (एस.के. वर्मा वि. म.प्र. राज्य) ...1892

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र., 1966, नियम 29 – नियम 29 पुनर्विलोकन की शक्ति प्रदान करता है और स्पष्टतः यह निहित करता है कि ऐसी शक्ति का प्रयोग सिर्फ ऐसा अधिकारी कर सकता है जो आदेश करने वाले अधिकारी से वरिष्ठ हो। (अनिल सोनी वि. म.प्र. राज्य) ...1636

सिविल सेवा (आचरण) नियम, म.प्र. 1965, नियम 22(1) – द्विविवाह – सरकारी कर्मचारी बिना पूर्व अनुमति के दूसरा विवाह नहीं कर सकता है अन्यथा उसे कदाचरण माना जायेगा – नियम एक ऐसे नागरिक को अयोग्य नहीं बनाता है, जो रोजगार पाने की महत्वाकांक्षा रखता है, उस पर केवल यह रोक लगाता है कि दूसरा विवाह करने के पूर्व अनुमति प्राप्त करे – याची ने रोजगार में आने के पूर्व, जब वह सरकारी कर्मचारी नहीं था, प्रथम विवाह वर्ष 1964 में व दूसरा विवाह वर्ष 1967 में किया – कदाचरण का मामला नहीं बनता है – अनिवार्य सेवानिवृत्ति का आदेश पूर्व की मजदूरी प्रदान करने के साथ अपास्त किया। (कैलाशवन गोस्वामी वि. म.प्र. राज्य) ...1053

सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र. 1961 (तारीख 10.3. 2000 से यथा संशोधित) – नियम 6 (5) – अनर्हता – उपबंध करता है कि कोई भी उम्मीदवार जिसने विवाह के लिये नियत न्यूनतम आयु के पूर्व विवाह किया हो वह सेवा या पद पर नियुक्ति के लिये योग्य नहीं होगा – अपीलार्थी ने लोक सेवा आयोग द्वारा संचालित राज्य सिविल सेवा की परीक्षा में भाग लिया – उसे साक्षात्कार के लिये नहीं बुलाया गया क्योंकि उसने विवाह के लिये नियत न्यूनतम आयु अर्थात् 21 वर्ष के पूर्व विवाह किया था – अभिनिर्धारित – तथापि नियम भूतलक्षी नहीं है – किन्तु विवाह की तिथि पर अपीलार्थी 21 वर्ष से कम आयु का था इसलिये किसी सेवा या पद के लिये योग्य नहीं – अपील खारिज। (गेंद लाल पटेल वि. म.प्र. लोक सेवा आयोग) ...1040

Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 12(b) & (c) - *Inter se seniority of promoted Government Servant - According to Rule 12(b), the inter se seniority of the promoted Government Servant has to be reckoned from the date of his confirmation on the post on which he is promoted - If two or more persons are confirmed with effect from the same date then the appointing authority shall determine their inter se seniority in service in which they were included in the merit list, if any, prepared for determining their suitability for promotion and their relative seniority in the lower service from which they were promoted.* [Devendra Bapna v. State of M.P.] ...1942

Civil Service (Pension Rules), M.P. 1976, Rule 45 (a) - *Persons to whom gratuity is payable - Gratuity is payable to the nominee - However, Rule 46(1) provides that the nomination shall not be in favour of any person or persons other than the family member of government servant.* [Girijabai v. State of M.P.] ...1167

Civil Service (Pension Rules), M.P. 1976, Rule 47 (6) - *For grant of family pension nomination is not necessary - Legally wedded wife of government servant is entitled to receive family pension.* [Girijabai v. State of M.P.] ...1167

Civil Services (Pension) Rules, M.P., 1976, (Work Charged & Contingency Paid Employees) Pension Rules, M.P., 1979, Grah Nirman Mandal Adhiniyam, M.P., 1972 (3 of 1973), Section 15, Housing Board Regulations, M.P., 1977, Regulation 3 - *Petitioner appointed as Time Keeper on 25.07.1973 as a Work Charge & Contingency Employee in the M.P. Housing Board - Regularised on the post of Assistant on 14.03.1995 - Retired on 30.08.2003 but was denied pension - Held - Provisions of Rules 1976 & Rules 1979 are applicable to employees who have been rendered their services as Work-Charge & Contingency paid employees also in the M.P. Housing Board - Petitioner entitled for pension.* [Satyanarayan Gupta v. M.P. Housing Board]...2046

Civil Wrong & Criminal Offence - ***Distinguished*** - *Criminal proceedings cannot be quashed merely on the ground that civil remedy is available - In the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court.* [V.C. Raam Sukaesh v. State of M.P.] ...*70

Coal Mines Labour Welfare Fund (Repeal) Act (27 of 1986), Coal Mines Provident Fund Scheme, Payment of Gratuity Act, 1972, Section 7 - ***Entitlement of Gratuity*** - *Petitioner an employee of Coal Mines Welfare Organisation - Said Organisation was abolished and services of the petitioner were transferred to a Company - After retirement petitioner filed claim before the Controlling Authority for payment of gratuity - Controlling Authority allowed the claim by holding that past services of the petitioner have not been properly counted - Appellate authority set-aside order - Held - There was a specific provision in option exercised by petitioner that past services rendered*

सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(बी) व (सी) – पदोन्नत शासकीय सेवक की पारस्परिक ज्येष्ठता – नियम 12(बी) के अनुसार पदोन्नत शासकीय सेवक की पारस्परिक ज्येष्ठता की संगणना उस पद में जिस पर वह पदोन्नत हुआ है स्थायी होने के दिनांक से की जाएगी – यदि दो या अधिक व्यक्ति एक ही दिनांक से स्थायी हुए हैं, तब सेवा, जिसमें वे पदोन्नति के लिये उनकी उपयुक्तता और निम्नतर सेवा, जिससे वे पदोन्नत हुए थे, में उनकी सापेक्ष ज्येष्ठता निर्धारित करने के लिए निर्मित योग्यता सूची, यदि कोई हो, में सम्मिलित थे, में उनकी पारस्परिक ज्येष्ठता का निर्धारण नियुक्ति प्राधिकारी करेगा। (देवेन्द्र बापना वि. म.प्र. राज्य) ...1942

सिविल सेवा (पेंशन नियम), म.प्र. 1976, नियम 45 (ए) – उपदान (ग्रेच्युटी) किन व्यक्तियों को देय है – उपदान नामित को देय – तथापि नियम 46 (1) में उपबन्ध है कि नाम निर्देशन सरकारी सेवक के परिवार के किसी व्यक्ति या व्यक्तियों के अलावा अन्य के पक्ष में नहीं होगा। (गिरजा बाई वि. म.प्र. राज्य) ...1167

सिविल सेवा (पेंशन नियम), म.प्र. 1976, नियम 47 (6) – परिवार पेंशन मंजूर करने के लिये नाम निर्देशन आवश्यक नहीं – सरकारी सेवक की वैध रूप से विवाहित पत्नी पेंशन की हकदार है। (गिरजा बाई वि. म.प्र. राज्य) ...1167

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, (कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारी) पेंशन नियम, म.प्र., 1979, गृह निर्माण मण्डल अधिनियम, म.प्र., 1972 (1973 का 3), धारा 15, गृह निर्माण मण्डल विनियम, म.प्र., 1977, विनियम 3 – याची की नियुक्ति तारीख 25.07.1973 को मध्य प्रदेश गृह निर्माण मण्डल में कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारी के रूप में हुई – 14.03.1995 को वह सहायक के पद पर नियमित हुआ – तारीख 30.08.2003 को वह सेवानिवृत्त हुआ किन्तु उसे पेंशन देने से इंकार किया गया – अभिनिर्धारित – नियम 1976 और नियम 1979 के उपबंध ऐसे कर्मचारियों को लागू होते हैं जिन्होंने म.प्र. गृह निर्माण मण्डल में कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारियों के रूप भी अपनी सेवाएँ दी हैं – याची पेंशन के लिए हकदार। (सत्यनारायण गुप्ता वि. एम.पी. हाउसिंग बोर्ड) ...2046

सिविल दोष व दाण्डिक अपराध – सुभिन्न – दाण्डिक कार्यवाहियाँ केवल इस आधार पर अभिखंडित नहीं की जा सकतीं हैं कि सिविल उपचार उपलब्ध है – उच्च न्यायालय की अन्तर्निहित शक्तियों के प्रयोग के मामले में केवल यह देखना अपेक्षित है कि क्या कार्यवाही को जारी रखना न्यायालय की प्रक्रिया का पूरी तरह दुरुपयोग होगा। (व्ही.सी. राम सुकेश वि. म.प्र. राज्य) —*70

कोयला खान श्रम कल्याण निधि (निरसन) अधिनियम (1986 का 27), कोयला खान भविष्य निधि स्कीम, उपदान संदाय अधिनियम, 1972, धारा 7 – उपदान की हकदारी – याची कोयला खान कल्याण संगठन का कर्मचारी – उक्त संगठन का अंत कर दिया गया और याची की सेवाएँ एक कम्पनी को अंतरित कर दी गईं – सेवानिवृत्ति के उपरांत याची ने उपदान के भुगतान के लिये नियंत्रण प्राधिकारी के समक्ष दावा पेश किया – नियंत्रण प्राधिकारी ने यह अभिनिर्धारित करते हुए दावा स्वीकार किया कि याची की पूर्व सेवाओं की गणना उचित रूप से नहीं की गई – अपील प्राधिकारी ने आदेश अपास्त किया – अभिनिर्धारित – याची द्वारा प्रयोग किये गये विकल्प में यह विनिर्दिष्ट उपबंध था कि कोयला खान कल्याण संगठन में दी गईं पूर्व सेवाएँ

in the Coal Mines Welfare Organisation that for the purposes of calculation of gratuity shall not be counted - Thus petitioner not entitled for payment of gratuity - Petition dismissed. [Kedar Nath Mishra v. Appellate Authority under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (C)] ...1923

Coal Mines Provident Fund Scheme, Payment of Gratuity Act, (39 of 1972) , Section 7 - See - *Coal Mines Labour Welfare Fund (Repeal) Act 1986.* [Kedar Nath Mishra v. Appellate Authority under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (C)] ...1923

Constitution, Article 14 - *Scope - Mere differentiation or inequality of treatment does not per se amount to discrimination - It is necessary to show that selection or differentiation is unreasonable or arbitrary and it does not rest on any rational basis.* [Manoj Kumar Pandya v. State of M.P.] ...1383

Constitution, Article 14, State Bar Council of Madhya Pradesh Rules, 1963, Rule 143-A - *Maximum age for registration as an Advocate - State Bar Council has not placed any material in support of prescription of maximum age of 45 years for enrollment nor has any material been brought on record to establish as to how debarring entry of the persons above the age of 45 years would either benefit the legal profession or would adversely affect the standard of the legal profession or polluted its sanctity - Rule is arbitrary and discriminatory - And violative of Article 14 of Constitution - Rule declared ultra vires.* [Shekhar Seth (Dr.) v. M.P. State Bar Council] ...1974

Constitution, Articles 14, 16 - *Right of selected candidate for appointment - Petitioner selected for the post of Additional Assistant Development Commissioner and was placed at serial no. 17 of supplementary list - Persons placed upto serial no. 16 given appointment - As one person did not join therefore, one post was lying vacant - Petitioner not given appointment - Held - Although a selected candidate has no right for appointment, however, there must be some rational for not appointing person - Action of employer has to be in consonance with Article 14 - No reasons assigned by respondent no.2 for not appointing petitioner although post was lying vacant - Respondents directed to appoint petitioner with all consequential benefits - However, Petitioner shall not be entitled for arrears of salary on the principle of No Work No pay.* [Shyam Mohan Srivastava v. State of M.P.] ...1119

Constitution, Article 16 - *Recommendations by D.P.C. - Courts would not interfere with assessment of D.P.C. unless the aggrieved officer establishes that he was not promoted on account of malafide or decision was hit by Wednesbury principles.* [Jagdish Kumar Shrivastava v. State of M.P.] ...1141

Constitution, Article 16 - *Resignation - Petitioner submitted resignation making a request for its acceptance prior to expiry of period of notice - Acceptance of resignation before expiry of period of notice not arbitrary.* [Sunil Thakur v. Hindustan Petroleum Corporation] ...1452

उपदान की गणना करने के प्रयोजन के लिये नहीं गिनी जाऐंगी – इसलिए याची उपदान के भुगतान का हकदार नहीं – याचिका खारिज। (केदार नाथ मिश्रा वि. अपीलियेट अथारिटी अंडर पेमेन्ट आफ ग्रेच्यूटी एक्ट, 1972 एन्ड रीजनल लेबर कमिश्नर (सी)) ...1923

कोयला खान भविष्य निधि स्कीम, उपदान संदाय अधिनियम, (1972 का 39), धारा 7 – देखें – कोयला खान श्रम कल्याण निधि (निरसन) अधिनियम 1986. (केदार नाथ मिश्रा वि. अपीलियेट अथारिटी अंडर पेमेन्ट आफ ग्रेच्यूटी एक्ट, 1972 एन्ड रीजनल लेबर कमिश्नर (सी)) ...1923

संविधान, अनुच्छेद 14 – क्षेत्र – मात्र भेदात्मकता या व्यवहार में असमानता भेदभाव की कोटि में नहीं आता – यह दर्शाना आवश्यक है कि चयन या भेदात्मकता अनुचित या मनमाना है और उनका आधार युक्तिसंगत नहीं है। (मनोज कुमार पंड्या वि. म.प्र. राज्य) ...1383

संविधान, अनुच्छेद 14, राज्य अधिवक्ता परिषद्, म.प्र. नियम, 1963 , नियम 143-ए – अधिवक्ता के रूप में पंजीयन के लिए अधिकतम आयु – राज्य अधिवक्ता परिषद् ने नामांकन के लिए अधिकतम आयु 45 वर्ष विहित करने के समर्थन में कोई सामग्री पेश नहीं की और न यह स्थापित करने के लिए ऐसी कोई सामग्री अभिलेख पर लायी गई कि 45 वर्ष से ऊपर की उम्र के व्यक्तियों का प्रवेश वर्जित करना किस प्रकार विधि व्यवसाय के लिए लाभदायक होगा या विधि व्यवसाय के स्तर को प्रतिकूल रूप से प्रभावित करेगा या उसकी पवित्रता को दूषित करेगा – नियम मनमाना और भेदभावपूर्ण है – और संविधान के अनुच्छेद 14 का उल्लंघन – नियम अधिकारातीत घोषित। (शेखर सेठ (डॉ.) वि. एम.पी. स्टेट बार कांउसिल) ...1974

संविधान, अनुच्छेद 14,16 – चयन किए उम्मीदवार का नियुक्ति के लिए अधिकार – याची का अनुपूरक सूची में 17 वें स्थान पर अपर सहायक विकास आयुक्त के पद पर चयन – 16 वें स्थान तक के उम्मीदवारों को नियुक्ति दी गई – एक उम्मीदवार ने पदग्रहण नहीं किया इसलिए एक पद खाली रहा – याची को नियुक्त नहीं किया गया – अभिनिर्धारित – यद्यपि चयन किए उम्मीदवार को नियुक्ति के लिए अधिकार नहीं, किन्तु नियुक्ति न देने का कोई युक्तिसंगत कारण नहीं – नियोजक की कारवाई अनुच्छेद 14 के अनुरूप होना चाहिये – यद्यपि पद रिक्त था, पर याची को नियुक्त न करने का कोई कारण प्रत्यर्थी क्रं. 2 ने नहीं बताया – प्रत्यर्थियों को निदेश दिया कि याची को सभी पारिणामिक लाभों सहित नियुक्ति दी जाये – किन्तु याची "काम नहीं तो वेतन नहीं" के सिद्धान्त अनुसार बकाया वेतन का हकदार नहीं। (श्याम मोहन श्रीवास्तव वि. म.प्र. राज्य) ...1119

संविधान, अनुच्छेद 16 – डी.पी.सी. द्वारा सिफारिश – न्यायालय डी.पी.सी. के निर्धारण में हस्तक्षेप नहीं करेगा जब तक कि व्यथित अधिकारी यह सिद्ध न कर दे कि उसे दुर्भावना के आधार पर पदोन्नति नहीं दी या निर्णय वेडनेसबरी सिद्धान्त के विरूद्ध है। (जगदीश कुमार श्रीवास्तव वि. म.प्र. राज्य) ...1141

संविधान, अनुच्छेद 16 – त्यागपत्र – याची ने त्यागपत्र इस निवेदन के साथ प्रस्तुत किया कि इसे सूचना अवधि की समाप्ति के पूर्व स्वीकार किया जाये – सूचना अवधि समाप्ति से पूर्व त्यागपत्र स्वीकार किया जाना मनमाना नहीं। (सुनील ठाकुर वि. हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन) ...1452

Constitution, Article 16 - *Resignation - Withdrawal of - Resignation once accepted cannot be permitted to be withdrawn as the relations of employer and employee ceases with effect from the date of its acceptance.* [Sunil Thakur v. Hindustan Petroleum Corporation] ...1452

Constitution, Articles 16, 309 - *Promotion - Criteria adopted by D.P.C. is seniority cum merit which requires satisfying a pre-determined Bench Mark - Petitioner could not be promoted as he was not able to qualify pre-determined Bench Mark - Petitioner was rightly superseded.* [Jagdish Kumar Shrivastava v. State of M.P.] ...1141

Constitution, Article 19 - *Protection of certain rights regarding freedom of speech, etc. - Fundamental Right guaranteed under Article 19 is absolute but subject to reasonable restrictions.* [B.S.N. Joshi & Sons Ltd. v. State of M.P.]...1671

Constitution, Article 19(1)(g) - *To practise any profession or to carry on any occupation, trade or business - Condition in N.I.T. that Firm should have successfully executed work contract of similar type awarded by MPPGCL / MPSEB / MPEB without any default - Held - Prescribing terms and conditions and qualifications for tender does not permit interference to be made by Writ Court - Action of tendering authority can be interfered with only if it is found to be tainted with malice or is misuse of statutory power and taken in arbitrary manner.* [B.S.N. Joshi & Sons Ltd. v. State of M.P.] ...1671

Constitution, Article 19(1)(g) - *To practise any profession, or to carry on any occupation, trade or business - Condition in N.I.T. that only those Firms shall be eligible if no litigation is pending - Held - Any rule, regulation or condition which prevents a person from litigating his grievance in a Court of Law is unsustainable - Condition quashed as unjustified.* [B.S.N. Joshi & Sons Ltd. v. State of M.P.] ...1671

Constitution, Articles 19(1)(g), 226 - *Unaided Educational Institution - Fees Structure - Institution demanded bank guarantee and F.D.Rs for certain sum - Demand was made on the ground that Fee Structure by Committee is subject to judicial review - Held - No allegation that students can leave the college in mid-stream - Judicial Review cannot be a ground or basis requiring petitioners (students) to furnish bank guarantees/F.D.Rs - Demand of bank guarantee or F.D.R. quashed - Petition allowed.* [Priyanka Shrivastava v. State of M.P.]...1641

Constitution, Article 166 - *Directory or Mandatory - Provisions of Article 166 are directory and substantial compliance with those provisions are sufficient.* [M. Balakrishna Reddy v. Director, CBI, New Delhi] ...1001

Constitution, Article 226 - *Admission in D. Ed. - Petitioners have passed examination of Uttar Madhyama in Sanskrit conducted by Bhartiya Vidya Bhavan, Mumbai - Minimum qualification for appearing in D.Ed. Course is Higher Secondary School Examination or Equivalent Examination - Uttar Madhyama Examination has not been equated with Higher Secondary*

संविधान, अनुच्छेद 16 – त्यागपत्र – वापस लेना – एक बार स्वीकार किये गये त्यागपत्र को वापस लेने की अनुमति नहीं दी जा सकती क्योंकि त्यागपत्र स्वीकार करने की तारीख से नियोजक एवं कर्मचारी के संबंध समाप्त हो जाते हैं। (सुनील ठाकुर वि. हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन) 1452

संविधान, अनुच्छेद 16, 309 – पदोन्नति – डी.पी.सी. ने वरीयता सह योग्यता का मानदण्ड अपनाया जिसमें पूर्व निर्धारित स्तर को संतुष्ट करना अपेक्षित होता है – याची पदोन्नति नहीं पा सकता है क्योंकि वह पूर्व निर्धारित स्तर की योग्यता प्राप्त करने में समर्थ नहीं रहा – याची को उचित रूप से अतिष्ठित (सुपरसीड) किया गया था। (जगदीश कुमार श्रीवास्तव वि. म.प्र. राज्य) 1141

संविधान, अनुच्छेद 19 – वाक् की स्वतंत्रता आदि विषयक कुछ अधिकारों का संरक्षण – अनुच्छेद 19 के अन्तर्गत प्रत्याभूत मूल अधिकार आत्यंतिक किन्तु युक्तियुक्त निबंधनों के अध्यधीन है। (बी.एस.एन. जोशी एण्ड सन्स लि. वि. म.प्र. राज्य) ...1671

संविधान, अनुच्छेद 19(1)(जी) – कोई वृत्ति या कोई उपजीविका, व्यापार या कारबार करना – निविदा आमंत्रित करने वाली सूचना में शर्त कि फर्म ने बिना किसी चूक हुए समतुल्य किस्म का कार्य संविदा सफलतापूर्वक निष्पादित किया हो जो एमपीपीजीसीएल/मप्रराविमं/मप्रविमं द्वारा दिया गया – अभिनिर्धारित – निविदा के लिए विहित निबन्धन व शर्तें और अर्हताएँ रिट न्यायालय द्वारा हस्तक्षेप करने की अनुमति नहीं देती हैं – निविदा अधिकारी के कार्य में हस्तक्षेप केवल तभी हो सकता है जब वह विद्वेष से दूषित पाया जाता है या कानूनी शक्ति का दुरुपयोग है और मनमाने ढंग से लिया गया है। (बी.एस.एन. जोशी एण्ड सन्स लि. वि. म.प्र. राज्य) ...1671

संविधान, अनुच्छेद 19(1)(जी) – कोई वृत्ति या कोई उपजीविका, व्यापार या कारबार करना – निविदा आमंत्रित करने वाली सूचना में शर्त कि सिर्फ वे ही फर्में योग्य होंगी यदि कोई मुकदमा विचाराधीन न हो – अभिनिर्धारित – कोई नियम, विनियम या शर्त जो किसी व्यक्ति को अपनी शिकायत को न्यायालय में मुकदमा करने से रोकती हो, न टिक सकने वाली है – शर्त अन्यायपूर्ण होने से अभिखण्डित की गई। (बी.एस.एन. जोशी एण्ड सन्स लि. वि. म.प्र. राज्य) ...1671

संविधान, अनुच्छेद 19(1)(जी), 226 – गैर अनुदान प्राप्त शैक्षणिक संस्थान – शुल्क संरचना – संस्था द्वारा कुछ राशि की बैंक गारंटी और एफ.डी.आर. की मांग की गई – मांग इस आधार पर की गई कि कमेटी द्वारा शुल्क संरचना न्यायिक पुर्नविलोकन के अधीन है – अभिनिर्धारित – ऐसा अभिकथन नहीं है कि विद्यार्थी मध्य सत्र में महाविद्यालय छोड़ सकते हैं – याचिओं से बैंक गारंटी या एफ.डी.आर. की अपेक्षा इस आधार पर नहीं की जा सकती है कि न्यायिक पुर्नविलोकन होना है – बैंक गारंटी की मांग या एफ.डी.आर. की मांग अभिखण्डित – याचिका मंजूर। (प्रियंका श्रीवास्तव वि. म.प्र. राज्य)...1641

संविधान, अनुच्छेद 166 – निदेशात्मक या आज्ञापक – संविधान के अनुच्छेद 166 के उपबन्ध निदेशात्मक हैं एवं उन उपबन्धों का सारवान पालन पर्याप्त है। (एम. बालाकृष्णा रेड्डी वि. डायरेक्टर, सी.बी.आई., न्यू देहली) ...1001

संविधान, अनुच्छेद 226 – डी.एड. में प्रवेश – याची ने भारतीय विद्या भवन, मुंबई द्वारा संचालित उत्तर मध्यमा परीक्षा संस्कृत में उत्तीर्ण की – डी.एड. में प्रवेश हेतु न्यूनतम शैक्षणिक योग्यता उच्चतर माध्यमिक शाला परीक्षा अथवा समकक्ष परीक्षा है – उत्तर मध्यमा परीक्षा उच्चतर माध्यमिक शाला परीक्षा के समकक्ष नहीं है – याची डी.एड. में प्रवेश की पात्रता नहीं रखता – याचिका खारिज। (राधा मिश्रा वि. सेक्रेटरी, बोर्ड आफ सेकेंडरी एजूकेशन) ...1101

Examination - Petitioners not entitled for admission to D.Ed. Course - Petition dismissed. [Radha Mishra v. Secretary, Board of Secondary Education] ...1101

Constitution, Article 226 - ***Admissions in Medical College - NRI Quota - Wards*** - *Petitioners admitted in Medical Courses in NRI Quota - Their admissions cancelled by Committee on the ground that they are neither children nor Wards of NRI - All the petitioners securing first division marks in 10+2 Examination - Held - Term "Ward" has been given broader meaning by Supreme Court in the case of Ruchin Bharat Patel - Nothing on record to show that N.R.I. had acted with malafide manner - Merit has not been given complete go by - Admissions upheld - Decision of Committee quashed - Petition allowed.* [Ansul Tomar v. State of M.P.] ...1979

Constitution, Article 226 - ***Admission Procedure*** - *State Govt. decided to hold common entrance examination and centralized counselling instead of College level counselling - Holding of entrance test cannot be found fault with in view of clause 3.3 of NCTE Norms - Recourse to college level counselling cannot be allowed.* [Pitambra Peeth Shiksha Prasarani Samiti v. State of M.P.]...1063

Constitution, Article 226 - ***Admission*** - *Resp. No.1 was given provisional admission in College subject to approval by University - University cancelled his admission as he failed in Pre-Law Test - Learned Single Judge held that resp. No.1 was wrongly admitted by College, therefore, petition disposed of with compensation of Rs.20,000/- - Order challenged in Writ Appeal - Held - Resp. No.1 knew very well that his admission was provisional - He was not kept in dark by College - He had chosen to obtain study at his peril - Moreover, he was allowed to appear in examination of LL.B. Ist year under interim order of High Court - In that examination he adopted unfair means and was debarred for three years from obtaining education - Thus, no loss was caused to him by the act of College - Order set-aside - Appeal allowed.* [Hitkarini Law College v. Ashish Kumar Pathak] ...1866

Constitution, Article 226 - ***Admission to B.Ed. Courses*** - *Validity of Rules providing 75% of B.Ed. seats shall be for residents of M.P. and 25% for students who are not residents of M.P. already upheld - Examination forms not issued by University as enquiry with regard to domicile certificates submitted along with forms is still in progress - Held - High Power Committee constituted for conducting enquiry - Committee shall decide verification within fours weeks - Before passing any adverse order, the committee shall hear concerned Principal or nominee of institution and student who is likely to be aggrieved - After verification Separate examination shall be held by University for eligible students - Petition disposed of.* [Yuva Vyayasayik Shikshan Sansthan v. Jiwaji University, Gwalior] ...1056

Constitution, Article 226 - ***Affiliation of Institution*** - *Petitioner applied for grant of recognition for D.Ed. Courses to NCTE - During pendency of application Union of India directed NCTE not to proceed with the matter -*

संविधान, अनुच्छेद 226 – चिकित्सा महाविद्यालय में प्रवेश – एनआरआई कोटा – प्रतिपाल्य – याचियों का चिकित्सा पाठ्यक्रमों में एनआरआई कोटे में प्रवेश – समिति द्वारा उनके प्रवेश इस आधार पर निरस्त किये कि वे एनआरआई के न तो संतान हैं और न ही उनके प्रतिपाल्य हैं – सभी याचियों ने 10+2 परीक्षा में प्रथम श्रेणी के अंक अर्जित किये थे – अभिनिर्धारित – उच्चतम न्यायालय ने रुचिन भारत पटेल के मामले में "प्रतिपाल्य" शब्द का व्यापक अर्थ किया है – अभिलेख पर यह दर्शाने के लिए कुछ नही है कि एनआरआई ने दुर्भावनापूर्ण तरीके से .त्य किया – योग्यता को पूर्णतः अनदेखा नहीं किया गया – प्रवेश मान्य किये गये – समिति का निर्णय अभिखण्डित – याचिका मंजूर। (अंशुल तोमर वि. म.प्र. राज्य) ...1979

संविधान, अनुच्छेद 226 – प्रवेश प्रक्रिया – राज्य सरकार ने कालेज स्तरीय काउंसिलिंग के स्थान पर सम्मिलित प्रवेश परीक्षा व केन्द्रीयकृत काउंसिलिंग कराने का निर्णय लिया – प्रवेश परीक्षा कराने में एन.सी.टी.ई. के मानक के खण्ड 3.3 के अनुसार कोई गलती नहीं की – कालेज स्तरीय काउंसिलिंग की अनुमति नहीं दी जा सकती है। (पीताम्बरा पीठ शिक्षा प्रसारणी समिति वि. म.प्र. राज्य) ...1063

संविधान, अनुच्छेद 226 – प्रवेश – प्रत्यर्थी क्रमांक 1 को महाविद्यालय में अनंतिम प्रवेश विश्वविद्यालय के अनुमोदन के अध्यधीन दिया – विश्वविद्यालय ने उसका प्रवेश निरस्त कर दिया क्योंकि वह प्री–लॉ टेस्ट में असफल हो गया था – विद्वान एकल न्यायाधीश ने अभिनिर्धारित किया कि प्रत्यर्थी क्रमांक 1 को गलत रूप में महाविद्यालय द्वारा प्रवेश दिया गया था, इसलिए याचिका 20,000/– रुपये प्रतिकर के साथ निपटाई गई – आदेश को रिट अपील में चुनौती दी –अभिनिर्धारित – प्रत्यर्थी क्रमांक 1 अच्छी तरह जानता था कि उसका प्रवेश अनंतिम था – उसे महाविद्यालय द्वारा अंधेरे में नहीं रखा गया – उसने स्वयं के जोखिम पर विद्याध्ययन करना पसंद किया – इसके अतिरिक्त उसे उच्च न्यायालय के अंतरिम आदेश के अधीन एलएल.बी. प्रथम वर्ष की परीक्षा में प्रवेश की अनुमति दी गई – उस परीक्षा में उसने अनुचित साधनों को अपनाया और उसे तीन वर्ष के लिए शिक्षा प्राप्त करने से बहिष्कृत किया गया – इस प्रकार उसे महाविद्यालय के कृत्य से कोई भी हानि कारित नहीं हुई – आदेश अपास्त – अपील मंजूर। (हितकारणी लॉ कालेज वि. आशीष कुमार पाठक) ...1866

संविधान, अनुच्छेद 226 – बी.एड. कोर्स में प्रवेश – नियम जिसमें उपबन्ध है कि बी.एड. में 75% स्थान म.प्र. के निवासी हेतु व 25% स्थान ऐसे विद्यार्थियों जो म.प्र. के निवासी नहीं हैं, के लिए रहेंगे, इस नियम की विधीमान्यता पूर्व निर्धारित – विश्वविद्यालय द्वारा, अधिवास प्रमाण पत्रों की जॉच की वजह से परीक्षा फार्म जारी नहीं किये गये – अभिनिर्धारित – जॉच हेतु उच्चस्तरीय समिति का गठन – समिति 4 सप्ताह में सत्यापन करेगी – समिति कोई भी प्रतिकूल आदेश पारित करने के पूर्व संबंधित प्राचार्य या संस्थान के नामित और विद्यार्थी जो व्यथित हो सकता है, को सुनेगी – सत्यापन के पश्चात् विश्वविद्यालय पात्र विद्यार्थियों हेतु अलग परीक्षा लेगा – याचिका का निपटारा। (युवा व्यवसायिक शिक्षण संस्थान वि. जीवाजी विश्वविद्यालय, ग्वालियर) ...1056

संविधान, अनुच्छेद 226 – संस्थान को सम्बद्ध करना – याची ने डी.एड. पाठ्यक्रम की मान्यता प्रदान करने के लिए राष्ट्रीय अध्यापक शिक्षा परिषद् (एनसीटीई) को आवेदन दिया – आवेदन के लम्बित रहने के दौरान भारत संघ ने एनसीटीई को निदेश दिया कि इस मामले की

High Court by interim order permitted petitioner to admit students at their own risk subject to decision of petition - Finally Writ Petition dismissed - Subsequently recognition granted by NCTE in December, 2007 - Thereafter on the basis of recognition petitioner applied for grant of affiliation to Board of Secondary Education for the year 2007-08 - The application was rejected by the Board on the ground that petitioner had not completed 180 days of imparting training - Held - Petitioner without recognition cannot nurture idea to admit students - When in final order relief was denied, petitioner cannot claim any benefit on the basis of interim relief - Affiliation rightly rejected - Petition dismissed. [Siddhi Vinayak College, Bhind v. State of M.P.] ...1645

Constitution, Article 226 - ***Alternative Remedy*** - *In case of breach of statutory provision, violation of fundamental rights and action taken to be contrary to law - Interference under Article 226 can be made.* [Satya Prakashi Parsadia v. State of M.P.] ...1092

Constitution, Article 226 - ***Alternative Remedy*** - *Order without jurisdiction - Order of removal passed by authority subordinate to appointing authority - Writ Petition dismissed by Single Judge holding that petitioner can avail the alternative remedy of appeal - Held - Order of removal was without jurisdiction - Alternative remedy of appeal is no bar for exercise of jurisdiction under Article 226 of the Constitution - Order of removal quashed - It will be open for Appointing authority to pass fresh order in accordance with law - Appeal allowed.* [Ram Kishore Shukla v. State of M.P.] ...1364

Constitution, Article 226 - ***Alternative Remedy*** - *Petition once admitted, could not be dismissed on the ground of alternative remedy.* [Bhuvneshwar Prasad @ Guddu Dixit v. State of M.P.] ...1683

Constitution, Article 226, Civil Procedure Code, 1908, Order 6 Rule 17 - ***Amendment of Petition*** - *Provisions of C.P.C. do not strictly apply to proceedings under Article 226 - However, High Court while exercising its power have to keep in mind the principles incorporated in different provisions of C.P.C.* [Reshma Philip v. State of M.P.] ...1366

Constitution, Article 226, Civil Services (Classification, Control and Appeal) Rules, 1966, Rule 23, Rajya Anusuchit Jati Ayog Adhiniyam, M.P., (25 of 1995), Section 9 - ***Alternative Remedy*** - *Resp. No.6 belongs to S.C. Category made complaint to State S.C. Commission against appellant that he deliberately delayed writing of his A.C.Rs. and he was addressing and abusing him on the basis of caste - Chairman recorded finding against appellant and directed Secretary to impose punishment of stoppage of two increments or of reversion - W.P. dismissed on the ground of alternative remedy i.e. departmental appeal - Held - Order was not passed in any departmental proceeding - No appeal against order which has been issued purportedly in exercise of power u/ss 9 & 10 of Adhiniyam - Order dismissing petition suffers from manifest irregularity.* [S.K. Verma v. State of M.P.] ...1892

कार्यवाही आगे जारी न रखें – उच्च न्यायालय ने अंतरिम आदेश द्वारा याची को विद्यार्थियों को उनके स्वयं के जोखिम पर याचिका के निर्णय के अधीन दाखिला देने की अनुमति दी – अंततः रिट याचिका खारिज – तत्पश्चात् दिसम्बर 2007 में एनसीटीई द्वारा मान्यता प्रदान की गई – उसके बाद मान्यता के आधार पर याची ने वर्ष 2007–2008 के लिए संस्थान को सम्बद्ध करने के लिए माध्यमिक शिक्षा मण्डल को आवेदन दिया – आवेदन बोर्ड द्वारा इस आधार पर निरस्त कर दिया कि याची ने 180 दिन का प्रशिक्षण पूर्ण नहीं करवाया – अभिनिर्धारित – याची मान्यता के बिना विद्यार्थियों को प्रवेश देने के विचार को प्रोत्साहित नहीं कर सकता – जब अंतिम आदेश में अनुतोष इंकार कर दिया, याची अंतरिम आदेश के आधार पर कोई लाभ का दावा नहीं कर सकता – सम्बद्ध करना उचित रूप से निरस्त – याचिका खारिज। (सिद्धी विनायक कालेज, भिण्ड वि. म.प्र. राज्य) ...1645

संविधान, अनुच्छेद 226 – अनुकल्पिक उपचार – अधिनियम के उपबन्ध के भंग होने के मामले में, मूलभूत अधिकारों के उल्लंघन होने पर और विधि के विरूद्ध कार्य करने पर – अनुच्छेद 226 के अन्तर्गत हस्तक्षेप किया जा सकता है। (सत्यप्रकाशी परसादिया वि. म.प्र. राज्य) ...1092

संविधान, अनुच्छेद 226 – वैकल्पिक उपचार – अधिकारिता के बिना आदेश – नियुक्ति प्राधिकारी के अधीनस्थ प्राधिकारी द्वारा सेवा से हटाये जाने का आदेश पारित – एकल पीठ द्वारा रिट याचिका यह अभिनिर्धारित करते हुये खारिज की गई कि याची अपील का वैकल्पिक उपचार का लाभ उठा सकता है – अभिनिर्धारित – सेवा से हटाये जाने का आदेश अधिकारिता के बिना दिया गया था – अपील का वैकल्पिक उपचार है, इससे संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता के प्रयोग में वर्जन नहीं – हटाये जाने का आदेश अभिखण्डित – नियुक्ति प्राधिकारी विधि अनुसार नया आदेश पारित करने के लिये स्वतंत्र – अपील मंजूर। (रामकिशोर शुक्ला वि.म.प्र. राज्य) ...1364

संविधान, अनुच्छेद 226 – वैकल्पिक उपाय – एक बार गृहीत की गई याचिका वैकल्पिक उपाय के आधार पर निरस्त नहीं की जा सकती। (भुवनेश्वर प्रसाद उर्फ गुड्डू दीक्षित वि. म.प्र. राज्य) ...1683

संविधान, अनुच्छेद 226, सिविल प्रक्रिया संहिता, 1908, आदेश 6 नियम 17 – याचिका में संशोधन – सि.प्र.सं. के उपबन्ध अनुच्छेद 226 की कार्यवाही में कड़ाई से लागू नहीं होते – फिर भी उच्च न्यायालय को अपनी शक्ति का प्रयोग करते समय सि.प्रसं के विभिन्न उपबन्धों में समाहित सिद्धान्तों का ध्यान रखना चाहिये। (रेशमा फिलिप वि. म.प्र. राज्य) ...1366

संविधान, अनुच्छेद 226, सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1966, नियम 23, राज्य अनुसूचित जाति आयोग अधिनियम, म.प्र. (1995 का 25), धारा 9 – वैकल्पिक उपचार – प्रत्यर्थी क्रमांक 6 जो अनुसूचित जाति के वर्ग का है, ने राज्य अनूसूचित जाति आयोग को अपीलार्थी के विरुद्ध शिकायत की कि उसने जानबूझकर वार्षिक गोपनीय चरित्रावली के प्रतिवेदन विलम्ब से लिखे और वह उसे जाति के आधार पर अपशब्दों से संबोधित करता था – अध्यक्ष ने अपीलार्थी के विरुद्ध निष्कर्ष अभिलिखित किये और सचिव को निदेश दिये कि दो वेतन वृद्धियाँ रोकने या पदावनति का दण्ड आरोपित किया जाए – रिट याचिका वैकल्पिक उपचार अर्थात् विभागीय अपील के आधार पर खारिज – अभिनिर्धारित – आदेश किसी विभागीय कार्यवाही में पारित नहीं – अधिनियम की धारा 9 व 10 के अधीन शक्तियों के प्रयोग में आदेश किया जाना तात्पर्यित, आदेश के विरुद्ध कोई अपील नहीं – याचिका खारिज करने का आदेश प्रत्यक्षतः अनियमितता से ग्रसित। (एस.के. वर्मा वि. म.प्र. राज्य) ...1892

Constitution, Article 226 - *Date of enforcement of Act - No mandamus can be issued to bring statutory provision into force when the date on which it is brought into force is left to the discretion of Central Govt. - However, Court can always issue mandamus to consider whether time for bringing a provision of an Act has arrived or not.* [Avinash v. Union of India] ...1725

Constitution, Article 226 - ***Departmental Enquiry*** - *Petitioner prayed for departmental enquiry against respondent no. 3 on the ground that in an enquiry he was found guilty for substituting the partnership deed by a new partnership deed in which petitioner was not shown as partner - No opportunity of hearing was given to respondent no.3 in the enquiry - In subsequent enquiry no direct evidence was found against respondent no. 3 - Decision of State Govt. not to start departmental proceedings against respondent no.3 is well founded - Petition dismissed.* [Ajay Arora v. State of M.P.] ...1163

Constitution, Article 226 - ***Estoppel*** - *Notification shall make it clear that children/wards of the employees of Adarsh School would be admitted as days scholars only and such days scholars would not be entitled to any other facility - Knowing well the terms of this notification petitioner sought admission - Then he cannot be allowed to say that the relaxation given in favour of the children/wards of the employees though is correct but the benefits could not be denied.* [Master Shyam Kishore v. State of M.P.] ...*35

Constitution, Article 226 - ***Ground regarding maintainability of appeal not raised - Held*** - *Petitioner not taking the ground of maintainability of appeal before all three authorities and even in writ petition cannot be permitted to raise at the time of final hearing.* [Prajapal Singh v. State of M.P.] ...1721

Constitution, Article 226 - ***Grounds to challenge constitutional validity*** - *If the act of repository of power is in conflict with Constitution, or governing Act or general principles of law of land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.* [M.P. Cement Manufacturers Association v. State of M.P.] ...1665

Constitution, Article 226 - ***Locus Standi*** - *Petitioner prayed for departmental enquiry against respondent no.3 on the ground that he had substituted the partnership deed by new partnership deed in which the name of the Petitioner as partner was not mentioned - Held - Petitioner who is a liquor contractor has no locus standi to invoke jurisdiction of High Court so as to direct initiation of departmental enquiry which is essentially in the nature of service matter - Petition at the instance of petitioner not maintainable as it is the sole prerogative of employer to decide whether departmental enquiry has to be drawn or not - Petition dismissed.* [Ajay Arora v. State of M.P.] ...1163

Constitution, Article 226, Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 50 - ***Intention to prepare scheme*** -- *After finalization of draft scheme, final scheme published in Govt. Gazette on 28.03.2003 - It was*

संविधान, अनुच्छेद 226 – अधिनियम के प्रवर्तन की तिथि – वैधानिक उपबन्धों को प्रवर्तन में लाने कोई परमादेश जारी नहीं किया जा सकता है, जब वह तिथि, जिसको यह प्रवर्तन में आता है, केन्द्र सरकार के विवेक पर छोड़ी गई हो – तथापि न्यायालय यह विचार करने सर्वदा परमादेश जारी कर सकता है कि क्या अधिनियम के उपबन्ध को लाने का समय आ गया है या नहीं। (अविनाश वि. यूनियन आफ इंडिया) ...1725

संविधान, अनुच्छेद 226 – विभागीय जांच – याची ने प्रत्यर्थी क्रमांक 3 के विरूद्ध विभागीय जांच की प्रार्थना इस आधार पर कि वह जांच में दोषी पाया गया कि उसने भागीदारी विलेख के स्थान पर नया भागीदारी विलेख प्रतिस्थापित कर दिया जिसमें याची का नाम भागीदार के रूप में नहीं दर्शाया गया था – प्रत्यर्थी क्रमांक 3 को जांच में सुनवाई का कोई अवसर नहीं दिया गया था – पश्चात्वर्ती जांच में प्रत्यर्थी क्रमांक 3 के विरूद्ध कोई प्रत्यक्ष साक्ष्य नहीं पाया – प्रत्यर्थी क्रमांक 3 के विरूद्ध विभागीय कार्यवाही शुरू न करने का राज्य सरकार का निर्णय सुधारित;– याचिका खारिज। (अजय अरोरा वि. म.प्र. राज्य) ...1163

संविधान, अनुच्छेद 226 – विबन्ध – अधिसूचना में यह स्पष्ट किया गया है कि आदर्श स्कूल के कर्मचारियों के बालकों/प्रतिपाल्यों को सिर्फ आवासी विद्यार्थी के रूप में प्रवेश दिया जाएगा और ऐसे आवासी विद्यार्थी किसी अन्य सुविधा के हकदार नहीं होगें – याची ने अधिसूचना की शर्तों को भलीभांती समझकर प्रवेश लिया था – तब उसे यह कहने की अनुमति नहीं दी जा सकती है कि कर्मचारियों के बालकों/प्रतिपाल्यों के पक्ष में जो छूट दी गई, यद्यपि सही है, किन्तु लाभों से इंकार नहीं किया जा सकता है। (मास्टर श्याम किशोर वि. म.प्र. राज्य) ---*35

संविधान, अनुच्छेद 226 – अपील की पोषणीयता के संबंध में आधार नहीं उठाया – अभिनिर्धारित – याची ने अपील की पोषणीयता का आधार तीनों प्राधिकारियों के समक्ष नहीं उठाया और रिट याचिका में भी नहीं लिया, अंतिम सुनवाई के समय उठाने की अनुमति नहीं दी जा सकती। (प्रजापाल सिंह वि. म.प्र. राज्य) ...1721

संविधान, अनुच्छेद 226 – संवैधानिक वैधता को चुनौती देने के आधार – यदि शक्ति के निधान का त्य संविधान या शासी अधिनियम या देश की विधि के सामान्य सिद्धांतों के विरोध में है, या यह इतना मनमाना या अनुचित है कि कोई निष्पक्ष भाव रखने वाला प्राधिकारी उसे कभी नहीं बना सकता था। (म.प्र. सीमेंट मेनूफेकचर्रस एसोसियेशन वि. म.प्र. राज्य) ...1665

संविधान, अनुच्छेद 226 – "सुने जाने का अधिकार" – याची ने प्रत्यर्थी क्रमांक–3 के विरूद्ध विभागीय जांच की प्रार्थना इस आधार पर की कि उसने भागीदारी विलेख के स्थान पर नया भागीदारी विलेख प्रतिस्थापित कर दिया जिसमें याची का नाम भागीदार के रूप में नहीं दर्शाया गया था – अभिनिर्धारित – याची जो एक शराब का ठेकेदार है, उच्च न्यायालय के ऐसे क्षेत्राधिकार का प्रयोग करते हुये विभागीय जांच जो कि सारतः सेवा के मामले की प्रकृति की है, में उसे सुने जाने का और सहायता मांगने का अधिकार नहीं है – याची के प्रेरण पर याचिका पोषणीय नहीं क्योंकि यह तो एकमात्र नियोजक का परमाधिकार यह तय करने के लिये है कि क्या विभागीय जांच शुरू की जाये या नहीं – याचिका खारिज। (अजय अरोरा वि. म.प्र. राज्य) ...1163

संविधान, अनुच्छेद 226, नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973, धारा 50 – स्कीम तैयार करने का आशय – स्कीम के प्रारूप को अंतिम रूप देने के उपरांत अंतिम स्कीम सरकारी राजपत्र में 28.03.2003 को प्रकाशित – यह नियत किया गया कि स्कीम राजपत्र में प्रकाशन

stipulated that scheme would come into operation w.e.f. date of publication in Gazette - Held - Scheme would be treated as come into existence on 28.03.2003. [Mahavir Grih Nirman Sahkari Sanstha Maryadit v. State of M.P.] ...1603

Constitution, Article 226 - ***Physical Training Instructor*** - *Equal Pay for Equal Work - Similarly situated Physical Training Instructor and Teacher have already been given UGC scale - Question of Nature of duties of Physical Training Instructor with the duties of Teacher has already become fait accompli - Single Judge allowed petition with the direction to grant pay scale of UGC Teachers - DB found no ground for interference - Appeal dismissed.* [State of M.P. v. Ramesh Chandra Bajpai] ...1350

Constitution, Article 226 - ***Public Interest Litigation*** - *Locus Standi - Public Interest Litigation Petition filed against resp. No.2, Revenue Minister, for C.B.I. enquiry regarding acquisition of disproportionate assets - Held - Although allegations of criminal record of petitioner, his personal interest as competitor in business and his acting as a proxy of another political rival, yet same requires keen scrutiny before discarding lis.* [Anil Bansal v Central Bureau of Investigation] ...1952

Constitution, Article 226 - ***Regulations of Medical Council of India, 2000, Clauses 3, 7 & Note (a) - MBBS Course*** - *Attending classes is one thing and to become eligible in appearing in the examination is altogether different thing - Petitioners passed 1st professional examination in supplementary examination - Although they had attended classes with main batch but they were not allowed to appear in second professional examination - Held - Terminology used in clause 7 'joining of main batch' cannot be given undue emphasis - Passing in 1st professional examination is compulsory before proceeding to second professional examination - Petitioners cannot be permitted to appear in examination unless they complete 18 months regular training and pass the first MBBS Course - Petition dismissed.* [Muniraj Patel v. State of M.P.] ...1377

Constitution, Article 226 - ***Service Law*** - *Resp. No.6 appointed as Assistant Professor in Orthopaedics - Appointment challenged by petitioner on ground that resp. No.6 has obtained M.S. (Orthopaedics) degree from Jiwaji University, Gwalior which is not recognised by Medical Council of India - Held - Resp. No.6 was given admission in Orthopaedics from All India quota and subject of Orthopaedics is being taught in Jiwaji University for last 35 years - State Govt. has been giving appointment to persons obtaining degree from Jiwaji University - Admittedly, the course of Orthopaedics in Jiwaji University not recognised by Medical Council of India and thus when the Medical Council of India and M.P. Medical Council slept over the matter and permitted to commit illegality resp. No.6 cannot be made to suffer on that count - Petition dismissed.* [Omprakash Lakhwani (Dr.) v. State of M.P.] ...2003

की तिथि से लागू होगी – अभिनिर्धारित – स्कीम का 28.03.2003 को अस्तित्व में आना माना जाएगा। (महावीर गृह निर्माण सहकारी संस्था मर्यादित वि. म.प्र. राज्य) ...1603

संविधान, अनुच्छेद 226 – व्यायाम अनुदेशक – समान कार्य के लिये समान वेतन – समरूप स्थित व्यायाम अनुदेशक व शिक्षक को विश्वविद्यालय अनुदान आयोग का वेतनमान पूर्व से दिया गया – व्यायाम अनुदेशक एवं शिक्षक के कर्त्तव्यों की प्रकृति का प्रश्न पूर्व निर्धारित – एकल पीठ ने याचिका विश्वविद्यालय अनुदान आयोग द्वारा शिक्षक के लिये निर्धारित वेतनमान देने के निदेश के साथ मंजूर की – खण्डपीठ ने हस्तक्षेप का कोई आधार नहीं पाया – अपील निरस्त। (म.प्र. राज्य वि. रमेश चन्द्र बाजपेयी) ...1350

संविधान, अनुच्छेद 226 – पब्लिक इन्ट्रेस्ट लिटिगेशन – सुने जाने का अधिकार – प्रत्यर्थी क्रमांक 2 राजस्व मंत्री के विरुद्ध अनुपातहीन सम्पत्ति अर्जित करने के संबंध में सी.बी.आई. से जाँच के लिए जनहित याचिका पेश की गई – अभिनिर्धारित – यद्यपि याची के दाण्डिक अभिलेख के अभिकथन उसकी व्यक्तिगत रुचि, कारोबार में प्रतिस्पर्धा और अन्य राजनैतिक प्रतिद्वन्दी के लिए परोक्षतः किया गया कृत्य किन्तु वाद अमान्य करने के पूर्व उसकी सूक्ष्म जाँच अपेक्षित है। (अनिल बंसल वि. सेंट्रल ब्यूरो आफ इन्वेस्टीगेशन) ...1952

संविधान, अनुच्छेद 226, भारतीय आयुर्विज्ञान परिषद विनियम, 2000, खण्ड 3, 7 और टीप (ए) – एमबीबीएस पाठ्यक्रम – कक्षा में हाजिर होना एक बात है और परीक्षा में बैठने के लिए पात्र होना बिल्कुल ही अलग बात है – याचियों ने प्रथम व्यावसायिक परीक्षा को पूरक परीक्षा में उत्तीर्ण किया – यद्यपि वे मुख्य बैच के साथ कक्षा में हाजिर हुए परन्तु उन्हें द्वितीय व्यावसायिक परीक्षा में बैठने की अनुमति नहीं दी गई – अभिनिर्धारित – खण्ड 7 में प्रयुक्त परिभाषा 'मुख्य बैच के साथ शामिल होना' को अनुचित बल नहीं दिया जा सकता – द्वितीय व्यावसायिक परीक्षा में प्रवेश के पूर्व प्रथम व्यावसायिक परीक्षा उत्तीर्ण करना अनिवार्य है – याचियों को परीक्षा में बैठने की अनुमति नहीं दी जा सकती है जब तक कि वे 18 महीनों का नियमित प्रशिक्षण और प्रथम एमबीबीएस कोर्स उत्तीर्ण न कर लेवें – याचिका खारिज। (मुनिराज पटेल वि. म.प्र. राज्य) 1377

संविधान, अनुच्छेद 226 – सेवा विधि – प्रत्यर्थी क्रमांक 6 अस्थि रोग विज्ञान में सहायक प्राध्यापक के रूप में नियुक्त – नियुक्ति को याची द्वारा इस आधार पर चुनौती दी गई कि प्रत्यर्थी क्रमांक 6 ने एम.एस. (अस्थि रोग विज्ञान) की डिग्री जीवाजी विश्वविद्यालय, ग्वालियर से प्राप्त की जो भारतीय चिकित्सा परिषद् द्वारा मान्यता प्राप्त नहीं – अभिनिर्धारित – प्रत्यर्थी क्रमांक 6 को अस्थि रोग विज्ञान में प्रवेश अखिल भारतीय कोटे से दिया गया था और जीवाजी विश्वविद्यालय में पिछले 35 वर्षों से अस्थि रोग विज्ञान पढ़ाया जा रहा है – राज्य सरकार जीवाजी विश्वविद्यालय से डिग्री प्राप्त करने वाले व्यक्तियों को नियुक्तियाँ दे रही है – स्वीकृत रूप से भारतीय चिकित्सा परिषद् द्वारा जीवाजी विश्वविद्यालय के अस्थि रोग विज्ञान के पाठ्यक्रम को मान्यता प्राप्त नहीं और इस प्रकार जब भारतीय चिकित्सा परिषद् एवं म.प्र. चिकित्सा परिषद् इस मामले में चुप्पी साधे हैं और अवैधानिकता कारित होने की अनुमति दिये हुए हैं, प्रत्यर्थी क्रमांक 6 को इस बिन्दु पर पीड़ित नहीं किया जा सकता – याचिका खारिज। (ओमप्रकाश लखवानी (डॉ.) वि. म.प्र. राज्य) ...2003

Constitution, Article 226 - *Tender - Disqualification in technical bid - Petitioner claimed experience of work by its lead partner as Sub-Contractor - Condition of eligibility criteria required work in same name and capacity - Held - Experience as contractor can not be equated with that of Sub-Contractor - Unless the decision is arbitrary, unfair or based on malafides, the court will not interfere in decision taken in commercial matter relating to contracts - Petition dismissed.* [Niraj Pratibha J.V. v. Indore Development Authority] ...2013

Constitution, Article 226 - *Transfer - Petitioner challenged her transfer - Another transfer order was passed during pendency of the petition - Application for amendment of Petition dismissed as subsequent transfer order raised a fresh cause of action and writ petition dismissed as infructuous - Held - Material facts remained the same - There was only alteration of one material fact that another transfer order was issued - Amendment should be allowed for the purposes of deciding real controversy in issue between the parties - Amendment allowed and matter remitted back to Single Judge for deciding writ petition on merits.* [Reshma Philip v. State of M.P.] ...1366

Constitution, Articles 226, 227 - ***Difference of Opinion - Scope of Third Judge*** - *Both the Judges of Division Bench came to the conclusion that tendered votes can be opened and there is no divergent opinion on said question - Third Judge cannot go into the question that whether tendered vote can be opened or not.* [Kailashi v. Smt. Bharosi Bai] ...1586

Constitution, Articles 226 & 227 - *In those cases where factual disputes are involved it would not be permissible to deal with them in a Writ Petition - However petitioner shall be free to take legal recourse by filing a civil suit or by approaching any other forum as permissible under the law.* [Veerpal Singh Gurjar v. Insurance Ombudsman for M.P. & Chhattisgarh]...1155

Constitution, Articles 226, 227, National Highways Act (48 of 1956), Sections 3-H, 3-G - ***Determination of compensation*** - *Public Interest Litigation Petition filed alleging discrepancies in determination of compensation amount - If amount determined by competent authority is not acceptable to either party, the same may be determined by arbitrator appointed by Central Govt. on application of either party - Dispute is in the realm of individual entitlement and cannot assume character of P.I.L. - Petition dismissed.* [Kanhaiyalal Patel v. Union of India] ...1932

Constitution, Articles 226/227 - ***Object of Prime Minister National Relief Fund*** - *It is working in larger interest of public and help is being provided to needy people - A discretionary fund of PM and is being managed by trust and not bureaucratic machinery - Relief Fund is not subject matter of any review by Courts - No allegation that Relief Fund is under mismanagement or is not functioning properly or the funds are not reaching the needy persons - Observations made against fund or mismanagement of*

संविधान, अनुच्छेद 226 – निविदा – तकनीकी बोली में अयोग्यता – याची ने अपने प्रमुख भागीदार का उप–ठेकेदार के रूप में कार्य के अनुभव का दावा किया – योग्यता के मापदंड की शर्त उसी नाम व हैसियत से कार्य करना अपेक्षित करती है – अभिनिर्धारित – ठेकेदार का अनुभव उप–ठेकेदार के समतुल्य नहीं हो सकता – जब तक विनिश्चय मनमाना, अनुचित या दुर्भावना पर आधारित न हो, न्यायालय संविदा से संबंधित वाणिज्यिक मामले में लिये गए विनिश्चय में हस्तक्षेप नहीं करेगा – याचिका खारिज। (नीरज प्रतिभा जे.व्ही. वि. इंदौर डेवेलपमेंट अथारिटी) ...2013

संविधान, अनुच्छेद 226 – स्थानांतरण – याची ने अपने स्थानांतरण को चुनौती दी – याचिका के लंबित रहने के दौरान दूसरा स्थानांतरण आदेश पारित – याचिका में संशोधन का आवेदन खारिज क्योंकि उत्तरवर्ती स्थानांतरण के कारण नया वाद हेतुक उत्पन्न हो गया एवं रिट याचिका निष्फल होने से खारिज – अभिनिर्धारित – सारवान तथ्य यथावत रहे – केवल एक सारवान तथ्य में परिवर्तन कि दूसरा स्थानांतरण आदेश जारी किया गया – पक्षकारों के मध्य वास्तविक विवाद के विनिश्चय के प्रयोजन के लिये संशोधन मंजूर किया जाना चाहिये – संशोधन मंजूर एवं मामला एकलपीठ को रिट याचिका के गुणदोषों पर विनिश्चिय के लिये वापस भेजा गया। (रेशमा फिलिप वि. म.प्र. राज्य) 1366

संविधान, अनुच्छेद 226, 227 – विचारों की भिन्नता – तृतीय न्यायाधीश का विषय क्षेत्र – खण्ड न्यायपीठ के दोनों न्यायाधीश निष्कर्ष पर पहुंचे कि निविदत्त वोट खोले जा सकते हैं एवं इस प्रश्न पर कोई भिन्न मत नहीं है – तृतीय न्यायाधीश इस प्रश्न पर विचार नहीं कर सकते कि क्या निविदत्त वोट खोले जा सकते हैं या नहीं। (कैलाशी वि. श्रीमति भरोसी बाई) ...1586

संविधान, अनुच्छेद 226 एवं 227 – जिन वादों में तथ्यात्मक विवाद अर्न्तग्रस्त हों उन्हें रिट याचिका में निपटाने की अनुमति नहीं दी जा सकती है – तथापि याची सिविल वाद लाने अथवा विधि द्वारा अनुज्ञेय किसी अन्य फोरम में वैद्य कारवाई करने के लिये स्वतंत्र है। (वीरपाल सिंह गुर्जर वि. इंश्योरेंस ओंबड्समेन फार एम.पी. एन्ड छत्तीसगढ़) ...1155

संविधान, अनुच्छेद 226, 227, राष्ट्रीय राजमार्ग अधिनियम (1956 का 48),धाराएँ 3–एच, 3–जी – प्रतिकर का निर्धारण – प्रतिकर राशि के निर्धारण में विसंगतियों को अभिकथित करते हुए जनहित याचिका पेश – यदि सक्षम प्राधिकारी द्वारा निर्धारित राशि दोनों में से किसी पक्षकार को स्वीकार्य न हो तो उसका निर्धारण दोनों पक्षों में से किसी के आवेदन पर केन्द्र सरकार द्वारा नियुक्त मध्यस्थ के द्वारा किया जा सकता है – विवाद का क्षेत्र व्यक्तिगत हकदारी का है और जनहित याचिका का स्वरूप नहीं ले सकता है – याचिका खारिज। (कन्हैया लाल पटेल वि. यूनियन आफ इंडिया) ...1932

संविधान, अनुच्छेद 226/227 – प्रधानमंत्री राष्ट्रीय राहत कोष का उद्देश्य – यह जनता के व्यापक हित में कार्य करता है एवं जरूरतमंद व्यक्ति को सहायता प्रदान की जाती है – यह प्रधानमंत्री के विवेकाधीन कोष है एवं इसका प्रबंध न्यास द्वारा किया जाता है नौकरशाही प्रबंधन द्वारा नहीं – राहत कोष न्यायालय द्वारा पुनर्विलोकन की विषयवस्तु नहीं है – ऐसा अभिकथन नहीं कि राहत कोष कुप्रबंधन के अधीन है या उचित कार्य नहीं कर रहा है या राशि जरूरतमंद व्यक्तियों को नहीं पहुंच रही है – कोष या कोष के कुप्रबंधन के विरुद्ध टीका टिप्पणी लोप की गयी। (सचिव, प्रधान मंत्री राष्ट्रीय राहत कोष वि. गोपाल दास नायक) 1352

fund are expunged. [Secretary, Prime Minister National Relief Fund v. Gopal Das Nayak] ...1352

Constitution, Articles 226/227 - ***Prime Minister National Relief Fund*** *- Interest can be awarded in a case where some debt is payable or amount is legally payable - Interest cannot be awarded where amount is distributed from discretionary fund.* [Secretary, Prime Minister National Relief Fund v. Gopal Das Nayak] ...1352

Constitution, Articles 226, 227 - ***Scope of interference with the findings of Industrial Court*** *- High Court in exercise of its powers under Articles 226 & 227 of Constitution cannot reappreciate the evidence led before Industrial Court and come to a different conclusion - High Court can interfere with the findings of Industrial Court only if it comes to conclusion that Industrial Court has acted beyond its jurisdiction or in violation of principles of natural justice or where there is an error apparent on face of record.* [Asbestos Janata Mazdoor Union v. Eternit Everest Ltd.] ...1905

Constitution, Articles 226/227 - ***Voluntary Retirement*** *- Petitioner applied on 01.09.2005 seeking voluntary retirement w.e.f. 01.12.2005 - Application accepted on 05.10.2006 - Petitioner withdrew the said application on 06.10.2006 - Held - Premature acceptance of application for voluntary retirement would not impede or deny his right to withdraw application before the effective date - He had right to withdraw or revoke it before it became effective - Not allowing the petitioner to withdraw the application for voluntary retirement is wholly illegal and unjustified - Order quashed - Petitioner directed to be reinstated - Petition allowed.* [Mahesh Kumar Swarnakar v. State of M.P.] ...2038

Constitution, Article 233(2), Uchchatar Nyayik Sewa (Bharti Tatha Sewa Shartein) Niyam, M.P., 1994, Rule 7(1)(c) - *Qualification for appointment as District Judge entry level - Whether an Advocate who has put in seven years of practice but has been appointed as Public Prosecutor or Asstt. Public Prosecutor or Asstt. District Public Prosecutor is eligible for appointment as District Judge (Entry Level) by way of Direct recruitment - Held - As per rules framed by Bar Council, a Law Officer of State Govt. is qualified to be admitted as an Advocate if by terms of his appointment, he is required to act and plead in Courts on behalf of State - If person has been enrolled as an advocate and thereafter appointed as P.P. / A.P.P. / A.D.P.P. and by terms of his appointment continues to conduct cases on behalf of State Govt. before Criminal Courts, does not cease to be an Advocate within meaning of Art.233(2) of Constitution and Rule 7(1)(c) of Niyam, 1994.* [Jyoti Gupta (Smt.) v. Registrar General, High Court of M.P.] ...1711

Constitution, Article 309 - ***Conditional appointment order*** *- An employee who accepts appointment on certain terms and conditions, can not*

संविधान, अनुच्छेद 226/227 – प्रधानमंत्री राष्ट्रीय राहत कोष – ब्याज उस मामले में दिया जा सकता है जहां ऋण देय हो या राशि कानूनी तौर पर देय हो – ब्याज नहीं दिलाया जा सकता है जहां राशि विवेकाधीन कोष से वितरित की जाए। (सचिव, प्रधान मंत्री राष्ट्रीय राहत कोष वि. गोपाल दास नायक) 1352

संविधान, अनुच्छेद 226, 227 – औद्योगिक न्यायालय के निष्कर्षों में हस्तक्षेप का विषयक्षेत्र – उच्च न्यायालय संविधान के अनुच्छेद 226 व 227 के अधीन अपनी शक्तियों के प्रयोग में औद्योगिक न्यायालय के समक्ष की साक्ष्य का पुनर्मूल्यांकन नहीं कर सकता और भिन्न निष्कर्ष नहीं दे सकता – उच्च न्यायालय औद्योगिक न्यायालय के निष्कर्षों में हस्तक्षेप केवल तभी कर सकता है यदि वह इस निष्कर्ष पर पहुँचता है कि औद्योगिक न्यायालय ने अपनी अधिकारिता से परे या नैसर्गिक न्याय के सिद्धांतों के उल्लंघन में कार्य किया है या जहाँ कि अभिलेख को देखने से ही कोई त्रुटि प्रकट होती हो। (एसबेस्टास जनता मजदूर यूनियन वि. एटरनिट एवरेस्ट लि.) ...1905

संविधान, अनुच्छेद 226/227 – स्वैच्छिक सेवानिवृत्ति – याची ने स्वैच्छिक सेवानिवृत्ति 01.12.2005 से प्रभावी होना चाहते हुए 01.09.2005 को आवेदन दिया – आवेदन 05.10.2006 को स्वी.त हुआ – याची ने उस आवेदन को 06.10.2006 को वापस लिया – अभिनिर्धारित – स्वैच्छिक सेवानिवृत्ति के आवेदन की समयपूर्व स्वी.ति उसके प्रभावशील होने के दिनांक से पूर्व उसे वापस लेने में न तो बाधक होगी और न उसके अधिकार से इंकार किया जायेगा – उसे प्रभावी होने के पूर्व वापस लेने या रद्द करने का अधिकार है – याची को उसका स्वैच्छिक सेवानिवृत्ति का आवेदन वापस लेने की मंजूरी न देना पूर्णतः अवैध और अनुचित – आदेश अभिखण्डित – याची को सेवा में बहाल करने का निदेश दिया – याचिका मंजूर। (महेश कुमार स्वर्णकार वि. म.प्र. राज्य) ...2038

संविधान, अनुच्छेद 233(2), उच्चतर न्यायिक सेवा (भर्ती तथा सेवा शर्तें) नियम, म.प्र., 1994, नियम 7(1)(सी) – जिला न्यायाधीश (प्रारंभिक स्तर) के रूप में नियुक्ति हेतु योग्यता – क्या एक अधिवक्ता जो सात वर्षों से वकालत के पेशे में हो किन्तु लोक अभियोजक या सहायक लोक अभियोजक या सहायक जिला लोक अभियोजक के रूप में नियुक्त किया गया है, सीधी भर्ती के द्वारा जिला न्यायाधीश (प्रारम्भिक स्तर) के रूप में नियुक्ति के लिये योग्य है – अभिनिर्धारित – अधिवक्ता परिषद् द्वारा विरचित नियमों के अनुसार राज्य सरकार का एक विधि अधिकारी अधिवक्ता के रूप में शामिल करने योग्य है, यदि उसकी नियुक्ति के निबंधनों के द्वारा उससे राज्य की ओर से न्यायालय में वकालत करना अपेक्षित है – यदि व्यक्ति अधिवक्ता के रूप में नामांकित किया गया है एवं उसके बाद वह लोक अभियोजक/सहायक लोक अभियोजक/सहायक जिला लोक अभियोजक के रूप में नियुक्त होता है और उसकी नियुक्ति के निबंधनों द्वारा राज्य सरकार की ओर से दाण्डिक न्यायालयों के समक्ष मामले संचालित करना जारी रखता है, संविधान के अनुच्छेद 233(2) व नियम, 1994 के नियम 7(1)(सी) के अर्थ में अधिवक्ता होना समाप्त नहीं होता है। (ज्योति गुप्ता (श्रीमति) वि. रजिस्ट्रार जनरल, उच्च न्यायालय म.प्र.) ...1711

संविधान, अनुच्छेद 309 – सशर्त नियुक्ति आदेश – कर्मचारी जो नियुक्ति किन्हीं निबन्धन और शर्तों पर स्वीकार करता है, तो वह अपने पक्ष से पलट नहीं सकता है और मानदंड

turn around and claim benefit without fulfilling the criteria, then the same has its own binding - Respondent appointed on a specific stipulation that unless he passes Hindi Typing Examination or completed 40 years of age, whichever is earlier will not be entitled for regularization, unless fulfills conditions laid down in appointment order - Decision in Dongar Singh Pawar's case does not lay down correct proposition of law - Appeal allowed. [State of M.P. v. Vinod Mohan Shrivastava] ...1869

Constitution, Article 309 - ***Grant of benefit of Second Time Bound Promotion - Entitlement*** - *Petitioner not granted the benefit of Second Time Bound Promotion - Learned Single Judge directing for grant of Second Time Bound Promotion to the petitioner - Held - In matter of grant of Time Bound Promotion, the DPC is required to make an over all assessment of performance of each candidate by adopting same standard, yardsticks and norms - Process of assessment is vitiated either on the ground of bias, malafides or arbitrariness - No allegation of malafides or arbitrariness - Not entitled for grant of Second Time Bound Promotion - Appeal allowed.* [State of M.P. v. Subhash Chandra Agrawal] ...1900

Constitution, Article 309, Land Revenue Code, M.P., 1959, Section 104(2) - ***Disciplinary Authority*** - *Petitioner working as Patwari - He was removed from service by Sub Divisional Magistrate after holding departmental enquiry - Held - Collector is the appointing authority and removal of Petitioner by Sub Divisional Magistrate not proper - Notification to that effect issued by State Govt. will not have the effect of damaging substantive Section 104(2) - Petitioner directed to be reinstated with 50% back wages - Competent Authority is free to pass appropriate order in accordance with law - Petition allowed.* [Vinod Kumar Khare v. State of M.P.] ...1436

Constitution, Article 309 - ***Recovery*** - *Respondent worked as Stenographer (Ordinary Grade) till 28.03.95 in Income Tax department - Subsequently appointed as L.D.C. and regularized on the said post - Respondent given pay protection for the post of Stenographer as pay of Stenographer was higher - Subsequently order of pay protection withdrawn and recovery directed to be made from the salary of the respondent - Held - No recovery can be made from the salary as respondent did not misrepresent and actually worked on the post of Stenographer till 28.03.95 - Petition disposed of.* [Union of India v. C. Samuel] ...1619

Constitution, Article 311 - ***Back Wages*** - *D.P.C. kept the recommendations of petitioner for promotion in sealed cover as he was facing criminal trial - Later on, petitioner acquitted for want of evidence - Petitioner given notional promotion with seniority as he was found suitable after opening of sealed cover - Back wages not given on the ground of no work no pay - Held - Respondents have not made any exercise to determine whether petitioner*

को पूरा किये बिना लाभ का दावा नहीं कर सकता, उसकी अपनी स्वयं की बाध्यता है – प्रत्यर्थी की नियुक्ति इस विनिर्दिष्ट अनुबंद्ध पर कि जब तक वह हिन्दी टाइपिंग की परीक्षा पास न कर लेवे या 40 वर्ष की आयु पूर्ण न कर लेवे, इनमें जो भी पूर्व में हो, नियमितीकरण का हकदार नहीं होगा, जब तक नियुक्ति आदेशों की शर्तों को पूर्ण न कर देवे – डोंगर सिंह पवार के मामले में विधि की सही प्रतिपादना नहीं – अपील मंजूर। (म.प्र. राज्य वि. विनोद मोहन श्रीवास्तव) ...1869

संविधान, अनुच्छेद 309 – द्वितीय समयबद्ध पदोन्नति का लाभ देना – हकदारी – याची को द्वितीय समयबद्ध पदोन्नति का लाभ नहीं दिया गया – विद्वान एकल न्यायाधीश ने द्वितीय समयबद्ध पदोन्नति याची को देने के निदेश दिये – अभिनिर्धारित – समयबद्ध पदोन्नति प्रदान करने के मामले में विभागीय पदोन्नति समिति को प्रत्येक उम्मीदवार के कार्य का समग्र मूल्यांकन एक ही मानक, मापदंड एवं प्रमाप अपनाते हुए करना अपेक्षित है – मूल्यांकन की प्रक्रिया पूर्वाग्रह, दुर्भावना, या मनमानेपन के आधार पर दूषित होती है – दुर्भावना या मनमानेपन के आरोप नहीं – द्वितीय समयबद्ध पदोन्नति देने के लिए हकदार नही – अपील मंजूर। (म.प्र. राज्य वि. सुभाष चंद्र अग्रवाल) ...1900

संविधान, अनुच्छेद 309, भू राजस्व संहिता, म.प्र., 1959, धारा 104(2) – अनुशासनात्मक प्राधिकारी – याची पटवारी के रूप में कार्यरत – उसे अनुविभागीय मजिस्ट्रेट ने विभागीय जांच करने के बाद सेवा से हटा दिया – अभिनिर्धारित – कलेक्टर नियुक्ति प्राधिकारी है और याची को अनुविभागीय मजिस्ट्रेट द्वारा सेवा से हटाया जाना उचित नहीं – राज्य सरकार द्वारा इस संबंध में जारी की गई अधिसूचना का प्रभाव सारवान धारा 104 (2) को क्षति नहीं पहुंचायेगा – याची को 50 प्रतिशत पिछले वेतन के साथ सेवा में बहाल किये जाने का निदेश दिया – सक्षम प्राधिकारी विधि के अनुसार यथोचित आदेश पारित करने के लिये स्वतंत्र है – याचिका मंजूर। (विनोद कुमार खरे वि. म.प्र. राज्य) 1436

संविधान, अनुच्छेद 309 – वसूली – प्रत्यर्थी ने आयकर विभाग में आशुलिपिक (साधारण ग्रेड) के रूप में 28.03.95 तक कार्य किया – तत्पश्चात् नि.श्रे.लि. के रूप में नियुक्त हुआ और उस पद पर नियमित हुआ – प्रत्यर्थी को आशुलिपिक पद के वेतन का संरक्षण दिया गया चूंकि आशुलिपिक का वेतन अधिक था – तत्पश्चात् वेतन संरक्षण का आदेश वापस लिया और प्रत्यर्थी के वेतन से वसूली करने के निदेश दिये गये – अभिनिर्धारित – वेतन से कोई वसूली नहीं की जा सकती क्योंकि प्रत्यर्थी ने दुर्व्यपदेशन नहीं किया और आशुलिपिक के पद पर 28.03.95 तक वास्तविक रूप में कार्य किया – याचिका निपटाई गई। (यूनियन आफ इंडिया वि. सी. सेमुअल) 1619

संविधान, अनुच्छेद 311 – पिछला वेतन – डी.पी.सी. ने याची की पदोन्नति की अनुसंशा को बंद लिफाफे में रखा क्योंकि वह दाण्डिक विचारण का सामना कर रहा था – बाद में साक्ष्य के अभाव में याची दोषमुक्त हुआ – याची को कल्पित वरीयता के साथ पदोन्नति प्रदान की गई क्योंकि बंद लिफाफे को खोलने पर वह योग्य पाया गया – काम नहीं तो वेतन नहीं के आधार पर पिछला वेतन नहीं दिया गया – अभिनिर्धारित – प्रत्यर्थियों ने यह अवधारित करने के लिऐ कोई कार्य ही नहीं किया कि निर्णय के आलोक में याची को कम से कम दोषी या पूर्णतः निर्दोष माना जायेगा – याची

in the light of judgment could be said to have been found blameworthy in least or totally unblameworthy - Claim of petitioner could not have been legally declined without assigning any reason - Respondents directed to decide the matter - Petition disposed of. [R.P. Upadhyaya v. State of M.P.] ...1985

Constitution, Article 311 - ***Distinction*** - *Suspension of sentence and conviction - Petitioner convicted U/s 13(1)(d) r/w 13(2) of Prevention of Corruption Act - Sentence suspended in appeal - Show Cause Notice issued as to why he should not be dispensed with service - Notice challenged on the ground that sentence is suspended - Held - There is distinction between suspension of sentence and conviction - Order suspending sentence by no stretch of imagination can be said to be an order of stay of conviction - Issuance of Show Cause Notice cannot be flawed - Appeal dismissed.* [Umashankar Singh v. Union of India) ...1360

Constitution, Articles 311, 226 - ***Departmental Enquiry*** - *Appreciation of Evidence - Not permissible for High Court to re-appreciate the evidence and come to a different conclusion - Re-appreciation of evidence is permissible only when evidence does not establish the conclusion arrived at by authorities or the conclusion is such that no prudent person can arrive at the same.* [Ram Prakash Trademen v. State of M.P.] ...1072

Constitution, Articles 311, 226 - ***Departmental Enquiry*** - *Penalty - Punishment imposed by authorities can be interfered with only if punishment is shown to be so harsh and excessive, it warrants interference as it shocks the conscious of the Court.* [Ram Prakash Trademen v. State of M.P.]...1072

Constitution, Articles 311, 226 - ***Departmental Enquiry***- *Petitioner member of SAF, posted in sensitive area i.e., ATC Tower at Airport Bairagarh - Found in company of a lady in his barrack - Witnesses examined in presence of Petitioner - Petitioner was allowed to cross examine them - Petitioner could not point out any specific irregularity or illegality with regard to manner in which enquiry was conducted - Departmental Enquiry was conducted in accordance with rules after following principles of Natural Justice - Petition dismissed.* [Ram Prakash Trademen v. State of M.P.] ...1072

Constitution, Articles 341,342 - *Cancellation of Caste Certificate - High Power Committee cancelled caste certificate as petitioner does not belong to Halba/Halbi but Kosti community which is a backward Class - Petitioner claimed protection under Milind's Case - Held - Apex Court had extended benefit only to the Doctors who had already carried out their studies and had also obtained degree - Petitioner cannot be given protection by directing employer for not taking any action against petitioner as employment was obtained by submitting a false certificate - Petition dismissed.* [Domudas Dhakate v. State of M.P.] ...1448

Constitution, Estoppel - *Petitioner participated in selection process after understanding the Rules - As he could not secure employment, he cannot*

के दावे को बिना कोई कारण बताये वैध रूप से इंकार नहीं किया जा सकता – प्रत्यर्थियों को मामले का विनिश्चय करने का निदेश दिया – याचिका निपटाई गई। (आर.पी. उपाध्याय वि. म.प्र. राज्य) ...1985

संविधान, अनुच्छेद 311 – अन्तर – दण्डादेश एवं दोषसिद्धि का निलंबन – याची भ्रष्टाचार निवारण अधिनियम की धारा 13 (1) (डी) सहपठित धारा 13 (2) के अधीन दोषसिद्ध – अपील में दण्डादेश का निलंबन – कारण बताओ नोटिस जारी कि क्यों न उसे नौकरी से अभिमुक्त किया जावे – नोटिस को इस आधार पर चुनौती दी कि दण्डादेश निलंबित है – अभिनिर्धारित – दण्डादेश एवं दोषसिद्धि के निलंबन में अंतर है – दण्डादेश निलंबन के आदेश को किसी भी प्रकार दोषसिद्धि को रोकने का आदेश नहीं कहा जा सकता – कारण बताओ नोटिस जारी किया जाना गलत नहीं कहा जा सकता – अपील खारिज। (उमांशंकर सिंह वि. यूनियन ऑफ इण्डिया) ...1360

संविधान, अनुच्छेद 311, 226 – विभागीय जांच – साक्ष्य का विवेचन – उच्च न्यायालय को साक्ष्य का पुर्नविवेचन करके भिन्न निष्कर्ष निकालने की अनुमति नहीं – साक्ष्य के पुर्नविवेचन की अनुमति केवल तभी दी जा सकती है जब प्राधिकारी द्वारा दिया गया निष्कर्ष साक्ष्य से स्थापित नहीं होता है या निष्कर्ष ऐसा है कि कोई भी प्रज्ञावान व्यक्ति ऐसा निष्कर्ष नहीं निकाल सकता। (राम प्रकाश ट्रेडमेन वि. म.प्र. राज्य) ...1072

संविधान, अनुच्छेद 311, 226 – विभागीय जांच – शास्ति – प्राधिकारियों द्वारा आरोपित दण्ड में हस्तक्षेप केवल तभी किया जा सकता है यदि यह दर्शाया जाये कि दण्ड इतना कठोर और अत्यधिक है कि उसमें हस्तक्षेप आवश्यक है क्योंकि वह न्यायालय के अंतःकरण को आघात करता है। (राम प्रकाश ट्रेडमेन वि. म.प्र. राज्य) ...1072

संविधान, अनुच्छेद 311, 226 – विभागीय जांच – याची एस.ए.एफ. का सदस्य, संवेदनशील क्षेत्र अर्थात् बैरागढ़ हवाई अड्डे के ए.टी.सी. टावर पर तैनात – एक महिला के साथ बैरक में पाया गया – याची की उपस्थिति में साक्षियों की परीक्षा की गई – याची को उनके प्रतिपरीक्षण का अवसर दिया गया – याची जिस तरीके से जॉच संचालित की गई थी उस संबंध में कोई विर्निदिष्ट अनियमितता या अवैधता नहीं बता सका – विभागीय जांच नियमों के अनुसार व नैसर्गिक न्याय के सिद्धांतों का पालन करते हुये संचालित की गई थी – याचिका खारिज। (राम प्रकाश ट्रेडमेन वि. म.प्र. राज्य) ...1072

संविधान, अनुच्छेद 341, 342 – जाति प्रमाण पत्र का रद्दकरण – याची का जाति प्रमाण पत्र उच्चाधिकार समिति ने रद्द किया चूंकि वह हल्बा/हल्बी जाति का नहीं था बल्कि कोष्टी समुदाय जो एक पिछड़ा वर्ग है, का है – याची ने मिलिंद के मामले के अंतर्गत संरक्षण का दावा किया – अभिनिर्धारित – उच्चतम न्यायालय ने उन्हीं डॉक्टरों को यह लाभ विस्तारित किया था जिन्होंने अपना अध्ययन पूर्ण कर लिया था और डिग्री प्राप्त कर ली थी – याची ने मिथ्या प्रमाण पत्र प्रस्तुत कर नौकरी प्राप्त की थी अतएव याची को ऐसा संरक्षण नहीं दिया जा सकता है कि उसके नियोक्ता को निदेश दिया जाये कि उसके विरूद्ध कोई कार्यवाही न करे – याचिका खारिज। (दोमूदास धकाटे वि. म.प्र. राज्य) 1448

संविधान, विबन्ध – याची ने नियमों को समझने के बाद चयन प्रक्रिया में भाग लिया – वह रोजगार नहीं पा सका, उसे नियमों की सांविधानिकता को चुनौती देने की अनुमति नहीं दी जा सकती है। (शैलेश कुमार साहू वि. म.प्र. राज्य) ..1138

be allowed to challenge the constitutional validity of Rules. [Shailesh Kumar Sahu v. State of M.P.] ...1138

Consumer Protection Act (68 of 1986), Section 12, Arbitration and Conciliation Act, 1996, Section 11(5) - *Insurance policy - Whether after availing remedy under Consumer Protection Act and having award in her favour respondent can have recourse to proceed under arbitration - Held - State Consumer Grievances Redressal Commission itself has given liberty to respondent to approach for arbitration - Apart from this, writ petition challenging order of appointment of arbitrator was withdrawn by appellant - Therefore, appellant can not be allowed to raise objection about arbitration proceedings - However, since appellant was ex parte before arbitrator - Award set-aside on payment of cost - Appeal allowed.* [Oriental Insurance Co. Ltd. v. Anjali Gupta (Ku.)] ...2075

Cooperative Societies Act, M.P., 1960 (17 of 1961), Section 58-B ***(As amended w.e.f. 05.05.2005)*** - *Petitioner retired on 31.08.06 from the post of Supervisor from Zila Sahkari Kendriya Bank, Tikamgarh - Number of employees including the petitioner found responsible for indulging in misconduct of defalcation - At the instance of Bank RRC issued by Collector against the petitioner - Petitioner has challenged RRC in W.P. - Held - No opportunity of hearing given prior to issuance of RRC as per the provisions of first proviso of Section 58-B - Bank was not entitled to make a request to the Collector for issuance of RRC - Such order shall be passed by the Registrar - RRC issued by the Collector at the request of Bank was without jurisdiction.* [Harcharan Rajpali v. The Collector, Tikamgarh] ...1702

Co-operative Societies Act, M.P., 1960 (17 of 1961), Section 64 - ***Dispute - Alternative Remedy*** - *Election in respect of District Co-operative Krishi Evam Gramin Vikas Bank Shivpuri challenged on the ground that percentage of reservation of delegates is determined to the extent of 90% - Held - Reservation of membership in the election process should not exceed more than 50% - When glaring infirmities are found in the matter of fixation of reservation over and above, the proportionate reservation, writ petition may not be dismissed on the ground of alternative remedy.* [Kalyan Singh v. State of M.P.] ...1406

Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 77 (3)(a) - ***Qualification for appointment as Chairman*** - *Respondent no.2 has worked for more than 5 years as A.D.J. and District Judge - He is qualified to be appointed as Chairman.* [N.K. Saxena v. State of M.P.] ...1144

Cooperative Societies Act, M.P., 1960 (17 of 1961), Section 84-A - *Registrar is competent authority to make request to the Collector for recovery of amount as arrears of land revenue and not the Society - Neither certificate was issued by Registrar nor Registrar had determined or ascertained the amount as recoverable as an arrears of land revenue - Issuance of RRC by the Collector was without jurisdiction.* [Harcharan Rajpali v. The Collector, Tikamgarh] ...1702

उपभोक्ता संरक्षण अधिनियम (1986 का 68), धारा 12, माध्यस्थम् और सुलह अधिनियम, 1996, धारा 11(5) – बीमा पॉलिसी – क्या प्रत्यर्थी उपभोक्ता संरक्षण अधिनियम के अधीन उपचार का उपयोग करने के बाद एवं अपने पक्ष में अवार्ड पारित होने के बावजूद माध्यस्थम् के अधीन कार्यवाही का आश्रय ले सकता है – अभिनिर्धारित – राज्य उपभोक्ता विवाद प्रतितोषण आयोग ने स्वमेव प्रत्यर्थी को माध्यस्थम् को निवेदन करने की स्वतंत्रता दी – इसके अलावा मध्यस्थ की नियुक्ति के आदेश को चुनौती देने वाली रिट याचिका अपीलार्थी द्वारा वापस ले ली गई – इसलिए अपीलार्थी को माध्यस्थम् कार्यवाहियों के बारे में आपत्ति करने की अनुमति नहीं दी जा सकती – तथापि अपीलार्थी मध्यस्थ के समक्ष एकपक्षीय रहा – अवार्ड खर्च संदाय करने पर अपास्त – अपील मंजूर। (ओरिएन्टल इंश्योरेन्स कंपनी लि. वि. अंजली गुप्ता (कु.)) ...2075

सहकारी समितियाँ अधिनियम, म.प्र., 1960 (1961 का 17), धारा 58–बी (05.05.2005 से यथासंशोधित) – याची जिला सहकारी केन्द्रीय बैंक, टीकमगढ़ से पर्यवेक्षक के पद से 31.08.06 को सेवानिवृत्त हुआ – याची सहित काफी संख्या में कर्मचारी गबन के दुराचरण में निरत होने के लिये उत्तरदायी पाये गये – बैंक के प्रेरण पर कलेक्टर द्वारा याची के विरुद्ध आरआरसी जारी की गई – याची ने आरआरसी को रिट याचिका में चुनौती दी है – अभिनिर्धारित – धारा 58–बी के प्रथम परन्तुक के उपबंध के अनुरूप आरआरसी जारी करने के पूर्व सुनवाई का कोई अवसर प्रदान नहीं किया गया – बैंक आरआरसी जारी कराने के लिये कलेक्टर से अनुरोध करने की हकदार नहीं थी – ऐसा आदेश रजिस्ट्रार द्वारा पारित किया जायेगा – बैंक के अनुरोध पर कलेक्टर द्वारा जारी की गई आरआरसी अधिकारिता विहीन थी। (हरचरण राजपाली वि. द कलेक्टर, टीकमगढ़) ...1702

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – विवाद – वैकल्पिक उपचार – जिला सहकारी कृषि एवं ग्रामीण विकास बैंक शिवपुरी, से संबंधित चुनाव को इस आधार पर चुनौती दी कि प्रतिनिधियों के आरक्षण का प्रतिशत बढाकर 90% निर्धारित किया – अभिनिर्धारित – चुनाव प्रकिया में सदस्यों का आरक्षण 50 % से अधिक नहीं होना चाहिए – अनुपातिक आरक्षण तय करने के मामले में जब आरक्षण अधिक तय करने की प्रत्यक्ष त्रुटियाँ पाई जायें, तो वैकल्पिक उपचार है, इस आधार पर रिट याचिका खारिज नहीं की जा सकती है। (कल्याण सिंह वि. म.प्र. राज्य) 1406

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 77 (3)(अ) – अध्यक्ष की नियुक्ति के लिये अर्हता – प्रत्यर्थी क्रमांक 2 ने 5 वर्ष से अधिक समय तक अपर जिला न्यायाधीश व जिला न्यायाधीश के पद पर कार्य किया – वह अध्यक्ष नियुक्त किये जाने की अर्हता रखता है। (एन.के. सक्सेना वि. म.प्र. राज्य) ...1144

सहकारी समितियाँ अधिनियम, म.प्र., 1960 (1961 का 17), धारा 84–ए – भू राजस्व की बकाया के तौर पर राशि की वसूली करने के लिये कलेक्टर से अनुरोध करने को रजिस्ट्रार सक्षम प्राधिकारी है न कि सोसायटी – न तो रजिस्ट्रार द्वारा प्रमाण–पत्र जारी किया गया और न रजिस्ट्रार ने भू–राजस्व के तौर पर वसूली योग्य राशि अवधारित या अभिनिश्चित की थी – कलेक्टर द्वारा आरआरसी जारी करना अधिकारिता विहीन था। (हरचरण राजपाली वि. द कलेक्टर, टीकमगढ़) ...1702

Criminal Law Amendment Ordinance, 1944 - Sections 3, 4 - *Attachment of Property - District Judge - Special Judge has passed ad-interim order U/s 4 of Ordinance for attaching the property - No charge sheet was filed before Special Judge - Held - Special Judge is empowered with the powers of District Judge under the Ordinance of 1944 only when the said Court is trying the offence punishable under Prevention of Corruption Act - No charge sheet was filed when impugned order of attachment was passed - Order passed by Special Judge without jurisdiction - Appeal allowed.* [V.K. Brahamankar v. Special Police Establishment] ...1511

Criminal Procedure Code, 1973 (2 of 1974), Section 91 - *Production of documents - Court must see that apart from necessity, desirability is also one of the two factors.* [Map Auto Ltd. v. Anil Kumar Jain] ...*34

Criminal Procedure Code, 1973 (2 of 1974) - Section 125 - *Delay cannot be as a bar in filing of the application for maintenance - Both the parties have not filed any case for divorce which makes it apparent that the pit fall of their marriage lies in clash of egos - Its also explains the inordinate delay of 25 years in filing of application for maintenance - Application allowed.* [Shobha v. Krushnakant Pandya] ...1299

Criminal Procedure Code, 1973 (2 of 1974) - Section 125 - *Maintenance - Merely denying the claim on hyper technical grounds would be taking undue advantage of the provisions of law to twist the beneficial aspects of S. 125 of the Code.* [Shobha v. Krushnakant Pandya] ...1299

Criminal Procedure Code, 1973 (2 of 1974), Section 125, *Muslim Women (Protection of Rights on Divorce) Act, 1986* - *Claim for maintenance by Muslim women who is not divorced - Held - Application for maintenance by such Muslim women is maintainable - Revision allowed.* [Jumana Bai v. Mushtaq Ali] ...1839

Criminal Procedure Code, 1973 (2 of 1974) - Section 125 (4) - *Wife stated before the court that she was willing to reside with her Husband - Husband refused to take her back, stating that since he had been living alone for more than 25 years - He was no longer interested in taking her back - Trial Court's conclusion that wife was not willing to reside with her husband without just cause - Finding is incomprehensible.* [Shobha v. Krushnakant Pandya] ...1299

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *Contradiction about lodging of F.I.R. - Effect of such contradiction has to be viewed in light of facts and circumstances of each case - In some cases it may prove fatal whereas in some cases it may not have the same effect.* [State of M.P. v. Gopal Singh] ...1265

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *F.I.R. - Cryptic and anonymous oral message, which did not in terms, specify cognizable offence cannot be treated as F.I.R.* [State of M.P. v. Gopal Singh] ...1265

दण्ड विधि संशोधन अध्यादेश, 1944 – धारा 3, 4 – संपत्ति की कुर्की – जिला न्यायाधीश – विशेष न्यायाधीश ने अध्यादेश की धारा 4 के अधीन सम्पत्ति को कुर्क करने का अंतरिम आदेश पारित किया – विशेष न्यायाधीश के समक्ष आरोप पत्र पेश नहीं था – अभिनिर्धारित – विशेष न्यायाधीश को 1944 के अध्यादेश के अधीन जिला न्यायाधीश के अधिकार सिर्फ तब प्राप्त होते हैं जब वह न्यायालय भ्रष्टाचार निवारण अधिनियम के अधीन दण्डनीय अपराध का विचारण कर रहा हो – कोई आरोप पत्र पेश नहीं था जब कुर्की का आक्षेपित आदेश पारित किया था – विशेष न्यायाधीश द्वारा बिना अधिकारिता के आदेश पारित – अपील मंजूर। (ही.के. ब्राह्मणकर वि. स्पेशल पुलिस एस्टेब्लिशमेंट) 1511

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 91 – दस्तावेजों का पेश किया जाना – न्यायालय को यह देखना चाहिये कि आवश्यकता के अलावा, वांछनीयता भी दो कारकों में से एक है। (मेप आटो लिमि. वि. अनिल कुमार जैन) ---*34

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – धारा 125 – भरण–पोषण का आवेदन प्रस्तुत करने में विलंब बाधा नहीं बन सकता है – दोनों पक्षों ने विवाह विच्छेद के लिये कोई मामला प्रस्तुत नहीं किया इससे स्पष्ट है कि उनके विवाह का अंत अहम के टकराव में है – यह भरण–पोषण का आवेदन पेश करने में हुये 25 वर्ष के असाधारण विलंब को भी स्पष्ट करता है – आवेदन मंजूर। (शोभा वि. कृष्णकांत पंड्या) ...1299

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – धारा 125 – भरण–पोषण – केवल तकनीकी आधारों पर दावे से इंकार करना विधि के उपबन्धों का अवांछित लाभ लेते हुये संहिता की धारा 125 के लाभदायक पहलुओं को विकृत करना होगा। (शोभा वि. कृष्णकांत पंड्या) ...1299

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125, मुस्लिम महिला (विवाह विच्छेद पर अधिकारों का संरक्षण) अधिनियम, 1986 – मुस्लिम महिला द्वारा भरण–पोषण के लिए दावा जिसका विवाह विच्छेद नहीं हुआ है – अभिनिर्धारित – ऐसी मुस्लिम महिला द्वारा भरण–पोषण का आवेदन पोषणीय है – पुनरीक्षण मंजूर। (जुमाना बाई वि. मुश्ताक अली) ...1839

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – धारा 125(4) – पत्नी ने न्यायालय के समक्ष कहा कि वह पति के साथ रहने के लिये रजामंद थी – पति ने उसे वापस ले जाने से इंकार किया कि वह पिछले 25 वर्ष से अधिक समय से अकेला रह रहा था – वह उसे वापस ले जाने में कोई रूचि नही रखता था – विचारण न्यायालय का यह निष्कर्ष कि पत्नी बिना किसी कारण के अपने पति के साथ नहीं रहना चाहती थी – निष्कर्ष बोधगम्य नहीं है। (शोभा वि. कृष्णकांत पंड्या) ...1299

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना रिपोर्ट दर्ज करवाने के बारे में – अंतर्विरोध – ऐसे अंतर्विरोध का प्रभाव प्रत्येक मामले के तथ्यों एवं परिस्थितियों के आलोक में देखा जाना चाहिये – किसी मामले में यह घातक सिद्ध हो सकता है जबकि किसी मामले में ऐसा प्रभाव नहीं हो सकता है। (म.प्र. राज्य वि. गोपाल सिंह) ...1265

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना रिपोर्ट – गुप्त और अनाम मौखिक संदेश जिसके शब्दों से विनिर्दिष्ट संज्ञेय अपराध होना प्रकट न होता हो, प्रथम सूचना रिपोर्ट नहीं माना जा सकता है। (म.प्र. राज्य वि. गोपाल सिंह) ...1265

Criminal Procedure Code, 1973 (2 of 1974), Section 154 - *Two F.I.R.s - First report discloses that husband is pressurising to sign blank papers - Second report discloses as to how husband and his relatives demanded dowry and how she was harassed - If certain facts constituting the offence were not disclosed at the first available opportunity - On this ground proceedings can not be quashed.* [Shakuntala Sharma v. State of M.P.] ...1320

Criminal Procedure Code, 1973 (2 of 1974), Sections 161 & 162 - *Statement recorded u/s. 161 of Code cannot be used for impeaching the credibility of defence witness - Even when defence witness was initially a prosecution witness and prosecution did not choose to examine such witness.* [Manoj v. State of M.P.] ...2093

Criminal Procedure Code, 1973 (2 of 1974), Section 167(2) - *Compulsive release - Application for grant of bail filed after expiry of 90 days - Application not decided on the same day - Charge sheet filed on the following day - Application rejected by the Trial Court - A.S.J. rejected the revision - Held - Applicant's right would have been extinguished only in case if he failed to furnish bail - As no bail order was passed on the same day, therefore, applicant is entitled to be released - Application allowed.* [Mahesh v. State of M.P.] ...*46

Criminal Procedure Code, 1973 (2 of 1974), Sections 173, 482 - *Further investigation - Quashing of proceedings - Charge-sheet filed against applicant before Special Judge returned back for presentation before the Court of Special Magistrate - Fresh Charge-sheet filed after recording statements of discharged accused persons as witnesses - Held - C.B.I. could have conducted further investigation only with due permission of Court - However, merely because C.B.I. had conducted further investigation without prior permission, it would not be sufficient to vitiate cognizance unless it is shown that such an investigation has caused any prejudice to applicants or had resulted in miscarriage of justice - Petition dismissed.* [Shamsher Singh Mangat (Lt. Col.) v. State of M.P.] ...2141

Criminal Procedure Code, 1973 (2 of 1974), Section 174 - *Inquest Report - Scope of Section 174 is limited in scope and is confined to the ascertainment of apparent cause of death - Details of overt act are not necessary to be recorded in inquest report.* [State of M.P. v. Gopal Singh]...1265

Criminal Procedure Code, 1973 (2 of 1974), Sections 190, 319 - *Charge-sheet has been filed before Magistrate for the offences exclusively triable by Court of Sessions - Application u/Ss. 190, 319(2) Cr.P.C. filed before Magistrate for proceeding against applicants - On the basis of enquiry Magistrate took cognizance against applicants - Held - Case instituted on police report which is exclusively triable by Court of Sessions, Magistrate has no option but to commit the case for trial or to order for further*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – दो प्रथम सूचना रिपोर्ट – प्रथम रिपोर्ट से यह प्रगट होता है कि पति कोरे कागजों पर हस्ताक्षर करने के लिये दबाव डाल रहा है – दूसरी रिपोर्ट से प्रगट होता है कि किस तरह पति और उसके रिश्तेदारों ने दहेज की मांग की और कैसे उसे परेशान किया गया था – यदि कुछ तथ्य जो अपराध के गठित होने के बारे में प्रथम उपलब्ध अवसर पर प्रगट नहीं किये गये – इस आधार पर कार्यवाही को अभिखण्डित नहीं किया जा सकता है। (शकुन्तला शर्मा वि. म.प्र. राज्य) ...1320

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 161 व 162 – संहिता की धारा 161 के अधीन अभिलिखित कथन प्रतिरक्षा साक्षी की विश्वसनीयता को अधिक्षेपित करने के लिए प्रयुक्त नहीं किया जा सकता – जबकि प्रतिरक्षा साक्षी प्रारम्भ में अभियोजन साक्षी था और अभियोजन ने ऐसे साक्षी का परीक्षण नहीं कराया। (मनोज वि. म.प्र. राज्य) ...2093

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167 (2) – बाध्यकारी जमानत – जमानत आवेदन 90 दिन की समाप्ति के बाद पेश – आवेदन पर आदेश उसी दिन नहीं दिया – आरोप पत्र अगले दिन पेश – विचारण न्यायालय द्वारा आवेदन निरस्त – अपर सेशन न्यायाधीश ने पुनरीक्षण निरस्त की – अभिनिर्धारित – आवेदक का अधिकार सिर्फ उस दशा में समाप्त हो सकता है यदि वह जमानत प्रस्तुत करने में असफल रहता है – जमानत के आवेदन पर उसी दिन कोई आदेश पारित नहीं किया, इसलिये आवेदक जमानत पर छूटने का अधिकारी है – आवेदन मंजूर। (महेश वि. म.प्र. राज्य) ---*46

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173, 482 – अतिरिक्त अन्वेषण – कार्यवाहियों का अभिखंडित किया जाना – विशेष न्यायाधीश के समक्ष आवेदक के विरुद्ध पेश आरोप–पत्र विशेष मजिस्ट्रेट के न्यायालय के समक्ष प्रस्तुति हेतु वापस किया गया – उन्मोचित अभियुक्त व्यक्तियों के साक्षी के रूप में बयान अभिलिखित करने के बाद नया आरोप–पत्र पेश – अभिनिर्धारित – न्यायालय की सम्यक् अनुमति से ही सी.बी.आई. अतिरिक्त अन्वेषण संचालित कर सकती थी – तथापि मात्र इसलिए कि सी.बी.आई. ने पूर्व अनुमति के बिना अतिरिक्त अन्वेषण संचालित किया था, यह संज्ञान को दूषित करने के लिए पर्याप्त नहीं होगा यदि यह दर्शित नहीं किया जाता है कि ऐसे अन्वेषण ने आवेदकों को कोई प्रतिकूल प्रभाव कारित किया है या परिणामस्वरूप न्याय की विफलता हुई है – याचिका खारिज। (शमशेर सिंह मंगत (ले. कर्नल) वि. म.प्र. राज्य) ...2141

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 – मृत्यु समीक्षा रिपोर्ट – धारा 174 का विषय क्षेत्र सीमित है और मृत्यु के दृश्यमान कारण अभिनिश्चय तक सीमित है – मृत्यु समीक्षा रिपोर्ट में प्रकट कृत्य (ओवर्ट एक्ट) के ब्यौरे अभिलिखित करना आवश्यक नहीं। (म.प्र. राज्य वि. गोपाल सिंह) ...1265

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190, 319 – मजिस्ट्रेट के समक्ष अनन्यतः सेशन न्यायालय के विचारण योग्य अपराधों के लिए आरोप–पत्र पेश – मजिस्ट्रेट के समक्ष आवेदकों के विरुद्ध कार्यवाही करने के लिए द.प्र.सं. की धारा 190, 319(2) के अन्तर्गत आवेदन पेश – जांच के आधार पर मजिस्ट्रेट ने आवेदकों के विरुद्ध संज्ञान लिया – अभिनिर्धारित – पुलिस रिपोर्ट पर संस्थित मामला जो अनन्यतः सेशन न्यायालय द्वारा विचारण योग्य है, में मजिस्ट्रेट, मामला विचारण हेतु सुपुर्द करे या पुनः अनुसंधान का आदेश

investigation - Holding of any enquiry by Magistrate not provided - Order taking cognizance set aside - Petition allowed. [Mangilal v. State] ...1549

Criminal Procedure Code, 1973 (2 of 1974), Section 193 - *Cognizance of Offences by Sessions Court - Committal proceedings before Special Court are mandatory - Proceedings cannot be quashed in those cases where charge sheet was filed directly before Special Court in view of judgment passed in Anand Swaroop Tiwari unless occasioned failure of justice.* [Bhagwan Singh v. State of M.P.] ...1514

Criminal Procedure Code, 1973 (2 of 1974), Section 197 - ***Sanction for prosecution*** - *Applicant working as Sarpanch - Money was allotted for carrying out certain works - Neither work was completed nor money was refunded - Held - Proceedings would not be vitiated on account of non compliance of Section 197 when there are grave charges of corruption and mis-appropriation involved.* [Prahladsingh v. State of M.P.] ...1287

Criminal Procedure Code, 1973 (2 of 1974), Section 200 - *Complaint filed against applicants alleging that departmental enquiry was initiated against him on false allegations and he was dismissed from service - Held - Non-applicant No.1 failed to establish that how the departmental enquiry was initiated on false allegations and that too with an ulterior motive - Taking of cognizance illegal and erroneous - Petition allowed.* [Saubir Bhattacharya v. Jai Prakash Kori] ...1849

Criminal Procedure Code, 1973 (2 of 1974), Section 200 - ***Complaint*** *- It is the duty of Magistrate to see as to whether criminal complaint is filed in proper form and whether any person has been made accused improperly or illegally.* [Saubir Bhattacharya v. Jai Prakash Kori] ...1849

Criminal Procedure Code, 1973 (2 of 1974), Section 200 - ***Statement of complainant*** - *Statement of complainant recorded and case was adjourned for recording of statement of remaining evidence of complainant - Statement of complainant recorded for the second time on subsequent dates - Recording of second statement of complainant with an intention to fill up lacunas not proper.* [Saubir Bhattacharya v. Jai Prakash Kori] ...1849

Criminal Procedure Code, 1973 (2 of 1974), Sections 200, 202 - ***Postponement of issue of process*** - *Trial Magistrate recorded the statement of complainant and postponed the case for recording of evidence of remaining witnesses - On next date complainant expressed that he doesnot want to examine any other witness - Trial Court after considering the allegations made in complaint and the statement issued process against applicants - Held - It cannot be said that Trial Court committed any illegality or irregularity.* [LML Limited v. Kailash Narain Rai] ...*33

Criminal Procedure Code, 1973 (2 of 1974), Section 204 - ***Issue of Process*** - *Issuance of process is not interlocutory order - Petitioners have efficacious alternative remedy. [LML Limited v. Kailash Narain Rai]* ...*33

देवे, अन्य विकल्प नहीं – मजिस्ट्रेट द्वारा जांच करने का कोई उपबंध नहीं – संज्ञान लेने का आदेश अपास्त – याचिका मंजूर। (मांगीलाल वि. राज्य) 1549

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 193 – अपराधों का सेशन न्यायालय द्वारा संज्ञान – विशेष न्यायालय के समक्ष मामला सुपुर्दगी की कार्यवाही आज्ञापक है – आनन्द स्वरूप तिवारी वाले मामले में पारित निर्णय को ध्यान में रखकर उन मामलों में कार्यवाही अभिखण्डित नहीं की जा सकती है जहाँ आरोप पत्र सीधे विशेष न्यायालय में पेश किया गया हो जब तक कि न्याय की निष्फलता न हुई हो। (भगवान सिंह वि. म.प्र. राज्य) 1514

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – अभियोजन के लिये मंजूरी – आवेदक सरपंच के रूप में कार्यरत – निश्चित निर्माण के लिये धन आवंटित किया गया – न तो कार्य पूरा किया और न ही धन वापस लौटाया – अभिनिर्धारित – जब भ्रष्टाचार और दुर्विनियोग में अंतर्ग्रस्त होने के गंभीर आरोप हों, कार्यवाही इस आधार पर निष्फल नहीं हो जायेगी कि धारा 197 का अनुपालन नहीं किया गया। (प्रहलाद सिंह वि. म.प्र. राज्य) ...1287

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 – आवेदकगण के विरुद्ध यह अभिकथित करते हुए परिवाद प्रस्तुत किया गया कि उसके विरुद्ध मिथ्या अभिकथनों पर विभागीय जाँच प्रारम्भ कर दी गई और उसे सेवा से बर्खास्त कर दिया गया – अभिनिर्धारित – अनावेदक क्रमांक 1 यह स्थापित करने में असफल रहा कि कैसे विभागीय जाँच झूठे अभिकथनों और अंतरस्थ हेतु से प्रारम्भ की गई – संज्ञान लेना अवैध एवं त्रुटिपूर्ण – याचिका मंजूर। (सुबीर भट्टाचार्य वि. जय प्रकाश कोरी) ...1849

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 – परिवाद – मजिस्ट्रेट का कर्तव्य है कि यह देखे कि क्या दाण्डिक परिवाद उचित प्ररूप में प्रस्तुत किया गया है और क्या किसी व्यक्ति को अनुचित या अवैध रूप से अभियुक्त बनाया गया है। (सुबीर भट्टाचार्य वि. जय प्रकाश कोरी) ...1849

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 – परिवादी का कथन – परिवादी के कथन अभिलिखित किये गये और मामला परिवादी के शेष साक्षियों के कथन अभिलिखित करने के लिए स्थगित किया गया – पश्चात्वर्ती तारीख को दूसरी बार परिवादी के कथन अभिलिखित किये गये – कमियों को पूरा करने के आशय से परिवादी के दुबारा कथन अभिलिखित करना उचित नहीं। (सुबीर भट्टाचार्य वि. जय प्रकाश कोरी) ...1849

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारायें 200, 202 – आदेशिका के जारी किये जाने को मुल्तवी करना – विचारण मजिस्ट्रेट ने परिवादी का कथन अभिलिखित किया और शेष साक्षियों के कथन हेतु मामला मुल्तवी किया – अगली तारीख पर परिवादी ने व्यक्त किया कि वह किसी अन्य साक्षी की परीक्षा नहीं करना चाहता है – विचारण न्यायालय ने परिवाद में किये अभिकथनों और कथन पर विचार करने के बाद आवेदकों के विरुद्ध आदेशिका जारी की – अभिनिर्धारित – यह नहीं कहा जा सकता है कि विचारण न्यायालय ने कोई अवैधता या अनियमितता की। (एल.एम.एल लिमि. वि. कैलाश नारायण राय) ---*33

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 204 – आदेशिका जारी करना – आदेशिका जारी करने का आदेश अर्न्तवर्ती आदेश नहीं है – याचियों के पास प्रभावकारी वैकल्पिक

Criminal Procedure Code, 1973 (2 of 1974), Sections 211,222 - Minor Offence - Offence punishable U/s 307 of I.P.C. is not minor offence of 302 of I.P.C. - Accused cannot be convicted U/s 307 of I.P.C. in absence of charge. [Dulichand v. State of M.P.] ...*31

Criminal Procedure Code, 1973 (2 of 1974), Sections 216, 397 - *Interlocutory Order - Alteration of Charge - Prosecution filed application under Section 216 of Code for framing additional charges - Trial Court fixed the case for evidence without deciding application - Revisional Court directed Trial Court to decide the application - Held - Orders which are matters of moment and some affect or adjudicate rights of accused or a particular aspect of trial cannot be said to be interlocutory order - Revision maintainable.* [Sovran Singh v. State of M.P.] ...1527

Criminal Procedure Code, 1973 (2 of 1974), Section 227 - *Discharge of accused - Charge sheet was filed against complainant on a report lodged by bank officials - Complainant was discharged - Held - Mere discharge is not sufficient to make out a case - It has to be shown through oral evidence supported by documentary evidence that how the report was false - Complainant failed to establish prima facie that he was discharged by Court after coming to conclusion that report was false.* [Saubir Bhattacharya v. Jai Prakash Kori] ...1849

Criminal Procedure Code, 1973 (2 of 1974), Sections 233, 312 - *Expenses of defence witnesses - Sessions Trial - Discretion to direct State Govt. to make payment of expenses of defence witness is vested in the Court which has to be exercised judiciously - Rejection of prayer for such direction by Trial Court is perfectly justified - No interference called for - Revision dismissed.* [Nandlal v. State of Maharashtra] ...1292

Criminal Procedure Code, 1973 (2 of 1974) - Section 243 - *Defence Witnesses - Fair Trial - Includes Fair and proper opportunities allowed by law to prove innocence - Request for leading defence evidence should be considered unless Magistrate finds the object of accused is to vexatious or delaying criminal proceedings - Accused is permitted to call defence witness.* [Narendra Dhakad v. Anand Kumar] ...1309

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - *Recalling of witness - Witness who was examined in-Chief and cross examined fully, cannot be recalled and re-examined to deny evidence which he had already given before Court - Jurisdiction vested in Court must be exercised judicially and not capriciously or arbitrarily.* [Suo Motu Revision State of M.P. v. Vinod Mudgal] ...1817

Criminal Procedure Code, 1973 (2 of 1974) - Section 313 - *Examination of accused - Is not a mere formality - Court is required to put proper question to accused relating to material which is against interest of accused and seek explanation of accused.* [Bhoorelal v. State of M.P.]...1229

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारायें 211,. 222 – छोटा अपराध – भा.द.सं. की धारा 307 के अन्तर्गत दंडनीय अपराध, भा.दं.सं. की धारा 302 के अपराध का छोटा अपराध नहीं है – अभियुक्त को भा.दं.सं. की धारा 307 के आरोप के अभाव में दोषसिद्ध नहीं किया जा सकता है। (दुलीचंद वि. म.प्र. राज्य) ---*31

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216,397 – अन्तर्वर्ती आदेश – आरोप में परिवर्तन – अभियोजन ने अतिरिक्त आरोप विरचित करने के लिए संहिता की धारा 216 के अंतर्गत आवेदन प्रस्तुत किया – विचारण न्यायालय ने आवेदन को विनिश्चय किये बिना मामला साक्ष्य के लिये नियत किया – पुनरीक्षण न्यायालय ने विचारण न्यायालय को आवेदन का विनिश्चय करने का निदेश दिया – अभिनिर्धारित – आदेश जो महत्वपूर्ण विषयों पर है और अभियुक्त के अधिकार का न्याय–निर्णय करते हैं या उनको किसी तरह प्रभावित करते हैं या विचारण के किसी विशिष्ट पहलू पर है तो ऐसे आदेशों को अन्तर्वर्ती आदेश नहीं कहा जा सकता है – पुनरीक्षण पोषणीय। (सोवरन सिंह वि. म.प्र. राज्य) 1527

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – अभियुक्त का उन्मोचन – बैंक पदाधिकारियों द्वारा दर्ज रिपोर्ट पर परिवादी के विरुद्ध आरोप–पत्र पेश किया गया – परिवादी उन्मोचित – अभिनिर्धारित – केवल उन्मोचन मामला बनाने के लिए पर्याप्त नही – दस्तावेजी साक्ष्य से समर्थित मौखिक साक्ष्य द्वारा यह दर्शित करना होता है कि रिपोर्ट कैसे गलत थी – परिवादी प्रथम दृष्ट्या स्थापित करने में असफल रहा कि न्यायालय द्वारा इस निष्कर्ष पर पहुंचने के बाद कि रिपोर्ट झूठी थी उसे उन्मोचित किया गया। (सुबीर भट्टाचार्य वि. जय प्रकाश कोरी) ...1849

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 233, 312 – प्रतिरक्षा साक्षियों का खर्च – सेशन मामला – प्रतिरक्षा साक्षियों के खर्चे का भुगतान राज्य सरकार द्वारा किये जाने का निदेश देने का स्वविवेक न्यायालय में निहित है जिसका प्रयोग विवेकानुसार करना चाहिये – विचारण न्यायालय द्वारा ऐसा निदेश जारी किये जाने का निवेदन निरस्त करना पूर्णतः न्यायोचित – कोई हस्तक्षेप किया जाना अनावश्यक – पुनरीक्षण खारिज। (नंदलाल वि. महाराष्ट्र राज्य) ...1292

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – धारा 243 – प्रतिरक्षा साक्षी – निष्पक्ष विचारण में निर्दोषिता साबित करने के लिये विधि द्वारा अनुज्ञात निष्पक्ष व उचित अवसर की अनुज्ञा शामिल है – प्रतिरक्षा साक्ष्य पेश करने के निवेदन पर विचार करना चाहिये जब तक कि मजिस्ट्रेट यह नहीं पाये कि अभियुक्त का उद्देश्य तंग करने वाला या दाण्डिक कार्यवाही को विलंबित करने वाला है – अभियुक्त को प्रतिरक्षा साक्षी बुलाये जाने की अनुमति दी गई। (नरेन्द्र धाकड़ वि. आनंद कुमार) ...1309

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – साक्षी को पुनः बुलाना – जिस साक्षी का मुख्य परीक्षण एवं प्रति परीक्षण पूर्ण हो चुका हो, उसे पुनः परीक्षण के लिये नहीं बुलाया जा सकता है कि वह उसके द्वारा पूर्व में न्यायालय में दी गई साक्ष्य से इंकार करे – न्यायालय को निहित अधिकारिता का प्रयोग न्याय सम्मत करना चाहिए ना कि अनुचित या मनमाने तरीके से। (सू मोटो रीविजन म.प्र. राज्य वि. विनोद मुदगल) ...1817

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – अभियुक्त की परीक्षा – केवल एक औपचारिकता नहीं है – न्यायालय से यह अपेक्षित है कि अभियुक्त के हित के विरूद्ध जो सामग्री है उसके संबंध में उचित प्रश्न अभियुक्त से पूछे जायें और अभियुक्त से उसका स्पष्टीकरण लिया जाये। (भूरेलाला वि. म.प्र. राज्य) ...1229

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - *Power to proceed against other persons appearing to be guilty of offence - Public document or document of prosecution, filed along with charge sheet, can be considered at the time of taking cognizance against new person U/s 319.* [Subhash Chandra Jain v. State of M.P.] ...*53

Criminal Procedure Code, 1973 (2 of 1974), Section 320 - **See** - *Penal Code, India 1860, Section 394,* [Bharat Singh v. State of M.P.] ...2126

Criminal Procedure Code, 1973 (2 of 1974), Section 321 - *Withdrawal from prosecution - Cross cases pending in one Court - One party facing trial U/s 325 and another U/s 326 of I.P.C. - Withdrawal of one case cannot be said to be in public interest or in the interest of justice - Compelling one party to face trial and giving benefit to other party ought not to be allowed - Order permitting withdrawal from prosecution set aside - Petition allowed.* [Ramnaresh v. Arjun] ...*50

Criminal Procedure Code, 1973 (2 of 1974), Section 386 - **See** - *Penal Code 1860, Section 324,* [Bhure Singh v. State of M.P.] ...*42

Criminal Procedure Code, 1973 (2 of 1974), Section 391 - *Additional evidence - The nomination order is a material document - Appellate Court cannot refuse to take additional evidence on the grounds that - At the initial stage the partner of a firm who was wrongly prosecuted, did not mentioned the fact of nomination and - If such Additional evidence is taken on record at appellate stage trial will start denovo.* [Hindustan Food Products India v. State of M.P.] ...1313

Criminal Procedure Code, 1973 (2 of 1974), Section 395 - *Reference to High Court - Whether Special Court constituted under M.P. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 is empowered to try the offence punishable under Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Police filed one charge sheet for the trial of offences under the Adhiniyam 1981 and the Act 1989 - Held - Special Court constituted under one Act cannot try the cases of other Acts for which other Special Court has been constituted - Reference answered accordingly.* [In Reference v. Radhakrishna] ...1562

Criminal Procedure Code, 1973 (2 of 1974), Sections 397, 401 - *Appellants were tried for offence u/s. 302/34 - Convicted by Trial Court u/s. 323/34 - State did not file appeal - High Court in revision filed by complainant appreciated the evidence and remanded case back to pass judgment - Held - High Court should have kept in mind that while exercising its revisional jurisdiction, it exercises a limited power - Judgment of High Court demonstrates that in effect and substance the finding of trial court has been reversed - Trial Court would be bound by observations made in Judgment, and have no option but to convict appellants - High Court has exceeded its jurisdiction - Appeal Allowed.* [Johar v. Mangal Prasad] ...1333

Criminal Procedure Code, 1973 (2 of 1974), Sections 397, 401 - ***Revision - Interlocutory order*** - *Charge Sheet filed u/Ss. 304 & 201 I.P.C.-*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अपराध के दोषी प्रतीत होने वाले अन्य व्यक्तियों के विरूद्ध कार्यवाही करने की शक्ति – धारा 319 के अधीन नये व्यक्ति के विरूद्ध संज्ञान लेते समय आरोप पत्र के साथ प्रस्तुत लोक दस्तावेज या अभियोजन के दस्तावेज पर विचार किया जा सकता है। (सुभाष चन्द्र जैन वि. म.प्र. राज्य) ----*53

दण्ड प्रकिया संहिता, 1973 (1974 का 2), धारा 320 – देखें – दण्ड संहिता, 1860, धारा 394, (भूरे सिंह वि. म.प्र. राज्य) ---2126

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321 – अभियोजन का वापस लेना – प्रतिदावों का एक न्यायालय में लंबित होना – एक पक्षकार भा.दं.सं. की धारा 325 के विचारण का और दूसरा पक्षकार भा.दं.सं. की धारा 326 के विचारण का सामना कर रहा है – एक मामले में अभियोजन को वापस लेना लोकहित या न्यायहित में नहीं कहा जा सकता है – एक पक्षकार को विचारण का सामना करने के लिए बाध्य करते हुए दूसरे पक्षकार को लाभ देना मंजूर नहीं किया जाना चाहिये – अभियोजन वापस लिये जाने की अनुमति का आदेश अपास्त – याचिका मंजूर। (रामनरेश वि. अर्जुन) ...*50

दण्ड प्रकिया संहिता, 1973 (1974 का 2), धारा 386 – देखें – दण्ड संहिता, 1860, धारा 324, (भूरे सिंह वि. म.प्र. राज्य) ---*42

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 391 – अतिरिक्त साक्ष्य – नाम निर्देशन का आदेश एक तात्विक दस्तावेज है – अपील न्यायालय अतिरिक्त साक्ष्य को इस आधार पर लेने से इंकार नहीं कर सकता है कि – आरंभिक प्रक्रम पर फर्म के भागीदार जिसे गलत ढ़ंग से अभियोजित किया गया, ने नाम निर्देशन के तथ्य का उल्लेख नहीं किया – और यदि ऐसा अतिरिक्त साक्ष्य अपील के प्रक्रम पर अभिलेख पर लिया तो नये सिरे से विचारण करना होगा। (हिन्दुस्तान फुड प्रोडक्ट्स इंडिया वि. म.प्र. राज्य) ...1313

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 395 – उच्च न्यायालय को निर्देश – म.प्र. डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, 1981 के अधीन गठित विशेष न्यायालय क्या अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 के अधीन दण्डनीय अपराध का विचारण करने के लिये सशक्त है – पुलिस ने अधिनियम 1981 और अधिनियम 1989 के अधीन अपराधों के विचारण के लिए एक आरोप पत्र पेश किया – अभिनिर्धारित – एक अधिनियम के अधीन गठित विशेष न्यायालय ऐसे मामलों का विचारण नहीं कर सकता है जो किसी अन्य अधिनियम के अधीन गठित विशेष न्यायालय द्वारा विचारणीय हैं – तदनुसार निर्देश उत्तरित। (इन रेफरेंस वि. राधाकृष्णा) 1562

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397, 401 – अपीलार्थीगण का धारा 302/34 के अपराध के लिये विचारण किया गया – विचारण न्यायालय ने धारा 323/34 में दोषसिद्ध पाया – राज्य द्वारा अपील नहीं की गई – उच्च न्यायालय ने परिवादी द्वारा पेश पुनरीक्षण में साक्ष्य का अभिमूल्यन करते हुए मामले में निर्णय पारित करने के लिये प्रतिप्रेषण कर दिया – अभिनिर्धारित – पुनरीक्षण क्षेत्राधिकार का प्रयोग करते समय उच्च न्यायालय को ध्यान रखना चाहिए कि वह सीमित शक्तियों का प्रयोग कर रहा है – उच्च न्यायालय का निर्णय यह दर्शाता है कि विचारण न्यायालय द्वारा दिये गये निष्कर्ष को सारवान और प्रभावी रूप से उलट दिया है – निर्णय में की गई टिप्पणीयां विचारण न्यायालय पर बाध्य होंगी और उसे अपीलार्थीगण को दोषसिद्ध करने के अलावा कोई विकल्प नहीं रहेगा – उच्च न्यायालय ने अधिकारिता का प्रयोग बढ़कर किया – अपील मंजूर। (जौहर वि. मंगल प्रसाद) 1333

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397, 401 – पुनरीक्षण – अन्तर्वर्ती आदेश – आरोप–पत्र भा.द.सं. की धारा 304 और 201 के अन्तर्गत पेश – मजिस्ट्रेट ने भा.

Magistrate took cognizance u/Ss. 302, 201 I.P.C. - Order is interlocutory in nature - Not revisable. [Mangilal v. State] ...1549

Criminal Procedure Code, 1973 (2 of 1974), Sections 397, 401, 482 - ***Withdrawal of Revision*** - *Application U/s 482 of Code is maintainable even if the revision was withdrawn.* [Shakuntala Sharma v. State of M.P.] ...1320

Criminal Procedure Code, 1973 (2 of 1974) - Section 437(6) - ***Applicant practicing as an Advocate*** - *Applicant advised the poor illiterate persons suffering from Gangrene or like disease to prepare their false claim cases in order to earn easy money - Poor persons admitted in hospital and their limbs were amputated and false vehicular accident cases were registered in connivance of Doctor and police personals - Applicant does not deserve for bail.* [Arjun Sahu v. State of M.P.] ...1541

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) - *'Unless for reasons to be recorded in writing' - Magistrate has a right to refuse bail even after expiry of 60 days from the date of framing of charges after recording reasons in writing.* [Arjun Sahu v. State of M.P.] ...1541

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - ***Applicant working as Sub-Registrar*** - *He registered certain sale deeds which were forged as they were based on false documents - Offence registered U/ss 420, 467, 468, 469, 471 r/w Sections 34, 120-B of I.P.C. against applicant - Held - Sub-Registrar was only to satisfy the identity of the executant and also to see that the document was properly stamped or not - Sub-Registrar has no authority to examine question of title and to refuse registration of documents on this ground - Applicant entitled to be released on bail - Application allowed.* [Surendra v. State of M.P.] ...*41

Criminal Procedure Code, 1973 (2 of 1974), Section 439 - ***Applicants were granted anticipatory bail by High Court*** - *Application for regular bail U/s 439 dismissed by ASJ - High Court held after granting the anticipatory bail nothing incriminating evidence was collected by I.O. - Applications ought to have been allowed in the light of principles laid down by the High Court in Chhotelal Rai's case.* [Katua Patel v. State of M.P.] ...*32

Criminal Procedure Code, 1973 (2 of 1974), Section 464 - *Effect of omission to frame, or absence of , or error in, charge - Appellants charged for offence u/s 407 I.P.C. - Convicted u/ss. 379 & 381 I.P.C. - Held - Charge contained particulars of offences and accused persons were aware of basic ingredients of offence for which they were being tried - Conviction u/ss. 379 & 381 I.P.C. is saved by provision of Section 464 as it has not resulted in failure of justice.* [Akbar v. State of M.P.] ...1531

Criminal Procedure Code, 1973 (2 of 1974), Section 470(4) (b) - See *Penal Code 1860, Section 224.* [State of M.P. v. Shankarlal Soni] ...*52

द.सं. की धारा 302, 201 के अन्तर्गत संज्ञान लिया – आदेश अन्तर्वर्ती प्र.ति का है – पुनरीक्षण योग्य नहीं। (मांगीलाल वि. राज्य) 1549

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397, 401, 482 – पुनरीक्षण का वापस लिया जाना – यदि पुनरीक्षण को वापस लिया गया था तो भी संहिता की धारा 482 के अंतर्गत आवेदन पोषणीय है। (शकुन्तला शर्मा वि. म.प्र. राज्य) ...1320

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437 (6) – आवेदक अधिवक्ता के रूप में विधि व्यवसायी – आवेदक ने गरीब, अशिक्षित व्यक्तियों जो गैंगरीन या उसी तरह की बीमारी से पीड़ित थे, को सरलता से धन अर्जित करने के लिये उनके मिथ्या दावे तैयार करवाने की सलाह दी – गरीब व्यक्तियों को अस्पताल में भर्ती कराया गया और उनके अंगों का अंगविच्छेदन किया गया और डॉक्टर व पुलिस कर्मचारियों की दुरभिसंधि से मोटर यान दुर्घटना के मिथ्या दावे दर्ज कराये गये – आवेदक जमानत पाने का पात्र नहीं। (अर्जुन साहू वि. म.प्र. राज्य) 1541

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437 (6) – 'जब तक ऐसे कारणों से जो लेखबद्ध किये जायेंगें' – मजिस्ट्रेट को आरोप विरचना की तिथि से 60 दिन समाप्त होने के बाद भी कारण लेख बद्ध करके जमानत से इंकार करने का अधिकार है। (अर्जुन साहू वि. म.प्र. राज्य) ...1541

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – आवेदक उप–रजिस्ट्रार के रूप में कार्यरत – उसने कुछ विक्रय पत्रों को रजिस्टर्ड किया जो कूटरचित थे, क्योंकि वे झूठे दस्तावेजों पर आधारित थे – आवेदक के विरूद्ध भा.दं.सं. की धारायें 420, 467, 468, 471 सहपठित धारा 34, 120 बी के अंतर्गत अपराध पंजीबद्ध किया गया – अभिनिर्धारित – उप–रजिस्ट्रार को केवल निष्पादक की पहचान के बारे में संतुष्ट होना होता है और यह भी देखना होता है कि दस्तावेज उचित रूप से स्टाम्पित है या नहीं – उप–रजिस्ट्रार को हक के प्रश्न की जांच का अधिकार नहीं है और इस आधार पर दस्तावेज के रजिस्ट्रेशन से इंकार नहीं कर सकता है – आवेदक जमानत पर छूटने का हकदार है – आवेदन मन्जूर किया। (सुरेन्द्र वि. म.प्र. राज्य) ---*41

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – उच्च न्यायालय द्वारा आवेदकों को अग्रिम जमानत दी गई – अपर सेशन न्यायाधीश ने धारा 439 के अंतर्गत नियमित जमानत खारिज कर दी – उच्च न्यायालय ने अभिनिर्धारित किया कि अग्रिम जमानत देने के बाद अनुसंधान अधिकारी द्वारा कोई भी अपराध में फंसाने का साक्ष्य एकत्र नहीं किया गया – उच्च न्यायालय द्वारा "छोटेलाल राय के मामले" में प्रतिपादित सिद्धान्त के आलोक में आवेदनों को स्वीकार किया जाना था। (कटुआ पटेल वि. म.प्र. राज्य) —*32

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 464 – आरोप विरचित न करने या उसके अभाव या उसमें गलती का प्रभाव – अपीलार्थीओं के विरुद्ध भा.द.सं. की धारा 407 के अधीन दण्डनीय अपराध के लिए आरोप विरचित – भा.द.सं. की धारा 379 व 381 के अधीन दोषसिद्ध पाया – अभिनिर्धारित – आरोप में अपराधों की विशिष्टियाँ दी गईं थीं और अभियुक्तगण अपराध के मूल तत्वों से अवगत थे जिनके लिये उनका विचारण किया जा रहा था – भा.द.सं. की धारा 379 व 381 के अधीन की गई दोषसिद्धि धारा 464 के उपबंधों द्वारा सुरक्षित क्योंकि ऐसा नहीं हुआ कि इसके परिणामस्वरूप वस्तुतः कोई न्याय नहीं हो पाया हो। (अकबर वि. म.प्र. राज्य) ...1531

दण्ड प्रकिया संहिता, 1973 (1974 का 2), धारा 470 (4) (बी) – देखें – दण्ड संहिता, 1860, धारा 224, – (म.प्र. राज्य वि. शंकरलाल सोनी) ---*52

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - *Exercise of inherent powers - Powers of High Court u/s 482 Cr.P.C. are very wide and the very plentitude of power requires great caution in its exercise - Court must be careful to see that its decision in exercise of this power is based on sound principles.* [Tej Singh v. Rewa Ram] ...2145

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Negotiable Instruments Act, 1881, Section 138 - *Legally enforceable debt - Prosecution cannot be quashed at threshold for dishonour of cheque issued for repayment of a time barred debt - Not possible to conclude that cheques in question were drawn in respect of debt or liability which was completely barred from being enforced.* [Ramprasad v. Smt. Sudhaben] ...*60

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Section 406 - *Quashing of complaint - Non-applicant filed complaint on the allegation that he had entrusted jewelry worth Rs. 125 crores to applicant - Applicant did not return jewelry inspite of repeated requests - Applicant alleged that property was handed over to him by way of security of loan - Held - It is not in dispute that property belonging to non-applicant is in possession of applicant - It is not a case in which allegations do not disclose commission of any offence or allegations are absurd and inherently improper or there is an express legal bar to the institution - No case made out for quashing of complaint - Application dismissed.* [Chandanmal v. Suryakant] 1554

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Sections 406, 409, 420, 424 - *Quashing of FIR - Applicants, a manufacturer of Indian made foreign liquor appointed N.A.-3 as marketing consultant - Police registered offence against applicants u/ss 406, 409, 420 & 424 of IPC on the basis of complaint made by N.A.-3 - Applicants challenged the said FIR on the ground that FIR lodged to escape from the consequences of criminal case u/s 138 of Negotiable Instruments Act by applicants - Held - It is not appropriate to interfere in the investigation of the police, as investigation is in progress - Petition dismissed.* [V.C. Raam Sukaesh v. State of M.P.] ...*70

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Sections 406, 420, 120-B - *Inherent powers of High Court - Quashing of F.I.R. - Applicant No.1 entered into an agreement to sell with non-applicants - Agreement not honoured - N.A. filed a complaint u/Ss. 406, 420, 120-B I.P.C. against applicants - Magistrate ordered for investigation u/s 156(3) of Cr.P.C. - Proceedings challenged before High Court for its quashment - Held - Averments in the complaint do not show that applicants had fraudulent or dishonest intention at the time of making the promise - Mere failure to subsequently keep a promise, it cannot presume that they had a culpable intention to break the promise from the beginning - No material on record to show that applicants have misappropriated or converted the property in*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अन्तर्निहित शक्तियों का प्रयोग – द.प्र.सं. की धारा 482 के अधीन उच्च न्यायालय की शक्तियाँ बहुत व्यापक और शक्ति की सम्पूर्णता इसके प्रयोग में बड़ी सावधानी अपेक्षित है – न्यायालय को ध्यान रखना चाहिए कि इन शक्तियों के प्रयोग में उसका विनिश्चय ठोस सिद्धांतों पर आधारित हो। (तेज सिंह वि. रेवा राम) ...2145

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, परक्राम्य लिखत अधिनियम, 1881, धारा 138 – वैध रूप से प्रवर्तनीय ऋण – अवधि बाधित ऋण के प्रतिसंदाय के लिये जारी चेक के अनादर का अभियोजन प्रारम्भ में ही अभिखण्डित नहीं किया जा सकता – यह निष्कर्ष निकालना संभव नहीं है कि प्रश्नगत चेक पूरी तरह से प्रवर्तन से वर्जित ऋण या देनदारी के संबंध में जारी किये गये थे। (रामप्रसाद वि. श्रीमति सुधाबेन) ---*60

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धारा 406 – परिवाद का अभिखण्डन – अनावेदक ने परिवाद यह अभिकथन करते हुए पेश किया कि उसने 125 करोड़ रुपये मूल्य के गहने आवेदक को न्यस्त किये थे – आवेदक ने बार–बार अनुरोध के बावजूद गहने वापस नहीं किये – आवेदक ने अभिकथन किया कि सम्पत्ति उसे ऋण की प्रतिभूति के रूप में सौंपी गई थी – अभिनिर्धारित – इसमें विवाद नहीं है कि अनावेदक की सम्पत्ति आवेदक के कब्जे में है – यह मामला नही है कि अभिकथन से किसी अपराध का कारित होना प्रगट न होता हो या अभिकथन अर्थहीन व निहायत अनुचित हों या संस्थापन करने में कोई विधिक बाधा हो – परिवाद को अभिखण्डित करने का मामला नही बनता है – आवेदन खारिज। (चंदनमल वि. सूर्यकांत) 1554

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धाराएँ 406, 409, 420, 424 – एफआईआर का अभिखंडन – आवेदकगण, देश में निर्मित विदेशी मदिरा के उत्पादक, ने अनावेदक क्रमांक 3 को विपणन सलाहकार के रूप में नियुक्त किया – पुलिस ने अनावेदक क्रमांक 3 द्वारा की गई शिकायत के आधार पर आवेदकों के विरुद्ध भा.द.सं. की धारा 406, 409, 420 व 424 के अधीन अपराध दर्ज किया – आवेदकों ने उक्त एफआईआर को इस आधार पर चुनौती दी कि धारा 138 परक्राम्य लिखत अधिनियम के अधीन आवेदकों द्वारा प्रस्तुत दाण्डिक मामले के परिणामों से बचने के लिए एफआईआर दाखिल की गई – अभिनिर्धारित – पुलिस के अनुसंधान में हस्तक्षेप करना यथोचित नहीं क्योंकि अनुसंधान प्रगति पर है – याचिका खारिज। (व्ही.सी. रामसुकेश वि. म.प्र. राज्य) ---*70

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धाराएँ 406, 420, 120–बी – उच्च न्यायालय की अन्तर्निहित शक्तियाँ – प्रथम सूचना रिपोर्ट का अभिखण्डन – आवेदक क्र. 1 ने अनावेदकों के साथ विक्रय का अनुबन्ध किया – अनुबन्ध का पालन नहीं किया – अनावेदक ने आवेदक के विरुद्ध भा.द.सं. की धारा 406,420,120–बी के अधीन परिवाद पेश किया – मजिस्ट्रेट ने द.प्र.सं. की धारा 156(3) के अन्तर्गत अनुसंधान करने का आदेश दिया – कार्यवाही को अभिखण्डन के लिए उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – परिवाद के अभिकथनों से यह दर्शित नहीं होता है कि आवेदकों का वचन देते समय कपटपूर्ण या बेईमानीपूर्ण आशय था – केवल बाद में वचन का पालन करने में विफल रहे इससे यह उपधारित नहीं किया जा सकता है कि उनका प्रारम्भ से ही वचन को तोड़ने का सदोष आशय था – अभिलेख पर ऐसी कोई सामग्री नहीं है जो दर्शाये कि आवेदकों ने दुर्विनियोग किया या प्रश्नास्पद सम्पत्ति को

question to their own use - It cannot be said that applicants committed any criminal conspiracy - Complaint is an abuse of process of Court and proceedings are, therefore, liable to be quashed. [Tej Singh v. Rewa Ram] ...2145

**Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860; Section 420 - *Quashing of proceedings* - *Prosecution cannot be quashed merely because civil remedy is available - Such powers can be exercised by High Court when continuance of the proceedings would be a total abuse of the process of Court - Whether allegations made in complaint are correct has to be ascertained on the basis of evidence led at the time of trial - Petition dismissed.* [LML Limited v. Kailash Narain Rai] ...*33

**Criminal Procedure Code, 1973 (2 of 1974), Section 482, Prevention of Corruption Act, 1988, Section 13(1)(d) - *Quashing of Proceedings on the ground of delay in lodging F.I.R.* - *F.I.R. lodged in the year 2006 i.e., after 6 years of incident - Applicant found guilty in departmental enquiry which had culminated in the year 2004 - Held - No general or wide proposition of law can be formulated that whenever there is inordinate delay on the part of investigating agency in completing investigation such delay would provide ground for quashing F.I.R. - Considering nature of allegations and defence in enquiry it cannot be said that delay in lodging F.I.R. would cause any prejudice to Applicant in his defence or occasion failure of justice - Petition dismissed.* [H.S.S. Raghuvanshi v. State of M.P.] ...1569

**Criminal Procedure Code, 1973 (2 of 1974), Section 482 - *Quashing of F.I.R.* - *Accessory Liability - Revenue officers merely acted as per the orders of Registrar, Public Trust - Considering the concept of accessory liability, officials though not charged for having received trust income or assets for their own benefit can also not escape liability for having acted as an accessory to a breach of trust by carrying out mutations.* [Suresh Kumar Agrawal v. State of M.P.] ...1328

**Criminal Procedure Code, 1973 (2 of 1974), Section 482 - *Quashing of F.I.R. and investigation* - *Inherent powers are to be exercised to prevent abuse of the process of Court but not to stifle a legitimate prosecution - Registrar, Public Trust granted permission to sell property of Public Trust - Trust was constituted for welfare of orphans and helpless children - Registrar was required to consider that how the sell of land adjacent to school, temple and residential accommodations was in the interest of trust - He was required to scrutinized each and every sale transaction - F.I.R. and investigation cannot be quashed - Petition dismissed.* [Suresh Kumar Agrawal v. State of M.P.]...1328

**Criminal Procedure Code, 1973 (2 of 1974), Section 482 - *Scope* - *The inherent powers U/s 482 of Code can only be exercised sparingly and in very rare cases - Trial Court has rightly took the cognizance on the basis of FIR lodged at P.S. Chhatarpur - Prima Facie offence U/s 498 -A of I.P.C. made out - Proceedings can not be quashed.* [Shakuntala Sharma v. State of M.P.] ...1320

उनके उपयोग के लिए संपरिवर्तित किया – यह नहीं कहा जा सकता है कि आवेदकों ने कोई दाण्डिक षड्यंत्र कारित किया – परिवाद न्यायालय की आदेशिका का दुरुपयोग है और इसलिए कार्यवाही अभिखण्डित किये जाने योग्य है। (तेज सिंह वि. रेवा राम) ...2145

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धारा 420 – कार्यवाहियों को अभिखंडित करना – अभियोजन केवल इसलिये अभिखंडित नहीं किया जा सकता है, क्योंकि सिविल उपचार उपलब्ध है – उच्च न्यायालय द्वारा ऐसी शक्तियों का प्रयोग किया जा सकता है जब कार्यवाहियों को जारी रखना न्यायालय की आदेशिका का पूर्णतः दुरूपयोग हो – परिवाद में किये गये अभिकथन सही हैं या नहीं यह विचारण के समय प्रस्तुत साक्ष्य के आधार पर ही निश्चित रूप से जाना जा सकता है – याचिका खारिज। (एल.एम.एल लिमि. वि. कैलाश नारायण राय)---*33

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(डी) – प्रथम सूचना रिपोर्ट विलंब से दर्ज कराने के आधार पर कार्यवाही का अभिखण्डन – प्रथम सूचना रिपोर्ट वर्ष 2006 में अर्थात घटना के 6 वर्ष के बाद दर्ज कराई – आवेदक को विभागीय जांच में, जो सन् 2004 में समाप्त हुई, दोषी पाया गया –अभिनिर्धारित–विधि की कोई सामान्य या व्यापक प्रतिपादना सुनिश्चित नहीं की जा सकती है कि जब भी अनुसंधान एजेंसी द्वारा अनुसंधान को पूरा करने में अत्यधिक विलंब हुआ हो तो ऐसे विलंब के आधार पर प्रथम सूचना रिपोर्ट अभिखण्डित की जाये – जांच में अभिकथन की प्रकृति और प्रतिरक्षा पर विचार करने पर यह नहीं कहा जा सकता है कि विलंब से प्रथम सूचना रिपोर्ट दर्ज कराई इससे आवेदक को उसके प्रतिरक्षा में पूर्वाग्रह होगा या न्याय की निष्फलता का कारण बनेगा – याचिका खारिज। (एच.एस.एस. रघुवंशी वि. म.प्र. राज्य) 1569

दण्ड प्रकिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना रिपोर्ट का अभिखण्डन – सहायक दायित्व – राजस्व अधिकारियों ने तो केवल रजिस्ट्रार, लोक न्यास के आदेशानुसार कार्य किया तथापि अधिकारियों को न्यास की आय या परिसम्पत्तियों का उनके स्वयं के लाभ के लिये प्राप्त करने के लिये आरोपित नहीं किया जा सकता है किन्तु उन्होंने एक सहायक के रूप में कार्य कर नामान्तरण करके न्यास भंग किया इस दायित्व से सहायक दायित्व की परिकल्पना के विचार अनुसार नहीं बच सकते हैं। (सुरेश कुमार अग्रवाल वि. म.प्र. राज्य) ...1328

दण्ड प्रकिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना रिपोर्ट व अनुसंधान का अभिखण्डन – अंर्तनिहित शक्तियों का प्रयोग न्यायालय की आदेशिका के दुरूपयोग को रोकने के लिये किया जाता है न कि विधिसम्मत अभियोजन को दबाने के लिये – रजिस्ट्रार, लोक न्यास ने लोक न्यास की संपत्ति को बेचने की अनुमति दी – न्यास का गठन अनाथ और असहाय बच्चों के कल्याण के लिये किया गया था – रजिस्ट्रार के लिये यह विचार करना अपेक्षित था कि कैसे स्कूल से लगी हुई भूमि, मंदिर व आवासी भवन को विक्रय करना न्यास के हित में था – रजिस्ट्रार के लिये यह अपेक्षित था कि प्रत्येक विक्रय संव्यवहार की संवीक्षा करते – प्रथम सूचना रिपोर्ट व अनुसंधान अभिखंडित नहीं किया जा सकता है – याचिका खारिज। (सुरेश कुमार अग्रवाल वि. म.प्र. राज्य) ...1328

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – विषय क्षेत्र – संहिता की धारा 482 के अंतर्गत अंर्तनिहित शक्तियों का प्रयोग यदाकदा एवं बहुत विरले मामलों में किया जा सकता है – विचारण न्यायालय ने पुलिस थाना छतरपुर में पंजीबद्ध प्रथम सूचना रिपोर्ट के आधार पर उचित रूप से संज्ञान लिया – प्रथम दृष्ट्या भा.द.सं. की धारा 498–ए के अधीन अपराध बनता है – कार्यवाही अभिखण्डित नहीं की जा सकती। (शकुन्तला शर्मा वि. म.प्र. राज्य) ...1320

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - *Negotiable Instruments Act 1881, Section 138.* [Mridula Kalpiwar (Smt.) v. Mridial Pathak]..*67

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - *Penal Code, 1860, Section 420/34, 120-B.* [Suresh Goel v. Grasim Industries Ltd.]...1841

Criminal Procedure Code, 1973 (2 of 1974) Schedule- I as amended by (M.P. Amendment) Act 2007 w.e.f. 22.2.2008 - *By the amendment some serious offences of IPC (as shown in amendment) were made triable by "Court of Session" instead of "Magistrate of the First Class" - "Pending cases not affected" - New law or amendment bringing about change of forum does not affect pending cases unless a provision is made in it for change over of proceedings or there is some other clear indication in new law or the amendment that pending cases are affected - Cases pending in the court of JMFC as on 22/2/2008 are not affected and will be continued to be tried by JMFC - Reference answered accordingly.* [In Reference] ...1035

Criminal trial - ***Duty of prosecution*** - *Oral dying declaration was not challenged in cross-examination of a witness - Therefore it is not necessary for prosecution to ask to autopsy surgeon that despite deceased having injuries whether he was able to give dying declaration.* [State of M.P. v. Ashok] ...1503

Delhi Special Police Establishment Act (25 of 1946), Section 6 - *Consent - By letter dated 5-2-1957 State Government had accorded consent to the members of Delhi Special Police Establishment exercising powers and jurisdiction within State - Letter sets out all particulars required by Section 6 - It refers to file/reference number, name of department, authority from whom it was issued, and communicated to concerned department - It cannot be said that State Government has not granted consent U/s 6.* [M. Balakrishna Reddy v. Director, CBI, New Delhi] ...1001

Delhi Special Police Establishment Act (25 of 1946), Section 6 - ***Consent - Form of*** - *Delhi Special Police Establishment exercising powers and jurisdiction within State - U/s 3 notification and U/s 5 order requires to be issued - U/s 6 consent is required - Mode, method or manner for granting consent not specified - Though in Sections 3 & 5 such mode was provided - It depends on facts of each case whether consent has been given by State or not.* [M. Balakrishna Reddy v. Director, CBI, New Delhi] ...1001

Doctrine of Election - *As per housing policy 20% of developed plots out of land acquired or in alternative monetary compensation to be offered to land owner - A valid and precise offer of option is prerequisite for invoking doctrine - Since no offer had ever been put by Development Authority - Adverse inference against land owners for non-exercise of option would be contrary to norms of equity, good conscious and fair play.* [Mahavir Grih Nirman Sahkari Sanstha Maryadit v. State of M.P.] ...1603

Electricity Duty Act, M.P. (10 of 1949), Section 5, Electricity Duty

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें –परक्राम्य लिखत अधिनियम 1881, धारा 138. (मृदुला कल्पीवार (श्रीमति) वि. मृिदिल पाठक) ---*67

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धाराएँ 420/34, 120–बी, (सुरेश गोयल वि. ग्रेसिम इंडस्ट्रीज, लि.) ...1841

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) प्रथम अनुसूची जो (म.प्र.संशोधन अधिनियम, 2007) द्वारा तारीख 22.02.2008 से संशोधित – इस संशोधन द्वारा भारतीय दण्ड संहिता के कुछ गंभीर अपराधों (जो कि संशोधन में बताये गये हैं) कां विचारण प्रथम श्रेणी मजिस्ट्रेट के बजाय सेशन न्यायालय द्वारा किया जायेगा – "लंबित मामले अप्रभावित" – नया कानून या ऐसा संशोधन जो फोरम बदलता है लंबित मामलों को प्रभावित नहीं करता है जब तक कि उसमें ऐसा उपबन्ध न हो या नये कानून में या संशोधन में कोई ऐसा स्पष्ट संकेत हो कि लंबित मामले भी प्रभावित होंगे – तारीख 22/02/2008 को न्यायिक मजिस्ट्रेट प्रथम श्रेणी के न्यायालय में जो मामले लंबित थे वे प्रभावित नहीं होंगे और न्यायिक मजिस्ट्रेट प्रथम श्रेणी के न्यायालय में ही उनका विचारण जारी रहेगा – तदानुसार रेफरेंस का निपटारा किया गया। (इन रेफ्रेन्स) ...1035

दाण्डिक विचारण – अभियोजन का कर्तव्य – मौखिक मृत्युकालिक कथन को साक्षी के प्रतिपरीक्षण में चुनौती नहीं दी गई – इसलिये अभियोजन के लिये शव परीक्षण करने वाले सर्जन से यह पूछना आवश्यक नहीं था कि मृतक को उपहतियां होने के बावजूद क्या वह मौखिक मृत्युकालिक कथन देने की स्थिति में था। (म.प्र. राज्य वि. अशोक) 1503

दिल्ली विशेष पुलिस स्थापना अधिनियम (1946 का 25), धारा 6 – सम्मति – राज्य सरकार ने दिनांक 5.2.1957 के पत्र द्वारा दिल्ली विशेष पुलिस स्थापना के सदस्यों को राज्य में उनके शक्तियों और अधिकारिता के प्रयोग की सम्मति दी – पत्र में धारा 6 में अपेक्षित सभी विशिष्टियों हैं – इसमें फाइल/संदर्भ क्रमांक, विभाग का नाम, जारी करने वाले प्राधिकारी और संबंधित विभाग को संसूचित करने का उल्लेख है – यह नहीं कहा जा सकता है कि राज्य सरकार ने धारा 6 के अंतर्गत सम्मति प्रदान नहीं की। (एम. बालाकृष्णा रेड्डी वि. डायरेक्टर, सी.बी.आई., न्यू देहली) ...1001

दिल्ली विशेष पुलिस स्थापना अधिनियम (1946 का 25), धारा 6 – सम्मति – प्रारूप – दिल्ली विशेष पुलिस स्थापना द्वारा राज्य में शक्तियों और अधिकारिता का प्रयोग – धारा 3 के अंतर्गत अधिसूचना और धारा 5 के अंतर्गत आदेश जारी करना अपेक्षित – धारा 6 के अंतर्गत सम्मति अपेक्षित है – सम्मति प्रदान करने का तरीका, पद्धति व रीति निर्दिष्ट नहीं है – तथापि धारा 3 व 5 में ऐसी पद्धति का उपबन्ध है – राज्य सरकार द्वारा सम्मति दी गई या नहीं यह प्रत्येक मामले के तथ्यों पर निर्भर करता है। (एम. बालाकृष्णा रेड्डी वि. डायरेक्टर, सी.बी.आई., न्यू देहली) ...1001

निर्वाचन का सिद्धांत – आवासीय नीति के अनुसार अर्जित भूमि में से विकसित भूखण्डों का 20: या विकल्प में धन के रूप में प्रतिकर का प्रस्ताव भूमिस्वामी को देना होगा – सिद्धांत का प्रयोग करने के लिये वैध और सुस्पष्ट वैकल्पिक प्रस्ताव पूर्वापेक्षित है – चूंकि विकास प्राधिकारी द्वारा कभी भी कोई प्रस्ताव नहीं रखा गया – भूमिस्वामियों ने अपने विकल्प का प्रयोग नहीं किया, उनके विरुद्ध ऐसा प्रतिकूल निष्कर्ष निकालना साम्य के मानदण्ड, शुद्ध अंतःकरण और निष्पक्ष व्यवहार के विरुद्ध होगा। (महावीर गृह निर्माण सहकारी संस्था मर्यादित वि. म.प्र. राज्य) ...1603

विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 5, विद्युत शुल्क नियम, म.प्र.

Rules, M.P. 1949, Rule 5 - *Recovery of interest on delayed payment. - Petitioner was enjoying certain exemption extended by State Govt. - Exemption were withdrawn later on - Petitioner instead of making payment as per demands under the head of electricity duty, challenged the order of demand - Order of demand was stayed however, petition was dismissed and S.L.P. was also dismissed - Held - When Court grants stay against execution of any order, it acts in favour of party who had secured such order - Equity and fairplay provide that if man secures certain privileges or benefits flowing from an order of Court, then such person should be required to return the benefit after vacation or rejection of order - Petitioner liable to pay interest on delayed payment - Petition dismissed.* [Vikram Cement v. State of M.P.] ...1660

Electricity Duty Act, M.P. (10 of 1949), Section 5, Electricity Duty Rules, M.P. 1949, Rule 5(2) - *Recovery of duty and interest - Notification issued by State Govt. provides for payment of interest @ 12% if the delay is 3 months or less - 15% if the delay is more than 3 months and less than 6 months - 20% if delay is more than 6 months but less than 12 months - 24% if delay is more than 12 months - Held - Government has taken into consideration the true spirit of Section 5 - It cannot be said that there is any discrimination between the classes of defaulters.* [Vikram Cement v. State of M.P.] ...1660

Electricity Duty Act, M.P. (10 of 1949), Section 5, Electricity Duty Rules, M.P. 1949, Rule 5(2) - *Whether recovery of interest @ 24% p.a. is penal in nature - Held - Section 5 of Act does not put any cap on the rate of interest - Rule provides for a cap of 24% - Rule in fact serves the interest of public and defaulters - When Rule provides that rate of interest shall not go beyond 24%, one cannot argue that rate of interest is penal in nature.* [Vikram Cement v. State of M.P.]. ...1660

Electricity Duty Rules, M.P. 1949, Rule 5 - **See** - *Electricity Duty Act, M.P., 1949, Section 5,* [Vikram Cement v. State of M.P.] ...1660

Electricity Duty Rules, M.P. 1949, Rule 5(2) - **See** - *Electricity Duty Act, M.P., 1949, Section 5,* [Vikram Cement v. State of M.P.] ...1660

Electricity Supply Code, 2004, Clause 4.17 - *New electricity connection by auction purchaser - Petitioners purchased a flat in public auction - Applied for new electricity connection - New connection denied on the ground that certain dues were outstanding against previous owner - Held - Petitioners bonafide auction purchaser - Release of new electricity connection cannot be denied - Petitioners entitled for new connection - Petition allowed with cost of Rs.10,000/-.* [Satish Gangrade v. M.P. Madhya Kshetra Vidyut Vitran Company Ltd.] ...1678

Essential Commodities Act (10 of 1955), Sections 3,7, (Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, M.P. 1991, Clause 6(5), 12 - *Violation of Scheme - Appellant convicted for violating provisions of*

1949, नियम 5 – विलम्बित भुगतान पर ब्याज की वसूली – याची राज्य सरकार द्वारा विस्तारित कुछ छूट का उपभोग कर रहा था – बाद में छूट वापस ले ली गई – याची ने विद्युत शुल्क शीर्ष के अधीन माँग के अनुसार भुगतान करने के बजाय, माँग के आदेश को चुनौती दी – माँग का आदेश स्थगित किया गया, तथापि याचिका खारिज की गई और एस.एल.पी. भी खारिज हुई – अभिनिर्धारित – जब न्यायालय किसी आदेश के निष्पादन के विरुद्ध रोक प्रदान करता है, तो वह उस पक्षकार के पक्ष में कार्य करता है जिसने ऐसा आदेश प्राप्त किया है – साम्य और उचित व्यवहार यह उपबन्धित करते हैं कि यदि व्यक्ति न्यायालय के आदेश से कुछ विशेषाधिकार और लाभ प्राप्त करता है तो ऐसे व्यक्ति से आदेश के रद्द या नामंजूर होने पर लाभ को वापस करना अपेक्षित है – याची विलम्बित भुगतान पर ब्याज भुगतान करने के लिये दायी – याचिका खारिज। (विक्रम सीमेंट वि. म. प्र. राज्य) ...1660

विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 5, विद्युत शुल्क नियम, म.प्र. 1949, नियम 5(2) – शुल्क और ब्याज की वसूली – राज्य शासन द्वारा जारी अधिसूचना 12% की दर से ब्याज का भुगतान करने के लिए उपबंध करती है, यदि विलम्ब तीन माह या कम है – 15% यदि विलम्ब तीन माह से अधिक और 6 माह से कम है – 20% यदि विलम्ब 6 माह से अधिक किन्तु 12 माह से कम है – 24% यदि विलम्ब 12 माह से अधिक है – अभिनिर्धारित – सरकार ने धारा 5 का सही अर्थ विचार में लिया है – यह नहीं कहा जा सकता कि व्यतिक्रमियों के वर्गों के मध्य में कोई भेदभाव है। (विक्रम सीमेंट वि. म. प्र. राज्य) ...1660

विद्युत शुल्क अधिनियम, म.प्र. (1949 का 10), धारा 5, विद्युत शुल्क नियम, म.प्र.1949, नियम 5(2) – क्या 24% वार्षिक की दर से ब्याज की वसूली दण्डात्मक प्रकृति की है – अभिनिर्धारित – अधिनियम की धारा 5 ब्याज की दर को किसी सीमा में नहीं बाँधती है – नियम 24% की सीमा उपबंधित करता है – वास्तव में नियम लोक एवं व्यतिक्रमियों के हित की पूर्ति करता है – जब नियम यह उपबंधित करता है कि ब्याज की दर 24% के बाहर नहीं जाएगी, कोई यह तर्क नहीं कर सकता है कि ब्याज की दर दण्डात्मक प्रकृति की है। (विक्रम सीमेंट वि. म.प्र. राज्य) ...1660

विद्युत शुल्क नियम, म.प्र. 1949, नियम 5– देखें – विद्युत शुल्क अधिनियम, म.प्र. , 1949, धारा 5, (विक्रम सीमेंट वि. म.प्र. राज्य) ...1660

विद्युत शुल्क नियम, म.प्र. 1949, नियम 5(2) – देखें – विद्युत शुल्क अधिनियम, म.प्र.,1949, धारा 5, (विक्रम सीमेंट वि. म.प्र. राज्य) ...1660

विद्युत प्रदाय संहिता, 2004, खण्ड 4.17 – नीलाम खरीददार द्वारा नया विद्युत संयोजन – याचियों द्वारा एक लेट सार्वजनिक नीलामी में खरीदा – नये विद्युत संयोजन के लिये आवेदन दिया – नये संयोजन से इस आधार पर इंकार कर दिया कि पूर्वस्वामी के विरुद्ध कुछ देय बकाया थे – अभिनिर्धारित – याची सद्भावी नीलाम खरीददार है – नया विद्युत संयोजन देने से इंकार नहीं किया जा सकता – याची नया कनेक्शन पाने का हकदार – रु. 10,000/– वाद व्यय के साथ याचिका मंजूर। (सतीश गंगराडे वि. म.प्र. मध्य क्षेत्र विद्युत वितरण कंपनी लि.) ...1678

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3, 7, (खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति वितरण योजना, म.प्र. 1991, खण्ड 6(5), 12 – योजना का उल्लंघन – अपीलार्थी को योजना के उपबन्धों के उल्लंघन के लिये दोषसिद्ध किया गया – अभिनिर्धारित –

Scheme - Held - Scheme was not made in exercise of any power conferred by order U/s 3 of Act - Scheme is made in exercise of Executive Power of State - Appellant cannot be convicted for violating provisions of Scheme - Appellant acquitted - Appeal allowed. [Arvind Kumar v. State of M.P.] ...1479

Essential Commodities Act (10 of 1955), Section 6-C(2) - *Interest - Petitioners were allotted fair price shops - Prosecuted for violation of provisions of Scheme - Prosecution ended in acquittal, however articles were confiscated - Order of confiscation was set aside in appeal - Articles were already sold during the pendency of criminal case - Price of the articles was paid as per order of Court, however, interest thereon was denied - Held - Entitlement to interest is by virtue of a statutory provision - Court is not vested with any kind of discretion to deny interest - Absence of grant of interest in criminal appeal will not deprive right to receive interest - Respondents directed to pay interest at reasonable rate - Petition allowed.* [Prathmik Mahila Sahakari Upbhokta Bhandar, Shahpura, Distt. Dindori v. State of M.P.] ...1969

Evidence Act (1 of 1872), Section 3 - *Appreciation of Evidence - Evidence of mother of deceased cannot be disbelieved merely on the ground that she was not mentioned as an eye witness in FIR - More so, her presence on the place of occurrence as an eye witness is also borne out from the testimony of another witness.* [Rajendra v. State of M.P.] ...*59

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - In the complaint no date of receipt of cheque is mentioned - Complainant was not confronted with the contents of complaint and no opportunity was given to explain this omission in the complaint - The omission cannot be taken into consideration against the complainant and omission is also not material one and does not amount to contradiction.* [Kishanlalv. Murlidhar] ...1237

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - It is not the law that statement of I.O. cannot be believed - If the statement of I.O. inspires confidence, such statement must be believed.* [Laxmi Narayan v. State of M.P.]...2115

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - Material prosecution witnesses in examination in-chief deposed against the accused persons - Were not cross examined by the defence counsel on the date of recording of their evidence - They were recalled and cross examined after lapse of 10 months - In cross examination they changed their version and turned hostile - In re- examination they were confronted with their earlier version by prosecutor - They admitted that their earlier version was correct - Thereafter no further cross examination was done by defence - Earlier version in their examination in-chief is reliable.* [Kamal v. State of M.P.] ...1214

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence of doctor - It is well settled legal position that evidence of doctor has to be appreciated like an other fact - Medical expert has admitted the defence*

योजना अधिनियम की धारा 3 के अंतर्गत आदेश में प्रदत्त किसी भी शक्ति के प्रयोग में नहीं बनाई गई थी – योजना राज्य की कार्यपालिक शक्तियों के प्रयोग में बनाई गई – अपीलार्थी को योजना के उपबन्धों के उल्लंघन के लिये दोषसिद्ध नहीं किया जा सकता – अपीलार्थी दोषमुक्त – अपील मंजूर। (अरविंद कुमार वि. म.प्र. राज्य) 1479

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 6–सी(2) – ब्याज – याचियों को उचित मूल्य की दुकानें आबंटित – स्कीम के उपबंधों के उल्लंघन के लिए अभियोजित – अभियोजन में दोषमुक्ति हुई, तथापि वस्तुऐं समपहृत (जब्त) की गईं – समपहरण का आदेश अपील में अपास्त किया – वस्तुएँ दाण्डिक मामले के लम्बित रहने के दौरान पहले ही विक्रय की जा चुकी थीं – न्यायालय के आदेशानुसार वस्तुओं के मूल्य का भुगतान किया, तथापि, उस पर ब्याज से इनकार किया – अभिनिर्धारित – ब्याज की हकदारी वैधानिक उपबंध के आधार पर है – न्यायालय में ब्याज से इनकार करने का किसी प्रकार का विवेकाधिकार निहित नही है – दाण्डिक अपील में ब्याज प्रदान करने का अभाव ब्याज प्राप्त करने के अधिकार से वंचित नहीं करेगा – प्रत्यर्थियों को युक्तियुक्त दर से ब्याज संदाय करने का निदेश दिया गया – याचिका मंजूर। (प्राथमिक महिला सहकारी उपभोक्ता भंडार, शहपुरा जिला डिंडोरी वि. म.प्र. राज्य) ...1969

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – मृतक की माँ के साक्ष्य पर केवल इस आधार पर अविश्वास नहीं किया जा सकता कि उसका नाम प्रथम सूचना रिपोर्ट में प्रत्यक्षदर्शी साक्षी के रूप में उल्लिखित नहीं – अन्य साक्षियों के साक्ष्य से भी उसकी घटना स्थल पर प्रत्यक्षदर्शी साक्षी के रूप में उपस्थिति निश्चित होती है। (राजेन्द्र वि. म.प्र. राज्य) ---*59

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – परिवाद में चैक प्राप्ति की तारीख का उल्लेख नहीं – परिवादी का परिवाद की अंर्तवस्तु की ओर ध्यान आकृष्ट नहीं किया एवं परिवाद में हुये इस लोप के स्पष्टीकरण का कोई अवसर नहीं दिया – इस लोप को परिवादी के विरूद्ध विचार में नहीं लिया जा सकता है एवं लोप तात्विक भी नहीं है और खण्डन नहीं माना जा सकता। (किशनलाल वि. मुरलीधर) ...1237

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का मूल्यांकन – यह विधि नहीं है कि अनुसंधान अधिकारी के कथन पर विश्वास नहीं किया जा सकता – यदि अनुसंधान अधिकारी का कथन विश्वास प्रेरित करता हो तो ऐसे कथन पर विश्वास किया जाना चाहिए। (लक्ष्मी नारायण वि. म.प्र. राज्य) ...2115

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का अधिमूल्यन – तात्विक अभियोजन साक्षियों ने मुख्य परीक्षा में अभियुक्तों के विरूद्ध अभिसाक्ष्य दिया – प्रतिरक्षा पक्ष के अभिभाषक द्वारा उनके साक्ष्य अभिलेखन की तारीख पर प्रतिपरीक्षा नहीं की गई – उनको 10 माह व्यतीत होने के बाद पुनः बुलाया गया और प्रतिपरीक्षा की गई – प्रतिपरीक्षा में वे उनका बयान बदलते हुए पक्ष द्रोही हो गये – पुनः परीक्षा में अभियोजक ने उनके पूर्व के बयान का ध्यान दिलाया – उन्होंने स्वीकार किया कि उनका पूर्व का बयान सही था – उसके बाद प्रतिरक्षा पक्ष द्वारा पुनः प्रतिपरीक्षा नहीं की गई – उनका मुख्य परीक्षा में दिया गया पूर्व का बयान विश्वसनीय। (कमल वि. म.प्र. राज्य) ...1214

साक्ष्य अधिनियम (1872 का 1), धारा 3 – चिकित्सक के साक्ष्य का अधिमूल्यन – यह एक सुस्थापित विधिक स्थिति है कि चिकित्सक के साक्ष्य का अधिमूल्यन किसी अन्य तथ्य की

suggestion that if the deceased would have fallen on a pointed object (iron line angle), he could sustain injuries on abdomen - Held - Looking to the nature of injuries the same could not be sustained by falling on an iron fencing. [Kamal v. State of M.P.] ...1214

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence of relative witness - Evidence of relatives cannot be discarded simply on the ground that they are interested witnesses - As according to case diary statements they were not the eye witnesses and in the court they have improved their version and became the eye witnesses of the incident - Their evidence is not reliable.* [Ganga Prasad v. State of M.P.] ...1774

Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - Testimony of Food Inspector - Corroboration of main witness by independent witness is a rule of prudence - Not requirement of law - Testimony of Food Inspector cannot be rejected for want of corroboration.* [Shankar v. State of M.P.] ...*69

Evidence Act (1 of 1872), Section 3 - *Evidence - Examination-in-Chief of witness could not be completed as original documents were not available - Witness not produced for cross-examination - As opportunity of cross-examination not given to appellant therefore, statement of witness cannot be read over in evidence.* [State of M.P. v. Shankerlal Soni] ...*52

Evidence Act (1 of 1872), Section 3 - *Evidence - Related and interested witness - Evidence of mother of deceased cannot be discarded merely on the ground that she is closely related to deceased - If it is otherwise found to be trustworthy and credible.* [Rajendra v. State of M.P.] ...*59

Evidence Act (1 of 1872), Section 3 - *Evidence - Sole Testimony of Food Inspector - Corroboration of main witness by independent witness is a rule of prudence and not requirement of law - Testimony of Food Inspector cannot be rejected for want of corroboration by independent witness.* [Radhika Prasad Gupta v. State of M.P.] ...*58

Evidence Act (1 of 1872), Section 9 - *Delay in holding Test Identification Parade - Some accused persons are still at large - Test Identification could not have been conducted in respect of only some of accused persons - No question of delay was put to Investigating Officer - If there was any delay in holding identification parade, it is insignificant in the peculiar facts of present case.* [Pravin v. State of M.P.] ...1023

Evidence Act (1 of 1872), Section 9 - *Recovery of Mobile Phone and golden ring - Complainant has nowhere stated about snatching of golden ring - Complainant admitted that seized articles were shown to him prior to holding of Test Identification Parade - Held - Evidence of Test Identification Parade and identification of articles in Court looses its sanctity and evidentiary value - Conviction of appellants set aside - Appeal allowed.* [Sachin v. State of M.P.] ...1242

तरह ही किया जाता है – चिकित्सीय विशेषज्ञ ने प्रतिरक्षा पक्ष का यह सुझाव स्वीकार किया कि यदि मृतक किसी नुकीली वस्तु (लोहे के एंगल) पर गिरता तो भी उसे पेट में उपहतियां आ सकती थीं – अभिनिर्धारित – उपहतियों की प्रकृति को देखते हुये उस तरह की उपहतियां लोहे की बाड़ (फैंसिंग) पर गिरने से नहीं आ सकती हैं। (कमल वि. म.प्र. राज्य) ...1214

साक्ष्य अधिनियम (1872 का 1), धारा 3 – रिश्तेदार साक्षी के साक्ष्य का अधिमूल्यन – रिश्तेदारों की साक्ष्य केवल इस आधार पर अमान्य नहीं की जा सकती कि वे हितबद्ध साक्षी हैं – अनुसंधान दैनंदिनी के कथनों के अनुसार वे प्रत्यक्षदर्शी साक्षी नहीं थे और न्यायालय में उन्होंने अपने बयान में सुधार किया और घटना के प्रत्यक्षदर्शी साक्षी बन गये – उनकी साक्ष्य विश्वसनीय नहीं। (गंगाप्रसाद वि. म.प्र. राज्य) ...1774

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का मूल्यांकन – खाद्य निरीक्षक का परिसाक्ष्य – मुख्य साक्षी की स्वतंत्र साक्षी द्वारा सम्पुष्टि विवेकशीलता का नियम है – कानून की अपेक्षा नहीं – खाद्य निरीक्षक का परिसाक्ष्य सम्पुष्टि के अभाव में अस्वीकार नहीं किया जा सकता है। (शंकर वि. म.प्र. राज्य) ---*69

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य – साक्षी की मुख्य परीक्षा पूर्ण नहीं हो सकी क्योंकि मूल दस्तावेज उपलब्ध नहीं थे – साक्षी को प्रतिपरीक्षण के लिये पेश नहीं किया – चूंकि अपीलार्थी को प्रतिपरीक्षण का अवसर नहीं दिया गया, इसलिए साक्षी का कथन साक्ष्य में नहीं पढ़ा जा सकता है। (म.प्र. राज्य वि. शंकरलाल सोनी) ---*52

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य – रिश्तेदार और हितबद्ध साक्षी – मृतक की माँ की साक्ष्य केवल इस आधार पर अमान्य नहीं की जा सकती कि वह मृतक की करीबी रिश्तेदार है – यदि यह अन्यथा विश्वसनीय और प्रमाणिक होना पाया जाए। (राजेन्द्र वि. म.प्र. राज्य) ---*59

साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य – खाद्य निरीक्षक की एकमात्र साक्ष्य – मुख्य साक्षी का स्वतंत्र साक्षी से समर्थन दूरदर्शिता का नियम है विधि की अपेक्षा नहीं – खाद्य निरीक्षक का अभिसाक्ष्य स्वतंत्र साक्षी के समर्थन के अभाव में निरस्त नहीं किया जा सकता है। (राधिका प्रसाद गुप्ता वि. म.प्र. राज्य) ---*58

साक्ष्य अधिनियम (1872 का 1), धारा 9 – शिनाख्त परेड कराने में विलम्ब – कुछ अभियुक्त अभी भी स्वच्छंद – केवल कुछ अभियुक्तों के लिये शिनाख्त परेड संचालित नहीं की जा सकी – अनुसंधान अधिकारी से विलम्ब के बारे में कोई प्रश्न नहीं पूछा गया – यदि शिनाख्त परेड संचालित किये जाने में कोई विलम्ब हुआ हो तो वह प्रस्तुत मामले के विशेष तथ्यों में अर्थहीन है। (प्रवीण वि. म.प्र. राज्य) ...1023

साक्ष्य अधिनियम (1872 का1), धारा 9 – मोबाइल फोन व सोने की अंगूठी की बरामदगी – परिवादी ने कहीं भी सोने की अंगूठी छीनने के बारे में नहीं कहा – परिवादी ने स्वीकार किया कि उसे जब्त वस्तुएं शिनाख्त परेड करने के पूर्व दिखा दी थीं – अभिनिर्धारित – शिनाख्त परेड का साक्ष्य और न्यायालय में वस्तुओं की शिनाख्त का साक्ष्य उसका महत्व और साक्षिक मूल्य खो चुका है – अपीलार्थियों की दोषसिद्धि अपास्त – अपील मंजूर। (सचिन वि. म.प्र. राज्य) ...1242

Evidence Act (1 of 1872), Section 9 - *Test Identification Parade - Branch Manager, although had taken part in test identification parade, did not in his substantive evidence refer to that fact - Held - No cross examination of this witness particularly his identification of accused in Court - No suggestion that accused persons had covered their faces - Witness had full opportunity in broad day-light to be with accused - Magistrate conducting identification parade confirming identification - Witness rightly relied upon by both the Courts.* [Pravin v. State of M.P.] ...1023

Evidence Act (1 of 1872), Section 9 - *Test Identification Parade - Golden chain recovered from possession of appellant was identified by complainant in test identification parade conducted by Tahsildar - Neither chain was produced nor was it identified in Court - Held - Evidence of test identification parade is not a substantive piece of evidence and can be used only for contradiction and corroboration purposes - Trial Court erred in relying on evidence of identification of golden chain - Appellant acquitted - Appeal allowed.* [Ganpat v. State of M.P.] ...1235

Evidence Act (1 of 1872), Section 9 - *Test Identification Parade - No Bar that Doctor cannot conduct T.I.P. - Substantive Evidence is identification in Court - T.I.P. only provides corroboration to identification by witness in Court, if required.* [Bhure Singh v. State of M.P.] ...*42

Evidence Act (1 of 1872), Section 9 - *Test Identification Parade - Test Identification Parade conducted by Naib Tahsildar is not substantive peace of evidence - Complainant not identified appellants in Court - Court relied upon evidence of test identification parade as substantive piece of evidence - Held - Substantive evidence is the statement of witnesses given in Court on oath - Complainant did not identify the appellants in Court - Identification not proved.* [Sachin v. State of M.P.] ...1242

Evidence Act (1 of 1872) - Section 27 - *Confessional Statement - Memorandum prepared under Section 27 not admissible in evidence - Only so far as it relates to information about recovery or discovery would only be admissible in evidence.* [Bhoorelal v. State of M.P.] ...1229

Evidence Act (1 of 1872) - Section 30 - *Confessional Statement of co-accused - Statement of co-accused who was juvenile recorded under Section 164 - Co-accused not being tried together -- Held - Confessional statement of co-accused neither produced nor proved - Co-accused not being tried together by same Judge - No question put to accused under Section 313 regarding confessional statement - Confessional statement of co-accused cannot be relied upon.* [Bhoorelal v. State of M.P.] ...1229

Evidence Act (1 of 1872), Section 32 - *Dying Declaration - Conviction can be based upon oral dying declaration if same is found to be trustworthy and reliable.* [State of M.P. v. Ashok] ...1503

साक्ष्य अधिनियम (1872 का 1), धारा 9 – शिनाख्त परेड – तथापि शाखा प्रबन्धक ने शिनाख्त परेड में हिस्सा लिया – किन्तु अपने सारवान साक्ष्य में इस तथ्य का उल्लेख नहीं किया – अभिनिर्धारित – इस साक्षी से अभियुक्त की पहचान के सम्बन्ध में विशिष्ट रूप से प्रतिपरीक्षा नहीं की गई – ऐसा सुझाव नहीं दिया कि अभियुक्तों ने उनके चेहरे ढ़क रखे थे – साक्षी के पास दिन के उजाले में अभियुक्त के साथ रहने का पूरा अवसर था – शिनाख्त परेड संचालित करने वाले मजिस्ट्रेट ने शिनाख्त की पुष्टि की – दोनों न्यायालयों ने साक्षी पर उचित रूप से विश्वास किया। (प्रवीण वि. म.प्र. राज्य) 1023

साक्ष्य अधिनियम (1872 का 1), धारा 9 – शिनाख्त परेड – अपीलार्थी के कब्जे से बरामद सोने की चेन को परिवादी ने तहसीलदार द्वारा संचालित शिनाख्त परेड में पहचान लिया – चेन न तो पेश की गई और न ही न्यायालय में उसकी पहचान की गई – अभिनिर्धारित – शिनाख्त परेड का साक्ष्य सारवान साक्ष्य नहीं है और ऐसा साक्ष्य केवल खण्डन या पुष्टि के लिये प्रयुक्त किया जा सकता है – विचारण न्यायालय ने सोने की चेन की पहचान का साक्ष्य पर भरोसा करके भूल की – अपीलार्थी को दोषमुक्त किया – अपील मंजूर की गई। (गनपत वि. म.प्र. राज्य) ...1235

साक्ष्य अधिनियम (1872 का 1), धारा 9 – शिनाख्त परेड – ऐसा वर्जन नहीं है कि डाक्टर शिनाख्त परेड संचालित नहीं कर सकता है – न्यायालय में पहचान सारवान साक्ष्य है – यदि अपेक्षित हो तो शिनाख्त परेड से केवल न्यायालय में साक्षी द्वारा की गई पहचान की पुष्टि होती है। (मूरे सिंह वि. म.प्र. राज्य) ---*42

साक्ष्य अधिनियम (1872 का1), धारा 9 – शिनाख्त परेड – नायब तहसीलदार द्वारा संचालित शिनाख्त परेड सारवान साक्ष्य नहीं – परिवादी ने न्यायालय में अपीलार्थियों को नहीं पहचाना – न्यायालय ने शिनाख्त परेड के साक्ष्य को सारवान साक्ष्य मानते हुये विश्वास किया – अभिनिर्धारित – साक्षी न्यायालय में शपथ पर जो अभिसाक्ष्य देता है सारवान साक्ष्य है – परिवादी ने अपीलार्थियों को न्यायालय में नहीं पहचाना – पहचान सिद्ध नहीं। (सचिन वि. म.प्र. राज्य) ...1242

साक्ष्य अधिनियम (1872 का 1) – धारा 27 – संस्वीकृति कथन – धारा 27 के अंतर्गत तैयार मेमोरेण्डम साक्ष्य में ग्राह्य नहीं – यह केवल ऐसी जानकारी जिसका संबंध बरामदगी या प्रगटीकरण से है केवल वही साक्ष्य में ग्राह्य है। (भूरेलाल वि. म.प्र. राज्य) ...1229

साक्ष्य अधिनियम (1872 का 1) – धारा 30 – सह–अभियुक्त का संस्वीकृति कथन – सह–अभियुक्त जो किशोर था, का कथन धारा 164 के अंतर्गत अभिलिखित – सह–अभियुक्त का विचारण साथ–साथ नहीं किया जा रहा था – अभिनिर्धारित – सह–अभियुक्त का संस्वीकृति कथन न तो प्रस्तुत न ही सिद्ध किया गया – सह–अभियुक्त का विचारण साथ ही साथ उसी न्यायाधीश द्वारा नहीं – धारा 313 के अंतर्गत अभियुक्त से संस्वीकृति कथन के संबंध में कोई प्रश्न नहीं पूछा गया – सह–अभियुक्त के संस्वीकृति कथन पर विश्वास नहीं किया जा सकता है। (भूरेलाल वि. म. प्र. राज्य) ...1229

साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – मौखिक मृत्युकालिक कथन पर दोषसिद्धि आधारित की जा सकती है, यदि वह विश्वसनीय और भरोसेमंद हो। (म.प्र. राज्य वि. अशोक) 1503

Evidence Act (1 of 1872), Section 32(1) - ***Dying Declaration*** - *Provision of Section 32(1) of the Act is an exception to the rule against admissibility of hearsay rule and if the dying declaration is reliable, conviction can be based thereon.* [Ganga Prasad v. State of M.P.] ...1774

Evidence Act (1 of 1872), Section 32(3) - *Statement of relevant fact by person who is dead is relevant - Against interest of maker - Statement of an accused u/s 27 of Evidence Act who subsequently died - Cannot be used against third person for his criminal prosecution.* [Laxmi Narayan v. State of M.P.]...2115

Evidence Act, (1 of 1872), Section 45 - See - *Negotiable Instruments Act 1881, Section 138,* [Meena Tiwari v. Satya Prakash Capital Investment Ltd.] ...*47

Evidence Act (1 of 1872), Section 60 - *Hearsay Evidence - Prosecution witnesses say that they were informed by the eye witness regarding incident - Eye Witness did not depose that he had informed other prosecution witnesses - Held - Evidence of Prosecution witnesses not admissible as hit by Section 60 of Act.* [Ganpat v. State of M.P.] ...1235

Evidence Act (1 of 1872), Section 102, Insurance Act, 1938, Section 45 - ***Burden of proof on insurer*** - *Burden of proof that suppression was made fraudulently by the policy holder and the policy holder was knowing the fact that the statement which he was making is false on insurer.* [Narmada Bai Chouhan v. Regional Manager, LIC of India] ...1746

Evidence Act, (1 of 1872), Section 113-A - See - *Penal Code 1860, Sections 107 & 306, .* [Manoj v. State of M.P.] ...2093

Evidence Act (1 of 1872), Section 113-A - See - *Penal Code, 1860, Section 306.* [Dinesh v. State of M.P.] ...1785

Evidence Act (1 of 1872), Section 114 - ***Presumption of marriage*** - *Partners living together for long spell as husband and wife - There would be presumption in favour of wedlock - However, presumption rebuttable - Heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place.* [Tulsa v. Durghatiya] ...981

Evidence Act (1 of 1872), Section 114 - ***Presumption*** - *Stolen Property recovered from possession of appellant - Presumption raised by Section 114 can be drawn.* [Pravin v. State of M.P.] ...1023

Evidence Act (1 of 1872), Section 114 - See - *Prevention of Food Adulteration Act, 1954 - Section 13 (2)* [Shankar v. State of M.P.] ...*69

Evidence Act (1 of 1872), Sections 145 & 157 - ***Contents of complaint*** - *Would not be a substantive piece of evidence - Can be used for contradiction and corroboration to its author/complainant as per provisions U/s 145 & 157 of the Act.* [Kishanlal v. Murlidhar] ...1237

साक्ष्य अधिनियम (1872 का 1), धारा 32(1) – मृत्युकालिक कथन – अधिनियम की धारा 32(1) का उपबंध अनुश्रुत नियम की ग्राह्यता के विरुद्ध नियम का अपवाद है और यदि मृत्युकालिक कथन विश्वसनीय है, दोषसिद्धि उस पर आधारित हो सकती है। (गंगाप्रसाद वि. म.प्र. राज्य) ...1774

साक्ष्य अधिनियम (1872 का 1), धारा 32(3) – उस व्यक्ति द्वारा सुसंगत तथ्य का कथन सुसंगत है जिसकी मृत्यु हो गई हो – करने वाले के हित के विरुद्ध – साक्ष्य अधिनियम की धारा 27 के अधीन अभियुक्त का कथन, जिसकी बाद में मृत्यु हो गई – तृतीय व्यक्ति के विरुद्ध उसके दाण्डिक अभियोजन के लिए प्रयुक्त नहीं किया जा सकता। (लक्ष्मी नारायण वि. म.प्र. राज्य)...2115

साक्ष्य अधिनियम, (1872 का 1), धारा 45 – देखें – परक्राम्य लिखत अधिनियम 1881, धारा 138, (मीना तिवारी वि. सत्य प्रकाश केपिटल इन्वेस्टमेंट लि.) ---*47

साक्ष्य अधिनियम (1872 का 1), धारा 60 – अनुश्रुत साक्ष्य – अभियोजन साक्षियों का कहना है कि उन्हें घटना के संबंध में जानकारी प्रत्यक्षदर्शी साक्षी ने दी थी – प्रत्यक्षदर्शी साक्षी उसके अभिसाक्ष्य में यह नहीं बताता है कि उसने अन्य अभियोजन साक्षियों को जानकारी दी थी – अभिनिर्धारित – अभियोजन साक्षियों का बयान साक्ष्य में ग्राह्य नहीं है और वह अधिनियम की धारा 60 के विरूद्ध है। (गनपत वि. म.प्र. राज्य) ...1235

साक्ष्य अधिनियम (1872 का 1), धारा 102, बीमा अधिनियम, 1938, धारा 45 – सबूत का भार बीमाकर्ता पर – सबूत का भार बीमाकर्ता पर है कि पॉलिसी धारक द्वारा छिपाव कपटपूर्वक किया गया और पॉलिसी धारक को इस तथ्य का ज्ञान था कि वह जो कथन कर रहा था, मिथ्या है। (नर्मदा बाई चौहान वि. रीजनल मेनेजर, एल.आई.सी. आफ इंडिया) ...1746

साक्ष्य अधिनियम, (1872 का 1), धारा 113–ए – देखें – दण्ड संहिता 1860, धारा 107 व 306, (मनोज वि. म.प्र. राज्य) ...2093

साक्ष्य अधिनियम (1872 का 1), धारा 113–ए – देखें – दण्ड संहिता, 1860, धारा 306, (दिनेश वि. म.प्र. राज्य) ...1785

साक्ष्य अधिनियम (1872 का 1), धारा 114 – विवाह की उपधारणा – दोनों लंबे समय से पति–पत्नी की तरह रहते रहे – विवाह की उपधारणा की जायेगी – किन्तु उपधारणा खण्डनीय – सबूत अथवा प्रमाण का भार उस व्यक्ति पर होगा जो विवाह की वैधता को नकार रहा है । (तुलसा वि. दुर्गतिया) ...981

साक्ष्य अधिनियम (1872 का 1), धारा 114 – उपधारणा – अपीलार्थी के कब्जे से चुराई गई संपत्ति बरामद की गई – धारा 114 के अंतर्गत उपधारणा की जायेगी। (प्रवीण वि. म.प्र. राज्य) 1023

साक्ष्य अधिनियम (1872 का 1), धारा 114 – देखें – खाद्य अपमिश्रण निवारण अधिनियम 1954, धारा 13 (2) (शंकर वि. म.प्र. राज्य) ---*69

साक्ष्य अधिनियम (1872 का 1), धारा 145 व 157 – परिवाद की अंर्तवस्तु – सारवान् साक्ष्य नहीं है – अधिनियम की धारा 145 व 157 के उपबन्धों के अधीन उसके लेखक/परिवादी के खण्डन एवं पुष्टि के लिये प्रयोग किया जा सकता है। (किशनलाल वि. मुरलीधर) ...1237

Excise Act, M.P. (2 of 1915), Sections 17, 28 - *License - Auction of liquor shops for the financial year 2000-01 took place on 23rd March 2000 - Petitioner did not participate however on 29th March 2000 submitted application expressing willingness to offer amount 10% more than bid submitted by successful bidder for the remaining period - Excise Commissioner cancelled the auction held on 23rd March and directed for re auction which took place on 10th April 2000 - Licence was issued to Petitioner on 21st April as petition filed by successful bidder of first auction was pending - Petitioner prayed for remission of license fee for the period 1st April to 20th April as shops were run by Deptt. - Held - Re-auction took place at the instance of Petitioner for the remaining period of financial year - Petitioner not entitled for remission in license fees.* [Shambhoo Marketing Pvt. Ltd. v. State of M.P.] ...1104

Excise Act, M.P. (2 of 1915), Sections 34(1)(A), 49A(1)(A) - ***Liquor seized from applicant*** *- On chemical examination sample found unfit for human consumption - No evidence available regarding sealing of sample and sending the same for chemical examination - Held - Conviction u/s 49A(1)(A) set-aside - However, liquor found from applicant - Applicant covicted under converted Section 34(1)(A) - Revision Partly allowed.* [Murlidhar v. State of M.P.] ...1814

Factories Act (63 of 1948), Sections 9, 92 & 105 - ***Powers of Factory Inspector*** *- Maintainability of Complaint - Petitioner No.1 working as Chief Workshop Manager and Petitioner No. 2 working as Deputy Chief Mechanical Engineer in Deep Paint Plant in Gwalior - They are Occupiers as per definition of the Act - A small explosion took place on 05.04.2002 - Factory Inspector appointed u/s 8 of the Act - On the basis of his report prosecution u/s 92 launched against petitioners - Held - Factory Inspector is empowered to visit factory within the local limits for which he is appointed along with assistants i.e. experts - He went alone in the factory - His report was not based on the reports of Assistants -Factory Inspector was not an Expert - He violated provision of Section 9 and thus prosecution on the basis of his report liable to set aside - Petition Allowed.* [H.K. Kala v. State of M.P.] ...1699

Factory Act, (63 of 1948), Section 2(M) - See *-Industrial Disputes Act, 1947, Sections 25-K, 25-L, 25-N,* [M.P. Housing Board v. Smt. Jyoti Chitnis]... 1442

Family Courts Act (66 of 1984), Section 7, Guardians and Wards Act 1890, Section 7 - *Permission to operate Bank Account of Mentally ill person - Appellant appointed as Guardian of mentally ill person - However, Family Court declined permission to operate bank account on the ground that it has no jurisdiction to grant permission - Held - It is within jurisdiction of Family court to pass orders regarding operation of bank account of mentally ill person - However, such exercise would be subject to provisions contained in Mental Health Act, 1987.* [B. Raman v. To whom so ever] ...1177

आबकारी अधिनियम, म.प्र. (1915 का 2), धारायें 17, 28 – अनुज्ञप्ति (लायसेंस) – ता. 23 मार्च 2000 को वित्तीय वर्ष 2000–01 के लिए शराब की दुकानें नीलाम की गई – याची ने उसमें भाग नहीं लिया किन्तु 29 मार्च 2000 को सफल बोली लगाने वाले द्वारा लगाई गई बोली से 10 % अधिक राशि देने का प्रस्ताव आवेदन अवशिष्ट कालावधि के लिये प्रस्तुत कर रजामन्दी व्यक्त की – आबकारी आयुक्त ने 23 मार्च को किया गया नीलाम रद्द कर दिया एवं पुनः नीलाम करने का निदेश दिया जो 10 अप्रैल 2000 को किया गया – 21 अप्रैल को याची को अनुज्ञप्ति जारी की क्योंकि प्रथम नीलामी में सफल बोली लगाने वाले की याचिका लंबित थी – याची ने अनुज्ञप्ति शुल्क में माफी के लिए निवेदन किया क्योंकि 1 अप्रैल से 20 अप्रैल की कालावधि में विभाग द्वारा दुकानें चलाई गई थीं – अभिनिर्धारित – याची के अनुरोध पर ही वित्तीय वर्ष की अवशिष्ट कालावधि के लिए पुनः नीलामी की गयी – याची अनुज्ञप्ति शुल्क में माफी का हकदार नहीं। (शम्भू मार्केटिंग प्रा. लिमि. वि. म.प्र. राज्य) ...1104

आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(1)(ए), 49ए(1)(ए) – आवेदक से मदिरा अभिग्रहित की गई – रासायनिक परीक्षण पर नमूना मानव उपभोग के लिए अनुपयुक्त पाया गया – नमूने को सीलबन्द करने और उसे रासायनिक परीक्षण के लिए भेजने के सम्बन्ध में कोई साक्ष्य उपलब्ध नहीं – अभिनिर्धारित – धारा 49ए(1)(ए) के अधीन दोषसिद्धि अपास्त – तथापि आवेदक के पास से मदिरा पाई गई – आवेदक परिवर्तित धारा 34(1)(ए) के अधीन दोषसिद्ध – पुनरीक्षण आंशिक मंजूर। (मुरलीधर वि. म.प्र. राज्य) ...1814

कारखाना अधिनियम (1948 का 63), धाराएँ 9, 92 व 105 – कारखाना निरीक्षक की शक्तियाँ – परिवाद की पोषणीयता – याची क्रमांक 1 चीफ वर्कशॉप मैनेजर के रूप में और याची क्रमांक 2 डिप्टी चीफ मैकेनिकल इंजीनियर के रूप में डीप पेंट प्लांट, ग्वालियर में कार्यरत – अधिनियम की परिभाषा के अनुसार वे अधिष्ठाता हैं – 05.04.2002 को एक छोटा विस्फोट हुआ – अधिनियम की धारा 8 के अधीन कारखाना निरीक्षक नियुक्त हुआ – उसके प्रतिवेदन के आधार पर धारा 92 के अधीन याचीगण के विरुद्ध अभियोजन आरम्भ हुआ – अभिनिर्धारित – कारखाना निरीक्षक उन स्थानीय सीमाओं के अन्दर जिनके लिए वह नियुक्त हुआ है सहायकों अर्थात् विशेषज्ञों के साथ कारखाने का निरीक्षण करने को सशक्त है – वह कारखाने में अकेला ही गया – उसका प्रतिवेदन सहायकों के प्रतिवेदनों पर आधारित नहीं था – कारखाना निरीक्षक विशेषज्ञ नहीं था – उसने धारा 9 के उपबन्धों का उल्लंघन किया और इसलिए उसके प्रतिवेदन पर आधारित अभियोजन अपास्त किये जाने योग्य – याचिका मंजूर। (एच.के. काला वि. म.प्र. राज्य) ...1699

कारखाना अधिनियम,(1948 का 63), धारा 2(एम)–देखें – औद्योगिक विवाद अधिनियम, 1947, धारा 25–के, 25–एल, 25–एन, (एम.पी. हाउसिंग बोर्ड वि. श्रीमती ज्योति चिटनिस) 1442

परिवार न्यायालय अधिनियम (1984 का 66), धारा 7, संरक्षक और प्रतिपाल्य अधिनियम, 1890, धारा 7 – मानसिक रूप से अस्वस्थ व्यक्ति के बैंक खाते के संचालन की अनुमति – अपीलार्थी को मानसिक रूप से अस्वस्थ व्यक्ति का संरक्षक नियुक्त किया गया – यद्यपि परिवार न्यायालय ने इस आधार पर बैंक का खाता संचालन की अनुमति नहीं दी कि उन्हें अनुमति प्रदान करने का क्षेत्राधिकार नहीं है – अभिनिर्धारित – मानसिक रूप से अस्वस्थ व्यक्ति के बैंक खाते को संचालित करने के संबंध में परिवार न्यायालय को आदेश पारित करने का क्षेत्राधिकार है – तथापि इसका प्रयोग मानसिक स्वास्थ्य अधिनियम, 1987 के उपबन्धों के अंतर्गत ही किया जायेगा। (बी. रामन वि. टू हूम सो एव्हर) ...1177

Family Courts Act (66 of 1984), Sections 7,8,20, Mental Health Act 1987, Sections 52, 53 - *Applicability of provisions of Mental Health Act - Provisions of Mental Health Act which are not inconsistent with that of Act, 1984 are applicable and within jurisdiction of Family Court.* [B. Raman v. To whom so ever] ...1177

Family Courts Act (66 of 1984), Section 10, Civil Procedure Code, 1908, Order 26, Rule 10A - *Family Court ordered for a second DNA test keeping in view letter of Director, C.D.F.D. wherein it was requested to the Court for taking resampling of blood for conducting re-test - However, Family Court was not justified in ordering for DNA test from a place of choice of husband - It is clarified that the report of first DNA test cannot be taken on record, the same has to be ignored in toto.* [Amar Sharma v. Smt. Seema Sharma] ...2008

Finance Act (14 of 2001), Section 65(72) - Clause z (b) - ***Taxable Service*** *- Service provided to customer by Photo Studio or Agency relating to Photography - Photography is an inclusive definition and not restrictive - Any negative used for taking photograph would come under the inclusive definition of photography - When a part of work is done by Photographer and part of work is assigned to colour laboratory would in fact be a photography studio or agency - Colour laboratories are amenable to service tax - Petition dismissed.* [Colorway Photo Lab v. Union of India]. ...1397

Fisheries (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 15(3) - ***Merit has to be given preference and not the seniority*** *- Person who is junior but is of exceptional merit and suitability has to be placed above to his senior in the merit list so that the chances of promotion are not adversely effected because of seniority.* [Devendra Bapna v. State of M.P.] ...1942

General Clauses Act, (10 of 1897), Section 27 - See - *Prevention of Food Adulteration Act, 1954, Section 13(2)* [Gulab v. State of M.P.] ...1535

General Clauses Act, (10 of 1897), Section 27 - See - *Prevention of Food Adulteration Act, 1954, Section 13 (2)* [Shankar v. State of M.P.] ...*69

Geology and Mining Class-I and Class-II Service Recruitment Rules, 1965, Rule 14 - ***Promotion - Merit-cum-Seniority*** *- Criteria for promotion to the post of Superintending Geologist was merit-cum-seniority - Respondents applying the criteria of seniority-cum-merit promoted respondent No.3 & 4 - Indore Bench in similar circumstances directed in case of petitioner therein that although the criteria is merit-cum-seniority but as criteria of seniority-cum-merit has been applied, the same benefit be extended to the petitioner therein - Held - Relying on the judgment passed by the Indore Bench respondents were directed to apply the criteria of seniority-cum-merit and extend the benefit to the petitioner for promotion and determine the inter-se seniority and all other monetary benefits - Petition allowed.* [R.S. Mehta (Dr.) v. State of M.P.] ...1912

परिवार न्यायालय अधिनियम (1984 का 66), धारा 7,8,20, मानसिक स्वास्थ्य अधिनियम 1987, धारा 52, 53 – मानसिक स्वास्थ्य अधिनियम के उपबन्धों का लागू होना – मानसिक स्वास्थ्य अधिनियम के ऐसे उपबन्ध जो परिवार न्यायालय अधिनियम 1984 के उपबन्धों से असंगत नहीं हैं वे परिवार न्यायालय के क्षेत्राधिकार के अंतर्गत आते हैं और परिवार न्यायालय में लागू होंगे। (बी. रामन वि. दू हूम सो एव्हर) ...1177

कुटुंब न्यायालय अधिनियम (1984 का 66), धारा 10, सिविल प्रक्रिया संहिता, 1908, आदेश 26 नियम 10ए – कुटुंब न्यायालय ने सी.डी.एफ.डी. के संचालक के पत्र, जिसमें पुनः जाँच करने के लिए रक्त का पुनः नमूना लेने का न्यायालय से अनुरोध किया गया था, को ध्यान में रखते हुए दूसरे डीएनए जाँच का आदेश दिया – तथापि कुटुंब न्यायालय का पति की पसंद के स्थान पर डीएनए जाँच के लिए आदेश देना न्यायसंगत नहीं – यहाँ यह स्पष्ट किया कि डीएनए जांच की पहली रिपोर्ट अभिलेख पर नहीं ली जा सकती और इसे पूर्णतः अनदेखा किया जाए। (अमर शर्मा वि. श्रीमति सीमा शर्मा) ...2008

वित्त अधिनियम (2001 का 14), धारा 65 (72) – खण्ड जेड (बी) – करयोग्य सेवा – ग्राहक को फोटो स्टूडियो अथवा एजेंसी द्वारा फोटोग्राफी के संबंध में सेवा प्रदाय करना – फोटोग्राफी एक समग्र परिभाषा है, प्रतिबंधक नहीं – किसी निगेटिव का प्रयोग फोटोग्राफ बनाने के लिए किया जायेगा तो वह फोटोग्राफी की परिभाषा में शामिल है – जब कार्य का कुछ भाग फोटोग्राफर द्वारा निष्पादित किया गया हो और कार्य का कुछ भाग कलर लैब को सौंपा गया हो तो वह फोटोग्राफी स्टूडियो अथवा ऐजेंसी है – कलर लैब सेवाकर के अध्याधीन हैं – याचिका खारिज। (कलरवे फोटो लेब वि. यूनियन ऑफ इण्डिया) 1397

मत्सय उद्योग (राजपत्रित) सेवा भर्ती नियम, म.प्र., 1987, नियम 15(3) – योग्यता को अधिमान दिया जाना चाहिए न कि ज्येष्ठता को – व्यक्ति जो कनिष्ठ है परन्तु विशिष्ट योग्यता और उपयुक्तता रखता है, योग्यता सूची में उसके वरिष्ठ के ऊपर रखा जाएगा ताकि पदोन्नति के अवसर ज्येष्ठता की वजह से प्रतिकूल रूप से प्रभावित न हों। (देवेन्द्र बापना वि. म.प्र. राज्य)...1942

साधारण खण्ड अधिनियम, (1897 का 10), धारा 27 – देखें – खाद्य अपमिश्रण निवारण अधिनियम 1954, धारा 13(2), (गुलाब वि. म.प्र. राज्य) 1535

साधारण खण्ड अधिनियम, (1897 का 10), धारा 27 – देखें – खाद्य अपमिश्रण निवारण अधिनियम 1954, धारा 13(2), (शंकर वि. म.प्र. राज्य) ---*69

भू–विज्ञान और खनन वर्ग–एक और वर्ग–दो सेवा भर्ती नियम, 1965, नियम 14 – पदोन्नति – योग्यता–सह–ज्येष्ठता – अधीक्षण भू–वैज्ञानिक के पद पर पदोन्नति के लिए मापदंड योग्यता–सह–ज्येष्ठता था – प्रत्यर्थियों ने ज्येष्ठता–सह–योग्यता मापदंड प्रयोग में लाते हुए प्रत्यर्थी क्रमांक 3 और 4 को पदोन्नत किया – इन्दौर न्यायपीठ ने समरूप परिस्थितियों में उसमें के याची के मामले में निदेशित किया कि यद्यपि मापदंड योग्यता–सह–ज्येष्ठता है परन्तु चूंकि वरीयता–सह–योग्यता का मापदंड लागू किया गया है, समान लाभ उसमें के याची को दिया जाए – अभिनिर्धारित – इन्दौर न्यायपीठ द्वारा पारित निर्णय पर निर्भर करते हुए प्रत्यर्थियों को ज्येष्ठता–सह–योग्यता का मापदंड लागू करने और याची को पदोन्नति के लिए लाभ देने तथा पारस्परिक ज्येष्ठता व अन्य सभी आर्थिक लाभ निर्धारित करने को निदेशित किया गया – याचिका मंजूर। (आर.एस. मेहता (डॉ.) वि. म.प्र. राज्य) ...1912

Grah Nirman Mandal Adhiniyam, M.P. 1972 (3 of 1973) - Section 15 - See - *Civil Services (Pension) Rules, M.P., 1976* [Satya Narayan Gupta v. M.P. Housing Board] ...2046

Guardians and Wards Act (7 of 1890), Section 7 - See - *Family Courts Act 1984, Section 7,* [B. Raman v. To whom so ever] ...1177

Hindu Marriage Act (25 of 1955), Section 9 - ***Restitution of Conjugal Rights*** - *Decree for restitution of conjugal rights challenged by wife - Wife did not agree to live with husband and not even agreed to live with her sons - It can be presumed that there is something panic which compelled her to live abandoned life - She cannot be compelled to live together against her wishes - A decree for restitution of conjugal rights to give a tool to husband to harass her through the process of Court - Therefore decree set aside.* [Milan v. Sunil] ...*36

Hindu Marriage Act (25 of 1955) - Section 9 - ***Restitution of Conjugal Rights*** - *Respondent is legally wedded wife of appellant - However owing to differences they left the company of each other voluntarily - It could not be said that appellant is only person who left the company of respondent without any sufficient cause - No decree of restitution of conjugal rights can be granted - Appeal allowed.* [Virendra v. Rajni] ...1191

Hindu Marriage Act (25 of 1955), Section 25 - ***Permanent Alimony*** - *'At the time of passing of any decree' - Suit for grant of divorce dismissed by Trial Court - Permanent alimony to wife U/s 25 cannot be granted - Though her claim to maintenance stands preserved U/s 18(1) of the Hindu Adoptions and Maintenance Act and Section 125 Cr.P.C.* [Shyamlal v. Durgabai]...1472

Housing Board Regulations, M.P., 1977, Regulation 3 - See - *Civil Services (Pension) Rules, M.P., 1976* [Satya Narayan Gupta v. M.P. Housing Board] ...2046

Income Tax Act (43 of 1961), Section 4 - ***Charge of Income Tax*** - *Whether TDS is attracted on stipend paid to PG students - Held - Stipend is not being paid for any kind of service rendered by a PG student - Stipend paid is to meet the cost of education and would be in nature of scholarship - TDS not attracted in respect of stipend paid to PG students - Petition allowed.* [Junior Doctors Association v. The Chief Commissioner of Income Tax]...1992

Income Tax Act (43 of 1961), Sections 10(20)(Explanation), 10(29) [As amended w.e.f. 01.04.2003], Sections 11, 11A - ***Intention behind the amendment*** *-Before amendment, Sections 10(2) & 10(29) of the I.T. Act provide for blanket exemption to all local authorities without fulfilling any condition - Section 11 provides for exemption on fulfillment of certain conditions - Thus, the intention behind the amendment was to remove blanket exemption to local authorities and provide exemption, only if they fulfill the conditions u/s 11A.* [Commissioner of Income Tax v. Krishi Upaj Mandi Samiti, Morena] ...1735

गृह निर्माण मंडल अधिनियम, म.प्र., 1972 (1973 का 3) – धारा 15 – देखें – सिविल सेवा (पेंशन) नियम, म.प्र. 1976 (सत्यनारायण गुप्ता वि. एम.पी. हाउसिंग बोर्ड) ...2046

संरक्षक और प्रतिपाल्य अधिनियम, (1890 का 7), धारा 7 – देखें – परिवार न्यायालय अधिनियम 1984, धारा 7, (बी. रामन वि. टू हूम सो एव्हर) ...1177

हिन्दू विवाह अधिनियम (1955 का 25), धारा 9 – दाम्पत्य अधिकारों का प्रत्यास्थापन – दाम्पत्य अधिकारों के प्रत्यास्थापन की डिक्री को पत्नी द्वारा चुनौती दी गई – पत्नी अपने पति के साथ रहने को सहमत नहीं व यहाँ तक कि उसके पुत्रों के साथ भी रहने को सहमत नहीं – यह माना जा सकता है कि कुछ ऐसा संत्रास है जो उसे परित्यक्त जीवन हेतु विवश करता है – उसे उसकी इच्छा के विरूद्ध साथ रहने को विवश नहीं किया जा सकता है – दाम्पत्य अधिकारों के प्रत्यास्थापन की डिक्री पति को न्यायालय की आदेशिका के माध्यम से उत्पीड़न का हथियार देता है – इसलिए डिक्री अपास्त की गई। (मिलन वि. सुनील) ---* 6

हिन्दू विवाह अधिनियम (1955 का 25) – धारा 9 – दाम्पत्य अधिकारों का प्रत्यास्थापन – प्रत्यर्थी अपीलार्थी की विधिक रूप से विवाहित पत्नी है – तथापि उनके बीच आपसी मत भिन्नता के कारण दोनों ने एक दूसरे को स्वेच्छा से छोड़ दिया – यह नहीं कहा जा सकता है कि अपीलार्थी ही एकमात्र व्यक्ति है जिसने प्रत्यर्थी के साथ रहना बिना किसी पर्याप्त कारण के छोड़ा हो – दाम्पत्य अधिकारों के प्रत्यास्थापन की डिक्री नहीं दी जा सकती – अपील मंजूर। (वीरेन्द्र वि. रजनी) ...1191

हिन्दू विवाह अधिनियम (1955 का 25), धारा 25 – स्थायी निर्वाह व्यय – 'कोई डिक्री पारित होने के समय' – विवाह विच्छेद का वाद विचारण न्यायालय द्वारा खारिज – धारा 25 के अन्तर्गत पत्नी को स्थायी निर्वाह व्यय नहीं दिलाया जा सकता – यद्यपि उसका भरण पोषण का दावा हिन्दू दत्तक एवं भरण पोषण अधिनियम की धारा 18 (1) एवं धारा 125 दण्ड प्रकिया संहिता के अन्तर्गत सुरक्षित। (श्यामलाल वि. दुर्गाबाइ) 1472

गृह निर्माण मंडल विनियम, म.प्र., 1977, विनियम 3 – देखें – सिविल सेवा (पेंशन) नियम, म.प्र. 1976 (सत्यनारायण गुप्ता वि. एम.पी. हाउसिंग बोर्ड) ...2046

आयकर अधिनियम (1961 का 43), धारा 4 – आयकर का भार – क्या स्नातकोत्तर छात्रों को प्रदत्त स्टाईपंड पर टीडीएस आकृष्ट होता है – अभिनिर्धारित – स्टाईपंड स्नातकोत्तर छात्र द्वारा दी गई किसी प्रकार की सेवा के लिए प्रदत्त नहीं किया जाता – प्रदत्त स्टाईपंड शिक्षा के खर्च को पूरा करने के लिए है और छात्रवृत्ति की पकृति का है – स्नातकोत्तर छात्रों को प्रदत्त स्टाईपंड के संबंध में टीडीएस आकृष्ट नहीं होता – याचिका मंजूर। (जूनियर डॉक्टर्स् एसोसिएशन वि. द चीफ कमिश्नर आफ इनकम टैक्स) ...1992

आयकर अधिनियम (1961 का 43), धाराएँ 10(20)(स्पष्टीकरण), 10(29) "01.04.2003 से यथा संशोधित", धाराएँ 11, 11क – संशोधन का आशय – संशोधन के पहले आयकर अधिनियम की धारा 10(2) व 10(29) सभी स्थानीय प्राधिकारियों को बिना कोई शर्त पूरी किये व्यापक छूट प्रदान करती हैं – धारा 11 कुछ शर्तों को पूरा करने पर छूट प्रदान करती है – अतः संशोधन का आशय था कि स्थानीय प्राधिकारियों को प्राप्त व्यापक छूट को समाप्त करना और यदि वे धारा 11क की शर्तें पूर्ण करे तो ही छूट प्रदान करना। (कमिश्नर आफ इनकम टैक्स वि. कृषि उपज मंडी समिति, मुरैना) ...1735

Income Tax Act (43 of 1961), Sections 10(20) (Explanation), 10(29) [As amended w.e.f. 01.04.2003], 11, 12, 12A, 12AA(1)(b)(ii), Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 7, 19, 38, 39 - *Exemption from payment of Income Tax to Market Committee - Only those assessee are entitled to registration u/s 12A & 12AA of I.T. Act who are entitled to exemption u/s 11 & 12 of the I.T. Act - Marketing committees are not entitled for exemption u/s 12 after the amendment w.e.f. 01.04.2003 - However, marketing committees fulfill all the requirements of Section 11 to get exemption, therefore, are entitled to registration u/s 12A & 12AA of the I.T. Act.* [Commissioner of Income Tax v. Krishi Upaj Mandi Samiti, Morena]...1735

Income Tax Act (43 of 1961), Section 80G(5)(vi) - ***Exemption from income tax - Denied by the Commissioner*** - *Object of the trust to promote and improve social or moral or material condition of a community - Held - Object can not be considered as charitable in nature - Petition dismissed.* [Gujrati Samaj, Ujjain v. Commissioner of Income Tax, Ujjain] ...1690

Income Tax Act (43 of 1961), Section 127 (2) - ***Power to transfer cases*** *- Petitioner's cases transferred from Indore to Bhopal circle of Income Tax Department without giving opportunity of hearing and assigning any reason - Held - Concerned authority has not complied the provisions of Section 127(2) - Order transferring cases quashed - However, concerned authority may take necessary steps as per provision of Section 127(2).* [Manohar Sweets v. Commissioner of Income Tax] ...1465

Income Tax Act (43 of 1961), Sections 132, 131, 142(1) - ***Search and Seizure*** *- Petitioner/Assessee Cooperative Society engaged in banking transactions - A search held by Income Tax Department at its business premises - Action challenged on the ground that search and seizure was not in consonance with provisions of Section 132 - Held - Large amount of income of Society remained unaccounted and escaped from assessment/taxation - Investment and valuable will never be revealed if notice u/s 142(1) or 131 are issued - Sufficient material available and the action is with due application of mind - Information not taken from third source thus action cannot be said to be malafide or having no rational nexus - Petition dismissed.* [Gwalior Citizen Sakh Sahakarita Maryadit v. Union of India] ...2022

Income Tax Act (43 of 1961), Section 147 - ***Income escaping assessment*** *- Resp. No.2 holding Public post - Resp. No.2 claims himself to be a part of HUF - Not filing return on the ground that he was not under obligation to file return as entire income is agricultural income - Resp. No.2 purchasing property in the names of his family members - Held - Resp. No.2 has public accountability - Basic characteristics of Rule of Law do not make distinction between weakest and mightiest - Income Tax Commissioner to initiate proceeding against resp. No.2 and facts mentioned in petition should be treated as reasons to believe as required u/s 147 of Act - Petition disposed off* [Anil Bansal v Central Bureau of Investigation] ...1952

आयकर अधिनियम (1961 का 43), धाराएँ 10(20)(स्पष्टीकरण), 10(29) "01.04.2003 से यथा संशोधित", 11, 12, 12क, 12कक(1)(बी)(पप),.षि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 7, 19, 38, 39 – विपणन समिति को आयकर के भुगतान से छूट – आयकर अधिनियम की धारा 11, 12 में छूट पाने वाले निर्धारिती ही धारा 12क व 12कक के अन्तर्गत पंजीयन पाने के अधिकारी हैं – 01.04.2003 के संशोधन प्रभावी होने के बाद विपणन समिति धारा 12 के अधीन छूट पाने की अधिकारी नहीं है – यद्यपि विपणन समिति छूट पाने के लिए धारा 11 की सभी आवश्यकताओं को पूरा करती है, अतः आयकर अधिनियम की धारा 12क, 12कक के अधीन पंजीयन की अधिकारी है।(कमिश्नर आफ इनकम टैक्स वि. कृषि उपज मंडी समिति, मुरैना) ...1735

आयकर अधिनियम (1961 का 43), धारा 80जी(5)(अप) – आयकर से छूट – कमिश्नर द्वारा इंकार किया गया – न्यास का उद्देश्य समाज की सामाजिक या नैतिक या सारवान स्थिति की उन्नति और सुधार करना – अभिनिर्धारित – उद्देश्य धर्मार्थ प्रकृति का नही माना जा सकता है – याचिका खारिज। (गुजराती समाज, उज्जैन वि. कमिश्नर आफ इनकम टैक्स, उज्जैन) ...1690

आयकर अधिनियम (1961 का 43), धारा 127 (2) – मामलों के अंतरण का अधिकार – याची के मामले सुनवाई का अवसर दिये बिना और कोई कारण बताये बिना आयकर विभाग के इंदौर वृत्त से भोपाल वृत्त में अंतरित कर दिये – अभिनिर्धारित – संबंधित प्राधिकारी ने धारा 127 (2) के उपबन्धों का पालन नहीं किया – मामलों के अंतरण का आदेश अभिखण्डित – तथापि संबंधित प्राधिकारी धारा 127 (2) के उपबन्ध अनुसार आवश्यक कदम उठा सकते हैं। (मनोहर स्वीटस् वि. कमिश्नर ऑफ इंकम टेक्स) 1465

आयकर अधिनियम (1961 का 43), धाराएँ 132, 131, 142(1) – तलाशी और अभिग्रहण – याची/निर्धारिती सहकारी सोसायटी बैंकिंग संव्यवहार करती थी – आयकर विभाग द्वारा उसके कारबार परिसर की तलाशी ली गई – कृत्य को इस आधार पर चुनौती दी गई कि तलाशी और अभिग्रहण धारा 132 के उपबन्धों के अनुकूल नहीं थी – अभिनिर्धारित – सोसायटी की आय की बड़ी रकम बेहिसाब और निर्धारण/कराधान से छोड़ दी गई – यदि धारा 142(1) या 131 के अधीन सूंचनापत्र जारी किये जाते तो निवेश और मूल्यवान कमी भी प्रकट नहीं होते – पर्याप्त सामग्री उपलब्ध और कार्यवाही मस्तिष्क के सम्यक् प्रयोग में है – सूचना अन्य स्रोत से नहीं ली गई इसलिए कार्यवाही दुर्भावनापूर्ण या कोई युक्तिसंगत संबंध न रखने वाली नहीं कही जा सकती – याचिका खारिज। (ग्वालियर सिटीजन साख सहकारिता मर्यादित वि. यूनियन आफ इंडिया) ...2022

आयकर अधिनियम (1961 का 43), धारा 147 – निर्धारण से बचाई हुई आय – प्रत्यर्थी क्रमांक 2 लोक पद धारण किये हुए – प्रत्यर्थी क्रमांक 2 स्वयं को एचयूएफ का भाग होने का दावा करता है – विवरणी इस आधार पर पेश नहीं की कि वह विवरणी पेश करने के लिए आबद्ध नहीं था क्योंकि सम्पूर्ण आय कृषिक आय है – प्रत्यर्थी क्रमांक 2 ने अपने परिवार के सदस्यों के नाम से सम्पत्ति क्रय की – अभिनिर्धारित – प्रत्यर्थी क्रमांक 2 का लोक उत्तरदायित्व है – विधि के नियम का मूल अभिलक्षण प्रभावशाली और कमजोरों में भेद नहीं करता – आयकर आयुक्त प्रत्यर्थी क्रमांक 2 के विरुद्ध कार्यवाही प्रारम्भ करें और याचिका में वर्णित तथ्यों को विश्वास करने का कारण मानें जैसा कि अधिनियम की धारा 147 के अधीन अपेक्षित है – याचिका निपटाई गई। (अनिल बंसल वि. सेंट्रल ब्यूरो आफ इंवेस्टीगेशन) ...1952

Industrial Disputes Act (14 of 1947), Section 25-H - ***Re-employment of retrenched workmen*** - *The benefit of Section 25-H is available to all retrenched workmen and not only to those who were legally retrenched - Respondent was illegally retrenched w.e.f. 1-3-2001 - On 2-2-2004, employer without offering employment to respondent engaged 56 employees - Respondent is entitled for re-employment.* [Ayukt Indore Nagar Palika Nigam, Indore v. Jagdish] ...1125

Industrial Disputes Act, (14 of 1947), Sections 25-K, 25-L, 25-N, Factory Act, 1948, Section 2(M) - ***Industrial Establishment*** - *Services of respondent No. 1 terminated without the permission from the Government - Held - Construction of houses by the petitioner for the purpose of selling comes within definition of manufacturing process - As per Provision of Chapter V(B) of Act, 1947 no permission sought from Government before termination of services - Order of Tribunals directing re-instatement proper - However, respondent No.1 entitled for 25% back wages instead of 50% as directed by Tribunals.* [M.P. Housing Board v. Smt. Jyoti Chitnis] ...1442

Industrial Disputes Act, (14 of 1947), Section 25-O - ***Procedure for closing down an undertaking*** - *Petitioner applied to State seeking permission to close down industrial undertaking - Intended date for closure given was 15.03.2004 which was beyond 90 days - State Govt. did not consider application - Matter referred by State Govt. to Industrial Tribunal - Tribunal held that closure is justified - However directed for payment of full wages to workmen till date of order i.e. 06.07.2005 - Held - Section 25-O is a complete Code - Wherever decision is taken by State Govt. or Tribunal, intended date of closure specified by employer cannot be changed - Fixing of date of closure upto date of order by Tribunal is beyond its jurisdiction - Petition allowed.* [Hind Syntex Ltd. v. Dewas Mazdoor Sangh] ...1410

Industrial Relation Act, M.P. (27 of 1960), Section 108-A, Industrial Employment (Standing Orders) Rules, M.P., 1963 - ***Payment of salary to a classified employee*** - *Respondent worked on daily wages basis as Chowkidar for 6 months - Under the standing orders he has been classified as permanent for the post of Chowkidar with salary for the post - But, pay scale of Chowkidar denied by employer - Application u/s 108-A of Act filed before Labour Court for recovery of amount as per pay scale of Chowkidar which was allowed - Order challenged by employer in writ petition - Held - Admittedly, there is no pay scale prescribed of the employee who has been classified as permanent under standing orders - However, pay scale of Chowkidar has been prescribed - When the respondent (employee) has been classified as Chowkidar then certainly he is entitled to get the pay scale of Chowkidar.* [State of M.P. v. Hariram] ...1997

Insurance Act (4 of 1938), Section 45 - ***Insurance Policy*** - *Appellants' claim repudiated by respondents on the ground that insured had concealed*

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–एच – छंटनी किए कर्मकार को फिर से नौकरी में लेना – धारा 25–एच का लाभ छंटनी किए सभी कर्मकारों को उपलब्ध होगा न कि केवल उन्हें, जिनकी विधिक रूप से छंटनी की गई थी – तारीख 1–3–2001 को प्रत्यर्थी की अवैध रूप से छंटनी की गई थी – तारीख 2–2–2004 को नियोजक ने प्रत्यर्थी को नौकरी देने का प्रस्ताव दिये बिना 56 कर्मकारों को नौकरी पर रखा – प्रत्यर्थी फिर से नौकरी पाने का हकदार है। (आयुक्त इंदौर नगरपालिका निगम, इंदौर वि. जगदीश) ...1125

औद्योगिक विवाद अधिनियम, (1947 का 14), धारा 25–के, 25–एल, 25–एन, कारखाना अधिनियम, 1948, धारा 2(एम) – औद्योगिक स्थापना – प्रत्यर्थी क्र. 1 की सेवाऐं शासन की अनुमति के बिना समाप्त कर दीं – अभिनिर्धारित – याची द्वारा मकानों का निर्माण विक्रय करने के प्रयोजन से किया यह विनिर्माण प्रक्रिया की परिभाषा में आता है – 1947 के अधिनियम के अध्याय पाँच(बी) के उपबंध अनुसार सेवाऐं समाप्त करने से पूर्व शासन से कोई अनुमति नही ली गई – अधिकरण का बहाल करने के निदेश का आदेश उचित – यद्यपि अधिकरण द्वारा निदेशित 50% पिछले वेतन के स्थान पर प्रत्यर्थी क्र. 1, 25% पिछला वेतन पाने का हकदार। (एम.पी. हाउसिंग बोर्ड वि. श्रीमती ज्योति चिटनिस) 1442

औद्योगिक विवाद अधिनियम, (1947 का 14), धारा 25–ओ – उपक्रम को बंद करने के लिये प्रक्रिया – याची ने औद्योगिक उपक्रम बंद करने की अनुमति के लिये राज्य को आवेदन किया – समापन की आशयित तिथि 15.03.2004 दी गई जो 90 दिनों से परे थी – राज्य शासन ने आवेदन पर विचार नही किया – मामला राज्य शासन द्वारा औद्योगिक अधिकरण को निर्दिष्ट – अधिकरण ने यह अभिनिर्धारित किया कि समापन न्यायसंगत है – यद्यपि कामगार को आदेश की तिथि अर्थात् 06.07.2005 तक का पूरा बकाया वेतन देने का निदेश दिया – अभिनिर्धारित – धारा 25–ओ पूर्ण संहिता है – जहाँ राज्य शासन या अधिकरण के द्वारा निर्णय लिया जाना हो, तो नियोक्ता द्वारा समापन की आशयित विनिर्दिष्ट तिथि नहीं बदली जा सकती है – समापन की तिथि को अधिकरण द्वारा आदेश की तिथि तक नियत करना उसके क्षेत्राधिकार से परे है – याचिका मंजूर। (हिन्द सिंटेक्स लिमिटेड वि. देवास मजदूर संघ) 1410

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धारा 108–ए, औद्योगिक नियोजन (स्टेंडिंग ऑर्डर्स) नियम, म.प्र., 1963 – वगीकृत कर्मचारी को वेतन का भुगतान – प्रत्यर्थी ने दैनिक वेतनभोगी चौकीदार के रूप में 6 माह कार्य किया – उसे स्टेंडिंग ऑर्डर्स के अधीन पद के वेतन सहित चौकीदार के पद के लिए स्थायी के रूप में वगीकृत किया गया – किन्तु नियोजक द्वारा चौकीदार का वेतनमान देने से इंकार – चौकीदार के वेतनमान के अनुसार राशि की वसूली के लिए श्रम न्यायालय के समक्ष अधिनियम की धारा 108–ए के अन्तर्गत आवेदन पेश, जो मंजूर किया गया – आदेश को नियोजक ने रिट याचिका में चुनौती दी – अभिनिर्धारित – स्वीकृत रूप से ऐसे कर्मचारी जिन्हें स्टेंडिंग ऑर्डर्स के अन्तर्गत स्थायी वगीकृत किया गया हो उनके लिए कोई वेतनमान विहित नहीं है – तथापि, चौकीदार का वेतनमान विहित है – जब प्रत्यर्थी (कर्मचारी) को चौकीदार के रूप में वगीकृत किया गया है तब वह निश्चित रूप से चौकीदार का वेतनमान पाने का हकदार है। (म.प्र. राज्य वि. हरिराम) ...1997

बीमा अधिनियम (1938 का 4), धारा 45 – बीमा पॉलिसी – अपीलार्थीगण का दावा प्रत्यर्थीगण द्वारा इस आधार पर अस्वीकार किया गया कि बीमाकृत ने प्रस्ताव प्रपत्र में तात्विक तथ्यों

material facts and made some false statements regarding his health in proposal form - Held - No evidence on record to show that suppression of disease was fraudulent by insured - Insured was examined by Panel Doctor of respondents prior to issuance of policy and was found fit - No justification in dismissing the claim of appellants - Suit decreed - Appeal allowed. [Narmada Bai Chouhan v. Regional Manager, LIC of India] ...1746

Insurance Act, (4 of 1938), Section 45 - See - *Evidence Act, 1872, Section 102, [Narmada Bai Chouhan v. Regional Manager, LIC of India]* ... *1746*

Interpretation of Statutes - *A statute must be read as a whole and one provision of the Act should be construed with the provisions in the same Act so as to make a consistent enactment of the whole statute - It is the duty of the Courts to avoid "head on clash" between two sections of the same Act and, whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise.* [Prashant Kumar Sahu v. M/s. Optel Telecommunications Ltd.] ...1753

Irrigation Engineering Services (Gazetted) Recruitment Rules, M.P., 1968, Rule 15(1) - *Eligibility for Promotion* - *Petitioner appointed as Sub-Engineer on 19.10.1984 - Completed B.E. degree in the year 1991 - Not considered for promotion after completion of 8 years of service - Learned Single Judge dismissed the petition that petitioner did not complete 8 years of service after completing B.E. Degree - Held - As per rule 15(1) the seniority for promotion has to be counted from the date of appointment and not from the date of acquiring the required qualification - Case for promotion is to be considered after completion of 8 years of qualifying service as Sub-Engineer.* [Sanjay Verma v. State of M.P.] ...1592

(Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, M.P. 1991, Clause 6(5), 12 - See -*Essential Commodities Act 1955, Sections 3,7,* [Arvind Kumar v. State of M.P.] ...1479

Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, M.P. (30 of 1984), Section 7 - *Appellant member of Scheduled Caste and landless person - Found in settled possession of Government land - Does not possess any other land except Government/suit land - He may file application u/s 7 of Adhiniyam to authorized officer.* [Prahlad v. State of M.P.] ...2069

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 7, 19, 38, 39 - See - *Income Tax Act, 1961, Sections 10(20) (Explanation), 10(29) [As amended w.e.f. 01.04.2003], 11, 12, 12A, 12AA(1)(b)(ii),* [Commissioner of Income Tax v. Krishi Upaj Mandi Samiti, Morena] ...1735

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Sections 11, 40, 41(1)(B), Krishi Upaj Mandi (Mandi Samiti Ka Nirvachan) Rules, M.P. 1997, Rules 14(b),80,82 - ***Representatives of traders holding licence*** -

को छिपाया और अपने स्वास्थ्य के बारे में मिथ्या कथन किये थे – अभिनिर्धारित – अभिलेख पर यह दर्शाने के लिये कोई साक्ष्य नहीं कि बीमा.त द्वारा बीमारी को छिपाना कपटपूर्ण था – पॉलिसी जारी करने के पूर्व बीमाकृत की जाँच प्रत्यर्थीगण के पैनल चिकित्सक द्वारा की गई थी और स्वस्थ्य पाया था – अपीलार्थीगण का दावा खारिज करने का कोई औचित्य नहीं – वाद डिक्री किया गया – अपील मंजूर। (नर्मदा बाई चौहान वि. रीजनल मेनेजर, एल.आई.सी. आफ इंडिया) ...1746

बीमा अधिनियम, (1938 का 4), धारा 45 – देखें – साक्ष्य अधिनियम, 1872, धारा 102, (नर्मदा बाई चौहान वि. रीजनल मेनेजर, एल.आई.सी. आफ इंडिया) ...1746

कानूनों का निर्वचन – एक कानून को पूर्ण रूप से पढ़ा जाना चाहिए और अधिनियम के एक उपबंध का अर्थ उसी अधिनियम के उपबंधों से लगाना चाहिए ताकि पूरे कानून को संगत अधिनियमिति बनाया जा सके – यह न्यायालयों का कर्तव्य है कि एक ही अधिनियम की दो धाराओं के बीच में "हेड ऑन क्लैश" होने को टाले और जब भी ऐसा किया जाना संभव हो उपबंध परस्पर विरोधी प्रतीत हों तो उनका अर्थ समरूप होता हुआ निकाला जाए। (प्रशांत कुमार साहू वि. मे. आप्टेल टेलीकम्यूनिकेशंस् लि.) ...1753

सिंचाई अभियांत्रिकी सेवा (राजपत्रित) भर्ती नियम, म.प्र., 1968, नियम 15(1) – पदोन्नति के लिये पात्रता – याची 19.10.1984 को उप–अभियंता के रूप में नियुक्त हुआ – बी.ई. डिग्री 1991 में पूर्ण की – सेवा के 8 वर्ष पूर्ण होने पर पदोन्नति के लिये विचार नहीं किया गया – विद्वान एकल न्यायाधीश ने याचिका निरस्त की कि याची ने बी.ई. डिग्री पूर्ण करने के पश्चात् सेवा के 8 वर्ष पूरे नहीं किये – अभिनिर्धारित – नियम 15(1) के तहत पदोन्नति के लिये वरिष्ठता की गणना भर्ती दिनांक से की जावेगी न कि अपेक्षित योग्यता प्राप्ति दिनांक से – उप–अभियंता के रूप में अर्हक सेवा के 8 वर्ष पूर्ण करने पर पदोन्नति के मामले पर विचार करना था। (संजय वर्मा वि. म.प्र. राज्य) ...1592

(खाद्य पदार्थ) सार्वजनिक नागरिक पूर्ति वितरण योजना, म.प्र. 1991, खण्ड 6(5), 12 – देखें –आवश्यक वस्तु अधिनियम 1955, धारा 3, 7, (अरविंद कुमार वि. म.प्र. राज्य) 1479

कृषि प्रयोजन के लिये उपयोग की जा रही दखल रहित भूमि पर भूमिस्वामी अधिकारों का प्रदान किया जाना (विशेष उपबंध) अधिनियम, म.प्र. (1984 का 30), धारा 7 – अपीलार्थी अनुसूचित जाति का सदस्य और भूमिहीन व्यक्ति – शासकीय भूमि के सुस्थापित कब्जे में पाया गया – शासकीय/वादग्रस्त भूमि के अलावा कोई अन्य भूमि कब्जे में नहीं – वह प्राधिकृत अधिकारी को अधिनियम की धारा 7 के अधीन आवेदन पेश कर सकता है। (प्रहलाद वि. म.प्र. राज्य) ...2069

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धाराएँ 7, 19, 38, 39 – देखें – आयकर अधिनियम, 1961, धाराएँ 10(20)(स्पष्टीकरण), 10(29) '01.04.2003 से यथा संशोधित', 11, 12, 12क, 12कक(1)(बी)(पप), (कमिश्नर आफ इनकम टैक्स वि. कृषि उपज मंडी समिति, मुरैना) ...1735

कृषि उपज मंडी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 11,40,41(1)(बी), कृषि उपज मंडी (मंडी समिति का निर्वाचन) नियम, म.प्र. 1997, नियम 14(बी), 80, 82 – अनुज्ञप्तिधारी व्यापारियों (लाइसेंसी) के प्रतिनिधि – अनुज्ञप्तिधारी व्यापारियों के

Nomination of 4th respondent as member to Board under category of representatives of traders holding licence - 4th respondent is trader but not elected as representative of traders holding licence - Held - Post of representatives of traders holding licence can only be held on being elected as provided under rules - Nomination of 4th respondent quashed - Petition allowed. [Anil v. State of M.P.] ...1469

Krishi Upaj Mandi (Mandi Samiti Ka Nirvachan) Rules, M.P. 1997, Rules 14(b), 80, 82 - See - *Krishi Upaj Mandi Adhiniyam, M.P. 1972, Sections 11, 40, 41(1)(B),* [Anil v. State of M.P.] ...1469

Land Acquisition Act (1 of 1894), Section 4 - ***Acquisition of Land - Availability of alternative Government Land -*** *Question whether alternative land is available for the purposes or whether Govt. should not acquire land only because oustees preferred the same, are matters of subjective satisfaction of Government.* [Yogesh Neema v. State of M.P.] ...1878

Land Acquisition Act (1 of 1894), Sections 5-A, 17(1), (4) - ***Acquisition of Land - Scope of interference by Court -*** *Once Court finds that Govt. has applied its mind for the need for invoking urgency clause and also to the necessity of dispensing with enquiry u/s 5-A of Act and there is no malafide in such decision, Court should not interfere with such decision.* [Yogesh Neema v. State of M.P.] ...1878

Land Acquisition Act (1 of 1894), Sections 5-A, 17(1), (4) - ***Acquisition of Land -*** *Some part of land acquired without any objections speedily soon after issuance of notification u/s 4 - Acquisition of remaining part of land being delayed due to objections of land owners - Held - Govt. can invoke provisions of Section 17(4) and can dispense with enquiry u/s 5-A.* [Yogesh Neema v. State of M.P.] ...1878

Land Revenue Code, M.P. (20 of 1955), Section 65 - *Provides that State Government may vest any Settlement Officer with all or any of the powers of a Collector under this Code to be exercised by him - State Government has not issued any notification delegating the powers of Collector to Settlement Officer U/s 65 of the Code.* [Chetanlal Thakur v. State of M.P.] ...1114

Land Revenue Code, M.P. (20 of 1955), Section 88 - *Provides that Settlement Officer shall exercise all the powers of the Collector conferred on him in any of the provisions of Chapter IX & XVIII of the Code - It is clear that U/s 88 of the Code the powers of disciplinary authority vested with the Collector cannot be delegated to the Settlement Officer.* [Chetanlal Thakur v. State of M.P.] ...1114

Land Revenue Code, M.P. (20 of 1959), Section 104(2) - See - *Constitution, Article 309.* [Vinod Kumar Khare v. State of M.P.] ...1436

Land Revenue Code, M.P. (20 of 1959), Section 110 - ***Presumption -*** *Entries in record of rights raise a presumption that the person whose name is*

प्रतिनिधियों के संवर्ग में चौथे प्रत्यर्थी को बोर्ड में सदस्य के रूप में नामांकन – चौथा प्रत्यर्थी एक व्यापारी है परन्तु अनुज्ञप्तिधारी व्यापारियों का निर्वाचित प्रतिनिधि नहीं – अभिनिर्धारित – अनुज्ञप्तिधारी व्यापारियों के प्रतिनिधि का पद केवल निर्वाचित होने पर ही धारित किया जा सकता है, जैसा की नियमों में उपबन्ध है – चौथे प्रत्यर्थी का नामांकन अभिखण्डित – याचिका मंजूर। (अनिल वि. म.प्र. राज्य) 1469

कृषि उपज मंडी (मंडी समिति का निर्वाचन) नियम, म.प्र. 1997, नियम 14(बी), 80, 82 – देखें – कृषि उपज मंडी अधिनियम, म.प्र. 1972, धारा 11,40,41(1)(बी), (अनिल वि. म.प्र. राज्य) 1469

भूमि अर्जन अधिनियम (1894 का 1), धारा 4 – भूमि का अर्जन – वैकल्पिक शासकीय भूमि की उपलब्धता – यह प्रश्न कि क्या वैकल्पिक भूमि उक्त प्रयोजन के लिये उपलब्ध है या बेदखल होने वालों ने इसे पसंद किया कि सरकार को भूमि अर्जित नहीं करना चाहिए, ये मामले सरकार के व्यक्तिपरक संतोष के हैं। (योगेश नीमा वि. म.प्र. राज्य) ...1878

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 5–ए, 17(1), (4) – भूमि का अर्जन – न्यायालय द्वारा हस्तक्षेप का विषयक्षेत्र – जब न्यायालय यह पाता है कि सरकार ने अत्यावश्क खंड का अवलंब लेने की आवश्यकता विचारोपरांत तय की और अधिनियम की धारा 5–ए के अन्तर्गत जाँच को अभिमुक्ति देने को आवश्यक माना और ऐसा निर्णय लेने में कोई दुर्भावना नहीं है, न्यायालय को ऐसे निर्णय में हस्तक्षेप नहीं करना चाहिए। (योगेश नीमा वि. म.प्र. राज्य) ...1878

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 5–ए, 17(1), (4) – भूमि का अर्जन – धारा 4 के अधीन अधिसूचना जारी होने के उपरांत शीघ्रता से भूमि का कुछ भाग बिना किसी आपत्ति के अर्जित किया गया – भूमि के शेष भाग का अर्जन भूमिस्वामियों की आपत्तियों के कारण विलम्बित हुआ – अभिनिर्धारित – सरकार धारा 17(4) के उपबंधों का अवलंब ले सकती है और धारा 5–ए के अधीन जाँच को अभिमुक्ति दे सकती है। (योगेश नीमा वि. म.प्र. राज्य) ...1878

भू राजस्व संहिता, म.प्र. (1955 का 20), धारा 65 – उपबन्धित करती है कि राज्य सरकार किसी बंदोबस्त अधिकारी को इस संहिता के अधीन कलेक्टर की सभी या किन्हीं शक्तियों का प्रयोग करने का अधिकार प्रदान कर सकती है – राज्य सरकार ने कलेक्टर की शक्तियों को संहिता की धारा 65 के अंतर्गत बंदोबस्त अधिकारी को प्रत्यायोजित करने के लिये कोई अधिसूचना जारी नहीं की। (चेतनलाल ठाकुर वि. म.प्र. राज्य) ...1114

भू राजस्व संहिता, म.प्र. (1955 का 20), धारा 88 – उपबन्धित करती है कि बंदोबस्त अधिकारी कलेक्टर की सभी शक्तियों का प्रयोग करेगा जो संहिता के अध्याय 9 व 18 के किन्हीं उपबन्धों के अधीन उसे प्रदान की गई – यह स्पष्ट है कि संहिता की धारा 88 के अधीन अनुशासनात्मक प्राधिकारी की शक्तियां जो कलेक्टर में निहित हैं बंदोबस्त अधिकारी को प्रत्यायोजित नहीं की जा सकती हैं। (चेतनलाल ठाकुर वि. म.प्र. राज्य) ...1114

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 104(2) – देखें –संविधान, अनुच्छेद 309, (विनोद कुमार खरे वि. म.प्र. राज्य) ...1436

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 110 – उपधारणा – अधिकार अभिलेख की प्रविष्टि यह उपधारणा उत्पन्न करती है कि जिस व्यक्ति के नाम की प्रविष्टि है वह कब्जे

entered is in possession but the same can be rebutted by adducing evidence. [Mahant Ram Khilawan Das V. State of M.P.] ...997

Land Revenue Code, M.P., (20 of 1959) - Sections 147, 154-A - See - *Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, Sections 3, 4,* [Savita Ben Thakur Das Patel (Smt.) v. State of M.P.] ...1731

Law of Torts - ***Medical Negligence*** - *Failure of T.T. operation - No evidence that operation was not performed by the doctor by taking reasonable degree of care & skill - As the doctor was not found negligent, the liability cannot be fastened to pay damages and in that case there will not be any question of vicarious liability of employer of doctor.* [Radha Ujjainkar (Smt.) v. State of M.P.] ...2089

Law of tort - ***Medical negligence*** - *Where a person is guilty of negligence per se, no further proof is needed -There was excess bleeding to young lady during the course of family planning operation in a camp - Death occurred in transit when she was shifted to Indore which shows that there was no proper arrangements where she was operated - Medical negligence proved.* [Gowardhan Singh V. State of M.P.] ...1183

Limitation Act, (36 of 1963), Section 12 Art. 123 - See - *Civil Procedure Code, 1908, Order 9 Rule 13,* [Mohan @ Munna Pachari v. Jagdish Chandra Dubey] ...1402

Limitation Act (36 of 1963), Section 29(2) - ***Savings*** - *Unless special law or local law expressly excludes application of provisions of Act, 1963, the provisions shall apply even to limitation prescribed for any suit, appeal or application under any special law.* [Ramesh Chouksey v. Union of India] ...1887

Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 (1 of 1988), Sections 3, 4, Land Revenue Code, M.P., 1959, Sections 147, 154-A - ***Recovery of dues of Banking Company as arrears of land revenue*** - *Petitioners had taken loan from bank and mortgaged their agricultural land - Lands were auctioned under Adhiniyam, 1987 as the petitioners committed default in repayment of loan amount - Auction proceedings challenged on the ground that they are in violation of Sections 147,154-A of Code - Held - When there are two apparently conflicting provisions and if a Special provision is made on a certain matter, that matter is excluded from general provision - Provisions of Adhiniyam will prevail over provisions of Sections 147,154-A of Code - Petition dismissed.* [Savita Ben Thakur Das Patel (Smt.) v. State of M.P.]...1731

Madhyamik Shiksha Mandal (Namankan) Viniyam, M.P. 1994 - Regulation 3 - ***Enrollment*** - *Petitioner, a student of Class X was refused enrollment on the ground that he was required to get himself enrolled while he was prosecuting studies of class IX - Consequently admit card for appearing in examination of class X was also not issued - Held - Regulation 3 of Viniyam, 1994 provides that if a student is to be admitted for examinations conducted*

में है किन्तु साक्ष्य पेश कर उपधारणा खण्डित की जा सकती है। (महंत राम खिलावन दास वि. म.. प्र. राज्य) ...997

भू–राजस्व संहिता, म.प्र., (1959 का 20) धाराएँ 147, 154–ए, – देखें – लोक धन (शोध्य राशियों की वसूली) अधिनियम, 1987, धाराएँ 3, 4, (सविता बेन ठाकुर दास पटेल (श्रीमति) वि. म.प्र. राज्य) ...1731

अपकृत्य विधि – चिकित्सीय उपेक्षा – टी.टी. शल्यक्रिया की विफलता – कोई साक्ष्य नहीं कि चिकित्सक द्वारा शल्यक्रिया करने में युक्तियुक्त मात्रा में सावधानी और कुशलता नहीं बरती गई थी – चूंकि चिकित्सक द्वारा उपेक्षा किया जाना नहीं पाया गया, उस पर नुकसानी देने का दायित्व नहीं डाला जा सकता और ऐसी दशा में चिकित्सक के नियोजक का प्रतिनिधिक दायित्व का कोई प्रश्न ही नहीं उठता। (राधा उज्जयनकर (श्रीमति) वि. म.प्र. राज्य) ...2089

अपकृत्य विधि – चिकित्सीय उपेक्षा – जहां किसी व्यक्ति का चिकित्सीय उपेक्षा का दोषी होना स्वयं सिद्ध है वहां किसी अन्य साक्ष्य की आवश्यकता नहीं है – एक शिविर में परिवार नियोजन की शल्यक्रिया के दौरान युवती को अत्यधिक रक्त स्त्राव हुआ – इंदौर ले जाते समय रास्ते में उसकी मृत्यु हुई, इससे प्रगट होता है कि जहां उसकी शल्यक्रिया की गई वहां उचित व्यवस्थायें नहीं थीं – चिकित्सीय उपेक्षा सिद्ध। (गोवर्धन सिंह वि. म.प्र. राज्य) ...1183

परिसीमा अधिनियम, (1963 का 36), धारा 12, अनुच्छेद 123 – देखें –सिविल प्रक्रिया संहिता 1908, आदेश 9 नियम 13, (मोहन उर्फ मुन्ना पंछारी वि. जगदीश चन्द्र दुबे) 1402

परिसीमा अधिनियम (1963 का 36), धारा 29(2) – व्यावृत्ति – जब तक विशेष विधि या स्थानीय विधि अधिनियम, 1963 के प्रावधानों का लागू होना स्पष्ट रूप से अपवर्जित नहीं करती, किसी विशिष्ट विधि के अधीन किसी वाद, अपील या आवेदन के लिए विहित परिसीमा को भी प्रावधान लागू होंगे। (रमेश चौकसे वि. यूनियन आफ इंडिया) ...1887

लोक धन (शोध्य राशियों की वसूली) अधिनियम, 1987 (1988 का 1), धाराएँ 3, 4, भू–राजस्व संहिता, म.प्र., 1959 धाराएँ 147, 154–ए – बैंकिंग कम्पनी के शोध्य की वसूली भू राजस्व के बकाया के तौर पर – याचीयों ने बैंक से ऋण लिया एवं अपनी कृषि भूमि बंधक रखी – भूमियॉं 1987 के अधिनियम के अधीन नीलाम हुई क्योंकि याचीयों ने ऋण के प्रतिसंदाय में व्यतिक्रम किया – नीलामी कार्यवाही को इस आधार पर चुनौती दी गई कि वे संहिता की धारा 147, 154–ए के उलंघनों में हैं – अभिनिर्धारित – जब दो प्रगट तौर पर विरोधी उपबंध हों एवं यदि एक विशिष्ट उपबन्ध किसी मामले के लिये निर्मित हो तब मामला सामान्य उपबन्ध से अपवर्जित होगा – अधिनियम के उपबन्ध संहिता की धारा 147, 154–ए के उपबन्धों पर अभिभावी होंगे – याचिका खारिज। (सविता बेन ठाकुर दास पटेल (श्रीमति) वि. म.प्र. राज्य) ...1731

माध्यमिक शिक्षा मण्डल (नामांकन) विनियम, म.प्र. 1994 – विनियम 3 – नामांकन – याची 10वीं कक्षा का विद्यार्थी था, उसका नामांकन इस आधार पर इंकार किया कि जब वह 9वीं कक्षा में पढ़ रहा था उसी समय उसका नामांकन होना अपेक्षित था – परिणामस्वरूप 10वीं कक्षा में प्रवेश के लिये प्रवेश पत्र जारी नहीं किया गया – अभिनिर्धारित – विनियम 1994 के विनियम 3 में उपबन्ध है कि 9वीं कक्षा के बाद बोर्ड द्वारा संचालित परीक्षा में यदि विद्यार्थी प्रविष्ट होता है तो इसके लिये आवश्यक है कि वह अपना नामांकन करावे – यह उपबन्ध कहीं भी नहीं है कि 9वीं

by Board after 9th class, it is necessary for him to get himself enrolled - It is nowhere provided that if student fails to get himself enrolled in 9th class he shall be debarred forever from getting enrolled in future classes - Order refusing enrollment quashed - Respondents to act immediately on the application and to allow the Petitioner to appear in High School Examination in accordance with law - Petition allowed. [Fanish Kumar Shukla V. Board of Secondary Education, M.P., Bhopal] ...1132

**Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-B - *Limitation* - *Contract terminated on 23.03.90 - Demand notice to recover extra amount served on appellant on 22.01.93 - Subsequent notice served on 16.06.94 - Appellant should have approached S.E. within one month from 22.01.93 - Appellant approached S.E. in the year 1994 - S.E. neither decided the dispute within 60 days nor time was extended mutually by parties - Appellant approached Chief Engineer in the year 1999 - Reference petition filed before Tribunal dismissed as barred by time - Held - Appellant had not approached the authorities within time and failed to take recourse within period stipulated in clause 29 of agreement - Reference petition filed before Tribunal in 1999 was not maintainable - Revision dismissed.* [Aggyaram & Co. (M/s.) v. M.P. Public Works Department] ...1799

**Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-B - *Limitation* - *Once limitation has commenced and comes to an end, it would not be revived by rendering a decision on an incompetent reference.* [Aggyaram & Co. (M/s.) v. M.P. Public Works Department] ...1799

**Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 16 - *Award - Escalation in price - Tribunal awarded Rs.2,41,008/- by way of escalation and interest thereon - Held - There was delay on the part of department in carrying out its obligations - Period was extended without any penalty - Contract did not remain contract for period of 12 months - Clause 32 of agreement that no claim for price escalation rendered ineffective - Escalation rightly granted - Revision dismissed.* [State of M.P. v. M/s. Bharat Construction Co.] ...1807

Master Plan Development Scheme - *The scheme is required to adhere to the designated use of the land in the master plan and scheme is prepared for consistent with the designated use contained in the master plan. Any deviation from the master plan not permitted.* [Jeevan Singh v. State of M.P.] ...1650

Mental Health Act (14 of 1987), Sections 52, 53 - See - *Family Courts Act 1984, Sections 7,8,20,* [B. Raman v. To whom so ever] ...1177

**Mines and Minerals (Regulation and Development) Act (67 of 1957), Sections 21, 23A - *Compounding of offence - Petitioner filed an application seeking compounding of offence - Application allowed and directed to deposit Rs.75,000 as compounding fee - Petitioner challenged the order on the ground that he had never made any application and the clerk of Collector*

कक्षा में विद्यार्थी अपना नामांकन कराने में असफल रहता है तो वह भविष्य की कक्षाओं में अपना नामांकन कराने के लिये हमेशा के लिये वंचित कर दिया जायेगा – नामांकन से इंकार का आदेश अभिखण्डित – प्रत्यर्थी याची के आवेदन पर तुरंत कार्यवाही करके उच्चतर माध्यमिक परीक्षा में प्रविष्ट होने की विधि अनुसार अनुमति देवें – याचिका मंजूर की गई। (फनीस कुमार शुक्ला वि. बोर्ड आफ सेकेन्डरी एजूकेशन, एम.पी., भोपाल) ...1132

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7–बी – परिसीमा – संविदा 23.03.90 को समाप्त की गई – अतिरिक्त राशि वसूली हेतु मांग का सूचनापत्र 22.01.93 को अपीलार्थी पर तामील किया गया – पश्चात्वर्ती सूचनापत्र 16.06.94 को तामील किया गया – अपीलार्थी को अधीक्षण यंत्री को 22.01.93 से एक माह के भीतर निवेदन करना था – अपीलार्थी वर्ष 1994 में अधीक्षण यंत्री के समक्ष पहुंचा – अधीक्षण यंत्री ने न तो विवाद 60 दिनों के भीतर निर्णीत किया और न पक्षकारों द्वारा परस्पर अवधि बढ़ाई गई – अपीलार्थी मुख्य अभियंता के समक्ष वर्ष 1999 में पहुँचा – अधिकरण के समक्ष प्रस्तुत निर्देश याचिका समय वर्जित होने से खारिज की गई – अभिनिर्धारित – अपीलार्थी अधिकारियों के समक्ष अवधि के भीतर नहीं पहुँचा था और अनुबन्ध के खण्ड 29 में नियत कालावधि में आश्रय लेने में असफल रहा – अधिकरण के समक्ष वर्ष 1999 में प्रस्तुत निर्देश याचिका पोषणीय नहीं थी – पुनरीक्षण खारिज। (आज्ञाराम एण्ड कंपनी (मे.) वि. एम.पी. पब्लिक वर्कस् डिपार्टमेंट) ...1799

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7–बी – परिसीमा – एक बार परिसीमा प्रारम्भ हो कर समाप्ति पर पहुंचती है, एक अक्षम निर्देश पर दिए निर्णय द्वारा वह पुनर्जीवित नहीं हो सकेगी। (आज्ञाराम एण्ड कंपनी (मे.) वि. एम.पी. पब्लिक वर्कस् डिपार्टमेंट) ...1799

माध्यस्थम अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 16 – पंचाट – मूल्यवृद्धि – अधिकरण ने मूल्यवृद्धि और उस पर ब्याज के रूप में रु. 2,41,008/– का अवार्ड दिया – अभिनिर्धारित – विभाग की ओर से अपने दायित्वों को पूरा करने में विलम्ब किया गया था – कालावधि बिना किसी शास्ती के बढ़ाई गई – संविदा 12 माह की कालावधि का संविदा नहीं रहा – अनुबन्ध का खण्ड 32 कि मूल्यवृद्धि के लिए कोई दावा नहीं, निष्प्रभावी हो गया – मूल्यवृद्धि दिलाया जाना सही – पुनरीक्षण खारिज। (म.प्र. राज्य वि. मे. भारत कंसट्रक्शन कंपनी) ...1807

महायोजना विकास स्कीम – स्कीम में यह अपेक्षित होता है कि भूमि का महायोजना में मनोनीत प्रयोग का पालन किया जाए और स्कीम को महायोजना में मनोनीत प्रयोग से सुसंगत होते हुए तैयार किया जाता है – महायोजना से कोई परिवर्तन को अनुमति नहीं। (जीवन सिंह वि. म.प्र. राज्य) ...1650

मानसिक स्वास्थ्य अधिनियम (1987 का 14), धारा 52, 53 – देखें – परिवार न्यायालय अधिनियम 1984, धारा 7,8,20, (बी. रामन वि. टू हूम सो एव्हर) ...1177

खान और खनिज (विनियमन और विकास) अधिनियम (1957 का 67), धारा 21, 23 ए – अपराध का शमन – याची ने एक आवेदन अपराध का शमन करने के लिये प्रस्तुत किया – आवेदन मंजूर हुआ और रूपये 75,000/– शमन शुल्क जमा करने का निदेश दिया – याची ने उस आदेश को इस आधार पर चुनौती दी कि उसने कभी भी कोई आवेदन नहीं दिया और कलेक्टर

had obtained his signature on blank paper - Held.- Application was signed by petitioner as well as his Counsel - No explanation offered by Petitioner as to why his counsel had put his signature - Petitioner cannot be allowed to turn around and say that application was blank when he signed it - Petition dismissed. [Santosh Kumar Sharma v. State of M.P.] ...*51

**Motor Vehicles Act (59 of 1988), Sections 2(44), 166 - *Accident occurred due to rash and negligent driving of Tractor* - *Deceased was rolled over by the wheel of tanker which was attached to a tractor - Tribunal has exonerated the insurer on the ground that tractor was insured but not the tanker - Held - If there would not have been any rash and negligent driving of tractor, the tanker would not have moved - Thus, accident was combined effect of use of tractor & tanker -Insurer held liable.* [Krishna (Smt.) v. Chief Municipal Officer, Nagar Panchayat, Rau] ...*55

**Motor Vehicles Act (59 of 1988), Sections 128, 173 - *Contributory negligence* - *Two fat ladies travelling on motorcycle as pillion riders - Appellant while driving motorcycle did not possess licence - Appellant and both pillion riders are contributory negligent to the extent of 20% - 20% deduction in compensation on account of contributory negligence held valid - Appeal disposed of.* [Amrut Lal v. Sandeep] ...*62

**Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company* - *Claimant hired truck in connection with purchase of garlic - Accident took place while claimant was travelling in truck to fetch garlic - It cannot be said that there was violation of terms and conditions of policy - Insurance Company liable.* [Kamlesh Kahar v. Ashif Khan] ...*45

**Motor Vehicles Act (59 of 1988), Section 147 - *Liability of Insurance Company* - *Offending Vehicle insured for 20 passengers and one driver - Same was plied for carrying 50 passengers which was contrary to terms and conditions of Insurance Policy - Held - Insurance Company cannot be exonerated mere on account of carrying more passengers in vehicle in comparison of its capacity - If vehicle is overloaded and more than 20 passengers got injured, insurer is liable to indemnify the claim of 20 passengers in descending order from higher side to lower side.* [Dheer Singh v. Ravi Kumar] ...*63

**Motor Vehicles Act (59 of 1988), Section 147, Motor Vehicles Rules, M.P., 1994, Rule 240 - *Powers of Executing Court* - *Claims tribunal passed an award in favour of claimants (petitioners) that owner & driver would be severally & jointly liable, and further directed that Insurance Company shall make the payment to the claimants and thereafter Insurance Company shall recover the amount from owner - Insurance Company deposited the amount of award in the Executing Court - Executing Court ordered that until & unless the owner shall furnish the security of the amount of compensation, the amount be not paid to claimants - Order challenged in writ petition - Held - Executing Court has no*

के लिपिक ने उससे कोरे कागज पर हस्ताक्षर करवाये – अभिनिर्धारित – आवेदन पर याची और उसके अधिवक्ता के हस्ताक्षर थे – याची द्वारा इसका कोई स्पष्टीकरण नहीं दिया गया कि उसके अधिवक्ता ने उसके हस्ताक्षर क्यों किये – याची को अपने पक्ष से पलटने की अनुमति नहीं दी जा सकती कि आवेदन कोरा था जब उसने उस पर हस्ताक्षर किये – याचिका खारिज। (संतोष कुमार शर्मा वि. म.प्र. राज्य) ---*51

मोटर यान अधिनियम (1988 का 59), धारा 2(44), 166 – ट्रेक्टर के उतावलेपन व असावधानी से चलाने से दुर्घटना घटी – ट्रेक्टर से जुड़े टेंकर के पहिये से मृतक कुचला था – अधिकरण ने बीमाकर्ता को इस आधार पर मुक्त किया कि ट्रेक्टर बीमित था लेकिन टेंकर नहीं – अभिनिर्धारित – यदि ट्रेक्टर को उतावलेपन व उपेक्षापूर्वक से न चलाया जाता तो टेंकर नहीं चलता – अतः दुर्घटना ट्रेक्टर व टेंकर के उपयोग के संयुक्त प्रभाव से घटी – बीमाकर्ता उत्तरदायी। (कृष्णा (श्रीमति) वि. चीफ म्यूनिसिपल आफिसर, नगर पंचायत, राउ) ---*55

मोटर यान अधिनियम (1988 का 59), धाराएँ 128, 173 – योगदायी उपेक्षा – दो मोटी महिलाएँ मोटरसायकिल की पिछली सीट पर बैठकर यात्रा कर रहीं थीं – अपीलार्थी के पास मोटरसायकिल चलाते समय अनुज्ञप्ति नहीं थी – अपीलार्थी और पिछली सीट की दोनों सवारियों की 20% योगदायी उपेक्षा – योगदायी उपेक्षा के कारण प्रतिकर में 20% की कटौती वैध अभिनिर्धारित – अपील निपटाई गई। (अमृत लाल वि. संदीप) ---*62

मोटरयान अधिनियम (1988 का 59), धारा 147 – बीमा कंपनी का दायित्व – दावेदार ने लहसुन खरीद कर लाने के लिए ट्रक किराये पर लिया था – जब दावेदार ट्रक पर लहसुन लाने के लिए यात्रा कर रहा था उस समय दुर्घटना घटित हुई – यह नहीं माना जा सकता है कि बीमा पॉलिसी के निबंधनों और शर्तों का उल्लंघन हुआ – बीमा कंपनी उत्तरदायी। (कमलेश कहार वि. आशिफ खान) ---*45

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – उल्लंघन करने वाला यान 20 यात्रियों और एक चालक के लिए बीमा.त था – उसमें 50 यात्रियों को ले जाया जा रहा था जो बीमा पॉलिसी के निबंधनों और शर्तों का उल्लंघन था – अभिनिर्धारित – बीमा कम्पनी को सिर्फ इस आधार पर दायित्व मुक्त नहीं किया ज़ा सकता कि यान में उसकी क्षमता से अधिक यात्रियों को ले जाया जा रहा था – यदि यान में क्षमता से अधिक यात्री थे और 20 से अधिक यात्रियों को उपहतियाँ आईं, तो बीमाकर्ता अवरोही क्रम में उच्च पार्श्व से निम्न पार्श्व में 20 यात्रियों को क्षतिपूर्ति करने के लिए दायी है। (धीरसिंह वि. रवि कुमार) ----*6

मोटर यान अधिनियम (1988 का 59), धारा 147, मोटर यान नियम, म.प्र., 1994, नियम 240 – निष्पादन न्यायालय की शक्तियाँ – दावा अधिकरण ने दावेदारों (याचियों) के पक्ष में अवार्ड पारित किया कि स्वामी और चालक संयुक्ततः और पृथकतः दायी होंगे, और निदेशित किया कि बीमा कम्पनी दावेदारों को भुगतान करेगी और तत्पश्चात् बीमा कम्पनी स्वामी से राशि वसूल करेगी – बीमा कम्पनी ने अवार्ड की राशि निष्पादन न्यायालय में जमा की – निष्पादन न्यायालय ने आदेशित किया कि जब तक स्वामी प्रतिकर की राशि की प्रतिभूति पेश न करे तब तक दावेदारों को राशि का भुगतान न किया जाए – आदेश को रिट याचिका में चुनौती दी – अभिनिर्धारित – निष्पादन न्यायालय को ऐसी कोई शर्त आरोपित

power to impose such condition which was not part of the original award - Petition allowed. [Prem Narayan Bhagel v. Banchandra] ...2041

Motor Vehicles Act (59 of 1988), Section 148 - *Liability of Insurance Company* - *The owner has liability to verify the fact as to whether driver possessed a valid licence or not - Driver of offending vehicle who is the brother of owner was having fake licence - Tribunal and High Court - Rightly exonerated Insurance Company - However Claimants need not repay Rs. 50,000/- to Insurance Company - Insurance Company can recover the same from the insured - Claimants can recover the remaining amount from the Driver and owner.* [Premkumari v. Prahlad Dev] ...985

Motor Vehicles Act (59 of 1988), Sections 149, 166 - *Whether on account of cancellation of policy, still insurer is liable to pay compensation - Yes, authorised agent of insurer collected premium in cash from insured - Insured also received cover note - Authorized agent issued cheque for the amount of premium in favour of insurer which was dishonoured - Policy cancelled due to dishonour of cheque - Held - Insurer is liable for act of his agent - Cannot be absolved of its liability.* [Oriental Insurance Co. Ltd., Bilaspur v. Indrapal] ...2055

Motor Vehicles Act (59 of 1988), Section 149 (2) - *Liability of Insurance Company - LP Gas* - *Whether running a vehicle on LP Gas is a violation policy condition - No.* [Santosh Singh @ Kishanpal v. United India Insurance Co. Ltd.] ...*39

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Appellant undergone 4 operations - Appellant suffered permanent disability because of loss of part of tibia due to which there is shortening of left leg - Doctor not mentioning the percentage of permanent disability - Permanent disability has to be assessed from medical papers - Considering the fact of shortening of leg, permanent disability is upto 25%.* [Babu Singh v.Mohd. Irfan Khan & ors.]...*30

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Appellant was working as Tube-well operator and motor winding work - Total income assessed to Rs. 30,000/- per annum - Permanent disability 25% - Loss of income would be Rs. 7,500/- per annum - Appellant aged about 22 years - Multiplier of 17 applicable - Appellant entitled for Rs. 50,000/- towards treatment, special diet, pain & suffering and Rs. 50,000/- towards future treatment - Compensation enhanced from Rs. 30,000/- to Rs. 2,27,500/-.* [Babu Singh v.Mohd. Irfan Khan & ors.] ...*30

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Claimant sustaining 40% permanent disability - Remained under treatment for six months - Compensation enhanced from Rs.57,000/- to Rs.1,52,000/- - Interest @ 7% p.a. on enhanced amount payable from the date of filing of claim petition. [Oriental Insurance Co. Ltd., Bilaspur v. Indrapal]* ...2055

Motor Vehicles Act (59 of 1988), Section 166 - *Compensation* - *Permanent Disability of claimant assessed to the extent of 66% - Income*

करने की शक्तियाँ नहीं हैं जो मूल.अवार्ड का भाग नही थी – याचिका मंजूर। (प्रेम नारायण ब्रघेल वि. बनचन्द्रा) ...2041

मोटर यान अधिनियम (1988 का 59), धारा 148 – बीमा कंपनी का दायित्व – वाहन मालिक का दायित्व है कि वाहन चालक के पास वैध ड्राईविंग लाइसेंस है या नहीं इसकी जांच करे – आघात करने वाले वाहन चालक, जो वाहन मालिक का भाई था, के पास नकली लाईसेंस था – अधिकरण व उच्च न्यायालय ने बीमा कंपनी को उचित रूप से भारमुक्त किया – फिर भी दावेदारों को रू0 50,000/– बीमा कंपनी को लौटाने की आवश्यकता नहीं – बीमा कंपनी उक्त राशि बीमित से वसूल कर सकती है – दावेदार शेष राशि वाहन मालिक व वाहन चालक से वसूल कर सकते हैं। (प्रेम कुमारी वि. प्रहलाद देव) ...985

मोटर यान अधिनियम (1988 का 59), धाराएँ 149, 166 – क्या पॉलिसी के रद्द होने पर भी बीमाकर्ता प्रतिकर अदा करने के लिए दायी है – हाँ, बीमाकर्ता के प्राधिकृत अभिकर्ता ने बीमाकृत से प्रीमियम की राशि नगद प्राप्त की – बीमाकृत को कवर नोट भी प्राप्त हुआ – प्राधिकृत अभिकर्ता ने प्रीमियम की राशि के लिए बीमाकर्ता के हित में चैक जारी किया जो अनादृत हुआ – चैक के अनादृत होने के कारण पॉलिसी रद्द की गई – अभिनिर्धारित – बीमाकर्ता उसके अभिकर्ता के कृत्य के लिए दायी है – उसके दायित्व से मुक्त नहीं हो सकता। (ओरियेंटल इंश्योरेन्स कं. लि., बिलासपुर वि. इंद्रपाल) ...2055

मोटर यान अधिनियम (1988 का 59), धारा 149 (2) – बीमा कम्पनी का दायित्व – एल.पी. गैस – क्या वाहन को एल.पी. गैस से चलाना बीमा पालिसी की शर्तों का उल्लंघन है – नहीं। (संतोष सिंह उर्फ किशन पाल वि. यूनाईटेड इंडिया इंश्योरेंस कंपनी लिमि.) ---*39

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – अपीलार्थी की चार बार शल्य क्रिया हुई – अपीलार्थी को स्थायी निःशक्तता हो गई क्योंकि बायें पैर की टीबिया के भाग की हानि होने से बांया पैर छोटा हो गया – डॉक्टर ने स्थायी निःशक्तता का प्रतिशत नहीं बताया – स्थायी निःशक्तता का निर्धारण चिकित्सा के पर्चों से किया – पैर के छोटे होने के तथ्य पर विचार करते हुए 25% तक स्थायी निःशक्तता मानी गई। (बाबू सिंह वि. मोहम्मद इरफान खान एव अन्य) ---*30

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – अपीलार्थी ट्यूबवैल ऑपरेटर एवं मोटर बांइडिंग का कार्य करता था – कुल आमदनी 30,000/– रू0 वार्षिक निर्धारित की – स्थायी निःशक्तता 25% – आय की हानि 7,500/– रू0 वार्षिक – अपीलार्थी की उम्र करीब 22 वर्ष – 17 का गुणांक उपयुक्त – अपीलार्थी 50,000/– उपचार, विशेष भोजन, दर्द व पीड़ा हेतु एवं 50,000/– रू0 भविष्य के उपचार हेतु पाने का अधिकारी – प्रतिकर 30,000/– रू0 से बढ़ाकर 2,27,500/– रू0 किया। (बाबू सिंह वि. मोहम्मद इरफान खान एव अन्य) ---*30

मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – दावेदार को 40% स्थाई निःशक्तता हुई – छः माह तक उपचार चला – प्रतिकर 57,000/– रुपये से बढ़ाकर 1,52,000/– रुपये किया – बढ़ी हुई राशि पर 7% वार्षिक ब्याज दावा पेश करने की तारीख से देय। (ओरियेंटल इंश्योरेन्स कं. लि., बिलासपुर वि. इंद्रपाल) ...2055

मोटरयान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – दावेदार की स्थायी निःशक्तता 66 प्रतिशत निर्धारित की गयी – मासिक आय रुपये 3000/– आंकी गयी – आय की

taken as Rs. 3000/- p.m. - 2/3rd loss of income comes to Rs. 2000/- p.m. - Multiplier of 18 would be applicable - Compensation Rs. 12,000/- for loss of earning of four months - Rs.4,32,000/- for loss of future income - Rs. 50000/- for pain and suffering - Rs. 11000/- for medical expenditure - Rs.20000/- for expenditure on special diet etc. - Compensation Rs. 3,85,758/- enhanced to Rs. 5,25,000/- - Appeal allowed. [Kamlesh Kahar v. Ashif Khan] ...*45

Motor Vehicles Act (59 of 1988), Section 166 - ***Contributory Negligence - In violation of S. 128 M.V. Act, Appellant/injured while travelling on a motor cycle as a pillion rider - Held - Pillion rider is not liable for contributory negligence. [Babu Singh v.Mohd. Irfan Khan & ors.]*** ... *30

Motor Vehicles Act (59 of 1988), Sections 166 & 173 - ***Compensation - Appellant sustaining 11% permanent disability - He was earning 21,600/- p.a. - 11% comes to Rs.2,376/- p.a. - Appellant aged 25 years therefore multiplier of 18 would apply - Appellant entitled for Rs.42,768/- along with Rs.10,000/- for treatment and Rs.5,000/- for his loss of income during course of treatment, special diet, attendant expenses etc. - Appeal allowed.*** [Dheer Singh v. Ravi Kumar]...*6

Motor Vehicles Rules, M.P., 1994, Rule 240 - See - *Motor Vehicles Act 1988, Section 147.* [Prem Narayan Bhagel v. Banchandra] ...2041

M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (14 of 2006) - ***Objection regarding arbitration clause - Objection regarding arbitration clause not raised before writ court - But raised first time in Writ Appeal - Held - Objection should be taken immediately at the first instance - Not proper to consider such objection at appeal stage.*** [Cine Exhibitors Pvt. Ltd. v. The Gwalior Development Authority] ...1872

M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (14 of 2006), Section 2(2) Explanation - *Explanation cannot be understood to limit the scope of words 'sufficient cause' as used in proviso to sub-section (2) - But, it provides the additional support to the dominant object of the Act for giving a meaningful purpose and also to avoid the creation of any obstacle to the statutory right of an appellant.* [Dr. Harisingh Gaur Vishwavidyalaya Sagar (M.P.) v. Rajeshwar Yadav] ...1599

M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (14 of 2006), Section 2(2) Explanation - *The word 'petitioner' used in the Explanation does not mean that petitioner who files a writ petition, but to understood as a party who files the Writ Appeal.* [Dr. Harisingh Gaur Vishwavidyalaya Sagar (M.P.) v. Rajeshwar Yadav] ...1599

Municipalities Act, M.P. (37 of 1961) - Sections 30,31 - ***Qualification and Disqualification of voters - Respondent no.3 enrolled in voter list of Gram Panchayat - Also registered as voter in voter list of Municipality- Respondent no.3 elected as President of Municipality - Held - Section 31***

2/3 नुकसानी रुपये 2000/– होती है – 18 का गुणक लागू होगा – प्रतिकर रुपये 12000/– 4 माह की आय की नुकसानी – रुपये 4,32,000/– भविष्य में होने वाली आय की नुकसानी – रुपये 50,000/– पीड़ा एवं दर्द के लिए – रुपये 11,000/– चिकित्सा व्यय के लिए – रुपये 20,000/– विशेष आहार इत्यादि के व्यय के लिए – प्रतिकर रुपये 3,85,758/– को बढ़ाकर रूपये 5,25,000/– किया – अपील मंजूर। (कमलेश कहार वि. आशिफ खान) ---*45

मोटर यान अधिनियम (1988 का 59), धारा 166 – योगदायी उपेक्षा – मो.या. अधिनियम की धारा 128 का उल्लंघन कर अपीलार्थी/उपहत मोटर साइकिल की पिछली सीट पर बैठकर यात्रा कर रहा था – अभिनिर्धारित – पिछली सीट पर बैठा व्यक्ति योगदायी उपेक्षा के लिए दायी नहीं है। (बाबू सिंह वि. मोहम्मद इरफान खान एव अन्य) ---*30

मोटर यान अधिनियम (1988 का 59), धाराएँ 166 व 173 – प्रतिकर – अपीलार्थी को 11% स्थायी निःशक्तता हुई – वह 21,000/– रुपये वार्षिक कमाता था – उसका 11% 2,376/– रुपये वार्षिक होता है – अपीलार्थी की आयु 25 वर्ष इसलिए 18 का गुणक लागू – अपीलार्थी 42,768/– रुपये के साथ इलाज के लिए 10,000/– रुपये और इलाज के दौरान हुई आय की नुकसानी, विशेष भोजन और सेवक व्यय इत्यादि के लिए 5,000/– रुपये पाने अधिकारी – अपील मंजूर। (धीरसिंह वि. रवि कुमार) ---*63

मोटर यान नियम, म.प्र., 1994, नियम 240 – देखें –मोटर यान अधिनियम 1988, धारा 147. (प्रेम नारायण बघेल वि. बनचन्द्रा) ...2041

म.प्र. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, 2005 (2006 का 14) – माध्यस्थम् खण्ड के संबंध में आपत्ति – रिट न्यायालय के समक्ष माध्यस्थम् खण्ड के संबंध में आपत्ति नहीं ली गई – बल्कि रिट अपील में पहली बार उठाई गई – अभिनिर्धारित – आपत्ति प्रथम अवसर पर तुरन्त लेना चाहिए – अपील के प्रक्रम पर ऐसी आपत्ति पर विचार करना उचित नहीं। (सिने एग्जीविटर्स प्रा.लि. वि. द ग्वालियर डेव्हेलपमेंट अथारिटी) ...1872

म.प्र. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, 2005 (2006 का 14), धारा 2(2) स्पष्टीकरण – स्पष्टीकरण को शब्द "पर्याप्त कारण", जैसा कि उपधारा (2) के परन्तुक में प्रयुक्त किया गया है, के विषय क्षेत्र को सीमित करने वाला नहीं समझा जा सकता। – बल्कि यह अधिनियम के मुख्य उद्देश्य को अर्थपूर्ण प्रयोजन प्रदान करने के लिए और अपीलार्थी के कानूनी अधिकार में किसी बाधा के सृजन को टालने को भी अतिरिक्त समर्थन प्रदान करता है। (डॉ. हरिसिंह गौर विश्वविद्यालय, सागर (म.प्र.) वि. राजेश्वर यादव) ...1599

म.प्र. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, 2005 (2006 का 14), धारा 2(2) स्पष्टीकरण – स्पष्टीकरण में प्रयुक्त शब्द श्याचीश का अर्थ यह नहीं होता है कि याची जो रिट याचिका पेश करता है, बल्कि अभिप्राय उस पक्षकार से है जो रिट अपील पेश करता है। (डॉ. हरिसिंह गौर विश्वविद्यालय, सागर (म.प्र.) वि. राजेश्वर यादव) ...1599

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारायें 30, 31 – मतदाता की योग्यता और अयोग्यता – प्रत्यर्थी क्र. 3 ग्राम पंचायत के मतदाता की सूची में नामांकित – नगरपालिका की मतदाता सूची में भी मतदाता के रूप में पंजीबद्ध – प्रत्यर्थी क्र. 3 नगरपालिका के अध्यक्ष के रूप में निर्वाचित – अभिनिर्धारित – धारा 31 एक व्यक्ति को नगरपालिका के निर्वाचक

does not disqualify a person for registration in municipal electoral roll on the ground that such a person is registered in voter list of Gram Panchayat. [Raja Ram Ahirwar v. State of M.P.] ...1042

Municipalities Act, M.P. (37 of 1961), Section 47(2) - ***Recalling of President*** - *20 Councillors submitted representation to Collector for recalling of President - Collector forwarded the same to Project Officer -Project Officer recommended to forward proposal to State Govt. - Collector accepted the proposal and sent it to State Govt. - Held - Statutory requirement is that Collector himself should satisfy and verify - In fact Collector has accepted and approved the satisfaction arrived at by Project Officer - This being not in accordance with provisions of Statute - State Election Commissioner shall not proceed with recommendations made by Collector - Petition allowed.* [Satya Prakashi Parsadia v. State of M.P.] ...1092

Municipalities Act, M.P. (37 of 1961), Sections 95, 355 - ***Appointment of Shiksha Karmis*** - *Municipality is appointing authority of Shiksha Karmi - No approval of State Government required as there is no such provision - Appointments made in accordance with Rules,1998 - Government is liable to pay salary or to reimburse the amount to Municipal Council.* [State of M.P. v. Shiv Narayan Saxena] ...1 56

Municipalities Act, M.P. (37 of 1961), Section 323 (1) - ***Power to suspend execution of orders of Council*** - *There is no power with Collector or any other authority mentioned therein to suspend the execution of resolution/order or prohibit the doing of any act which has already been executed/implemented - Not even in cases where Council had violated provisions of Section 109 (3) of Act in disposing of its property.* [Devendra Kumar Paliwal v. State of M.P.] ...1128

Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, M.P. 1998 - Rule 5(9)(ii) - ***Select List*** - *Rule provides that select list of each category and waiting list shall be prepared which shall be valid for a period of nine months - This provision is for waiting list and not for the select list.* [State of M.P. v. Shiv Narayan Saxena] ...1 56

Muslim Women (Protection of Rights on Divorce) Act, (25 of 1986) - See - *Criminal Procedure Code, 1973, Section 125,* [Jumana Bai v. Mushtaq Ali] ...18-9

Nagar Palika Nirvachan Niyam, M.P. 1994 - Rule 9-A(1) - ***Deletion of entry in voter's list*** - *Rule 9-A cannot be interpreted to override the provisions of 1961 Act and disqualify a person who is otherwise entitled to be registered as voter in electoral roll - It also does not provide automatic disqualification but merely provides for deletion of name of person from electoral roll.* [Raja Ram Ahirwar v. State of M.P.] ...1042

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Sections

नामावली में पंजीबद्ध होने के लिए इस आधार पर अयोग्य नहीं बनाती है कि ऐसा व्यक्ति ग्राम पंचायत की मतदाता सूची में पंजीबद्ध है। (राजा राम अहिरवार वि. म.प्र. राज्य) ...1042

नगरपालिका, अधिनियम, म.प्र. (1961 का 37), धारा 47 (2) – अध्यक्ष को वापिस बुलाना – 20 पार्षदों ने अध्यक्ष को वापस बुलाने के लिए कलेक्टर को प्रतिवेदन प्रस्तुत किया – कलेक्टर ने प्रतिवेदन प्रोजेक्ट ऑफीसर को अग्रेषित कर दिया – प्रोजेक्ट ऑफीसर ने प्रस्ताव राज्य सरकार को अग्रेषित करने की सिफारिश की – कलेक्टर ने प्रस्ताव स्वीकार कर लिया और उसे राज्य सरकार को भेजा – अभिनिर्धारित – अधिनियम की यह अपेक्षा है कि कलेक्टर का स्वयं का ही संतुष्टिकरण व सत्यापन होना चाहिए – वास्तव में कलेक्टर ने प्रोजेक्ट ऑफीसर के संतुष्टिकरण को ही स्वीकार कर अनुमोदित कर दिया – यह अधिनियम के उपबन्धों के अनुसार नहीं है – राज्य निर्वाचन आयुक्त को कलेक्टर द्वारा की गई सिफ़ारिशों पर कार्यवाही नहीं करना चाहिए – याचिका मंजूर की गई। (सत्य प्रकाशी परसादिया वि. म.प्र. राज्य) ...1092

नगर पालिका अधिनियम, म.प्र. (1961 का 37), धारा 95, 355 – शिक्षाकर्मी की नियुक्ति – नगरपालिका शिक्षाकर्मी की नियोक्ता प्राधिकारी है – राज्य शासन से अनुमोदन अपेक्षित नहीं क्योंकि ऐसा कोई उपबन्ध नहीं है – नियुक्तियां 1998 के नियमों के अनुसार की गई – सरकार वेतन देने या राशि की प्रतिपूर्ति नगरपालिका परिषद को करने के लिये दायी है। (म.प्र. राज्य वि. शिवनारायण सक्सेना) 1356

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 323 (1) – परिषद के आदेशों के निष्पादन को निलंबित करने की शक्ति – कलेक्टर या उसमें उल्लेखित अन्य प्राधिकारी को ऐसी शक्ति नहीं है कि वे प्रस्ताव/आदेश या प्रतिबंधित ऐसा कोई कार्य जिसका पहले से ही निष्पादन/कार्यान्वयन हो चुका, का निष्पादन निलंबित करे – यहाँ तक कि ऐसे मामले जिनमें परिषद ने अधिनियम की धारा 109 (3) के उपबन्धों का उल्लंघन कर अपनी सम्पत्ति का व्ययन किया हो। (देवेन्द्र कुमार पालीवाल वि. म.प्र. राज्य) ...1128

नगर पालिका शिक्षाकर्मी (भर्ती और सेवा की शर्तें) नियम, म.प्र. 1998 – नियम 5(9)(पप) – चयन सूची – नियम में उपबन्ध है कि प्रत्येक वर्ग की चयन सूची और प्रतीक्षा सूची तैयार की जायेगी जो 9 माह की अवधि के लिये वैध रहेगी – यह उपबन्ध प्रतीक्षा सूची के लिये है न कि चयन सूची के लिये। (म.प्र. राज्य वि. शिवनारायण सक्सेना) 1356

मुस्लिम महिला (विवाह विच्छेद पर अधिकारों का संरक्षण) अधिनियम, (1986 का 25) –देखें– दण्ड प्रक्रिया संहिता, 1973, धारा 125, (जुमाना बाई वि. मुश्ताक अली) ...1839

नगरपालिका निर्वाचन नियम, म.प्र. 1994 – नियम 9–ए(1) – मतदाता सूची में प्रविष्टि का विलोपन – नियम 9–ए(1) का निर्वचन नहीं हो सकता है कि अधिनियम 1961 के उपबन्धों पर अध्यारोही हो और एक व्यक्ति को अयोग्य कर देवे जो अन्यथा निर्वाचक नामावली में मतदाता के रूप में पंजीबद्ध होने का हकदार हो – यह स्वयंप्रेरित अयोग्यता का उपबन्ध भी नहीं करती है किन्तु केवल निर्वाचक नामावली से व्यक्ति का नाम विलोपित करने का उपबन्ध करती है। (राजा राम अहिरवार वि. म.प्र. राज्य) ...1042

नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 38 एवं 50, नगर

38 & 50, Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Grihon, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, 1975, Rules 19 & 20 - *Allotment of land at concessional rates - Land allotted to newspaper on concessional rates for it being an educational institution - The said allotment challenged - Hon'ble High Court held it to be void against rule 19 and 20 - Petitioner apprehending termination of their allotment and challenging it before the High Court - Held - The issue that newspapers are educational institution has already been held the Division Bench in Compact Printers Pvt. Limited vs. Indore Development Authority in Misc. Petition No.1197/1989, the said decision not brought to knowledge of the Division Bench while deciding the Vijay Kumar Tiwari's case - As the matter was already covered by the decision of the Division Bench that newspapers are educational institutions and are entitled for allotment at concessional rates - Respondents directed to consider the applications of the petitioner's afresh and decide in accordance with law laid down in K.K. Bhalla's case - Petitions disposed of.* [Jeevan Singh v. State of M.P.] ...1650

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 50 - See - *Constitution, Article 226.* [Mahavir Grih Nirman Sahkari Sanstha Maryadit v. State of M.P.] ...160

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 73 - ***Power of State Government to give direction*** - *Housing Policy issued in September 1995 - Directions are binding on authorities and officers appointed under Section 3 of Act - Held - Petitioner entitled for allotment of 20% of developed plots out of land acquired as per housing policy.* [Mahavir Grih Nirman Sahkari Sanstha Maryadit v. State of M.P.] ...160

Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Grihon, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, 1975, Rules 19 & 20 - See - *Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Sections 38 & 50,* [Jeevan Singh v. State of M.P.] ...1650

Nagriya Nikay Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, M.P. 2005 - Rule 6(9) *Explanation - Additional marks for teaching experience - By giving Explanation State Govt. has simply observed that teaching experience would mean experience in institutions mentioned in Explanation - If by explanation, State Govt. wanted to give additional weightage or marks to persons who acquired teaching experience in given class or classes, it cannot be held that Explanation leads to a discrimination.* [Shailesh Kumar Sahu v. State of M.P.] ...11 8

Narcotic Drugs and Psychotropic Substances Act (61 of 1985) - Sections 8 & 15(c) - ***Punishment for contravention in relation to poppy straw*** - *60 bags containing poppy husk were seized - 120 samples were prepared - Only one sample was sent to F.S.L. - Seized articles not produced before trial court - Held - 120 samples were representative sample of each*

तथा ग्राम निवेश विकसित भूमियों, ग्रहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, 1975, नियम 19 व 20 – रियायती दरों पर भूमि का आबंटन – समाचार पत्र शिक्षण संस्था होने से भूमि रियायती दर पर आबंटित – उस आबंटन को चुनौती दी गई – माननीय उच्च न्यायालय ने उसे नियम 19 व 20 के विरुद्ध होने से शून्य अभिनिर्धारित किया – याची को उनकी भूमि के आबंटन का पर्यवसान होने की आशंका और उच्च न्यायालय के समक्ष चुनौती – अभिनिर्धारित – यह विषय कि समाचार पत्र शिक्षण संस्था है खण्ड न्यायपीठ द्वारा पहले ही कॉम्पेक्ट प्रिंटर्स प्रायवेट लिमिटेड बनाम् इंदौर डेवलपमेंट अथॉरिटी में अभिनिर्धारित किया जा चुका है, वह निर्णय खण्ड न्यायपीठ की जानकारी में नहीं लाया गया जब विजय कुमार तिवारी के मामले का निर्णय/निर्णायक हो रहा था – चूंकि मामला पहले ही से खण्ड न्यायपीठ के निर्णय से आवृत्त/आच्छादित है कि समाचार पत्र शिक्षण संस्था है और भूमि रियायती दर पर पाने के हकदार है – याची के आवेदन पर पुनः विचार करने का निदेश और उसे के.के. मल्ला में प्रतिपादित विधि के अनुसार निर्णय लिया जावे – याचिका निपटायी गई। (जीवन सिंह वि. म.प्र. राज्य) ...1650

नगर तथा ग्राम निवेश अधिनियम, म.प्र., (1973 का 23), धारा 50 – देखें – संविधान, अनुच्छेद 226, (महावीर गृह निर्माण सहकारी संस्था मर्यादित वि. म.प्र. राज्य) ...1603

नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 73 – निदेश देने की राज्य सरकार की शक्ति – आवासीय नीति सितम्बर 1995 में जारी हुई – अधिनियम की धारा 3 के अधीन नियुक्त प्राधिकारियों और अधिकारियों पर निदेश बंधनकारी – अभिनिर्धारित – याची आवासीय नीति के अनुसार अर्जित भूमि में से 20% विकसित भूखण्डों के आबंटन का हकदार। (महावीर गृह निर्माण सहकारी संस्था मर्यादित वि. म.प्र. राज्य) ...1603

नगर तथा ग्राम निवेश विकसित भूमियों, ग्रहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, 1975, नियम 19 व 20 – देखें – नगर तथा ग्राम निवेश अधिनियम, म.प्र.,1973, धारा 38 एवं 50 (जीवन सिंह वि. म.प्र. राज्य) ...1650

नगरीय निकाय संविदा शाला शिक्षक (रोजगार एवं संविदा की शर्तें) नियम, म.प्र., 2005 नियम 6(9) स्पष्टीकरण – अध्यापन के अनुभव के लिए अतिरिक्त अंक – राज्य शासन द्वारा स्पष्ट किया गया कि अध्यापन अनुभव का तात्पर्य स्पष्टीकरण में दिये गये संस्थानों में अनुभव से है – स्पष्टीकरण के द्वारा राज्य शासन ऐसे व्यक्तियों को जो अध्यापन का अनुभव बताये गये कक्षा या कक्षाओं में अर्जित करते है उन्हें अतिरिक्त वरीयता या अंक देना चाहता है – यह अभिनिर्धारित नहीं किया जा सकता है कि स्पष्टीकरण प्रभेदकारी है। (शैलेश कुमार साहू वि. म.प्र. राज्य) ...1138

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) – धाराएँ 8 व 15(सी) – पॉपी स्ट्रा के सम्बन्ध में उल्लंघन के लिए दण्ड – 60 बोरे जिनमें पॉपी हस्क था अभिग्रहीत किये – 120 नमूने तैयार किये – केवल एक नमूना न्यायालयिक विज्ञान प्रयोगशाला को भेजा – अभिग्रहीत वस्तुएँ विचारण न्यायालय के समक्ष पेश नही कीं – अभिनिर्धारित – 120 नमूने प्रत्येक विशिष्ट बोरे के प्रतिनिधि नमूने थे – चूंकि एक नमूना भेजा गया इसलिए यह नहीं कहा जा

individual bag - As one sample was sent, therefore, it cannot be said that whole 60 bags were containing poppy husk - Non-production of seized articles is also fatal - Prosecution failed to establish identity and quantity of seized articles - Conviction not sustainable - Appeal allowed. [Shakil v. State of M.P.] ...2102

Narcotic Drugs and Psychotropic Substances Act (61 of 1985) - Section 35 - *Presumption of culpable mental state - Once the accused is found in possession of contraband articles burden shifts on him to prove that he had no culpable mental state.* [Pramod v. State of M.P.] ...1259

Narcotic Drugs and Psychotropic Substances Act (61 of 1985) - Sections 42, 43 - *Power of entry, search, seizure and arrest without warrant or authorization - Appellant was driving motor cycle - Contraband articles found beneath the seat of motor cycle - Provisions of Section 42(1) will not be attracted while conducting search and seizure in public place or a moving vehicle - Appellant found to be in possession of contraband articles - Appellant was rightly held guilty by Trial Court - Appeal dismissed.* [Pramod v. State of M.P.] ...1259

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52-A - *Disposal of seized narcotic drugs and psychotropic substances - Narcotic drug and psychotropic substances can be disposed off immediately after following procedure prescribed in Section 52-A - Investigating agency or prosecution should have taken recourse of these provisions - Trial court also suo-moto could have taken steps for disposal of seized articles.* [Shakil v. State of M.P.] ...2102

National Highways Act (48 of 1956) - Sections 3-H, 3-G - See - *Constitution, Articles 226, 227.* [Kanhaiyalal Patel v. Union of India] ...19 2

National Security Act (65 of 1980), Section 3 - *Detention - Public Order - 20 cases registered against petitioner out of them one is registered U/ss 336 & 347 of IPC for indiscriminate firing in public - Even if it is taken as a single act would enough to hold that public order was affected - A single act can be considered for detaining a person - Advisory Board on due consideration upheld the detention - No interference can be made in writ petition on the basis of material on record.* [Ram Khiladi Gurjar v. State of M.P.] ...1428

National Security Act (65 of 1980), Sections 3(2), 8, 14(1) - *Revocation of detention orders - Non-communication of information regarding right of detenu to file representation to Central Government - Held - It was mandatory that detenu was apprised of his right to make representation also to Central Government - As that was not done, therefore, right of detenu under Article 22(5) of Constitution impinged and curtailed - Detention order though can be maintained, the further detention cannot be allowed - Petition allowed.* [Rizwan @ Rijju v. State of M.P.] ...2052

Natural Justice - *Applicant conducted the investigation and filed charge-*

सकता है कि सभी 60 बोरों में पॉपी हस्क था – अभिग्रहीत वस्तुओं का पेश न किया जाना भी घातक है – अभियोजन अभिग्रहीत वस्तुओं की पहचान और मात्रा को स्थापित करने में असफल रहा – दोषसिद्धि स्थिर रखने योग्य नहीं – अपील मंजूर। (शकील वि. म.प्र. राज्य) ...2102

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, (1985 का 61) – धारा 35 – आपराधिक मनः स्थिति की उपधारणा – यदि अभियुक्त विनिषिद्ध वस्तुओं के कब्जे में पाया जाता है तो यह सिद्ध करने का भार उस पर है कि उसकी आपराधिक मनः स्थिति नहीं थी। (प्रमोद वि. म.प्र. राज्य) ...1259

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, (1985 का 61) – धारा 42, 43 – प्रवेश, तलाशी, जब्ती एवं बिना वारंट के गिरतारी का अधिकार या प्राधिकार देना – अपीलार्थी मोटर साइकल चला रहा था – विनिषिद्ध वस्तुएँ मोटर साइकल की सीट के नीचे से मिली – धारा 42 (1) के उपबन्ध आकृष्ट नहीं होंगे यदि तलाशी व जब्ती लोक स्थान व चलते वाहन पर की जाय – अपीलार्थी विनिषिद्ध वस्तुओं के कब्जे में पाया गया – अपीलार्थी को विचारण न्यायालय द्वारा उचित रूप से दोषी पाया गया – अपील खारिज़। (प्रमोद वि. म.प्र. राज्य) ...1259

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) – धारा 52–ए – अभिग्रहीत स्वापक औषधि एवं मनःप्रभावी पदार्थ का व्ययन – स्वापक औषधि एवं मनःप्रभावी पदार्थ का व्यय धारा 52–ए में विहित प्रक्रिया का पालन करने के बाद तत्काल किया जा सकता है – अनुसंधान एजेंसी या अभियोजन को इन उपबंधों का आश्रय लेना चाहिए था – विचारण न्यायालय स्वप्रेरणा से भी अभिग्रहीत वस्तुओं के व्ययन के लिए कार्यवाही कर सकता था। (शकील वि. म.प्र. राज्य) ...2102

राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धारायें 3–एच, 3–जी – देखें – संविधान, अनुच्छेद 226, 227. (कन्हैया लाल पटेल वि. यूनियन आफ इंडिया) ...1932

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3 – निरोध – लोक व्यवस्था – याची के विरुद्ध 20 मामले पंजीबद्ध उनमें से एक मामला लोक स्थान पर अंधाधुंध गोली चलाने के लिए भा.द.सं. की धारा 336 व 347 के अन्तर्गत पंजीबद्ध – यदि इस एकमात्र .त्य को ही लिया जावे तो यह भी लोक व्यवस्था प्रभावित करने के लिए पर्याप्त पाया जायेगा – एक .त्य भी व्यक्ति को निरोधित करने के लिए विचार में लाया जा सकता है – सलाहकार बोर्ड ने भलीभांति विचार करने के बाद निरोध आदेश की पुष्टि की – अभिलेख पर उपलब्ध तथ्यों के आधार पर रिट याचिका में कोई हस्तक्षेप नहीं किया जा सकता है। (राम खिलाड़ी गुर्जर वि. म.प्र. राज्य) 1428

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराएँ 3(2), 8, 14(1) – निरोध के आदेशों का प्रतिसंहरण – बन्दी को केन्द्रीय सरकार को अभ्यावेदन पेश करने के अधिकार की जानकारी संसूचित नहीं की – अभिनिर्धारित – यह आज्ञापक था कि बन्दी को उसके केन्द्रीय सरकार को अभ्यावेदन पेश करने के अधिकार से अवगत कराना था – चूंकि ऐसा नहीं किया गया, इसलिए संविधान के अनुच्छेद 22(5) के अधीन दिये गये बंदी के अधिकार का आघटन (impinged) और न्यूनता (curtailed) हुई – निरोध का आदेश यद्यपि पोषण किया जा सकता है, आगे निरोध में रखना मंजूर नहीं किया जा सकता – याचिका मंजूर। (रिजवान उर्फ रिज्जू वि. म.प्र. राज्य) ...2052

नैसर्गिक न्याय – आवेदक ने अन्वेषण संचालित किया और भा.द.सं. की धारा 379 के

sheet u/s 379 of IPC - The trial court finding the investigation as biased and not having conducted properly passed adverse remark against the applicant - Order challenged on the ground that no opportunity of hearing was given - Held - Before passing adverse remark against a person or authority in a trial, opportunity of hearing should be given - Application allowed. [Randheer Singh (Dr.) v. State of M.P.] ...2150

Negotiable Instruments Act (26 of 1881), Sections 9, 138 - *'Holder in due course' - Cheque drawn in favour of person who is dead - Complaint on behalf of his legal heirs maintainable.* [Ramprasad v. Smt. Sudhaben]...*60

Negotiable Instruments Act (26 of 1881), Section 118 (b) - *The case of complainant was that cheque was bearing date 2-9-1992 - Defence plea that undated cheque was delivered to complainant - There is legal presumption about date mentioned on the cheque as per provision U/s 118 (b) - Complainant is not required to rebut the plea raised by defence - Finding of Trial Court that undated cheque was given by the accused to the complainant is erroneous.* [Kishanlal v. Murlidhar] ...12 7

Negotiable Instruments Act (26 of 1881), Section 138 - *Accused admitted the receipt of Rs. 40,000/- in his accused statement recorded U/s 313 of Cr.P.C. as well as in his reply of the notice - Trial Court has failed to consider the admission - Appeal against acquittal allowed - Accused convicted U/s 138 of the Act and sentenced to imprisonment for 6 months and also pay compensation Rs. 50,000/- to complainant.* [Kishanlal v. Murlidhar] ...12 7

Negotiable Instruments Act (26 of 1881), Section 138 - *Applicant sending notice for dishonouring of cheque on the basis of oral information received from the Bank - Trial court did not frame charge u/s. 138 as the offence was not made out as there was no written intimation by the Bank - Held - Obligation of issuance of notice by the payee starts from the date of receiving an information in writing from the bank with regard to dishonour of the cheque - If even on an unwritten or oral information the payee opts to issue legal notice of demand under Section 138 of the Act, then subsequently he becomes estopped from taking defence that, as the written information was received subsequently, he was not obliged to issue notice, hence, prior to receiving written information, the limitation ought not to be counted from the first notice - Petition dismissed.* [Arora Distilleries Pvt. Ltd. (M/s) v. M/s. Vijay Associates] ...21 0

Negotiable Instruments Act (26 of 1881), Section 138 - *Cause of Action - Complainant presented cheques which were dishonoured - Issued notice to the applicant - Did not file the complaint but presented the cheques once again - Issued second notice to the applicant - Filed complaint thereafter - Held - If dishonour of cheque has once snowballed into a cause of action, it is not permissible for payee to create another cause of action with same cheque - It was first notice of demand that gave rise to cause of action - No application for*

अधीन आरोप–पत्र पेश किया – विचारण न्यायालय ने अन्वेषण पक्षपातपूर्ण और उचित रूप से संचालित न किया जाना पाते हुए आवेदक के विरुद्ध प्रतिकूल टिप्पणी पारित की – आदेश को इस आधार पर चुनौती दी गई कि सुनवाई का कोई अवसर प्रदान नहीं किया गया – अभिनिर्धारित – विचारण में किसी व्यक्ति या प्राधिकारी के विरुद्ध प्रतिकूल टिप्पणी पारित करने के पूर्व सुनवाई का अवसर दिया जाना चाहिए – आवेदन मंजूर। (रणधीर सिंह (डॉ.) वि. म.प्र. राज्य) ...2150

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 9, 138 – 'सम्यक् अनुक्रम धारक' – चेक जिस व्यक्ति के पक्ष में दिया गया उसकी मृत्यु हो गई – उसके वैध वारिसों की ओर से परिवाद पोषणीय। (रामप्रसाद वि. श्रीमति सुधाबेन) ---*60

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 118 (बी) – परिवादी का मामला था कि चैक में तारीख 2–9–1992 लिखी थी – प्रतिरक्षा का तर्क कि परिवादी को बिना तारीख का चैक दिया गया था – धारा 118 (बी) के उपबन्ध के अनुसार चैक में दर्शाइ तारीख के बारे में विधिक उपधारणा की जाती है – परिवादी के लिये यह अपेक्षित नहीं की है कि प्रतिरक्षा द्वारा उठाये गये दलील का खण्डन करे – विचारण न्यायालय का यह निष्कर्ष कि अभियुक्त द्वारा बिना तारीख का चैक परिवादी को दिया गया था, गलत है। (किशनलाल वि. मुरलीधर) ...1237

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – अभियुक्त ने उसके द.प्र.सं. की धारा 313 के अंतर्गत अभिलिखित कथन में व नोटिस के जवाब में रूपये 40,000/– की प्राप्ति स्वीकार की – विचारण न्यायालय इस स्वीकृति पर विचार करने में असफल रहा – दोषमुक्ति के विरूद्ध अपील मंजूर – अभियुक्त को अधिनियम की धारा 138 के अंतर्गत दोषसिद्ध किया और 6 माह के कारावास से दण्डादिष्ट किया व परिवादी को 50,000/– रू0 प्रतिकारात्मक खर्च भी दिलाया। (किशनलाल वि. मुरलीधर) ...1237

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – आवेदक ने बैंक से प्राप्त मौखिक सूचना के आधार पर चैक के अनादृत होने का नोटिस भेजा – विचारण न्यायालय ने धारा 138 के अधीन आरोप विरचित नहीं किया क्योंकि बैंक से कोई लिखित सूचना न होने से अपराध नहीं बनता था – अभिनिर्धारित – पाने वाले की नोटिस जारी करने की बाध्यता चैक के अनादर होने के सम्बन्ध में बैंक से लिखित सूचना प्राप्त होने के दिन से आरम्भ होती है – यदि अलिखित या मौखिक सूचना पर भी पाने वाला अधिनियम की धारा 138 के अधीन मांग का सूचनापत्र जारी करना चुनता है तो तत्पश्चात् वह बचाव लेने से बिबंधित हो जाता है कि चूंकि लिखित सूचना बाद में प्राप्त हुई थी, वह नोटिस जारी करने के लिए बाध्य नहीं था, इसलिए लिखित सूचना प्राप्त करने के पूर्व, प्रथम सूचनापत्र से परिसीमा की गणना नहीं की जानी चाहिए – पुनरीक्षण खारिज। (अरोरा डिस्टीलरीज प्रा.लि. (मे.) वि. मे. विजय एसोसिएटस्)...2130

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – वाद कारण – परिवादी ने चेक पेश किये जो अनादरित हुए – आवेदक को सूचनापत्र जारी हुआ – परिवाद प्रस्तुत नहीं किया बल्कि पुनः चेक पेश किये – आवेदक को दूसरा सूचनापत्र जारी किया गया – उसके उपरांत परिवाद पेश किया – अभिनिर्धारित – यदि चेक का अनादरण होकर एक बार वाद कारण उत्पन हो गया, तो पाने वाले को उसी चेक से अन्य वाद कारण सृजन करने की अनुमति नहीं दी जा सकती है – मांग का पहला सूचनापत्र था जिससे वाद कारण उत्पन्न हुआ – विलम्ब को क्षमा किये जाने हेतु कोई

condonation of delay filed - It would not be possible to convict applicant for the offence - Proceedings quashed. [Nishant v. Prakash Chand]...*57

Negotiable Instruments Act (26 of 1881), Section 138 - *Complaint filed before the expiry of 15 days of notice period - Application filed by the applicant for quashment of the complaint for it being premature - Trial court rejected the application on the ground that once he has taken cognizance u/s. 204 of Cr.P.C., he is not empowered to review his own order - Held - The complaint cannot be dismissed as premature as it is filed prior to the expiry of notice period of 15 days - The magistrate is required to wait for expiry of the period of notice for taking cognizance - Petition disposed of.* [Hemant Sharma v. Kishorilal Vanshkar] ...*65

Negotiable Instruments Act (26 of 1881), Section 138, Criminal Procedure Code, 1973, Section 482 - *First cheque of Rs. 2 lacs and second cheque of Rs. 3 lacs dishonoured on different dates - Demand notices served - No payment against cheques were made within stipulated period of 15 days of receipt of demand notice - It is alleged that total amount of Rs. 5 lacs was deposited in the Bank by petitioner - Petition filed u/s 482 of Code for quashing the prosecution - Held - No amount was outstanding against cheque is a question of fact which is to be determined in face of evidence to be adduced by parties - Cannot be considered in proceedings u/s 482 of Code - Petition dismissed.* [Mridula Kalpiwar (Smt.) v. Mridial Pathak] ...*67

Negotiable Instruments Act (26 of 1881), Section 138, Evidence Act, 1872, Section 45 - ***Handwriting Expert*** - *Applicant alleged that complainant had interpolated cheque by adding '9' in front of Rs.6785/- - Sought permission to get cheque examined by Handwriting Expert - Held - If permission is refused it may put applicant in inconvenience and irreparable loss - Applicant permitted to examine the cheque by handwriting expert.* [Meena Tiwari v. Satya Prakash Capital Investment Ltd.] ...*47

Negotiable Instruments Act (26 of 1881), Section 138 - *For quashing a complaint u/s 138 of Act, under the inherent powers, High Court is not concerned with the defence of the accused.* [Mridula Kalpiwar (Smt.) v. Mridial Pathak]...*67

Negotiable Instruments Act (26 of 1881) - Section 138 - ***Handwriting Expert*** - *Applicant has not denied his signatures on cheque - No question in this regard to put to Bank Manager also - Other columns of cheque may be filled by anyone on the instructions of applicant himself - No useful purpose will be served by getting cheque examined by hand writing expert.* [Narendra Dhakad v. Anand Kumar] ...1 09

Negotiable Instruments Act (26 of 1881), Section 138, Proviso (b) (as existed prior to the amendment brought into w.e.f. 06.02.2003) - *Demand notice within 15 days of the receipt of information from the Bank - Bank means drawee bank and not collecting bank - Delay on the part of collecting bank in*

आवेदन पेश नहीं – आवेदक को अपराध के लिए दोषसिद्ध करना संभव नहीं होगा – कार्यवाही अभिखण्डित। (निशांत वि. प्रकाश चंद) ---*57

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – सूचनापत्र की 15 दिवस की कालावधि की समाप्ति के पूर्व ही परिवाद पेश – समयपूर्व होने से आवेदक द्वारा परिवाद अभिखण्डित करने के लिए आवेदन पेश – विचारण न्यायालय ने आवेदन इस आधार पर निरस्त कर दिया कि वह एक बार द.प्र.सं. की धारा 204 के अधीन संज्ञान ले चुका है तो वह स्वयं के आदेश का पुनर्विलोकन करने के लिए सशक्त नहीं है – अभिनिर्धारित – परिवाद समय पूर्व होने से खारिज नहीं किया जा सकता चूंकि वह सूचनापत्र की 15 दिवस की कालावधि की समाप्ति के पूर्व पेश किया गया – मजिस्ट्रेट से अपेक्षित है कि संज्ञान लेने के लिए सूचनापत्र की कालावधि की समाप्ति की प्रतीक्षा करे – याचिका निपटाई गई। (हेमंत शर्मा वि. किशोरीलाल बंशकार) ---*65

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, दण्ड प्रक्रिया संहिता, 1973, धारा 482 – प्रथम चैक 2 लाख रुपये का और द्वितीय चैक 3 लाख रुपये का विभिन्न तारीखों में अनादृत – माँग के सूचनापत्र की तामीली करवाई – माँग का सूचनापत्र प्राप्त होने के 15 दिन की नियत अवधि के भीतर चैक का भुगतान नहीं किया – यह अभिकथित किया कि कुल राशि 5 लाख रुपये याची ने बैंक में जमा करा दी – अभियोजन को विखण्डित करने के लिए संहिता की धारा 482 के अन्तर्गत याचिका पेश – अभिनिर्धारित – चैक की कोई राशि देना बकाया नहीं थी यह तथ्य का प्रश्न है जिसका विनिश्चिय पक्षकारों द्वारा पेश साक्ष्य से ही किया जा सकता है – संहिता की धारा 482 की कार्यवाही में विचार नहीं किया जा सकता – याचिका खारिज। (मृदुला कल्पीवार (श्रीमति) वि. मृिदिल पाठक) ---*67

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, साक्ष्य अधिनियम, 1872, धारा 45 – हस्तलेख विशेषज्ञ – आवेदक ने अभिकथन किया कि परिवादी ने चेक का क्षेपण (इन्टरपोलेटेड) रुपये 6785/– के आगे ₹9₹ जोड़कर किया – चेक का परीक्षण हस्तलेख विशेषज्ञ द्वारा कराने की अनुमति चाही – अभिनिर्धारित – यदि अनुमति अस्वी.त की जाती है तो आवेदक को असुविधा एवं अपूरणीय हानि होगी – आवेदक को चेक का परीक्षण हस्तलेख विशेषज्ञ द्वारा कराने की अनुमति दी गई। (मीना तिवारी वि. सत्य प्रकाश केपिटल इन्वेस्टमेंट लि.) ---*47

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – अधिनियम की धारा 138 के अन्तर्गत पेश परिवाद के विखण्डन के लिए, उच्च न्यायालय अंतर्निहित शक्तियों के अन्तर्गत अभियुक्त की प्रतिरक्षा पर विचार नहीं कर सकता। (मृदुला कल्पीवार (श्रीमति) वि. मृिदिल पाठक) ---*67

परक्राम्य लिखत अधिनियम (1881 का 26) – धारा 138 – हस्तलेख विशेषज्ञ – आवेदक ने चैक पर अपने हस्ताक्षर से इंकार नहीं किया – बैंक मैनेजर से भी इस संबंध में कोई प्रश्न नहीं पूछा गया – आवेदक के स्वयं के निर्देश पर चैक के अन्य कॉलम किसी के द्वारा भरे जा सकते हैं – हस्तलेख विशेषज्ञ द्वारा चैक की जांच करवाने से कोई उपयुक्त प्रयोजन हल नहीं होगा। (नरेन्द्र धाकड़ वि. आनंद कुमार) ...1309

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, परन्तुक (बी) (तारीख 06.02.2003 को प्रभावशील हुए संशोधन के पूर्व की स्थिति) – मांग का सूचनापत्र बैंक से सूचना प्राप्त होने के 15 दिन के भीतर – बैंक का अर्थ अदाता बैंक न कि संग्रहकर्ता बैंक – अदाता बैंक द्वारा दी गई

forwarding the intimation given by drawee bank not sufficient to extend the statutory period of limitation. [Govind Singh Parmar v. Jai Prakash Mishra]...*64

Negotiable Instruments Act (26 of 1881), Section 138 - See - *Criminal Procedure Code, 1973, Section 482,* [Ramprasad v. Smt. Sudhaben] ...*60

Negotiable Instruments Act (26 of 1881), Section 138 - See - *Penal Code 1860, Section 420* [Govind Singh Parmar v. Jai Prakash Mishra] ...*64

Negotiable Instruments Act (26 of 1881), Section 139 - *Presumption* *- Accused denied its liability in reply to the notice sent by Complainant - Accused specifically alleged that cheque was issued by way of security and no goods were supplied by complainant - Complainant's witness also admitted in cross examination that cheque was issued by way of security - Onus to rebut presumption u/s 139 gets discharged - Onus shifts on complainant to prove the liability of Accused.* [Map Auto Ltd. v. Anil Kumar Jain] ...* 4

Panchayat (Appeal and Revision) Rules, M.P 1995, Rule 3 - See - *Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993, Section 91,* [Prajapal Singh v. State of M.P.] ...1721

Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership), Rules, M.P., 1995 - Rule 3 - *Presentation of election petition - Election petition filed by Counsel for Petitioner - By virtue of Vakalatnama, a lawyer doesnot become authorized by election petitioner to present the election petition - Presentation of election petition by Counsel doesnot fulfill the requirements of Rule 3 - Presentation of election petition by Counsel not proper - Election Petition rightly dismissed - Petition dismissed.* [Urmila Devi v. Returning Officer (Panchayat)] ...1175

Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995 - Rule 21(d)(iii) - *Grounds for declaring election to be void - Amendment of Election Petition - Election Petitioner has* *to plead all material facts which have affected result of election - Election petitioner cannot be permitted to introduce new facts by way of amendment after limitation - Order allowing application for amendment quashed - Petition allowed.* [Madanlal v. Sub Divisional Officer (Revenue)] ...1425

Panchayat Nirvachan Niyam, M.P., 1995, Rules 12 Proviso, 80(3) - *Recounting of Votes - Every order for recounting must be in writing - Not necessary to examine returning officer by specified officer for that purpose.* [Kailashi v. Smt. Bharosi Bai] ...1586

Panchayat Raj Adhiniyam, M.P. 1993, (1 of 1994), M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke Adhyaksha Tatha Upadhyaksha Ke Virudha Aviswas Prastav) Niyam, 1994, Niyam 3 - *Seven days Notice period is a mandatory condition - Not followed - No confidence motion passed - Not legal.* [Ramesh Chandra Vanshkar v. state of M P.] ...* 8

सूचना संग्रहकर्ता बैंक द्वारा अग्रेषित करने में किया गया विलम्ब परिसीमा की वैधानिक कालावधि को बढ़ाने के लिए पर्याप्त नहीं। (गोविंद सिंह परमार वि. जय प्रकाश मिश्रा) ---*64

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – देखें – दण्ड प्रकिया संहिता 1973, धारा 482 (रामप्रकाश वि. श्रीमति सुधाबेन) ---*60

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – देखें – दण्ड संहिता 1860, धारा 420. (गोविंद सिंह परमार वि. जय प्रकाश मिश्रा) ---*64

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 – उपधारणा – परिवादी द्वारा भेजे गये नोटिस के जवाब में अभियुक्त ने उसके दायित्व से इंकार किया – अभियुक्त ने विनिर्दिष्ट रूप से अभिकथन किया कि चेक प्रतिभूति के तौर पर दिया गया था और परिवादी द्वारा कोई माल नहीं भेजा गया था – परिवादी साक्षी ने भी प्रतिपरीक्षण में यह स्वीकार किया कि चेक प्रतिभूति के तौर पर दिया गया था – धारा 139 के अधीन उपधारणा को खंडित करने के सिद्धी के भार से उन्मोचित – परिवादी पर अभियुक्त का दायित्व सिद्धी का भार आ गया। (मेप आटो लिमि. वि. अनिल कुमार जैन) ---*34

पंचायत (अपील और पुनरीक्षण) नियम, म.प्र., 1995, नियम 3 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र., 1993, धारा 91, (प्रजापाल सिंह वि. म.प्र. राज्य) ...1721

पंचायत (निर्वाचन याचिका, भ्रष्ट आचरण एवं सदस्यता के लिये अयोग्यता) नियम, म.प्र. 1995 – नियम 3 – निर्वाचन याचिका की प्रस्तुती – निर्वाचन याचिका याची की ओर से अधिवक्ता द्वारा प्रस्तुत – याची अधिवक्ता को वकालतनामे के द्वारा निर्वाचन याचिका प्रस्तुत करने के लिये अधिकृत नहीं कर सकता है – अधिवक्ता द्वारा प्रस्तुत याचिका नियम 3 की अपेक्षा को पूरी नहीं करती है – अधिवक्ता द्वारा प्रस्तुत निर्वाचन याचिका उचित नहीं – निर्वाचन याचिका उचित रूप से खारिज – याचिका खारिज। (उर्मिला देवी वि. रिटर्निंग आफिसर (पंचायत)) ...1175

पंचायत (निर्वाचन याचिका, भ्रष्ट आचरण एवं सदस्यता के लिये अपात्रता) नियम, म.प्र. 1995 – नियम 21 (डी)(iii) – निर्वाचन को शून्य घोषित करने के आधार – निर्वाचन याचिका में संशोधन – निर्वाचन याची को, सभी सारवान तथ्य जिन्होंने निर्वाचन के परिणाम को प्रभावित किया, का अभिवचन करना था – निर्वाचन याची को परिसीमा के बाद संशोधन द्वारा नये तथ्यों को जोड़ने की अनुमति नहीं दी जा सकती – संशोधन का आवेदन स्वीकार करने का आदेश अभिखण्डित – याचिका मंजूर। (मदनलाल वि. सब डिवीजनल ऑफीसर (रेवेन्यू), ...1425

पंचायत निर्वाचन नियम, म.प्र., 1995, नियम 12 परन्तुक, 80(3) – मतों की पुनर्गणना – पुनर्गणना का प्रत्येक आदेश लिखित में होना चाहिए – इस उद्देश्य के लिए विशिष्ट अधिकारी द्वारा निर्वाचन अधिकारी का परीक्षण करने की आवश्यकता नहीं है। (कैलाशी वि. श्रीमति भरोसी बाई) ...1586

पंचायत राज अधिनियम, म.प्र. 1993 (1994 का 1), म.प्र. पंचायत (ग्राम पंचायत के सरपंच तथा उपसरपंच, जनपद पंचायत तथा जिला पंचायत के अध्यक्ष तथा उपाध्यक्ष के विरूद्ध अविश्वास प्रस्ताव) नियम 1994, नियम 3 – सात दिन की अवधि का नोटिस एक आज्ञापक शर्त है – पालन नहीं किया गया – अविश्वास प्रस्ताव पास – विधिक नहीं। (रमेश चन्द्र बंशकार वि. म.प्र. राज्य) ---*38

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 5, M.P. Nagar Palika Nirvachan Niyam, 1994 - Rule 9-A - *Deletion of entry in voter's list - Section 5 of Adhiniyam, 1993 provides that no person shall be entitled to be registered in the list of voters if he is registered in the electoral roll relating to any other local authority - Provision has to be made in Rule 9-A of Rules to ensure that the person whose name is entered into electoral roll of Municipality as well as in voter list of Panchayat elections does not circumvent the provision of Section 5 of Adhiniyam, 1993.* [Raja Ram Ahirwar v. State of M.P.] ...1042

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) [As amended w.e.f. 01.09.2006], Section 36(1)(m) - ***Deleted*** - *Clause (m) was inserted in the year 2000 which provided that a person shall be disqualified in election to be an office bearer if he has more than two living children one of whom is born on or after 26th day of January 2001 - Clause was deleted by Sansodhan Adhiniyam, 2006 w.e.f. 01.09.2006 - Deletion has been effected in prospective manner and no retrospective effect have been given.* [Bhuvneshwar Prasad @ Guddu Dixit v. State of M.P.] ...168

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993 (1 of 1994), Sections 36(1)(m), 2(a), 122 - ***Disqualification*** - *Petitioner submitted false information regarding date of birth of his fourth child - Election Petition filed u/s 122 of Adhiniyam - S.D.O. instead of deciding election petition referred the matter to Collector as question involves disqualification u/s 36 - Collector disqualified the petitioner - Held - Disqualification on account of having more than two children one of whom is born on or after 26.01.2001 was not decided in any election petition - No impediment in deciding petition u/s 36 by Collector.* [Bhuvneshwar Prasad @ Guddu Dixit v. State of M.P.]...168

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 69(1), Panchayat Service (Discipline and Appeal) Rules, M.P. 1999 - Rules 5,7 - ***Major Penalty*** - *Appellant who was working as Panchayat Secretary was denotified by Collector as Secretary on the allegation that he was found in possession of essential commodities belonging to ration card holders - Held - Rule 7 provides that for imposing major penalty formal inquiry will be held as far as may be in manner provided therein - Unless the procedure laid down in rule 7 is followed, appellant cannot be removed from the post of Secretary, Gram Panchayat or could not have been reverted to a lower post of Panchayat Karmi.* [Lalla Prasad Burman v. State of M.P.]...1050

Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (1 of 1994), Section 70 - *Appointment of Panchayat Karmi by the resolution of Gram Sabha - Appointment of petitioner by majority of votes and not on the basis of merits in terms of scheme of appointment - Held - Appointment rightly cancelled and fresh selection process rightly ordered - No interference called for - Petition dismissed.* [Prajapal Singh v. State of M.P.] ...1721

पंचायत राज एंव ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 5, म.प्र.नगरपालिका निर्वाचन नियम 1994 – नियम 9–ए – मतदाता सूची से प्रविष्टि का विलोपन – अधिनियम 1993 की धारा 5 उपबन्ध करती है कि कोई व्यक्ति मतदाता सूची में पंजीबद्ध होने का हकदार नहीं होगा यदि वह किसी अन्य स्थानीय प्राधिकारी से संबंधित निर्वाचक नामावली में पंजीबद्ध है – निर्वाचन नियम 9–ए के उपबन्ध यह सुनिश्चित करने के लिए किए गये हैं कि व्यक्ति जिसका नाम नगरपालिका के निर्वाचक नामावली में होने के साथ ही साथ पंचायत चुनाव की मतदाता सूची में हो, वह अधिनियम 1993 की धारा 5 के उपबन्ध से न बचता हो। (राजा राम अहिरवार वि. म.प्र. राज्य) ...1042

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र., 1993 (1994 का 1) (01.09.2006 से यथा संशोधित), धारा 36(1)(एम) – विलोपित – सन् 2000 में अंतस्थापित खण्ड (एम) विदित करता है कि व्यक्ति चुनाव के लिए अयोग्य होगा, यदि उसके दो से अधिक जीवित बच्चे हों, जिनमें से एक 26.01.2001 को या बाद में पैदा हो – खण्ड को संशोधन अधिनियम, 2006 द्वारा 01.09.2006 से विलोपित किया – विलोपन उत्तरदायी रूप से प्रभावी किया एवं कोई पूर्व व्यापी प्रभाव नहीं दिया। (भुवनेश्वर प्रसाद उर्फ गुड्डू दीक्षित वि. म.प्र. राज्य) ...1683

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 36(1)(एम), 2(ए), 122 – निरर्हता – याची ने चौथे बच्चे के जन्म दिवस की गलत जानकारी दी – अधिनियम की धारा 122 के अधीन चुनाव याचिका पेश – निरर्हता अन्तर्गत धारा 36 का प्रश्न अंतनिर्हित होने से अनुविभागीय अधिकारी ने चुनाव याचिका पर निर्णय देने की जगह, कलेक्टर को विचारार्थ भेजी – कलेक्टर ने याची को अयोग्य घोषित किया – अभिनिर्धारित – दो से अधिक बच्चे, जिनमें से एक 26.01.2001 के बाद पैदा हुआ हो, के कारण अयोग्यता चुनाव याचिका में निर्णीत नहीं या कलेक्टर के द्वारा धारा 36 के अन्तर्गत याचिका निर्णीत करने में कोई रुकावट नहीं है। (भुवनेश्वर प्रसाद उर्फ गुड्डू दीक्षित वि. म.प्र. राज्य) ...1683

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 69 (1), पंचायत सेवा (अनुशासन एवं अपील) नियम, म.प्र. 1999 – नियम 5, 7 – मुख्य शास्ति – अपीलार्थी, जो पंचायत सचिव के रूप में कार्य कर रहा था कलेक्टर ने इस अभिकथन पर कि उसके कब्जे में राशन कार्डधारियों की आवश्यक वस्तुएं पाई गईं, अधिसूचना द्वारा सचिव की नियुक्ति रद्द कर दी – अभिनिर्धारित – नियम 7 में उपबन्ध है कि मुख्य शास्ति आरोपित किये जाने के पूर्व औपचारिक जांच उपबंधित तरीके से की जायेगी – जब तक कि नियम 7 में बताई गई प्रक्रिया का पालन नहीं किया गया हो अपीलार्थी को ग्राम पंचायत के सचिव के पद से पदच्युत नहीं किया जा सकता है या उसे पंचायत कर्मी के निम्न पद पर पदावनत नहीं किया जा सकता है। (लल्ला प्रसाद बर्मन वि. म.प्र. राज्य) ...1050

पंचायत राज एवं ग्राम स्वराज अधिनियम, 1993 (1994 का 1), धारा 70 – पंचायत कर्मी की नियुक्ति ग्राम सभा के प्रस्ताव द्वारा – याची की नियुक्ति स्कीम के निबंधनों के अनुसार योग्यता के आधार पर नहीं बल्कि बहुमत द्वारा की गई – अभिनिर्धारित – नियुक्ति सही रूप में निरस्त और नई चयन प्रक्रिया सही रूप में आदेशित – कोई हस्तक्षेप आवश्यक नहीं – याचिका खारिज। (प्रजापाल सिंह वि. म.प्र. राज्य) ...1721

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 70, 69(1), 91 - *Appointment of Panchayat Karmi - Whether appealable - Panchayat Karmi is appointed U/s 70 of Adhiniyam - It does not provide that appointment shall be made by passing a resolution - Scheme provides for resolution - Resolution means formal expression of opinion or will of a body - Appointment order is issued by Sarpanch to carry out resolution of General Body - Appointment order can be challenged by filing appeal under Section 91 - Appointment of Panchayat Karmi pursuant to resolution is appealable.* [Devidayal Raikwar v. State of M.P.] ...1 70

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) - Section 85 -- *Section 85 confers power on State Government or Prescribed Authority to suspend resolution, order etc. on conditions precedent - Person grieved can bring his grievance to the notice of State Govt. and State Govt. should take a decision under Section 85 - State Government shall be guided by concept of promptitude.* [Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni] ...1080

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) - Sections 85, 91 - *When the Statute confers a right specifically mere absence of procedural rules, does not abrogate the right of litigant.* [Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni] ...1080

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P., 1993 (1 of 1994), Section 91, Panchayat (Appeal and Revision) Rules, M.P 1995, Rule 3 -*Appeal* - *Appeal would lie against an order of appointment of Panchayat Karmi issued by Sarpanch of the Gram Panchayat u/s 91 of the Act r/w Rule 3 of the Rules - Appellate Authority has all necessary powers to grant relief in case while allowing the appeal - Such powers will also include the powers to decide whether the selection made by the Gram Panchayat by adopting the resolution was not correct either on facts and law.* [Prajapal Singh v. State of M.P.] ...1721

Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994) - Section 91 - *Whether appeal or revision would lie against resolution passed by Gram Panchayat - Proceedings - Proceeding of Gram Panchayat is assailable in appeal or revision - However, resolution which would have been specifically challengeable in different manner under 1993 Act would not come under purview of Section 91.* [Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni] ...1080

Panchayat Samvida Shala Shikshak (Employment and Condition of Contract) Rules, M.P., 2005 - Explanation 5 Rule 9(b) - *Marks for different qualifications - Constitutional Validity challenged - Application for contract teacher Grade III - 20 marks to be awarded to D.Ed./B.T.C./D.S.E. incumbent but not to B.Ed. incumbent - Held - B.Ed. incumbents may be having qualification to teach at higher level but B.Ed. is not higher qualification to teach at primary*

पंचायत राज एवम ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 70, 69(1), 91 – पंचायत कर्मी की नियुक्ति – क्या अपील योग्य है – पंचायत कर्मी की नियुक्ति अधिनियम की धारा 70 के अंतर्गत होती है – ऐसा कोई उपबन्ध नहीं है कि नियुक्ति के लिये प्रस्ताव पारित किया जायेगा – योजना में प्रस्ताव का उपबन्ध हैं – प्रस्ताव का अर्थ है निकाय की राय या इच्छा की औपचारिक अभिव्यक्ति – आम सभा के प्रस्ताव के कियान्वयन के लिये सरपंच द्वारा नियुक्ति आदेश जारी किया गया – नियुक्ति आदेश को धारा 91 के अंतर्गत अपील पेश कर चुनौती दी जा सकती है – प्रस्ताव के अनुसरण में की गई पंचायत कर्मी की नियुक्ति अपील योग्य है। (देवीदयाल रैकवार वि. म.प्र. राज्य) ...1370

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1) – धारा 85 – धारा 85 राज्य सरकार एवं विहित प्राधिकारी को प्रस्ताव, आदेश इत्यादि को सशर्त निलंबित करने की शक्ति प्रदान करती है – व्यथित व्यक्ति उसकी शिकायत राज्य सरकार के ध्यान में ला सकता है और राज्य सरकार को धारा 85 के अंतर्गत निर्णय लेना चाहिये – राज्य सरकार तत्परता के सिद्धांत से मार्गदर्शन ले सकती है। (सागर मछुआ सहकारी समिति, सिवनी वि. चीफ एग्जीक्यूटिव आफिसर, जनपद पंचायत, सिवनी) ...1080

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1) – धाराएं 85, 91 – जब अधिनियम विशिष्ट रूप से कोई अधिकार देता है तो केवल प्रक्रिया संबंधी नियम के अभाव में वादी का अधिकार रद्द नहीं होता है। (सागर मछुआ सहकारी समिति, सिवनी वि. चीफ एग्जीक्यूटिव आफिसर, जनपद पंचायत, सिवनी) ...1080

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र., 1993, (1994 का 1), धारा 91, पंचायत (अपील और पुनरीक्षण) नियम, म.प्र., 1995, नियम 3 – अपील – ग्राम पंचायत के सरपंच द्वारा जारी पंचायतकर्मी के नियुक्ति आदेश के विरुद्ध अपील अधिनियम की धारा 91 सहपठित नियमों के नियम 3 में की जा सकती है – अपील प्राधिकारी को जब अपील मंजूर की जा रही हो, मामले में अनुतोष दिलाने की सभी आवश्यक शक्तियाँ प्राप्त हैं – ऐसी शक्तियों में यह विनिश्चय करना भी सम्मिलित है कि ग्राम पंचायत द्वारा प्रस्ताव को अंगी.त करते हुए चयन किया जाना तथ्य और विधि दोनों में सही नहीं था। (प्रजापाल सिंह वि. म.प्र. राज्य) ...1721

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1) – धारा 91 – क्या ग्राम पंचायत द्वारा पारित प्रस्ताव के विरूद्ध अपील या पुनरीक्षण पेश होगी – कार्यवाही – ग्राम पंचायत की कार्यवाही को अपील या पुनरीक्षण में चुनौती दे सकते हैं – तथापि ऐसा प्रस्ताव जो 1993 के अधिनियम के अंतर्गत अन्य तरीके से विशिष्ट रूप से चुनौती योग्य है वह धारा 91 की सीमा में नहीं आयेगा। (सागर मछुआ सहकारी समिति, सिवनी वि. चीफ एग्जीक्यूटिव आफिसर, जनपद पंचायत, सिवनी) ...1080

पंचायत संविदा शाला शिक्षक (रोजगार और संविदा की शर्तें) नियम, म.प्र., 2005 – स्पष्टीकरण 5 नियम 9(बी) – विभिन्न अर्हताओं के लिये अंक – संवैधानिक वैधता को चुनौती – संविदा शिक्षक ग्रेड तीन के लिये आवेदन – डी.एड./बी.टी.सी./डी.एस.ई. धारक को 20 अंक दिये गये परन्तु बी.एड. धारक को कोई अंक नहीं दिये गये – अभिनिर्धारित – बी.एड. धारक की अर्हता उच्च स्तर पर शिक्षा देने के लिये है किन्तु प्राथमिक स्तर पर शिक्षा देने के लिये बी.एड.

level - Rule is based on intelligible classification - Rule is intra vires of Constitution - Petition dismissed. [Manoj Kumar Pandya v. State of M.P.] ...1 8

Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, M.P., 2005 - Rule 6(9) 3rd Explanation - *Constitutional validity - 3rd Explanation provides that teaching experience certificate shall be issued to only those teachers whose salary has been paid from Grant-in-aid and only for that period for which salary was paid - Held- Government wants to ensure that fraudulent, manufactured certificates are not issued in relating to teaching experience - It cannot be argued that third explanation carves out a discrimination between equals - Teachers who are being paid from State Grant-in-aid and who are not being paid from State Grant-in-aid donot come under same class - Petition dismissed.* [Bhupendra Singh v. State of M.P.] ...11 6

Panchayat Service (Discipline and Appeal) Rules, M.P. 1999 - Rules 5,7 - See - ***Panchayat Raj Avam Gram Swaraj Adhiniyam, M.P. 1993, Section 69(1)*** [Lalla Prasad Burman v. State of M.P.] ...1050

Panchayats (Appeal and Revision) Rules, 1995 - Rules 3, 5 - ***Proceedings*** - *Word Proceeding used in Rule 5 is confined and restricted as to regularity of proceedings of authorities subordinate to it and further the same pertains to a case.* [Sagar Machhua Sahakari Samiti, Seoni v. Chief Executive Officer, Janpad Panchayat, Seoni] ...1080

Penal Code (45 of 1860), Sections 34, 397 - *Robbery or dacoity with attempt to cause death or grievous hurt - Individual act of each accused has to be established - Cannot be convicted with aid of Section 34 of I.P.C.* [Bharat Singh v. State of M.P.] ...2126

Penal Code, (45 of 1860), Sections 100 & 304 Part II - ***Right of Private Defence*** - *Appellant had inflicted a single injury by awl (Tocha) to deceased - None of accused persons were carrying any weapon - Appellant and acquitted persons were received bleeding injuries - No explanation given by prosecution - Genesis of the incident is shrouded in mystery - Trial Court found that appellant had exceeded right of private defence - Held - Appellant received injury on thoracic - Dimension and size of injury caused to appellant indicates that he did not exceed the right of private defence - Appellant acquitted - Appeal allowed.* [Durga Prasad v. State of M.P.] ...1475

Penal Code (45 of 1860), Sections 107 & 306, Evidence Act, 1872, Section 113-A - ***Abetting the commission of suicide*** - *Deceased (wife) found inside her house because of burning - No eye witness of incident - Deceased had also not disclosed anything - Possibility of receiving burn injury accidently or by some other person, is not ruled out - It is not proved that deceased committed suicide - No evidence that husband (appellant) instigated wife to commit suicide or deliberately harassing wife so that she could commit*

उच्च अर्हता नही – नियम बोधगम्य वर्गीकरण पर आधारित – नियम संवैधानिक शक्तियों के अधीन – याचिका खारिज। (मनोज कुमार पंड्या वि. म.प्र. राज्य) 1383

पंचायत संविदा शाला शिक्षक (नियोजन एवं संविदा की शर्तें) नियम, म.प्र. 2005 – नियम 6(9) तृतीय स्पष्टीकरण – संवैधानिक वैधता – तृतीय स्पष्टीकरण उपबन्ध करता है कि केवल उन अध्यापकों को ही अध्यापन अनुभव का प्रमाण पत्र जारी किया जावेगा जिन अध्यापकों का वेतन अनुदान से भुगतान होता है और केवल ऐसी कालावधि के लिए प्रदान किया जायेगा जिसमें वेतन का भुगतान किया गया था – अभिनिर्धारित – सरकार यह सुनिश्चित करना चाहती है कि अध्यापन अनुभव के संबंध में कपटपूर्ण, तैयार किये, प्रमाण पत्र जारी न हो – यह तर्क नहीं किया जा सकता है कि तृतीय स्पष्टीकरण समानों के मध्य विभेद परिकल्पित करता है – अध्यापक जिन्हें राज्य अनुदान से भुगतान किया जा रहा है और जिन्हें राज्य अनुदान से भुगतान नहीं किया जा रहा है वे समान वर्ग के अन्तर्गत नहीं आते हैं – याचिका खारिज। (भूपेन्द्र सिंह वि. म.प्र. राज्य) ...1136

पंचायत सेवा (अनुशासन एवं अपील) नियम, म.प्र. 1999 – नियम 5, 7 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 69 (1), (लल्ला प्रसाद बर्मन वि. म.प्र. राज्य) ...1050

पंचायत (अपील व पुनरीक्षण) नियम, 1995 – नियम 3, 5 – कार्यवाही – नियम 5 में प्रयुक्त कार्यवाही शब्द परिसीमित एवं प्रतिबंधित है जो अधिनस्थ प्राधिकारी की कार्यवाहियों का विनियमन करती है और यह मामले से अनुकूल होना है। (सागर मछुआ सहकारी समिति, सिवनी वि. चीफ एग्जीक्यूटिव आफिसर, जनपद पंचायत, सिवनी) ...1080

दण्ड संहिता (1860 का 45), धाराएँ 34, 397 – मृत्यु या घोर उपहति कारित करने के प्रयत्न के साथ लूट या डकैती – प्रत्येक अभियुक्त का वैयक्तिक कृत्य स्थापित करना पड़ता है – भा.द.सं. की धारा 34 की सहायता से दोषसिद्ध नहीं किया जा सकता। (भारत सिंह वि. म.प्र. राज्य) ...2126

दण्ड संहिता, (1860 का 45), धारा 100 व 304 भाग दो – प्रायवेट प्रतिरक्षा का अधिकार – अपीलार्थी ने मृतक को टोचे से एक उपहति कारित की – कोई भी अभियुक्त अपने साथ कोई हथियार नहीं लिये था – अपीलार्थी व दोषमुक्त व्यक्तियों को रक्तरंजित उपहतियाँ हुईं – अभियोजन द्वारा कोई स्पष्टीकरण नहीं दिया – घटना की उत्पत्ति रहस्यमय व छिपायी गयी – विचारण न्यायालय ने पाया कि अपीलार्थी ने प्रायवेट प्रतिरक्षा के अधिकार का उल्लंघन किया – अभिनिर्धारित – अपीलार्थी को छाती पर उपहति आयी – उपहति का आकार व विस्तार यह दर्शाते हैं कि उसने प्रायवेट प्रतिरक्षा के अधिकार का उल्लंघन नहीं किया – अपीलार्थी दोषमुक्त – अपील मंजूर। (दुर्गा प्रसाद वि. म.प्र. राज्य) 1475

दण्ड संहिता (1860 का 45), धारा 107 व 306, साक्ष्य अधिनियम, 1872, धारा 113–ए – आत्महत्या के लिए दुष्प्रेरित करना – मृतक (पत्नी) उसके घर के अन्दर जली हुई पाई गई – घटना का कोई प्रत्यक्षदर्शी साक्षी नहीं – मृतक ने भी कुछ नहीं बताया – किसी अन्य व्यक्ति द्वारा जलाने से या दुर्घटनावश जलने से उपहतियाँ आयीं हों यह आशंका निराधार नहीं – यह सिद्ध नहीं कि मृतक ने आत्महत्या की – ऐसा साक्ष्य नहीं कि पति (अपीलार्थी) ने पत्नी को आत्महत्या करने के लिए दुष्प्रेरित किया या जानबूझकर पत्नी को परेशान किया ताकि वह आत्महत्या

suicide - Deceased met with death after 7 years of marriage - Presumption u/s 113-A of Act not attracted - Offence u/s 306 I.P.C. not made out. [Manoj v. State of M.P.] ...2093

Penal Code, (45 of 1860), Sections 149, 302 - *Murder - Unlawful Assembly* *- Common Object - Accused appellants came to shop of deceased together - Most of them armed with deadly weapons - One of the accused pierced spear on left side of chest of deceased - Assaults were followed by other accused persons in same transaction - Held - Knowledge of members of unlawful assembly that death of deceased would thereby be caused can be safely attributed - Inference of knowledge and formation of unlawful assembly can be drawn from behaviour of members of assembly - Accused persons rightly convicted u/Ss 302/149 - Appeal dismissed.* [Antu v. State of M.P.] ...1483

Penal Code (45 of 1860) - Section 201 - *Causing Disappearance of evidence* *- In order to prove charge under Section 201, it is essential to prove that some offence has taken place - No offence under Section 201 made out.* [Sittu Patel v. State of M.P.] ...*40

Penal Code (45 of 1860), Section 224, Criminal Procedure Code, 1973, Section 470(4) (b) *- Computing the period of limitation, the time during which the offender has avoided arrest by absconding or concealing himself, shall be excluded - Appellant released on parole - Did not surrender after expiry of Parole - Arrested after 19 years - Period of absconding can be excluded - Charge sheet was not beyond limitation.* [State of M.P. v. Shankarlal Soni] ...*52

Penal Code (45 of 1860), Section 302 - *Homicidal or Suicidal* *- Deceased found burning in verandah by the husband - Autopsy surgeon found the cause of death was asphyxia and burns were antimortem - On query he clarified that cells remain active even after death - If a person is burnt immediately after death, burn would appear to be antimortem - Held - Deceased was not burnt in a closed room - No other article was found burnt which would have created thick smoke so as to be inhaled to cause death due to suffocation - Verandah was open place - Death due to suffocation not possible - No carbon particles found in trachea of deceased - Death was homicidal and not suicidal.* [State of M.P. v. Bharat Singh] ...1245

Penal Code (45 of 1860), Section 302 - *Motive* *- In circumstancial evidence, motive acquires significance - Once prosecution failed to prove the motive alleged and there is no evidence to attach culpability to the accused, merely on suspicion, surmises & conjectures accused could not have been convicted.* [Tukaram v. State of M.P.] ...2098

Penal Code (45 of 1860), Section 302 - *Murder* *- Child of appellant was earlier treated by deceased as he was indisposed since long - Again the child was taken to deceased who subjected him to treatment (witchcraft) -*

कर ले – मृतक की मृत्यु विवाह के 7 वर्ष के बाद हुई – अधिनियम की धारा 113–ए के अधीन उपधारणा आकृष्ट नहीं – भा.द.सं. की धारा 306 के अधीन अपराध सिद्ध नहीं। (मनोज वि. म.प्र. राज्य) ...2093

दण्ड संहिता, (1860 का 45), धारा 149, 302 – हत्या – विधि विरुद्ध जमाव – सामान्य उद्देश्य – अभियुक्तगण अपीलार्थीगण मृतक की दुकान पर साथ–साथ आये – उनमें से अधिकतर घातक हथियार लिये हुए थे – एक अभियुक्त ने मृतक की छाती के बांयी ओर भाले से वेध दिया – इसी क्रम में अन्य अभियुक्तों ने हमले किये – अभिनिर्धारित – विधि विरुद्ध जमाव के सदस्यों के ज्ञान में यह था कि इसके द्वारा मृतक की मृत्यु कारित होगी यह सुरक्षित रूप से उपारोपण (attribute) किया जा सकता है – जमाव के सदस्यों के व्यवहार से विधि विरुद्ध जमाव की रचना और ज्ञान का अनुमान निकाला जा सकता है – अभियुक्तों को धारा 302/149 के अधीन उचित रूप से दोषसिद्ध पाया – अपील खारिज। (अंतू वि. म.प्र. राज्य) 1483

दण्ड संहिता (1860 का 45), धारा 201 – साक्ष्य विलोपित करना – धारा 201 के अंतर्गत आरोप सिद्ध करने के लिए यह सिद्ध करना आवश्यक है कि कोई अपराध हुआ है – धारा 201 के अंतर्गत अपराध नहीं बनता है। (सित्तू पटेल वि. म.प्र. राज्य) ---*40

दण्ड संहिता (1860 का 45), धारा 224, दण्ड प्रकिया संहिता, 1973, धारा 470(4)(बी) – परिसीमा काल की संगणना करने में, वह समय अपवर्जित किया जायेगा, जिसके दौरान अपराधी फरार होकर या अपने को छिपाकर गिरतारी से बचता है – अपीलार्थी को पैरोल पर छोड़ा गया – पैरोल की समाप्ति के बाद आत्मसमर्पण नहीं किया – 19 वर्षो के बाद गिरतारी – फरार रहने की अवधि अपवर्जित की जा सकती है – आरोप पत्र परिसीमा से परे नहीं। (म.प्र. राज्य वि. शंकरलाल सोनी) ----*52

दण्ड संहिता (1860 का 45), धारा 302 – मानववध या आत्महत्या – पति ने मृतक को बरामदे में जलते हुए पाया – शव परीक्षा के शल्य चिकित्सक ने मृत्यु का कारण दम घुटना पाया था और जलने के घाव मृत्यु पूर्व के थे – प्रश्न पूछने पर उन्होनें स्पष्ट किया कि मृत्यु के बाद भी कोशिकाएं सक्रिय रहती है – यदि व्यक्ति को मृत्यु के तुरंत बाद जलाया जाय तो जलने के घाव मृत्यु पूर्व के प्रतीत होगें – अभिनिर्धारित – मृतक को बंद कमरे में नहीं जलाया गया था – कोई भी अन्य वस्तु जली हुई नहीं पाई गई जो घना धुआं पैदा करती जिसमें सांस लेने से दम घुटने के कारण मृत्यु होती – बरामदा खुला स्थान था – मृत्यु दम घुटने से होना संभव नहीं – मृतक की श्वास नली में कोई कार्बन कण नहीं पाये गये – मृत्यु मानववध थी और आत्महत्या नहीं थी। (म.प्र. राज्य वि. भारत सिंह) ...1245

दण्ड संहिता (1860 का 45), धारा 302 – हेतु – परिस्थितिजन्य साक्ष्य में हेतु महत्व रखता है – एक बार जब अभियोजन कथित हेतु को सिद्ध करने में असफल होता है और अभियुक्त को सदोषता से संलग्न करने लिए कोई साक्ष्य न हो तो केवल संदेह, अनुमान व अटकलबाजी से अभियुक्त को दोषसिद्ध नहीं किया जा सकता। (तुकाराम वि. म.प्र. राज्य) ...2098

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – अपीलार्थी के बालक का उपचार पूर्व में मृतक द्वारा किया गया चूंकि वह काफी समय से अस्वस्थ था – बालक को फिर से मृतक के पास ले जाया गया जिसने जादू टोना के अधीन होकर उसका उपचार किया – कोई सुधार नहीं दिखा

No improvement was shown and child died in the morning - Appellant on the next day entered the house of deceased and assaulted him with an axe - Held - Suddenness which is important constituent to bring case within Exception 1 to Section 300 is missing - Case of appellant does not fall within Exception 1 to Section 300 - Appellant rightly convicted for said offence - Appeal dismissed. [Nandu Ahir v. State of M.P.] ...1782

Penal Code (45 of 1860), Section 302 - *Murder* - *Circumstantial Evidence - Deceased, a second wife of appellant no.1 not having good terms with first wife of appellant no.1 - Deceased had shifted to her parents house on account of quarrel, however, rejoined appellant no.1 on his assurance that she will not be ill-treated - House of appellant was found locked from outside - Appellant no.1 had gone to borrow the bullock cart - Skeleton recovered after one and a half month from a distant place - Axe, Pickaxe and spade recovered at the instance of appellant no.1 from near a tree - Held - It is necessary that each circumstance should indicate guilt of accused without being compatible with any hypothesis of his innocence - Circumstances taken together cannot make a chain indicating the guilt of accused persons - Appellants acquitted - Appeal allowed.* [Kishan v. State of M.P.] ...1273

Penal Code (45 of 1860), Section 302 - *Murder* - *Circumstantial Evidence - Human skull and ribs found buried in ground - No evidence to prove that skeleton was of deceased - Cause of Death could not be ascertained - Evidence regarding identification of skeleton on account of cloths found on the spot not reliable - Prosecution failed to prove that skeleton found buried was that of deceased.* [Kishan v. State of M.P.] ...1273

Penal Code (45 of 1860), Section 302 - *Murder* - *Circumstantial Evidence - Last Seen Together - Deceased and respondent who were uncle and nephew residing together - If they left home together, that alone not sufficient to make out a case of last seen together.* [State of M.P. v. Ashok] ...1220

Penal Code (45 of 1860), Section 302 - *Murder* - *Circumstantial Evidence - Prosecution has to prove that circumstance led to no other inference except that of guilt of accused and has to exclude every other hypothesis of his innocence.* [State of M.P. v. Ashok] ...1220

Penal Code (45 of 1860), Section 302 - *Murder* - *Deceased made oral dying declarations to several persons who reached on the spot immediately after the incident - Police reached on spot and recorded Dehati Nalishi - Eye witness immediately disclosed minute description of incident to police - Opinion of Doctor that deceased would have become unconscious within 10-15 minutes would not mean that deceased became unconscious within 10-15 minutes - It would depend upon the strength and resistance of individual - Oral dying declaration cannot be disbelieved on that ground - Acquittal of respondents set aside - Respondents convicted - Appeal allowed.* [State of M.P. v. Gopal Singh] ...1265

और बालक की मृत्यु प्रातःकाल में हो गयी – अपीलार्थी ने दूसरे दिन मृतक के मकान में प्रवेश किया और उस पर कुल्हाड़ी से हमला किया – अभिनिर्धारित – आकस्मिकता, जो कि मामले को धारा 300 के अपवाद 1 में लाने के लिए महत्वपूर्ण घटक है, का अभाव है – अपीलार्थी का मामला धारा 300 के अपवाद 1 में नही आता – अपीलार्थी कथित अपराध के लिये सही रूप में दोषसिद्ध किया गया – अपील खारिज। (नन्दू अहीर वि. म.प्र. राज्य) ...1782

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – मृतक अपीलार्थी क्रं. 1 की दूसरी पत्नी थी, जिसके अपीलार्थी क्रं. 1 की पहली पत्नी से अच्छे संबंध नहीं थे – लड़ाई झगड़े की वजह से मृतक अपने मायके चली गई थी, यद्यपि अपीलार्थी क्रं. 1 के आश्वासन पर कि वह उसके साथ बुरा बर्ताव नहीं करेगा, वापस आ गई थी – अपीलार्थी के घर का ताला बाहर से बंद पाया गया – अपीलार्थी बैलगाड़ी उधार मांगने गया था – कंकाल दूरस्थ स्थान से डेढ माह बाद बरामद – अपीलार्थी क्रं. 1 की प्रेरणा पर कुल्हाडी, बसूला एवं फावडा (चंकम) पेड़ के पास से बरामद – अभिनिर्धारित – यह आवश्यक है कि प्रत्येक परिस्थिति को अभियुक्त के दोषी होने की परिकल्पना के साथ इंगित करना चाहिए – परिस्थितियों को साथ–साथ रखे तो एक श्रृंखला नहीं बन सकती है जो अभियुक्तों को दोषी होने की ओर इंगित करे – अपीलार्थियों को दोषमुक्त किया – अपील मंजूर की गई। (किशन वि. म.प्र. राज्य) ...1273

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – मानव खोपड़ी व पसलियां मैदान में गड़ी पाई गईं – यह सिद्ध करने का कोई साक्ष्य नहीं कि कंकाल मृतक का था – मृत्यु का कारण अभिनिश्चित नहीं हो सका – घटना स्थल पर पाये गये कपड़ों के आधार पर कंकाल के पहचान के संबंध में साक्ष्य विश्वसनीय नहीं – अभियोजन सिद्ध करने में असफल रहा है कि गड़ा पाया कंकाल मृतक का था। (किशन वि. म.प्र. राज्य) ...1273

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ–साथ देखे गये – मृतक और प्रत्यर्थी जो चाचा भतीजे थे साथ–साथ रहते थे – यदि उन्होंने साथ–साथ घर छोड़ा हो, तो इससे अंतिम बार उन्हें साथ–साथ देखा गया ऐसा मामला बनाया जाने का पर्याप्त आधार नही है। (म.प्र. राज्य वि. अशोक) ...1220

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अभियोजन को यह सिद्ध करना होता है कि परिस्थितियां अभियुक्त के दोषी होने के अलावा किसी अन्य निष्कर्ष पर नहीं पहुंचती हैं और वह अभियुक्त के निर्दोष होने की सभी संभावनाओं को नकारता है। (म.प्र. राज्य वि. अशोक) ...1220

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृतक ने मौखिक मृत्युकालिक कथन कई लोगों को जो घटना के तुरंत बाद घटना स्थल पर पहुंचे थे, दिया – पुलिस घटना स्थल पर पहुंची और देहाती नालिशी लिखी – प्रत्यक्षदर्शी साक्षी ने तत्काल घटना के सूक्ष्म विवरण पुलिस को बताये – चिकित्सक की राय कि मृतक 10–15 मिनट के अन्दर बेहोश हो गया होगा, का अर्थ यह नहीं होगा कि मृतक 10–15 मिनिट के अंदर बेहोश हो गया – यह एक व्यक्ति की शक्ति व प्रतिरोधात्मक क्षमता पर निर्भर करता है – मौखिक मृत्युकालिक कथन पर अविश्वास उक्त आधार पर नहीं किया जा सकता है – प्रत्यर्थियों की दोषमुक्ति अपास्त – प्रत्यर्थियों को दोषसिद्ध किया गया – अपील मंजूर। (म.प्र. राज्य वि. गोपाल सिंह) ...1265

Penal Code (45 of 1860), Section 302 - *Murder - Deceased receiving number of injuries including incised, stab and lacerated wounds - Oral dying declaration made by deceased to her daughter-in-law who reached on the spot - Fact of oral dying declaration mentioned in FIR lodged by witness - Police Statement also contains the fact of oral dying declaration - Oral dying declaration not challenged in cross examination - Reliable.* [State of M.P. v. Ashok] ...1503

Penal Code (45 of 1860), Section 302 - *Murder - False report lodged by husband/accused that when he came back to house he found his wife burning - Effort to remove evidence of homicidal death due to asphyxia by setting ablaze the deceased to indicate that it was a case of suicide - Extra Judicial Confession made to persons who were not having any enmity with accused persons - Attempt to influence Doctor is also a circumstance - Appellants guilty of committing murder- Judgment of acquittal set aside - Appellants convicted - Appeal allowed.* [State of M.P. v. Bharat Singh]...1245

Penal Code (45 of 1860), Section 302 - *Murder - In absence of evidence that blood found to be of human and also blood group of the deceased the evidence can not be said to be conclusive - No evidence that blood found on the knife and on clothes of respondent was human blood and blood group of the deceased.* [State of M.P. v. Ashok] ...1220

Penal Code (45 of 1860), Section 302 - Oral dying declaration - In FIR it has been stated by witness that in oral dying declaration, deceased told that respondent no.1 was having a hockey stick and respondent no. 2 was having a knife - But no where in the entire testimony of witness anything about use of hockey stick - Respondent no. 1 is entitled for the benefit of doubt. [State of M.P. v. Ashok] ...1503

Penal Code (45 of 1860), Sections 302, 149 - *Murder - After hearing alarm raised by deceased, his wife reached on spot and found that appellants were assaulting deceased - Appellant No.1 and 2 strangulated deceased and remaining appellants kept him pinned by holding his hands and legs - Other witnesses also reached on spot - F.I.R. was lodged promptly - Deceased died due to strangulation - Complaint was filed disputing the factum of involvement of appellants - Held - Considering the prompt F.I.R. and consistency of statements of eye-witnesses, appellants are guilty of committing murder - Appeal dismissed.* [Nar Singh v. State of M.P.] ...1225

Penal Code (45 of 1860), Ss. 302/149, 148, 147 - *Appellant Deewan Singh convicted u/s 302/149 & 148 IPC and remaining appellants convicted u/s 302/149 & 147 IPC - Conviction challenged in appeal - Held - Prosecution has come with two contradictory stories - One as per the dying declaration and other as per eye witnesses - Dying declaration was recorded by Naib Tahsildar on the certificate of Doctor - Dying declaration is more reliable in*

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – मृतक को काफी संख्या में कटे हुये, घोपे हुये और फटे हुये घावों सहित कई उपहतियां आईं – मृतक ने अपनी बहू को मौखिक मृत्युकालिक कथन दिया, जो घटना स्थल पर पहुँची थी – साक्षी द्वारा दर्ज करायी गई प्रथम सूचना रिपोर्ट में मौखिक मृत्युकालिक कथन के तथ्य का उल्लेख – पुलिस कथन में भी मौखिक मृत्युकालिक कथन के तथ्य का उल्लेख – मौखिक मृत्युकालिक कथन को प्रतिपरीक्षण में चुनौती नहीं दी गई – विश्वसनीय। (म.प्र. राज्य वि. अशोक) 1503

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – पति/अभियुक्त द्वारा झूठी रिपोर्ट दर्ज करवाई गई कि जब वह घर लौटा तो उसने अपनी पत्नी को जलते हुए पाया – दम घुटने से हुए मानव वध के साक्ष्य को हटाने के प्रयास में, यह बताने के लिए कि यह आत्महत्या का मामला था, मृतक को आग से जलाया – न्यायिकेत्तर संस्वीकृति उन व्यक्तियों की जिनकी अभियुक्त से कोई दुश्मनी नहीं थी – चिकित्सक पर दबाव डालने का प्रयत्न भी एक परिस्थिति है – अपीलार्थी हत्या कारित करने के दोषी – दोष मुक्ति का निर्णय अपास्त – अपीलार्थियों को दोष सिद्ध किया – अपील मंजूर। (म.प्र. राज्य वि. भारत सिंह) ...1245

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – जो रक्त पाया गया वह मानव रक्त था और मृतक के रक्त समूह का था ऐसे साक्ष्य के अभाव में पेश साक्ष्य निर्णायक साक्ष्य नहीं कहा जा सकता है – ऐसा साक्ष्य नहीं है कि जो रक्त चाकू और प्रत्यर्थी के कपड़ों पर पाया गया वह मानव रक्त था और मृतक के रक्त समूह का था। (म.प्र. राज्य वि. अशोक) ...1220

दण्ड संहिता (1860 का 45), धारा 302 – मौखिक मृत्युकालिक कथन – प्रथम सूचना रिपोर्ट में साक्षी ने कथन किया कि उसे मृतक ने अपने मौखिक मृत्युकालिक कथन में बताया था कि प्रत्यर्थी क्रं. 1 के पास हाकी स्टिक और प्रत्यर्थी क्रं. 2 के पास चाकू था – परन्तु साक्षी के सम्पूर्ण कथन में कहीं भी हाकी स्टिक के प्रयोग के बारे में कुछ नहीं – प्रत्यर्थी क्रं. 1 संदेह का लाभ पाने का हकदार है। (म.प्र. राज्य वि. अशोक) 1503

दण्ड संहिता (1860 का 45), धाराएँ 302, 149 – हत्या – मृतक द्वारा उंची आवाज में चिल्लाना सुनकर, उसकी पत्नी घटना स्थल पर पहुंची तो पाया कि अपीलार्थी मृतक पर हमला कर रहे थे – अपीलार्थी क्रं. 1 व 2 ने मृतक का गला घोंट दिया एवं शेष अपीलार्थी उसके हाथ व पैर बाँध कर पकड़े हुये थे – अन्य साक्षी भी उक्त स्थान पर पहुंच गये – प्रथम सूचना रिपोर्ट तुरंत लिखवाई गई – मृतक की मृत्यु गला घोंटने से हुई – अपीलार्थियों के घटना में अर्न्तग्रस्त होने के तथ्य को विवादित करते हेतु परिवाद पेश की थी – अभिनिर्धारित – शीघ्र प्रथम सूचना रिपोर्ट व प्रत्यक्षदर्शी साक्षियों के बयानों की अनुरूपता पर विचार करते हुए – अपीलार्थीगण हत्या कारित करने के दोषी – अपील खारिज। (नर सिंह वि. म.प्र. राज्य) ...1225

दण्ड संहिता (1860 का 45), धाराएँ 302/149, 148, 147 – अपीलार्थी दीवान सिंह भा.द. सं. की धाराएँ 302/149 व 148 के अन्तर्गत दोषसिद्ध और शेष अपीलार्थीगण भा.द.सं. की धाराएँ 302/149 व 147 के अन्तर्गत दोषसिद्ध – दोषसिद्धि को अपील में चुनौती – अभिनिर्धारित – अभियोजन दो विरोधाभाषी कहानियों के साथ आया है – एक मृत्युकालिक कथन के आधार पर और दूसरा प्रत्यक्षदर्शी साक्ष्य के आधार पर – मृत्युकालिक कथन नायब तहसीलदार द्वारा चिकित्सक के प्रमाण–पत्र पर अभिलिखित किया – प्रत्यक्षदर्शी साक्षी के विवरण की तुलना में मृत्युकालिक कथन

comparison to the eye witness account - In the light of that 'Dehati Nalishi' was not recorded timely and it is an afterthought document and there is no proof that it was forwarded to the Court immediately as required u/s 157 Cr.P.C. - Evidence of eye witnesses is not reliable as not supported by medical evidence as well - Therefore, the eye witness account is cooked up - Prosecution has failed to prove the charges beyond reasonable doubt - Court has acquitted the appellants. [Ganga Prasad v. State of M.P.] ...1774

Penal Code (45 of 1860), Sections 302, 304 Part I - *Murder or culpable homicide not amounting to murder - Appellants started pelting stones at deceased and injured witness while they alighted from bus - Both tried to run away - On account of pelting and striking from a close range deceased died instantaneously - Held - No evidence that appellants had knowledge that deceased and injured witness would return by bus - No evidence that appellants came close to the deceased and pleted stones and caused injuries - It would be perilous to infer any intention on the part of appellants to cause death of deceased - However, they had caused injury intentionally knowing that injuries were likely to cause death - Case would fall u/s 304 Part I - Appeal partly allowed.* [Ramsingh v. State of M.P.] ...2110

Penal Code (45 of 1860), Sections 302, 304 Part II - *Murder or culpable homicide not amounting to murder - Appellant having no prior enmity with deceased - Incident occurred on account of intermeddling with water pipe leading to altercation and scuffle - Appellant pushing deceased into empty well - Deceased died due to head injury - As deceased was pushed in empty well it could be inferred that appellant had knowledge that his act was likely to cause death - Act of appellant falls under Section 304 Part II - Appellant acquitted under Section 302 and convicted under Section 304 Part II.* [Rajendra v. State of M.P.] ...*59

Penal Code (45 of 1860), Sections 302, 309 - *Murder and attempt to commit suicide - Prosecution based on two circumstances that wife (deceased) died of poison and husband (appellant) consumed poison indicate that it was after administering poison to his wife, husband tried to commit suicide - Held - No evidence that the substance which was found in the viscera of the deceased contained the same poison as the poison consumed by the husband - It would be a far fetched conclusion that husband alone was the person who administered poison to the deceased - In view of the suspicion of the husband about her fidelity, commission of suicide by the wife was not ruled out - Conviction u/Ss. 302 & 309 I.P.C. set-aside - Appeal allowed.* [Tukaram v. State of M.P.] ...2098

Penal Code (45 of 1860) - Section 306 - *Abatement to commit suicide - Deceased (Bhuri Bai) was locked inside a room with applicant no.1 (Sittu Patel) by other applicants - Deceased felt guilty, ashamed and committed suicide - No iota of evidence regarding abatement - No offence under Section 306 made out - Applicants discharged.* [Sittu Patel v. State of M.P.] ...*40

अधिक विश्वसनीय है – इस आलोक में कि देहाती नालिशी यथासमय अभिलिखित नहीं की गई और यह एक पश्चाद्विचार दस्तावेज है और इसका कोई प्रमाण नहीं है कि धारा 157 द.प्र.सं. की अपेक्षानुसार उसे तुरन्त न्यायालय को अग्रेषित किया गया – प्रत्यक्षदर्शी साक्षियों का साक्ष्य विश्वसनीय नहीं है क्योंकि उसे चिकित्सकीय साक्ष्य का समर्थन नहीं है – इसलिये प्रत्यक्षदर्शी साक्षी का विवरण तैयार कराया गया (cooked up) – अभियोजन आरोपों को युक्तियुक्त शंका से परे सिद्ध करने में असफल रहा – न्यायालय ने अपीलार्थीगण को दोषमुक्त किया। (गंगा प्रसाद वि. म.प्र. राज्य) ...1774

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग–एक – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – मृतक और घायल साक्षी जब बस से उतरे तो अपीलार्थियों ने उन पर पत्थर फेंकना शुरू कर दिया – दोनों ने भागने का प्रयास किया – पत्थर फेंकने और कम दूरी से प्रहार करने के कारण मृतक की तत्काल मृत्यु हो गई – अभिनिर्धारित – कोई साक्ष्य नहीं कि अपीलार्थियों को इसका ज्ञान था कि मृतक और घायल साक्षी बस से वापस लौटेंगे – कोई साक्ष्य नहीं कि अपीलार्थी मृतक के नजदीक आए और पत्थर फेंके तथा क्षतियाँ कारित कीं – यह अनुमान निकालना कि अपीलार्थियों का मृतक की मृत्यु कारित करने का आशय था, जोखिमपूर्ण होगा – तथापि उन्होंने यह जानते हुए कि क्षतियों से मृत्यु कारित होना संभाव्य है साशय क्षति कारित की – मामला धारा 304 भाग–एक में आएगा – अपील अंशतः मंजूर। (रामसिंह वि. म.प्र. राज्य) ...2110

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग दो – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – अपीलार्थी की मृतक से कोई पूर्व–शत्रुता नहीं – घटना पानी के पाइप के साथ दखलंदाजी करने के कारण घटित और वाग्युद्ध बढ़कर हाथापाई हुई – अपीलार्थी ने मृतक को खाली कुऐं में धकेल दिया – सिर में आयी उपहति के कारण मृतक की मृत्यु हुई – चूंकि मृतक को खाली कुऐं में धकेला गया इस पर यह निष्कर्ष निकाला जा सकता है कि अपीलार्थी को यह ज्ञान था कि उसके कृत्य से मृत्यु कारित होना संभाव्य था – अपीलार्थी का कृत्य धारा 304 भाग दो के अन्तर्गत आता है – अपीलार्थी धारा 302 के अन्तर्गत दोषमुक्त और धारा 304 भाग दो के अन्तर्गत दोषसिद्ध। (राजेन्द्र वि. म.प्र. राज्य) ---*59

दण्ड संहिता (1860 का 45), धाराएँ 302, 309 – हत्या और आत्महत्या कारित करने का प्रयत्न – अभियोजन दो परिस्थितियों पर आधारित कि पत्नी (मृतक) की मृत्यु विष से हुई और पति (अपीलार्थी) का विष का सेवन करना दर्शाता है कि उसकी पत्नी को विष देने के बाद पति ने आत्महत्या का प्रयत्न किया – अभिनिर्धारित – ऐसा साक्ष्य नहीं कि मृतक के विसरा में जो पदार्थ पाया गया उसी विष का पति द्वारा सेवन किया गया – यह एक दूरस्थ निष्कर्ष है कि पति ही एकमात्र वह व्यक्ति है जिसने मृतक को विष दिया – पति उसकी पत्नी की पतिव्रता के बारे में शंका करता था इसलिए पत्नी द्वारा आत्महत्या करने की आशंका निराधार नहीं – भा.द.सं. की धारा 302 व 309 के अधीन दोषसिद्धि अपास्त – अपील मंजूर। (तुकाराम वि. म.प्र. राज्य) ...2098

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या के लिए दुष्प्रेरित करना – मृतक (भूरी बाई) को आवेदक क्रं. 1 (सित्तु पटेल) के साथ अन्य आवेदकों ने कमरे में बंद कर दिया था – मृतक को अपराध भाव व शर्मिंदगी हुई और आत्महत्या कर ली – आत्महत्या के दुष्प्रेरण के संबंध में नाम मात्र का साक्ष्य नहीं – धारा 306 के अंतर्गत अपराध नहीं बनता है – आवेदकों को उन्मोचित किया। (सित्तू पटेल वि. म.प्र. राज्य) ---*40

Penal Code (45 of 1860) - Section 306 - *Abatement to commit suicide - Deceased committed suicide by inflicting injury to himself as his wife did not want to live with him as he used to doubt her character - Deceased inflicted injury out of frustration or depression - No iota of evidence regarding abatement - Even if entire allegations leveled against the applicants are accepted as correct, no case for alleged commission of offence under Section 306 made out - Charge framed against applicants set aside - Revision allowed.* [Madholal v. State of M.P.] ...1282

Penal Code (45 of 1860), Section 306, Evidence Act, 1872, Section 113-A - *When presumption would be applicable - Wife committed suicide within a year from marriage due to demand of dowry and cruelty - Letter found near body shows that she terminated life due to suspicion made by husband regarding her character - Trial Court held that demand of dowry and cruelty not proved however convicted on the basis of letter - Held - Letter was not admitted by defence - It was also not proved that it was written by deceased - It was not the case of prosecution that as husband suspected her character therefore due to mental cruelty she committed suicide - As cruelty was not proved therefore, presumption of Section 113-A would not be applicable - Appellant acquitted - Appeal allowed.* [Dinesh v. State of M.P.] ...1785

Penal Code (45 of 1860), Section 324, Criminal Procedure Code, 1973, Section 386 - *Sentence - Applicant convicted U/s 324 - Incident took place about 14 years back - Applicant has already suffered imprisonment for 29 days - Sentence reduced to period already undergone.* [Bhure Singh v. State of M.P.] ...*42

Penal Code (45 of 1860), Sections 326, 367 - *Grievous Hurt - Sentence - Both hands of injured amputated by appellants no. 1 and 2 due to business rivalry - Incident took place 18 years back - However looking to the nature of incident specifically that injured will be handicapped throughout his life act of appellants deserve no sympathy - Trial Court already taken liberal view by sentencing them to 4 years imprisonment - Appeal dismissed.* [Gopal v. State of M.P.] ...*43

Penal Code (45 of 1860), Sections 376 or 376/511 - *Prosecutrix aged 11 years - Appellant committed sexual intercourse after throwing her on ground - In medical evidence hymen membrane was not torned but there was redness and marks of rubbing were present - Pubic hair were not found containing semen and human permatozoa whereas both were present on underwear and slides of semen of appellant - Appellant held guilty for commission of attempt to commit rape.* [Babu @ Babariya v. State of M.P.]... 1495

Penal Code (45 of 1860), Section 376/511 or 354 - *Prosecutrix aged 11 years was made to lie on cot by appellant after untying her Salwar - Appellant thereafter laid on her - No evidence that appellant removed his*

दण्ड संहिता (1860 का 45) – धारा 306 – आत्महत्या करने के लिये दुष्प्रेरण – मृतक ने स्वयं को उपहति कारित करके आत्महत्या कर ली क्योंकि वह अपनी पत्नि के चरित्र पर शंका करता था इससे उसकी पत्नि उसके साथ रहना नहीं चाहती थी – मृतक ने निराशा या अवसाद में उपहति कारित की – दुष्प्रेरण के संबंध में नाममात्र का साक्ष्य नहीं – यद्यपि आवेदकों के विरूद्ध लगाये गये संपूर्ण अभिकथन को सही होना स्वीकार करले तो भी धारा 306 के अंतर्गत अभिकथित अपराध नहीं बनता है – आवेदकों के विरूद्ध विरचित आरोप अपास्त – पुनरीक्षण मंजूर। (माधोलाल वि. म.प्र. राज्य) ...1282

दण्ड संहिता (1860 का 45), धारा 306, साक्ष्य अधिनियम, 1872, धारा 113.ए – कब उपधारणा लागू होगी – पत्नी ने विवाह के एक वर्ष के भीतर दहेज की मांग और क्रूरता की वजह से आत्महत्या की – उसके शरीर के पास मिला पत्र दर्शाता है कि पति द्वारा उसके चरित्र पर शक करने की वजह से उसने अपना जीवन समाप्त कर लिया – विचारण न्यायालय ने यह अभिनिर्धारित किया कि दहेज की मांग और क्रूरता सिद्ध नहीं फिर भी पत्र के आधार पर दोषी पाया – अभिनिर्धारित – बचाव पक्ष द्वारा पत्र स्वीकार नहीं किया गया – यह भी सिद्ध नही हुआ था कि पत्र मृतक द्वारा लिखा गया था – अभियोजन का यह मामला नहीं था कि पति उसके चरित्र पर शक करता था इसलिये उसने मानसिक क्रूरता के कारण आत्महत्या की – चूंकि क्रूरता सिद्ध नहीं हुई थी, इसलिए धारा 113.ए की उपधारणा लागू नहीं होगी – अपीलार्थी दोषमुक्त – अपील मंजूर। (दिनेश वि. म.प्र. राज्य) ...1785

दण्ड संहिता (1860 का 45), धारा 324, दण्ड प्रकिया संहिता, 1973, धारा 386 – दण्डादेश – आवेदक धारा 324 के अतर्गत दोषसिद्ध – घटना करीब 14 वर्ष पूर्व घटित – आवेदक पहले ही 29 दिन का कारावास भुगत चुका है – दण्डादेश पूर्व से भुक्ती हुई सजा की अवधि तक घटाया गया। (भूरे सिंह वि. म.प्र. राज्य) ---*42

दण्ड संहिता (1860 का 45), धाराएँ 326, 367 – घोर उपहति – दण्डादेश – कारोबार प्रतिद्वंदिता के कारण अपीलार्थी क्रमांक 1 व 2 द्वारा उपहत के दोनों हाथों का अंगच्छेदन – घटना 18 वर्ष पूर्व घटित – फिर भी घटना की विशिष्ट प्रकृति को देखते हुये कि उपहत पूरे जीवन के लिये विकलांग हो गया, अपीलार्थीगण सहानुभूति पाने के पात्र नहीं – विचारण न्यायालय ने पहले ही उदार दृष्टिकोण लेते हुये उन्हें 4 वर्ष के कारावास से दण्डित किया – अपील खारिज। (गोपाल वि. म.प्र. राज्य) ---*4

दण्ड संहिता (1860 का 45), धाराएँ 376 या 376/511 – 11 वर्षीय अभियोक्त्री – अपीलार्थी ने उसे जमीन पर पटकने के बाद मैथुन किया – चिकित्सीय साक्ष्य में योनि की झिल्ली फटी नहीं पायी किन्तु उसमें लालपन व रगड़ने के चिन्ह पाये – गुप्तांग के बाल में वीर्य और मानव शुक्राणु नहीं पाये गए जबकि ये दोनों अपीलार्थी के अधोवस्त्र और वीर्य के स्लाइड पर पाये गए – अपीलार्थी को बलात्संग का प्रयत्न करने का दोषी पाया। (बाबू उर्फ बाबरिया वि. म.प्र. राज्य) 1495

दण्ड संहिता (1860 का 45), धाराएँ 376/511 या 354 – अपीलार्थी द्वारा 11 वर्षीय अभियोक्त्री को उसका सलवार ढीला करने के बाद पलंग पर लिटाया – उसके बाद अपीलार्थी उसके ऊपर लेट गया – कोई साक्ष्य नहीं कि अपीलार्थी ने अपने अधोवस्त्र उतारे और अपना लिंग अभियोक्त्री

own undergarment and tried to penetrate his male organ in the vagina of prosecutrix - Medical evidence also does not show use of any kind of force on private part of prosecutrix - Appellant guilty of committing offence U/s 354. [Jeevan v. State of M.P.] ...1498

Penal Code (45 of 1860), Section 394, Criminal Procedure Code, 1973 (2 of 1974), Section 320 - *Compromise - Appellants convicted u/s 394 I.P.C. - They are first offenders - Matter has already been compromised by parties - However application for compromise was rejected as offence is not compoundable - Held - Considering the circumstances they are sentenced to imprisonment which they have already undergone (one year two months & 26 days) and fine of Rs.4000/- - Fine amount be paid to complainant by way of compensation.* [Bharat Singh v. State of M.P.] ...2126

Penal Code (45 of 1860), Sections 395, 397 & 450 - *Dacoity - Appellant along with other accused persons committed dacoity in bank - Currency notes of Rs. 13,95,720/- & a bag of bank official taken away - Rs. 40,000/- with bank slips & a bag recovered from appellant - And also gun recovered which was brandished against witness and a jeep used for committing offence was seized at the instance of appellant - No explanation given by appellant as to how a huge sum of Rs. 40,000/-, bank slips and a bag could be recovered from him - Appellant also identified by witnesses - Appellant rightly convicted - Appeal dismissed.* [Pravin v. State of M.P.] ...1023

Penal Code (45 of 1860), Section 397 - ***Robbery with attempt to cause death or grievous hurt*** *- Three persons assaulted complainant and snatched Rs.1,000/- - One accused given benefit of doubt - Two persons convicted as Rs.1,000/- was seized from one and lathi from another - Held - No evidence that seized lathi was used for beating complainant - No specific overtact attributed to any of appellant for causing grievous hurt - Because of acquittal of one accused, appellants also entitled for getting benefit regarding causing grievous hurt.* [Bharat Singh v. State of M.P.] ...2126

Penal Code (45 of 1860), Section 398 - *Prescribes punishment for attempt to commit robbery or dacoity armed with deadly weapon - In the case, Charge was not for attempt, but it was for complete commission of offence punishable 395 r/w S. 397 of IPC - Trial Court has failed to apply correct section for commission of offence on the basis of evidence available on record.* [Sachin v. State of M.P.] ...1242

Penal Code, (45 of 1860), Section 406 - See - *Criminal Procedure Code, 1973, Section 482.* [Chandanmal v. Suryakant] ...1554

Penal Code, (45 of 1860), Sections 406, 409, 420, 424 - See - *Criminal Procedure Code, 1973, Section 482* [V.C. Raam Sukaesh v. State of M.P.]..*70

Penal Code, (45 of 1860), Sections 406, 420, 120-B - See - *Criminal Procedure Code, 1973, Section 482* [Tej Singh v. Rewa Ram] ...2145

के योनि में प्रवेश कराने का प्रयास किया – चिकित्सीय साक्ष्य से भी अभियोक्त्री के गुप्तांग पर किसी तरह का बल प्रयोग करना दर्शित नहीं – अपीलार्थी धारा 354 के अधीन अपराध कारित करने का दोषी। (जीवन वि. म.प्र. राज्य) 1498

दण्ड संहिता (1860 का 45), धारा 394, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौता – अपीलार्थियों को भा.द.सं. की धारा 394 के अधीन दोषसिद्ध किया गया – वे प्रथम अपराधी हैं – पक्षकारों द्वारा मामले में पहले ही समझौता हो गया – तथापि समझौते का आवेदन खारिज कर दिया गया क्योंकि अपराध शमनीय नही – अभिनिर्धारित – परिस्थितियों को विचार में लेते हुए उन्हें वे जितनी सजा (एक वर्ष दो माह व 26 दिन) भुगत चुके थे उतने ही कारावास और 4000/– रुपये जुर्माने का दण्डादेश दिया – परिवादी को जुर्माना राशि प्रतिकर के रूप में संदाय की जाए। (भारत सिंह वि. म.प्र. राज्य) ...2126

दण्ड संहिता (1860 का 45), धाराएँ 395, 397 व 450 – डकैती – अपीलार्थी ने अन्य अभियुक्तों के साथ बैंक में डकैती डाली – 13,95,720/– रूपये के नगदी नोट और बैंक अधिकारी का एक बैग ले गये – अपीलार्थी से बैंक की स्लिप सहित 40,000/– रूपये व एक बैग बरामद किया – और बंदूक, जो साक्षी पर तानी गई थी, भी बरामद की गई और अपराध कारित करने के लिये प्रयुक्त जीप भी अपीलार्थी के बताने पर अभिग्रहित की गई – अपीलार्थी ने स्पष्टीकरण नहीं दिया कि उसके पास से कैसे बड़ी राशि 40,000/– रूपया, बैंक स्लिप और बैग बरामद किया गया – आपीलार्थी को साक्षियों द्वारा भी पहचाना गया – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज। (प्रवीण वि. म.प्र. राज्य) ...1023

दण्ड संहिता (1860 का 45), धारा 397 – मृत्यु या घोर उपहति कारित करने के प्रयत्न के साथ लूट – तीन व्यक्तियों ने परिवादी पर हमला किया और 1,000/– रुपये छीन लिये – एक अभियुक्त को संदेह का लाभ दिया गया – दो व्यक्तियों को दोषसिद्ध किया गया क्योंकि एक से 1,000/– रुपये और दूसरे से लाठी अभिग्रहीत की गई – अभिनिर्धारित – ऐसा कोई साक्ष्य नहीं कि अभिग्रहीत लाठी परिवादी को मारने के लिये प्रयुक्त की गई – घोर उपहति कारित करने के लिए किसी अपीलार्थी पर कोई विनिर्दिष्ट दोषारोपण नहीं – एक अभियुक्त की दोषमुक्ति के कारण अपीलार्थीगण भी घोर उपहति कारित करने के संबंध में लाभ पाने के हकदार। (भारत सिंह वि. म.प्र. राज्य) ...2126

दण्ड संहिता (1860 का 45), धारा 398 – लूट कारित करने का प्रयत्न या घातक आयुध ा के साथ डकैती के लिये दण्ड विहित करती है – इस मामले में प्रयत्न का आरोप नहीं था बल्कि भा.दं.सं. की धारा 395 सहपठित धारा 397 के अधीन दण्डनीय पूर्ण अपराध था – विचारण न्यायालय अभिलेख पर उपलब्ध साक्ष्य के आधार पर अपराध कारित करने के लिये सही धारा लागू करने में असफल रहा। (सचिन वि. म.प्र. राज्य) ...1242

दण्ड संहिता, (1860 का 45), धारा 406 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (चंदनमल वि. सूर्यकांत) 1554

दण्ड संहिता, (1860 का 45), धाराएँ 406, 409, 420, 424 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (व्ही. सी. रामसुकेश वि. म.प्र. राज्य) ---*70

दण्ड संहिता, (1860 का 45), धाराएँ 406, 420, 120–बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482, (तेज सिंह वि. रेवा राम) ...2145

Penal Code (45 of 1860), Section 409 - *Criminal Breach of Trust - Applicant working as Sarpanch.- Applicant awarded certain funds for execution of certain works in village - Applicant could not complete work - Money not refunded by applicant inspite of notice - Held - After having admitted receipt of money applicant guilty of criminal breach of trust as he did not complete the work - Appeal dismissed.* [Prahladsingh v. State of M.P.] ...1287

Penal Code (45 of 1860), Section 420, Negotiable Instruments Act, 1881, Section 138 - *Cheating - Even after introduction of S. 138 of the Act, prosecution u/s 420 of I.P.C. for dishonour of cheque is maintainable - Mere fact that cheque was dishonoured by itself would not mean that accused has cheated the complainant - But when the allegations show that the accused had a dishonest intention not to pay even at the time of issuance of cheque in question.* [Govind Singh Parmar v. Jai Prakash Mishra] ...*64

Penal Code (45 of 1860), Section 420 - See - *Criminal Procedure Code, 1973, Section 482* [LML Limited v. Kailash Narain Rai] ...*33

Penal Code (45 of 1860), Sections 420/34, 120-B, Criminal Procedure Code, 1973, Section 482 - *Cheating - Business Transaction - Huge money due against petitioner in business transactions - Petitioners assured that all dues will be cleared after selling or mortgaging immovable properties - Cheques were issued which were dishonoured - Complaints filed under Section 138 of Negotiable Instruments Act were forced to be withdrawn by petitioner on the ground that otherwise form "C" shall not be issued - Business dealings were made to continue with promise to make payment by sale of immovable property which were subsequently found unsaleable - Held - Substantial ingredients of offence are made out in complaint - Merely on the defence of the accused prosecution cannot be terminated - At present facts are incomplete and evidence is yet to be recorded - Not a fit case to quash prosecution under Section 482 - Petition dismissed.* [Suresh Goel v. Grasim Industries Ltd.] ...1841

Penal Code (45 of 1860), Section 489-C - *Possession of forged or counterfeit currency-notes or banknotes - Appellant Mohan Singh found in possession of one counterfeit currency note of Rs.500/- - No evidence on record to conclude that appellant was having knowledge that he is in possession of counterfeit currency note or he had any intention to use the same as genuine or it may be used as genuine - Mere possession is not sufficient to convict u/s 489-C - Appellant acquitted.* [Laxmi Narayan v. State of M.P.] ...2115

Penal Code (45 of 1860), Section 498-A - *Husband (appellant) after consuming liquor used to beat wife (deceased) - Appellant was also having suspicion over her character and always teasing her on the score - Husband was scolded as well as admonished for his cruel behivour with wife but there was no improvement - Conviction u/s 498-A upheld.* [Manoj v. State of M.P.]...2093

दण्ड संहिता (1860 का 45), धारा 409 – आपराधिक न्यास भंग – आवेदक सरपंच के रूप में कार्यरत – आवेदक को ग्राम में निश्चित निर्माण करवाने के लिये निश्चित निधि प्रदान की गई – आवेदक कार्य पूरा नहीं कर सका – नोटिस के बावजूद आवेदक ने निधि नहीं लौटाई – अभिनिर्धारित – आवेदक आपराधिक न्यास भंग का दोषी है क्योंकि उसने धन प्राप्त करना स्वीकार करने के बाद भी कार्य पूरा नहीं किया – अपील खारिज। (प्रहलाद सिंह वि. म.प्र. राज्य) ...1287

दण्ड संहिता (1860 का 45), धारा 420, परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – छल – अधिनियम की धारा 138 की पुरःस्थापना के बाद भी चैक के अनादृत होने के लिए भा.द.सं. की धारा 420 के अधीन अभियोजन पोषणीय – केवल यह तथ्य कि चैक अनादृत हो गया उसका स्वमेव यह अर्थ नहीं होगा कि अभियुक्त ने परिवादी के साथ छल किया – किन्तु जब अभिकथनों से यह दर्शित होता हो कि अभियुक्त का प्रश्नास्पद चैक को जारी करते समय ही भुगतान न करने का बेईमानीपूर्ण आशय था। (गोबिंद सिंह परमार वि. जय प्रकाश मिश्रा) ---*64

दण्ड संहिता, (1860 का 45), धारा 420 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (एल.एम.एल लिमि. वि. कैलाश नारायण राय) ---*

दण्ड संहिता (1860 का 45), धाराएँ 420/34, 120–बी, दण्ड प्रक्रिया संहिता, 1973, धारा 482 – छल – कारबारी संव्यवहार – याची के विरुद्ध कारबारी संव्यवहारों में बहुत बड़ी रकम बाकी – याचीगण ने विश्वास दिलाया कि सभी देय अचल सम्पत्तियाँ बेचकर या बंधक रखकर चुका दिये जावेंगे – चेक जारी किये गये जो अनादरित हो गये – परक्राम्य लिखत अधिनियम की धारा 138 के अधीन प्रस्तुत परिवाद याची द्वारा इस आधार पर वापस लेने को मजबूर किया कि अन्यथा प्रारूप 'C' जारी नहीं किया जाएगा – कारबारी व्यवहार अचल सम्पत्ति, जो बाद में विक्रय के अयोग्य पाई गई, के विक्रय द्वारा भुगतान करने के वचन के साथ चालू रखा – अभिनिर्धारित – अपराध के सारवान अवयव परिवाद में मौजूद हैं – केवल अभियुक्त के बचाव पर अभियोजन समाप्त नहीं किया जा सकता है – वर्तमान में तथ्य अधूरे हैं एवं साक्ष्य दर्ज होना शेष है – धारा 482 के अधीन अभियोजन अभिखण्डित करने लायक मामला नहीं – याचिका खारिज। (सुरेश गोयल वि. ग्रेसिम इंडस्ट्रीज लि.) ...1841

दण्ड संहिता (1860 का 45), धारा 489–सी – कूटरचित या कूटकृत करेंसी नोटों या बैंक नोटों को कब्जे में रखना – अपीलार्थी मोहन सिंह के कब्जे में 500/– रुपये का एक कूटकृत करेंसी नोट पाया गया – अभिलेख पर कोई साक्ष्य नहीं कि जिससे यह निष्कर्ष निकाला जा सके कि अपीलार्थी को यह ज्ञान था कि उसके कब्जे में कूटकृत करेंसी नोट था या उसका कोई आशय उस कूटकृत करेंसी नोट को असली के रूप में प्रयुक्त करने का था या उसे असली के रूप में प्रयुक्त किया जा सकता था – धारा 489–सी के अधीन दोषसिद्धि के लिए केवल कब्जा पर्याप्त नहीं – अपीलार्थी दोषमुक्त। (लक्ष्मी नारायण वि. म.प्र. राज्य) ...2115

दण्ड संहिता (1860 का 45), धारा 498–ए – पति (अपीलार्थी) मदिरा का सेवन करने के बाद अक्सर पत्नी (मृतक) को पीटता था – अपीलार्थी उसके चरित्र पर भी शक करता था और हमेशा इस आधार पर उसे तंग करता था – पति को डांटा गया साथ ही साथ उसके पत्नी के साथ क्रूर व्यवहार के लिए भर्त्सना की गई किन्तु कोई सुधार नहीं हुआ – धारा 498–ए के अधीन दोषसिद्धि की पुष्टि। (मनोज वि. म.प्र राज्य) . 2093

Penal Code (45 of 1860), Section 500 - *Defamation - Quashing of proceedings - Complaint did not contain actual words alleged to have been used by applicant - Relevant news item also not exhibited in evidence during enquiry U/s 202 - Held - Evidence was not sufficient to constitute defamation either by spoken words or intended to be read in newspaper - Complaint quashed - Petition allowed.* [Rajesh Nandini Singh v. Rakesh Khare] ...*49

Police Regulations, M.P., Regulation No.221, 228 & 270 - *Power of review - Petitioner inflicted with minor penalty of withholding of one increment for a period of one year - Subsequently new Superintendent of Police cancelled the order of minor penalty and issued a charge-sheet on the identical charges and the same incident and reopened the matter - After departmental enquiry petitioner dismissed from service and appellate authority also rejected the appeal - Held - Regulation No.220 does not repose any power of review in disciplinary authority and also does not vest any power to the disciplinary authority to exercise suo motu power of revision or to reopen the order passed by his predecessor who is equal in rank - Order of dismissal quashed and order of minor penalty restored - Petition allowed.* [Anil Soni v. State of M.P.] ...1636

Prevention of Corruption Act, (49 of 1988), Section 13(1)(d) - See - *Criminal Procedure Code, 1973, Section 482,* [H.S.S. Raghuvanshi v. State of M.P.] ...1569

Prevention of Food Adulteration Act (37 of 1954), Section 2(xiia) - ***Primary Food*** - *Turmeric Powder cannot be held to be a primary food.* [Radhika Prasad Gupta v. State of M.P.] ...*58

Prevention of Food Adulteration Act (37 of 1954), Section 2(xiii) - ***Sale*** - *Packets of Turmeric Powder lying at the shop - In absence of any evidence it cannot be held that turmeric powder kept along with other articles was not intended for sale or applicant had bought them for personal use - Even sale of an article to a Food Inspector for analysis is also a sale.* [Radhika Prasad Gupta v. State of M.P.] ...*58

Prevention of Food Adulteration Act (37 of 1954), Sections 7(1) / 16(1)(a)(i) - *In view of mandatory provisions of Section 16(1) of Act, no sentence lesser than the minimum prescribed by the statute could be awarded for the offence u/s 16(1)(a)(i) of the Act.* [Shankar v. State of M.P.] ...*69

Prevention of Food Adulteration Act (37 of 1954), Section 13(2), General Clauses Act, 1897, Section 27, Evidence Act, 1872, Section 114 - ***Presumption*** - *Notice u/s 13(2) of Act 1954 sent by registered post at correct address - Merely because AD receipt was not received back will not be sufficient to rebut or dislodge the presumption of service of notice.* [Shankar v. State of M.P.] ...*69

Prevention of Food Adulteration Act, (37 of 1954), Section 13(2), General Clauses Act, 1897, Section 27 - ***Report of Public Analyst - Service of Report*** - *Report of Public Analyst sent to applicant by registered post - No*

दण्ड संहिता (1860 का 45), धारा 500 – मानहानि – कार्यवाहियों का अभिखण्डन – आवेदक द्वारा प्रयोग में लाये गये अभिकथित वास्तविक शब्दों का उल्लेख परिवाद में नहीं – धारा 202 की जांच के दौरान सुसंगत समाचार को भी साक्ष्य में प्रदर्श नहीं कराया – अभिनिर्धारित – बोले हुए शब्दों या आशयित समाचार पत्र को पढ़ने से मानहानि का अपराध गठित करने के लिये पर्याप्त साक्ष्य नहीं थी – परिवाद अभिखण्डित – याचिका मंजूर। (राजेश नंदिनी सिंह वि. राकेश खरे,) ----*49

पुलिस विनियम, म.प्र., विनियम क्र. 221, 228, 270 – पुनर्विलोकन की शक्ति – याची को एक वर्ष के लिए वेतन वृद्धि रोकने की लघु शास्ती दी गई – तत्पश्चात् नये पुलिस अधीक्षक ने लघु शास्ती के आदेश को निरस्त कर दिया और समान आरोपों और समान घटना पर आरोप–पत्र जारी करते हुए मामले को पुनर्जीवित कर दिया – विभागीय जाँच के उपरांत याची को सेवा से पदच्युत किया गया और अपील प्राधिकारी ने भी अपील खारिज कर दी – अभिनिर्धारित – विनियम क्रमांक 220 अनुशासनात्मक प्राधिकारी में पुनर्विलोकन का अधिकार नहीं रखती और अनुशासनात्मक प्राधिकारी में ऐसी शक्तियां निहित नहीं करती कि वह स्वविवेक पुनरीक्षण की शक्ति का प्रयोग करे या उसके पूर्वाधिकारी जो समान पद का हो द्वारा पारित आदेशों को पुनर्जीवित कर सके – पदच्युत का आदेश अपास्त और लघु शास्ती का आदेश पुनः स्थापित/बहाल – याचिका मंजूर। (अनिल सोनी वि. म.प्र. राज्य) ...1636

भ्रष्टाचार निवारण अधिनियम, (1988 का 49), धारा 13(1)(डी) – देखें –दण्ड प्रक्रिया संहिता, 1973, धारा 482, (एच.एस.एस. रघुवंशी वि. म.प्र. राज्य) 1569

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 2(xiia) – प्राथमिक खाद्य – पिसी हल्दी प्राथमिक खाद्य होना अभिनिर्धारित नहीं किया जा सकता। (राधिका प्रसाद गुप्ता वि. म.प्र. राज्य) ---*58

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 2(xiii) – विक्रय – पिसी हल्दी के पैकेट दुकान पर रखे हुए – किसी साक्ष्य के अभाव में यह अभिनिर्धारित नहीं किया जा सकता कि अन्य वस्तुओं के साथ रखी पिसी हल्दी विक्रय के लिये आशयित नहीं थी अथवा आवेदक ने उन्हें निजी उपयोग के लिए खरीदा था – यहां तक कि खाद्य निरीक्षक को विश्लेषण हेतु किसी वस्तु का विक्रय भी विक्रय ही है। (राधिका प्रसाद गुप्ता वि. म.प्र. राज्य) ---*58

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(1)/ 16(1)(ए)(i) – अधिनियम की धारा 16(1) के आज्ञापक उपबंधों को विचार में लेते हुए अधिनियम की धारा 16(1)(ए)(i) के अपराध के लिए कानून द्वारा विहित न्यूनतम दण्डादेश से कम से दण्डित नहीं किया जा सकता। (शंकर वि. म.प्र. राज्य) ---*69

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2), साधारण खंड अधिनियम, 1897, धारा 27, साक्ष्य अधिनियम, 1872, धारा 114 – उपधारणा – अधिनियम 1954 की धारा 13(2) के अधीन सूचनापत्र रजिस्टर्ड डाक द्वारा सही पते पर भेजा गया – केवल इसलिए कि पावती रसीद वापस प्राप्त नहीं हुई, सूचनापत्र की तामीली की उपधारणा का खण्डन या विस्थापन करने के लिए पर्याप्त नहीं होगा। (शंकर वि. म.प्र. राज्य) ---*69

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2), साधारण खण्ड अधिनियम, 1897, धारा 27 – लोक विश्लेषक की रिपोर्ट – रिपोर्ट की तामील – आवेदक को लोक विश्लेषक की रिपोर्ट रजिस्ट्रीकृत डाक द्वारा भेजी गयी – ऐसा सुझाव नहीं कि स्थानीय

suggestion that address described by Local Health Authority was not correct - Held - There would be presumption of service of notice sent by registered post on correct address - Merely AD was not received would not be sufficient to rebut or dislodge presumption of service. [Gulab v. State of M.P.] ...15 5

Prevention of Food Adulteration Act (37 of 1954), Section 13(2) - *Report of Public Analyst - Report of Public Analyst sent by U.P.C. - Applicant has not denied receipt of the same - Not exercised his right for getting part of sample analysed by Central Laboratory - Applicant has not been prejudiced in any way.* [Gyasi Lal Napit v. State of M.P.] ...*54

Prevention of Food Adulteration Act (37 of 1954), Section 16(1)(a)(ii) - *Delay in prosecution - Sample of milk collected on 25.04.1987 - Complaint filed on 15.03.1988 - Nothing on record to show that another part of sample became unfit for analysis - No question to quash complaint - Revision dismissed.* [Gyasi Lal Napit v. State of M.P.] ...*54

Prevention of Food Adulteration Act (37 of 1954), Section 17 - *Duty of Food Inspector in case of prosecution of company or firm - Food Inspector is required to prosecute a right person - Burden does not lie on such accused who has been wrongly arrayed as an accused, as to who is the right person to be prosecuted.* [Hindustan Food Products India v. State of M.P.] ...1 1

Prevention of Food Adulteration Act (37 of 1954), Section 17(2) - *Offences by companies or partnership firms - Nomination-nominee alone can be prosecuted - But in exceptional cases, Director's of a company or partners of a firm or the concerned person can be prosecuted.* [Hindustan Food Products India v. State of M.P.] ...1 1

Prevention of Food Adulteration Act (37 of 1954), Section 17(4) - *For prosecuting a partner or a director specific averments as required in sub section 4 of section 17 of the Act is to be mentioned in the complaint that alleged act has been committed with the consent or connivance of, or is attributable to, any neglect on his part.* [Hindustan Food Products India v. State of M.P.] ...1 1

Prevention of Food Adulteration Rules, 1955 - *Appendix B Item No. A.16.16 - Pickles in Oil - Percentage of Oil - Layer of oil not less than 0.5 cm above contents or percentage of oil shall not be less than 10 percent - Samples of pickle taken by Food Inspector - Report of public analyst mentioned that percentage of oil was less than 10 percent - Report silent about layer of oil above contents - Trial Court held that prosecution cannot continue as report is incomplete - Revisional Court remanded the matter - Held - Word 'and' is ordinarily conjunctive while 'or' is disjunctive - 'Or' cannot be read as 'and' to mean that if sample fails to meet either of requirement, then it would be taken to be adulterated - Report appears to be incomplete - If prosecution does not prove all requirements to constitute an offence, then prosecution would certainly be abuse of process of law - Order of Trial Magistrate restored - Revision allowed.* [Bansal Stores v. State of M.P.] ...18 0

स्वास्थ्य प्राधिकारी द्वारा वर्णित पता सही नहीं था – अभिनिर्धारित – रजिस्ट्रीत डाक के द्वारा सही पते पर नोटिस को भेजने पर उसकी तामील की उपधारणा की जायेगी – केवल पावती का प्राप्त न होना तामील की उपधारणा का खण्डन या विस्थापन करने के लिये पर्याप्त नहीं है। (गुलाब वि. म.प्र. राज्य)....1535

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2) – लोक विश्लेषक का प्रतिवेदन – खाद्य विश्लेषक का प्रतिवेदन यू.पी.सी. द्वारा भेजा गया – आवेदक ने उसके मिलने से इंकार नहीं किया है – केन्द्रीय प्रयोगशाला से नमूने के अंश का विश्लेषण करा पाने का अपना अधिकार प्रयोग नहीं किया – आवेदक पर किसी तरह का प्रतिकूल प्रभाव नहीं पड़ा। (ग्यासी लाल नापित वि. म.प्र. राज्य) ---*54

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 16(1)(a)(ii) – अभियोजन में विलम्ब – दूध का नमूना 25.04.1987 को लिया गया – परिवाद 15.03.1988 को पेश – अभिलेख पर यह दर्शित करने के लिए ऐसा कुछ नहीं कि नमूने का दूसरा भाग विश्लेषण के लिये अनुपयुक्त हो गया – परिवाद अभिखण्डित करने का प्रश्न ही नहीं – पुनरीक्षण खारिज। (ग्यासी लाल नापित वि. म.प्र. राज्य) ---*54

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 17 – कंपनी या फर्म के अभियोजन के मामले में खाद्य निरीक्षक का कर्त्तव्य – खाद्य निरीक्षक से यह अपेक्षित है कि वह सही व्यक्ति को अभियोजित करे – किस सही व्यक्ति का अभियोजन किया जाना है यह बताने का भार ऐसे अभियुक्त पर नहीं है जिसे गलती से अभियुक्त बनाया गया है। (हिंदुस्तान फुड प्रोडक्ट्स इंडिया वि. म.प्र. राज्य) ...1313

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 17(2) – कंपनी या भागीदारी फर्म द्वारा अपराध – नाम निर्देशन – केवल नामित का ही अभियोजन किया जा सकता है – किन्तु आपवादिक मामलों में कंपनी के निदेशक या फर्म के भागीदार या संबंधित व्यक्ति को अभियोजित किया जा सकता है। (हिंदुस्तान फुड प्रोडक्ट्स इंडिया वि. म.प्र. राज्य) ...1313

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 17 (4) – किसी भागीदार या निदेशक का अभियोजन करने के लिये परिवाद में अधिनियम की धारा 17 उपधारा 4 में अपेक्षित विर्निदिष्ट प्रकथन कि अभिकथित कार्य सम्मति या मौन सहमति या उसके द्वारा की गई कोई उपेक्षा के कारण हुआ, उल्लेखित होना चाहिये। (हिंदुस्तान फुड प्रोडक्ट्स इंडिया वि. म.प्र. राज्य) ...1313

खाद्य अपमिश्रण निवारण नियम, 1955 – परिशिष्ट बी, वस्तु क्रमांक ए.16.16 – अचार में तेल – तेल का प्रतिशत – सामान के ऊपर तेल की परत 0.5 से.मी. से कम न हो या तेल का प्रतिशत 10 प्रतिशत से कम न हो – खाद्य निरीक्षक के द्वारा अचार का नमूना लिया – लोक विश्लेषक की रिपोर्ट उल्लिखित करती है कि तेल का प्रतिशत 10 से कम है – रिपोर्ट सामान के ऊपर तेल की परत के विषय में मौन – विचारण न्यायालय ने अभिनिर्धारित किया कि रिपोर्ट अपूर्ण होने से अभियोजन जारी नहीं रखा जा सकता – पुनरीक्षण न्यायालय ने मामले को प्रतिप्रेषित किया – अभिनिर्धारित – 'और' शब्द सामान्यतः संयोजक है जबकि 'या' असंयोजक – 'या' को 'और' के रूप में नहीं पढ़ा जा सकता जिससे यह तात्पर्य हो कि यदि नमूना किसी भी आवश्यकता को पूर्ण करने में असफल होता है तो उसे अपमिश्रित लिया जावेगा – रिपोर्ट अपूर्ण परिलक्षित होती है – यदि अभियोजन किसी अपराध को गठित करने वाली सभी आवश्यकताओं को साबित नहीं करता है, तब अभियोजन निश्चित रूप से अदालती कार्यवाही का दुरुपयोग होगा – विचारण दण्डाधिकारी का आदेश प्रत्यावर्तित – पुनरीक्षण मंजूर। (बंसल स्ट्रोर्स वि. म.प्र. राज्य) ...1830

Prevention of Food Adulteration Rules 1955- Rule 9B - *Delay in sending Report of Public Analyst - Copy of report of Public Analyst sent to applicant after one month and seven days instead of 10 days after the institution of prosecution - Applicant did not apply to send the other part of sample to Central Food Laboratory - Applicant cannot complain that sample had deteriorated and could not be analyzed - Revision dismissed.* [Gulab v. State of M.P.] ...15 5

Promotion - *Merit-cum-Seniority vis-à-vis Seniority-cum-Merit - Defined - Rule of seniority-cum-merit has to be applied then minimum marks are to be prescribed and if a candidate secure minimum merit marks then only on the basis of seniority he is to be placed in the select list but when the rule prescribes merit-cum-seniority then merit and ability has to be given great emphasis and seniority plays a less significant role.* [R.S. Mehta (Dr.) v. State of M.P.]...1912

Public Works Department Work Charged and Contingency Paid Employees Recruitment and Conditions of Service Rules, M.P. 1976 - Clause 3(A) - *Wireman - Age of Superannuation - Post of Wireman falls within category of Class IV employees and entitled to get benefit of extended period of age from 60 to 62 - Since Petitioner has already attained the age of 62 years, he will not be entitled for arrears of pay for the period he remained out of employment, however, will be entitled to all pensionary benefits.* [Jwala Prasad Batham v. State of M.P.] ...1590

Rajya Anusuchit Jati Ayog Adhiniyam, M.P., (25 of 1995), Sections 9 - See - *Constitution, Article 226* [S.K. Verma v. State of M.P.] ...1892

Rajya Anusuchit Jati Ayog Adhiniyam, M.P., (25 of 1995), Sections 9 & 10 - ***Functions of Commission*** - *Commission has not been constituted to act as a superior body or an adjudicating authority having judicial or quasi-judicial powers sitting over and above all departments of State Government - It has not been empowered to try and inquire into individual complaints like Civil Court, Disciplinary Authority or Trial Court - Cannot conduct trial or departmental enquiry - Cannot give finding as to guilt - Cannot direct authorities of State Government to take particular actions - Cannot enforce its orders and cannot call for compliance report - Appeal allowed.* [S.K. Verma v. State of M.P.] ...1892

Redressal of Public Grievances Rules, 1998 - ***Ombudsman*** - *Is only a non-adversarial adjudicator of disputes - Finding given by the insurance ombudsman will not come in the way of petitioner in case petitioner approaches any other forum for redressal of his grievance.* [Veerpal Singh Gurjar v. Insurance Ombudsman for M.P. & Chhattisgarh] ...1155

Registration Act (16 of 1908) - Section 32(c) - ***Registered Power of Attorney*** - *If Power of Attorney is executed by a registered document, for its cancellation, registered document is required - Intimation of its revocation by serving notice is not a proper one.* [Bhivji through LRs. v. Rajesh] ...1199

खाद्य अपमिश्रण निवारण नियम, 1955 – नियम 9बी – लोक विश्लेषक की रिपोर्ट भेजने में विलम्ब – आवेदक को लोक विश्लेषक की रिपोर्ट की प्रति अभियोजन के संस्थित होने के दस दिन के बजाय एक माह व सात दिन के बाद भेजी – आवेदक ने नमूने के अन्य भाग को केन्द्रीय खाद्य प्रयोगशाला में भेजने के लिए आवेदन नहीं दिया – आवेदक ऐसी शिकायत नहीं कर सकता है कि नमूना खराब हो गया था और उसका विश्लेषण नहीं हो सकता था – पुनरीक्षण खारिज। (गुलाब वि. म.प्र. राज्य) 1535

पदोन्नति – योग्यता–सह–ज्येष्ठता की तुलना में ज्येष्ठता–सह–योग्यता – परिभाषित – ज्येष्ठता–सह–योग्यता के नियम को लागू किया जाता है तब न्यूनतम अंक विहित करने होते हैं और यदि एक उम्मीदवार न्यूनतम योग्यता अंक प्राप्त करता है केवल तभी उसे ज्येष्ठता के आधार पर चयन सूची में रखना होता है, किन्तु जब नियम योग्यता–सह–ज्येष्ठता विहित करता है तब योग्यता और क्षमता पर अधिक जोर दिया जाता है और ज्येष्ठता कम महत्वपूर्ण भूमिका निभाती है। (आर.एस. मेहता (डॉ.) वि. म.प्र. राज्य) ...1912

लोक निर्माण विभाग कार्यभारित तथा आकस्मिकता निधि कर्मचारी के भर्ती तथा सेवा शर्तें नियम, म.प्र. 1976, खण्ड 3(ए) – वायरमेन – अधिवार्षिकीय आयु – वायरमेन का पद चतुर्थ श्रेणी कर्मचारी वर्ग में आता है और वह आयु की विस्तारित कालावधि 60 वर्ष से 62 वर्ष का लाभ पाने का हकदार है – चूंकि याची ने 62 वर्ष की आयु पहले ही पूरी कर ली है, जब वह नौकरी में नहीं था वह उस कालावधि का बकाया वेतन पाने का हकदार नहीं, तथापि वह पेंशन के सभी लाभ पाने का हकदार है। (ज्वाला प्रसाद बाथम वि. म.प्र. राज्य) ...1590

राज्य अनुसूचित जाति आयोग अधिनियम, म.प्र. (1995 का 25), धारा 9 – देखें – संविधान, अनुच्छेद 226 (एस.के. वर्मा वि. म.प्र. राज्य) ...1892

राज्य अनुसूचित जाति आयोग अधिनियम, म.प्र. (1995 का 25), धारा 9 व 10 – आयोग के कार्य – आयोग का गठन प्रवर निकाय या न्यायनिर्णायक प्राधिकारी जो न्यायिक या अर्द्धन्यायिक शक्तियाँ राज्य सरकार के समस्त विभागों पर रखता हो, के रूप में कार्य करने के लिए नहीं किया गया है – वह सिविल न्यायालय, अनुशासनात्क प्राधिकारी या विचारण न्यायालय की तरह व्यक्तिगत शिकायतों की जाँच और उसका विचारण करने के लिए सशक्त नहीं है – विचारण या विभागीय जाँच संचालित नही कर सकता है – दोषी होने का निष्कर्ष नहीं दे सकता है – राज्य सरकार के प्राधिकारियों को कोई विशिष्ट कार्य करने का निदेश नहीं दे सकता है – अपने आदेशों का प्रवर्तन नहीं करा सकता और अनुपालन रिपोर्ट नहीं बुला सकता – अपील मंजूर। (एस. के. वर्मा वि. म.प्र. राज्य) ...1892

लोक शिकायत निवारण नियम, 1998 – ओंबड्समेन – केवल विवादों का अनुकूल न्याय–निर्णायक है – बीमा के ओंबड्समेन द्वारा दिया गया निष्कर्ष, यदि याची अन्य फोरम को उसकी शिकायत के निवारण हेतु निवेदन करता है, तो उसके रास्ते में नहीं आता है। (वीरपाल सिंह गुर्जर वि. इंश्योरेंस ओंबड्समेन फार एम.पी. एन्ड छत्तीसगढ़) ...1155

रजिस्ट्रेशन अधिनियम (1908 का 16) – धारा 32 (सी) – रजिस्ट्रीकृत मुख्तारनामा – यदि मुख्तारनामा रजिस्ट्रीकृत दस्तावेज द्वारा निष्पादित किया गया हो तो उसके निरसन के लिये रजिस्ट्रीकृत दस्तावेज ही अपेक्षित है – नोटिस की तामीली द्वारा उसके निरसन की सूचना देना उचित नहीं है। (भीवजी वि. राजेश) ...1199

Regulations of Medical Council of India, 2000, Clauses 3, 7 & Note (a) - See - *Constitution, Article 226* - [Muniraj Patel v. State of M.P.]...1 77

Revenue Recovery Act (1 of 1890), Section 5 - *To invoke the provisions of Section 5, the Collector was required to satisfy himself that a sum was recoverable as arrears of land revenue and the authority who approached to the Collector was empowered to make such a request to the Collector and after satisfying with the aforesaid requirement of law only then the Collector was empowered to issue RRC and not otherwise.* [Harcharan Rajpali v. The Collector, Tikamgarh] ...1702

S.A.F. Rules, M.P. 1973 - Rule 26 - ***Probation*** - *Rule 26 provides that services of probationer can be brought to an end if in opinion of appointing authority there is no likelihood of such person becoming suitable officer - No such finding in the cancellation order of appointment - Order not sustainable - Petition allowed.* [Kadir Khan v. State of M.P.] ...1 75

Samaj Ke Kamjor Vargon Ki Krishi Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, M.P. (3 of 1976), Section 2(c)(d)(f) - ***Prohibited Transaction of Loan*** - *Appellants having purchased the lands in dispute in Court Auction - No material before S.D.O., Collector or High Court to show that appellants had any role to play in Court auction or that they were responsible for non-payment of revenue for which court auctions were held - Adhiniyam has clearly no application to the facts of case - Claim made by respondent no.1 dismissed - Appeal allowed.* [Baboolal Sharda v. Savitribai] ...99

Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v), Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P., 1981 - *Special Judge empowered under the Act of 1989 framed charge against NA-2 to 6 for the offence u/s 302/149 IPC along with offence u/s 3(2)(v) of the Act of 1989 and against NA-2 u/s 376(1) IPC r/w Section 3(2)(v) of the Act, 1989 - Charge u/s 395 & 396 of IPC r/w Section 11/13 of the Adhiniyam, 1981 not framed on the ground that a separate special court has been established to try such offence - Order challenged in revision before High Court - Held - Prima facie offence u/s 3(1)(xii) & 3(2)(v) are not made out - Revision partly allowed with the direction that charge-sheet be returned to Police for filing before Special Court established u/s 6 of the Adhiniyam of 1981 - That Court will consider whether any charge is made out or not.* [Mahesh Jatav v. State of M.P.]...18 4

Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(xii) & 3(2)(v) - Offence u/s 3(1)(xii) of Act of 1989 - *When a women belonging to SC/ST if sexually exploited by such a person, who is not in a position to dominate her will and without such position that women is not expected to have otherwise agreed for such act - This*

भारतीय आयुर्विज्ञान परिषद विनियम, 2000, खण्ड 3, 7 और टीप (ए) -- देखे –संविधान, अनुच्छेद 226, (मुनिराज पटेल वि. म.प्र. राज्य) 1377

राजस्व वसूली अधिनियम (1890 का 1), धारा 5 – धारा 5 के उपबन्धों का अवलंब लेने से पूर्व कलेक्टर को स्वयं को संतुष्ट करना आवश्यक था कि भू राजस्व के तौर पर कोई रकम वसूली योग्य थी और प्राधिकारी जो कलेक्टर के पास पहुंचा, कलेक्टर से ऐसा निवेदन करने को अधि.त था और विधि की उपर्युक्त अपेक्षा से संतुष्ट होने पर ही कलेक्टर आरआरसी जारी करने को अधि.त था अन्यथा नहीं। (हरचरण राजपाली वि. दं कलेक्टर, टीकमगढ़) ...1702

सशस्त्र पुलिस बल, नियम म.प्र., 1973 – नियम 26 – परिवीक्षा – नियम 26 उपबन्धित करता है कि परिवीक्षाधीन की नौकरी समाप्त की जा सकती है यदि नियोक्ता के मत में ऐसे व्यक्ति के उपयुक्त अधिकारी बनने की कोई संभावना न हो – नियुक्ति आदेश के रद्दकरण में ऐसा कोई निष्कर्ष नहीं – आदेश अपास्त योग्य – याचिका मंजूर। (कादिर खान वि. म.प्र. राज्य) 1375

समाज के कमजोर वर्गों की कृषि भूमि हड़पने संबंधी कुचक्रों से परित्राण तथा मुक्ति अधिनियम, म.प्र. (1976 का 3), धारा 2 (सी)(डी)(एफ) – ऋण का प्रतिबंधित संव्यवहार – अपीलार्थियों द्वारा वादग्रस्त भूमि न्यायालय नीलाम में खरीदी गई – उप मण्डल अधिकारी, कलेक्टर अथवा उच्च न्यायालय के समक्ष कोई तात्विक जानकारी प्रस्तुत नहीं की गई कि अपीलार्थियों की न्यायालय में नीलाम के दौरान कोई भूमिका रही या वे राजस्व भुगतान न होने के लिये उत्तरदायी हैं जिसके लिये नीलाम किया जा रहा था – वाद के तथ्यों में अधिनियम स्पष्टतः लागू नहीं – प्रत्यर्थी क्रं. 1 द्वारा प्रस्तुत दावा खारिज – अपील मंजूर। (बाबूलाल सारडा वि. सावित्री बाई) ...993

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धाराएँ 3(1)(xii) व 3(2)(v), डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. 1981 – 1989 के अधिनियम के अधीन सशक्त विशेष न्यायाधीश ने अनावेदक क्रमांक 2 लगायत 6 के विरुद्ध भा.द.सं. की धाराएँ 302/149 के साथ 1989 के अधिनियम की धारा 3(2)(v) के अपराध के लिए और अनावेदक क्रमांक 2 के विरुद्ध भा.द.सं. की धारा 376(1) सहपठित 1989 के अधिनियम की धारा 3(2)(v) के अपराध के लिए आरोप विरचित किये – भा.द.सं. की धारा 395 व 396 सहपठित 1981 के अधिनियम की धारा 11/13 के अधीन आरोप इस आधार पर विरचित नहीं किये गये कि एक पृथक विशेष न्यायालय ऐसे अपराध के विचारण के लिए स्थापित है – आदेश को उच्च न्यायालय के समक्ष पुनरीक्षण में चुनौती दी गई – अभिनिर्धारित – प्रथम दृष्ट्या धाराएँ 3(1)(xii) व 3(2)(v) के अधीन अपराध नहीं बनते हैं – पुनरीक्षण अंशतः इस निदेश के साथ स्वीकार की गई कि आरोप–पत्र 1981 के अधिनियम की धारा 6 के अधीन स्थापित विशेष न्यायालय के समक्ष पेश करने के लिए पुलिस को लौटाया जाए – वह न्यायालय यह विचार करेगा कि क्या कोई आरोप बनता है या नहीं। (महेश जाटव वि. म.प्र. राज्य) ...1834

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धाराएँ 3(1)(xii) व 3(2)(v) – 1989 के अधिनियम की धारा 3(1)(xii) के अधीन अपराध – जब अनुसूचित जाति/अनुसूचित जनजाति की किसी महिला का यदि किसी ऐसे व्यक्ति द्वारा यौन शोषण किया जाता है, जो उसकी इच्छा को अधिशासित करने की स्थिति में नहीं है और इस स्थिति के बिना वह महिला इस कृत्य के लिए अन्यथा सहमत होना प्रत्याशित न हो – यह अपराध

offence is not made out if the rape is committed by using criminal force. [Mahesh Jatav v. State of M.P.] ...18 4

Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) - Offence u/s 3(2)(v) of the Act - *Offence is not made out if the concerning offence under I.P.C. punishable with imprisonment for a term of 10 years or more against a person or property, on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belonging to such member.* [Mahesh Jatav v. State of M.P.] ...18 4

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 4 - *Criminal complaint filed by non-applicant discloses that atrocities began on 03.11.1987 - Act was not in force at the relevant time - Even if complaint is filed after coming into force of Act, it has got no retrospective effect - No cognizance could have been taken.* [Saubir Bhattacharya v. Jai Prakash Kori] ...1849

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, Rule 7 - ***Mandatory*** - *Non-compliance will not vitiate entire trial but vitiate trial relating to offences under Atrocities Act, unless and until the offence under I.P.C. has nexus with the offences under Atrocities Act - Accused can take such objection at appellate stage also but has to satisfy Court that grave prejudice has been caused to him which has resulted in miscarriage of justice - If objection is taken at initial stage, Court can direct for reinvestigation.* [Bhagwan Singh v. State of M.P.] ...1514

Specific Relief Act (47 of 1963), Section 16(c) - ***Readiness & Willingness*** - *Mandates plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready & willing to perform his part of contract - One of the terms in the agreement related to payment of interest - Therefore, the conclusion of the High Court that there is no specific plea regarding readiness to pay interest, is contrary to the factual scenario, in view of the categorical averment made in the plaint.* [Rameshwar Prasad (D) By L.Rs. v. Basantilal]...186

Specific Relief Act (47 of 1963), Section 16(c) read with Explanation (ii) - *Any person seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief - If pleadings manifest that the conduct of plaintiff entitles him to get the relief on perusal of plaint, he should not be denied the relief.* [Rameshwar Prasad (D) By L.Rs. v. Basantilal] ...186

Specific Relief Act, (47 of 1963), Section 16 (C) - ***Specific Performance of Contract*** - *Readiness and Willingness - Plaintiff must aver in plaint and thereafter prove those averments - Readiness and willingness must be in accordance with terms of agreement - Plaintiff must prove his readiness and willingness from the institution of suit till it is culminated into decree of Court.* [Bal Krishna v. Bhagwandas] ...1 40

नहीं बनता है यदि बलात्कार आपराधिक बल के प्रयोग द्वारा किया गया है। (महेश जाटव वि. म.प्र. राज्य) ...1834

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(2)(v) – अधिनियम की धारा 3(2)(v) के अधीन अपराध – यह अपराध नहीं बनता यदि भा.द.सं. के अधीन दस वर्ष या उससे अधिक की अवधि के कारावास से दण्डनीय अपराध किसी व्यक्ति या सम्पत्ति के विरुद्ध इस आधार पर किया जाए कि ऐसा व्यक्ति अनुसूचित जाति या अनुसूचित जनजाति का सदस्य है या ऐसी सम्पत्ति ऐसे सदस्य की है। (महेश जाटव वि. म.प्र. राज्य) ...1834

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 4 – अनावेदक द्वारा प्रस्तुत दाण्डिक परिवाद से प्रकट होता है कि अत्याचार दिनांक 03.11.1987 को प्रारम्भ हुआ – सुसंगत समय पर अधिनियम प्रवृत्त नहीं था – यद्यपि अधिनियम के प्रवर्तन में आने के बाद परिवाद प्रस्तुत किया गया, इसका कोई भूतलक्षी प्रभाव नहीं है – संज्ञान नहीं लिया जा सकता था। (सुबीर भट्टाचार्य वि. जय प्रकाश कोरी) ...1849

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) नियम, 1995, नियम 7 – आज्ञापक – अपरिपालन से सम्पूर्ण विचारण दूषित नहीं होगा किन्तु अत्याचार अधिनियम से सम्बंधित अपराध का विचारण दूषित होगा, जब तक भा.द.सं. के अधीन दण्डनीय अपराध का सम्बन्ध अत्याचार अधिनियम के अधीन दण्डनीय अपराध से न हो – अभियुक्त ऐसी आपत्ति अपील के प्रक्रम पर भी ले सकता है किन्तु न्यायालय को संतुष्ट करना होगा कि उसे घोर पक्षपात कारित हुआ जिसके परिणामस्वरूप न्याय की विफलता हुई है – यदि आपत्ति प्रारम्भिक प्रक्रम पर ली जाती है तो न्यायालय पुनःअनुसंधान का निदेश दे सकता है। (भगवान सिंह वि. म.प्र. राज्य) 1514

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – तत्परता और रजामंदी – वादी पर प्रादेश है कि वादपत्र में प्रकथन करे और स्वतंत्र साक्ष्य से तथ्य के समान स्थापित करे कि वह संविदा के अपने भाग का पालन करने के लिये सदैव तैयार व रजामंद रहा है – अनुबन्ध में एक निबंध ब्याज के भुगतान से सम्बंधित – इसलिये उच्च न्यायालय का निष्कर्ष कि ब्याज भुगतान करने की रजामंदी के बारे में कोई विनिर्दिष्ट अभिवचन नहीं है, वादपत्र में किये गये सुस्पष्ट प्रकथन को देखते हुए तथ्यात्मक दृश्यलेख के विपरीत है। (रामेश्वर प्रसाद (डी) बाय एल. आरस् वि. बसंतीलाल) ...1863

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) सहपठित स्पष्टीकरण (ii) – कोई व्यक्ति संविदा के विनिर्दिष्ट पालन का लाभ लेना चाहता हो तो यह अवश्य प्रकट करना चाहिए कि उसका आचरण सर्वत्र कलंक रहित रहा है जो उसे विनिर्दिष्ट अनुतोष का हकदार बनाता है – वादपत्र का परिशीलन करने पर अभिवचन से प्रकट होता है कि वादी का आचरण उसे अनुतोष पाने का हकदार बनाता है तो उसे अनुतोष देने से इंकार नहीं करना चाहिए। (रामेश्वर प्रसाद (डी) बाय एल.आरस् वि. बसंतीलाल) ...1863

विनिर्दिष्ट अनुतोष अधिनियम, (1963 का 47), धारा 16(सी) – संविदा का विनिर्दिष्ट पालन – तत्परता और रजामन्दी – वादी को वाद में प्रकथन करना और उसके बाद उन प्रकथनों को सिद्ध करना चाहिए – तत्परता और रजामन्दी अनुबन्ध की शर्तों के अनुरूप होना चाहिए – वादी को उसकी तत्परता और रजामंदी वाद संस्थित करने से लेकर न्यायालय की डिक्री होने तक सिद्ध करना चाहिए। (बाल कृष्ण वि. भगवानदास) 1340

Specific Relief Act (47 of 1963), Section 16(c) - *Suit for specific performance of contract of sale - Plaintiff - Should plead and prove that he was having sufficient funds to pay balance consideration and also to bear the expenses of registration - In absence of this evidence - Not entitled for decree for specific performance.* [Bahubal v. Shafi Mohammad] ...2072

Specific Relief Act, (47 of 1963), Section 20 - *Relief for specific performance lies in the discretion of court - Court is not bound to grant such relief merely because it is lawful to do so - Discretion to grant specific performance is not exercised if the contract is not equal and fair although the contract is not void.* [Bal Krishna v. Bhagwandas] ...1 40

Specific Relief Act (47 of 1963), Section 38 - ***Perpetual Injunction*** - *Plaintiff found in settled possession of Government land - Several times fine was imposed for encroaching Government land - Possession was not peaceful and hostile to the State Government - Plaintiff entitled for decree of perpetual injunction - However, State Government shall be free to take possession back after adopting due procedure of law.* [Prahlad v. State of M.P.] ...2069

State Bar Council of Madhya Pradesh Rules, 1963, Rule 143-A - See - *Constitution, Article 14* [Shekhar Seth (Dr.) v. M.P. State Bar Council]... 1974

State Road Transport Corporation Employees Deposit Fund Regulation, M.P. 1985 - Clause 10 - ***Interest*** - *Retired and serving employees of the Corporation are entitled to get interest on amount deposited under the Employees Deposit Fund Scheme as prescribed in clause 10 of Regulations.* [Anil Jain v. Managing Director, M.P.R.T.C.] ...1 92

State Road Transport Corporation Employees Deposit Fund Regulation, M.P. 1985 - Clause 10 - ***Rate of interest*** - *The payment of interest was statutorily governed as per the regulation, and the rate of such interest has been prescribed by the government as per notifications - However the Corporation by issuing circulars can not deviate from discharge of his statutory obligation of payment of interest arbitrarily.* [Anil Jain v. Managing Director, M.P.R.T.C.] ...1 92

Succession Act (39 of 1925), Section 372 - ***Succession Certificate*** - *Deceased leaving two wives and four children from second wife - Second wife nominated by deceased in official records to receive claims - Trial Court granted succession certificate to second wife - High Court reversed the order and granted succession certificate in favour of first wife as divorce by custom could not be proved - Held - Second wife in her application had pointed out the names of four children - Second wife cannot claim to be legal heir but she had the status of nominee - She continued to stay with deceased and was person of confidence of deceased and had born four children - She was always preferable even to legally wedded wife who had never stayed with deceased - High Court was not justified in granting claim of first wife to the exclusion of the nominee of deceased and also to his legitimate legal heirs -*

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – विक्रय की संविदा के विनिर्दिष्ट पालन के लिये वाद – वादी – अभिवचन करना एवं साबित करना चाहिए कि उसके पास प्रतिफल की अतिशेष राशि प्रदाय करने एवं पंजीयन के व्यय वहन करने के लिये पर्याप्त निधि है – इस साक्ष्य के अभाव में – विनिर्दिष्ट पालन की डिक्री का हकदार नही। (बाहूबल वि. शफी मोहम्मद) ...2072

विनिर्दिष्ट अनुतोष अधिनियम, (1963 का 47), धारा 20 – विनिर्दिष्ट पालन का अनुतोष न्यायालय के विवेकाधिकार के अधीन है – न्यायालय ऐसा अनुतोष दिलाने के लिये बाध्य नहीं है मात्र इसलिए कि ऐसा करना विधिसंगत है – यदि संविदा समान और उंचित नहीं है तथापि शून्य भी नहीं है, तो विनिर्दिष्ट पालन का अनुतोष देने के विवेकाधिकार का प्रयोग नहीं किया जा सकता है। (बाल कृष्ण वि. भगवानदास) 1340

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – शाश्वत व्यादेश – वादी शासकीय भूमि के सुस्थापित कब्जे में पाया गया – शासकीय भूमि पर अतिक्रमण करने के लिए कई बार जुर्माना आरोपित किया गया – कब्जा शांतिपूर्ण व राज्य शासन के प्रतिकूल नहीं था – वादी शाश्वत व्यादेश की डिक्री पाने का हकदार – तथापि, राज्य शासन विधि की सम्यक प्रक्रिया अपनाने के बाद कब्जा वापस लेने के लिये स्वतंत्र होगा। (प्रहलाद वि. म.प्र. राज्य) ...2069

राज्य अधिवक्ता परिषद् म.प्र., नियम, 1963, नियम 143–ए – देखें – संविधान, अनुच्छेद 14 (शेखर सेठ (डॉ.) वि. म.प्र. स्टेट बार कांउसिल) ...1974

सड़क परिवहन निगम कर्मचारी जमा निधि विनियम, म.प्र. 1985 – खण्ड 10 – ब्याज – निगम के सेवानिवृत्त कर्मचारी और सेवारत कर्मचारी, कर्मचारी जमा निधि योजना में जमा राशि पर ब्याज पाने के हकदार हैं जैसा कि विनियम खण्ड 10 में विहित है। (अनिल जैन वि. मैनेजिंग डायरेक्टर, एम.पी.आर.टी.सी.) 1392

सड़क परिवहन निगम कर्मचारी जमा निधि विनियम, म.प्र. 1985 – खण्ड 10 – ब्याज की दर – ब्याज का भुगतान विनियम के कानून से शासित होता है और ऐसे ब्याज की दर सरकार द्वारा अधिसूचनाओं में विहित की जाती है – तथापि ब्याज का भुगतान निगम की कानूनी बाध्यता है और वह परिपत्र जारी करके उसके कानूनी बाध्यता के भार से मनमाने ढंग से उन्मोचित नहीं हो सकता है। (अनिल जैन वि. मैनेजिंग डायरेक्टर, एम.पी.आर.टी.सी.) 1392

उत्तराधिकार अधिनियम (1925 का 39), धारा 372 – उत्तराधिकार प्रमाण–पत्र – मृतक की दो पत्नियाँ एवं दूसरी पत्नी से चार संतानें थी – मृतक द्वारा शासकीय अभिलेखों में दूसरी पत्नी को दावों को प्राप्त करने के लिये नामित किया – विचारण न्यायालय ने उत्तराधिकार प्रमाण–पत्र दूसरी पत्नी को दिया – उच्च न्यायालय ने आदेश उलटा एवं उत्तराधिकार प्रमाण–पत्र प्रथम पत्नी के पक्ष में दिया क्योंकि रूढ़ि द्वारा तलाक साबित नहीं हो सका – अभिनिर्धारित – दूसरी पत्नी ने अपने आवेदन में चारों संतानों के नाम इंगित किये थे – दूसरी पत्नी विधिक उत्तराधिकारी होने का दावा नहीं कर सकती किन्तु उसकी हैसियत नामित की थी – वह मृतक के साथ लगातार रही एवं मृतक की विश्वासपात्र थी एवं चार संतानों को जन्म दिया – वह हमेशा वैध विवाहित पत्नी जो कभी मृतक के साथ नहीं रही, से अधिक पसंद की गई – उच्च न्यायालय का मृतक के नामिती एवं वैध उत्तराधिकारियों को छोड़कर प्रथम पत्नी का दावा स्वीकार करना,

First wife would be entitled to 1/5th share only - Appeal allowed. [Vidyadhari v. Sukhrana Bai] ...(SC) 1575

Succession Act (39 of 1925), Section 372 - *Succession certificate - Obtained from the competent authority without impleading the necessary party i.e. nominee of government servant - Cannot be said to be as per law.* [Girijabai v. State of M.P.] ...1167

Transfer of Property Act (4 of 1882), Sections 10, 111(g) - *Right of re-entry - Land was given on lease for construction of cinema hall - Subsequently, cinema licence was cancelled by the Collector - Lease also cancelled on the same ground - Held - Section 10 does not carve out any exception with regard to perpetual or permanent lease - Notice is necessary for termination of lease - No express condition in agreement regarding forfeiture - It would not be open to lessor to invoke the forfeiture clause for determining the perpetual lease - Forfeiture of lease not legal.* [Cine Exhibitors Pvt. Ltd. v. The Gwalior Development Authority] ...1872

Transfer of Property Act (4 of 1882), Section 53A - *Adverse Possession - Plea of adverse possession cannot be sustained when alternative plea of retention of possession by operation of Section 53A are inconsistence and plea of adverse possession cannot be found.* [Jaswant Singh v. Smt. Dayamani] ...2080

Upkar Adhiniyam, M.P., 1981 (1 of 1982) [As amended in 2001], Section 3(1), Vidyut Sudhar Adhiniyam, M.P., 2000, Section 12(3) - *Energy Development Cess - Constitutional validity of amendment 2001 challenged on the ground that M.P. Electricity Regulatory Commission not consulted - Held - Consequence of non-consultation in terms of Section 12(3) of Adhiniyam, 2003 would not be an incompetent piece of legislation.* [M.P. Cement Manufacturers Association v. State of M.P.] ...1665

Upkar Adhiniyam, M.P., 1981 (1 of 1982) [As amended in 2001], Section 3(1), Vidyut Sudhar Adhiniyam, M.P., 2000, Section 12(3) - *Energy Development Cess - Effect of non-consultation with M.P. Electricity Regulatory Commission - Held - Adhiniyam, 1981 and Adhiniyam, 2000 have been enacted to meet different exigencies and are to operate in different fields - Adhiniyam, 2000 is to operate in relation to electrical industry and policies - Adhiniyam, 1981 is general in nature and is to operate in relation to cess/tax on certain items - Provisions of one Act cannot be read into another Act - Act in which action is taken does not ask for consultation - Petitions dismissed.* [M.P. Cement Manufacturers Association v. State of M.P.] ...1665

Vidhan Sabha (Regulation and Condition of Service) Rules, M.P., 1990, Rule 7 - *Effect of amendment in the rules - If a power is exercised by an authority who at the time of exercising such power had the power to do so and if subsequently the power is retrospectively withdrawn - Held - A person holding lawful office under the colour of lawful authority, even if person is*

न्यायसंगत नहीं था – प्रथम पत्नी केवल 1/5 हिस्से की अधिकारी होगी – अपील मंजूर। (विद्याधारी वि. सुखराना बाई) ...(SC) 1575

उत्तराधिकार अधिनियम (1925 का 39), धारा 372 – आवश्यक पक्षकार अर्थात् सरकारी सेवक के नामित को पक्षकार बनाये बिना सक्षम प्राधिकारी से उत्तराधिकार प्रमाण पत्र प्राप्त किया – इसे विधि अनुसार नहीं कहा जा सकता है। (गिरजा बाई वि. म.प्र. राज्य) ...1167

सम्पत्ति अंतरण अधिनियम (1882 का 4), धाराएँ 10, 111(जी) – पुनः प्रवेश का अधिकार – भूमि सिनेमा हॉल के निर्माण के लिए पट्टे पर दी गई थी – तत्पश्चात् कलेक्टर द्वारा सिनेमा की अनुज्ञप्ति को रद्द कर दिया – पट्टे को भी इसी आधार पर रद्द कर दिया – अभिनिर्धारित – धारा 10 शाश्वत या स्थायी पट्टे के संबंध में कोई अपवाद परिकल्पित नहीं करती – पट्टे के पर्यवसान के लिए सूचनापत्र आवश्यक है – संविदा में समपहरण के संबंध में कोई अभिव्यक्त शर्त नहीं – पट्टादाता शाश्वत पट्टे के पर्यवसान के लिए समपहरण खण्ड का अवलंब लेने को स्वतंत्र नहीं रहेगा – पट्टे का समपहरण विधिक नहीं। (सिने एग्जीविटर्स प्रा.लि. वि. द ग्वालियर डेव्हेलपमेंट अथारिटी) ...1872

सम्पत्ति अंतरण अधिनियम (1882 का 4), धारा 53ए – प्रतिकूल कब्जा – प्रतिकूल कब्जे का अभिवचन तब नहीं उठाया जा सकता जब प्रतिधारण का वैकल्पिक अभिवचन धारा 53ए के प्रवर्तन से विसंगत हो और प्रतिकूल कब्जे का अभिवचन नहीं पाया जाए। (जसवंत सिंह वि. श्रीमति दयामनी) ...2080

उपकर अधिनियम, म.प्र., 1981 (1982 का 1) (2001 में यथासंशोधित), धारा 3(1), विद्युत सुधार अधिनियम, म.प्र., 2000, धारा 12(3) – ऊर्जा विकास उपकर – संशोधन 2001 की संवैधानिक वैधता को इस आधार पर चुनौती कि म.प्र. विद्युत विनियामक आयोग से परामर्श नहीं लिया गया – अभिनिर्धारित – 2003 के अधिनियम की धारा 12(3) के निबन्धनों के अनुसार परामर्श न करने का परिणाम विधान का अक्षम खण्ड नहीं होगा। (एम.पी. सीमेंट मेन्यूफेकचर्रस ऐसोसियेशन वि. म.प्र. राज्य) ...1665

उपकर अधिनियम, म.प्र., 1981 (1982 का 1) (2001 में यथासंशोधित), धारा 3(1), विद्युत सुधार अधिनियम, म.प्र., 2000, धारा 12(3) – ऊर्जा विकास उपकर – म.प्र. विद्युत विनियामक आयोग से परामर्श न करने का प्रभाव – अभिनिर्धारित – 1981 का अधिनियम और 2000 का अधिनियम विभिन्न अत्यावश्यकताओं को पूरा करने के लिये अधिनियमित हुए हैं और विभिन्न क्षेत्रों में संचालित होते हैं – 2000 का अधिनियम विद्युत उद्योग और नीतियों के संबंध में संचालन करने के लिए है – 1981 का अधिनियम सामान्य प्रकृति का है और कुछ मदों पर उपकर/कर के सम्बन्ध में संचालन करने के लिए है – एक अधिनियम के उपबन्धों को दूसरे अधिनियम में नहीं पढ़ा जा सकता है – अधिनियम जिसमें कार्यवाही की गई है परामर्श नहीं मांगता है – याचिका खारिज। (एम.पी. सीमेंट मेन्यूफेकचर्रस ऐसोसियेशन वि. म.प्र. राज्य) ...1665

विधान सभा (विनियम और सेवा की शर्तें) नियम, म.प्र., 1990, नियम 7 – नियम में संशोधन का प्रभाव – यदि कोई प्राधिकारी शक्ति का प्रयोग कर रहा है और ऐसी शक्ति का प्रयोग करते समय उसके पास ऐसी शक्ति थी और तत्पश्चात् ऐसी शक्ति को भूतलक्षी प्रभाव से वापस ले लिया जाता है – अभिनिर्धारित – व्यक्ति विधिपूर्ण प्राधिकार के पदाभास से विधिपूर्ण पद को धारण करता है, यदि व्यक्ति पद को धारण करने की पूर्ण अर्हता नहीं रखता

not fully qualified to hold office, order passed by him in his official capacity cannot be challenged on the ground of lack of jurisdictional competence. [M.P. Dwivedi v. M.P. Vidhan Sabha Secretariate, Bhopal] ...1622

Vidhan Sabha (Regulation and Condition of Service) Rules, M.P., 1990, Rules 7, 13 & 18 - ***Absorption and repatriation*** - *Petitioner working as Front Office Assistant in M.P. Tourism Cooperation - He was send on deputation to Vidhan Sabha Secretariat - Petitioner thereafter absorbed on the post of Assistant Protocal Officer which was five grade above his substantive post of Front Office Assistant - Respondents cancelled the order of absorption and repatriated petitioner to his parent department - Held - No scheme for absorption was made in accordance with Rule 18(2) and thus Speaker could not have absorbed the services of petitioner without deliberation, upon the recommendation of Special Committee of the Legislative Assembly - Petition dismissed.* [M.P. Dwivedi v. M.P. Vidhan Sabha Secretariate, Bhopal] ...1622

Vidyut Sudhar Adhiniyam, M.P., 2000 (4 of 2001), Section 9 - ***Electric connection*** - *Tariff in commercial category is more than the industrial category - Without notice and giving an opportunity of hearing -Respondent, having an electric connection in industrial category cannot be asked to pay hire tariff for last two years treating the connection in commercial category.* [Executive Engineer (Vigilance), M.P. State Electricity Board, Khargone v. Jaswant Singh] ...1187

Vidyut Sudhar Adhiniyam, MP, 2000, Section 12 (3) - **See** - *Upkar Adhiniyam, M.P., 1981, [as amended in 2001], Section 3 (1),* [M.P. Cement Manufacturers Association v. State of M.P.] ...1665

Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 37, Ordinance 6(26) - ***Revaluation in two subjects*** - *Constitutional validity of Ordinance 6(26) challenged which prohibits revaluation in two subjects only - Held - Courts cannot examine wisdom, merits or efficacy of policy - Any drawback in the policy incorporated in rule or regulation will not render it ultra-vires unless it can be said to suffer from any legal infirmity - Clause 26 of Ordinance 6 does not suffer from any illegality or arbitrariness - Not violative of Article 14 of Constitution - Petition dismissed.* [Abhineeta Elizabeth Lall (Ku.) v. Barkatullah University, Bhopal] ...1966

<u>Words and Phrases</u> :–

Commence - Meaning - *To begin, institute or start - Word 'commence' harmoniously used in Sections 21 & 43 - Meaning would be "to start".* [Prashant Kumar Sahu v. M/s. Optel Telecommunications Ltd.] ...175

Malafides - Change in Government - Effect - *Merely because there has been changed in the political scenario in the State, the action cannot be said to be bad in law when the absorption itself was contrary to the rules.* [M.P. Dwivedi v. M.P. Vidhan Sabha Secretariate, Bhopal] ...1622

तो भी उसके द्वारा अपनी अधिकारिक हैसियत से पारित आदेशों को इस आधार पर चुनौती नहीं दी जा सकती कि अधिकारिता सामर्थ्य की कमी है। (एम.पी. द्विवेदी वि. एम.पी. विधान सभा सेक्रेट्रिऐट, भोपाल) ...1622

विधान सभा (विनियम और सेवा की शर्तें) नियम, म.प्र., 1990, नियम 7, 13 एवं 18 – संविलयन और प्रत्यावर्तन – याची म.प्र. पर्यटन निगम में फ्रंट कार्यालय सहायक के पद पर कार्यरत – उसे प्रतिनियुक्ति पर विधान सभा सचिवालय में भेजा गया – उसके बाद उसे सहायक प्रोटोकॉल अधिकारी के पद पर संविलयन किया गया जो उसके फ्रंट कार्यालय सहायक के मूल पद से पाँच ग्रेड उच्च था – प्रत्यर्थी ने संविलयन के आदेश को निरस्त किया और याची को उसके मूल विभाग में प्रत्यावर्तित किया – अभिनिर्धारित – कोई स्कीम नियम 18(2) के अनुसार बनायी गई और इसलिए विधान सभा की विशेष समिति से विचार विमर्श और उसकी अनुशंसा के बिना अध्यक्ष याची की सेवा का संविलयन नहीं कर सकते थे – याचिका खारिज। (एम.पी. द्विवेदी वि. एम.पी. विधान सभा सेक्रेट्रिऐट, भोपाल) ...1622

विद्युत सुधार अधिनियम, म.प्र. 2000 (2001 का 4), धारा 9 – विद्युत संयोजन – व्यावसायिक श्रेणी में प्रभार औद्योगिक श्रेणी की अपेक्षा अधिक है – बिना सूचना और सुनवाई का अवसर दिये – प्रत्यर्थी जिसके पास औद्योगिक श्रेणी में विद्युत संयोजन था, को व्यावसायिक श्रेणी का विद्युत संयोजन मानते हुये पिछले दो वर्षों का उंची दर से प्रभार का भुगतान करने के लिये नहीं कहा जा सकता है। (एग्जीक्यूटिव इंजीनियर (विजीलेंस), म.प्र. राज्य विद्युत मंडल, खरगोन वि. जसवंत सिंह) ...1187

विद्युत सुधार अधिनियम, म.प्र., 2000, धारा 12 (3) – देखें – उपकर अधिनियम, म.प्र.,1981, (2001 में यथा संशोधित), धारा 3(1), (एम.पी. सीमेंट मेन्यूफेकचर्रस ऐसोसियेशन वि. म. प्र. राज्य) ...1665

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 37, अध्यादेश 6(26) – दो विषयों में पुनर्मूल्यांकन – अध्यादेश 6(26) की संवैधानिक वैधता को चुनौती जो पुनर्मूल्यांकन को केवल दो विषयों में प्रतिषिद्ध करता है – अभिनिर्धारित – न्यायालय नीति की बुद्धिमत्ता, गुणदोषों या प्रभावकारिता का परीक्षण नहीं कर सकता – किसी नियम या विनियम में सम्मिलित नीति में कोई कमी उसे अधिकारातीत नहीं बनायेगी, जब तक यह किसी कानूनी अशक्तता से ग्रस्त होना न कहा जाए – अध्यादेश 6 की कंडिका 26 किसी अवैधता व मनमानी से ग्रस्त नहीं है – संविधान के अनुच्छेद 14 का उल्लंघन नहीं – याचिका खारिज। (अभिनीता एलीजाबेज लाल (कुमारी) वि. बरकतउल्ला विश्वविद्यालय, भोपाल) ...1966

शब्द और वाक्यांश

कमेंस – अर्थ – प्रारम्भ करना, संस्थित या शुरू करना – धारा 21 व 43 में श्कमेंसश शब्द का प्रयोग सामंजस्यपूर्ण किया गया है – अर्थ होगा ष्शुरू करनाष। (प्रशांत कुमार साहू वि. मे. आप्टेल टेलीकम्यूनिकेशंस लि.) ...1753

दुर्भावना – सरकार में परिवर्तन – प्रभाव – केवल राज्य में राजनैतिक दृश्यलेख में परिवर्तन आने पर, कार्यवाही को विधि विरुद्ध नहीं कहा जा सकता, जबकि संविलयन स्वतः नियम के विरुद्ध था। (एम.पी. द्विवेदी वि. एम.पी. विधान सभा सेक्रेट्रिऐट, भोपाल) ...1622

Stipend - Scholarship - *Stipend is a compensation paid for services rendered for the benefit of other - Scholarship is paid for the maintenance of a scholar or student - Both have different connotations and can not be used as synonyms.* [Junior Doctors Association v. The Chief Commissioner of Income Tax] ...1992

Workmen's Compensation Act (8 of 1923), Sections 2(1)(l), 4 -***Total disablement - Mental disablement*** - *Claimant was driving jeep which turned turtle as steering had become free and brakes had failed - Claimant sustained injuries and became permanently mentally disabled - Application for compensation dismissed by Commissioner as not covered u/s 4(1)(c)(ii) r/w Schedule I - Held - Explanation II of Section 4(1)(c) makes it clear that in case of injury which is not specified in Schedule I, still compensation can be claimed in case of permanent total disablement - Claim petition was wrongly dismissed by Commissioner - Appeal allowed.* [Rajneesh Kumar Dwivedi v. M/s. K.P. Enterprises] ...2061

Workmen's Compensation Act (8 of 1923), Section 3 - *Employer's liability to pay compensation - Deceased working as driver - He had taken the vehicle to Amarkantak and Chitrakoot at the direction of the owner - Dead body of deceased was found near river at Satna and vehicle was seized from Rewa - Held - Owner in written statement and deposition has not denied the fact that deceased was in his employment - Jeep was found at a different place and dead body was found at a different place - Murder of deceased was committed in the course of employment - Order passed by Commissioner for Workmen's Compensation dismissing claim petition set aside.* [Dulari Singh (Smt.) v. Tribhuvan Murari Dubey] ...1759

Workmen's Compensation Act (8 of 1923), Section 4 - ***Amount of Compensation*** - *Claimant suffering 100% disability - Claimant was earning Rs.2,450 per month inclusive of allowance - 60% of monthly wages multiplied by relevant factor i.e., 207.98 - Claimant entitled to get Rs. 3,05,730.60 with interest @ 12% per annum.* [Rajneesh Kumar Dwivedi v. M/s. K.P. Enterprises] ...2061

Workmen's Compensation Act (8 of 1923), Section 4 - ***Compensation*** - *Monthly income of deceased assessed at Rs.3,000/- - Relevant factor is 213.57 - Compensation comes to Rs.3,20,355/- - Compensation shall carry interest at the rate of 12% p.a. - Appeal allowed.* [Dulari Singh (Smt.) v. Tribhuvan Murari Dubey] ... 1759

स्टाईपंड – छात्रवृत्ति – स्टाईपंड एक प्रतिकर है जो दूसरों के लाभ के लिए दी गई सेवाओं के लिए प्रदत्त किया जाता है – छात्रवृत्ति विद्यार्थी या छात्र के भरण–पोषण के लिए प्रदत्त की जाती है – दोनों भिन्न भावार्थ (केनोटेशन) रखते हैं और समानार्थी के रूप में प्रयुक्त नहीं किये जा सकते। (जूनियर डॉक्टर्स एसोशिएशन वि. द चीफ कमिश्नर आफ इनकम टेक्स) ...1992

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 2(1)(एल), 4 – पूर्ण निःशक्तता – मानसिक निःशक्तता – दावेदार जिस जीप को चला रहा था वह पलट गई क्योंकि उसके स्टेरिंग और ब्रेक ने काम करना बंद कर दिया – दावेदार को क्षतियाँ हुईं और वह स्थायी रूप से मानसिक निःशक्त हो गया – कमिश्नर द्वारा प्रतिकर का आवेदन खारिज कर दिया गया क्योंकि वह धारा 4(1)(सी)(ii) सहपठित अनुसूची 8 से आच्छादित नहीं था – अभिनिर्धारित – धारा 4(1)(सी) का स्पष्टीकरण 2 यह स्पष्ट करता है कि क्षति अनुसूची 8 में न बताई गई हो, फिर भी पूर्ण स्थायी निःशक्तता के मामले में प्रतिकर का दावा किया जा सकता है – कमिश्नर द्वारा दावा याचिका गलत रूप से खारिज की गई – अपील मंजूर। (रजनीश कुमार द्विवेदी वि. मे. के.पी. इंटरप्राइजेस)...2061

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 3 – प्रतिकर देने का नियोजक का दायित्व – मृतक वाहन चालक का कार्य कर रहा था – वह वाहन मालिक के निर्देश पर वाहन को अमरकंटक व चित्रकूट ले गया – मृतक का शव सतना में नदी के पास मिला एवं वाहन रीवा से अभिग्रहीत किया – अभिनिर्धारित – वाहन मालिक ने वादोत्तर व कथन में इस तथ्य से इंकार नहीं किया कि मृतक उसके नियोजन में था – जीप व शव अलग–अलग स्थान पर मिले – मृतक की हत्या नियोजन के अनुक्रम में की गई – कर्मकार प्रतिकर आयुक्त का दावा निरस्त करने का आदेश निरस्त। (दुलारी सिंह (श्रीमति) वि. त्रिभुवन मुरारी दुबे) ...1759

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4 – प्रतिकर की राशि – दावेदार 100% निःशक्तता से ग्रसित – दावेदार भत्तों को मिलाकर 2,450 रुपये प्रतिमाह अर्जित कर रहा था – मासिक मजदूरी के 60% से सुसंगत कारक अर्थात् 207.98 से गुणा किया – दावेदार 3,05,730.60 रुपये 12% वार्षिक ब्याज के साथ प्राप्त करने का अधिकारी है। (रजनीश कुमार द्विवेदी वि. मे. के.पी. इंटरप्राइजेस) ...2061

कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4 – प्रतिकर – मृतक की मासिक आय रु. 3000/– आंकी गई – सुसंगत खण्ड 213.57 है – प्रतिकर रु. 3,20,355/– आता है – प्रतिकर पर 12% प्रतिवर्ष की दर से ब्याज देय होगा – अपील मंजूर। (दुलारी सिंह (श्रीमति) वि. त्रिभुवन मुरारी दुबे) ...1759

.....

This Volume Contains

Short Notes 30 to 70

Pages 981 to 2152

JUSTICE ABHAY KUMAR GOHIL

Born on 1st July, 1946 at Sironj District Vidisha. His father was a Veteran Freedom Fighter and Chairman of Municipality, Sironj.

Educated in Hamidia College at Bhopal. Passed B.A. in the year 1965 and LL.B. in the year 1967. Started Practice at Bhopal in 1967. Enrolled as an Advocate in 1968. Practiced in all branches of Law, including Constitutional, Civil, Criminal, Labour, Arbitration, Service, Banking, Finance and other allied subjects.

Worked as Legal Adviser to Many Government Companies, Corporations, Banks, Co-operative Societies and Local bodies. Was State Government Advocate before the M.P. Arbitration Tribunal Bhopal from 1987-1999. Worked as Senior Central Government Standing Counsel in the High Court of M.P. at Jabalpur from 1994 to 1999. Also served as Deputy Advocate General for the State of M.P. in the High Court of M.P, Jabalpur in the year 1998-99.

Authored Number of Law Books on various subjects in Hindi and English both. Government of India awarded prize in 1972-1973 for his first Law book in Hindi, which was published in 1970. Was founder Editor in Chief of "Arbitration Tribunal Law Reporter" was also member of the Editorial and Advisory board of Central India Law Quarterly Journal and M.P. Labour and Service Law Reporter. Was elected Member of State Bar Counsel of M.P. in 1984 and remained till 1999.

Served as Vice-Chairman, Chairman Executive Committee, Law College Inspection Committee, Member of Advocate Welfare Committee was Chairman of Enrollment and Disciplinary Committee. Was also Chairman, Disciplinary Committee of All India Bar Council, New Delhi. Was also member of faculty of Law of Barkatullah University, Bhopal and was associated with many educational, Social and Cultural Institutions. Is life Member of Central India Law Institute and ILA. Is associated with various research activities in the Field of Law. Organized and attended various seminars, conferences on law during last three decades.

Appointed as Additional Judge of the High Court of M.P. on 26th April, 1999 and confirmed as the Judge, High Court of M.P. in the month of March, 2000. Superannuated on 1st July, 2008.

We wish his Lordship a healthy, happy and prosperous life.

Appointment to the Madhya Pradesh High Court

We Congratulate Smt. Indrani Datta, on her appointment as Judge of the High Court of Madhya Pradesh, Smt. Datta took oath of the High Office on 1st of July, 2008.

JUSTICE SMT. INDRANI DATTA

Born on 16th November, 1949. Joined Judicial Service as Civil Judge, Class-II, on 08.09.1975, promoted as Civil Judge, Class-I on 14.12.1983, as C.J.M on 13.06.1988 and promoted as officiating District Judge on 10.7.1989, granted selection grade on 12.5.1997, super-time scale on 16.6.2003. Worked as Additional District Judge and Presiding Officer, Special Court (SC/ST Act), Dewas in 1997, Special Judge for trial of cases under SC/ST (P.A.) Act, Indore w.e.f. 07.08.2000 and Presiding Officer, Family Court, Indore w.e.f. 14.5.2002. Presently posted as District & Sessions Judge, Vidisha.

During her tenure as Judicial Officer, she was posted in various Districts like Raipur, Rajnand Goan, Bilaspur, Durg, Harda, Seoni, Dewas, Indore, Bhopal, Vidisha.etc.

Elevated as Additional Judge of the High Court of Madhya Pradesh on 1st July, 2008.

We wish Smt. Justice Indrani Datta a successful tenure on the Bench.

.....

Farewell

Hon'ble the Chief Justice Mr. A. K. Patnaik, bids farewell to the demitting Judge :–

We have all assembled here today to bid a farewell to Brother Justice Abhay Kumar Gohil on his retirement as a judge of the Madhya Pradesh High Court.

Justice Gohil is a son of very illustrious father late Mr. Keshrimal Gohilji, who was a Veteran Freedom Fighter and the Chairman of Sironj Municipality. I had an opportunity to be a guest in the function at Sironj organized by Justice Gohil in memory of his father. On a piece of land given by his father, Justice Gohil and the Trust has constructed a Community Hall at Sironj and I could know about the great admiration the people of Sironj had for the service that the father of Justice Gohil had rendered as a Freedom Fighter and as Chairman of the Sironj Municipality.

Justice Gohil was born at Sironj on the 1st of July, 1946. After schooling, he did his B. A. at Hamidia College at Bhopal and completed his LL.B. in 1967. He was enrolled as an Advocate in 1968 and started practice at Bhopal. He shifted his practice to the High Court of Madhya Pradesh at Jabalpur. He practiced in civil, criminal, labour, arbitration, service, banking and Constitutional law. He has worked as a Legal Advisor to many Government companies, corporations, banks, co-operative societies and local bodies. He was the Government Advocate for the State of Madhya Pradesh before the M. P. Arbitration Tribunal, Bhopal from 1987 to 1988. Senior Central Government Standing Counsel in the High Court of Madhya Pradesh from 1994 to 1999 and Deputy Advocate General for the State of M.P. in the High Court of Madhya Pradesh at Jabalpur in the year 1998-99. He was elected member of the State Bar Council of Madhya Pradesh in 1994 and remained as such till 1999 and while he was a member of the State Bar Council, he served as Vice Chairman and Chairman of the Executive Committee, Law College Inspection Committee, Member of the Advocate Welfare Committee and Chairman of the Disciplinary Committee.

Justice Gohil has authored a number of books both in Hindi and English and the Government of India has awarded a prize to Justice Gohil for the First Law Book in Hindi published in 1970. He was founder Patron in Chief of Arbitration Tribunal Law Reporter. He has also been member of the Advisory Board of Central India Law Quarterly Journal at Madhya Pradesh and Service Law Reporter. He has been member of Faculty of Law of Barkatullah University, Bhopal and a member of the Central India Law Institute and the I .L.A. He was associated with various associations in the field of law and attended a number of seminars and conferences on law during the last three decades.

Justice Gohil was appointed as Additional Judge of the High Court of Madhya Pradesh on 26th April, 1999 and became permanent Judge in March 2000. On 13th March, 2006, Justice Gohil became the Administrative Judge of the Gwalior Bench and has discharged his responsibilities as Administrative Judge of the Gwalior Bench with tact, ability and team-work and was able to get the co-operation of all the Judges of the Gwalior Bench as well as the Advocates of Gwalior. During his tenure as a Judge of this Court, he has delivered many judgments on difficult issues which have been printed in the AIR and the local journals. As a Judge, he was also member of different Administrative Committees and has contributed a lot to the administration of the High Court as well as the subordinate courts of the State of M.P. His retirement as a Judge of the High Court will be a great loss for all of us.

Justice Gohil and Mrs. Gohil have been very affectionate and warm to me and my wife and we shall never forget the wonderful times that we have had together. On the occasion of his retirement, on own behalf, on behalf of my brother Judges, officers of the Registry and the High Court. I wish both Justice Gohil and Mrs. Gohil a long, healthy and happy life.

On behalf of Central Government Shri Vinod Kumar Sharma, Asstt. Solicitor General of India, bids farewell :–

स्वतंत्रता संग्राम सैनानी परिवार में जन्में प्रारम्भ से ही मेधावी छात्र रहे हैं। एवं विधि के क्षेत्र में विभिन्न क्षेत्र में दक्षता हासिल करने वाले माननीय न्यायमूर्ति श्री ए. के. गोहिल जी अपने कार्य एवं व्यवहार से हम सभी के बीच लोकप्रिय हैं। आपके द्वारा लिखी विधि से सम्बंधित पुस्तकें सदैव उपयोगी होकर आपका स्मरण कराती रहेंगी।

अहिंसा परमोधर्म के सिद्धांत पर चलकर न्यायमूर्ति के रुप में वर्षों से कई महत्वपूर्ण निर्णय पारित किये,

चीफ जस्टिस साहब के मार्गदर्शन में "गोल्डन जुबली" प्रोग्राम सभी न्यायमूर्तिगण एवं अभिभाषकगण के सहयोग से आप की प्रशासनीय क्षमत्रों से सफल हुऐ।

पूर्व राष्ट्रपति महामहिम श्री अब्दुलकलाम साहब एवं सर्वोच्च न्यायालय के वरिष्ठ न्यायमूर्तियों द्वारा दिये गये सम्बोधन से सभी लाभान्वित हुऐ।

जनहित याचीकाओं में पारित आदेश/निर्देशों से ग्वालियर व आसपास के नगर शहरों में बहुत जनउपयोगी कार्य हुऐ, जैसे शासकीय अस्पतालों में सुधार, यातायात समस्या, पानी की समस्या, आदि का निराकरण किया आपके द्वारा पारित महत्वपूर्ण निर्णयों द्वारा आप हमेशा स्मरणीय रहेंगे।

आपकी सेवा निवृत्ति के अवसर पर भारत के राष्ट्रपति महामहिम श्रीमती प्रतिभा देवी सिंह पाटिल नगर में हैं मैं आपकी दीर्घ आयु सुख समृध्दि एवं ईश्वर परिवार को सुखी निरोगी एवं प्रसन्न रखे ऐसी कामना करता हूँ।

आप का स्नेह एवं आशीर्वाद हम सब पर बना रहे अपेक्षा करता हूँ।

.....

Shri S. B. Mishra, Addl. Adv. General of M. P. bids farewell :–

माननीय न्यायमूर्ति श्री ए. के. गोहिल साहब, म. प्र. उच्च न्यायालय के न्यायाधिपति के पद से आज सेवानिवृत्त होने जा रहे हैं। इस अवसर पर आयोजित इस समारोह में हम माननीय न्यायमूर्ति श्री ए. के. गोहिल साहब का अभिवादन व सम्मान करने हेतु उपस्थित हुए हैं।

माननीय न्यायमूर्ति श्री ए. के. गोहिल जी का जन्म 1.7.1946 को सिरौंज जिला विदिशा म. प्र. में हुआ था। आपके पूज्य पिता स्व. श्री केसरीमल गोहिल ने भारत के स्वतंत्रता संग्राम में सक्रिय योगदान दिया था तथा वह एक निर्भीक एवं निडर, स्वतंत्रता संग्राम सेनानी थे।

माननीय न्यायमूर्ति श्री गोहिल आपने अपनी प्रारम्भिक शिक्षा सिरौंज जिला विदिशा और महाविद्यालयीन शिक्षा भोपाल म. प्र. में प्राप्त की। सन् 1967 में विधि स्नातक की उपाधि हमीदिया कॉलेज भोपाल से नियमित छात्र के रुप में प्राप्त की। तत्पश्चात् आपने 1967 से भोपाल में विधि व्यवसाय प्रारंभ किया। मान्यवर आपने विधि व्यवसाय क्षेत्र में सफल अभिभाषक के रुप में ख्याति प्राप्त की। मान्यवर आपने 1987 में म. प्र. आरव्हीट्रेशन ट्रिब्यूनल के समक्ष सबल पक्ष समर्थन किया। मान्यवर आप 1994 में एडीशनल सेंन्ट्रल गवर्मेन्ट स्टेंडिंग काउंसिल तथा इसके पश्चात् सीनियर स्टेंडिंग काउंसिल म. प्र. उच्च न्यायालय जबलपुर में नियुक्त हुए, तत्पश्चात् डिप्टी एडवोकेट जनरल म. प्र. शासन जबलपुर में नियुक्त हुए। मान्यवर आपने अपने इन सभी दायित्वों का सफलतापूर्वक निर्वाहन किया और दीवानी, फौजदारी, राजस्व विधि संवैधानिक संबंधी प्रकरणों में अपने पक्षकारों की ओर से सबल रुप से पक्ष समर्थन किया, इसी कारण मान्यवर म. प्र. उच्च न्यायालय के अग्रणीय अभिभाषकों के रुप में गणना होती थी तथा आपने अधिवक्ता के रुप में सफलता के नवीन कीर्तिमान स्थापित किये।

मान्यवर, आप हिन्दी एवं अंग्रेजी विधि पुस्तकों के अच्छे लेखक हैं तथा आपने हिन्दी में प्रथम बार विधि पुस्तक लिखी, जिस पर भारत सरकार ने 1972–73 में आपकी सराहना करते हुए पुरस्कार प्रदान किया व आप "म. प्र. आरव्हीट्रेशन लॉ रिर्पोटर" के सम्पादक भी रहे हैं। मान्यवर, आप राष्ट्रीयकृत बैंकों तथा कम्पनियों तथा सोसायटी के स्टेण्डिग काउंसिल भी रहे हैं।

माननीय न्यायमूर्ति श्री गोहिल साहब आप चार बार म. प्र. राज्य अधिवक्ता परिषद् के सदस्य निर्वाचित हुए। तथा आप म. प्र. राज्य अधिवक्ता परिषद् के उपाध्यक्ष व कार्यसमिति के चैयरमेन सन् 1984 से 1999 तक रहे व इस अवधि में आपके निर्देशन में अभिभाषकों के लिए कई कल्याणकारी योजनायें प्रतिपादित होकर कार्यान्वित कराई। श्रीमान आप अनेक सामाजिक एवं शैक्षणिक संस्थाओं के सदस्य व पदाधिकारी के रुप में विद्यार्थी जीवन तथा विधि व्यवसाय जीवन में भी जुड़े रहे।

माननीय न्यायमूर्ति श्री ए. के. गोहिल साहब आपने दिनांक 26.4.1999 को म. प्र. उच्च न्यायालय के न्यायाधिपति के पद की शपथग्रहण की और गौरवशाली महत्वपूर्ण पद पर अपने कर्तव्यों व दायित्वों का दृढ़ता तथा कर्तव्य परायणता के साथ सफलतापूर्वक निर्वाहन करते हुए आप सेवा निवृत्त हो रहे हैं। आपकी प्रकरणों का निराकरण करने के लिए सूक्ष्म परीक्षण व सन्निहित विधि प्रश्नों का निराकरण करने की पद्धति सराहनीय रही है।

महर्षि नारद ने कहा है कि–"धर्म शास्त्र विरोधेतु युक्तिः युक्तोविधिस्मृतः"

अर्थात् जब धर्म या विधिशास्त्रों के प्रावधानों में परस्पर विरोध हो तो तब न्यायाधीश का निर्णय युक्तियों पर आधारित होना चाहिये।

मान्यवर जब जब आपके समक्ष विधिशास्त्रों के प्रावधानों में परस्पर विरोध की स्थिति आई तब तब माननीय आपने विधि और न्याय सिद्धांतों को दृष्टिगत रखते हुए विधिशास्त्रों में परस्पर विरोध का निराकरण करते हुए विधि और न्याय युक्तियों के आधार पर आपने सारगर्भित युक्तिसंगत निर्णय पारित किये हैं।

महाकवि भवभूति ने कहा है कि-"वज्रादपि कठोराणि मृदूनि कुसुमादपि"

आपके न्याय आसन पर स्वभाव दृढ़ व कठोर प्रतीत होता था, परन्तु न्याय आसन के बाहर आपका स्वभाव सरल, सौम्य व मधुर रहा है। आपके द्वारा प्रकरणों में धैर्यपूर्वक सुनवाई की जाती थी तथा दोनों पक्षों को सुनवाई का पूरा अवसर देकर निर्णय पारित किये। आपके निर्णय कारण सहित पारदर्शी, परिलक्षित होते हैं जो अनेक विधि पुस्तकों में प्रकाशित हुए हैं ये निर्णय विधि व न्याय जगत का सदैव मार्गदर्शन करते रहेंगे। माननीय आपने नागरिकों के मूलभूत अधिकारों व हितों व कमजोर वर्गों के मौलिक अधिकारों की रक्षा एवं सुरक्षा प्रदान की है। श्रीमान् आपने हमेशा युवा अभिभाषकों को प्रोत्साहित किया है और उनका आपके समक्ष उपस्थित होकर पैरवी करने से आत्मविश्वास बढ़ा। आपके द्वारा पारित निर्णयों में विद्वत्ता की झलक स्पष्ट रुप से देखी जा सकती है।

मैं अपनी ओर से तथा अपने सहयोगी शासकीय अधिवक्ताओं की ओर तथा म. प्र. शासन की ओर से आपका हार्दिक अभिवादन करता हूँ तथा सर्वशक्ति मान ईश्वर से प्रार्थना है कि माननीय आपको दीर्घ आयु और स्वस्थ्य व यशस्वी जीवन प्रदान करें। ताकि आप राष्ट्र की सेवा करते रहें।

On behalf of Senior Advocates, Shri K. B. Chaturvedi bids farewell :–

Today we have assembled to pay Honour to the Hon'ble Justice Shri A.K. Gohil, who is demitting office of Judge of this Hon'ble court in particular the Gwalior Bench.

Hon'ble Justice Gohil before elevation was successful lawyer. He was working in various branches on successful career. He was elevated, to adorn the seat on 26th of April 1999.

He completed a very successful inning and we pray for his more laborious future assignment, which he will successfully complete.

Life is long, brief period of work has shown his capabilities which are permanently inscribed in various important judgements rendered by him.

Justice Gohil was keen in looking forward the betterment of the society through public interest litigations which came across him, Public got the redress.

Justice is not only to be done but it should appear to have been done. The aspiration are too many, but for a Judge, time is constraint.

I myself and on behalf of the Senior Advocates, pray to Almighty for long, healthy and prosperous future of Justice Gohil and his family.

On behalf of High Court Bar Association, Shri D. K. Katare, President, Bar Association Gwalior bids farewell :-

Your Lordship Justice Shri A. K.Gohil now demitting his office after nine years of dedicated service as a Judge of M.P. High Court. Your Lordship was elevated to the Bench on 26th April, 1999 which was widely acclaimed and the members of the Legal fraternity were happy that an excellent choice had been made your Lordship has rendered number of landmark judgments during his tenure.

The time has come to look back and adjudge my lord, I believe I speak for each one of us at the bar when I say that we have always found you to be very good Judge, and we will be missing an eminent judge of this High Court and his place will remain vacant and your lordship will be remembered by your Land mark judgments.

We wish and pray for a prosperous, and bright long life for Hon'ble Justice Shri A.K.Gohil and his family.

Shri J. P. Mishra, Member State Bar Council, bids farewell :-

माननीय न्यायमूर्ति श्री ए. के. गोहिल आज सेवा निवृत्त होने जा रहे हैं। मान्यवर आपके द्वारा वर्ष 1967 में विधि का व्यवसाय प्रारंभ किया गया। आपने अल्प समय में ही ख्यातिप्राप्त अभिभाषक के रुप में अग्रणीय स्थान प्राप्त किया। मान्यवर आपको भारत सरकार द्वारा एडीशनल सेन्ट्रल गवर्मेन्ट स्टेडिंग काउंसिल एवं तत्पश्चात सीनियर स्टेंडिंग काउंसिल के रुप में नियुक्त किया गया एवं म. प्र. सरकार द्वारा आपको डिप्टी एडवोकेट जनरल के रुप में नियुक्त किया गया। मान्यवर आपने अपने दायित्वों का सफलतापूर्वक निर्वाहन किया।

माननीय न्यायमूर्ति श्री गोहिल एक लम्बे समय तक म. प्र. राज्य अधिवक्ता परिषद् के सदस्य रहे एवं म. प्र. राज्य अधिवक्ता परिषद् के उपाध्यक्ष एवं कार्यसमिति के अध्यक्ष रहे। मान्यवर आपके द्वारा अभिभाषकों के कल्याण हेतु अनेक योजनाओं का क्रियान्वयन कराया गया। मान्यवर आपने अनेक सामाजिक एवं शैक्षणिक संस्थाओं के माध्यम से समाज की सेवा की।

माननीय न्यायमूर्ति श्री ए. के. गोहिल साहब को दिनांक 26.4.99 को म. प्र. उच्च न्यायालय के गरिमामयी न्यायाधिपति पद की शपथ दिलाई। मान्यवर आपके द्वारा सफलतापूर्वक न्यायदान कर पक्षकारों के मौलिक अधिकारों की रक्षा की। मान्यवर आपके द्वारा पारित न्यायदृष्टांत विधि एवं न्याय जगत का मार्गदर्शन करते रहेंगे।

मान्यवर आपका सरल स्वभाव एवं सौम्य व्यक्तित्व रहा। आपके द्वारा समय-समय पर म. प्र. राज्य अधिवक्ता परिषद् एवं उच्च न्यायालय अभिभाषक संघ को यथायोग सहयोग किया गया।

मैं अपनी ओर से एवं म. प्र. राज्य अधिवक्ता परिषद् की ओर से हृदय से आपका अभिवादन करता हूँ एवं ईश्वर से प्रार्थना करता हूँ कि मान्यवर आपको लम्बी आयु एवं यशस्वी जीवन प्रदान करें।

Farewell Speech delivered by Hon'ble Shri Justice Abhay Gohil :–

I am deeply touched with the feelings and sentiments just now expressed by My Lord the Chief Justice, President High Court Bar Association, Additional Advocate General, Assistant Solicitor General and Member of the State Bar Council.

After hearing the very high about me, I am thrilled and thinking whether I deserve for the same or not.

I am the most fortunate that I was chosen by Justice Shri A.K.Mathur, now Judge of the Supreme Court of India for elevation including by Justice S.K.Dubey and Justice D.P.S.Chouhan and, who were members of the Collegium. I am grateful to them. I am particularly grateful to Justice Mathur, who is a very outstanding judge in the country for granting me this opportunity to serve this institution with pride. I am grateful to the great living jurist of the country Shri Justice V.K.Krishnan Ayyar, who has showered his personal love and affection on me and taught me legal jurisprudence. I am also grateful to Hon. Shri Justice K.G.Balakrishan, Chief Justice of India, Justice B.N.Agrawal, Justice Ashok Bhan, Justice Dr.Arijit Pasayat, Justice S.B.Sinha, Justice P.P.Naolekar, Justice R.V.Ravindran, Justice Dalveer Bhandari and Justice D.K.Jain (Judges of the Supreme Court). Justice Faizanuddin and Justice D.M. Dharmadhikari, former Judges of the Supreme Court and Justice Bhawani Singh, the then Chief Justice ofM.P., who were kind enough to have personal affection towards me.

I am again fortunate to have the good wishes and blessings of My Lord Chief Justice Shri Justice A.K.Patnaik, who judged me from all corners and has just now delivered his opinion, which is a matter of great satisfaction to me, which will provide courage and strength to me in shaping my future life. He extended a big helping hand to me by appointing me as Administrative Judge of this Bench. He fully assisted me, guided me from time to time and gave me full liberty and wholehearted support, for which I am personally grateful to him and feel highly obliged. In the life it is always difficult for a man to know about himself, I think others know him better. You all know that Justice Patnaik himself is having a dynamic and attractive personality. He is a great judge of principles and values with many great personal qualities and a source of inspiration. He is not only an outstanding Chief Justice in the Country, but he is a great human Judge. In this High Court his personal relations with every judge is so cordial, which has developed a feelings in the mind of the judges that he is a true friend, philosopher and guide and this unique quality, coupled with soberity in nature has made him a good administrator and a successful Chief Justice. His thinking is creative, attitude is positive, approach is persuasive and judicious, which is reflected from his illustrious judgments. During last two and half years, he has developed judicial work culture in the State, provided effective leadership and

has raised the reputation of this High Court and brought it on forefronts in the country. He has travelled extensively throughout the State and he is the only Chief Justice of M.P. who is regularly visiting the Benches with a view to provide better judicial administration to the State. He has also taken several decisions in favour of the subordinate judiciary to improve the working conditions of the lower courts as well as in solving the problems of the judicial officers. Today I take this opportunity to extend my all gratitude to him and wish him a great success in life. I wish His Lordship to be the judge of Supreme Court and pray the almighty to provide him the opportunity to serve the country, where also he will prove himself to be a great human judge.

I am happy that as a token of great love and affection, my esteemed and distinguished brother Justice R.S.Garg is also present in this farewell ovation. I am personally grateful to him. He has always showered his personal love and affection towards me. Justice Garg is the senior most puisne judge in the country with an extraordinary caliber, many qualities and virtues. His command over the subject, language and the Board is well known. I am hopeful that in near future he will also get due dividend and a place in the country to serve the judiciary and Institution in a better way. I wish him a bright and successful future and pray almighty to provide him ladders and opportunity to serve the institution with enthusiasm.

I am grateful to Brother Justice S.Samvatsar, Justice S.K.Gangele, Justice P.K. Jaiswal, Justice Sheela Khanna, Justice S.C.Dwivedi, Justice B.M.Gupta, Justice A.P.Shrivastava, Justice Sanjay Yadav and Justice S.C.Sharma, who have extended their full cooperation to me. I had the opportunity to preside over the Bench alongwith most of the Judges of this Bench. They all were very cordial and affectionate to me. I wish them a grand success in life.

Today I also remember Justice Rajeev Gupta, Chief Justice of Chhattisgarh High Court, who is the jewel of this town and Justice Deepak Verma, now the Administrative Judge of Karnataka High Court, a brilliant judge of firm thought and action and both are very affectionate to me and are known for their gentleness. I extend my gratitudes to them and wish them a grand success in life. Justice Deepak Misra is a well wisher of mine. He is also having a great art of producing ornamental judgments. I am also grateful to him. Justice Kulshrestha is known for his great virtues. Justice N.K.Jain with whom I had occasion to sit is known for his brevity.

Today at this occasion, I remember all the judges of M.P. High Court particularly Justice Arun Mishra, Justice Ajit Singh, Justice Rajendra Menon, Justice Lahoti, Justice Vinay Mittal, Justice A.K.Shrivastava, Justice S.Kemkar, Justice S.K.Seth, Justice Rakesh Saxena, A.K.Saxena, Justice R.K.Gupta,

Justice R.S.Jha, Justice and to all. Though today it is not possible for me to remember everybody individually by name, but I remember them collectively and extend my gratitude to them. They all are good friends of mine, and are very cordial and helpful to me.

I got good experience while sitting in Indore Bench. There are many stalwarts in the Indore Bench. They shaped me as a good Judge. I had the opportunity to preside over the First Division Bench at Indore with Justice Sapre and thereafter with Justice Kochar. I found that brother Judges at Indore were friendly and have developed brotherhood. I always appreciated the leadership prevailing in the Indore High Court Bar, which is having a sophisticated style of working with many stalwarts.

When I came to Gwalior it was a known place to me. As a lawyer I had the occasion to appear before this Bench as well as before the Board of Revenue in number of cases. Gwalior Bar is a very docile bar. Bar has produced many efficient and brilliant advocates on Civil, Criminal and Constitutional side. Some of them are known at national level. I always appreciated the gentleness of all the advocates of Gwalior. They extended their full support and cooperation to me, for that I am having many words of praise for them. Today I will take this opportunity to advice particularly to the junior advocates to strive hard in the profession, develop stylish art of advocacy and occupy front place, so that many more advocates may be available for elevation. I extend my all good wishes to the Members of the Gwalior Bar and hope that they will produce positive result and will come up to the expectation ofHon'ble the Chief Justice. Shri S.B.Mishra, Additional Advocate General and all government advocates, Shri Vinod Sharma, Assistant Solicitor General for Union of India and Bar Council Members have also extended their full support to me. I thank them and extend my greetings to them.

Today I will take this opportunity to extend my hearty thanks to the Members of the Registry, particularly to Mr. R.P.Verma, Registrar and Mr.V.B.Singh, Dy.Registrar and other officers of the Registry those who have worked with me and extended full cooperation to me including officers of Protocol and establishment section. They are very cordial, obedient and faithful to me. They worked hard and executed all orders in true spirit. I hope that all the staff members will continue to work hard in the interest of the institution.

I also extend my heartiest thanks to my all personal staff members, Lalu, Verma, Phanse, Rupesh those who have worked with me extensively day and night to produce good result.

Retirement or superannuation is not an unusual event in the life of a Judge. It is known to every Judge that a date is fixed for demitting his office. 'this date was also know to me on the very first date when I took the oath of the office.

Therefore, I was aware that a day will come when I have to demit my office. It is in the system but what is memorable that is the conduct and character of the Judge. Though it is a difficult task to do justice but I tried my level best to be a true judge. I do not know whether I was successful or not, but in the end, on introspection, I feel fully satisfied that I could do something for the institution, for the Bar and for the cause of justice and has left some of my foot prints on the sand of this High Court.

I am always committed to certain principles, I lived with them and worked for them. I was committed to the philosophy that "tears of every poor person should be wiped out through the substantial justice by the courts and judges." These words of Sir James Barrie that - "Those who bring sunshine to the lives of others, can not remain away from it, were always in my mind. I always remained committed to the philosophy of social justice. It always reminds me -

"If the rule of law and rule of life run close together, a jurisprudence where man matter will bourgeon there, the springs of social justice will rise then-only then."

No doubt the Court is a human laboratory. In a democratic society where the constitutional approach is of welfare state, the court has to discharge its functions -for the public welfare with a view to render public service. The Indian judiciary being independent has proved the views of Oliver Goldsmith untrue that -

"Laws grind the poor and rich men rule the laws"

While discharging my duties as Judge, I was aware that in the whole society, there is crises of character, credibility and confidence and my duty was to repose confidence in them. It is my firm conviction that a man's character is his final fate and my character is specially shaped by my Gurus Great Saint Acharya Vidhyanand Ji, Acharya Vidhya Sagar Ji & Upadhyay Gyansagar Ji, who are devotees to Lord Mahaveera.

Few triplets are necessary for the system. Lawyers and Judges have to follow these triplets :-

Three things to respect - Old age, Nation and Law
Three things to admire - Intellect, character and credibility
Three things to cultivate - Sympathy,cheerfulness & contentment
Three things to stick - Promise, punctuality and perfection
Three things to prevent - Idleness, falsehood and teasing
Three things to govern - Tongue, temper and action
Three things to watch - Word, behaviour and character
Three things to love - Honesty, purity and truth

Friends - Great is the art of beginning but greater the art is of ending.

I am a student of law since very beginning and I hope I will always remain student of law and a student of law never retires.

I believe that prayers to up and blessings come down. I trust your blessings and good wishes will remain with me.

In the last, I would say in the words of Rabindranath Tagore - I am a way farer of an endless road, my greetings of a wanderer of Thee. (इसका ग्रामीण परिपेक्ष्य में मतलब है "हम तो जाते अपने गांव, सबको हमरी राम राम"). Please forgive me for my all past mistakes, which I have committed with you. I wish you all, very happy days in life and say good bye to all of you.

OVATION TO NEW JUDGE

Shri R. N. Singh, Advocate General of M. P. while felicitating the new Judge said :–

I welcome Hon'ble (Smt.) Justice Indrani Datta on her elevation as an Additional Judge of this Court.

After completing the Law Degree, she joined as Civil Judge in the year 1975. She also worked as C.J.M. and thereafter by virtue her merit was promoted to the cadre of Additional District Judge and then as District Judge. Selection Grade was given to her in the year 1997 whereas super time scale was granted in the year 2003. My Lord (Smt.) Justice Indrani Datta has also worked as Presiding Officer Special Court, Special Judge for trial of cases under SC/ST and Prevention of Corruption Act and Presiding Officer Family Court. My Lord was posted as District and Sessions Judge, Vidisha before elevation to this Court.

My Lord the Chief Justice has made all possible endeavour to fill-in the vacancies of this High Court. There are High Courts in the Country wherein the vacancies are more than 50% but in our High Court, virtually there is no vacancy. My Lord the Chief Justice deserves all appreciation for his foresightness. This High Court has been appreciated in the Chief Justices' Conference for disposal of cases and only in last week roughly 4200 cases have been disposed of in one day, I consider this must be the record in the judicial history of this country. This all is possible only when the leader of team is judicious, visionary and hardworking.

I, on behalf of State Govt., Law Officers and on my own behalf welcome My Lord Smt. Justice Indrani Datta on her elevation as an Additional Judge of this Hon'ble Court and wish a successful tenure for her.

On behalf of Senior Advocates Council, new Judge was felicited by its President Shri P. S. Nair, He said :–

I on my behalf and on behalf of other Senior Advocates extend hearty congratulations and warm welcome to Hon'ble Justice Smt. Indrani Datta on your appointment as additional Judge of this High Court.

You have today taken oath of faith and allegiance to Constitution of India.

Constitution is founden head of all laws. The Preamble speaks of JUSTICE, social economic and political. The fundamental principle and fundamental right are basic part of the Constitution and the directive principle is a guiding principle of State Policy. Judges are the upholders of the Constitution.

Litigant public approach the Court when they have genuine grievance. Nobody would like to come to the Court, spend money on lawyers and on their clerks and devote a lot of time by filing cases. A sympathetic and human approach is required when the case are brought before the Judges.

Normal people cannot afford to approach Highest Court of the Country where they have to spent huge amount for traveling and payment of colossal amount to lawyers. In fact the Highest Court has become monopoly of the Corporate Sectors where they can afford to pay lawyers lacs of rupees per appearance for a few minutes. It is beyond the means of ordinary citizen. High Court is the last resort of ordinary people and they have full faith in the judicial system and if this faith is to be sustained effective justice is to be meted out to the litigant public.

The common man looks up towards Judges with expectations and they think that Judges are holding a divine post. Keeping in mind the basic law of the country and Constitution I am sure vour lordship will be kind enough to consider the reasonable aspirations and expectations of the Common man who comes before your Lordship seeking justice and protection of their right to life and against arbitrary, unjust and unfair action.

Most people lost their faith in political and administrative system but have still faith in judiciary and judicial system and it is upto to judiciary to maintain the high standard and give justice to the people of this Country.

Thanking you and congratulate you once again.

On behalf of Central Government Shri Dharmendra Sharma, Asstt. Solicitor General of India, Welcomed the Judge, He said :-

We all have gathered to welcome with open arms Hon'ble Justice Shrimati Indrani Datta

It is a matter of immense pleasure for us that such luminaries with impeccable legal knowledge have joined the great institution

The presence of such personalities make us confident that we will scale higher lavels of performance and efficiency and full fill the rightful aspiration of the common man.

The caliber and dedication of Hon'ble Justice Smt Datta is beyond any shadow of doubt. With such a Star Studded line-up ofHon'ble Judge, it gives an excellent opportunity for all of us to learn from her and emulate the professionalism.

As we are well aware that for the smooth and seamless flow of work, the bench and bar needs to be on the same wavelength

I, sure that with the inclusion of Hon'ble Justice Smt Indrani Datta, the relation between the bench and bar will strengthen further.

This great institution has made giant leaps in the disposition of Justice but we have lot of challenges to over come in the future. I would like to assure all the Hon'ble Judges that she will receive complete co-operation from our end to face any such circumstances.

On behalf of the Central Government and my collegues, I warmly welcome Hon'ble Justice Smt Indrani Datta, in our midst.

I also pray to God to bestow upon them the virtues required to perform the onerous duties.

On behalf of High Court Advocates' Bar Association, new Judge was welcomed by its President, Shri R. P. Agrawal, He said :-

It is my proud privilege to welcome My Lord Smt. Indrani Datta on her elevation as Judge of this August High Court on behalf of the High Court Advocates' Bar Association.

My Lord was born on 16th November, 1949 and her first judicial appointment was as Civil Judge Class-II on 8.9.1975. My Lord has a very long judicial experience of about 33 years and during such period My Lord has worked on different judicial posts.

Many imminent judges adorned the seat of this Court in the past and it is hoped that my Lord would be the next in the chain of such imminent distinguished judges even though the tenure is short.

The lawyers expect patient hearing and gentle behaviour which certainly contributes to the development of the Bar. We at Bar do welcome speedy disposal of cases, but certainly not at the cost of quality because the litigants come to this Court to seek effective justice. The High Court being practically the last Court is practically the last hope of the litigants. Any hasty decision some time is likely to affect the cause of real justice. We therefore, hope that the matters would be heard patiently.

It is rather unfortunate that we the lawyers of Jabalpur, did not have the privilege of appearing before My Lord but we have heard that My Lord has deep knowledge of law and a fine temperament. My Lord is very considerate towards junior lawyers and they in turn feel very comfortable in her Court.

I, on behalf of the High Court Advocates' Bar Association, and also on my own behalf offer fullest co-operation to my Lord in all respects expected from us.

I again on behalf of the High Court Advocates' Bar Association and also on my own behalf wish a very happy and successful tenure to my Lord as Judge of this Court.

Reply to Ovation by Hon'ble Smt. Justice Indrani Datta :–

It is a matter of pride for me for getting myself elevated on the recommendation by My Lord the Chief Justice, Hon'ble Shri A.K. Patnaik and members of the collegium. Taking this assignment and joining this august office, today, is the most glorious moment of my life. First of all I am extremely thankful to almighty God for this. I express my gratitude to My Lord the Chief Justice Hon'ble Shri A.K. Patnaik for considering me worthy enough for this office and for reposing enough confidence in me. I also express my gratitude to Hon"ble Judges of the collegium who thought me fit for this august office. I also express my gratitude to all other Hon'ble Judges of this Court sitting here, who wished for my success. I started my career as Civil Judge, Class-II in 1975 and today taking oath of this high office gives me a great satisfaction. I am conscious and well aware of importance of this office and of the expectations and responsibilities, I need to work and deliver for. These 33 years of my service in State Judiciary at different locations has been great experience and this was smoothly possible by blessings from the almighty God, my parents and my family.

As always, I miss my father Late Shri Ashok Gandhe today. He served for

the Judiciary for more than 31 years and retired as D.J. Claims Tribunal. He was source of inspiration for me and it was he who made me think to opt for law.

My mother, Mrs. Mangala Gandhe, who dreamt for my assignment in this high office, today, I am delighted to make her dream come true. Indeed in this journey my moral support has been my mother who has not only stood by my side in difficult times but also motivated me. I am lucky to have her blessings. I would like to thank god for giving me a very intelligent thoughtful sincere and loving son Abhijit who is my strength and every thing for me. I would also like to thank my thoughtful brother Vikas and always smiling brother Dr. Shashank Gandhe for support and encouragements. I am proud to have such wonderful brothers. My heartfelt thanks to my daughter-in-law Anushka, my Vahini Vaishali and Meenal all my relatives, friends and well wishers of mine, who always supported me.

All my fellow Judges, my staff, members of the Bar of Indore, Bhopal, Vidisha, Dewas, Seoni, Raipur have been wonderful individuals to work with. I am indebted to all of them for their wishes and goodwill and humbly convey thanks for their cooperation extended during my postings at these places.

I am grateful to all the learned speakers for the kind words and warm welcome extended to me and for the generous things they have said about me. I would say that I would remain truly conscious of the oath I have taken today and try best to meet expectations and serve for the Nation.

I took an sincere attempt to mention all names, in case if I missed some one, I hereby say a thanks to them.

Finally, thanks to all who have graced this occasion by their presence.

Jai Hind.

---

(62)

N.K. Mody, J

AMRUTLAL
Vs.
SANDEEP & ors.

Motor Vehicles Act (59 of 1988), Sections 128, 173 - ***Contributory negligence*** - *Two fat ladies travelling on motorcycle as pillion riders - Appellant while driving motorcycle did not possess licence - Appellant and both pillion riders are contributory negligent to the extent of 20% - 20% deduction in compensation on account of contributory negligence held valid - Appeal disposed of.* 2007 ACJ 737, 2008 ACJ 393 (ref.)

मोटर यान अधिनियम (1988 का 59), धाराएँ 128, 173 – योगदायी उपेक्षा – दो मोटी महिलाएँ मोटरसायकिल की पिछली सीट पर बैठकर यात्रा कर रहीं थीं – अपीलार्थी के पास मोटरसायकिल चलाते समय अनुज्ञप्ति नहीं थी – अपीलार्थी और पिछली सीट की दोनों सवारियों की 20% योगदायी उपेक्षा – योगदायी उपेक्षा के कारण प्रतिकर में 20% की कटौती वैध अभिनिर्धारित – अपील निपटाई गई। 2007 ACJ 737] 2008 ACJ 393 (संदर्भित)

S. Patwa, for the appellant.

H.C. Jindal, for the respondent No.3.

***M.A. No.1597/2007 (Indore), D/- 4 April, 2008.**

---

(63)

U.C. Maheshwari, J

DHEER SINGH
Vs.
RAVI KUMAR & ors.

A. **Motor Vehicles Act (59 of 1988), Section 147** - ***Liability of Insurance Company*** - *Offending Vehicle insured for 20 passengers and one driver - Same was plied for carrying 50 passengers which was contrary to terms and conditions of Insurance Policy - Held - Insurance Company cannot be exonerated mere on account of carrying more passengers in vehicle in comparison of its capacity - If vehicle is overloaded and more than 20 passengers got injured, insurer is liable to indemnify the claim of 20 passengers in descending order from higher side to lower side.* 2008(1) MPLJ 1 (rel.)

क. मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कम्पनी का दायित्व – उल्लंघन करने वाला यान 20 यात्रियों और एक चालक के लिए बीमाकृत था – उसमें 50 यात्रियों को ले जाया जा रहा था जो बीमा पॉलिसी के निबंधनों और शर्तों का उल्लंघन था – अभिनिर्धारित – बीमा कम्पनी को सिर्फ इस आधार पर दायित्व मुक्त नहीं किया जा सकता कि यान में उसकी क्षमता से अधिक यात्रियों को ले जाया जा रहा था – यदि यान में क्षमता से अधिक यात्री थे और 20 से अधिक यात्रियों को उपहतियाँ आईं, तो बीमाकर्ता अवरोही क्रम में उच्च पार्श्व से निम्न पार्श्व में 20 यात्रियों को क्षतिपूर्ति करने के लिए दायी है। 2008(1) MPLJ 1 (अवलंबित)

B. Motor Vehicles Act (59 of 1988), Sections 166 & 173 - ***Compensation*** *- Appellant sustaining 11% permanent disability - He was earning 21,600/- p.a. - 11% comes to Rs.2376/- p.a. - Appellant aged 25 years therefore multiplier of 18 would apply - Appellant entitled for Rs.42,768/- along with Rs.10,000/- for treatment and Rs.5000/- for his loss of income during course of treatment, special diet, attendant expenses etc. - Appeal allowed.*

ख. मोटर यान अधिनियम (1988 का 59), धाराएँ 166 व 173 – प्रतिकर – अपीलार्थी को 11% स्थायी निःशक्तता हुई – वह 21,000/– रुपये वार्षिक कमाता था – उसका 11% 2,376/– रुपये वार्षिक होता है – अपीलार्थी की आयु 25 वर्ष इसलिए 18 का गुणक लागू – अपीलार्थी 42,768/– रुपये के साथ इलाज के लिए 10,000/– रुपये और इलाज के दौरान हुई आय की नुकसानी, विशेष भोजन और सेवक व्यय इत्यादि के लिए 5000/– रुपये पाने अधिकारी – अपील मंजूर।

Sanjay Saini, for the appellant.

None, for the respondent No.1 to 3.

Rakesh Jain & Jitendra Singh, for the respondent No.2.

***M.A. No.1656/2000 (Jabalpur), D/- 3 April, 2008.**

---

(64)

R.C. Mishra, J

GOVIND SINGH PARMAR
Vs.
JAI PRAKASH MISHRA

A. Negotiable Instruments Act (26 of 1881), Section 138, Proviso (b) (as existed prior to the amendment brought into w.e.f. 06.02.2003) - *Demand notice within 15 days of the receipt of information from the Bank - Bank means drawee bank and not collecting bank - Delay on the part of collecting bank in forwarding the intimation given by drawee bank not sufficient to extend the statutory period of limitation.* (2001) 3 SCC 609 (rel.)

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, परन्तुक (बी) (तारीख 06.02.2003 को प्रभावशील हुए संशोधन के पूर्व की स्थिति) – मांग का सूचनापत्र बैंक से सूचना प्राप्त होने के 15 दिन के भीतर – बैंक का अर्थ अदाता बैंक न कि संग्रहकर्ता बैंक – अदाता बैंक द्वारा दी गई सूचना संग्रहकर्ता बैंक द्वारा अग्रेषित करने में किया गया विलम्ब परिसीमा की वैधानिक कालावधि को बढ़ाने के लिए पर्याप्त नहीं। (2001) 3 SCC 609 (अवलंबित)

B. Penal Code (45 of 1860), Section 420, Negotiable Instruments Act, 1881, Section 138 - ***Cheating*** *- Even after introduction of S. 138 of the Act, prosecution u/s 420 of I.P.C. for dishonour of cheque is maintainable - Mere fact that cheque was dishonoured by itself would not mean that accused has cheated the complainant - But when the allegations show that the accused had a dishonest intention not to pay even at the time of issuance of cheque in question.* 2002 DCR 499, (2007) 7 SCC 373, (2006) 9 SCC 601 (rel.)

ख. दण्ड संहिता (1860 का 45), धारा 420, परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – छल – अधिनियम की धारा 138 की पुरःस्थापना के बाद भी चैक के अनादृत होने के लिए भा.द.सं. की धारा 420 के अधीन अभियोजन पोषणीय – केवल यह तथ्य कि चैक अनादृत हो गया उसका स्वमेव ग्रह अर्थ नहीं होगा कि अभियुक्त ने परिवादी के साथ छल किया – किन्तु जब अभिकथनों से यह दर्शित होता हो कि अभियुक्त का प्रश्नास्पद चैक को जारी करते समय ही भुगतान न करने का बेईमानीपूर्ण आशय था। 2002 DCR 499, (2007) 7 SCC 373, (2006) 9 SCC 601 (अवलंबित)

Sharad Verma, for the applicant.
Girish Shrivastava, for the non-applicant.

***M.Cr.C. No. 5473/2006 (Jabalpur), D/- 12 March, 2008.**

---

(65)

B.M. Gupta, J.

HEMANT SHARMA
Vs.
KISHORILAL VANSHKAR

Negotiable Instruments Act (26 of 1881), Section 138 - *Complaint filed before the expiry of 15 days of notice period - Application filed by the applicant for quashment of the complaint for it being premature - Trial court rejected the application on the ground that once he has taken cognizance u/s. 204 of Cr.P.C., he is not empowered to review his own order - Held - The complaint cannot be dismissed as premature as it is filed prior to the expiry of notice period of 15 days - The magistrate is required to wait for expiry of the period of notice for taking cognizance - Petition disposed of.* (2000) 7 SCC 183, 2008 (I) MPWN 35 (ref.)

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – सूचनापत्र की 15 दिवस की कालावधि की समाप्ति के पूर्व ही परिवाद पेश – समयपूर्व होने से आवेदक द्वारा परिवाद अभिखण्डित करने के लिए आवेदन पेश – विचारण न्यायालय ने आवेदन इस आधार पर निरस्त कर दिया कि वह एक बार द.प्र.सं. की धारा 204 के अधीन संज्ञान ले चुका है तो वह स्वयं के आदेश का पुनर्विलोकन करने के लिए सशक्त नहीं है – अभिनिर्धारित – परिवाद समय पूर्व होने से खारिज नहीं किया जा सकता चूंकि वह सूचनापत्र की 15 दिवस की कालावधि की समाप्ति के पूर्व पेश किया गया – मजिस्ट्रेट से अपेक्षित है कि संज्ञान लेने के लिए सूचनापत्र की कालावधि की समाप्ति की प्रतीक्षा करे – याचिका निपटाई गई। (2000) 7 SCC 183, 2008(I) MPWN 35 (संदर्भित)

T.C. Narwariya, for the applicant.
None, for the non-applicant.

***M.Cr.C. No.4563/06 (Gwalior), D/- 20 June, 2008.**

---

(66)

S.K. Seth, J

INDIAN OIL CORPORATION LIMITED & ors.
Vs.
RAMESH & ors.

Civil Procedure Code (5 of 1908), Order 1 Rule 8 & Order 23 Rule 3 - *Compromise in representative suit - Suit for injunction filed in representative capacity - During pendency, suit compromised by some plaintiffs - Compromise signed by counsel and not by all plaintiffs - Trial Court rejected application to record compromise - Held - Compromise signed by counsel was valid as nobody raised objection even after publication of notice in newspaper - Trial Court has exercised jurisdiction vested in it improperly and acted illegally or with material irregularity - Order set-aside - Revision allowed.* AIR 1947 Nag 17, AIR 1975 SC 2202, AIR 2006 SC 2628, (1992) 1 SCC 31 (ref.)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 8 व आदेश 23 नियम 3 – प्रतिनिधि वाद में समझौता – प्रतिनिधि की हैसियत में व्यादेश के लिए वाद पेश – लम्बित रहने के दौरान कुछ वादियों द्वारा वाद में समझौता किया गया – समझौता अधिवक्ता द्वारा हस्ताक्षरित न कि सभी वादियों द्वारा – विचारण न्यायालय ने समझौता अभिलिखित करने का आवेदन खारिज किया – अभिनिर्धारित – अधिवक्ता द्वारा हस्ताक्षरित समझौता वैध था क्योंकि समाचार पत्र में प्रकाशन के उपरांत भी किसी व्यक्ति ने आपत्ति नहीं की – विचारण न्यायालय ने उसमें निहित क्षेत्राधिकार का अनुचित रूप से प्रयोग किया और अवैधानिकता की या सारवान् अनियमितता की – आदेश अपास्त – पुनरीक्षण मंजूर। AIR 1947 Nag 17, AIR 1975 SC 2202, AIR 2006 SC 2628, (1992) 1 SCC 31 (संदर्भित)

B.L. Pavecha with *Yogesh Mittal,* for the applicants.
Sandeep Kochatta, for the non-applicants No.1, 2, 4 to 8 & 14.
S.D. Bohra, G.A., for the non-applicant No.16.
None, for the other non-applicants though served.

***C.R. No.277/2007 (Indore), D/- 4 February, 2008.**

---

(67)

R.C. Mishra, J

MRIDULA KALPIWAR (SMT.)
Vs.
MRIDIAL PATHAK

A. Negotiable Instruments Act (26 of 1881), Section 138, Criminal Procedure Code, 1973, Section 482 - *First cheque of Rs. 2 lacs and second cheque of Rs. 3 lacs dishonoured on different dates - Demand notices served - No payment against cheques were made within stipulated period of 15 days of receipt of demand notice - It is alleged that total amount of Rs. 5 lacs was deposited in the Bank by petitioner - Petition filed u/s 482 of Code for quashing the prosecution - Held - No amount was outstanding against cheque is a question of fact which is to be determined in face of evidence to be*

adduced by parties - Cannot be considered in proceedings u/s 482 of Code - Petition dismissed. 2000 (1) MPWN 154 (ref.)

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138, दण्ड प्रक्रिया संहिता, 1973, धारा 482 – प्रथम चैक 2 लाख रुपये का और द्वितीय चैक 3 लाख रुपये का विभिन्न तारीखों में अनादृत – माँग के सूचनापत्र की तामीली करवाई – माँग का सूचनापत्र प्राप्त होने के 15 दिन की नियत अवधि के भीतर चैक का भुगतान नहीं किया – यह अभिकथित किया कि कुल राशि 5 लाख रुपये याची ने बैंक में जमा करा दी – अभियोजन को विखण्डित करने के लिए संहिता की धारा 482 के अन्तर्गत याचिका पेश – अभिनिर्धारित – चैक की कोई राशि देना बकाया नहीं थी यह तथ्य का प्रश्न है जिसका विनिश्चिय पक्षकारों द्वारा पेश साक्ष्य से ही किया जा सकता है – संहिता की धारा 482 की कार्यवाही में विचार नहीं किया जा सकता – याचिका खारिज। 2000 (1) MPWN 154 (संदर्भित).

B. Negotiable Instruments Act (26 of 1881), Section 138 - *For quashing a complaint u/s 138 of Act, under the inherent powers, High Court is not concerned with the defence of the accused.* (2005) 13 SCC 705 (ref.)

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – अधिनियम की धारा 138 के अन्तर्गत पेश परिवाद के विखण्डन के लिए, उच्च न्यायालय अंतर्निहित शक्तियों के अन्तर्गत अभियुक्त की प्रतिरक्षा पर विचार नहीं कर सकता। (2005) 13 SCC 705 (संदर्भित).

R.K. Nanhoriya, for the applicant.
Sanjay Patel, for the non-applicant.

***M.Cr.C. No. 49/2007 (Jabalpur), D/- 13 March, 2008.**

---

(68)

R.S. Garg, J

SHAKIR @ GOVINDA
Vs.
STATE OF M.P.

Arms Act (54 of 1959), Sections 4, 25(1-B)(b) - ***Licence for acquisition and possession of arms - Applicant found in possession of knife - No notification issued u/s. 4 prohibiting acquisition, possession or carrying of arms of such class or description in the specified area brought on record - Applicant cannot be convicted - Revision allowed.***

आयुध अधिनियम (1959 का 54), धाराएँ 4, 25(1–बी)(बी) – आयुध के अर्जन और कब्जे में रखने के लिए लायसेंस – आवेदक के कब्जे में चाकू पाया गया – धारा 4 के अन्तर्गत जारी अधिसूचना जिसमें विनिर्दिष्ट क्षेत्र में विनिर्दिष्ट किस्म के आयुध का अर्जन, कब्जे में रखना या ले जाना प्रतिबंधित किया उसे अभिलेख पर नहीं लाया गया – आवेदक को दोषसिद्ध नहीं किया जा सकता – पुनरीक्षण स्वीकार।

A.S. Rathore, for the applicant.
G.S. Chouhan, G.A., for the non-applicant.

*Cr.R. No.148/2004 (Indore), D/- 3 April, 2008.

---

(69)

Smt. Sushma Shrivastava, J

SHANKER
Vs.
STATE OF M.P.

A. Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - Testimony of Food Inspector - Corroboration of main witness by independent witness is a rule of prudence - Not requirement of law - Testimony of Food Inspector cannot be rejected for want of corroboration.* AIR 2004 SC 1236 (ref.)

क. साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का मूल्यांकन – खाद्य निरीक्षक का परिसाक्ष्य – मुख्य साक्षी की स्वतंत्र साक्षी द्वारा सम्पुष्टि विवेकशीलता का नियम है – कानून की अपेक्षा नहीं – खाद्य निरीक्षक का परिसाक्ष्य सम्पुष्टि के अभाव में अस्वीकार नहीं किया जा सकता है। AIR 2004 SC 1236 (संदर्भित)

B. Prevention of Food Adulteration Act (37 of 1954), Section 13(2), General Clauses Act, 1897, Section 27, Evidence Act, 1872, Section 114 - *Presumption - Notice u/s 13(2) of Act 1954 sent by registered post at correct address - Merely because AD receipt was not received back will not be sufficient to rebut or dislodge the presumption of service of notice.*

ख. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(2), साधारण खंड अधिनियम, 1897, धारा 27, साक्ष्य अधिनियम, 1872, धारा 114 – उपधारणा – अधिनियम 1954 की धारा 13(2) के अधीन सूचनापत्र रजिस्टर्ड डाक द्वारा सही पते पर भेजा गया – केवल इसलिए कि पावती रसीद वापस प्राप्त नहीं हुई, सूचनापत्र की तामीली की उपधारणा का खण्डन या विस्थापन करने के लिए पर्याप्त नहीं होगा।

C. Prevention of Food Adulteration Act (37 of 1954), Section 7(1) / 16(1)(a)(i) - *In view of mandatory provisions of Section 16(1) of Act, no sentence lesser than the minimum prescribed by the statute could be awarded for the offence u/s 16(1)(a)(i) of the Act.* (2004) 13 SCC 78 (ref.)

ग. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(1) / 16(1)(ए)(i) – अधिनियम की धारा 16(1) के आज्ञापक उपबंधों को विचार में लेते हुए अधिनियम की धारा 16(1)(ए)(i) के अपराध के लिए कानून द्वारा विहित न्यूनतम दण्डादेश से कम से दण्डित नहीं किया जा सकता। (2004) 13 SCC 78 (संदर्भित)

Kapil Patwardhan, for the applicant.

R.N. Yadav, P.L., for the non-applicant/State.

***Cr.R. No.822/1998 (Jabalpur), D/- 13 March, 2008.**

---

(70)

A.P. Shrivastava, J

V.C. RAAM SUKAESH & ors.
Vs.
STATE OF M.P. & ors.

A. Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Sections 406, 409, 420, 424 - *Quashing of FIR* - *Applicants, a manufacturer of Indian made foreign liquor appointed N.A.-3 as marketing consultant - Police registered offence against applicants u/ss 406, 409, 420 & 424 of IPC on the basis of complaint made by N.A.-3 - Applicants challenged the said FIR on the ground that FIR lodged to escape from the consequences of criminal case u/s 138 of Negotiable Instruments Act by applicants - Held - It is not appropriate to interfere in the investigation of the police, as investigation is in progress - Petition dismissed.* (2005) 10 SCC 228, 2007 (2) CCSC 1014 (SC), 2006 Cr.L.R. (SC) 63, AIR 1975 SC 495, AIR 1977 SC 2229, 2001 Cr.L.J. 3737, AIR 1945 PC 18, 1963 (2) SCR 52, (1972) 1 SCC 452, (1973) 3 SCC 753 (ref.)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धाराएँ 406, 409, 420, 424 – एफआईआर का अभिखंडन – आवेदकगण, देश में निर्मित विदेशी मदिरा के उत्पादक, ने अनावेदक क्रमांक 3 को विपणन सलाहकार के रूप में नियुक्त किया – पुलिस ने अनावेदक क्रमांक 3 द्वारा की गई शिकायत के आधार पर आवेदकों के विरुद्ध भा.द.सं. की धाराएँ 406, 409, 420 व 424 के अधीन अपराध दर्ज किया – आवेदकों ने उक्त एफआईआर को इस आधार पर चुनौती दी कि धारा 138 परक्राम्य लिखत अधिनियम के अधीन आवेदकों द्वारा प्रस्तुत दाण्डिक मामले के परिणामों से बचने के लिए एफआईआर दाखिल की गई – अभिनिर्धारित – पुलिस के अनुसंधान में हस्तक्षेप करना यथोचित नहीं क्योंकि अनुसंधान प्रगति पर है – याचिका खारिज। (2005) 10 SCC 228, 2007 (2) CCSC 1014 (SC), 2006 Cr.L.R. (SC) 63, AIR 1975 SC 495, AIR 1977 SC 2229, 2001 Cr.L.J. 3737, AIR 1945 PC 18, 1963 (2) SCR 52, (1972) 1 SCC 452, (1973) 3 SCC 753 (संदर्भित)

B. Civil Wrong & Criminal Offence - *Distinguished* - *Criminal proceedings cannot be quashed merely on the ground that civil remedy is available - In the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court.* AIR 2000 SC 1869 (ref.)

ख. सिविल दोष व दाण्डिक अपराध – सुभिन्न – दाण्डिक कार्यवाहियाँ केवल इस आधार पर अभिखंडित नहीं की जा सकतीं हैं कि सिविल उपचार उपलब्ध है – उच्च न्यायालय की अन्तर्निहित शक्तियों के प्रयोग के मामले में केवल यह देखना अपेक्षित है कि क्या कार्यवाही को जारी रखना न्यायालय की प्रक्रिया का पूरी तरह दुरुपयोग होगा। AIR 2000 SC 1869 (संदर्भित)

Ankur Modi with *Vijay Sundaram,* for the applicants.
S.D. Mahore, P.P., for the non-applicants No.1 & 2-State.
Y.S. Tomar, for the non-applicant No.3.

***M.Cr.C. No.1541/2005 (Gwalior), D/- 25 July, 2008.**

I.L.R. [2008] M. P., 1863

SUPREME COURT OF INDIA

Before Mr. Justice Dr. Arijit Pasayat & Mr. Justice P. Sathasivam

7 April, 2008*

RAMESHWAR PRASAD (D) BY L.RS. ... Appellants

Vs.

BASANTI LAL ... Respondent

A. Specific Relief Act (47 of 1963), Section 16(c) read with Explanation (ii) - *Any person seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief - If pleadings manifest that the conduct of plaintiff entitles him to get the relief on perusal of plaint, he should not be denied the relief.* (Para 8)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) सहपठित स्पष्टीकरण **(ii)** – कोई व्यक्ति संविदा के विनिर्दिष्ट पालन का लाभ लेना चाहता हो तो यह अवश्य प्रकट करना चाहिए कि उसका आचरण सर्वत्र कलंक रहित रहा है जो उसे विनिर्दिष्ट अनुतोष का हकदार बनाता है – वादपत्र का परिशीलन करने पर अभिवचन से प्रकट होता है कि वादी का आचरण उसे अनुतोष पाने का हकदार बनाता है तो उसे अनुतोष देने से इंकार नहीं करना चाहिए।

B. Specific Relief Act (47 of 1963), Section 16(c) - ***Readiness & Willingness*** - *Mandates plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready & willing to perform his part of contract - One of the terms in the agreement related to payment of interest - Therefore, the conclusion of the High Court that there is no specific plea regarding readiness to pay interest, is contrary to the factual scenario, in view of the categorical averment made in the plaint.* (Paras 7 & 9)

ख. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – तत्परता और रजामंदी – वादी पर प्रादेश है कि वादपत्र में प्रकथन करे और स्वतंत्र साक्ष्य से तथ्य के समान स्थापित करे कि वह संविदा के अपने भाग का पालन करने के लिये सदैव तैयार व रजामंद रहा है – अनुबन्ध में एक निबंध ब्याज के भुगतान से सम्बंधित – इसलिये उच्च न्यायालय का निष्कर्ष कि ब्याज भुगतान करने की रजामंदी के बारे में कोई विनिर्दिष्ट अभिवचन नहीं है, वादपत्र में किये गये सुस्पष्ट प्रकथन को देखते हुए तथ्यात्मक दृश्यलेख के विपरीत है।

Cases referred :

AIR 1994 SC 105, (2006) 11 SCC 587.

JUDGMENT

The Judgment of the Court was delivered by DR. ARIJIT PASAYAT, J. :–Challenge in this appeal is to the judgment of the Madhya Pradesh High Court, Indore Bench dismissing LPA No.16 of 1993 filed by the appellant Rameshwar Prasad. In this appeal the legal representatives of Rameshwar Prasad have been impleaded after his death. By the impugned judgment by which two LPAs.

*C.A. No. 644/2002

i.e. LPA Nos.16 and 19 of 1993 were disposed of. LPA No.16 of 1993 was filed by Rameshwar Prasad whereas other LPA was filed by the present respondent Basanti Lal. Rameshwar Prasad had filed a suit for the relief of specific performance of contract. The trial court granted the relief of specific performance of the contract. First appeal No.45 of 1976 was filed by Basanti Lal, the respondent. The appeal was allowed and the judgment and decree of the trial court was set aside on the following terms:

a) That the appellant shall refund the sum of Rs.3000/- as agreed in Ex. P/3 to the respondent by payment or deposit in trial court within a period of one month from today.

b) That the respondent on payment or deposit of this amount, shall put the appellant in vacant possession of the property covered by Ex. P/3 within a period of 15 days thereafter on analogy of Section 65 of the Contract Act.

c) The appellant shall be liable to pay interest at the rate of 1% per month on this amount in case payment or deposit is made beyond the period of one month from the date of default till compliance.

d) The respondent shall be liable to pay mesne profits, determinable by the trial court in terms of Order 20 Rule 12 of the Code and ordered in the shape of final decree in that behalf in pursuance of this direction on failure to deliver possession within 15 days as directed above from the date of default till delivery of possession. No claim of standing crops shall be admissible in view of enjoyment of usufruct for such a long duration and that possession shall be delivered along with the standing crops, if in existence.

e) Parties are left to bear their own costs of this appeal as incurred. Counsel fee on each side shall, on certification, be Rs.1500/-.

2. Both Rameshwar Prasad and Basanti Lal preferred appeals before the Division Bench. By the impugned judgment so far as the appeal filed by Rameshwar Prasad is concerned the High Court held that the plaintiff had neither pleaded nor proved that he was ever ready and willing to pay interest, having failed to prove the purported waiver of interest, as claimed, the Division Bench held that the plaintiff has not established basic ingredients for decree of specific performance of contract. On that ground alone the appeal was dismissed and other points raised were not considered.

3. Learned counsel for the appellants submitted that the High Court categorically noted that in paragraph 13 of the plaint as was shown in the notice sent to the defendant, it was categorically stated that he was compelled to comply with all terms and conditions of agreement. The High Court wrongly construed the statement and came to the conclusion that the said statement cannot be construed to mean that plaintiff was ready to pay the amount of interest, particularly in view of the stand of the defendant. It was pointed out that in the paragraph 13 it has been stated that the plaintiff was always ready and willing and even ready and willing today for performance of his part of the contract.

4. It is submitted that the question of interest of delay was never raised before the trial court.

5. Learned counsel for the respondent submitted that there was dispute as regards the claim of payment of Rs.4,500/- and if there was delay interest was payable. Plaintiff raised an absolutely frivolous plea that payment was being made on behalf of the defendant.

6. The agreement dated 13.9.1963 contains the following clause which is of significance:

> "Till the payment of instalment, interest at the rate of Rs.0.75 paise percent shall be payable on Rs.5,000/- Interest shall be payable w.e.f. 13.9.1963."

Following averment in the plaint needs to be quoted:

> "That the plaintiff was always ready and willing to execute the sale deed and fulfill his part of the contract and is even so today. The plaintiff had even informed through his counsel Sh. U.N. Bhachawat, to the defendant in reply to his notice dated 7.10.1968 that he was ready and willing to pay balance amount of sale consideration of Rs.500 and to comply the terms of the sale agreement which were applicable on the plaintiff and the plaintiff was so ready even before. The defendant should execute the sale deed and should get Rs.500/- from the plaintiff and get the same registered."

7. There is a specific statement that the plaintiff was willing to comply with the terms of the sale agreement which were applicable and was so ready even before. One of the terms in the agreement related to payment of interest. Therefore the conclusion of the High Court that there is no specific plea regarding readiness to pay interest is contrary to the factual scenario, in view of the categorical averment made in the plaint.

8. The provisions of Section 16(c) of the Specific Relief Act, 1963 (in short the 'Act') are as follows:

> "Section 16 - Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person--
>
> (a).....
>
> (b).....
>
> (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant."

The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision

imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

9. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in *Surya Narain Upadhyaya v. Ram Roop Pandey and Ors.* (AIR 1994 SC 105) that the plaintiff had substantiated his plea.

10. These aspects were also highlighted in *Sugani v. Rameshwar Das & Anr.* (2006 (11) SCC 587).

11. The High Court's conclusions are clearly contrary to the materials on record. The High Court was wrong in holding that that there was no indication about the readiness and willingness to pay interest. Since the High Court has not decided the other issues, we set aside the impugned judgment and remit the matter to it for considering the matter afresh in accordance with law. The impugned conclusions stand nullified by this judgment.

12. As the matter is pending since long, let the High Court decide the matter as early as practicable preferably by the end of August, 2008.

13. The appeal is disposed of accordingly with no orders as to costs.

Appeal disposed of.

I.L.R. [2008] M. P., 1866

WRIT APPEAL

Before Mr. Justice Arun Mishra & Mr. Justice Prakash Shrivastava

24 January, 2008*

HITKARINI LAW COLLEGE ... Appellant

Vs.

ASHISH KUMAR PATHAK & anr. ... Respondents

Constitution, Article 226 - *Admission - Resp. No.1 was given provisional admission in College subject to approval by University - University cancelled his admission as he failed in Pre-Law Test - Learned Single Judge held that resp. No.1 was wrongly admitted by College, therefore, petition disposed of with compensation of Rs.20,000/- - Order challenged in Writ Appeal - Held - Resp. No.1 knew very well that his admission was provisional - He was not kept in dark by College - He had chosen to obtain study at his peril - Moreover, he was allowed to appear in examination of LL.B. Ist year under interim order of High Court - In that examination he adopted unfair means and was debarred for three years from obtaining education - Thus, no loss was caused to him by the act of College - Order set-aside - Appeal allowed.* (Para 9)

*W.A. No.363/2006 (Jabalpur)

संविधान, अनुच्छेद 226 – प्रवेश – प्रत्यर्थी क्रमांक 1 को महाविद्यालय में अनंतिम प्रवेश विश्वविद्यालय के अनुमोदन के अध्यधीन दिया – विश्वविद्यालय ने उसका प्रवेश निरस्त कर दिया क्योंकि वह प्री–लॉ टेस्ट में असफल हो गया था – विद्वान एकल न्यायाधीश ने अभिनिर्धारित किया कि प्रत्यर्थी क्रमांक 1 को गलत रूप में महाविद्यालय द्वारा प्रवेश दिया गया था, इसलिए याचिका 20,000/– रुपये प्रतिकर के साथ निपटाई गई – आदेश को रिट अपील में चुनौती दी – अभिनिर्धारित – प्रत्यर्थी क्रमांक 1 अच्छी तरह जानता था कि उसका प्रवेश अनंतिम था – उसे महाविद्यालय द्वारा अंधेरे में नहीं रखा गया – उसने स्वयं के जोखिम पर विद्याध्ययन करना पसंद किया – इसके अतिरिक्त उसे उच्च न्यायालय के अंतरिम आदेश के अधीन एलएल.बी. प्रथम वर्ष की परीक्षा में प्रवेश की अनुमति दी गई – उस परीक्षा में उसने अनुचित साधनों को अपनाया और उसे तीन वर्ष के लिए शिक्षा प्राप्त करने से बहिष्कृत किया गया – इस प्रकार उसे महाविद्यालय के कृत्य से कोई भी हानि कारित नहीं हुई – आदेश अपास्त – अपील मंजूर।

Sheel Nagu, for the appellant.
D.K. Dixit with *Anshul Dixit*, for the respondent No. 1
Amrit Rupraha, for the respondent No.2.

ORDER

The Order of the Court was delivered by ARUN MISHRA, J. :–This writ appeal has been preferred by the Hitkarini Law College aggrieved by the decision of the Single Bench in as much as awarding the compensation of Rs.20,000/- to the respondent no.1 as he was given admission illegally in first year of three years' law course.

2. It is not in dispute that respondent no.1 Ashish Pathak appeared in the entrance examination and obtained 37.4% marks whereas minimum passing marks in the Pre Law Test was 40%. It is also not in dispute that the respondent no.1 was not entitled for admission as per his performance in Pre Law Test. That part of order of Single Bench has attained finality.

3. The respondent no.1 preferred petition praying for the relief to quash the order, annexure P/7, by which his examination form was cancelled by the University on the ground that he failed to enclose the certificate of passing Pre Law Test. An interim order was passed during the pendency of the writ petition pursuant to which respondent no.1 appeared in the examination of Law First year in which he was found guilty of using unfair means and was debarred for three years, is also not in dispute. The learned Single Judge held that respondent no.1 could not have been admitted. He was wrongly admitted by the College. University was directed to consider the case of the petitioner whether it was possible to grant relaxation. Following is the operative portion of the order passed in W.P.No.1761/05 on 3.7.05 :

> "18. In view of the aforesaid analysis, I am inclined to dispose of the writ petition with the following directions which are as under in seriatim :
>
> (a) The respondent no.1 University shall consider the case of the petitioner to continue his study by relaxing the rules, if possible, as he has already completed one year.

(b) Such a direction is given keeping in view the special features of the case.

(c) If any relaxation is granted to the petitioner and if he is allowed to prosecute his study he shall be shifted to some other College which would be bound by the directions of the University.

(d) The respondent no.2 shall pay a compensation of Rs.20,000/- to the petitioner in as much as it was obligatory and imperative on the part of the respondent no.2 institution to apprise the petitioner about his position and not to admit him.

(e) The aforesaid amount shall be paid within a period of three months from the date of receipt of the order passed today.

4. Aggrieved by the order awarding compensation contained in para 18(d) the writ appeal has been preferred by the College after rejection of the review application by the learned Single Judge.

5. Shri Sheel Nagu, learned counsel appearing on behalf of the College has submitted that the respondent no.1 appeared in the Pre Law Test and he failed to obtain even the passing marks. Thus, he knew it very well that he could not have been admitted in the College still he obtained the admission. He was given provisional admission by the College subject to the approval by the University. Thus, the respondent no.1 knew it very well that his admission was subject to approval of the University still he decided to pursue the studies at his own risk, appeared in the examination under interim order, was found using unfair means in the exam consequently he was debarred to obtain education for three years. Thus, no loss was caused to the petitioner by the act of the College in giving him provisional admission. He has been debarred due to his own misdeed of using unfair for three years. Thus, liability to pay compensation to respondent no.1 could not have been saddled upon the Institution.

6. Ms. Amrit Rupraha, has submitted that as the respondent no.1 has failed to obtain even the minimum passing marks in the Pre Law Test he could not have been admitted. He even did not enclose the mark-sheet of Pre Law Test as obviously he failed in the examination consequently his form was rightly rejected by the University.

7. Shri D.K.Dixit, learned counsel appearing on behalf of the respondent no.1 submitted that as the respondent no.1 had obtained 57% marks in the graduation he was given admission in the College knowing the facts fully well. Thus, compensation has rightly been awarded by the learned Single Judge, no case for interference in the writ appeal is made out.

8. Entitlement of the petitioner for compensation has to be judged in the backdrop of the fact that once he has appeared in the Pre law Test it was incumbent upon him to have obtained 40% of the marks which were minimum passing marks for

the purpose of admission in the law course. Marks obtained in graduation were of no avail. The petitioner knew it very well that he has failed to clear the Pre Law Test. His name was not in the merit list still he obtained the "provisional admission" in the institution subject to the approval of the University. Thus, the respondent no.1 knew this fact very well that he was basically not entitled to pursue the course. He was not kept in dark by the Hitkarini Law College in any manner. The respondent no.1 had chosen to obtain study at his peril in view of "provisional admission".

9. In the circumstances when the respondent no.1 knew the facts very well and his admission was clearly provisional. It passes comprehension that how he could have claimed any compensation against the College. Moreover, he appeared in the examination of LL.B. first year under the interim order passed by this court in which he adopted unfair means and was debarred for three years from obtaining education. Thus, no loss was caused by any of the act of the College to the student. He was responsible for the plight in which he had been put himself. Consequently, we set aside the part of the order passed by the Single Judge saddling the liability on Hitkarini Law College to compensate the respondent no.1 by making a payment in the sum of Rs.20,000/-.

10. Resultantly, we allow the appeal, set aside the direction contained in para 18(d) for payment of compensation to the respondent no.1. However, we leave the parties to bear their own costs as incurred of the appeal.

Appeal allowed.

I.L.R. [2008] M. P., 1869

WRIT APPEAL

Before Mr. Justice Abhay Gohil & Mr. Justice Sanjay Yadav

20 February 2008*

STATE OF M.P. & ors. ... Appellants

Vs.

VINOD MOHAN SHRIVASTAVA ... Respondent

Constitution, Article 309 - Conditional appointment order - *An employee who accepts appointment on certain terms and conditions, can not turn around and claim benefit without fulfilling the criteria, then the same has its own binding - Respondent appointed on a specific stipulation that unless he passes Hindi Typing Examination or completed 40 years of age, whichever is earlier will not be entitled for regularization, unless fulfills conditions laid down in appointment order - Decision in Dongar Singh Pawar's case does not lay down correct proposition of law - Appeal allowed.* (Para 6)

संविधान, अनुच्छेद 309 – सशर्त नियुक्ति आदेश – कर्मचारी जो नियुक्ति किन्हीं निबन्धन और शर्तों पर स्वीकार करता है, तो वह अपने पक्ष से पलट नहीं सकता है और मानदंड को पूरा किये बिना

*W.A. No.492/2006 (Gwalior)

लाभ का दावा नहीं कर सकता, उसकी अपनी स्वयं की बाध्यता है – प्रत्यर्थी की नियुक्ति इस विनिर्दिष्ट अनुबद्ध पर कि जब तक वह हिन्दी टाइपिंग की परीक्षा पास न कर लेवे या 40 वर्ष की आयु पूर्ण न कर लेवे, इनमें जो भी पूर्व में हो, नियमितीकरण का हकदार नहीं होगा, जब तक नियुक्ति आदेशों की शर्तों को पूर्ण न कर देवे – डोंगर सिंह पवार के मामले में विधि की सही प्रतिपादना नहीं – अपील मंजूर।

Cases referred :

2005(II) MPWN 116, W.P. No.759/97 decided on 15.07.1998, (2004)13 SCC 706, 2006(3) MPHT 352 (No good law).

Brijesh Sharma, G.A., for the appellants/State.

S.P. Jain, for the respondent.

JUDGMENT

The Judgment of the Court was delivered by **Abhay Gohil, J.** :–This writ appeal is filed by the State, challenging the order dated 31.3.2004 passed by learned Writ Court in W.P. No.5546/03.

2. There is no dispute that the respondent was appointed on compassionate basis. In the appointment letter, there was clear stipulation that he has to pass Hindi Typing Examination and only thereafter, his services will be regularised and after regularisation, he will get the regular increments.

3. The Divisional Bench of this Court in the case of *State of Madhya Pradesh v. Smt. Sushma Surana,* 2005 (II) MPWN 116, has considered the entire controversy including terms and conditions mentioned in the appointment letter and has held that a employee shall be entitled for annual increment after his regularisation on passing Hindi Typing Examination or on completing the age of 40 years. In the case of *Smt. Sushma Surana* (Supra), this Court has considered the decision of the Indore Bench passed in writ petition No. 759/97 decided on 15th of July, 1998 in the case of *Dilnaz Anklesaria and another Vs. State of M.P. and three others.*

4. At this juncture, Shri S.P. Jain learned Counsel for the respondent has drawn our attention to the judgment rendered by a Single Judge of this court in the case of *Dongar Singh Pawar v. State of M.P. & Others.* reported in 2006 (3) MPHT 352 bearing W.P. (S) No.2849/05 and a connected writ petition bearing W.P. (S) No.4148/05 decided on 16.05.06 to bolster his submission that in the similar circumstances, the learned Single Judge while distinguishing the case of *Sushma Surana* (supra) has granted a regular increment after completing one year of service from the initial date of appointment, irrespective the stipulations being there in the appointment letter that the same is permissible only after passing the Hindi typing examination or on completion of 40 years, which ever is early.

5. We gave our thoughtful consideration to the submission made by the learned Counsel for the respondents and have perused the order passed in the case of *Dongar Singh* (supra). The learned Single judge in the case of *Dongar Singh* (supra) while placing reliance on the recruitment rules namely M.P. Irrigation

Department (Non-Gazetted) Service Recruitment Rules, 1969 and the schedule thereunder has allowed the said increment holding that the stipulations for passing Hindi Tying examination since were not provided under the Recruitment Rules, the same cannot be *sine-qua-non* for denying the increment/regularisation to an employee who is appointed to the post. We respectfully dis-agree with the aforesaid reasoning of the learned Single Judge.

6. True it is that the service condition of a person appointed in the government service are governed by the Rules framed under Article 309 of the Constitution of India. But it is equally true that there is no specific bar for providing a specific stipulation in the appointment letter regarding minimum eligibility criteria and if such stipulations are made in the letter of appointment, it would be incumbent on the part of the employee concern to fulfill the said criteria before he acquires eligibility to gain increment and becomes the member of service, in absence of which an employee, who accepts appointment on certain terms and conditions, cannot turn around and claim benefit of increment without fulfilling the said criteria, then the same has its own binding. It is not disputed that the petitioner in the case of *Dongar Singh* (supra) did not fulfill the criteria stipulated in the appointment letter and was not entitled for the increment. Therefore, in our considered opinion, the judgment rendered in the case of *Dongar Singh* (supra) does not lay down the correct proposition of law in respect of a person who is appointed on a specific stipulation that unless he passes the Hindi Typing Examination or have completed 40 years of age, whichever is early, will not be entitled for regularisation.

7. In the case of *State of Rajasthan and others v. Rajendra K. Verma*, (2004) 13 SCC 706, the Apex Court was pleased to hold the entitlement of respondent therein for regularisation of his services from the date when he passed the test as stipulated by the government order. The following facts were noted by the Apex Court in paragraph 2 and 3 of the judgment;

> 2. Having heard the learned counsel for the parties on either side and after perusing the judgment of the learned Single Judge as well as of the Divison Bench of the High Court, we are of the view that the findings of fact recorded by the High Court in the light of the respective contentions raised do not need any interference by us in these matters, except to the extent that the regularisation of services of the respondent, as ordered by the High Court, from the date of his initial appointment and payment of interest at the rate of 10% of arrears of salary need to be modified. As per government order dated 15-3-1978 (Annexure P-5), it appears to us that the respondent was entitled to regularisation from the date he passed the speed test for stenography and typing, which test he passed on 7-11-1978. Para 2 of the said government order reads;
>
> "All Stenographers Grade II appointed on an ad hoc basis prior to 1-1-1976 who are not covered by No.1 above, may be treated as regularly

appointed in service on their passing speed test to be held by an institution to be prescribed at the standards for Hindi and English stenography and typing prescribed for the Higher Secondary Board Education Examination."

3. Having regard to para 2 of the government order extracted above, we think that the respondent is entitled to regularisation only from 7-11-1978 and not from the date of his initial appointment.

8. Thus, we are of the considered opinion that the judgment passed in *Dongar Singh* (supra) does not lay down the correct proposition of law.

9. Therefore, this appeal is disposed of with the direction that the respondent shall be entitled for regularisation and for annual increment either on passing of Hindi Typing Examination or on completing the age of 40 years, therefore, the order of learned Writ Court is modified to that extent.

10. Accordingly, appeal is disposed of with the aforesaid direction.

Appeal disposed of.

I.L.R. [2008] M. P., 1872
WRIT APPEAL

Before Mr. Justice Abhay Gohil & Mr. Justice A.P. Shrivastava
28 March, 2008*

CINE EXHIBITORS PVT. LTD. ... Appellant
Vs.
THE GWALIOR DEVELOPMENT AUTHORITY & ors. ... Respondents

A. **M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (14 of 2006) -** ***Objection regarding arbitration clause - Objection regarding arbitration clause not raised before writ court - But raised first time in Writ Appeal - Held - Objection should be taken immediately at the first instance - Not proper to consider such objection at appeal stage.*** (Para 9)

क. म.प्र. उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, 2005 (2006 का 14) – माध्यस्थम् खण्ड के संबंध में आपत्ति – रिट न्यायालय के समक्ष माध्यस्थम् खण्ड के संबंध में आपत्ति नहीं ली गई – बल्कि रिट अपील में पहली बार उठाई गई – अभिनिर्धारित – आपत्ति प्रथम अवसर पर तुरन्त लेना चाहिए – अपील के प्रक्रम पर ऐसी आपत्ति पर विचार करना उचित नहीं।

B. **Transfer of Property Act (4 of 1882), Sections 10, 111(g) -** ***Right of re-entry - Land was given on lease for construction of cinema hall - Subsequently, cinema licence was cancelled by the Collector - Lease also cancelled on the same ground - Held - Section 10 does not carve out any exception with regard to perpetual or permanent lease - Notice is necessary for termination of lease - No express condition in agreement regarding forfeiture - It would not be open to lessor to invoke the forfeiture clause for determining the perpetual lease - Forfeiture of lease not legal.*** (Para 14)

*W.A. No.234/07 (Gwalior)

ख. सम्पत्ति अंतरण अधिनियम (1882 का 4), धाराएँ 10, 111(जी) – पुनः प्रवेश का अधिकार – भूमि सिनेमा हॉल के निर्माण के लिए पट्टे पर दी गई थी – तत्पश्चात् कलेक्टर द्वारा सिनेमा की अनुज्ञप्ति को रद्द कर दिया – पट्टे को भी इसी आधार पर रद्द कर दिया – अभिनिर्धारित – धारा 10 शाश्वत या स्थायी पट्टे के संबंध में कोई अपवाद परिकल्पित नहीं करती – पट्टे के पर्यवसान के लिए सूचनापत्र आवश्यक है – संविदा में समपहरण के संबंध में कोई अभिव्यक्त शर्त नहीं – पट्टादाता शाश्वत पट्टे के पर्यवसान के लिए समपहरण खण्ड का अवलंब लेने को स्वतंत्र नहीं रहेगा – पट्टे का समपहरण विधिक नहीं।

Cases referred :

2002) 2 SCC 624, (1976) 2 SCC 228.

H.D. Gupta & K.N. Gupta with *S.B. Gupta*, for the appellant.

M.P.S. Raghuvanshi, for the respondent No.1.

Brijesh Sharma, G.A., for the respondent Nos .2 & 3.

JUDGMENT

The Judgment of the Court was delivered by ABHAY GOHIL, J. :–Appellant has filed this Writ Appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, against the order dated 21.2.2007 passed by the learned Single Judge in W.P.No.1718/02, whereby dismissed the Writ Petition with certain observations.

2. Briefly stated, it is the case of the appellant that the appellant is a Company incorporated under the Companies Act 1956. The respondent No.1 Gwalior Development Authority issued an advertisement for auction of plot for construction of Cinema Theater at Plot No.B-2 in the locality known as Mayur Market, Thatipur area. The bid of the company being highest was accepted and on 18.3.1983 a lease agreement was executed between the petitioner company and Gwalior Development Authority. Said lease agreement was for a period of 30 years with further right of renewal. Thereafter, petitioner company constructed Cinema Hall on the plot and started business of exhibiting cinema. It was submitted the Cinema Hall was constructed and started in 1995. On account of some dispute between the Directors of the petitioner company, the Managing Director without any resolution and without any consent of other Directors, sent a letter to the Collector District Gwalior informing him to cancel the cinema licence. Thereafter the Collector without verifying the contents of the letter cancelled the cinema licence. It was submitted that because the Managing Director acted contrary to the interest of the Company, therefore he was removed by passing the resolution in the Board meeting and some other person was appointed as Managing Director and the newly appointed Managing Director filed an application to the Collector on 16.8.2002 for renewing the cinema licence, but no order is passed thereon. In the meantime vide letter dt. 9.8.2002 (Annexure P/1) cinema licence was cancelled by the Collector, Thereafter respondent G.D.A. Vide order dt.9.8.2002 has also cancelled the lease dead dt.18.3.1983 on the same ground, against which the Writ Petition was filed.

3. Before the Writ Court, return was filed by the respondent No.1 GDA and it was submitted that the respondents having right to re-enter on the demised premises in case of breach of any condition of the agreement. Collector vide letter dt.1.3.2002 informed that licence of the appellant for exhibition of cinema was cancelled by the District Magistrate on 22.11.2001 on the application of the appellant himself. Therefore the purpose for which the lease was granted has ended with the cancellation of cinema licence. Therefore, show cause notice to the appellant on 18.3.2002 was issued that why lease deed should not be cancelled. No reply of show cause was filed. Therefore, the order dated 9.8.2002 (Annexure P/1) was issued, which is legal and valid and direction was given to hand over the possession of the leased property. It was further submitted that without obtaining any permission, the appellants have sold part of the land to Ankit Grih Nirman Sahkari Samiti through registered sale deed dated 21.1.1999 and prayed for dismissal of the Writ Petition.

4. Reply was also filed by the respondents No.2 and 3 i.e. the Collector and it was submitted that it was the government land and registered as PWD Nazool Parade in the revenue entries. The Gwalior Sudhar Nyas made a request for transfer of various lands including the land in question, but no transfer has been taken place and the GDA has wrongly granted the lease on 18.3.1983, agreement is void ab initio and the State has supported the order dated 9.8.2002 passed by the GDA on the ground that appellant has violated the terms and conditions of the lease deed.

5. The learned Writ Court held that since the petitioner is not running the cinema at present in the said premises and GDA has simply issued Annexure P/1, in which it is directed to surrender the possession of the property within 7 days, failing which action shall be taken and no action has been taken except terminating his lease, the learned Single Judge was of the view that whenever the appropriate authority shall dispossess the petitioner from the suit premises, he will have an opportunity to raise all the objections and declined to interfere in the extra ordinary jurisdiction under Article 226/227 of the Constitution of India and liberty was granted that the petitioner is free to raise all the points raised in this petition before the appropriate authority before whom an action for dispossession shall be taken and dismissed the petition, against which the appellant has filed this appeal.

6. We have heard Shri H.D.Gupta and Shri K.N.Gupta, learned Senior Advocates for the appellant and Shri M.P.S.Raghuvanshi, learned counsel for the respondent No.1 and Shri.Brijesh Sharma, learned Govt. Advocate for respondents No.2 and 3. Both the parties argued the matter at length and raised various objections and counter objections and supported their stand. There is no dispute between the parties that as per the lease agreement, the period of lease is 30 years with right of renewal. As per Annexure P/1 dated 9.8.2002 the lease has been cancelled on the ground that his cinema licence has been cancelled. It was also argued that no notice of terminating lease as required under the law was

issued to the appellant. It was also mentioned in the letter that the possession be handed over within 7 days to the GDA, failing which action shall be taken in accordance with law. It was further argued that Condition No.5.3 provides regarding the construction of cinema building only in accordance with the building bye-laws and regulations of the lessor as amended from time to time and there is no condition in the lease deed that if the cinema licence shall be cancelled for any reason or if the party will not run the cinema, lease shall be liable to be cancelled. It was further argued that no action can be taken beyond the purview of the terms and conditions of the lease deed. It was also submitted that the application for renewal of lease is also pending. Learned counsel for the appellant placed reliance on the condition No.5.3 of the lease agreement and on decisions in the case of *Raghuram Rao Vs. Eric P.Mathias* [(2002) 2 SCC 624] and submitted that violation can only be considered when there is an "express condition" and "express violation" of the same, otherwise lease can not be cancelled.

7. Shri M.P.S.Raghuvanshi, learned counsel for the respondent No.1 argued and submitted that the action taken by the respondents regarding cancellation of lease deed is in accordance with the provisions of the lease agreement. If the property is not being used for the purpose for which it is allotted, the lease can be cancelled and possession can be taken, but he could not satisfactorily replied on the question that whether for taking possession he will get the matter adjudicated before the court of law and will be able to get possession after obtaining decree from the court or under law he is having any power directly to take possession over the property. He was unable to show any provisions of law under which the GDA was entitled to take possession over the property. He argued on the arbitration clause in the agreement and submitted that in view of the arbitration clause, the Writ Petition is not maintainable and matter should be referred to the Arbitrator.

8. Learned Govt. Advocate also argued on the same lines and supported the arguments of the counsel for the GDA.

9. Having heard the learned counsel for the parties firstly we have considered the objection relating to the arbitration clasue in the agreement. In reply it was submitted on behalf of the appellant that no such objection about the existence of the arbitration clause was taken in the return filed by the GDA before Writ Court or by the State nor any such objection was raised in the arguments before learned Single Judge, therefore there is no occasion for taking such an objection at a late stage or at the appellate stage. It is true that GDA has not taken any such objection in the return nor before the learned Single Judge. Therefore, learned Single Judge had also no occasion to consider the aforesaid question. It is the clear position under the lat that the objection about the existence of arbitration clause should be taken immediately at the first instance, but admittedly in this case, the respondents have not taken any such objection before the Writ Court, but the same has been raised first time in this Writ Appeal. Therefore, it would not be proper to consider this objection at this stage More so, if the dispute arose between the parties and

the dispute is covered by the condition of agreement for referring the matter to the arbitrator instead of passing the order of cancellation of lease and direction for handing over the possession, the GDA ought to have referred the dispute to the Arbitrator for its adjudication in accordance with law, but GDA itself has not taken any such decision. Therefore, now the GDA can not be allowed to raise the same at this belated stage.

10. So far as the question about directly exercising right of re-entry is concerned, it is true that under the Transfer of Property Act, notice of termination of lease is necessary and only thereafter the suit can be filed for possession and possession can be obtained on the basis of the decree of the court and not directly taking the law in hand. It is also true that question of breach of lease deed and violation of terms and conditions is also required to be adjudicated before the competent court and the learned Single Judge has also dealt with the matter on the same line and therefore the learned Single Judge was also of the view that whenever the appropriate authority shall dispossess the petitioner from the suit premises, he will have an opportunity to raise all the objections and on this ground declined to interfere at this stage in the writ jurisdiction.

11. Whether the land has been transferred by the State to the GDA or not is the inter-se dispute between the Government and the GDA. When GDA has granted lease through auction within the knowledge of the State, therefore State is estopped from raising any such ground that land has not been transferred to GDA, after lapse of 30 years. GDA also can not be allowed to take law in its hand. The cancellation of lease is on a specific ground of cancellation of cinema licence, therefore the other grounds as alleged are not required to be considered being after thought.

12. Next, we have considered that under clause 5.3 of the lease agreement, there is no provision for cancellation of lease agreement on the termination of the cinema licence. Clause 5.3 of the lease deed reads as under :-

> 5.3 That the lessee will construct/erect up on the said land CINEMA THEATRE only and no other in accordance with the building Bye-laws and regulations of the lessor as amended from time to time. The plans for construction shall be submitted to the Executive Engineer for approval before commencement of any construction within 6 months from the date of execution of this Indenture. The lessee shall also have to plant at lease 5 (five) trees and specific space shall also have to be shown in the building plans. Completion certificate shall only be granted by the Authority when the trees are duly planted."

The aforesaid clause does not grant any permission to the lessor to cancel the lease on the cancellation of the cinema licence. Admittedly there is no stipulation in the aforesaid lease deed.

13. The Supreme Court in the case of *Raghuram Rao Vs. Eric P.Mathias*

[(2002) 2 SCC 624], has elaborately clarified the position under the Transfer of Property Act and held that Section 10 of the Transfer of Property Act does not carve out any exception with regard to perpetual or permanent lease. So far as the notice in writing as contemplated under Section 111(g) before terminating the lease, after the amendment in the Transfer of Property Act (1.4.1930), the notice is necessary and issue is concluded by the decision in the case of *Ratan Lal Vs. Vardesh Chander* (1976) 2 SCC 228. It was further held that in the matter of forfeiture of lease under Section 111(g) of the Transfer of Property Act, the lessee should commit breach of "an express condition" which provides that on breach thereof, the lessor may re-enter. The words "express condition" themselves stipulate that condition must be clear, manifest, explicit, unambiguous and there is no question of drawing any inference. It was held that if there is no express condition restraining partial alienation of the leasehold property, it would not be open to the transferee of the lessor's right to invoke the forfeiture clause for determining the perpetual lease and such conditions cannot be inferred by implication. The question of alienation was considered and it was held that perpetual alienation will not be treated as forfeiture under the clause.

14. Therefore, from the aforesaid law laid down by the Hon'ble Supreme Court, it is clear that the notice of termination of lease is necessary and secondly the lessee should commit breach of "an express condition" which provides that on breach thereof, the lessor may re-enter. It was further held in the aforesaid decision that when there is no express condition, it would not be open to the lessor to invoke the forfeiture clause for determining the perpetual lease and such conditions cannot be inferred by implication.

15. In view of the aforesaid discussion, this position under the law is very clear that when right of re-entry not given on breach of that covenant, the lease can only be forfeited on that ground and this position is also clear that lessor has to determine the lease. Thus, it is clear that lease can only be forfeited when there is express violation of express condition. From bare reading of aforesaid condition No.5.3 of the lease agreement, prima facie, we do not see that there is any provision in the condition regarding forfeiture. Admittedly Annexure P/1 is not the notice of detrermination or termination of lease as required under Section 111 (g) of the Transfer of Property Act. Therefore, such an action of forfeiture of lease can not held to be legal. In such circumstances, the authority also can not assume the jurisdiction of taking possession without taking recourse of law and any such attempt made out would also be without jurisdiction. The question of the existence of any condition and its violation is also the subject matter of adjudication and any action beyond adjudication would also be illegal and without jurisdiction. Consequently, this Writ Appeal is allowed, Annexure P/1 is set aside. Parties to bear their own costs.

Appeal allowed.

I.L.R. [2008] M. P., 1878

WRIT APPEAL

Before Mr. A.K. Patnaik, Chief Justice and
Mr. Justice Prakash Shrivastava

28 March, 2008*

YOGESH NEEMA & ors. ... Appellants

Vs.

STATE OF M.P. & ors. ... Respondents

A. Land Acquisition Act (1 of 1894), Sections 5-A, 17(1), (4) - *Acquisition of Land - Scope of interference by Court - Once Court finds that Govt. has applied its mind for the need for invoking urgency clause and also to the necessity of dispensing with enquiry u/s 5-A of Act and there is no malafide in such decision, Court should not interfere with such decision.* (Para 11)

क. भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 5–ए, 17(1), (4) – भूमि का अर्जन – न्यायालय द्वारा हस्तक्षेप का विषयक्षेत्र – जब न्यायालय यह पाता है कि सरकार ने अत्यावश्क खंड का अवलंब लेने की आवश्यकता विचारोपरांत तय की और अधिनियम की धारा 5–ए के अन्तर्गत जाँच को अभिमुक्ति देने को आवश्यक माना और ऐसा निर्णय लेने में कोई दुर्भावना नहीं है, न्यायालय को ऐसे निर्णय में हस्तक्षेप नहीं करना चाहिए।

B. Land Acquisition Act (1 of 1894), Sections 5-A, 17(1), (4) - *Acquisition of Land - Some part of land acquired without any objections speedily soon after issuance of notification u/s 4 - Acquisition of remaining part of land being delayed due to objections of land owners - Held - Govt. can invoke provisions of Section 17(4) and can dispense with enquiry u/s 5-A.* (Para 11)

ख. भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 5–ए, 17(1), (4) – भूमि का अर्जन – धारा 4 के अधीन अधिसूचना जारी होने के उपरांत शीघ्रता से भूमि का कुछ भाग बिना किसी आपत्ति के अर्जित किया गया – भूमि के शेष भाग का अर्जन भूमिस्वामियों की आपत्तियों के कारण विलम्बित हुआ – अभिनिर्धारित – सरकार धारा 17(4) के उपबंधों का अवलंब ले सकती है और धारा 5–ए के अधीन जाँच को अभिमुक्ति दे सकती है।

C. Land Acquisition Act (1 of 1894), Section 4 - *Acquisition of Land - Availability of alternative Government Land - Question whether alternative land is available for the purposes or whether Govt. should not acquire land only because oustees preferred the same, are matters of subjective satisfaction of Government.* (Para 12)

ग. भूमि अर्जन अधिनियम (1894 का 1), धारा 4 – भूमि का अर्जन – वैकल्पिक शासकीय भूमि की उपलब्धता – यह प्रश्न कि क्या वैकल्पिक भूमि उक्त प्रयोजन के लिये उपलब्ध है या बेदखल होने वालों ने इसे पसंद किया कि सरकार को भूमि अर्जित नहीं करना चाहिए, ये मामले सरकार के व्यक्तिपरक संतोष के हैं।

Cases referred :

AIR 1997 SC 1236, (2002) 4 SCC 160, AIR 1964 SC 1217, AIR 1967 SC 1081,

*W.A. No.128/2008 (Jabalpur)

AIR 1968 SC 870, (1977) 1 SCC 133, (1998) 6 SCC 1, (2004) 8 SCC 14, (2004) 8 SCC 453, AIR 2004 SC 3289, (2005) 7 SCC 627.

Hemant Shrivastava, for the appellants.
T.S. Ruprah, Addl.A.G., for the respondents.

JUDGMENT

The Judgment of the Court was delivered by A.K. PATNAIK, C. J. :–The two appeals have been filed under Section 2(1) of the Madhya Pradesh Uchcha Nayayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the orders dated 14th January, 2008 passed by the learned Single Judge in W.P. No. 16250/2007 and W.P. No. 16752/2007.

2. The material facts briefly are that for the Onkareshwar Dam, lands of several villagers were acquired and the displaced villagers were required to be rehabilitated in other localities. A Task Force was constituted for identifying the localities in which the displaced villagers were to be rehabilitated. On the basis of the recommendation of the Task Force, lands were acquired for rehabilitation of the displaced villagers and rehabilitation sites were established. One of the rehabilitation sites, namely Inpun rehabilitation site, as initially planned, was to comprise of 1200 plots, but more and more displaced villagers preferred plots at this Inpun rehabilitation site because amenities like Primary, Middle and High Schools, Panchayat Bhawan etc. were available in this rehabilitation site. The Task Force therefore recommended acquisition of 31.70 hectares of additional land for extension of the Inpun rehabilitation site. On the basis of the recommendation of the Task Force, the Executive Engineer, Narmada Development Division No. 32, Badwah recommended for immediate acquisition of additional land in his proposal dated 29.10.2007. Thereafter, 17.52 hectares of land were acquired by notification dated 7.11.2007 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act") in Revenue Case No.30/A-82/06-07 but the remaining additional land could not be acquired because of objections of the land owners before issuance of a notification under Section 4 of the Act. The Collector, East Nimar, Khandwa District in his letter dated 7.11.2007 sent a proposal to the Commissioner, Indore Division, M.P. for immediate acquisition of 11.04 hectares of land and the properties standing thereon and for permission for acquisition under Section 17(1) of the Act and for a separate permission to dispense with the provisions of Section 5-A of the Act by invoking powers under Section 17(4) of the Act and for issuance of a declaration under Section 6 of the Act immediately after acquisition under Section 4(1) of the Act. The Commissioner, Indore Division then issued an order dated 15.11.2007 granting permission to Collector, District Khandwa under Section 17 of the Act for acquisition of agricultural land measuring 11.04 hectares in Village Inpun, Tahsil Khandwa, District Khandwa and, thereafter, a declaration was issued on 26.11.2007 in respect of the land which was sought to be acquired. The appellants

who were owners of land covered by the order dated 15.11.2007 issued under Sections 17 and the declaration dated 26.11.2007 under Section 6 of the Act filed two writ petitions under Article 226 of the Constitution numbered as W.P. No. 16250/2007 and W.P. NO. 16752/2007. The learned single Judge initially directed maintenance of status quo regarding possession of land by both the parties, but after hearing the parties dismissed the writ petitions by the impugned order dated 14th January, 2008. Aggrieved, the appellants have filed the two appeals.

3. Mr. Hemant Shrivastava, learned counsel for the appellants submitted that the learned Single Judge has dismissed the writ petitions filed by the appellants relying on *Ramniklal N. Bhutta vs. State of Maharashtra,* AIR 1997 SC 1236 in which the Supreme Court has taken a view that in land acquisition matters, the High Court will not exercise its jurisdiction under Article 226 of the Constitution merely on the making out of the legal point but only for furtherance of interests of justice and that the Court will have to weigh the public interest vis-a-vis the private interest while exercising its discretionary powers under Article 226 of the Constitution. He submitted that the learned Single Judge has also relied on the observations of the Supreme Court in *First Land Acquisition Collector vs. Nirodhi Prakash,* (2002) 4 SCC 160 that the question of urgency and acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the State Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. He submitted that the learned single Judge has lost sight of the judgments of Supreme Court in which it has been held that the right to be heard in an inquiry under Section 5-A of the Act is a valuable right of a land owner and this valuable right cannot be dispensed with arbitrarily and without application of mind by the Government under Section 17(4) of the Act to the question whether it is necessary in a particular case of acquisition of land to dispense with the inquiry under Section 5-A of the Act. In support of this contention, he relied on decisions of the Supreme Court in *Nandeshwar Prasad and others vs. U.P. Government and others,* AIR 1964 SC 1217, *Raja Anand Brahma Shah vs. State of U.P. and others,* AIR 1967 SC 1081, *Ishwarlal Girdharlal Joshi vs. State of Gujarat and another,* AIR 1968 SC 870, *Narayan Govind Gavate and others vs State of Maharashtra and others,* (1977) I SCC 133, *Om Prakash and another vs. State of U.P. and others,* (1998) 6 SCC 1, *Union of India and others vs. Mukesh Hans,* (2004) 8 SCC 14, *Union of India and others vs. Krishan Lal Arneja and others,* (2004) 8 SCC 453, *Union of India and others vs. Deepak Bhardwaj and others,* AIR 2004 SC 3289. He further submitted that in *Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chanai and others,* (2005) 7 SCC 627, the Supreme Court has held that the right to make objections under Section 5-A of the Act is akin to a fundamental right having regard to Article 300-A of the Constitution and therefore this right cannot be easily dispensed with by a mechanical order passed by the Government under Section 17(4) of the Act. He submitted that the view taken

by the learned Single Judge in the impugned order that the Court cannot examine in a judicial review the decision of the Government to invoke the provisions of sub-section (1) and (4) of Section 17 of the Act and dispense with the inquiry under Section 5-A of the Act is not correct in law.

4. Mr. R.N. Singh, learned Advocate General, appearing for the respondents, on the other hand, submitted that the Omkareshwar Project is an important power and irrigation time bound project of the Government of Madhya Pradesh for which land of various villagers had to be acquired and the villagers, many of whom are scheduled castes, had to be rehabilitated in rehabilitation sites as early as possible by acquiring and developing land. He submitted relying on the returns filed by the respondents that at the Inpun rehabilitation site developed for rehabilitation of the displaced villagers, there are amenities like Primary, Middle and High Schools, Panchayat Bhawan etc. and for this reason the displaced villagers have shown their preference for the Inpun rehabilitation site and therefore additional land was recommended to be acquired by the Task Force. He submitted that on the basis of the recommendation of the Task Force, the Executive Engineer, Narmada Development Division No.32, Badwah recommended for immediate acquisition of additional land for rehabilitation of the displaced villagers and the Collector sent a proposal dated 7.11.2007 for immediate acquisition of land measuring 11.04 hectares and also sought separate permission for invocation of Section 17(1) of the Act and Section 17(4) of the Act and the Commissioner, Indore Division exercising powers of the Government delegated to him issued the order dated 15.11.2007 for acquisition of land dispensing with the inquiry under Section 5-A of the Act in accordance with Section 17(4) of the Act. He submitted that there was total application of mind to the urgency of acquiring additional land in Inpun rehabilitation site and to the need for dispensing with the inquiry under Section 5-A of the Act and therefore this is not a fit case in which High Court in exercise of its powers under Article 226 of the Constitution should interfere with the decision of the Government to acquire the additional land by dispensing with the inquiry under Section 5-A of the Act. He submitted that the learned single Judge was therefore right in dismissing the writ petitions by relying on the judgments of the Apex Court in *Ramniklal N. Bhutta vs. State of Maharashtra and First Land Acquisition Collector vs. Nirodhi Prakash (supra)*.

5. Sub-sections (1) and (4) of Section 17 of the Act are quoted herein below:

> "17(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for public purpose.
>
> Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Xxxxxx xxx.

(3) Xxxxxx xxx.

4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply, and, if it does so direct a declaration may be made under section 6 in respect of the land at any time after the date of publication of the notification under section 4, sub-section (1)."

6. Sub-sections (1) and (4) of Section 17 of the Act arose for interpretation in *Union of IndiaVs. Mukesh Hansh (supra)*, and the Supreme Court after considering its earlier decisions held that mere existence of urgency under Section 17 (1) of the Act though is a condition precedent for invoking Section 17(4) by itself is not sufficient to direct the dispensation of Section 5-A inquiry and the Government must form a clear opinion that along with the existence of such urgency, there is also a need for dispensing with the Section 5-A inquiry. In the aforesaid case, in almost all the notings in the file, there was no reference to the need for invoking Section 17(4) of the Act and these facts coupled with the findings of the High court led the Supreme Court to hold that the decision of the Lieutenant Governor to dispense with Section 5-A inquiry suffered from the vice of non-application of mind.

7. Sub-sections (1) and (4) of Section 17 of the Act were again interpreted in *Union of India & others Vs. Krishanlal Arneja (supra)* and the Supreme Court relying upon its earlier decisions held that even when there is no statement about the existence of urgency in the notification issued under Section 4(1) read with Section 17(1) of the Act, the Government could justify the urgency and the need to dispense with the enquiry under Section 5-A by invoking Section 17 (4) by reference to the surrounding circumstances, the nature of the public purpose, the real urgency that the situation demands etc. and the records of the case. The Supreme Court further held that in every case of urgency for acquisition of land covered under sub section (1) of Section 17 of the Act the normal procedure laid down in Section 5-A cannot be dispensed with and it is only when the Government after application of mind finds that there is need to dispense with the inquiry under Section 5-A of the Act that such a direction can be given by the Government under Section 17(4) of the Act.. In this case, the Supreme Court found that even after the Government took a decision to acquire the property in question, for almost two years no proceedings were initiated to acquire the property and all of a sudden the property was sought to be acquired by dispensing with the valuable right of the owners under Section 5-A of the Act.

8. Regarding the scope of judicial review in respect of orders under Sections 17 (1) and 17 (4) of the Act, the Supreme Court observed in *First Land Acquisition Collector Vs. Nirodhi Prakash Gangoli & others* (2002(4) SCC 160) :

"The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority malafide."

9. Keeping in mind the law laid down by the Supreme Court in the afore said decision, we may now examine the facts of the present case. The English Translation of the letter dated 7.11.2007 of the Collector and the order dated 15.11.2007 passed by the Commissioner on behalf of the Government under Section 17(1) & (4) of the Act are extracted herein below:

"Office of the Collector. District ; East Nimar. Khandwa (MP)

No. /13990/Land Acquisition/07, Khandwa dt.7.11.2007

To,

The Commissioner,
Indore Division, Indore (MP).

Sub : For permission to exercise urgency clause U/Sec. 17 in the Land Acquisition cases of Village Inpun, Tahsil Khandwa, District-Khandwa.

---

1. Under the Omkareshwar Project, for the purpose of extension of the rehabilitation site Inpun, the proposals for immediate acquisition of 29.93 hectares ol land comprised in 33 different survey numbers have been sent by Executive Engineer, Narmada Development Division No.32, Barwah. On examination of the proposals so presented it is found that the proceeding for acquisition of 17.52 hectares of land comprised in 21 survey numbers has been taken up in Revenue Case N0.30/A-82/06-07 in which the Notification under Section 4(1) of the Act has been published at specified places and the declaration under Section 6 of the Act is being sent for publication.

2. As against the total proposed area of 29.93 hectares sought to be acquired as mentioned in para 1; the proceedings for acquisition of 17.52 hectares of land is already in progress, since before. In such a condition

only 29.93 -17.52 = 12.41 hectares of land is left for consideration. In this connection, on examination it has been found that 1.37 hectares of land comprised in 5 different survey numbers has already been acquired but the Sub Divisional Officer and the Land Acquisition Officer for the purpose of construction of a canal of Indira Sagar Project. Therefore, only 12.41 - 1.37 = 11.04 hectares of land remains to be considered for acquisition. Table no.1 is enclosed and presented for Clarification of the situation in para I and para 2.

3. Therefore, in pursuance to the proposal received from Executive Engineer, Narmada Development Division No.32, Barwah, it is in the propriety of things to immediately acquire 11.04 hectares of land and other properties thereupon, as comprised in Survey No. I to 12 mentioned in the table.

4. The Executive Engineer has requested for early acquisition of land and the properties thereupon in exerise of Section 17(1), 17(4) of the Land Acquisition Act, 1894.

5. Therefore, it is requested that permission for application of Section 17(1) may be granted for early acquisition of agriculture land and the properties thereupon as mentioned in para 3.

6. It is also requested that a separate permission may be granted under Section 17(4) so that without following the provisions of Section 5-A, the declaration under Section 6 may be issued immediately after the issuance of notification under Section 4(1).

7. As per above, it is requested that separate permission may be granted for 17(1), 17(4) as in aforesaid paras 5 and 6.

End :Land Acquisition
Proposals, village-inpun,
(Agriculture Land)
enclosed table.

Sd/- 7.11.07
S.B. Singh,
Collector, East Nimar,
Khandwa (MP)"

" **Office of the Commissioner, Indore Division, Indore**

No_/1599/5/Court/07, Indore, dt. 15.11.2007

To,

The Collector,
District Khandwa MP).

Sub : For permission to exercise urgency clause U/Sec. 17 in the Land Acquisition cases of Village Inpun, Tahsil Khandwa, District Khandwa.

Ref : Your Letter No. 13990/LandAcquisition/07 Dated 7.11.2007.

As per the aforesaid subject, kindly peruse the letter under reference.

2. By the letter under reference, in respect of 11.04 hectares of agriculture land comprised in 12 Survey Numbers in village Inpun, Tahsil Khandwa, District Khandwa, you have sought for separate permission under Section 17(1) and 17(4) of the Land Acquisition Act, 1894, for development of rehabilitation site for the oustees of Omkareshwar Project, as per the proposal of Executive Engineer, Narmada Development Division No.32, Barwaha and it has been shown in the proposal so presented that the proceeding for acquisition of 17.52 hectares of land comprised in 21 survey numbers is underway in Revenue Case No. 30/A-82/06-07 in which Notification under Section 4(1) has been published at specified places, and that the declaration under Section 6 of the Act has been sent for publication. It is also represented that against the total proposed area for acquisition i.e. 29.93 hectares, the proceeding for acquisition of 17.52 hectares of land is already underway, therefore, in such a situation only 29.93 -17.52 - 12.41 hectare of land remains for consideration. And as 1.37 hectares of land is shown to have been acquired under 5 different survey numbers for construction of canal of Indira Sagar Project, therefore, only 12.41 -1.37 -11.04 hectares of land remains to be considered for acquisition.

Therefore, in pursuance to your proposal, for the agriculture land of total 12 survey numbers, total area 11.04 hectares in village Inpun, Tahsil Khandwa, District Khandwa, permission is granted under Section 17 of the Land Acquisition Act, 1894.

End : As per above.
(Approved by
Commissioner)

Deputy Commissioner (Revenue)
For Commissioner,
Indore Division, Indore."

10. It will be clear from the proposal contained in the letter dated 7.11.2007 of the Collector, extracted above, that the purpose for which the land was being acquired was extension of the rehabilitation site at Inpun for rehabilitation of displaced persons of the Omkareshwar Project. The Omkareshwar Project is a dam being constructed for irrigation as well as generation of power in the State of Madhya Pradesh and is a time bound project and law is well settled that before submergence of any village by the dam is allowed, the rehabilitation of the people of the village must be completed. Thus, the nature of the public purpose for which the land was acquired itself warranted invocation of the urgency clause under Section 17 (1) of the Act and for this reason, the Collector had made request in the proposal for permission for application of Section 17 (1) of the Act for early acquisition of the agricultural land and the properties situated thereon.

11. It further appears from the proposal contained in the letter dated 7.11.2007 of the Collector that permission was requested not only for application of Section 17 (1) of the Act but also under Section 17 (4) of the Act so that the provisions of

Section 5-A of the Act were dispensed with and the declaration under Section 6. could be issued immediately after issuance of notification under Section 4 (1) of the Act. The reason for invocation of the .provisions of Section 17 (4) of the Act given in paragraph 7 of the reply filed by the respondents in W.A.No. 129 of 2008 is that before acquisition of the said land, certain objections and complaints were submitted by the land owners to the respondents on 27.4.2007 before issuance of notification under Section 4 of the Act on 7.11.2007 and hence the acquisition of the land for the urgent purpose of rehabilitating the villagers at the Inpun rehabilitation site would be delayed. Mr. Shrivastava argued that this cannot be a reason for dispensing with the enquiry under Section 5-A of the Act, particularly when for part of the land acquired for the same purpose, the provisions of Section 5-A of the Act were not dispensed with. We are unable to accept this argument of Mr. Shrivastava. If part of the land is acquired without any objections from the land owners speedily soon after issuance of notification under Section 4 (1) of the Act but the acquisition of other part of the land was being delayed because of the objections of the land owners' to expedite the acquisition for the urgent purpose and to avoid the delay of the enquiry under Section 5-A of the Act, the Government could invoke the provisions of Section 17 (4) of the Act and dispense with the enquiry under Section 5-A of the Act. The proposal contained in the letter dated 7.11.2007 of the Collector and the order dated 15.11.2007 passed by the Commissioner on behalf of the Government as well as the records of this case would thus show clear application of mind to not only the need for invoking the urgency clause under Section 17 (1) of the Act but also to the necessity of dispensing with the enquiry under Section 5-A of the Act in exercise of powers under Section 17 (4) of the Act. Hence, the requirements of sub-sections (1) and (4) of Section 17 of the Act, as explained by the Supreme Court in the cases of *Union of India vs. Mukesh Hans and Union of India vs. Krishanlal Arneja (supra)* cited by Mr. Shrivastava are met and the contention of the appellants that invocation of Section 17 (1) and (4) of the Act was vitiated by non-application of mind or by malafide is thus misconceived.

12. Mr. Shrivastava submitted, that there were Government lands near the Inpun rehabilitation side which could be utilized by the Government for the purpose of rehabilitation at Inpun site and therefore, acquisition of the land of the appellants was unreasonable, arbitrary and in violation of fundamental rights of the appellants as enshrined under Arts. 14, 19 and 21 of the Constitution of India. He further submitted that the reason given for the acquisition of the land of the appellants that more and more oustees preferred sites at Inpun rehabilitation site cannot be accepted by the Court. We are afraid, the question whether other Government land was available and could be utilized for extension of the Inpun rehabilitation site and whether Government should not acquire land only because oustees preferred lands in the Inpun rehabilitation site are matters of the subjective satisfaction of the Government. So long as the acquisition of land is for

a public purpose and the urgency for the acquisition of land for public purpose was such as to require not only invocation of the urgency clause under Section 17 (1) but also dispensing with enquiry under Section 5-A in exercise of the powers under Section 17 (4) of the Act, the Court cannot interfere with the decision of the Government to acquire the land urgently by exercising its powers under Sections 17 (1) and 17 (4) of the Act. As has been held by the Supreme Court in *First Land Acquisition Collector vs. Nirodhi Prakash Ganguli and others (supra)*, once the Court finds that the Government has applied its mind to need for invoking both sub-sections (1) and (4) of Section 17 of the Act and there is no malafide in such a decision of the Government, the Court in exercise of its powers under Article 226 of the Constitution will not interfere with such a decision of the Government.

13. We, therefore, do not find any merit in these appeals and we accordingly dismiss the same and vacate the interim orders of status quo dated 5.2.2008. No order as to costs.

Appeal dismissed.

I.L.R. [2008] M. P., 1887
WRIT APPEAL
Before Mr. A.K. Patnaik, Chief Justice &
Mr. Justice Shantanu Kemkar
9 April, 2008*

RAMESH CHOUKSEY ... Appellant
Vs.
UNION OF INDIA & ors. ... Respondents

A. Limitation Act (36 of 1963), Section 29(2) - *Savings - Unless special law or local law expressly excludes application of provisions of Act, 1963, the provisions shall apply even to limitation prescribed for any suit, appeal or application under any special law.* (Para 5)

क. परिसीमा अधिनियम (1963 का 36), धारा 29(2) – व्यावृत्ति – जब तक विशेष विधि या स्थानीय विधि अधिनियम, 1963 के प्रावधानों का लागू होना स्पष्ट रूप से अपवर्जित नहीं करती, किसी विशिष्ट विधि के अधीन किसी वाद, अपील या आवेदन के लिए विहित परिसीमा को भी प्रावधान लागू होंगे।

B. Cantonment Electoral Rules, 2007, Rule 13 - *Objections - Limitation - Rule 13(1) provides that objection to an entry in electoral roll has to be made within a period of 20 days from the date of publication - Rule 13(7) expressly excludes the provision of Section 5 of Limitation Act - Application filed by petitioner beyond period of 20 days for correction of name of his father could not be entertained.* (Para 6)

ख. छावनी निर्वाचन नियम, 2007, नियम 13 – आपत्तियाँ – परिसीमा – नियम 13(1) उपबंधित करता है कि निर्वाचक नामावली में एक प्रविष्टि की आपत्ति प्रकाशन की तिथि से 20 दिवस की कालावधि के अंदर करनी होती है – नियम 13(7) परिसीमा अधिनियम की धारा 5 के प्रावधानों को स्पष्ट

*W.A. No.429 2008 (Jabalpur)

रूप से अपवर्जित करता है – याची द्वारा अपने पिता के नाम के सुधार के लिए 20 दिनों की कालावधि के पश्चात् प्रस्तुत आवेदन ग्राह्य नहीं किया जा सकता।

C. Cantonments Act (41 of 2006), Section 29(1) - *Qualification for being a member of Board - Name of appellant entered in electoral roll - However, his father's name wrongly mentioned - Held - If appellant files his nomination paper, Returning officer will have to apply his mind to aforesaid provision and take a decision thereon - Since nomination paper was not filed, it was premature for Single Judge to express any opinion on merits of claim of the appellant - Observations of Single Judge that returning officer cannot consider nomination of appellant are deleted - Appeal disposed of.* (Para 10)

ग. छावनी अधिनियम (2006 का 41), धारा 29(1) – बोर्ड का सदस्य होने के लिए अर्हता – अपीलार्थी का नाम निर्वाचक नामावली में दर्ज – तथापि उसके पिता का नाम गलत ढंग से उल्लेखित – अभिनिर्धारित – यदि अपीलार्थी अपना नामांकन पत्र प्रस्तुत करता है, निर्वाचन अधिकारी को उपरोक्त प्रावधान में अपनी बुद्धि का प्रयोग करना पड़ेगा एवं उस पर निर्णय लेगा – चूंकि नामांकन पत्र प्रस्तुत नहीं किया गया, एकल न्यायाधीश के लिए अपीलार्थी के दावे के गुणदोषों पर कोई विचार व्यक्त करना समयपूर्व था – एकल न्यायाधीश की टिप्पणी कि निर्वाचन अधिकारी अपीलार्थी के नामांकन पर विचार नहीं कर सकता है, हटाया गया – अपील निपटाई गई।

Amit Shukla with *Shivraj Singh*, for the appellant.
Dharmendra Sharma, A.S.G., for the respondent No. 1.
Indira Nair with *Jasmeet Chana*, for the respondent No. 2 & 3.

ORDER

The Order of the Court was delivered by **A.K. Patnaik, C. J.** :–This is an appeal filed under Section 2 (1) of the M.P. Uchcha Nyayalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005 against the order dated 7.4.2008 passed by learned single Judge in W.P.No.4063 of 2008.

2. The relevant facts briefly are that the appellant is a resident of the area of the Cantonment Board, Jabalpur and he had contested the elections to the office of Member of the Cantonment Board in the years 1976, 1982 and 1992 and was elected and he was also the Vice President of the Cantonment Board. In the final electoral roll for election of the Cantonment Board published on 3.1.2008, the name of the appellant has been shown at serial No.3832 but his father's name has been wrongly mentioned as 'Late Bhagirath Chouksey' instead of 'Late Deen Dayal Chouksey. He filed an application for correction of the name of his father in the electoral roll on 17.3.2008. When no decision was taken on his application, he filed Writ Petition No.4063 of 2008 under Art.226 of the Constitution before this Court. The respondent No.2 filed return contending inter-alia that the application of the appellant for correction of his father's name in the electoral roll was filed beyond the period of 20 days prescribed in sub-rule (1) of Rule 13 of the Cantonment Electoral Rules, 2007 (for short 'the **Rules of 2007**') and under sub-rule (7) of Rule 13 of the Rules of 2007, the Chief Executive Officer has to reject any claim or objection to the electoral roll which is not made within the period of

20 days. The learned single Judge accepted the contention of the respondents and dismissed the writ petition by the impugned order dated 7.4.2008. Aggrieved, the appellant has filed this appeal.

3. Mr. Amit Shukla, learned counsel for the appellant, submitted that the appellant had been contesting the elections of the Cantonment Board since 1976 and there is no dispute that the appellant is a resident of Cantonment Board, Jabalpur and is an elector and therefore this was a fit case in which the mistake in the electoral roll with regard to the name of father of the appellant should have been corrected pursuant to the application of the appellant filed on 17.3.2008.

4. Mrs. Nair, learned Senior Counsel and Mr. Dharmendra Sharma, learned Assistant Solicitor General appearing for the respondents, on the other hand, submitted that in view of the provision in sub-rule (7) of Rule 13 of the Rules of 2007 that any objection to the electoral roll filed beyond the period of 20 days from the date of publication of the notice referred to in Rule 12 of the Rules of 2007 has to be rejected, the Chief Executive Officer of the Cantonment Board could not possibly consider the application of the appellant for correction of the name of father of the appellant in the electoral roll.

5. We find on a reading of the impugned order dated 7.4.2008 passed by the learned single Judge that the learned single Judge has observed that it is trite law that whenever limitation is provided by a statute (Act, Rule or Byelaw), power to condone the delay is to be necessarily engrafted therein. This is not an accurate statement of the law Section 29 (2) of the Limitation Act, 1963 which states the law on the point is quoted herein below:

> **"29. Savings - (1).....**
>
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

The language of Section 29 (2) of the Limitation Act makes it clear that unless the special law or local law expressly excludes application of provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act, 1963, the provisions in Sections 4 to 24 shall apply even to limitation prescribed for any suit, appeal or application under any special law.

6. Sub-rules (1) and (7) of Rule 13 of the Rules of 2007, which are relevant are quoted herein below:

"13. Claims and objections -

(1) Every claim for the inclusion of a name in the electoral roll and every objection to an entry therein shall be made within a period of twenty days from the date of publication of the notice referred to in rule 12.

(2) ....

(3) .....

(4) .....

(5) .....

(6) .....

(7) The Chief Executive Officer shall reject any claim or objection which is not made within the period or in the form and manner specified in this rule."

It will be clear from sub-rule (1) of Rule 13 of the Rules of 2007, quoted above that any objection to an entry in the electoral roll has to be made within a period of twenty days from the date of publication of the notice referred to in Rule 12. Sub-rule (7) of Rule 13 further provides that the Chief Executive Officer shall reject any claim or objection which is not made within the period specified in the rule. Hence, by virtue of the provision in the special law contained in sub-rule (7) of Rule 13 of the Rules of 2007, Section 5 of the Limitation Act, 1963 for condoning delay in filing an objection filed beyond the period of twenty days is expressly excluded. The result is that the application of the appellant for correction of the name of his father in the electoral roll having been filed beyond the period of twenty days from the date of publication of the notice referred to in Rule 12 could not be entertained and has to be rejected by the Chief Executive Officer.

7. Mr. Shukla next submitted that the appellant had also made a prayer in the writ petition for a direction to the respondents not to reject the nomination paper of the appellant on the ground of such wrong entry with regard to the name of his father in the voter list but the learned single Judge has held in the impugned order that the appellant having not made the objection to the wrong entry within twenty days from the date of publication of the electoral roll cannot seek a direction to the respondents to consider the nomination form of the appellant containing particulars not tallying with those contained in the voter list. He submitted that since the name of the appellant has been entered on the electoral roll of the Cantonment and that the identity of the appellant is beyond doubt, the learned single Judge was not correct in refusing the relief on the ground that the particulars of the appellant do not tally with those contained in the voter list.

8. He further submitted that in the Proviso to sub-section (4) of Section 33 of the Representation of People Act, 1951 (for short **'the Act of 1951'**), it is provided that no misnomer or inaccurate description or clerical, technical or printing error

in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood and the returning officer shall permit any such misnomer or inaccurate description or clerical or clerical, technical or printing error has to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be over-looked. He submitted that this provision has been engrafted as a Proviso to sub-section (4) of Section 33 of the Act of 1951 to ensure that the nomination paper of a candidate whose name is entered in the electoral roll and who is properly identified, is not rejected on technical grounds. He submitted that since the name of the appellant has been entered in the electoral roll of the Cantonment Board and the identity of the appellant is beyond doubt, the nomination paper of the appellant cannot be rejected on the ground that his father's name has been shown as 'Late Bhagirath Prasad Chouksey' and not as 'Late Deen Dayal Chouksey'.

9. Mrs. Nair and Mr. Sharma, on the other hand, submitted that Proviso to sub-section (4) of Section 33 of the Act of 1951 is not applicable to elections to the Cantonment Board and that only the provisions of the Cantonments Act, 2006 (for short 'the Act of 2006') and the Rules of 2007 are applicable.

10. Sub-section (1) of Section 29 of the Cantonments Act, 2006, which is relevant is quoted herein below:

> **"29. Qualification for being a member of the Board -**
>
> (1) Save as hereinafter provided, every person, not being a person holding any office of profit under the Government, whose name is entered on the electoral roll of a cantonment shall be qualified for election as a member of the Board in that cantonment."

It will be clear from the language of sub-section (1) of Section 29 of the Act of 2006 that every person whose name is entered on the electoral roll of the Cantonment shall be qualified for election as a Member of the Board. Thus, in the event the appellant files the nomination paper, the Returning Officer will have to apply his mind to the aforesaid provision in sub-section (1) of Section 29 of the Act of 2006 and take a decision whether or not, the nomination paper of the appellant will have to be accepted. Since the appellant had not filed his nomination form and stage of scrutiny and examination of nomination form by the Returning Officer had not come, it was premature for the learned Single Judge to express any opinion on the merits of the claim of the appellant and for this reason, we delete the observations of the learned single Judge in the impugned order that the Returning Officer cannot consider the nomination of the appellant because the particulars of the appellant do not tally with those contained in the voter list.

11. With the aforesaid observations, the appeal is disposed of. Considering the facts and circumstances of the case, the parties to bear their respective costs.

Appeal disposed of.

I.L.R. [2008] M. P., 1892
WRIT APPEAL
Before Mr. Justice R.S. Garg & Mr. Justice R.S. Jha
6 May, 2008*

S.K. VERMA ... Appellant
Vs.
STATE OF M.P. & ors. Respondents

A. Constitution, Article 226, Civil Services (Classification, Control and Appeal) Rules, 1966, Rule 23, Rajya Anusuchit Jati Ayog Adhiniyam, M.P., (25 of 1995), Section 9 - ***Alternative Remedy*** *- Resp. No.6 belongs to S.C. Category made complaint to State S.C. Commission against appellant that he deliberately delayed writing of his A.C.Rs. and he was addressing and abusing him on the basis of caste - Chairman recorded finding against appellant and directed Secretary to impose punishment of stoppage of two increments or of reversion - W.P. dismissed on the ground of alternative remedy i.e. departmental appeal - Held - Order was not passed in any departmental proceeding - No appeal against order which has been issued purportedly in exercise of power u/ss 9 & 10 of Adhiniyam - Order dismissing petition suffers from manifest irregularity.* **(Para 10)**

क. संविधान, अनुच्छेद 226, सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, 1966, नियम 23, राज्य अनुसूचित जाति आयोग अधिनियम, म.प्र. (1995 का 25), धारा 9 – वैकल्पिक उपचार – प्रत्यर्थी क्रमांक 6 जो अनुसूचित जाति के वर्ग का है, ने राज्य अनूसूचित जाति आयोग को अपीलार्थी के विरुद्ध शिकायत की कि उसने जानबूझकर वार्षिक गोपनीय चरित्रावली के प्रतिवेदन विलम्ब से लिखे और वह उसे जाति के आधार पर अपशब्दों से संबोधित करता था – अध्यक्ष ने अपीलार्थी के विरुद्ध निष्कर्ष अभिलिखित किये और सचिव को निदेश दिये कि दो वेतन वृद्धियाँ रोकने या पदावनति का दण्ड आरोपित किया जाए – रिट याचिका वैकल्पिक उपचार अर्थात् विभागीय अपील के आधार पर खारिज – अभिनिर्धारित – आदेश किसी विभागीय कार्यवाही में पारित नहीं – अधिनियम की धारा 9 व 10 के अधीन शक्तियों के प्रयोग में आदेश किया जाना तात्पर्यित, आदेश के विरुद्ध कोई अपील नहीं – याचिका खारिज करने का आदेश प्रत्यक्षतः अनियमितता से ग्रसित।

B. Rajya Anusuchit Jati Ayog Adhiniyam, M.P., (25 of 1995), Sections 9 & 10 - ***Functions of Commission*** *- Commission has not been constituted to act as a superior body or an adjudicating authority having judicial or quasi-judicial powers sitting over and above all departments of State Government - It has not been empowered to try and inquire into individual complaints like Civil Court, Disciplinary Authority or Trial Court - Cannot conduct trial or departmental enquiry - Cannot give finding as to guilt - Cannot direct authorities of State*

*WA No. 1770/2007 (Jabalpur)

Government to take particular actions - Cannot enforce its orders and cannot call for compliance report - Appeal allowed. (Para 18)

ख. राज्य अनुसूचित जाति आयोग अधिनियम, म.प्र. (1995 का 25), धारा 9 व 10 – आयोग के कार्य – आयोग का गठन प्रवर निकाय या न्यायनिर्णायक प्राधिकारी जो न्यायिक या अर्द्धन्यायिक शक्तियाँ राज्य सरकार के समस्त विभागों पर रखता हो, के रूप में कार्य करने के लिए नहीं किया गया है – वह सिविल न्यायालय, अनुशासनात्क प्राधिकारी या विचारण न्यायालय की तरह व्यक्तिगत शिकायतों की जाँच और उसका विचारण करने के लिए सशक्त नही है – विचारण या विभागीय जाँच संचालित नही कर सकता है – दोषी होने का निष्कर्ष नहीं दे सकता है – राज्य सरकार के प्राधिकारियों को कोई विशिष्ट कार्य करने का निदेश नहीं दे सकता है – अपने आदेशों का प्रवर्तन नहीं करा सकता और अनुपालन रिपोर्ट नहीं बुला सकता – अपील मंजूर।

Case referred :

1992 Supp. (3) SCC 217.

Mahendra Pateriya, for the appellant.
Rahul Jain, for the State.
Sanjay K. Agrawal, for the respondents No.2 & 3.
Prabhat Yadav, for the respondent No. 6.

J U D G M E N T {ORAL}

The Judgment of the Court was delivered by **R.S. JHA, J.** :–The present appeal has been filed by the appellant being aggrieved by order dated 17.10.2007 passed by the learned Single Judge in Writ Petition No. 14313/2007{S} whereby the petition filed by the petitioner has been dismissed on the ground of availability of an alternative remedy.

2. The facts in brief necessary for adjudication of the present appeal are that the respondent No. 6, who belongs to the Scheduled Caste category and is an Under Secretary working in the School Education Department filed a complaint before respondent No. 2/Madhya Pradesh State Scheduled Caste Commission against the present appellant/petitioner alleging that the appellant/petitioner had deliberately delayed the writing of his Annual Confidential Reports relating to the years 2005, 2006 and 2007 and also made allegations that the appellant/petitioner was addressing and abusing the respondent No. 6 on the basis of his caste.

3. The issue was taken up by the respondent No. 3 in his capacity as Chairman of respondent No. 2 and vide order dated 22.9.2007 recorded a finding that the appellant/petitioner had deliberately delayed the writing of the Annual Confidential Reports of respondent No. 6 and was habitually addressing him and abusing him on the basis of his caste and on that basis himself took cognizance of the case and directed the police authorities to prosecute the appellant/petitioner under the provisions of the Scheduled Caste/Scheduled Tribe {Prevention of Atrocities} Act, 1989 with a further direction to Secretaries of the concerned departments to impose a punishment of stoppage of two increments cumulatively or of reversion and report compliance within fifteen days.

4. Being aggrieved by the aforesaid direction issued by the respondent No. 3,

the appellant/petitioner filed a writ petition before this Court, which has been dismissed by order dated 17.10.2007 on the ground that the appellant/petitioner has an alternative remedy of filing an appeal.

5. It has been contended by the learned counsel for the appellant/petitioner that the impugned order dated 22.9.2007 has been passed by respondent No. 3, who is neither a departmental authority nor has the order been passed in departmental proceeding and, therefore, an alternative remedy of filing an appeal under Rule 23 of the Madhya Pradesh Civil Services {Classification, Control & Appeal} Rules, 1966 is not available to the appellant/petitioner.

6. It is further contended by the learned counsel appearing for the appellant/petitioner that the respondent No. 3 has no power, authority or jurisdiction to issue the order dated 22.9.2007 directing the police authorities to register a case against the appellant/petitioner under the provisions of Scheduled Caste/Scheduled Tribe {Prevention of Atrocities} Act, 1989 and to direct the State Authorities to initiate departmental proceedings against the appellant/petitioner and as such the directions are beyond the purview of the provisions of Madhya Pradesh Anusuchit Jati Ayog Adhiniyam, 1995 {for brevity 'the Act of 1995'}.

7. Per contra, learned counsel appearing for respondents No. 2 and 3 has submitted that the impugned order has been passed by respondent No. 3 in exercise of powers under Sections 9 & 10 of the Act of 1995. Alternatively, it is submitted that the impugned order should be treated to be a recommendation only, which is yet to be acted upon by the State and, therefore, the petition and the appeal filed by the appellant/petitioner are misconceived.

8. During the course of arguments, it is also submitted by the learned counsel for the respondents No. 2 and 3 that subsequent to the issuance of notice by this Court and arguments on the previous date of hearing before this Court the respondent No. 3 has modified the impugned order dated 22.9.2007 by order dated 1.5.2008 and that part where the departmental authorities have been directed to impose punishment upon the appellant/petitioner has been modified and a simple recommendation for initiating the departmental proceedings has now been made.

9. The learned Government Advocate appearing for the State submits that prima facie the impugned directions issued by the respondent No. 3 do not appear to be in conformity with the provisions of the Act of 1995 and to that extent has supported the stand taken by the appellant/petitioner.

10. As is apparent from a perusal of the record, the appellant had filed the petition before this Court assailing order dated 22.9.2007 passed by respondent No.3. The said order was not passed or issued in any departmental proceedings under the provisions of Civil Services (Classification, Control and Appeal) Rules, 1966 but has in fact been issued in purported exercise of powers under Sections 9 and 10 of the Act of 1995 against which there is no provision for appeal under Rule 23 of the Civil Services (Classification, Control and Appeal) Rules, 1966. In view of the aforesaid, we are in

full agreement with the learned counsel for the appellant that the impugned order of the learned single Judge dismissing the petition on the ground of alternative remedy of appeal suffers from manifest irregularity and deserves to be set aside. We accordingly entertain this appeal and proceed to decide the same on merits.

11. The issue before this Court is as to whether the respondent No. 3 has the power, authority or jurisdiction to take up and adjudicate upon individual complaints like a Civil Court under Sections 9 & 10 of the Madhya Pradesh Anusuchit Jati Ayog Adhiniyam, 1995 and to issue directions to the police authorities to prosecute an individual under the provisions of Scheduled Caste/Scheduled Tribe {Prevention of Atrocities} Act, 1989 or to direct imposition of a punishment or initiation of departmental proceedings against individuals.

12. To appreciate the rival contentions of the parties, it is apposite to take into consideration the provisions of Sections 9 & 10 of the Act of 1995, which read as under:-

> "**9.Functions of the Commission** – {1} It shall be the function of the Commission –
>
> {a}to act as watch-dog Commission for the protection afforded to the members of the Scheduled Castes under the Constitution and under any other law for the time being in force;
>
> {b}to recommend to the State Government to take steps to add particular castes, races or tribes or parts of or groups within castes, races or tribes in the Constitution {Scheduled Castes} Order, 1950;
>
> {c}to watch the proper and timely implementation of programmes meant for welfare of Scheduled Castes and to suggest improvement in such programmes of the State Government or any other body or authority responsible for such programmes;
>
> {d}to tender advice regarding reservation for Scheduled Castes in public services and admission in educational institutions;
>
> {e}to perform such other functions as may be assigned to it by the State Government.
>
> {2}The advice of the Commission shall, ordinarily be binding upon the State Government, where, however, the Government does not accept the advice, it shall record its reasons therefor.
>
> **10.Powers of the Commission** – The Commission shall, while performing its functions under sub-section {1} of Section 9, have all the powers of a Civil Court trying a suit and in particular, in respect of the following matters, namely: –
>
> {a}summoning and enforcing the attendance of any person from any part of the State and examining him on oath;

{b}requiring the discovery and production of any document;

{c}receiving evidence on affidavits;

{d}requisitioning any public record or copy thereof from any Court or office;

{e}issuing commissions for the examination of witnesses and documents; and

{f}any other matter which may be prescribed."

13. Before we interpret the above mentioned sections, we think it apposite to take into account the backdrop under which the Act of 1995 was enacted as well as its aims and objects. The Supreme Court in the case of *Indra Sawhney and others v. Union of India and others,* 1992 Supp (3) SCC 217, had directed the Government of India and the State Governments to create a permanent machinery either by way of a Commission or a Committee for examining the requests of inclusions or exclusions of any caste, community or group of persons on the advice of such Commission or Committee and also for examining the exclusion of any pseudo community if smuggled into the list of OBCs. in paragraph 243 (17) of the aforesaid judgment. Pursuant to the durection issued by the Supreme Court in the case of *Indra Sawhney (supra)* the State of Madhya Pradesh enacted the Act No. 25 of 1995, i.e. Madhya Pradesh Rajya Anusuchit Jati Adhiniyam, 1995. The statement of object and reasons of the said Act is as follows:-

> "Madhya Pradesh Anusuchit Jati, Anusuchit Jan Jati Tatha Pichchada Varg Ayog Adhiniyam, 1983 (N0. 31 of 1983) was enacted to provide for a Commission for Scheduled Castes, Scheduled Tribes and Other Backward Classes in the State. However, in view of Supreme Court's direction in the case of *Indira Sawhney v. Union of India* AIR 1993 SC 447, a separate Commission is now required to be constituted for the Backward Classes other than Scheduled Castes and Scheduled Tribes. Accordingly a separate law is being enacted in that behalf. It has also become necessary to bring new and separate enactment for Scheduled Castes."

From a perusal of the above, it is apparent that the Act of 1995 was enacted in compliance of the directions issued by the Supreme Court in the case of *Indra Sawhney* (supra) primarily and basically for the purposes of examining the issues of inclusion, exclusion or over inclusion of any caste in respect of the Scheduled Castes notified under the Constitution.

14. A perusal of the functions conferred upon the Commission under Section 9 of the Act of 1995 also makes it clear that the Commission has basically been constituted for the aforesaid purposes and Section 9(1)(a), on which heavy reliance has been placed by the learned counsel for the respondent No.3, has to be understood and interpreted in the aforesaid context. It is also clear from reading of the provisions of Section 9(2) of the Act of 1995 that the Commission is only a recommendatory and

advisory body and that its recommendations and advise is not final and binding upon the State Government as the State has been conferred with the discretion to accept or not to accept the advice given by the Commission by recording reasons therefore. A perusal of Section 9(1)(a) indicates that the Commission constituted under the Act has to act as a watch dog for the protection afforded to the members of the Scheduled Castes under the Constitution and under any other law for the time being in force.

15. In the light of the above, when various clauses to Section 9(1) are read together along with section 9(2) it is abundantly clear that Section 9(1) (a) only confers upon the Commission a function to over see that the constitutional benefits and protections as well as statutory protections afforded to the members of Scheduled Castes as a whole are being made available to them and in case the Commission is of the opinion that there are certain lapses or shortcomings in affording the same, the Commission may advise the State Government as to the steps to be taken by the State for proper implementation of the constitutional and statutory protections, which advice may or may not be accepted by the State Government. The powers conferred on the Commission are limited to the aforesaid extent. In other words, the Commission has not been empowered to act as an adjudicatory body into individual complaints.

16. Section 10 of the Act of 1995 gives limited powers to the Commission of a Civil Court only for the purposes of Section 9(1) in performing its advisory role of summoning and enforcing the attendance of any person, requiring the discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing Commissions for examination of witnesses and documents and such incidental matters. Section 10 does not confer powers of a regular Civil Court to adjudicate all issues raised before it like a judicial forum with all its complexities. The Commission is only an advisory body having no judicial powers of a regular Civil Court as is manifest from reading the provisions of the Act of 1995.

17. From other provisions of the Act of 1995 we also find that there is no provision prescribing any penalty under the Act nor is there any provision empowering the Commission to adjudicate upon the guilt or culpability of an individual nor has the Commission been conferred with the power to issue any directions or orders to officers or authorities of the State Government to comply with its orders within a fixed time and to report compliance thereof to the Commission.

18. On a conjoint reading of the provisions of the Act of 1995 leaves no iota of doubt that the Commission has not been constituted to act as a superior body or an adjudicating authority having judicial or quasi-judicial powers sitting over and above all departments of the State Government nor has it been empowered to try and inquire into the individual complaints like a Civil Court, a Disciplinary Authority or a

Trial Court. It is also apparent that the Commission cannot conduct a trial or a departmental enquiry against an individual, give a finding as to his guilt or otherwise and direct the authorities of the State Government to take particular actions like instituting criminal proceedings or departmental enquiry against an individual. It is also apparent that the Commission cannot enforce its orders or directions nor can it call for a compliance report from the subordinate authorities of the State in respect of the directions issued by it.

19. From a perusal of the impugned order dated 22.9.2007 as well as the modified order dated 1.5.2008 placed on records by the learned counsel for respondent No. 3 during the course of hearing it is apparent that the complaint filed by the respondent No.6 before the Commission was sent by it to the concerned department and the General Administration Department vide its communication dated 25-5-2007 informed the Commission that the A.C.Rs. of respondent No.6 for the years 2005, 2006 and 2007 written by the petitioner/appellant had been received by the School Education Department and that they do not contain any adverse remark against respondent No.6. The Commission was also informed that allegations regarding abusing and victimization on the basis of caste as levelled by the respondent No.6 were found to be baseless. In spite of the aforesaid report of the concerned authority of the State Government the respondent No.3 on the insistence of respondent No.6 issued notices to the petitioner and others, recorded their statements and thereafter, assuming and usurping the role of judicial forum, recorded a finding that the appellant/petitioner was guilty of victimizing respondent No.6 only on the basis of his caste and on that basis respondent No.3 directed the police authorities to prosecute the appellant/petitioner under the provisions of Scheduled Castes and Scheduled Tribes {Prevention of Atrocities} Act 1989 and also directed the departmental authorities to impose punishment upon the appellant/petitioner for the aforesaid misconduct.

20. Furthermore, perusal of Note 2,3,4 & 5 made in the impugned orders also makes it clear that the respondent No. 3 has called for a compliance report of the directions issued by it within fifteen days from the Principal Secretary, General Administration Department, Principal Secretary, School Education Department, Additional Director General of Police {Scheduled Caste/Scheduled Tribe}{AJK} and the Superintendent of Police, Bhopal.

21. In our considered opinion, the impugned findings as well as directions issued by respondent No. 3 are apparently beyond the power, authority and jurisdiction vested in him by the Act of 1995. In view of the interpretation as given by us to the provisions of Sections 9 & 10 of the Act of 1995, we are of the considered opinion that Section 9 or 10 does not give or confer any power on respondent No. 3 to adjudicate upon the guilt or culpability of any individual and issue directions to subordinate authorities of the State to take particular actions against a particular individual and report compliance. The only function conferred upon respondents No. 2 and 3 under the Act is to make recommendations to the State Government

and not to issue directions to the subordinate authorities and that too. in respect of the limited purpose of Section 9 which has been analysed by us in the preceding paragraphs.

22. In view of the aforesaid and even on the basis of the facts on records, we find that the present case is one of no evidence and the findings recorded by the respondent No. 3 against the appellant/petitioner are unsustainable. We also find from a perusal of the record that the present case was not one where the constitutional rights or statutory rights of respondent No.6 were in any way violated as the writing of A.C.Rs. is neither a constitutional nor a statutory right and in case the respondent No.6 felt that he was being victimized or penalized on the basis of his caste, his appropriate remedy was to file a complaint under the provisions of the Scheduled Castes and Scheduled Tribes {Prevention of Atrocities} Act 1989 rather than misusing and abusing the powers of the Commission under the Act of 1995.

23. As we have held above and we reiterate that the respondents No. 2 and 3 are not empowered to adjudicate upon individual complaints or to substitute itself in the place of Criminal Courts, Departmental Authorities or the Civil Courts and direct officers or authorities of the State to take a particular action against an individual and report compliance thereof, we find substance in the submission of the learned counsel appearing for the appellant/petitioner that the impugned order dated 22.9.2007 and the modified order dated 1.5.2008 are patently beyond the power, authority and jurisdiction of respondents No. 2 and 3. We accordingly allow the appeal and quash the impugned orders. We make it further clear that the subordinate authorities, who have been directed by the Commission to take action against the appellant/petitioner and report compliance thereof are not bound by any such direction issued by respondent No.3.

24. We may note the fact that on the previous date of hearing, after the matter was argued and this Court was inclined to issue interim orders, the learned counsel appearing for respondent No. 3 had assured this Court that he would advise the respondent No. 3 to withdraw the impugned order and pursuant to the aforesaid the modified order dated 1.5.2008 was issued by respondent No.3 which has been placed before this Court during the course of hearing with a submission that the impugned order has been suitably modified. However, we find that though superficial changes have been made by respondent No.3, the tenor, language and the effect of the impugned order remains the same with cosmetic changes. It is also apparent from a perusal of modified order dated 1-5-2008 that respondent No.3 by mentioning the provisions of Sections 9, 10, 15, 16 and 19(2) of the Act of 1995 has stated that it has full powers of Civil Court to take cognizance of the matter and has thereafter again reiterated the directions to the police and departmental authorities to take action against the petitioner/appellant though the respondent No. 3 has facially modified the order dated 22.9.2007 and tried to project it as a recommendation, in the notes appended to the order dated 1.5.2008, he has again directed the subordinate authorities of the State to comply with the directions

issued by him regarding insitution of a criminal case under the Atrocities Act and imposing punishment by initiating departmental proceedings and to submit a compliance report thereof within fifteen days. In view of the above, we are of the considered opinion that respondent No.3 has tried to play fast and loose with this Court and interfere in the judicial process. We express our disapproval on the conduct of respondent No.3. Ordinarily, we would have imposed heavy penal costs upon respondent No.3 for attempting to interfere in the judicial process of this Court, however, as the learned counsel appearing for respondent No. 3 assures this Court on his behalf that he shall be absolutely circumspect in future and shall act within the four-corners of law we think it appropriate to accept the submissions of the learned counsel with note of caution and impose a token cost of Rs. 1000/-only.

25. With the aforesaid observations, the appeal filed by the appellant/petitioner is allowed and the impugned orders dated 22-9-2007 and the order of modification dated 1-5-2008, which is in similar terms, are hereby quashed.

Appeal allowed.

I.L.R. [2008] M. P., 1900

WRIT APPEAL

Before Mr. Justice S. Samvatsar & Mr. Justice S.A. Naqvi

15 May, 2008*

STATE OF M.P. & ors. ... Appellants

Vs.

SUBHASH CHANDRA AGRAWAL ... Respondent

Constitution, Article 309 - ***Grant of benefit of Second Time Bound Promotion - Entitlement*** - *Petitioner not granted the benefit of Second Time Bound Promotion - Learned Single Judge directing for grant of Second Time Bound Promotion to the petitioner - Held - In matter of grant of Time Bound Promotion, the DPC is required to make an over all assessment of performance of each candidate by adopting same standard, yardsticks and norms - Process of assessment is vitiated either on the ground of bias, malafides or arbitrariness - No allegation of malafides or arbitrariness - Not entitled for grant of Second Time Bound Promotion - Appeal allowed.* (Paras 16 & 20)

संविधान, अनुच्छेद 309 – द्वितीय समयबद्ध पदोन्नति का लाभ देना – हकदारी – याची को द्वितीय समयबद्ध पदोन्नति का लाभ नहीं दिया गया – विद्वान एकल न्यायाधीश ने द्वितीय समयबद्ध पदोन्नति याची को देने के निदेश दिये – अभिनिर्धारित – समयबद्ध पदोन्नति प्रदान करने के मामले में विभागीय पदोन्नति समिति को प्रत्येक उम्मीदवार के कार्य का समग्र मूल्यांकन एक ही मानक, मापदंड एवं प्रमाप अपनाते हुए करना अपेक्षित है – मूल्यांकन की प्रक्रिया पूर्वाग्रह, दुर्भावना, या मनमानेपन के आधार पर दूषित होती है – दुर्भावना या मनमानेपन के आरोप नहीं – द्वितीय समयबद्ध पदोन्नति देने के लिए हकदार नही – अपील मंजूर।

---

*W.A. No.10/2008 (Gwalior)

Cases referred :

AIR 2007 SC 2296, 1994 Supp (1) SCC 454, (1996) 1 SCC 562, (1996) 2 SCC 363.

Vivek Khedkar, G.A., for the appellants.

Deeksha Mishra, for the respondent.

ORDER

The Order of the Court was delivered by S. SAMVATSAR, J. :–This appeal is filed by the State Government being aggrieved by the order dated 23/8/2007 passed by the learned Single Judge of this Court in WP No.2529/2006(S), whereby the learned Single Judge has allowed the petition filed by respondent Subhash Chandra Agrawal and quashed the order dated 8/3/2006 (Annexure P-1) of the respondents, whereby they have refused to grant benefit of second time bound promotion on the ground that he was not found fit for higher pay scale.

2. Brief facts of the case are that respondent Subhash Chandra Agrawal was appointed as Stenographer Grade-III in the year 1974. He was given the first benefit of higher pay scale in the year 1989 under the time bound scheme framed by the State Government and he was promoted to the post of Stenographer Grade-II.

3. The State Government has framed a policy, which was notified on 19/4/1999 (Annexure P-3) for giving benefits of time bound promotion to the Government servants after completion of 12 years service and 24 years of service. As per the aforesaid notification, an employee on completing 24 years of service is entitled to the benefit of second time bound promotion.

4. The respondent was appointed as Stenographer Grade-III in the year 1974, hence according to him he was entitled to the benefit of second time bound promotion the year 1999. However, the said benefit was not given to him and the same benefit was extended to his junior. He, therefore, made a representation to the authorities, but did not get any reply, hence he filed Writ Petition No. 5560/2005, which was disposed of with a direction to the petitioner to make a representation before the respondents within a period of 15 days from the date of passing of order and the respondents shall decide the same within a period of two months thereafter and if petitioner is legally entitled for the benefit of higher pay-scale, the same shall be given to the petitioner without any further delay. Pursuant to the said direction, the order Annexure P-1 was issued, by which promotion to the petitioner was denied on the ground that after considering his ACRs, he was not found fit for promotion by the DPC. Resultantly, the benefit of second time bound promotion was denied to him.

5. This order was challenged by the respondent herein by filing WP No.2529/2006(s), which was allowed by the learned Writ Court of this Court vide order dated 23/8/2007. The learned Writ Court quashed the order dated 8/3/2006 (Annexure P-1) and directed the appellants herein to grant benefit of second time

bound promotion to the respondent herein in pursuance of meeting of the DPC held on 24/8/2005. Hence, this writ appeal.

6. Shri Vivek Khedkar, learned counsel for the appellants/State has urged that the impugned order is factually incorrect. He submitted that the Court cannot sit as an appellate authority on the decision of the DPC, hence the learned Single Judge has committed grave error in allowing the writ petition. On the other hand, Ms Deeksha Mishra, learned counsel for the respondent has vehemently opposed and supported the impugned order.

7. The State Government for grant of benefit of time bound promotions has framed a policy, which was notified on 17/3/1999, which provides that every employee shall be entitled to a minimum benefit of higher pay scale, first on completion of 12 years and second on completion of 24 years of service. Clause (c) of the said scheme provides for grant of benefit of time bound promotion pay scale, and 5 years' ACRs of the employee shall be examined in the same manner, in which the case of the employee is considered for promotion to the higher post, and if employee is found fit, then he can get the benefit of time bound promotion.

8. Learned counsel for the appellants has submitted that the learned Single Judge has allowed the writ petition filed by the respondent by holding that the scheme of time bound promotion is different from regular promotion, and therefore, the criteria of merit-cum-seniority cannot be adopted, because the purpose of granting time bound promotion is to grant benefit of pay-scale to an employee on account of stagnation in the cadre in order to relieve frustration to the employee. In support of this principle, the learned Single Judge has relied on judgment of the Apex Court in the case of *Dwijen Chandra Sarkar and another Vs. Union of India*, reported in (1999) 2 SCC 119.

9. From perusal of the aforesaid judgment, we find that principle laid down in the aforesaid judgment is not applicable, because in that case criteria for merit-cum-seniority was applied. This is not a situation in the present case. The policy Annexure P-3 clearly lays down that benefit of time bound promotion shall be extended to an employee only after consideration his 5 years' ACRs in the same manner, which is applicable to promotion.

10. So far as promotions are concerned, service conditions of the respondent are governed by the rules viz. Irrigation Department (Non Gazetted) Service Recruitment Rules, 1969.

11. Rule 14 of the said Rules, 1969 relates to conditions of eligibility for promotion. The policy provides that a person shall be granted time bound promotion only in the manner, which are provided for promotion in the rule. Thus rule 14 is applicable in case of time bound promotion. This rule clearly provides the criteria of seniority-cum-merit. Schedule-IV of the said rules provides for eligibility criteria of an employee for promotion. Thus, it is clear that an employee has to be considered for time bound promotion in accordance with Rule 14 i.e. after applying

the principle of seniority-cum-merit. The DPC for considering the case of the respondent herein was held on 24/8/2005 and the record of the DPC was produced before this Court at the time of hearing. The DPC for considering the case of the employees for promotion has laid down the norms, which are as under:-

(i) Five years ACRs which are under consideration should be generally "Good".

(ii) The latest ACR should not be "C".

(iii) The employee should get at least 3 "B" in last five years and one higher than "B".

(iv) If an employee gets 2 "C", he should get 2 "A" in the last five years.

The ACRs which were considered by the DPC in the case of the respondent herein from the year 1995 to 2005 i.e. 10 years, as per the norms laid down by the DPC they were required to consider five years ACRs.

12. Contention of learned counsel for the respondent is that five years ACRs means the ACR for the year 1995, 1996, 1997, 1998 and 1999 should have been considered by the DPC and the ACRs of the subsequent years are not relevant, as the respondent has completed 24 years of service in the year 1999.

13. Learned counsel for the State, however, contended that as the respondent was promoted to the post of Stenographer Grade-II in the year 1989, 12 years of service will be completed in the year 2001, and therefore, the ACRs for the year 1997, 1998, 1999, 2000 and 2001 should have been considered by the DPC and other ACRs are not relevant.

14. The ACRs which are produced before this Hon'ble Court from the years 1995 to 2005 show that the ACRs of the respondent for the years 1995 and 1999 are "C" while ACRs for the year 1996, 1997 and 1998 are "B". If these ACRs are considered, then respondent is not entitled for higher pay-scale, because he does not fall in category "B" of five years, and he has got "C" in the year 1999, therefore, he is not entitled for promotion. Moreover, Clause 3 provides that if an employee shall get only 3 "B" in last five years, and have earned above "B" atleast in one year. In the present case, the respondent has not got any gradation above "B" from the years 1995 to 1999. Even assuming that the respondent-employee was entitled for promotion in the year 2001, still he could not be promoted as per criteria, because from the year 1997 to 2001, he has got only 2 "B" and 3 "C", hence for this reason also he is not qualified as per the norms laid down by the DPC.

15. The Apex Court in the case of *C.P.Kalra Vs. AIR India*, 1994 Supp (1) SCC 454 has laid down that criteria laid down by the DPC for promotion should not be interfered by the High Court unless and until it is arbitrary, unfair or irrational. In the case of *State of Rajasthan Vs. Fateh Chand Soni*, (1996) 1 SCC 562 the Apex Court in para 8 of its judgment has held that the High Court, in our opinion,

was not right in holding that promotion can only be to a higher post in the Service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word 'promote' means "to advance to a higher position, grade, or honour". So also 'promotion' means "advancement or preferment in honour, dignity, rank, or grade". 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post".

16. Thus, reasoning given by the learned Single Judge that the criteria laid down for promotion cannot be made applicable for granting benefit of time bound promotion pay scale, cannot be accepted.

17. Learned counsel for the respondent has submitted that the respondent was not served with an adverse entry, hence denying him promotion on the basis of entry, he cannot be deprived of his promotion. This argument is without any merit. In the present case, we find that there is no adverse entry against the respondent. The respondent has got "B" and "C" grade in all the years.

18. Contention of learned counsel for the respondent is that it is a case of down grading, and therefore, it was necessary for the department to afford him an opportunity of hearing. For this purpose, she has relied on judgment of the Apex Court in the case of *U.P. Jal Nigam and others Vs. Prabhat Chandra Jain & others*, (1996) 2 SCC 363.

19. From perusal of the said judgment, we find that this judgment does not support the contention of learned counsel for the respondent. In that case gradation of the employee was 'outstanding' in one year followed by 'satisfactory' in the succeeding year and the Apex Court, therefore, held that this reflects adverseness, and therefore, it was necessary to communicate the same to the employee and to afford an opportunity of hearing. The Apex Court in para 3 of the aforesaid judgment that laid down that if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading.

20. In the present case, downgrading from 'B' to 'C' i.e. from 'good' to 'satisfactory'. Thus, there is normal gradation, which does not require any opportunity of hearing to the employee. The Apex Court in the case of *Union of India Vs. A.K.Narula*, AIR 2007 SC 2296 has laid down that the guidelines give a certain amount of play in the joints to the DPC by providing that it need not be guided by the overall grading recorded in the Crs, but may make its own assessment on the basis of the entries in the CRs. The DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness, the selection calls for interference. Where the DPC has proceeded in a fair, impartial and

reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by the DPC, the Court will not interfere. In the absence of any allegation of mala fide or bias against the DPC and in the absence of any arbitrariness in the manner in which assessment has been made, the High Court was not justified in directing that the benefit of upgrading be given to respondent.

21. In the present case, we find that the DPC has laid down the norms, which are made applicable uniformly to all the candidates under the zone of consideration. There are no allegation of mala fides or bias against the members of the DPC, and therefore, the learned Single Judge has committed an error in interfering in the process of selection of the DPC and passing directing the respondents to grant the benefit of second time-bound promotion to the respondent herein. In view of the matter, we find that the impugned order cannot be allowed to stand and the same deserves to be set aside.

22. Resultantly, writ appeal succeeds and is allowed. The impugned order passed by the learned Single Judge is hereby set aside and the order dated 8/3/2006 (Annexure P-1) passed by the Chief Executive, Water Resources Department, Bhopal is restored.

Appeal allowed.

I.L.R. [2008] M. P., 1905

WRIT APPEAL

Before Mr. A.K. Patnaik, Chief Justice & Mr. Justice Shantanu Kemkar

25 July, 2008*

ASBESTOS JANATA MAZDOOR UNION ... Appellant

Vs.

ETERNIT EVEREST LTD. & ors. ... Respondents

Constitution, Articles 226, 227 - *Scope of interference with the findings of Industrial Court - High Court in exercise of its powers under Articles 226 & 227 of Constitution cannot reappreciate the evidence led before Industrial Court and come to a different conclusion - High Court can interfere with the findings of Industrial Court only if it comes to conclusion that Industrial Court has acted beyond its jurisdiction or in violation of principles of natural justice or where there is an error apparent on face of record.* (Para 11)

संविधान, अनुच्छेद 226, 227 – औद्योगिक न्यायालय के निष्कर्षों में हस्तक्षेप का विषयक्षेत्र – उच्च न्यायालय संविधान के अनुच्छेद 226 व 227 के अधीन अपनी शक्तियों के प्रयोग में औद्योगिक न्यायालय के समक्ष की साक्ष्य का पुनर्मूल्यांकन नहीं कर सकता और भिन्न निष्कर्ष नहीं दे सकता – उच्च न्यायालय औद्योगिक न्यायालय के निष्कर्षों में हस्तक्षेप केवल तभी कर सकता है यदि वह इस निष्कर्ष पर पहुँचता है कि औद्योगिक न्यायालय ने अपनी अधिकारिता से परे या नैसर्गिक न्याय के सिद्धांतों के उल्लंघन में कार्य किया है या जहाँ कि अभिलेख को देखने से ही कोई त्रुटि प्रकट होती हो।

*W.A. No.291/2006 (Jabalpur)

Cases referred :

1986 MPLJ 285, 1991 (1) JLJ 220, 1996 MPLJ 822, 2001 (1) JLJ 596, 2005 (1) JLJ 329, AIR 1977 SC 322, AIR 1986 SC 1514, (2005) 3 SCC 409.

Ravishankar Pandey, for the appellant.

Rajendra Tiwari with *Sanjay Verma,* for the respondents.

ORDER

The Order of the Court was delivered by **A.K. PATNAIK, C. J.** :–This is an appeal filed under Section 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 13.2.2006 passed by the learned Single Judge in Writ Petition No.883/2004 under Article 226 of the Constitution.

2. The facts relevant for disposing of this appeal briefly are that the appellant No.1, which is a registered trade union of employees of the establishment of respondent No.1 at Katni, raised an industrial dispute relating to the service conditions of the employees of the respondent No.1. After conciliation proceedings failed, the State Government passed an order dated 22.3.1997 making a reference of 29 subjects of dispute to the Industrial Court under Section 51 of the Madhya Pradesh Industrial Relations Act, 1960 (for short 'the Act') which was registered as Reference Case No.3/97. During the pendency of the reference, the appellant No.1 ceased to be the Representative Union of the employees of the undertaking of the appellant in May, 1998 and the employees formed a Coordination Committee. On 20.10.1999 a settlement was entered between the Coordination Committee of the employees and the management of the respondent No.1 in presence of the Labour Officer and the management filed an application before the Industrial Court for passing an award in terms of the settlement dated 20.10.1999. The reference was amended by the State Government and the Labour Officer was authorised by the State Government to represent the employees of the respondent No.2 before the Industrial Court.

3. The appellant No.1 then filed Writ Petition No.2043/2001 before this Court in which the Court passed orders on 30.11.2001 directing the Labour Officer not to enter into any compromise with the management of respondent No.1 and authorised the appellant No.1 to remain present on each day of the proceeding before the Industrial Court. Appellant No.2 who was working as Temporary Substitute Pool (TSP) employee filed an application before the Labour Court to classify him as a permanent employee and also filed an application under Section 10 of the Code of Civil Procedure, 1908 before the Industrial Court in Reference Case No.3/97 for stay of the reference proceedings, but the Industrial Court dismissed the application. The appellant No.2 then moved this Court in W.P. No.6984/2002 and the Court disposed of the writ petition by order dated 17.3.2003 with the direction that the application filed by the appellant No.2 before the Labour Court shall remain stayed till decision in the reference application by the Industrial

Court and if the grievance of the appellant No.2 remains unredressed by the decision of the Industrial Court in the reference case, the Labour Court will decide it in accordance with law and the appellant No.2 will be free to participate in the reference proceedings to protect his interest.

4. Thereafter, respondent No.2 became the Representative Union and by order dated 16.7.2002 the State Government again amended the reference and directed that in Reference Case No.3/97 respondent No.2 will represent the employees of the undertaking of the respondent No.1. In Reference Case No.3/97, however, respondent No.2 did not lead any evidence but the appellants No.1 and 2 and the respondent No.1 led evidence and the Industrial Court ultimately disposed of the reference by order dated 12.3.2004. Appellants No.1 and 2 challenged the order dated 12.3.2004 of the Industrial Court in W.P. No.883/2004 on various grounds, but by the impugned order the learned Single Judge dismissed the writ petition. Aggrieved, the appellants have filed this appeal.

5. At the hearing, the appellant No.2, who is also the President of the appellant No.1 Union, appeared in person and submitted that the first subject of dispute referred to the Industrial Court in Reference Case No.3/97 was whether the TSP employees working in the undertaking of the respondent No.1 performed the work of permanent nature and was it proper to classify them as TSP employees ? He took us through his own evidence and the evidence of Shri Lakhan Lal Dwivedi and submitted that the conclusion of the Industrial Court that TSP employees who were not working on any vacant posts were not eligible to be categorised as regular or permanent was not at all correct. He submitted that the learned Single Judge in the impugned order should have set aside this conclusion of the Industrial Court and should have held that TSP employees who have been working for years together in the undertaking of respondent No.1 are doing work of permanent nature and should be regularised in service.

6. In support of his submissions, respondent No.2 cited a decision in *Bijlee Karmachari Sangh, M.P. and another vs M.P. Electricity Board, Jabalpur and others,* 1986 MPLJ 285 in which a learned Single Judge of this Court has observed that keeping thousands of employees on nominal muster roll for years together and paying them daily wages amounts to discrimination and such employees are entitled to be treated as permanent. He cited *Ichalkaranji Co-operative Spining Mills Ltd. vs Deccan Co-operative Soot Girani Kamgar Sangh and others,* 1991(1) LLJ 220, in which the Bombay High Court has held that Badli workers and casual employees who were on rolls for more than two years have to be confirmed. He relied on *Factory Manager, Central India Machinery Manufacturing Co. Ltd. vs Prakash Singh Rood Singh and others,* 1996 MPLJ Vol. XLI 822, in which a learned Single Judge of this Court has held that a 'Badli workman' means a workman who is employed in the establishment in place of another workman whose name is borne on the muster rolls of the establishment and merely because the employer has chosen to describe a workman

as a Badli workman would not be conclusive in this regard and the employer must prove that he was employed on the post of regular employee which had fallen vacant due to his remaining absent temporarily and was to demit as soon as the regular employee rejoined. He cited *Hindustan Machine Tools and others vs M. Rangareddy and others,* 2001 (1) LLJ 596, in which the Supreme Court having found that casual labourer have been continued for a long spell of two-three years observed that there was presumption of regular need for services of such casual labourers and was obligatory for the employer to examine the feasibility of regularisation of casual labourers. He also cited the decision of the Punjab & Haryana High Court in *State of Punjab and others vs Kulwant Singh and others,* 2005 (1) LLJ 329 directing regularisation of services of workmen who worked for more than 10 to 17 years by creating posts for them.

7. The respondent No.2 next submitted that the conclusion of the Industrial Court that TSP employees working in the undertaking of the respondent No.1 cannot be classified as permanent was not really based on evidence but on the settlement dated 20.10.1999. He submitted that the settlement dated 20.10.1999 was not in the interest of the employees and the Industrial Court ought not to have relied on the settlement to which the appellant No.1 was not a party. He submitted that the Representative Union also was not a party to the settlement and the settlement was arrived at between the management of the respondent No.1 and the Co-ordination Committee formed by the employees. He submitted that Section 98 of the Act provides that the Industrial Court will make an award in terms of the agreement arrived at between the employer and the Representative Union who were parties to any industrial dispute pending before the Industrial Court and therefore the Industrial Court could not make an award in terms of the settlement dated 20.10.1999 to which the Representative Union was not a party. He submitted that the finding of the learned Single Judge in the impugned order that the settlement dated 20.10.1999 was a statutory agreement between the employer and the Representative Union and Industrial Court had to make the award in terms of the settlement as provided in Section 98 of the Act was thus not correct.

8. Mr. Rajendra Tiwari, learned senior counsel with Mr. Sanjay Verma, Advocate, appearing for the respondent No.1, on the other hand, submitted that the conclusion of the Industrial Court that TSP employees in the establishment of the respondent No.1 cannot be classified as permanent as they were not working on vacant posts was based on the evidence that was adduced by the parties before the Industrial Court and the learned Single Judge has rightly held in the impugned order that the High Court while exercising power under Article 226 of the Constitution cannot reappreciate evidence as an Appellate Court and come to a different conclusion.

9. Regarding the settlement dated 20.10.1999, Mr. Tiwari and Mr. Verma submitted that the settlement was a fair and just one covering different subjects of dispute referred to the Industrial Court in the reference and, as a matter of fact, the Industrial Court has found that the majority of the employees working in

the establishment of the respondent No.1 have accepted the benefits of the settlement dated 20.10.1999. They submitted that it is only a few TSP employees who have refused to accept all the terms of the settlement. They cited *Herbertsons Ltd. vs. Workmen of Herbertsons Ltd. and others,* AIR 1977 SC 322 in which the Supreme Court has held that it is not necessary that each individual worker should know the implications of the settlement and since a recognised union which is expected to protect the legitimate interests of labour enters into a settlement in the interests of labour, the Industrial Court has to give due weight and consideration to a settlement arrived at in the course of collective bargaining.

10. We have considered the aforesaid submission of learned counsel for the parties and we find that in para 6 of the order dated 12.3.2004 disposing of the Reference Case No.3/97, the Industrial Court has discussed the pleadings and evidence on the dispute whether TSP employees working in the undertaking of respondent No.1 can be classified as regular or permanent employees and has come to the conclusion that they cannot be classified as regular or permanent employees as they are not working on any vacant posts. The English translation of the relevant portion of para 6 of the order dated 12.3.2004 of the Industrial Court is extracted herein below:

> "This Schedule is related to the dispute that whether the work of TSP employees in the factory is of regular nature and whether it is appropriate due to this reason to classified them as TSP employees. In this respect, the first party contented that TSP workers work continuously and they do not work in place of regular employees but they work on vacant position due to which they are eligible to be categorised as regular and it is not appropriate to categorise as TSP employees. It has also been argued that there is no such categorisation in the permanent orders, therefore, aforesaid categorisation is in appropriate. Aforesaid argument is not acceptable because first party had not proved by any documentary evidence that TSP employees work in the vacant place. Getting regular work cannot be the proof of the claim that Badli workers work in the vacant places in addition to the regular employees. First party in paragraph 1 of the statement stated as under - "and they work as a temporary substitute workers for a long period, who are deprived of benefits and legal facilities being provided to regular employees and their services are not secured. They do not get a salary when they are not engaged for a work on any day whereas they are bound to remain present on the gate of undertaking". It is clear from the previously mentioned pleading that TSP employees get their duties in shifts only and therefore they had to present for work in shifts only. In the written argument, Asbestor Janta Mazdoor Union contended that until the year 96-98 the daily absence of regular employees was 20-25% and this percentage in number was 200-220 per day. It is clear that 800-880 workers work per day. I perused the statement of witness Shri Lakhan Lal Dwivedi. He

asserted to have prepared the chart of number of regular employees who were not present on their work until the year 95-96 and 97-98. He asserted to have prepared the chart based on attendance register of the workers. However, the first party did not cross-examine on rest of this chart. Executive President of Asbestos Janta Mazdoor Union Ravi Shankar Dubey admitted in his cross-examination that all the workers got their benefits on the basis of agreement (Ex.D-1) before the agreement of Ex.D-2. Witness admitted that it is mentioned in the para 9 of the agreement (Ex.D-2) that total 75 TSP employees were made regular. Witness of first party Mohammad Ibrar admitted in his cross-examination that on 22.9.97 the number of workers in the department of second party institution was determined. It is also true that the number was ascertained according to the agreement of year 1993. It is also true that the agreement of the year 1999 which is Ex.D-2 workers accepting this agreement had got the benefit of the agreement. The two of the workers who did not get the benefit of the agreement, one of them was Foolchand Dubey. It is clear from this that the agreement (D-2) which is of 20.10.99, all the workers except two workers accepted it and got the benefit of it. Witness Ravishankar Dubey on behalf of Asbestos Janta Mazdoor Union took voluntary retirement in June, 2000 and got its benefit and gave affidavit (Ex.D-3). Later said that he took the benefit of VRS due to pressure. However, the witness asserted that he raised no objection regarding VRS in his deposition. He did not produce any document in this respect in the Court. Witness of the employer Shri Lakhan Lal Dwivedi said that agreement (D/2) was done after the Registrar in accordance with the order of Industrial Tribunal registered following prescribed procedure and the agreement, Indore dated 31/10/2000 which was passed in Appeal No.147/2000/MPIR. This agreement (D/2) is effective until today. In this agreement, the number of workers was fixed and regular employees were working according to the prescribed number of posts and no post is vacant. It can be concluded in respect of Schedule No.1 that TSP workers who were not working on vacant posts were not eligible to be categorised as regular as they worked in the capacity of shift workers in the absence of regular employees."

11. It will be clear from the aforesaid discussion in para 6 of the order of the Industrial Court that the Industrial Court has not only taken into consideration the pleading and evidence of the appellant No.2, President of the appellant No.1 Union, but also the evidence of Shri Lakhan Lal Dwivedi, the other witness examined by the appellants No.1 and 2, and only thereafter concluded that TSP employees who are not eligible to be categorised as permanent as they are working in the shifts in the absence of regular employees. The High Court in exercise of Article 226 and 227 of the Constitution cannot reappreciate the evidence before the Industrial Court and come to a different conclusion. The High Court can interfere

with the findings of the Industrial Court only if it comes to the conclusion that the Industrial Court has acted beyond its jurisdiction or in violation of the principles of natural justice or where there is an error apparent on the face of the record. The learned Single Judge was therefore right in holding in para 20 of the impugned order that on merits the Industrial Court has examined the dispute on the basis of evidence placed on record and given a finding of fact, and these findings of fact cannot be said to be erroneous or illegal calling for interference by the High Court under Article 226 or 227 of the Constitution. The learned Single Judge has further held in the impugned order that the Industrial Court has taken into consideration the law laid down by the Apex court in *Prakash Cotton Mills Pvt. Ltd. vs Rashtriya Mills Mazdoor Sangh,* AIR 1986 SC 1514 and *Karnataka State Road Transport Corporation and Another vs S.G. Kotturappa and another,* (2005) 3 SCC 409, in which it has been held that the Badli (TSP) workman gets works only in the absence of regular employees and have no right to claim employment.

12. The discussion in para 6 of the order of the Industrial Court in the reference quoted above would also show that the Industrial Court has taken into consideration that all the workers got the benefits on the basis of settlement dated 20.10.1999 and as per clause 9 of the settlement 75 TSP employees were to be made regular. We further find that in para 9 of the order dated 12.3.2004 the Industrial Court discussed the question of regularisation of the TSP employees and has found that the strength of TSP employees on the date of the order of the Industrial Court were 16 to 18 and accordingly the Industrial Court has directed the respondent No.1 employer to regularise these 16 to 18 TSP employees in accordance with the clause 6 of the settlement dated 20.10.1999. The English translation of paras 9 and 10 of the order dated 12.3.2004 of the Industrial Court is quoted herein below:

> "On behalf of the Esbestos Janta Majdoor Union judicial principles laid down in the judicial citations AIR 1978 SC 548, AIR 1979 SC 876, 1966 (1) SCC 639, 1989 MPLSR 195, 1986 MPLJ 285 have been produced and it has been submitted that the workers working for long time should be regularised. It has also been argued that in case cross-examination has not been made on any question, it should be held undisputed. Judicial citation 2004 MPHT 16 has been produced in this regard. By citing the judicial citation 2001 (1) LLJ 569, it has been argued that direction to regularise the TSP workers should be given. Although facts of the said judicial citations are different to the facts of the present and is not applicable yet it is evident that present strength of the TSP employees is 16 to 18 in the light of the settlement Ex.D-2 employer should proceed to regularise them. This proceeding should be done as per the Clause no.9 of the settlement Ex.D-2. Because on behalf of the employer it has been stated that the said settlement is in force to this date.
>
> With the above direction this reference case is disposed of. As the propriety of the relief sought in the Schedules of the Reference Case has not been

established therefore answer to these Schedules is given in negative and case is rejected with the above direction. Parties to bear their respective costs."

13. The discussion in paras 9 and 10 of the order of the Industrial Court quoted above would show that although the Industrial Court has held that the authorities cited by the appellants for regularisation of employees who have worked for long periods did not apply to the facts of the present case, it has directed the respondent No.1 to regularise the remaining 16 to 18 TSP employees. The Industrial Court has also found that the benefits of the settlement dated 20.10.1999 have been received by most of the employees and hence the settlement was in the interest of the employees. Thus, even if the settlement was not entered into by the Representative Union and even if the appellant No.1 Union was not a party to the settlement and the Committee formed by the employees had entered into the settlement with the management, the Industrial Court having found that the most of the employees have not objected to the settlement but have taken the benefits of the settlement was bound to give due weight and consideration to the settlement and make an award in terms of such settlement because amicable settlement of industrial dispute is one of the objects of the Act.

We therefore hold that this appeal has no merit and accordingly dismiss the same.

Appeal dismissed.

I.L.R. [2008] M. P., 1912
WRIT PETITION
Before Mr. Justice R.K. Gupta
6 February, 2008*

R.S. MEHTA (DR.) ... Petitioner
Vs.
STATE OF M.P. & ors. ... Respondents

A. Geology and Mining Class-I and Class-II Service Recruitment Rules, 1965, Rule 14 - *Promotion - Merit-cum-Seniority* - *Criteria for promotion to the post of Superintending Geologist was merit-cum-seniority - Respondents applying the criteria of seniority-cum-merit promoted respondent No.3 & 4 - Indore Bench in similar circumstances directed in case of petitioner therein that although the criteria is merit-cum-seniority but as criteria of seniority-cum-merit has been applied, the same benefit be extended to the petitioner therein - Held - Relying on the judgment passed by the Indore Bench respondents were directed to apply the criteria of seniority-cum-merit and extend the benefit to the petitioner for promotion and determine the inter-se seniority and all other monetary benefits - Petition allowed.* (Paras 6 & 7)

*W.P. No.22628/2003 (O.A. No.1029/2003) (Jabalpur)

क. भू–विज्ञान और खनन वर्ग–एक और वर्ग–दो सेवा भर्ती नियम, 1965, नियम 14 – पदोन्नति – योग्यता–सह–ज्येष्ठता – अधीक्षण भू–वैज्ञानिक के पद पर पदोन्नति के लिए मापदंड योग्यता–सह–ज्येष्ठता था – प्रत्यर्थियों ने ज्येष्ठता–सह–योग्यता मापदंड प्रयोग में लाते हुए प्रत्यर्थी क्रमांक 3 और 4 को पदोन्नत किया – इन्दौर न्यायपीठ ने समरूप परिस्थितियों में उसमें के याची के मामले में निदेशित किया कि यद्यपि मापदंड योग्यता–सह–ज्येष्ठता है परन्तु चूंकि वरीयता–सह–योग्यता का मापदंड लागू किया गया है, समान लाभ उसमें के याची को दिया जाए – अभिनिर्धारित – इन्दौर न्यायपीठ द्वारा पारित निर्णय पर निर्भर करते हुए प्रत्यर्थियों को ज्येष्ठता–सह–योग्यता का मापदंड लागू करने और याची को पदोन्नति के लिए लाभ देने तथा पारस्परिक ज्येष्ठता व अन्य सभी आर्थिक लाभ निर्धारित करने को निदेशित किया गया – याचिका मंजूर।

B. ***Promotion - Merit-cum-Seniority vis-à-vis Seniority-cum-Merit - Defined - Rule of seniority-cum-merit has to be applied then minimum marks are to be prescribed and if a candidate secure minimum merit marks then only on the basis of seniority he is to be placed in the select list but when the rule prescribes merit-cum-seniority then merit and ability has to be given great emphasis and seniority plays a less significant role.*** (Para 21)

ख. पदोन्नति – योग्यता–सह–ज्येष्ठता की तुलना में ज्येष्ठता–सह–योग्यता – परिभाषित – ज्येष्ठता–सह–योग्यता के नियम को लागू किया जाता है तब न्यूनतम अंक विहित करने होते हैं और यदि एक उम्मीदवार न्यूनतम योग्यता अंक प्राप्त करता है केवल तभी उसे ज्येष्ठता के आधार पर चयन सूची में रखना होता है, किन्तु जब नियम योग्यता–सह–ज्येष्ठता विहित करता है तब योग्यता और क्षमता पर अधिक जोर दिया जाता है और ज्येष्ठता कम महत्वपूर्ण भूमिका निभाती है।

Cases referred :

(2006) 6 SCC 145, (1998) 6 SCC 720.

A.K. Pathak, for the petitioner.

Rahul Jain, Dy.G.A., for the respondent No.1.

Sujoy Paul, for respondent Nos.3 & 4.

ORDER

R.K. Gupta, J. :–The present petition is filed by the petitioner challenging the order dated 23.9.2000 (Annexure A-10) and order dated 29.5.2000 (Annexure A-12). By these two orders the respondents have promoted the respondents 3 and 4 as Superintending Geologist in the Directorate of Geology and Mining. The petitioner has contended that he is more meritorious than the respondents 3 and 4 and yet the claim of the petitioner has been ignored.

2. The facts leading to the present petition are that the petitioner as well as the respondents 3 and 4 were working as Deputy Director (Tech.), which is the feeder post for getting promotion to the post of Superintending Geologist. It is also not in dispute that the petitioner as well as respondents 3 & 4 were eligible to be considered for their promotion to the post of Superintending Geologist.

3. The matter with regard to promotion on the post of Superintending Geologist is regulated by the rules framed by the State Government known as Madhya Pradesh Geology and Mining Class-I and Class-II Service Recruitment Rules, 1965 (hereinafter referred to as "the Rules"). The Rule 14 of the Rules provides for appointment by promotion and accordingly the promotion is to be regulated by applying the rule of *"merit-cum-seniority"*. This is also not in dispute between the parties.

4. In accordance with the aforesaid Rules, the first DPC met on 21.7.2000 to regulate the promotion on the post of Superintending Geologist and accordingly the order of promotion was passed, which is Annexure A-10 to the petition. By this order the petitioner was not promoted and the respondent No.4 was promoted to the said post. The minutes of the Departmental Promotion Committee (hereinafter referred to as **"the DPC"**) were made available to this Court and the DPC considered the case of the petitioner as well as respondent No.4 and other officers. The said committee further considered the confidential reports for the preceding five years i.e. from 1994-95 to 1998-99. According to the chart submitted before this Court, the grading of the confidential reports in respect of the petitioner Dr. R.S. Mehta, respondent No.4 Shri R.K. Sharma, Shri A.M. Vivarekar (petitioner in W.P.No.7700/2003), Shri S.K. Trivedi (respondent No.3 in W.P.No.7700/2003) and one Shri S.C. Tandan, who was at serial No.1 are as under:-

Year	1994-95	1995-96	1996-97	1997-98	1998-99
Petitioner	Ka+	Ka+	Ka+	Ka	Ka
Respondent No.4	Ka	Ka+	Ka+	Ka+	Ka+
Shri A.M.Vivarekar	Ka	Kha	Kha	Ka+	Ka+
Shri S.K. Trivedi	Kha	Ka+	Kha	Kha	Kha
Shri S.C. Tandan	Kha	Kha	Ka	Kha	Kha

5. On the basis of the aforesaid, since the respondent No.4, according to the DPC, was found to be more meritorious as he secured 19 marks, therefore, he was promoted and petitioner was not promoted. In the DPC dated 21.7.2000 the respondent No.3 was not found fit and was not promoted. The order Annexure A-10 by which the promotions were affected, was challenged by one of the incumbents namely Shri A.M. Vivarekar by filing an original application before the State Administrative Tribunal, which was registered as O.A. NO. 2332/2000 *(A.M. Vivarekar Vs. State of M.P. & others)*. Subsequently, after abolition of the aforesaid Tribunal, the case was transferred to the Indore Bench and it was registered as W.P. No. 7700/2003. The said petition was decided by the Indore Bench of this Court on 14.12.2005. Copy of the said judgment is placed on record by the petitioner along with the application for urgent hearing.

6. As it is evident from the judgment passed by the Indore Bench of this Court,

the Indore Bench concluded that the DPC has effected promotion by applying the wrong Rule of 'Seniority cum Merit' and the Rule of 'Merit cum Seniority' has not been applied. The Indore Bench has further recorded a finding in para-5 of its judgment that even though the petitioner in that petition secured 16 marks yet he was not promoted. It was also stated that no specific reasons were assigned by the DPC with regard to non-promotion of Shri A.M. Vivarekar and on that basis the Indore Bench of this Court allowed the said writ petition and further directed the respondents to issue promotion order of the said petitioner from the date when the other respondents were promoted vide order dated 23.9.2000. The Indore Bench of this Court further directed to assign seniority to the said petitioner above the respondents. The judgment passed by the Indore Bench in the case of *A.M. Vivarekar* (supra) has also attained finality, as it has been upheld by the Apex Court.

7. On the basis of the assessment of the DPC which met on 21.7.2000, this Court has already concluded that the Rule which was applicable for promotion was the *'merit-cum-seniority'* has not been applied and the promotions have been effected by applying the rule of *'seniority-cum-merit'*. The Indore Bench of this Court in the case of *A.M. Vivarekar* (supra) has further concluded that the petitioner therein secured 16 marks and yet he was not promoted, therefore, a direction as such was given to promote the petitioner therein.

8. The following criteria was fixed by the DPC which met on 21.7.2000:-

(a) The integrity of the employee would be unblemished,

(b) There should not be any CR entry for the last five years as "Gha"

(c) usually the last five years of CRs entries would be generally good and last 2 years entries must be good.

9. The DPC assigned marks to the employees on the basis of grading of CRs which are as under:-

A plus	:	4
Ka	:	3
Kha	:	2
Ga	:	1

10. I have already referred to hereinabove that the petitioner secured total 18 marks, which are more marks than 16 which Shri A.M. Vivarekar secured, who was petitioner in W.P. No. 7700/2003 (supra) before the Indore Bench of this Court and he was directed to be promoted.

11. Learned counsel for the petitioner submitted that once the Indore Bench has already given a direction to give promotion to Shri A.M. Vivarekar, who secured 16 marks in the same DPC wherein the petitioner herein secured 18 marks, which is also not disputed by the respondents, therefore, the present petitioner is also entitled to be given the benefit of promotion by applying the ratio of the judgment passed by the Indore Bench of this Court in the case of *A.M. Vivarekar* (supra).

12. The submissions as put forth by the parties are considered. It is true that the Indore Bench while deciding the case of *A.M. Vivarekar* (supra) has already recorded a finding that he was allotted total 16 marks by the DPC which met on 21.7.2000 and in the same DPC the present petitioner has been given total 18 marks, which are on higher side than Shri A.M. Vivarekar. The respondents should have taken into account that when a candidate namely Shri A.M. Vivarekar, who had secured 16 marks, has been promoted then the petitioner who secured more marks than him should also have been promoted. The petitioner has been promoted by an order dated 8.2.2007 on the said post and in the case of the petitioner the judgment passed by the Indore Bench in the case of *A.M. Vivarekar* (supra) has not been made applicable. Thus, according to me, the present petitioner is also entitled to be given the benefit of his promotion on the post of Superintending Geologist, as the petitioner was wrongly deprived of his promotion. Accordingly, I direct the respondents to release the promotion to the petitioner from 23.9.2000 along with all monetary benefits. The State Government is further directed to determine the inter se seniority of the petitioner and also the persons those who were promoted vide order dated 23.9.2000 on the post of Superintending Geologist in accordance with the rules applicable for determination of seniority in accordance with law. The respondents have acted unfairly with the petitioner by not giving him promotion and only giving promotion to the person who secured less marks.

13. Though it was not necessary for me to decide the present case with reference to the second grievance of the petitioner with regard to the DPC dated 13.5.2002 wherein the respondent No.3 was promoted to the post of Superintending Geologist. In the said DPC the petitioner and the respondent No.3 both were considered. The confidential reports for the year 1996-97 to 2000-01 were considered. The minutes of the DPC have also been made available to this Court and according to the same a comparative assessment of their confidential reports is given as under:-

Year	1996-97	1997-98	1998-99	1999-00	2000-01	Marks obtained in DPC
Petitioner	Ka+	Ka	Ka	Ka+	Ka+	18
Respondent No.3	Ka	Kha	Kha	Kha	Ka+	13

14. The criteria for promotion was the same i.e. *"merit-cum-seniority"* and not the *"seniority-cum-merit"*. On the basis of the aforesaid chart, the DPC has allotted 18 marks to the petitioner and 13 marks were allotted to the respondent No.3 in the DPC dated 13.5.2002. But, the petitioner still in this DPC dated 13.5.2002 was not given promotion and the promotion was given to the respondent No.3 even though the respondent No.3 was less meritorious than the petitioner and also secured less marks than the petitioner.

15. Learned counsel appearing for the respondent No.1-State submitted that at the time when the DPC met on 13.5.2002, the same criteria was adopted by the DPC which was applicable in the DPC held on 21.7.2000 except for that the overall generally 'good' assessment in preceding five ACRs as replaced by 'very good' and in addition to that the guidelines, which were issued by the General Administration Department on 10.9.2001 vide order Annexure A-6, were also made applicable. By issuing these guidelines, the State Government has clarified that while granting promotion from a particular block the seniority in the feeder cadre shall be taken into consideration and promotion order from the select list shall be issued on the basis of seniority in the feeder cadre. The circular also prescribes the classification of the officers to be promoted on the basis of grading (i) Excellent, (ii) Very Good, (iii) Good, (iv) Average and (v) Unfit. It is further mentioned that for promotion from class I to class I post benchmark of at least very good grading should be considered. A copy of the said circular dated 10.9.2001 has also been filed on record by the respondent-State as Annexure R-I to their return, which is also filed by petitioner as Annexure A-6. The circular as such is also reproduced hereunder:-

"मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

कमांक सी/3–2/2000/3/एक, भोपाल, दिनांक 10 सितम्बर, 2001

प्रति,
शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, म.प्र. ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त जिलाध्यक्ष,
मध्य प्रदेश।

विषयः– प्रथम श्रेणी से प्रथम श्रेणी के पदों पर की जाने वाली पदोन्नतियों के लिये पदोन्नति के मापदण्ड।

म.प्र. सिविल सेवा (पदोन्नति के लिये आधार का निर्धारण) नियम, 1998 के प्रावधान के अनुसार "प्रथम श्रेणी से प्रथम श्रेणी" के पदों पर की जाने वाली पदोन्नतियों के लिये पदोन्नति का मापदण्ड "मेरिट" कम सीनयरिटी (योग्यता प्रधान–वरिष्ठता गौण)" निर्धारित किया गया है।

2. उपर्युक्त मापदण्ड के आधार पर की जाने वाली पदोन्नतियों के लिये पदोन्नति की प्रकिया म.प्र. सिविल सेवा (पदोन्नति में आरक्षण तथा विचारण श्रेत्र के विस्तार की सीमा) नियम, 1997 के नियम 5 में दर्शाई गई है, जिसमें चयन सूची तैयार करने हेतु विभागीय पदोन्नति समितियों के लिये विस्तृत मार्गदर्शी निर्देश दिये गये है।

3. प्रथम श्रेणी से प्रथम श्रेणी के पदों पर की जाने वाली पदोन्नतियों के लिये चयन सूची तैयार करने में एकरूपता लाने के लिये राज्यशासन, म.प्र. सिविल सेवा (पदोन्नति में आरक्षण तथा विचारण श्रेत्र के विस्तार की सीमा) नियम, 1997 के तहत निम्नलिखित पूरक निर्देश जारी करता है–

(1) विभागीय पदोन्नति समिति, अधिकारियों को उनके मूल्यांकन के आधार पर उत्कृष्ट, बहुत अच्छा, अच्छा, औसत एवं अनुपयुक्त श्रेणी में वर्गीकृत करेगी।

(2) प्रथम श्रेणी से प्रथम श्रेणी के पदों पर पदोन्नति की योग्यता के लिये "बैन्चमार्क ग्रेड" बहुत अच्छा ;अमतल हववकद्ध रखा जावे।

(3) चयन सूची में जिन अधिकारियों का विचाराधीन अवधि का मूल्यांकन "उत्कृष्ट" श्रेणी का हो, उन्हें "एनब्लाक" बहुत अच्छा श्रेणी वालों से उपर रखा जावे। समान ग्रेडिंग वाले अधिकारी अपनी फीडिंग केडर की आपसी वरिष्ठता बरकरार रखेंगे।

(4) उपर (3) के प्रावधान रहते हुए भी अनुसूचित जाति एवं अनुसूचित जनजाति के ऐसे अधिकारी, जिनका स्थान पदोन्नति के विचारण क्षेत्र में प्रथम उतने स्थानों में है जितनी रिक्तियों के लिये चयन सूची बनाई जा रही है, को चयन सूची में सम्मिलिति किया जायेगा, बशर्ते वे पदोन्नति के लिये अयोग्य न पाए जाएं।

(5) चयन सूची में आवश्यकतानुसार विचारण क्षेत्र में निर्धारित "बेन्चमार्क ग्रेड" वाले पर्याप्त अधिकारी नहीं मिलने पर शेष बची रिक्तियों की पूर्ति हेतु नई डी.पी.सी. की जावेगी, जिसमें मूल विचारण क्षेत्र के आगे के आवश्यक संख्या तक के अर्हकारी सेवा पूर्ण करने वाले अधिकारियों के नामों पर विचार किया जावेगा।

हस्ता/–
(एस.के. वर्मा)
अतिरिक्त सचिव
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग"

16. It is pertinent to note here that the circular dated 10.9.2001 (Annexure A-6/Anneuxre R-I) is the circular which has been issued to supplement the Rules which are known as M.P. Civil Services (Reservation in Promotion and Limits on the Extent of Zone of Consideration) Rules, 1997. The Preamble of the said Rules reads as under:-

> "In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh hereby makes the following rules relating to reservation in favour of Scheduled Castes and Scheduled Tribes and to restrict the zone of consideration for promotion to the persons appointed to Public Services and posts in connection with the affairs of the State..."

In this case in the Departmental Promotion Committee dated 13.5.2002 no candidate belonging to the reserved community was promoted and there was only one post.

17. On the basis of the same, the aforesaid Rules have been made applicable for the purposes of extending the zone of consideration and limit of extent of zone of consideration for promotion to the reserve category belonging to Scheduled Caste and Scheduled Tribes. Since the circular Annexure A-6/Annexure R-I has been issued to supplement the aforesaid Rules, therefore, it is difficult to conceive that the said circular would apply in the present case. It is nobody's case that either the petitioner or the respondent No.3 are belonging to reserve category so that the circular issued by the State Government (Annexure A-6) to supplement the aforesaid Rules of 1997 would have any application. The respondents under the garb of the said circular have wrongfully deprived the petitioner from his lawful promotion to which he was entitled to. Thus, the circular Annexure A-6 would have no application in the present case so that the principles of 'enblock' as enumerated in Annexure A-6 could have been applied in this case.

18. The criteria in the present case is *"merit-cum-seniority"*, therefore, when the merits are equal then only the question of seniority is to be determined. While determining the merit, even though the petitioner is belonging to the 'excellent' category and secured 18 marks and the respondent No.3 secured only 13 marks then it is difficult to conceive as to how under these circumstances, the promotion of respondent No.3 was made, who was found to be less meritorious than the petitioner. There is no dispute between the parties that the petitioner received 18 marks on the basis of his confidential reports for the years 1996-97 to 2000-01 and so far as the respondent No.3 is concerned, he secured 13 marks. In the present case, if the rule of *"merit-cum-seniority"* is applied then according to the criteria the merit has to be given preference over the seniority but in the present case it is apparent that the rule of 'merit-cum-seniority' has been given a go bye and sacrificed and rule of 'seniority-cum-merit' has been applied. The justification which the State has given to place the persons is based upon the circular dated 10.9.2001 (Annexure P-6/Annexure R-I), which has no application in the present case for the reasons stated in the earlier paragraph.

19. The Apex Court in *B.V. Sivaiah and others Vs. K. Addanki Babu and others*, 1998 (6) SCC 720 has considered as to how the rule of 'seniority-cum-merit' and *"merit-cum-seniority"* are to be made applicable. In the facts of the case, the Apex Court was dealing with the promotion policy in the Regional Rural Banks and while considering the earlier judgments passed by the Apex Court explained the manner for the application of criteria of *"seniority-cum-merit"* and *"merit-cum-seniority"* in the matter of promotions. Both these criteria cannot be equated. The comparative assessment of merit is required to be made while applying the criteria of *"merit-cum-seniority"* and in *"seniority-cum-merit"* no such comparative assessment is required. The Apex Court in paras-9 and 10 of its judgment has observed that when the rule prescribes the principle/criteria to regulate promotion *'merit-cum-seniority'* then greater emphasis on merit and ability has to be laid and seniority plays a less significant role. The paras 9 and 10 from the said judgment are reproduced as under:-

"9. The principle of 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service / Indian Police Service (Appointment by Promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in *Union of India v. Mohan Lal Capoor* has said (SCC p. 856, para 37)

> "[F] or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

Similarly, Beg J. (as the learned Chief Justice then was) has said: (SCC p. 851, para 22)

> "22. Thus, we think that the correct view in conformity with the plain meaning of words used in the relevant rules, is that the "entrance" or "inclusion" test, for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor."

10. On the other hand, as between the two principles of seniority and merit, the criterion of *'seniority -cum-merit"* lays greater emphasis on seniority. In State of Mysore v. Syed Mahmood while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of *seniority-cum-merit,* this Court has observed that the rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on *seniority-cum-merit* the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

20. The same analogy subsequently has also been explained and relied upon by

the Apex Court in *Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and others*, 2006 (6) SCC 145 wherein the Apex Court has considered the difference between the criteria for promotion between *"merit-cum-seniority"* and *"seniority-cum-merit"*. The Apex Court relied upon the judgment passed in *B.V. Sivaiah* (supra), and thereafter decided that where the procedure adopted does not provide minimum standard for promotion and only minimum standard for interview, thus, the selection with reference to comparative merit would be contrary to the rule of *"seniority-cum-merit"*. In this reference, paras 16 and 17 from the judgment passed in the case of Harigovind Yadav (supra) are profitably reproduced as under:-

> "16. This Court noted that in the matter of formulation of a policy for promotion to a higher post, the two competing principles which may be taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. This Court observed: (*Sivaiah case*, SCC p. 726, para 8):
>
> > "In Sant Ram Sharma v. State of Rajasthan, this Court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that if a post falls vacant, it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones. An official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of "seniority-cum-merit" and "merit-cum-seniority" which take into account seniority as well as merit seek to achieve such a balance."
>
> 17. This Court also noted that while the principle *'seniority-cum- merit'* lays greater emphasis on seniority, *'merit-cum-seniority'* laid greater emphasis on merit and ability and seniority plays a less significant role, becoming relevant only when merit is approximately equal. After referring to several decisions bearing on the issue, this Court enunciated the following general principle in regard to promotions by *seniority-cum-merit* (at SCC P. 730 para 18) which is relied on by the appellant :
>
> "18. We thus arrive at the conclusion that the criterion of *"seniority-cum-merit"* in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment

of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of *seniority-cum-merit."*

21. On the basis of the law explained by the Apex Court in the aforesaid two judgments, it is clear that where the rule of *'seniority-cum-merit'* is to be applied then minimum marks have to be prescribed and if a candidate secures the minimum merit marks then on the basis of seniority he has to be placed in the select list but when the Rule prescribes *'merit-cum-seniority'* then merit and ability has to be given greater emphasis and seniority plays a less significant role. It appears that while applying the criteria of *'merit-cum-seniority'* in the present case, in fact, the rule of *'seniority-cum-merit'* has been applied and there had been no application of a rule of *'merit-cum-seniority'* because the persons securing more marks are ignored and the persons with lesser marks on the basis of their seniority have been preferred.

22. The respondent No.1 State in para-7 of its return has stated that while granting promotion from a particular block the seniority in the feeder cadre is taken into account for promotion for finding the person fit. The consideration of particular block where both the persons who secured more marks than the person who secured less marks are put in one block together and then on the basis of that block the rule of seniority is to be applied, then a person who is more meritorious shall be deprived of his promotion and the person who is less meritorious, on the basis of seniority in the block is given clearance by the DPC for his promotion. The method adopted by the respondents cannot be said to be a method which will be applicable in cases where promotion is to be effected by applying the criteria for *'merit-cum-seniority'*. It may be a good method to apply the criteria for promotion where the criteria is *'seniority-cum-merit'*.

23. Thus, by putting the persons the persons who received higher merit in a block along with the persons those who secured less marks unduly resulted into anomalous situation to go by rule of *'merit-cum-seniority'* and in fact the rule of *'seniority-cum-merit'* alone is applied and not the rule of *'merit-cum-seniority'*. When the Apex Court has laid down the ratio that if the criteria for promotion is *'merit-cum-seniority'* then greater emphasis has to be attached to the merit of an incumbent and the merit has to be tested on the basis of total marks allotted by the DPC. There is no dispute in the present case that the petitioner has secured more marks than the respondent No.3 but still both were put in a common block and thereafter a rule of seniority is applied. Then it is not a case where any importance has been attached to merit but the importance has been attached to the seniority,

that too by applying the guidelines Annexure A-6/Annexure R-1 which have no application in the present case.

24. On the basis of my discussion as such, I am of the opinion that when the DPC met to consider the case of the petitioner on 13.5.2002, though the respondent No.3 was senior to the petitioner but he was found to be less meritorious as he was only allotted 13 marks but the petitioner even though was junior, was found to be more meritorious as DPC admittedly awarded him 18 marks. It is difficult to digest as to how more meritorious person such as the petitioner who is junior to respondent No.3, could have been ignored and preference was given by applying the rule of seniority-cum-merit to respondent No.3, who was senior. It is also not a case of the respondents that the merit of the petitioner as well as respondent No.3 were equal so that the respondent No.3 being senior to the petitioner may get his promotion on that basis. But, I find that it is a case where the petitioner even though being junior but was more meritorious and while applying the criteria of *'merit-cum-seniority'* the petitioner ought to have been promoted and not the respondent No.3.

25. On the basis of the reasoning which I have given hereinabove, it is not a case where the petitioner has been fairly treated by the respondents-State but the petitioner has been arbitrarily deprived of his promotion also in the DPC dated 13.5.2002 and accordingly I hold that the petitioner shall also be entitled to his promotion on the post of Superintending Geologist from the date the respondent No.3 was given along with seniority and other benefits. Since I have already held earlier that the petitioner is entitled to his promotion, therefore, the respondents are directed to treat the petitioner as Superintending Geologist along with all monetary benefits with a further direction to determine the inter se seniority of the petitioner and also the persons those who were promoted vide order dated 23.9.2000 on the post of Superintending Geologist in accordance with the rules applicable for determination of seniority in accordance with law. Accordingly, the present petition stands allowed.

Petition allowed.

I.L.R. [2008] M. P., 1923
WRIT PETITION
Before Mr. Justice R.K. Gupta
21 February, 2008*

KEDAR NATH MISHRA ... Petitioner
Vs.
APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972 AND REGIONAL LABOUR COMMISSIONER (C) & anr. ... Respondents

Coal Mines Labour Welfare Fund (Repeal) Act (27 of 1986), Coal Mines Provident Fund Scheme, Payment of Gratuity Act, 1972, Section 7 - *Entitlement*

*W.P. No.2920/2004 (Jabalpur)

of Gratuity - Petitioner an employee of Coal Mines Welfare Organisation - Said Organisation was abolished and services of the petitioner were transferred to a Company - After retirement petitioner filed claim before the Controlling Authority for payment of gratuity - Controlling Authority allowed the claim by holding that past services of the petitioner have not been properly counted - Appellate authority set-aside order - Held - There was a specific provision in option exercised by petitioner that past services rendered in the Coal Mines Welfare Organisation that for the purposes of calculation of gratuity shall not be counted - Thus petitioner not entitled for payment of gratuity - Petition dismissed. (Para 11)

कोयला खान श्रम कल्याण निधि (निरसन) अधिनियम (1986 का 27), कोयला खान भविष्य निधि स्कीम, उपदान संदाय अधिनियम, 1972, धारा 7 – उपदान की हकदारी – याची कोयला खान कल्याण संगठन का कर्मचारी – उक्त संगठन का अंत कर दिया गया और याची की सेवाएँ एक कम्पनी को अंतरित कर दी गईं – सेवानिवृत्ति के उपरांत याची ने उपदान के भुगतान के लिये नियंत्रण प्राधिकारी के समक्ष दावा पेश किया – नियंत्रण प्राधिकारी ने यह अभिनिर्धारित करते हुए दावा स्वीकार किया कि याची की पूर्व सेवाओं की गणना उचित रूप से नहीं की गई – अपील प्राधिकारी ने आदेश अपास्त किया – अभिनिर्धारित – याची द्वारा प्रयोग किये गये विकल्प में यह विनिर्दिष्ट उपबंध था कि कोयला खान कल्याण संगठन में दी गईं पूर्व सेवाएँ उपदान की गणना करने के प्रयोजन के लिये नहीं गिनी जाऐंगी – इसलिए याची उपदान के भुगतान का हकदार नहीं – याचिका खारिज।

Cases referred :

(2007) 2 SCC (L&S) 932, 1999 (81) IFLR.

R.N. Shukla with *R.B. Tiwari,* for the petitioner.

N.S. Kale with *Abhijeet Bhowmik,* for the respondents.

ORDER

R.K. GUPTA, J. :–The present petition is filed by the petitioner invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India challenging the order 13.03.2004, Annexure P/5 which has been passed by the Appellate Authority in exercise of its powers vested with him under Section 7 of the Payment of Gratuity Act, 1972 where by the appeal preferred by the respondent Management has been allowed and the order passed by the Controlling Authority has been set aside.

2. The facts leading to the present case are that the petitioner earlier was an employee of the Coal Mines Welfare Organisation and the aforesaid Act was repealed by the Coal Mines Welfare Organisation (Repeal Act, 1986) with effect from 01.10.1986. The Repeal Act has been filed by the petitioner as Annexure P/1 to the petition. As a consequence of the same, all the assets and liabilities in relation to the erstwhile employees employed in Coal Mines Welfare Organisation stood transferred to different Companies with effect from 01.10.1986 and the services of the petitioner were transferred to respondent no.2 The petitioner retired from the services of the respondents with effect from 15.01.99 on reaching the age of superannuation of 60 years.

3. Since the amount of gratuity was not properly paid to the petitioner, therefore, the petitioner filed a case before the Controlling authority appointed under the Payment of Gratuity Act.

4. The case of the petitioner before the Controlling Authority was that full period of employment of the petitioner has not been counted. It is submitted by him that the period of services which he has rendered with the Coal Mines Welfare Organisation has not been counted for the purposes of calculating the amount of gratuity and accordingly he felt aggrieved and filed a case before the Controlling Authority for the proper calculation of the gratuity.

5. The Controlling authority allowed the claim in favour of the petitioner by passing an order Annexure P/4. The Controlling authority directed that the respondents have committed an illegality by not counting the previous services rendered by the petitioner with the Coal Mines Welfare Organisation.

6. The respondent Management preferred an appeal to the Appellate authority and the appellate authority by its impugned order Annexure P/5 allowed the appeal and consequently the order passed by the Controlling authority was set aside.

7. In view of the aforesaid factual backdrop of the case, the question in the present case is whether the respondent Management were justified in not counting the previous services rendered by the petitioner with the Coal Mines Welfare Organisation and whether the respondent Management is justified in counting the services of the petitioner from the date the services of the petitioner were transferred to the respondent no.1.

8. The submission that the previous services should have been counted as made by learned counsel for the petitioner is to be appreciated in the light of the Coal Mines Labour Welfare Fund (Repeal Act, 1986), a copy of which is placed on record as Annexure P/1. By virtue of Sub-section 1 of Section 4 of the Act, on dissolution of the Welfare Organisation, all rights and privileges of the Welfare Organisation become the rights and privileges, respectively, of the Central Government. Clause-b further provides that all properties movable and immovable, including cash balance, reserve funds, investments and moneys lying to the credit of the Welfare Organisation and all rights and interests in, or arising out of, such properties as were immediately before the appointed day, in the ownership, possession, power or control of the Welfare Organisation, and all books of account, registers and records and all other documents of whatever nature relating thereto, shall vest in the Central Government. Clause-c further provides that all borrowings, liabilities and obligations of the Welfare Organisation of whatever kind and subsisting immediately before the appointed day shall be deemed on and from such day to be the borrowings, liabilities and obligations, as the case may be, of the Central Government. Clause -D further provides that all contracts entered into, and all matters and things engaged to be done by, with or for, the Welfare Organisation and subsisting immediately before the appointed day shall be deemed,

on and from such day to have been entered into or engaged to be done by, into or for, the Central Government. Clause-e provides that all licenses and permits granted to the Welfare Organisation and in force immediately before the appointed day shall be deemed on and from such a day to have been granted to the Central Government and shall have effect accordingly.

9. Section 5 of the Act further provides the power of Central Government to direct vesting of rights in a Government company.-Notwithstanding anything contained in Section 4, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing that the right, title and interest of the Welfare Organisation in relation to any property shall, instead of continuing to vest in it, vest in the Government company.

10. The Central Government also issued a circular on 22nd September, 1986, copy of which is placed on record as Annexure P/2. According to Para 3 of the said circular, all the regular employees of Coal Mines Welfare Organisation will also stand transferred to the address of respective Co. Companies with effect from 01.10.1986 with certain terms and conditions. Clause I of the said conditions stipulate that employees opting for such absorption with the new employer will receive the same terminal and other benefits for their Government services prior to absorption in Coal Companies. This is the relevant provision. It also provide for exercise of option by an employee. The option was to be notified whether the employees employed by the erstwhile Coal Mines Welfare Organisation are willing to be retained in Government services or exercise their option for voluntary retirement and according to the same, the option was liable to be exercised within a period of 30 days.

11. The petitioner employee exercised his option not to be retained in the Government service but opted to be absorbed in any of the Government Companies. The option form submitted by the petitioner has been filed by the respondents which is Annexure R/1 to the return. According to the option form, the employee will become member of the Contributory Provident Fund under the Coal Mines Provident Fund Scheme w.e.f. 1st August, 1985 from the date of his absorption. There was a specific provision with regard to Provident Fund and Gratuity in the said option form and the relevant portion of the same is reproduced as under:-

> **Provident Fund and Gratuity:-**
>
> "The employees will become member of the Contributory Provident Fund under the Coal Mines Provident Fund Scheme with effect from 1st August, 1985 or 1st October, 1986, as the case may be. Gratuity will be admissible for the services rendered in the Company in terms of payment of Gratuity Act and relevant provisions of NCWA-III. Past services rendered with Coal Mines Welfare Organisation will not be taken into account for the purpose.

In respect of the services rendered by the employees upto 31st July, 1985 or 30th September, 1986, as the case may be, under Coal Mines Welfare Organisation they will be eligible to receive such retirement benefits from the Government as would have been admissible to them on that date, as may be decided by the Government."

According to the same, it was a specific condition with reference to the calculation of gratuity. According to the option form, the gratuity will be admissible for the services rendered in the Company in terms of the Payment of Gratuity Act and also in accordance with relevant provisions of NCWA-III. It also provides that the past services rendered with Coal Mines Welfare Organisation will not be taken into account for the purpose. It also provides that in respect of services rendered by the employees upto 31st July, 1985 or 30th September, 1986, as the case may be under Coal Mines Welfare Organisation they will be eligible to receive such retirement benefits from the Government as would have been admissible to them on that date, as may be decided by the Government.

12. In view of the Coal Mines Labour Welfare Fund (Repeal Act, 1986) including the option and also the order passed by the Central Government, it is clear that after the absorption, the employees those who were willing to work with the Coal Mines were to submit their option for their absorption, with any of the Companies as directed by the Central Government. The petitioner has chosen not to be retained in the services of the Welfare Organisation and as a consequence of the option submitted by the petitioner, the Central Government as per Annexure P/2 directed for transfer of services of the petitioner with the new Company. It is pertinent to mention that the petitioner has also accepted the amount of terminal benefits with respect to the period of service rendered by him with the Welfare Organisation. Petitioner since has accepted its terminal benefits with respect to the period for which he has served with the Welfare Organisation, it is, therefore, clear from the aforesaid documents that after absorption, the petitioner shall become the employee of the new Company.

13. On the basis of the same, it is thus clear that the services of the petitioner after his absorption with the respondent Company were treated to be a fresh employment. Learned counsel for the petitioner could not show any provision either from the Repeal Act or from any of the circular including the option form that the Central Government has agreed that the services of the employees employed in the erstwhile Coal Mines Welfare Organisation shall be continue with the same terms and conditions with the new Company where the employees are absorbed. In the absence of any provision as such for continuing the services of the petitioner with the new Company, it cannot be concluded that there had been no interruption of services of the petitioner. The conditions which have already been discussed above shows that it will be a fresh employment on transfer of assets and liabilities to the Company belonging to erstwhile Coal Mines Welfare Organisation. On absorption, it vests with the Central Government and the Central

Government directed that the services as such shall be absorbed by the Company as directed by the Central Government.

14. Learned counsel appearing on behalf of the petitioner relied upon the judgment passed by the Apex Court in *M.C. Chamaraju Vs. Hind Nippon Rural Industrial (P) Ltd.* 2007(2) SCC (L&S) 932. On this basis, counsel for the petitioner submitted that the Apex Court has already dealt with the question with regard to completion of 15 years continuous service which is the eligibility for claiming the gratuity and on this basis it is submitted by him that the entire services of the workman have to be counted. In the said case, it is seen that the employee was working in different divisions belong to the same Company and on the date of retirement, the services rendered by an employee in other divisions belonging to the same Company were not taken into account and, therefore, the Apex Court came to the conclusion that the services rendered by an employee in other Organisation belonging to the same Company have to be counted for the purposes of eligibility of 5 years continuous service to make an employee eligible to claim his gratuity. The question which was involved in the present case is directly not considered by the Apex Court in the judgment cited by the learned counsel for the petitioner which is involved in the present case. The Apex Court was considering the question with regard to power of High Courts to exercise judicial review while deciding the case has held that the High Court while exercising the powers of judicial review has limitations. The Apex Court further came to the conclusion that Payment of Gratuity Act was enacted with a view to grant benefits to workers, a 'weaker section' in the industrial adjudicatory process and thereafter it was held that once a Single Judge has allowed the petition preferred by an employee, that should not have been quashed by the Division Bench. Apart from the aforesaid, in the judgment cited, the question was entirely different than the counting of services rendered by an employee in the other Organisation belonging to the same employer and while applying the provisions of 'functional integrity' it was held that the services are to be counted.

15. In the present case, the question is entirely different. The question in the present case is that as a consequence of the repeal act (annexure P/1), whether the services of the petitioner which he has rendered with the Coal Mines Welfare Organisation can be counted for the purpose of gratuity particularly when there had already been a scheme floated by the Central Government by issuing a circular Annexure P/2 that the present employer shall not be entitled for any liability or to pay any benefit to the employee with respect to the period of service rendered by an employee during the period when he was in the employment of the Coal Mines Welfare Organisation.

16. Learned counsel for the petitioner relied upon the judgment passed by the Division Bench of Calcutta High Court in the case of *Bharat Aluminium Co. Ltd. and Others Vs. Sukumar Mukherjee and Others* reported in 1999(81) Indian Factories and Labour Reports. On this basis, the learned counsel for the petitioner

submitted that the case decided by the Division Bench of the Calcutta High Court fully applies to the present facts and circumstances of the case.

17. The submission so made by learned counsel for the petitioner is considered.

18. The facts of the case decided by the Division Bench of Calcutta High Court had been that the employee initially was an employee of Government Company. The said Company subsequently was taken over by the Aluminium Corporation of India Limited (Acquisition and Transfer of Aluminium Undertaking) Act, 1984. The employees thereafter become employees of the Central Government. The Apex Court was considering Section 5 of the aforesaid Act wherein it was provided that every liability of the company in relation to the Aluminium undertaking in respect of any period prior to the appointed day shall be the liability of the company and shall be enforceable against it and not against the Central Government or where the Aluminium undertaking is directed under Section 6, to vest in the Bharat Aluminium Company, against that company. The Calcutta High Court also considered Section 12 of the Act wherein a provision was made that every person who has been immediately before the appointed day, employed in the Aluminium undertaking shall become on and from the appointed day, an employee of the Central Government. Section 12 further provides that where the Aluminium undertaking is directed under Section 6, to vest in the Bharat Aluminium Company, an employee of that company on and from the date of such vesting, and shall hold office or service under the Central Government or the Bharat Aluminium Company, as the case may be with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Bharat Aluminium Company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Bharat Aluminium Company, as the case may be. Sub- section 2 of Section 12 further provides that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the Aluminium undertaking to the Central Government or the Bharat Aluminium Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

19. On the basis of the same, the Division Bench of Calcutta High Court was referring and interpreting the meaning and scope of Section 12 of the Act of 1984 and thereafter the Calcutta High Court has taken into account the definition of the word "continuous service" as defined under Section 2-A of Payment of Gratuity Act and thereafter came to the conclusion that the employees transferred to the Central Government shall count their seniority by including the period which they have rendered in the Aluminium Company.

20. Learned counsel for the petitioner had not been able to show any analogous provision in the repeal act which is Annexure P/1. In the repeal Act namely Coal Mines Labour Welfare Fund (Repeal Act, 1986), there is no analogous provision to Section 12 which was considered by the Division Bench of Calcutta High Court. Section 12 which was considered by the Division Bench of Calcutta High Court itself provides that there will be no break in service and the employees of the erstwhile Aluminium undertaking shall be continued with the same rights and privileges and the pension, gratuity and other benefits which would have been admissible to the employees as such, if there had been no such vesting and shall continue to do so until and unless the Management is directed.

21. Sub-section 2 of Section 12 creates a legal fiction that on transfer of such undertaking with the Central Government, no compensation shall be payable as per Section 25-FF of the Industrial Disputes Act, 1947. For the purpose of clarity, it would be necessary to reproduce Section 25-FF of the Industrial Disputes Act, 1947 which reads as under:-

> **"25-FF. Compensation to workmen in case of transfer of undertakings.-** Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched :
>
> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-
>
> (a) the service of the workman has not been interrupted by such transfer,
>
> (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
>
> (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continued and has not been interrupted by the transfer."

22. A reading of Section 25-FF itself provides that in case the employee are to be continued with the same terms and conditions of service without there being any interruption then the employee as such shall not be entitled for any compensation under Section 25-FF of the Industrial Disputes Act, 1947. Thus, according to Section 25-FF of the I.D. Act, 1947, the compensation to the workman was payable on transfer of an undertaking and the compensation as such was only payable with reference on the certain conditions that the services of workman has not been interrupted on such transfer. The terms and conditions of service

applicable to the workman has not been interrupted by such transfer. Section 12, as considered by the Calcutta High Court specifically provides that there will be no break in service, the same condition of service were applicable in favour of an employee which were applicable before the transfer of such undertaking and no compensation under the provisions of Industrial Disputes Act, 1947 shall be payable.

23. Whole of the reading of Section 12 which was considered by the Division Bench of Calcutta High Court itself indicates that there was no break in service in the condition of transfer. The new employer was under a legal obligation to pay the terminal benefits in terms to Section 25-FF of the Industrial Disputes Act, 1947. The provisions under the repeal Act which are applicable in the present case are entirely different then the provisions considered by the Division Bench of Calcutta High Court. At first instance, there is no analogous provision to Section 12 which was considered by the Division Bench of Calcutta High Court, in the present repeal Act which is relevant. There is no provision that the services of the employees shall be continued with the same terms and conditions. There is no provision that there would be any interruption into the services of the petitioner. On the contrary, the condition in the option form is that the employee shall be treated to be an employee after his absorption in the Company. Further there is provision that for the previous services rendered by an employee with the erstwhile Coal Mines Welfare Organisation, the erstwhile employer shall pay gratuity. The gratuity has already been received by the petitioner. Thus, after when the gratuity has been received by the petitioner then the gratuity as such be payable only on termination of the employment and not before that. If the services are continued because of the transfer then no gratuity is payable to an employee by the erstwhile employer. The services after absorption shall be the new services for the employee. There is no stipulation in the repeal Act or in any of the provision of the circulars issued by the Central Government that the services of the employee shall be continued with the same terms and conditions without any interruption.

24. In view of the aforesaid, I do not find that the judgment passed by the Division Bench of Calcutta High Court on which the heavy reliance was placed by the petitioner shall apply in the present case. The judgment referred by the Division Bench of Calcutta High Court was on a different facts and circumstances and also the Division Bench was interpreting entirely different provision and in the present case there is no analogous provision in the repeal act.

25. For the reasons stated hereinabove, the present case has no merit and is dismissed.

Petition dismissed.

I.L.R. [2008] M. P., 1932

WRIT PETITION

Before Mr. Justice Dipak Misra & Mr. Justice R.S. Jha

3 March, 2008*

KANHAIYALAL PATEL & ors. ... Petitioners

Vs.

UNION OF INDIA & ors. ... Respondents

Constitution, Articles 226, 227, National Highways Act (48 of 1956), Sections 3-H, 3-G - *Determination of compensation* - *Public Interest Litigation Petition filed alleging discrepancies in determination of compensation amount* - *If amount determined by competent authority is not acceptable to either party, the same may be determined by arbitrator appointed by Central Govt. on application of either party* - *Dispute is in the realm of individual entitlement and cannot assume character of P.I.L.* - *Petition dismissed.* (Para 17)

संविधान, अनुच्छेद 226, 227, राष्ट्रीय राजमार्ग अधिनियम (1956 का 48), धाराएँ 3–एच, 3–जी – प्रतिकर का निर्धारण – प्रतिकर राशि के निर्धारण में विसंगतियों को अभिकथित करते हुए जनहित याचिका पेश – यदि सक्षम प्राधिकारी द्वारा निर्धारित राशि दोनों में से किसी पक्षकार को स्वीकार्य न हो तो उसका निर्धारण दोनों पक्षों में से किसी के आवेदन पर केन्द्र सरकार द्वारा नियुक्त मध्यस्थ के द्वारा किया जा सकता है – विवाद का क्षेत्र व्यक्तिगत हकदारी का है और जनहित याचिका का स्वरूप नहीं ले सकता है – याचिका खारिज।

H.K. Upadhyay, for the petitioners.

Dharmendra Sharma, A.S.G., for the respondents No.1 to 3.

Deepak Awasthy, G.A., for the respondent No.4.

ORDER

The Order of the Court was delivered by DIPAK MISRA, J. :–The petitioner No.1, Sarpanch of Gram Panchayat, Padariya, petitioner No.2 a social worker and petitioner No.3, Janpad Adhyaksha, Chawarpatha and a social activist, describing themselves as pro bono publico have invoked the extraordinary jurisdiction of this Court and prayed for calling for the entire record relating to grant of compensation in the Rajmarg area, Narsinghpur in respect of persons whose land have been acquired for construction of 4-6 lane of NH-26, issue of appropriate direction to an independent authority or agency of the State Government or the Central Government to investigate into the matter pertaining to grant of compensation, to quash the entire proceeding for compensation from the stage of 'panchnama' itself, command the authorities concerned to prepare panchnama after granting opportunity to the persons whose lands have been acquited and to fix the proper compensation to the land oustees.

2. The facts which are exposited are that the petitioners are the persons who are espousing the cases of the persons whose lands have been acquired in village

*W.P. No.16653/2007 (Jabalpur)

Lolri in respect of certain lands situated in Bandobast No.418, P.C.No.9, Tahsil Tendukheda, District Narsinghpur. The respondent No.1, Ministry of Shipping, Roads and National Highway, is responsible for building, maintenance and up-keep of national highways in the country. It extends the technical and financial support to the State Government for development of State roads and roads of inter-state connectivity and economic importance. It evolves standard specifications for roads and bridges in the country. The respondent No.4, the competent authority under the provisions of National Higher Act, 1956 (for brevity 'the 1956 Act') is dealing with the cases relating to scheme of rehabilitation and uprading of NH-26 from Sagar to Rajmarg Choraha (Barman). As pleaded, in August, 2004 a rehabilitation scheme for rehabilitating and upgrading NH-26 from Sagar to Rajmarg Chowraha (Barman) into 4-6 lane carry ways was floated by the National Highway Authority of India Limited, the respondent No.2 herein. The said scheme has been brought on record as Annexure-P-1. In the said scheme the petitioners who are the residents of Narsinghpur districts are also affected alongwith other 1000 families. Although length of the project road is only 10 Kms. passing through Narsinghpur District yet nearly 1000 families are affected. For the purpose of acquisition a notification dated 18.3.2005 was published in newspaper dated 16.4.2005 under sub-section (1) of section 3-C of the 1956 Act. A general notice dated 26.8.2006 was published in 'Dainik Bhaskar' on 30.8.2006 informing the persons of Tahsil and villages whose names are given in the general notice that they should file claim/objection in respect of determination of compensation within a period of 21 days before the competent authority. In the said publication names of two villages of Tahsil Tendukheda are given and there was no mention of village Lolri. It is averred that notification under Section 3-D(2) vesting the land of village Lolri in the Central Government was published in the Gazette of India dated 14.3.2007 and was published in 'Dainik Bhaskar' on 30.4.2007. An order dated 31.8.2007 has been passed in which compensation in respect of village Lolri, Number Bandobast 418, P.C.No.9, Tahsil Tendukheda, District Narsinghpur has been fixed without complying with the provisions contained in section 3-G of the Act which mandates notification in respect of land for which compensation is being determined. It is asseverated that no notice or for that matter notification in respect of village Lolri, Settlement No.418, Tahsil Tendukheda has been published or notified in the official gazzette or otherwise in the local newspaper as required under Section 3-G of the Act and hence, order dated 31.8.2007 fixing the compensation is vulnerable: Reference has been made to the 'panchnamas' allegedly prepared behind the back of the petitioners and other persons which would demonstrate, as set forth in the petition, that they have been prepared at one go in the office but not at the relevant site. It is averred that the 'Panchanamas' contain signatures of 12 persons who are common in all the 'panchnamas'. None of these are either residents or having any shop or establishment on the place adjacent to the place of which the 'panchnamas' are prepared. The aforesaid action shows arbitrariness exercise of power and clearly shows the illegal manner

in which the 'panchnamas' have been prepared. It is the further case of the petitioners that the respondents No.3 and 4 have acted in an extremely whimsical manner in fixing the claims of compensation of such persons whose lands have been acquired for the purpose of building of 4-6 lane highway including the lands of the petitioners.

3. It is set forth that the lands of nearly about 400 persons have been acquired under the provisions of the 1956 Act it is asserted that there is rampant corruption in the grant of compensation. The respondent No.4 in connivance with the respondent No.3 and the lower staff have granted excess compensation only in those cases in which their illegal demands have been satisfied by the persons concerned. In the cases of petitioners and the like who could not fulfill illegal demands they have been granted compensation at a much lower rate. In some of the cases the compensation is even half than the market value of the land acquired. On the other hand the respondent No.4 has granted compensation for the non-existing houses. By common order dated 31.8.2007 the 4th respondent has decided the cases of compensation of all the persons whose lands are situated in village Lolri. It is alleged that there has been immense illegality in determination of compensation and discrepancies in preparation of 'panchnamas'. Certain instances have been given how the illegality have crept in relation to grant of compensation. It is urged that hotel Surya has been extended compensation for four bores whereas there is only single bore in the hotel. Certain cases of landowners who have been given less compensation though they were ought to have been given on the basis of market prices have been cited. That apart, various assertions have been made in the writ petition which need not be referred to as it only multiplies the number of persons who have been granted compensation at a lower rate.

4. As pleaded, the residents who have been affected had submitted a representation on 06.10.2007 to the Collector, Narsinghpur stating that there have been discrepancies in the grant of compensation and serious illegalities have been committed in the same. In the representation many an instance have been given but as the Collector took no action, the Commissioner, Jabalpur was apprised of the situation with regard to the rampant corruption in the grant of compensation. Be it noted some examples have been noted relating to grant of compensation on the ground that they have been granted in a malafide manner on certain considerations. The nature of allegations are that certain compensations have been granted in respect of constructions which do not exist, some owners who have additional construction have not been paid anything and in certain cases less compensation has been paid though there exist prima facie case for grant of higher compensation and that no difference has been made between the diverted and non-diverted land.

5. In the grounds it is urged that by non-following the statutory provisions as certained in specially section 3-D and 3-G of the Act vitiates the entire proceeding of fixation of compensation and, therefore, the same deserves to be quashed. It is

also urged that preparation of panchnamas by sitting in the office makes them susceptible and liable for being set aside. It is further urged that action relating to preparation of 'panchnamas' behind the back of the petitioner smacks of arbitrariness and is violative of Article 300 of the Constitution of India. By such an action of the authorities the poor people have been put to suffer and, therefore, the culprits should be brought to book. It is also contended that the compensation has been fixed on the basis of rate available in the year 2004-05 at the time of publication of notification whereas they have been granted compensation in the year 2007 in the month of November after a lapse of three years. In this backdrop various reliefs have been sought as have been stated earlier.

6. Be it placed on record that an application for amendment was filed forming the subject-matter of I.A. No.1905/2008 wherein order dated 22.9.2007 is called in question being violative of Article 14 of the Constitution on the ground that it has been based on the report of the revenue authorities. Various authorities have been sought to be arrayed as party. In the application for amendment it is urged that order dated 22.9.2007 is invalid as it has come into existence in contravention of the statutory provision. It is put forth that land has been acquired without any adjudication whatsoever and the compensation has been determined behind the back of the petitioners. It is also contended that the notificatiion dated 18.3.2005 ;is violative of provisions contained in Sections 3A(1) of the Act as it suffers from vagueness inasmuch as said notificatioin does not give brief description of the land. It is worth noting that a prayer has been incorporated to declare Section 3J of 1956 Act as unconstitutional. It is apposite to state that a writ petition has been filed by petitioner No.1 wherein a prayer has been made to declare the said provision as unconstitutional being hit by Article 14 of the Constitution and further to hold that land owners are entitled for additional market value under Section 28 of the Land Acquisition Act, 1894.

7. We have heard the learned counsel for the parties independently in the said case and, therefore, amendment as far as present case is concerned is allowed to the extent it challenges the notification and process of determination of compensation. We may note here, Mr. Dharmendra Sharma, Asstt. Solicitor General has no objection for allowing the said amendment and accordingly it is allowed to that extent and the contentions raised therein shall be adverted to by us.

8. A counter affidavit has been filed by the respondents 1 to 3 contending inter alia, that a gazette notification has been published under Section 3A of the Act on 23.3.2005 which featured the name of the village Lolari and there has been another gazette notification under Section 3D of the Act on 25.8.2005 as per Annexure R-2. On the basis of the aforesaid notifications the competent authority published notification under Section 3G on of the 1956 Act 21.11.2006 as per Annexure R-6. On the bais of the aforesaid the competent authority had passed the award on 31.8.2007 and 22.9.2007. Reference has been made to awards passed as per Annexure R-4 and R-5. It is contended that on the base of

the award the Project Director of the NHAI, PIU, Narsingpur has prepared the compensation cheques for the land and the structures standing therein. Be it noted, the said references have been made exclusively with regard to the land of the petitioners 1 and 2. It is also asserted that the amount of compensation has been determined in respect of the land belonging to other persons and awards have been passed. It is also stated that the land of the respondent No.3 has not yet been acquired for project. Reference has been made to the common order dated 31.8.2007 by which the determination has been made in respect of compensation payable to the petitioners 1 and 2 and all other affected persons of Tendukheda, Narsingpur. It is specifically put forth that the contention that there has been no notification published vesting the land in Central Government under Section 3 D of the Act and nor there has been publication of the notification in the local news papers in respect of the village Lolari is totally incorrect and misguided inasmuch as the same has been published in local newspapers on 21.11.2006 and compensation has been awarded by the competent authority on 31.8.2007 after conducting many public meetings at Lolari village and after due satisfaction of the villagers the award has been passed. It is put forth that there has been suppression of material facts. It is contended that the competent authority has passed a second compensation award for left over persons in Lolari village on 12.10.07 as per Annexure R-6 after following the due procedure. It is highlighted that except the petitioners 1 and 2 almost all the project affected persons have accepted the compensation amount and all of them have shifted to other places. It is also the stand in the return that on 26.8.06 village Lolari has not been included in the publication but the name of the said village was published in the daily newspaper on 29.11.2006. It is also set forth that there has been no procedural irregularities and entire gamut of the procedures as contemplated under the Act have been complied with. It is the case of the respondents that the compensation has been awarded as per law. It is the further stand in the return that if there is any grievance relating to fixation of amount of compensation the petitioners are entitled to approach the arbitrator as envisaged under Section 3G (5).

9. We have heard Mr. H.K. Upadhyay, learned counsel for the petitioners and Mr. Dharmendra Sharma, learned Additional Solicitor General for the Union of India.

10. To appreciate the facts, grounds urged and the nature of litigation it is appropriate to scan the anatomy of the 1956 Act. Section 3 is the dictionary clause which defines the 'competent authority' and 'Land'. Section 3A deals with the power to acquire land, etc. The said provision reads as under:

> 3A. Power to acquire land, etc. - (1) where the Central Government is satisfied that for a public purpose any land is required for building, maintenance, management or operation of a national highway or part thereof, it may by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language."

11. Section 3B relates to power to enter for survey, etc. which postulates that on the issue of a notification under sub-section (1) of Section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf to make inspection, survey, measurement, valuation or inquiry and do certain other things.

12. Section 3C provides for hearing of objections. It reads as under:

"3C. Hearing of objections. - (1) Any person interested in the land may, within twenty-one days from the date of publication of the notificatiion under sub-section (1) of Section 3A, object to the use of the land for the purpose of purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.- For the purpose of this sub-section, "Legal practitioner" has the same meaning as in clause (i) of sub-section (1) of Section 2 of the advocates Act, 1961 (25 of 1961) "

(3) Any order made by the competent authority under sub-section (1) shall be final."

13. Section 3D deals with declaration of acquisition. The said provision lays down that where no objection under sub-section (1) of Section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) the competent authority shall submit a report accordingly to the Central Government and on receipt of such report the Central Government shall declare by notification in the official gazette that the land should be acquired for the purpose mentioned in sub-section (1) of Section 3A and on the publication of the declaration under Sub-section (1) the land shall vest absolutely in the Central Government free from all encumbrances. Sub-section (3) of the said Section provides where in respect of any land, a notification has been published under Sub-section (1) of Section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of the notification, the said notification shall cease to have any effect. The proviso to said Section provides that in computing the said period of one year, the period during which any action

or proceeding to be taken in pursuance of the notification issued under Sub-section (1) of Section 3A is stayed by an order of a court shall be excluded. Sub-section (4) of Section 3D lays down that a declaration made by the Central Government under Sub-section (1) shall not be called in question in any Court or by any other authority. Section 3E deals with the power to take possession. The aforesaid provision being relevant is reproduced below:

> "3E. Power to take possession. - (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub-section (1) of Section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.
>
> (2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply-
>
> (a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner or Police;
>
> (b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,
>
> and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it."

14. Section 3F deals with the right to enter into the land where land has vested in the Central Government. Section 3G deals with the determination of amount payable as compensation. The said provision is as follows:

> **"3G. Determination of amount payable as compensation.** - (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.
>
> (2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. Of the amount determined under sub-section (1), for that land.
>
> (3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under Section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the serving of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

15. Section 3H deals with the deposit of payment of amount. It reads as under:

"**3H. Deposite and payment of amount.** - (1) The amount determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under Sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part

thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer to the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under Section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under Section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under Sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

16. On a perusal of the aforesaid provisions it is clear that if the amount determined by the competent authority is not acceptable to either of the parties the amount shall on an application by either of the parties be determined by the arbitrator to be appointed by the Central Government and the proceedings of the arbitration shall be governed by the Arbitration and Conciliation Act, 1996. Section 3G (7) deals with what factors the competent authority or the arbitrator shall take into consideration while determining the award.

17. From the assertions made in the counter affidavit it is quite luminescent that the Central Government had published notification under Section 3A as per Annexure R-1 on 23.3.2005. 3D notification was published on 25.8.2005 as per Annexure R-2 and 3G notification had been published on 21.11.2006 as per Annexure R-3. As is manifest the petitioners 1 and 2 are dissatisfied with the award passed. It is also worth noting that they have not challenged the notification on the ground of any procedure ultra vires. It is worth mentioning that Section 3A empowers the Central Government to declare its intention to acquire such land by notification in the official gazette. As is patent from the documents, the said gazette notification under Section 3A had been issued as per Annexure R-1 in respect of certain villages and as per Annexure R-7 in respect of village Lolari. Sub-section (3) of Section 3A provides that the competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language. There is no averments that the said provision has not been followed. On a scrutiny of Annexure R-9 it is clear that there had been publication of gazette notification in 'Dainik Bhaskar' and 'Nayi Dunia'. The particulars of the land have been given. Land owners have accepted the compensation after passing of the award. What has been urged is that before determining the compensation there was no proper notification. Annexure R-9

clearly state that there has been publication in 'Dainik Jagaran'. In any case that relates to determination of quantum. The purpose of Section 3G (3) and (4) is that the persons interested can state the nature of their respective interest in such land. Be it noted that Section 3H(4) postulates that if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated. Thus, there are two aspects: If there is any dispute with regard to the amount determined by the competent authority under Sub-section (1) or (2) of Section 3G the same shall be determined by the arbitrator appointed by the Central Government and second if there is any dispute as regards apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority is bound to refer the controversy/dispute to the civil court.. In any case the same is in the realm of individual entitlement and cannot assume the character of public interest litigation.

18. We would be failing in our duty if we do not take note of the submission made in the writ petition that there is rampant corruption and discrepancies. It has been averred that certain constructions had not been taken into consideration and certain constructions which are not there in existence have been taken note of. If the language of Section 3G (5) is properly understood it permits either of the parties to raise a dispute by filing an application before the arbitrator to be appointed by the Central Government. By either of the parties it is understood the land owner or the party whose the land has been acquired and compensation granted. The authority is also required to take care for its finances and liabilities. If any award is passed in respect of any construction which is not in existence, the said authority can raise a dispute. Thus, on mere bald allegations of this kind the notifications are not liable to be quashed..

19. Another aspect of which we cannot be oblivious needs to be stated. In the case at hand most of the beneficiaries have accepted the cheques. They have a right in law to approach the arbitrator If there is any grievance as regards entitlement, the competent authority has the statutory obligation to refer the matter to the principal civil Court in whose jurisdiction the land is situated. Thus, a complete mechanism is provided under the Act and there is no warrant for interference under Article 226 of the Constitution of India.

20. In view of the aforesaid premises, we do not perceive any merit in this public interest litigation and accordingly, it is dismissed. Regard being had to the totality of circumstances of the case there shall be no order as to costs.

Petition dismissed.

I.L.R. [2008] M. P., 1942

WRIT PETITION

Before Mr. Justice R.K. Gupta

4 March, 2008*

DEVENDRA BAPNA ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

A. Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 12(b) & (c) - *Inter se seniority of promoted Government Servant - According to Rule 12(b), the inter se seniority of the promoted Government Servant has to be reckoned from the date of his confirmation on the post on which he is promoted - If two or more persons are confirmed with effect from the same date then the appointing authority shall determine their inter se seniority in service in which they were included in the merit list, if any, prepared for determining their suitability for promotion and their relative seniority in the lower service from which they were promoted.* (Para 20)

क. सिविल सेवा (सेवा की सामान्य शर्तें) नियम, म.प्र., 1961, नियम 12(बी) व (सी) – पदोन्नत शासकीय सेवक की पारस्परिक ज्येष्ठता – नियम 12(बी) के अनुसार पदोन्नत शासकीय सेवक की पारस्परिक ज्येष्ठता की संगणना उस पद में जिस पर वह पदोन्नत हुआ है स्थायी होने के दिनांक से की जाएगी – यदि दो या अधिक व्यक्ति एक ही दिनांक से स्थायी हुए हैं, तब सेवा, जिसमें वे पदोन्नति के लिये उनकी उपयुक्तता और निम्नतर सेवा, जिससे वे पदोन्नत हुए थे, में उनकी सापेक्ष ज्येष्ठता निर्धारित करने के लिए निर्मित योग्यता सूची, यदि कोई हो, में सम्मिलित थे, में उनकी पारस्परिक ज्येष्ठता का निर्धारण नियुक्ति प्राधिकारी करेगा।

B. Fisheries (Gazetted) Service Recruitment Rules, M.P., 1987, Rule 15(3) - *Merit has to be given preference and not the seniority - Person who is junior but is of exceptional merit and suitability has to be placed above to his senior in the merit list so that the chances of promotion are not adversely effected because of seniority.* (Para 24)

ख. मत्सय उद्योग (राजपत्रित) सेवा भर्ती नियम, म.प्र., 1987, नियम 15(3) – योग्यता को अधिमान दिया जाना चाहिए न कि ज्येष्ठता को – व्यक्ति जो कनिष्ठ है परन्तु विशिष्ट योग्यता और उपयुक्तता रखता है, योग्यता सूची में उसके वरिष्ठ के ऊपर रखा जाएगा ताकि पदोन्नति के अवसर ज्येष्ठता की वजह से प्रतिकूल रूप से प्रभावित न हों।

Cases referred :

1985 MPLJ 778, AIR 1987 SC 2322.

K.K. Trivedi, for the petitioner.

Harish Agnihotri, G.A., for the respondent No.1 & 2.

None, for the respondent No.3.

P.N. Tiwari, for the respondent No.4.

*W P No.23798/03 (O.A. No.927/97) (Jabalpur)

ORDER

R.K. GUPTA, J. :–As common questions are involved in both the petitions, they are being decided by a common order.

The present petition i.e. W.P. No. 23798/03 is filed by the petitioner seeking seniority over respondent no.4 on the post of Joint Director. The petitioner submitted a representation against the seniority assigned to the respondent no.4 above to the petitioner and the said representation was rejected by order dated 11.8.97 which is Annexure A/1 to the petition.

2. In the present case, there is no dispute between the parties that petitioner was senior to the respondent no.4. The petitioner was appointed as Assistant Fisheries Officer on 15.11.1971 and respondent no.4 was appointed as Assistant Fisheries Officer in the year 1972. A gradation list was published by the respondents which is Annexure A/3 showing the position as on 31.3.94. In this seniority list, the petitioner was placed at serial no.1 and respondent no.4 was placed below to the petitioner.

3. The petitioner was selected by the Public Service Commission for the post of Assistant Director and was placed at Serial No.1 in the panel and so far as respondent no.4 is concerned, he was also selected by the Public Service Commission and was placed at serial no.4 in the waiting list. The petitioner was placed in the main merit list.

4. The petitioner was appointed to the post of Assistant Director in October, 1978 and was promoted to the post of Dy. Director by an order dated 24.7.90. So far as respondent no.4 is concerned, he was promoted in the year 1991. On the basis of the aforesaid facts, it is clear that petitioner was assigned higher seniority than the respondent no.4. According to the channel of promotion, from the post of Assistant Director, the promotion is to be regulated to the post of Joint Director then to the post of Director. The matter with regard to promotion to the post of Joint Director is regulated by the Recruitment Rules which are known as M.P. Fisheries (Gazetted) Service Recruitment Rules, 1987.

5. According to Rule 15, the promotions are to be regulated by applying the rule of *"merit cum seniority"*. Sub Rule 3 of Rule 15 further provides that if the Junior Officer who, in the opinion of the Committee is of exceptional merit and suitability, he may be assigned a higher place of merit than that of the officer senior to him.

6. There is no dispute that in terms to Rule 15(3), the DPC found respondent no.4 more meritorious than the petitioner and was placed at serial no.1 in the merit list and the petitioner was placed at serial no.3 for promotion to the post of Joint Director. Accordingly the order of promotion was passed by the respondents which is Annexure A/2. The order of promotion annexure A/2 states that this is a temporary promotion in the pay scale of Rs.3700-5000/- and the persons are promoted on officiating basis.

7. The main grievance of the petitioner is that once the petitioner in the feeder post was senior to the respondent no.4 then on such promotion, the respondent no.4 should not have been assigned a higher seniority i.e. above to the petitioner merely because respondent no.4 was found to be an officer of excellent merit and suitability by the DPC in terms to Rule 15(3) of the Recruitment Rules and thus it is submitted that inter se seniority between the two officers promoted by the same DPC and by the same order, the seniority in the feeder post has to be maintained.

8. Respondents in the return have stated that by virtue of Rule 15(3) if the DPC found a person to be of exceptional merit then the junior person has to be placed in the merit list above to the senior and accordingly the seniority has been assigned to the junior above to the senior.

9. Before appreciating the rival contentions of the parties, it would be appropriate to refer to the recruitment rules. Rule 15(3) of the M.P. Fisheries (Gazetted) Service Recruitment Rules, 1987 reads as under:-

> "15. Preparation of list of suitable officers. (1) the Committee shall prepare a list of such persons who satisfy the conditions prescribed in rule 14 above and as are held by the Committee to be suitable for promotion/transfer to the service. The list shall be sufficient to cover the anticipated vacancies on account of retirement and promotion during the course of one year from the date of preparation of the select list. A reserve list consisting of 25% of the number of persons included in the said list shall also be prepared to meet the unforeseen vacancies occurring during the course of the aforesaid period.
>
> (2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.
>
> (3) The names of the officers included in the list shall be arranged in order of seniority in the service or posts as specified in column (2) of Schedule IV, at the time of preparation of each select list :
>
> Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned in the list a higher place than that of the officer senior to him.
>
> Explanation- A person, whose name is included in a select list but who is not promoted during the validity of the list shall have no claim to seniority over those considered in a subsequent selection, merely by the fact of this earlier selection.
>
> 4. The list so prepared shall be reviewed and revised every year.
>
> 5. If in the process of selection, review or revision, it is proposed to supersede any member of the Service, the committee shall record its reasons for the proposed supersession."

10. Apart from the aforesaid rule, the relevant rule i.e. Rule 12 of the M.P. Civil Services (General Condition of Service) Rules 1961 was also relevant and Rule 12 of the Rules of 1961 reads as under:-

"**12. Seniority.** The seniority of the members of service of a district branch or group of posts of that service shall be determined in accordance with the following principles, viz.

(a) Director recruits (i) The seniority of a directly recruited Government servant appointed on probation shall count during his probation from the date of appointment viz:

(ii) The same order of inter se seniority shall be maintained on the confirmation of such direct recruits if the confirmation is ordered at the end of the normal period of probation. If, however, the period of probation of any direct recruits is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority."

(b) Promoted Government Servant.-
A promoted Government servant shall count his seniority from the date of his confirmation in the service to which he has been promoted and shall be placed in the gradation list immediately below the last confirmed member of that service but above all the probationers:

Provided that where two or more promoted Government servants are confirmed with effect from the same date, the appointing authority shall determine their inter se seniority in the service in which they are confirmed, with due regard to the order in which they were included in the merit list, if any, prepared for determining their suitability for promotion and their relative seniority in the lower service from which they have been promoted.

(c) Officiating Government Servant.- The inter se seniority of Government servant promoted to officiate in a higher service or a higher category of posts shall, during the period of their officiation, be the same as that in their substantive service or grade irrespective of the dates on which they began to officiate in the higher service or grade :

Provided that-

(i) If they were selected for officiation from a list in which the names of Government servants considered suitable for trial in a promotion, to the Higher service or grade were arranged in order of merit, their inter se seniority shall be determined in accordance with the order of merit in such list;

(ii) The seniority of a permanent Government servant appointed

to officiate in another service or post by transfer shall be determined ad hoc by the appointing authority.

Provided that the seniority proposed tobe assigned to such Government servant shall be determined and intimated to him in the order of appointment,

(iii) Where a permanent Government servant is reduced to a lower service, grade or category of posts, he shall rank in the gradation list of the latter service, grade or category of posts above all theothers in that gradation list, unless the authority ordering such reduction by a special order indicates a different position in the gradation list for such reduced Government servant.

(iv) Where an officiating Government servant is reverted to his substantive service or post, he shall revert to his position in that gradation list relating to his substantive appointment which he held before he was appointed to officiatein the other service or post."

11. The aforesaid Rule 12 subsequently was amended by the State Government and the new rule 12 has been substituted by the State Government in M.P. Civil Services (General Condition of Service) Rules, 1961. The aforesaid Rule 12 has been substituted with effect from 2.4.98. It is not quoted as it is not relevant.

12. On the basis of the aforesaid, it is clear that when the order of promotion was passed on 23.7.96 (Annexure A/2) in pursuance to the recommendations of the DPC, the un-amended rule 12 which has been quoted hereinabove was holding the field and was applicable. However, it is pertinent to mention here that respondents have not filed any circular issued by the State Government with reference to fixation of inter se seniority.

13. On the basis of the aforesaid, the matter has to be examined in terms to M.P. Civil Services (General Condition of Service) Rules, 1961. According to the same, the inter se seniority of promoted government servant is to be fixed from the date of his confirmation in the service to which he has been promoted and shall be placed in the gradation list immediately below the last confirmed member of that service but above all the probationers. The proviso appended to Rule 12(b) further states where two or more promoted Government servants are confirmed with effect from the same date, the appointing authority shall determine their inter se seniority in the service in which they are confirmed, with due regard to the order in which they were included in the merit list, if any, prepared for determining their suitability for promotion and their relative seniority in the lower service from which they have been promoted.

14. On the basis of the aforesaid rule, it is clear that the competent authority after the confirmation of the promoted Government servant shall fix the seniority and while fixing the seniority, due regard shall be given to the merit list in which order they have been placed and their relative seniority in the lower service from

which they have been promoted shall also be considered. Rule 12(b) holds the field with regard to fixation of seniority of the promoted Government servant.

15. Applying he aforesaid test as contemplated under Rule 12(b), if the order of promotion dated 23.7.96 (Annexure A/2) is seen then it is a case of temporary promotion of the petitioner as well as respondent no.4 on officiating basis. Once it is found that the promotion is of officiating basis then Rule 12(c) also governs the field. Rule 12 (c) reads as under:-

> **"12 (c) Officiating Government Servant.-** The inter se seniority of Government servant promoted to officiate in a higher service or a higher category of posts shall, during the period of their officiation, be the same as that in their substantive service or grade irrespective of the dates on which they began to officiate in the higher service or grade :
>
> Provided that-
>
> (i) If they were selected for officiation from a list in which the names of Government servants considered suitable for trial in a promotion, to the Higher service or grade were arranged in order of merit, their interse seniority shall be determined in accordance with the order of merit in such list;
>
> (ii) The seniority of a permanent Government servant appointed to officiate in another service or post by transfer shall be determined ad hoc by the appointing authority.
>
> Provided that the seniority proposed to be assigned to such Government servant shall be determined and intimated to him in the order of appointment,
>
> (iii) Where a permanent Government servant is reduced to a lower service,grade or category of posts, he shall rank in the gradation list of the latter service, grade or category of posts above all the others in that gradation list, unless the authority ordering such reduction by a special order indicates a different position inthe gradation list for such reduced Government servant.
>
> (iv) Where an officiating Government servant is reverted to his substantive service or post, he shall revert to his position in that gradation list relating to his substantive appointment which he held before he was appointed to officiate in the other service or post."

16. In this reference, this Court had an occasion to consider the effect of Rule 12 (c) in a judgment reported in 1985 M.P.L.J. 778 *Vasant Kumar Jaiswal Vs. State of M.P.* and in paragraph 5 and 6 following ratio has been laid down:-

> "5. Taking note of the aforesaid constitutional obligation, let us find out if the petitioner's interpretation is the only interpretation of the Rule or if there could be any other interpretation of the same. The Rule is, no doubt,

inartistically worded and can be read in the manner as the petitioner is reading it, but on a deeper understanding, the said reading does not appear to be correct. The use of the words "inter se seniority" in relation to promotion, would only imply determination of seniority between those who have been promoted at the same time. If so read, the rule would mean that seniority of persons promoted together, would remain the same as in the lower cadre as long as they are officiating in the higher cadre. Such a reading of the rule would avoid unreasonableness and the consequent unconstitutionality and would make the rule fully and effectively workable. The submission of the learned counsel for the petitioner, however, is that such a reading would bring the first part of the rule in conflict with the second part which requires the seniority to remain the as same as in the lower cadre "irrespective of the dates on which they began to officiate in the higher service of grade." It is true that the subsequent part of the rule, if read as the petitioner wants it to be read, would make the earlier interpretation unworkable, but the petitioner's reading of the earlier part of the rule does not appear to be correct. Several persons may be promoted together and yet may not join the promoted cadre on the same date. It is not unusual to find persons who, though promoted, are not relieved due to administrative exigencies to take up higher assignment immediately. If this was to affect their seniority, they would suffer for no fault on their part. In such a case, the normal rule of counting the seniority from the date of continuous officiation, would result in injustice and would become unreasonable. Under the circumstances, the rule, in order to survive the test of Article 14 and 16 of the Constitution, should be read to mean that seniority between persons promoted together to officiate in higher cadre, would be the same as in their substantive cadre-irrespective of the date from which they joined their service in the promoted cadre. This reading of the rule makes it just and proper and brings it in line with the law on the subject. This interpretation of the rule would lead to an inevitable conclusion that the petitioner's claim to his seniority is devoid of any substance and is not supported by Rule 12(c) of the Rules."

6. The decision of this Court in *Umesh Narayan Mishra's case* (supra) is said to be supporting the submission of the petitioner and, hence, may be examined. In the said case, this Court was considering the seniority of Extra Assistant Conservator of Forest, who had been promoted to that cadre on an officiating basis. The seniority list was prepared on the basis of directions contained in a memo dated 8.2.1978 and not on the basis of Rule 12 (c) as in existence. The said memo had the effect of enforcing a decision to amend Rule 12-without actually affecting the amendment. The ambit and scope of Rule 12 (c) was not examined in the aforesaid case as it was accepted that the list was not prepared in accordance with Rule 12 (c). This Court, therefore, quashed the list. The said decision is, therefore, not

an authority for deciding the real meaning, scope and ambit of Rule 12 (c) of the Rules. Indeed, in the instant case, the respondents claim that the seniority list is prepared in accordance with Rule 12 (c). Under the circumstances, the aforesaid judgment does not help the petitioner in any manner."

17. The aforesaid judgment has been confirmed by the Apex Court in a judgment reported in AIR 1987 SC 2322.

18. On the basis of the aforesaid ratio it is seen that the order of promotion dated 23.7.96 (annexure A/2) was a temporary promotion and petitioner as well as respondent no.4 both were allowed to officiate on the post of Joint Director then keeping in view the nature of promotion, Rule 12 (c) would also have the application in the present case. Since rule 12 (c) has already received consideration of this Court in the judgment of *Vasant Kumar* (supra) which also has been confirmed by the Apex Court in AIR 1987 SC 2322(supra) then if the two persons are allowed to be officiating on a higher post as they were found fit by the same DPC and by the one order they have been promoted then the seniority in the feeder post would be the relevant factor for the purpose of reckoning the seniority on the higher post.

19. There is no dispute in the present case that petitioner was senior to respondent no.4, therefore, the petitioner's seniority in the feeder post has to be reckoned and accordingly the petitioner shall be granted seniority above to respondent no.4 on the post of Joint Director.

20. The question has to be also considered in the light of Rule 12 (b). Rule 12(b) has already been referred to and discussed in earlier paragraphs. According to the same, the inter se seniority of a promoted government servant has to be reckoned from the date of his confirmation in the post on which he is promoted. The proviso attached to this also states that if two or more promoted government servants are confirmed with effect from the same date then the appointing authority shall determine their inter se seniority in the service in which they are confirmed, with due regard to the order in which they were included in the merit list, if any, prepared for determining their suitability for promotion and their relative seniority in the lower service from which they have been promoted.

21. The respondents have not filed any document and have also not stated in their return that respondent no.4 was confirmed earlier to petitioner on the post of Joint Director so that a case could have been made out in favour of respondent no.4 on the basis of confirmation that respondent no.4 was confirmed earlier so that there would not have any dispute with reference to fixation of inter se seniority between the promotees, i.e. petitioner and respondent no.4.

22. Apart from the aforesaid, proviso further states that the competent authority has to apply his mind for fixing the inter se seniority of two or more promoted government servants who are confirmed by the same order and with same date on the promoted post. Respondents have not placed any order and have not made any averments in their return that the respondent no.4 was confirmed and the

petitioner was not confirmed then it is very difficult to hold that in the absence of any confirmation of the petitioner as well as respondent no.4 on the post of Joint Director, the respondent no.4 can be assigned a higher seniority than the petitioner on the post of Joint Director by exercising the powers vested with the competent authority under the proviso appended to Rule 12 (b) which will be applicable only after when the promoted government servants are confirmed then such confirmation would be the date for fixing the seniority and in the absence of any confirmation as such, the proviso shall have no application. The fixation of seniority would only arise after confirmation and not before that.

23. Since the respondents have not stated in their return that respondent no.4 was confirmed earlier to the petitioner, therefore, in terms to Rule 12 (b) it is very difficult to hold that merely because respondent no.4 was placed in a higher rank in merit of Joint Director than the petitioner, respondent no.4 would be entitled to get higher seniority than the petitioner.

24. Rule 15(3) which has already been quoted relates to preparation of merit list after the selection by the DPC and if a person is found to be of more meritorious then he can be assigned a higher seniority in the merit list. This has to be applied as a criteria for promotion which is "merit cum seniority". This rule has to do nothing with fixation of seniority. Rule 15 does not state that after when a junior is found to be of more meritorious and suitable then after his promotion, he would also have a right to claim seniority over his senior. The purpose under Rule 15 only seems to be that an officer who is of exceptional merit and suitability should not be deprived of his promotion on the ground of 'seniority' because when the rule of *"merit cum seniority"* is applied then merit has to be given preference and not the seniority and for this reason a person who is junior but is of exceptional merit and suitability has to be placed above to his senior in the merit list so that the chances of promotion will not be adversely affected because of the seniority. This alone is the purpose of assigning the higher merit rank in the merit list to a junior by the DPC but the rule does not provides for conferring seniority also on the basis of exceptional merit. Rule 12(b) which governs the field for the purpose of fixation of seniority of two or more promoted officers.

25. Counsel appearing on behalf of the respondents have not argued anything that either rule 12(b) or 12 (c) have no application in the present case.

26. On the basis of the aforesaid, I am inclined to hold that respondent no.4 could not have been assigned a higher seniority on the post of Joint Director over the petitioner who was senior in the feeder post and accordingly it is directed that the respondents shall pass appropriate orders within two months from the date the certified copy of this order is submitted by the petitioner to the respondents and shall also provide all consequential benefits to the petitioner for the next higher post.

27. The next petition i.e. W.P.S No. 1119/2005 relates to the aspect that the

respondent no.4 from the post of Joint Director has further been promoted to the post of Director.

28. The tribunal while admitting the petition i.e. W.P. No. 23798/03 passed an order on 8.11.97 that respondent no.4 should not be given regular charge of the post of Director. During the pendency of the petition, the respondent no.4 was further promoted to the post of Director by an order dated 13.9.04 (annexure P/7) passed in W.P.S. No. 1119/05. This order has been challenged by the petitioner on the ground that case of seniority on the post of Joint Director was already pending i.e. W.P. No. 23798/03 and the tribunal has also passed an order of stay in favour of the petitioner that respondent no.4 should not be given regular charge of the post of Director. The Stay order was not vacated and the State Govt. by passing an order on 13.9.04 (annexure P/7) in W.P.S. No. 1119/05 promoted the respondent no.4 on temporary basis as a Director.

29. Since I have already held earlier while deciding the W.P. No. 23798/03 that no higher seniority on the post of Joint Director would have been assigned to the respondent no.4 above to the present petitioner and the seniority on the feeder post has to be counted because both i.e. petitioner and respondent no.4 were considered by the same DPC and found fit and by a common order both were promoted to the post of Joint Director, therefore, the seniority on the feeder post would be reckoned on the post of Joint Director and respondent no.4 shall be treated junior to the petitioner, therefore, the order passed in W.P. No. 1119/05 (annexure P/7) is also quashed because this order of promotion is based upon wrong seniority of the respondent no.4. The respondents in para 5 of the return filed in W.P. No. 1119/05 have stated as under:-

> "It is submitted that the name of the petitioner was also under the zone of consideration before the DPC met on 6.8.04 for making the promotion to the post of Director Fisheries. Only one post of Director was to be filled up in accordance with the Rules of 1987 under the criteria of merit and suitability in all respect with due regard to seniority. The respondent no.2 was senior to the petitioner in the feeder cadre of Joint Director. However, the previous five years Annual Confidential Reports from the year ending March 1999 to year ending March 2003 were taken into consideration for assigning the merit as per the yardstick evolved by the Committee. On scrutiny it was found that the respondent no.2 was holding the exceptional merit with two excellent (A+) remark and three 'very good' (A) remarks whereas the petitioner was found to have held two good remarks (B) and three excellent (A+). Obviously, the respondent no.2 was recommended for promotion to the post of Director and subsequently he has been promoted vide order dated 13.9.04, Annexure P/7."

30. On the basis of the same, it is clear that there had been only one post of Director and the name of the petitioner was also within the zone of consideration

before the DPC which met on 6.8.04. It is also stated that respondent no.4 was senior to the petitioner in the feeder cadre of Joint Director and on the basis of the confidential report of the respondent no.4 he has been promoted and was assigned a higher seniority on the feeder post i.e. Joint Director and further for this reason the name of respondent no.2 in W.P. No. 1119/05 and respondent no.4 in W.P. No. 23798/03 was recommended for promotion.

31. On the basis of the return it is clear that respondent no.2/4 was given preference over the petitioner only because of his wrong seniority on the post of Joint Director and for this reason he was promoted.

32. In view of the aforesaid, respondents are directed to re-fix the petitioner's seniority above to respondent no.2/4 on the post of Joint Director and then to hold a review DPC of 6.8.04 to consider the case of the petitioner, respondent no.2/4 and other persons those who were within the zone of consideration when the original DPC met on 6.8.04. The review DPC shall take place within a period of two months from the date the petitioner furnishes certified copy of this order to the respondents and the review DPC shall apply the same criteria which was applied by the original DPC to consider the case of the petitioner for his promotion on the post of Director.

33. Accordingly, both the petitions are allowed to the extent above.

Petition allowed.

I.L.R. [2008] M. P., 1952

WRIT PETITION

Before Mr. Justice Dipak Misra & Mr. Justice Prakash Shrivastava

27 March, 2008*

ANIL BANSAL ... Petitioner

Vs.

CENTRAL BUREAU OF INVESTIGATION & ors. ... Respondents

A. **Constitution, Article 226** - ***Public Interest Litigation - Locus Standi*** - *Public Interest Litigation Petition filed against resp. No.2, Revenue Minister, for C.B.I. enquiry regarding acquisition of disproportionate assets - Held - Although allegations of criminal record of petitioner, his personal interest as competitor in business and his acting as a proxy of another political rival, yet same requires keen scrutiny before discarding lis.* (Para 21)

क. संविधान, अनुच्छेद 226 – पब्लिक इन्ट्रेस्ट लिटिगेशन – सुने जाने का अधिकार – प्रत्यर्थी क्रमांक 2 राजस्व मंत्री के विरुद्ध अनुपातहीन सम्पत्ति अर्जित करने के संबंध में सी.बी.आई. से जाँच के लिए जनहित याचिका पेश की गई – अभिनिर्धारित – यद्यपि याची के दाण्डिक अभिलेख के अभिकथन उसकी व्यक्तिगत रुचि, कारोबार में प्रतिस्पर्धा और अन्य राजनैतिक प्रतिद्वन्दी के लिए परोक्षतः किया गया कृत्य किन्तु वाद अमान्य करने के पूर्व उसकी सूक्ष्म जाँच अपेक्षित है।

*W.P. No.16646 2006 (Jabalpur)

B. Income Tax Act (43 of 1961), Section 147 - *Income escaping assessment - Resp. No.2 holding Public post - Resp. No.2 claims himself to be a part of HUF - Not filing return on the ground that he was not under obligation to file return as entire income is agricultural income - Resp. No.2 purchasing property in the names of his family members - Held - Resp. No.2 has public accountability - Basic characteristics of Rule of Law do not make distinction between weakest and mightiest - Income Tax Commissioner to initiate proceeding against resp. No.2 and facts mentioned in petition should be treated as reasons to believe as required u/s 147 of Act - Petition disposed off.* (Paras 32 & 33)

ख. आयकर अधिनियम (1961 का 43), धारा 147 – निर्धारण से बचाई हुई आय – प्रत्यर्थी क्रमांक 2 लोक पद धारण किये हुए – प्रत्यर्थी क्रमांक 2 स्वयं को एचयूएफ का भाग होने का दावा करता है – विवरणी इस आधार पर पेश नहीं की कि वह विवरणी पेश करने के लिए आबद्ध नहीं था क्योंकि सम्पूर्ण आय कृषिक आय है – प्रत्यर्थी क्रमांक 2 ने अपने परिवार के सदस्यों के नाम से सम्पत्ति क्रय की – अभिनिर्धारित – प्रत्यर्थी क्रमांक 2 का लोक उत्तरदायित्व है – विधि के नियम का मूल अभिलक्षण प्रभावशाली और कमजोरों में भेद नहीं करता – आयकर आयुक्त प्रत्यर्थी क्रमांक 2 के विरुद्ध कार्यवाही प्रारम्भ करें और याचिका में वर्णित तथ्यों को विश्वास करने का कारण मानें जैसा कि अधिनियम की धारा 147 के अधीन अपेक्षित है – याचिका निपटाई गई।

Cases referred :

AIR 1993 SC 892, AIR 2004 SC 1576, (2005) 3 SCC 91, (2005) 1 SCC 590, (2006) 6 SCC 180, (2007) 4 SCC 380, W.P. No. 5064/98 decided on 16.09.2003, (2002) 2 SCC 333, AIR 2004 Jharkhand 115, (2006) 2 SCC 1, 1989 JLJ 127.

Manikant Sharma, for the petitioner.

Jayant Nikhra, for the respondent No. 1.

V.K. Tankha and *Naman Nagrath & H.K. Upadhyaya,* for the respondent No.2.

ORDER

The Order of the Court was delivered by DIPAK MISRA, J. :–The petitioner describing himself a social activist, as *pro bono publico,* has preferred this public interest litigation averring that the respondent No.2, the Minister, Department of Revenue, has purchased large chunk of immovable properties after being elected to the Member of Legislative Assembly in the year 2003 and the sale-deeds have been executed after the election and that apart he has also purchased number of properties in the names of his son and other relatives on many a guise. It is contended that he is a public servant under the provisions of the Prevention of Corruption Act, 1988 (for brevity 'the Act') and hence, the Central Bureau of Investigation be commanded to hold an enquiry regarding acquisition of disproportionate assets by abusing the official position and to proceed against him as per law.

2. The facts which are essential to be adumbrated are that the election to the Members of Legislative Assembly was held in the year 2003 and the respondent No.2 after being elected was appointed as the Minister of State, Department of

. Revenue. At the time of filing of nomination form the respondent No.2 had submitted an affidavit containing the details of movable and immovable properties and the deposits in the bank possessed by him and his family members. The said affidavit has been brought on record as Annexure-P-1. It is set forth that after having been appointed as a Minister he has purchased immovable properties in his name, in the name of his family members and friends which is manifestly beyond his known sources of income and the properties are valued more than one crore and their valuation is patent from a bare perusal of the sale-deeds. A detailed chart has been given in the writ petition and the documents in support of the same have been brought on record as Annexures-P-2 to P-10.

3. It is putforth that the said respondent has engaged himself in various illegal activities and pressurized various local authorities to do illegal acts. It is specifically urged that he has interfered in the functioning of Krishi Upaj Mandi in the guise of growth and development of market area which has really no connection with the Krishi Upaj Mandi Samiti. It is alleged that a plot has been allotted in favour of his son Sandeep Patel for establishment of a petrol pump and similarly some of his close relatives have been allotted valuable plots in the area belonging to the market committee. It is further putforth that the said respondent by misusing his official capacity has got allotted an E-Type Bungalow on Harda-Indore Road belonging to the Revenue Department and the respondent No.2 has got huge amount spent for modification of the said Bungalow. A reference has been made to the reply of the Chief Minister stating that there is no provision for allotment of government residence in favour of Members of Legislative Assembly in their Home Town. It is alleged that in the marriage of son of the second respondent enormous money has been spent in reception as more than 12000 cards were distributed and the daughter-in-law had received valuable gifts from him which was worth more than Rs.50 lacs. He has also abused his official position to get his photographs put on the gates installed at various places of Harda Town. It is averred that the respondent No.2 has gathered huge amount of money during his tenure as a Member of Legislative Assembly and the Minister of State and he is to be made accountable for the same.

4. It is contended that in the affidavit filed by the respondent No.2 at the time of filing of nomination form the sources of income was set to be agricultural land in village Ratatalai wherein he has 1/4th share and some money kept in fixed deposits. It is also urged that he had taken loan for purchase of a jeep -and not repaid the same. In this backdrop a prayer has been made which has been indicated hereinbefore.

5. A return has been filed by the respondent No. 1, Central Bureau of Investigation stating, inter alia, that it has heavy load of work and hence, this Court may not direct for conducting of investigation by it.

6. A counter affidavit has been filed by the respondent No.2 contending, inter alia, that the petitioner in the guise of public interest litigation has acted as a proxy

of one Rajendra Patel, a rival of the respondent, and an effort has been made to settle the scores. The allegations are reckless in nature and the documents which have been filed are irrelevant and certain things have been blown out of proportion in order to project an adverse picture. It is setforth that the respondent No.2 and his family members originally belong to Jaat Community and basically hail from State of Rajasthan and his family has been settled at Harda for a long time. He has been a Member of the Legislative Assembly since 1993 and was inducted as a Minister of State for Technology and Medical Admission. It is the further stand in the return that allegation has been made that he had abused his official capacity as a Minister by getting the house allotted in his name, though allotment of the said house was made by the State Government in June, 2004 prior to his becoming a Minister. The allegation to the effect that certain allotments have been made by Krishi Upaj Mandi Samiti are of no relevance as the action of Krishi Upaj Mandi Samiti has not been called in question and further a statutory remedy is available for the same. The rival of the respondent, Rajendra Patel, had applied for documents under Right to Information Act which goes a long way to show that the petitioner has acted as a proxy of Rajendra Patel. Various allegations have been made against said Rajendra Patel. It is pleaded that Krishi Upaj Mandi has been authorized by the State to lease out plots of mandi area for agricultural products. Krishi Upaj Mandi Samiti took a policy decision to have petrol pump, shops and such other facilities, etc. near the Mandi. A decision was taken by Mandi Samiti to give said plots on long term lease on "highest offer" basis as per State Government policy. An advertisement was issued as per Annexure-R-2/2 and in pursuance of the said advertisement the son of the respondent participated in the auction and as his price was the highest the same was accepted. The follow up action taken in pursuance of the lease has been stated in detail. It is asserted that Rajendra Patel and the present petitioner have tried to get the plots allotted from Mandi but the same did not get fructified due to lack of government policy. The petitioner who has a petrol pump barely one and half kms. away from the new site, has filed the present public interest litigation as his business is likely to be affected. A crime for offences punishable under Sections 420/34 and 285 of the Indian Penal Code read with Section 3/7 of Essential Commodities Act and Section 23 of Petroleum Act was registered against him which entailed in Criminal Case No.385/2005. After the charges were framed the petitioner preferred a revision which has been allowed on technical grounds and a direction was issued in the revision for registering a criminal case against the wife of the petitioner. The said order passed in the revision has been brought on record as Annexure-R-2/5. An effort has been made by putting forth certain misleading facts and annexing certain lease-deeds without specifically stating about the contents of the said deeds. The public interest litigation is basically founded on political motives as the documents would go a long way to exposit the same. It is putforth that Annexure-P-17 which is a

newspaper clipping does not pertain to the son of the answering respondent but relates to the marriage of his daughter which took place at Harda and no marriage function for his daughter was conducted at Bhopal. It is also disputed that no reception for general public was held at Harda for the marriage of his son. The marriage of his son was held in a Hotel at Bhopal and as a public person the respondent had invited number of people to attend the function. One open lawn of the Hotel was taken to hold the reception for which amount was paid to the Hotel. It has been categorically asserted that the properties have been purchased by the respondent because of the income earned from the agricultural properties which is owned by the HUF. It is putfroth that the HUF of the respondent which is holding the said agricultural land and deriving the income from the same has no other source of income and the entire purchase amount is from the said source and hence, the allegations are baseless, malafide and unsustainable in law.

7. A rejoinder affidavit has been filed by the petitioner stating, inter alia, that the assertions made with regard to HUF is incorrect and misleading inasmuch as no HUF is existing at all and the properties are separate owned by all the relatives of the respondent No.2. Various assertions have been made how the properties in question cannot be regarded as HUF. It is worth noting here that emphasis has been laid on the fact that at one point of time the second respondent had shown his property to be self acquired and hence, the plea of HUF does not stand to reason. It is further asseverated that the respondent No.2 has got the sale deeds executed in the names of his kith and kin and they are undervalued. Instances have been given about the sale deeds and the bank statements of the joint accounts. In essentiality, in the rejoinder it is further clarified how the respondent No.2 has acquired properties which is beyond known sources of his income and hence, he is liable to be prosecuted. Be it noted various documents have been brought on record.

8. We have heard Mr. Manikant Sharma, learned counsel for the petitioner, Mr. Jayant Nikhra, learned counsel for the respondent No. 1 and Mr. V.K. Tankha, learned senior counsel along with Mr. Naman Nagrath and Mr. H.K. Upadhyay for the respondent No.2.

9. It is submitted by Mr. Sharma that the respondent No.2 had disclosed his income at the time of his filing nomination papers and compared to the said disclosure, properties owned by him at this stage is enormous and acquisition of such property would go a long way to expose the abuse of power. It is contended by him that registered sale deeds per se would reveal that the respondent No.2 has abused his power to acquire the property and being a public servant he is liable to disclose the sources of his income. Submission of Mr. Sharma is that the stance taken by the respondent No.2 that there is HUF and money accrued from the agricultural income has been invested for purchase of other land properties cannot be given credence to inasmuch as the agricultural income is absolutely

meager and in any case it was obligatory on the part of the respondent No.2 to file income tax return when he has purchased such valuable properties. It is canvassed by Mr. Sharma that the allotment of the land in favour of the relatives of the respondent No.2 by Krishi Upaj Mandi is perceptibly an abuse of power and cannot' be countenanced in a democracy which is governed by Rule of Law. It is urged by him that ostentatious and unwarranted show of wealth in the marriage of his son, decoration of residential premises and allotment of premises at Harda Town beyond the rules are concrete instances of abuse of power. It is vehemently contended that it is a fit case where direction should be issued to CBI to investigate into the matter so that the truth can come out and the respondent No.2 can be proceeded in accordance with law.

10. Mr. V.K. Tankha, learned senior counsel for the respondent No.2 contended that the petitioner has no locus standi to file a public interest litigation of this nature as it has the tenor and character of score settling litigation or to put it differently would amount to personal interest litigation. It has also the contour of publicity litigation because the petitioner has worked as proxy of one Rajesh Patel. It is urged by him that the respondent No.2 is a part of HUF or not and whether the property is self acquired cannot be dealt with in a writ petition of this nature. It is his further proponement that the respondent No.2 was under no obligation to file income tax return under the Income Tax Act as the entire income is agricultural income. It is contended by Mr. Tankha that under the provisions of Income Tax Act as the respondent No.2 does not have any other income beside the agricultural income the provisions of the Income Tax Act are not applicable and, therefore, no return is to be filed. The learned counsel referred to departmental circular No. 493 dated .21.8.1997 which stipulates that the returns showing income below taxable limit are to be treated as 'non est return. Mr. Tankha has argued that the assessee in his capacity as co-parcener of HUF is not required to file return in respect of agricultural income in the light of the statutory provision of the Income Tax Act, 1961 and the circulars issued by the Central Board of Direct Taxes. It is canvassed by Mr. Tankha that the directions to CBI for investigation cannot be issued in a routine manner and the same has to be directed on certain conditions being satisfied and regard being had to the gravity of the matter and the concept of rare occasion which are not remotely noticeable in the case at hand and, therefore, the prayer is absolutely misconceived and hence, the writ petition is to be dismissed with exemplary costs.

11. Though we have narrated the submissions raised at the Bar in detail, in essentiality four questions emerge for consideration. We would like to compartmentalise and catalogue the issues as under:

(a) Whether the petitioner has the locus standi to prefer a public interest litigation or whether the present petition has to be thrown overboard on the foundation that the petitioner has been used an axe to grind against

the respondent No.2 and further in a lis of this nature no public interest is involved.

(b) Whether the allegations made in the petition are to be taken into consideration in entirety or some of them to be considered and if so whether there is warrant for directing an investigation by the CBI.

(c) Whether the respondent No.2 was under an obligation to disclose his property acquired by way of registered sale deeds and whether in the obtaining factual matrix regard being had to the totality of circumstances it was incumbent on the part of the respondent No.2 to do so.

(d) Whether this Court considering the facts in entirety and concept of public accountability in respect of a public servant can issue a direction for any kind of investigation including taking appropriate steps by the Income Tax Department.

12. First we shall deal with the issue relating to locus standi of the petitioner as the same has been raised with immense vehemence by Mr. Tankha, learned senior counsel for the second respondent. Learned senior counsel has combatted the assertions made in the petition on the ground that the petitioner has a criminal record; that he has been used as a proxy by one Rajesh Patel; that certain information have been obtained by Rajesh Patel and handed over to the petitioner who has assumed the role of a *pro bono publico* at the instance of a person who has an axe to grind against the respondent No.2; and that the lis cannot come under the public interest litigation as is understood. Having regard to the aforesaid factual scenario, it is apposite to refer to certain citations in the field.

13. In the *Janata Dal v. H.S. Chowdhary and Others*, AIR 1993 SC 892 in paragraph 66 it has been ruled thus:

"66. Though we have, in our country, recognised a departure from the strict rule of locus standi as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of locus standi no 'rigid litmus test' can be applied since the broad contours of PIL are still developing apace seemingly with divergent

views on several aspects of the concept of this newly developed law and discovered Jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial, process."

14. In *Mehsana District Central Co-operative Bank, Ltd. and Others v. State of Gujarat and others,* AIR 2004 SC 1576 the Apex Court while dealing with entertaining of public interest litigation in the context of performing of statutory obligations has stated thus:

> "18.....When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event if woudi always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case....."

15. In *R & M Trust v. Koramangala Residents Vigilance Group and Others,* (2005) 3 SCC 91 it has been held as under:

> "24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

16. In *Dattaraj Nathuji Thaware v. State of Maharashtra and Others,* (2005) I SCC 590 heir Lordships have expressed thus:

> "Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice,

vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta."

17. In *Kushum Lata v. Union of India and others*, (2006) 6 SCC 180 it has been held as follows:

".....Public interest litigation which has now come to occupy an important field in the administration of law should not be 'publicity interest litigation' or 'private interest litigation' or 'politics interest litigation' or the latest trend 'paise income litigation'. The High Court has found that the case at hand belongs to the second category. If not properly regulated and ' abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The Courts of justice should not be allowed to be polluted by unscrupulous litgants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of a public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *Janata Dal. v. H.S. Chowdhary and Kazi Lhendup Dorji v. CBI.* A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petition but also with a clean heart, clean mind and clean objective. (See *Ramjas Foundation v. Union of India and K.R. Srinivas v. R.M. Premchand.*)"

In the said case in paragraphs 15 and 16 it has been held as under:

"15. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful

to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of *Pro Bono Publico,* though they have no interest of the public or even of their own to protect.

16. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra vs. Prabhu,' and Andhra Pradesh State Financial Corporation vs. M/s GAR Re-Rolling Mills.* No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) V. K. Parasaran. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public."

18. In *Vishwanath Chaturvedi (3) v. Union of India and Others,* (2007) 4 SCC 380 it has been held as under:

"38. In the instant case, it needs to be noted that we are concerned in this case not with the merits of the allegations. The present petition is filed on acquisition of alleged wealth.

39. The test which one has to apply to decide the maintainability of the PIL concerns sufficiency of the petitioner's interest. In our view it is wrong in law for the court to judge the petitioner's interest without looking into the subject-matter of his complaint and if the petitioner shows failure of public duty, the court would be in error in dismissing the PIL.

40. It is also equally true that PIL is not maintainable to probe or enquire into the returns of another taxpayer except in special circumstances. It is the ratio of the decision of House of Lords in *Inland Revenue Commrs. v. National Federation of Self employed and Small Business Ltd.* However, when seams take place, allegation of disproportionate assets is required to be looked into. In *M.C. Mehta v. Union of India* (Taj Trapezium Matter) the Division Bench of this Court not only directed CBI to investigate the cases against the bureaucrats but also to enquire into the outflow of Rs.17 crores released by the State of U.P. in respect of project undertaken by NPCC. In that matter, the income tax returns of the former Chief Minister and other officials were ordered to be collected by this Court. They were directed to be collected from various Income

Tax Authorities. The point to be noted is that the source of the funds plays a crucial role in investigations by CBI in matters involving misappropriation of public funds."

19. In this context we may refer with profit to the decision rendered in *Sunderlal Patwa v. State of M.P. and ors.*, (Writ Petition No.5064/98 decided on 16.9.2003) wherein this Court analysing the decision in *Balco Employees' Union (Regd.) v. Union of India and Others,* (2002) 2 SCC 333 and reproducing paragraphs 97 and 98 of the said decision expressed the opinion as under :

"12. If the aforesaid decision is understood in proper perspective it cannot be said that once the public injury is caused and public interest is affected a public spirited person cannot knock at the doors of Court. In the case at hand the petitioner, as has been pleaded, has brought to the notice of this Court about illegal allotment of land. When the lands have been illegally allotted in violation of the statutory provisions by the State Government or a statutory corporation or a statutory body, in our considered opinion the same would come in the ambit and purview of the public interest litigation. A person can agitate the cause of the collective that the land which belong to the collective is being mis-utilised by a group of person affecting the rights of a common man. When the cause of public at large is canvassed it would be inappropriate to hold that the petitioner does not have the locus standi to approach the court of law. Allegations have been made that there is distribution of the land in favour of some chosen persons. Land belongs to the State. The State has handedover the same to the authorities which have been constituted under the statutory provisions and they deal with public largesse, and thus they cannot distribute the same in a capricious manner. They cannot be above law. Hence, we come to the irresistible conclusion that the petitioner has the locus standi to prefer the present public interest litigation."

20. In this context, we may refer with profit to the decision rendered in *Rajnish Mishra v. State of Jharkhand and Others,* AIR 2004 Jharkhand 115 wherein P.K. Balasubramanyan, C.J. (as his Lordship then was) speaking for the Court, while dealing with the issue relating to creation of unnecessary bodies or appointment of persons not qualified to handle activities of such bodies on the bodies result in eating away funds set apart for the Schemes, opined that a prudent Government in its role as guardian of public interest should cautiously consider whether it is really necessary to form a separate corporation for the purpose of dealing with a particular welfare measure. It is worth noting that the Bench has laid emphasis on public utility and need.

21. We have referred to the aforesaid decisions to highlight the purpose of public interest litigation, its requisite necessity, its use and abuse, the nature of the controversy to be addressed, the locus standi of petitioner in a public interest

litigation and his real effort, the change of the contour of the powerful weapon by some unscrupulous litigants, the mischievous elements who assume the self-styled role of *pro bono publico* and the role of the court while dealing with such multifaceted and multifaced litigation. In the case at hand though allegations have been against the petitioner with regard to his criminal record, his personal interest as -a competitor in business and his acting as a proxy of another political rival, yet the same requires the keen scrutiny before discarding the lis at the threshold on the ground of locus standi.

22. Before we delve into the nature of allegatiions we say with certitude that this is not a fit case where direction should be issued, at present, for investigation by Central Bureau of Investigation. Hence, we decline the said prayer for the present.

23. Presently we shall advert to the allegations, namely, the allotment of land by the Krishi Upaj Mandi in favour of the son of the respondent No.2 and the allotment of house at Harda in favour of the second respondent and its modification and innovation by the Public Works Department. It is worth-noting that apart from the making bald allegations that there has been abuse of power by the respondent No.2 with regard to allotment of cite in favour of his son, nothing has been really stated. In a public auction his son had purchased the land. Be that as it may. the son of the respondent No.2 has not been arrayed as a party. Hence we do not intend to dwell upon the said challenge in this public interest litigation.

24. As far as allotment of house at Harda is concerned, it is only put forth that there is no rule or provision for allotment of such quarters at Harda. In our considered opinion, as presently the same does not really deserve to be adverted to in a public interest litigation of this nature inasmuch as nothing has been brought on record how the same is illegal or irregular. Hence, we restrain ourselves from adverting to the said facet.

25. The next aspect relates to purchase of property in the names of wife, son, brother-in-law, mother-in-law, brother and brother's wife. On a perusal of Annexure-P/2 it appears that 5.611 hectares of land has been purchased in the name of Sudeep Patel, son of the respondent No.2 on payment of consideration of Rs.8,91,000/-. As per sale-deed contained in Annexure-P/3 2.02 hectares of land has been purchased in the name of Smt. Rekha, wife of the respondent No.2 on payment of consideration of Rs.3,88,000/-. It is perceivable from Annexure-P/4 that 5.771 hectares of land was purchased in the name of Sandeep Patel, another son of the respondent No.2 on payment of consideration of Rs.10,93,100/-. On a perusal of Annexure-P/5 it is noticeable that a sum of Rs.11,85,300/- has been spent for purchase of land admeasuring 5.768 hectares in the name of Smt. Kesharbai, mother-in-law of the said respondent. On a scrutiny of Annexure-P/7 it is vivid that Rs.6,89,600/- has been utilised towards consideration for purchase of 2.17 acre of land in the name of the wife and some others. Annexure-P/7 and

Annexure-P/8 show purchase of land admeasuring 4.80 acres and 6.68 acres for a sum of Rs.13,86,600/- and 20,08,500/- respectively in the names of wife and others. Annexure-P/9, another sale-deed, shows that towards purchase of an area admeasuring 1.43 acres Rs.1,84,000/- has been paid and the said transaction has been made in favour of the brother of the second respondent. Annexure-P/10 shows purchase of 5.77 acres of land on payment of Rs.2,57,000/- in the names of his wife and the brother. Thus, the total land purchased is 68,776 acres and the amount of consideration is Rs.80,83,100/- and stamp duty ofRs.7,34,680/-has been paid thereon for the purpose of registration. Thus, a total sum ofRs.88,17,780/- has been spent. Proponement of Mr. Tankha is that the entire purchase of the properties have been done from common pool of HUF funds by the present Karta of the family, namely, Shri Harnath Patel. It is urged by him that the Karta in his own wisdom has decided to purchase these assets in names of different members of the family keeping in view the possibility of future partition and family welfare. Properties have been purchased by Karta in a manner in which the properties falling in respective share of the members of the family would already be defined to a great extent for the future. It is also submitted that after being issued notice in this petition, the answering respondent and his family members have furnished the entire details of their agricultural land holdings and also estimates of their income derived from agriculture to a Chartered Accountant for verification. It is submitted that the details furnished regarding the agricultural income have been examined by the said Chartered Accountant, who has also certified the same and has given his opinion that the cash inflow in the form of agricultural income on the basis of land holdings of family, as being claimed by the respondent and his family members is well justified and acceptable.

26. True it is the stand of the respondent No.2 is that 'Karta' in his own wisdom has taken the decision to acquire the assets in the names of different members of the family keeping in view the possibility of future partition and family welfare and there may be opinion of the Chartered Accountant, yet the question remains whether the respondent No.2, as a public servant, has an accountability or not. Mr. Tankha submitted that in the provisions of the Income-Tax Act the respondent No.2 is under no obligation to file a return in respect of agricultural income as the whole income is based upon agricultural sources. The learned Senior Counsel has laid immense emphasis on the Circular No.493 dated 29-8-1997 which shows that no return need to be filed if the income is below the taxable limit. The learned counsel further submitted that the respondent No.2 has not filed any return in respect of the agricultural income in view of the statutory provisions.

27. In this context we think it apposite to analyse certain provisions of the Income Tax Act, 1961. Under the provisions of the Act every person is required to file his return as contemplated under Section 139 of the Act. Section 2(31) of the Act defines 'person' which includes the HUF. Proviso to Section 139(l)(b) provides that a person resides in such an area as may be specified and who is in

occupation of immovable property existing a specified floor area, whether by way of ownership tenancy or otherwise, is required to furnish a return. Be it noted, the said provision is attracted and applicable between the assessment years 1977-1978 and 2005-2006. If the return is not filed proceedings for assessment can be initiated under sections 147, 148, 141 and 151 of the Act.

28. In a case where a person is having substantial assets which are not disclosed in the return of income then the said investments can be treated to be unexplained under Sections 69, 69A, 69B and 69C of the Act if the person fails to offer an explanation regarding the nature and source of the investment or if explanation which is offered, by such person is not satisfactory. The Income Tax authorities have powers under sections 131, 132A, 133, 133A and 133B to collect evidence in respect of any income, books, documents etc. which the Income Tax authorities feel are relevant and necessary for the purpose of assessment.

29. The assessment of income which has not been shown in the Income Tax return or income in respect of which no return has been filed at all can be made by the Income Tax authorities in accordance with sections 147, 148, 149 and 151 of the Income Tax Act which provide for assessment to income escaping assessment. The only requirement is that before initiating proceedings, the Assessing Officer has to record the reasons for issuance of notice.

30. In a case where assessment is completed on an income which has not been offered for tax, or which has been concealed or particulars of which have been inaccurately disclosed, penalty can be levied under Section 271 of the Act. Besides imposition of penalty, prosecution can also be initiated under sections 276C, 276CC, 276D & 277 of the said enactment.

31. It is also worth-noting that the provisions of Wealth Tax Act are also applicable in a case where a person owns immovable properties. Section 3 of the Wealth Tax Act provides for charge of wealth tax at the rate of one per cent of the amount by which the net wealth exceeds fifteen lakhs rupees. Section 2(EA) of the enactment defines 'assets' which includes any building or land, urban land, cash in hand, in excess of fifty thousand rupees. Section 35B of the said enactment postulates for prosecution in a case where there is failure to furnish returns of net wealth.

32. We have referred to the aforesaid provisions of the Income Tax Act and the Wealth Tax Act to show that circumstances do exist for taking steps under the said enactments. The assertion that it is an HUF and the income earned would meet the requirement cannot be given instant credence. The respondent No.2 holds a public office. He has public accountability. A public figure unquestionably is accountable for his actions. He has to be guided by Rule of Law. It has been stated long back, however high one is, he is under the supremacy of law. The basic characteristics of Rule of Law do not make a distinction between the weakest and the mightiest. Maintenance of purity and sustenance of probity are the basic features of good public image. Any one who occupies a high office must remember that he enjoys public power and is under obligation to exercise

the same in public interest and bear the image which is expected of him in the public good. True value of public figure becomes a truism when it has transparency. In a different context the Apex Court in *Rameshwar Prasad and others (VI) vs. Union of India and another.* (2006)2 SCC 1 has stated that there is no place for hypocrisy in democracy. Norms of transparency have to rule supreme. Law does not countenance any kind of guise or deception. It is friendly only with the truth. In this context we may refer with profit to a Division Bench decision of this court rendered in *Kailash Joshi vs. State of M.P. and others,* 1989 JLJ 127 wherein C.P. Sen, J. expressed the opinion that though averments made in the petition are not accepted yet the Chief Minister has to clear the clouds in the public interest in order to cleanse the atmosphere which is vitiated and polluted and according to his very first statement in the Vidhan Sabha 28 years back. Truth has to echo all the time in a democratic body polity. The collective wants an explanation. The society demands transparency. Democracy commands that there should be no hypocrisy. The nation deserves that its public figures come with clean hands.

33. In view of the aforesaid, we are inclined to direct the Chief Commissioner, Income Tax, Bhopal to initiate a proceeding against the respondent No.2, a member of alleged HUF. The facts which have been enumerated in the petition should be treated to have the reasons attributes to believe as required under Section 147 of the Income Tax Act. We may hasten to clarify, the Income Tax authority shall proceed as per law and Rule of Law must prevail. The Registrar - Judicial is directed to send a copy of the order passed today to the Chief Commissioner of Income Tax, Bhopal to do the needful. In addition to the aforesaid, a copy of the order along with the photocopies of the sale deeds annexed to the writ petition be handed over to the learned counsel assisting the learned Senior Standing Counsel for the Income Tax Department to do the needful.

34. Accordingly, the writ petition is disposed of. There shall be no order as costs.

Petition disposed of.

I.L.R. [2008] M. P., 1966

WRIT PETITION

Before Mr. Justice Arun Mishra & Mr. Justice Prakash Shrivastava

28 March, 2008*

ABHINEETA ELIZABETH LALL (Ku.) ... Petitioner

Vs.

BARKATULLAH UNIVERSITY, BHOPAL ... Respondent

Vishwavidyalaya Adhiniyam, M.P. (22 of 1973), Section 37, Ordinance 6(26) - *Revaluation in two subjects* - *Constitutional validity of Ordinance 6(26)*

*W.P. No.14752/2007 (Jabalpur)

challenged which prohibits revaluation in two subjects only - Held - Courts cannot examine wisdom, merits or efficacy of policy - Any drawback in the policy incorporated in rule or regulation will not render it ultra-vires unless it can be said to suffer from any legal infirmity - Clause 26 of Ordinance 6 does not suffer from any illegality or arbitrariness - Not violative of Article 14 of Constitution - Petition dismissed. (Paras 8 & 10)

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22), धारा 37, अध्यादेश 6(26) – दो विषयों में पुनर्मूल्यांकन – अध्यादेश 6(26) की संवैधानिक वैधता को चुनौती जो पुनर्मूल्यांकन को केवल दो विषयों में प्रतिषिद्ध करता है – अभिनिर्धारित – न्यायालय नीति की बुद्धिमत्ता, गुणदोषों या प्रभावकारिता का परीक्षण नहीं कर सकता – किसी नियम या विनियम में सम्मिलित नीति में कोई कमी उसे अधिकारातीत नहीं बनायेगी, जब तक यह किसी कानूनी अशक्तता से ग्रस्त होना न कहा जाए – अध्यादेश 6 की कंडिका 26 किसी अवैधता व मनमानी से ग्रस्त नहीं है – संविधान के अनुच्छेद 14 का उल्लंघन नहीं – याचिका खारिज।

Cases referred :

(1993) 4 SCC 401, (2004) 6 SCC 714, (2004) 13 SCC 383, AIR 1965 SC 491, (1984) 4 SCC 27, ILR (2001) 1 MP 178.

Jasmit Chana, for the petitioner.

P.K. Kaurav, for the respondent.

ORDER

The Order of the Court was delivered by ARUN MISHRA, J. :–Petitioner in this writ petition has assailed vires of clause 26(1) Ordinance 6 framed under M.P. Vishwavidyalala Adhiniyam, 1973 (hereinafter referred to as 'the Adhiniyam') and to direct the respondent to revaluate the answer-sheets of the petitioner.

2. Petitioner has submitted that petitioner is a student of L.L.B. 1st year in Barkatullah University, Bhopal and has obtained total 491 marks out of 900 in L.L.B. 1st year. She had applied for revaluation of her answer-sheets in two subjects which is permissible and there is an increase of 32 marks in overall result as apparent from mark-sheet (Ex.P.3) issued after revaluation. Under clause 26 of the Ordinance 6 there is limit to apply for revaluation of only two subjects. Petitioner has been meritorious throughout her academic career, thus, she has prayed for revaluation of other answer-sheets also. Petitioner has submitted that she has done better than the marks awarded to her in other papers in which revaluation has not been done, consequently she has preferred writ petition.

3. The University in its return has denied the averments made in the petition contending that Ordinance 6 of the Barkatullah University has been framed in exercise of power under section 37 (iii) of the Adhiniyam providing provisions with regard to examinations leading to the degrees, diplomas and certificates of the University. The provision made restricting the revaluation in two papers is constitutional and does not infringe any of the rights of petitioner. Increase in

marks in two papers does not automatically entitles the petitioner to apply in other subjects. The provision cannot be said to be illegal or arbitrary. No case for interference in the academic matters is made out.

4. Ms Jasmit Chana, learned counsel for the petitioner, has submitted that revaluation could not have been restricted to two papers by the University as per the aforesaid Ordinance 6(26). The provision is illegal and arbitrary.

5. Shri P.K. Kaurav, learned counsel appearing on behalf of the respondent, has submitted that the matter is purely academic. There is power to frame the Ordinance under section 37 of the Adhiniyam. No case for interference in the petition is made out.

6. Main question for consideration is whether the provision made in clause 26(1) Ordinance 6 can be said to be ultra vires, arbitrary or illegal.

7. Under section 37 of the Adhiniyam the University is competent to frame Ordinance subject to the provisions of the Adhiniyam and the Statutes, the ordinances may provide for the examination leading to the degrees, diplomas and certificates of the University, laying down conditions for appearing at examinations for degrees, diplomas, certificates and other academic distinctions, conduct of examinations as provided under section 37(iii) & (vi) of the Adhiniyam, thus, revaluation is also one of the matter for which Ordinance can be framed by the University. Revaluation cannot be claimed as of right. In the absence of the provision for revaluation, it cannot be claimed as held by the Apex Court in *Guru Nanak Dev University v Parmindar Kaur Bansai and another,* (1993) 4 SCC 401, *Pramod Kumar Shrivastava v. Chairman. Bihar Public Service Commission,* (2004) 6 SCC 714, *Board of Secondary Education v. Prevas Ranjan Panda and another,* (2004) 13 SCC 383.

8. It is also settled that it is not for the Court to examine the wisdom, merits or efficacy of policy of the Legislature or its delegate to see if it effectuates the purpose of the Act. It is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate. Any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity. In the instant case, matter is purely academic one. Revaluation has been provided in the wisdom by the academic body like University only in two subjects. It is not for the Court to substitute the policy even it was open to the University to make no provision for revaluation even, in that case the provision could not have been said to be illegal or arbitrary or ultra vires of the power.

9. In *The University of Mysore and another v. C.D. Govinda Rao and another.* AIR 1965 SC 491, the Apex Court has laid down that the courts should be slow to interfere with the opinions expressed by the experts. If there is no allegation about mala fides against the experts who constituted the Board, it would

normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. In *Maharashtra State Board of Secondary & Higher Secondary Education & another v. Paritosh Bhupeshkumar Sheth and others.* (1984) 4 SCC 27, it is reiterated that court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. In *Yashwant Birla & others v. Pt. Ravishankar Shukla University & others*, (2001) I ILR (MP) 178, this Court upheld the vires of the provision provided backlog of two papers for permitting the students to appear in the next semester examination. It was held that provision was not arbitrary or violative of Article 14 of the Constitution of India, such matters are within the domain of the University.

10. In view of the aforesaid, in our opinion, clause 26 of Ordinance 6 cannot be said to be suffering with any illegality or arbitrariness, it cannot be said to be violative of Article 14 of the Constitution of India in any manner whatsoever.

11. Resultantly, the petition being devoid of merit and deserves dismissal. Same is hereby dismissed. However, we leave the parties to bear their own costs as incurred of the petition.

Petition dismissed.

I.L.R. [2008] M. P., 1969
WRIT PETITION
Before Mr. Justice Abhay M. Naik
1 April, 2008*

PRATHMIK MAHILA SAHAKARI UPBHOKTA BHANDAR, SHAHPURA, DISTT. DINDORI & ors. ... Petitioners
Vs.
STATE OF M.P. & ors. ... Respondents

Essential Commodities Act (10 of 1955), Section 6-C(2) - Interest - *Petitioners were allotted fair price shops - Prosecuted for violation of provisions of Scheme - Prosecution ended in acquittal, however articles were confiscated - Order of confiscation was set aside in appeal - Articles were already sold during the pendency of criminal case - Price of the articles was paid as per order of Court, however, interest thereon was denied - Held - Entitlement to interest is by virtue of a statutory provision - Court is not vested with any kind of discretion to deny interest - Absence of grant of interest in criminal appeal will not deprive right to receive interest - Respondents directed to pay interest at reasonable rate - Petition allowed.* (Paras 9 &10)

*W.P. No. 27474/2003 (Jabalpur)

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 6–सी(2) – ब्याज – याचियों को उचित मूल्य की दुकानें आबंटित – स्कीम के उपबंधों के उल्लंघन के लिए अभियोजित – अभियोजन में दोषमुक्ति हुई, तथापि वस्तुऐं समपहृत (जब्त) की गईं – समपहरण का आदेश अपील में अपास्त किया – वस्तुएँ दाण्डिक मामले के लम्बित रहने के दौरान पहले ही विक्रय की जा चुकी थीं – न्यायालय के आदेशानुसार वस्तुओं के मूल्य का भुगतान किया, तथापि, उस पर ब्याज से इनकार किया – अभिनिर्धारित – ब्याज की हकदारी वैधानिक उपबंध के आधार पर है – न्यायालय में ब्याज से इनकार करने का किसी प्रकार का विवेकाधिकार निहित नही है – दाण्डिक अपील में ब्याज प्रदान करने का अभाव ब्याज प्राप्त करने के अधिकार से वंचित नहीं करेगा – प्रत्यर्थियों को युक्तियुक्त दर से ब्याज संदाय करने का निदेश दिया गया – याचिका मंजूर।

Case referred :

1995 MPLJ 692.

Nilesh Kotecha, for the petitioners.

G.P. Singh, Government Advocate for the respondent Nos. 1 to 4.

ORDER

ABHAY M. NAIK, J. :–Petitioners are three in number, all Co-operative Societies. They were allotted fair price shops for distribution of Sugar, Wheat etc. Material for such distribution used to be supplied to them by the Collector, Dindori (Food and Civil Supply Officer, Dindori). Appellant No.1 deposited an amount of Rs. 35,859.25/-, appellant No.2 deposited a sum of Rs.24,589.20/- and appellant No.3 deposited an amount of Rs.50,203/- for purchase of 108 quintals of sugar and Rs.7838/- for purchase of wheat with the Collector, Distt. Dindori for distribution through fair price shops. Aforesaid sugar and wheat was confiscated and the petitioners were prosecuted on a charge of violation of the provisions of M.P. (Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, 1991 framed under section 3 of the Essential Commodities Act, 1955. Petitioners were acquitted by the Court of Special Judge on the ground that there was no violation by them of the scheme. During the pendency of criminal case, sugar as well as wheat were sold and thus, were not available for being returned to the petitioners after their due acquittal.

2. However, the Special Court while acquitting the petitioners confiscated the amount of Rs.1,09,870/-. To this extent, petitioners preferred criminal appeal No.1152/01 which was allowed by this Court on 25.2.2002 with the following operative portion :-

> "As there was acquittal of the accused persons, there was no justification for confiscating sugar or its sale proceeds to the State. The amount deposited by the appellants should in all fairness be refunded to them. The respondents are, therefore, directed to refund the amount deposited by the appellants to them. In the memo of appeal there is also a prayer for repayment of Rs.7,838/- being the price of wheat seized by the respondent No.5 from the shop of the appellant No.3 Sharda Prathmik Sahakari Upbhokta Bhandar, Shahpura. This wheat was not the subject matter of the special case and, therefore, no order can be passed in respect of that amount in this appeal. Respondent No.5 S.D.O., Shahpura will look into this matter and pass a

suitable order in respect of the amount of Rs.7,838/-. The order of this Court relating to repayment of the price of sugar to the appellants be complied with within two months of the date of this order."

3. Pursuant to the aforesaid order, a sum of Rs.1,09,870/- was paid to the petitioners in July, 2002. However, the amount of price of wheat i.e. Rs.7,838/- was not paid to the petitioners. Similarly, interest on the refunded amount was also not paid, therefore, the petitioners submitted applications in August, 2002 to the Collector, Dindori that the payment of the aforesaid be made to the petitioners. These applications are on record as Annexure/P-3, P-3A, P-3B, P-3C and P-3D of various dates. No heed was paid to such applications. Hence, this petition.

4. This writ petition is opposed on the ground that the interest was demanded in criminal appeal No.1152/2001 and the same was not allowed. This being so, it is contended by Shri G.P. Singh, learned Govt. Advocate that the prayer of the petitioners regarding interest would be deemed to have been denied and it cannot now be claimed through the present writ petition.

5. Shri Singh, learned Govt. Advocate relied upon for this purpose on sub-section (2) of Section 34 of C.P.C. which is as follows :-

"Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

6. This apart it has been contended by the learned Govt. Advocate that the prayer of the petitioners is also barred by the principles of res judicata. Petitioners had made a prayer in criminal appeal No.1152/2001 for grant of interest which was not accepted by this Court while rendering judgment in the said appeal. Thus, it is not open for the petitioners to file writ petition and claim a relief which was not granted earlier by this Court.

7. After hearing learned counsel for parties, I am of the considered opinion that the petition deserves to be allowed for the reasons mentioned hereinafter.

8. Admittedly, the petitioners were allotted fair price shops under the M.P. (Khadya Padarth) Sarvajanik Nagrik Purti Vitran Scheme, 1991. They were prosecuted for violation of provisions of the scheme which ultimately ended in their acquittal. Section 6-A to 6-D of the Essential Commodities Act, 1955 provide for confiscation of essential commodities, issue of show cause notice before confiscation of essential commodities and the manner of appeal to be preferred in case of grievance by the order of confiscation under Section 6-C. Section 6-C is relevant for the purpose of present writ petition and is therefore being reproduced below :-

"6-C. Appeal – (1) Any person aggrieved by an order of confiscation under section 6-A may, within one month from the date of the communication

to him of such order, appeal to [the State Government concerned and the State Government] shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) where an order under section 6-A is modified or annulled by [the State Government], or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to [return the essential commodity seized], [such persons shall, except as provided by sub-section (3) of section 6-A, be paid] the price therefor [as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of the seizure of [the essential commodity] [and such price shall be determined -

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3-C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.]"

9. From the perusal of the aforesaid provision, it is clear that a person from whom confiscation is made becomes entitled to refund of price as well as interest if his case is covered by sub-section (2) of Section 6-C. Admittedly, an order of confiscation against petitioners was made whereas they were acquitted and the order of confiscation was set aside (annulled) by this Court in criminal appeal No.1152/2001. This made them entitled to refund with interest by virtue of sub-section (2). Entitlement of this nature is conferred by statutory provision which cannot be allowed to be taken away by respondents in any manner. It enjoins a duty on the departmental authority to make the payment of the price of essential commodities to the person concerned on his acquittal by judicial authorities. Even the court was not invested with any kind of discretion to deny interest on such amount. This being so, non-grant of interest by this Court in criminal appeal will not preclude the petitioners from seeking interest which became their statutory right on being acquitted by criminal Court. It emerges from the language of sub-section (2) that even the High Court while rendering judgment of acquittal and setting aside order of confiscation was not empowered to deny interest. It was not invested with any kind of discretion in the matter of acceptance of claim regarding interest. I may profitably refer to this Court's decision in the case of *State of Madhya Pradesh Vs. Deena Nath Kedarnath* 1995 M.P.L.J 692 wherein it has been held :-

"Under the above provisions, when an order of confiscation is annulled or when prosecution for breach or violation of the provisions of the order has

ended in acquittal of the person and when the property seized is not possible to be returned, the person shall be paid the price of the goods with reasonable interest, as if such property is sold to the Government. The price to be paid for such goods is fixed in case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3-B) of Section 3; in case of sugar, in accordance with the provisions of sub-section (3-C) of section 3; and in case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3. Thus, the person entitled to have the price of the essential commodity seized with reasonable interest in two eventualities : (i) when the order of confiscation is set aside in appeal; and (ii) when the prosecution launched against the person has ended in his acquittal. Payment of the price of the essential commodity and interest therefor shall be payable only if the order of confiscation is set aside or the person concerned is acquitted. The order of acquittal is *sine quo non* for payment of price and reasonable interest. The words "such person shall, except as provided by sub-section (3) of section 6-A be paid the price therefor" in section 6-C(2) are significant and material, particularly the words "be paid". Under this section a duty is imposed to make payment and a right is created to get payment of the price of the essential commodity and reasonable interest therefor. Duty to make payment can only be discharged by an authority who actually holds the goods and who has power to sell the goods. This section does not speak about a direction or order to make payment, but the emphasis is on the words 'be paid' which means a duty is to be discharged by making payment. Under the scheme of the Essential Commodities Act, the power to seize essential commodities, confiscate them and sell it is with the Collector and not with the Courts. Exclusion of jurisdiction of ordinary criminal Courts can be brought about by setting up Tribunals or authority having limited jurisdiction in limited fields. A reading of the relevant provisions of the Essential Commodities Act, 1955, it is clear that there are two different authorities created viz., one for trial of offences and another for seizure of essential commodities, passing of order of confiscation and to dispose of the essential commodities. The power to dispose of the essential commodity vests with the Collector and, therefore, payment of the price and interest on the price of the essential commodity, in case of acquittal of the person or in case of order of confiscation being set aside, is that of the Collector and not of the Judicial Magistrate. As the Collector is the authority to make payment of the price of the essential commodity illegally confiscated, the application for refund of the price with reasonable interest thereon shall lie to the Collector and not to the Judicial Magistrate."

10. Keeping the aforesaid in mind, it may be safely held that mere absence of grant of interest in criminal appeal No.1152/2001 will not deprive the petitioners

of their right to receive interest. It was only when the petitioners were acquitted and the order of confiscation was set aside that there accrued a right in their favour to receive reasonable interest from the respondents and the respondents became duty bound to pay reasonable interest to them by virtue of sub-section (2). Accordingly, they submitted various applications revealed in Annexure/P-3, P-3A to P-3D. Such applications having not been granted, the writ petition has been rightly filed which deserves to be allowed. Section 34(2) of C.P.C. is out of place because there was neither civil suit nor a decree in the matter. Equally, there is no scope for application of principle of res judicata in the absence of necessary ingredients.

11. In the result, the writ petition is hereby allowed. Respondent No.2 is hereby directed to make payment of interest on Rs.1,09,870/- at reasonable rate within a period of three months from the date of receipt of certified copy of this order.

12. As regards price of wheat, it may be seen that the wheat was also confiscated from the petitioners and on account of acquittal of the petitioners, they became entitled to the amount of price of wheat which would also be liable to be paid/refunded with reasonable interest. Needless to say that reasonable rate in the present case may be the rate which was applicable to fixed deposits with nationalised banks for a period of five years during relevant period because a period of more than five years has already elapsed. Respondents having acted in utter disregard of specific statutory provision are also liable to pay to the petitioners cost of litigation quantified at Rs.3000/-, if already certified.

Petition allowed.

I.L.R. [2008] M. P., 1974

WRIT PETITION

Before Mr. Justice R.S. Garg & Mr. Justice R.S. Jha

1 April, 2008*

SHEKHAR SETH (DR.) ... Petitioner

Vs.

M.P. STATE BAR COUNCIL ... Respondent

Constitution, Article 14, State Bar Council of Madhya Pradesh Rules, 1963, Rule 143-A - ***Maximum age for registration as an Advocate*** - *State Bar Council has not placed any material in support of prescription of maximum age of 45 years for enrollment nor has any material been brought on record to establish as to how debarring entry of the persons above the age of 45 years would either benefit the legal profession or would adversely affect the standard of the legal profession or polluted its sanctity - Rule is arbitrary and discriminatory - And violative of Article 14 of Constitution - Rule declared ultra vires.* (Paras 8 & 9)

*W.P. No.10663/2005 (Jabalpur)

संविधान, अनुच्छेद 14, राज्य अधिवक्ता परिषद् म. प्र. नियम, 1963, नियम 143–ए – अधिवक्ता के रूप में पंजीयन के लिए अधिकतम आयु – राज्य अधिवक्ता परिषद् ने नामांकन के लिए अधिकतम आयु 45 वर्ष विहित करने के समर्थन में कोई सामग्री पेश नहीं की और न यह स्थापित करने के लिए ऐसी कोई सामग्री अभिलेख पर लायी गई कि 45 वर्ष से ऊपर की उम्र के व्यक्तियों का प्रवेश वर्जित करना किस प्रकार विधि व्यवसाय के लिए लाभदायक होगा या विधि व्यवसाय के स्तर को प्रतिकूल रूप से प्रभावित करेगा या उसकी पवित्रता को दूषित करेगा – नियम मनमाना और भेदभावपूर्ण है – और संविधान के अनुच्छेद 14 का उल्लंघन – नियम अधिकारातीत घोषित।

Cases referred :

1995 AIR SCW 473, AIR 2007 Madras 108, C.W.P. 10864/2006 decided on 21.09.2007 (P & H).

Amal Pushp Shroti, for the petitioner.

Rajendra Tiwari with *T.K. Khadka,* for the respondent.

ORAL ORDER

The Order of the Court was delivered by

R. S. GARG, J. :– The petitioners by these petitions are challenging the constitutional validity of Rule 143-A as framed by the State Bar Council of Madhya Pradesh. Rule 143-A of the Rules which prescribed 45 years as the maximum age for registration as an Advocate, has been challenged on the ground of unreasonableness and being violative of Articles 14, 16 and 19 of the Constitution of India. It is submitted in the petitions that the Bar Council of Madhya Pradesh has no power, authority or jurisdiction to make such a Rule and on the ground that the rule is arbitrary and discriminatory as persons who have crossed the age of 45 years have been debarred from entering the profession simply on the ground that they have crossed the age of 45 years. It is also submitted by the petitioners that Rule 143-A as amended has no nexus with the mental level of a person to act, appear and plead for a client as an Advocate. It is further submitted that in view of the Judgment of the Supreme Court in the case of *Indian Council of Legal Aid and Advice Vs. Bar Council of India and another* 1995 AIR SCW 473, the rule deserves to be declared unconstitutional.

2. Shri Tiwari, learned Senior Counsel for the respondents, has submitted that looking to the present conditions, the standard of education and inflow of people in the profession it was thought fit that some embargo be put at the entry level. It was further submitted that if age limit at the entry level is not fixed then persons after passing Law at any stage may come to join the profession which would not only pollute the system but would contaminate the Court proceedings and lower the standard of advocacy. Learned counsel for the respondent submits that the impugned Rule framed by the State Bar Council is therefore in conformity with the Judgment of the Supreme Court in the case of Indian Council of *Legal Aid and Advice Vs. Bar Council of India and another* (supra).

3. The impugned rule framed by the Bar Council of Madhya Pradesh reads in the following terms :

"**Rule 143-A**

A person who is otherwise qualified to be admitted as an advocate, but is of more than 45 years of age on the date of Receipt of application for enrolment in the Bar Council shall not be admitted as an advocate.

The provision of this rule shall also apply in case of persons seeking enrolment in this Bar Council by means of transfer from other State Bar Councils on and from the date of this rule comes into force, the provisions of this rule shall not apply to any other person enrolled as an advocate before his attaining of 45 years of age by any other State Bar Council seeking transfer to this State Bar Council"

4. As both the sides have relied upon the judgment of the Supreme Court in the case of Indian Council of *Legal Aid and Advice Vs. Bar Council of India and another* (supra), we find it appropriate to examine as to whether the present controversy is covered by the judgment of the Supreme Court. In that judgment the Supreme Court was adjudging the validity of the Rule framed by the Bar Council of India debarring persons who had completed 45 years of age from entry in the profession. The Supreme Court observed that under Section 49(1)(ah) the Bar Council of India could lay down the conditions subject to which "Advocate" shall have the right to practice. The Supreme Court however observed that the said provision does not empower the Bar Council of India to frame a Rule barring persons who have completed 45 years of age from enrolment as an Advocate. In paragraph 11 of the judgment it was held that the State Bar Council alone had the power to decide the question of enrolment of an applicant on its roll and not the Bar Council of India. The impugned Rule was, therefore, held to be *ultra vires* the provisions of the Act. The Supreme Court also observed that there is no nexus between the age limit and the mental level or the professional expertise. The Court ultimately observed that on either of the counts the rule could not be approved.

5. Taking a clue from the said judgment various State Bar Councils in the country including Madhya Pradesh have now framed the rules and put a bar on the enrolment of a person above the age of 45 years as an Advocate. In view of the aforesaid judgment of the Supreme Court it is apparent that the question of jurisdiction of the State Bar Council as raised by the petitioners in the present petition has no merit and is accordingly rejected. However, as far as the issue of reasonableness and discrimination are concerned the Supreme Court in the case of Indian Council of *Leagal Aid and Advice Vs. Bar Council of India and another* (supra) has held as under in paragraph 13 :-

"13. The next question is, is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi-government and other institutions since they on being enrolled as advocates use their past contacts to canvass for

cases and thereby bring the profession into disrepute and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-Government or quasi-government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly those who were enrolled as advocates while they were young and had later taken up some job in any government or quasi-government or similar institution and had kept the sanad in abeyance are not debarred from reviving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practicing. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practise even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution."

From perusal of the above it is apparent that the Supreme Court after dealing with the issue of power and jurisdiction of the Bar Council of India has specifically dealt with the issue of reasonableness of the rule prescribing 45 years as maximum age of entry into the legal profession and has held it to be violative to the principle of equality enshrined in Article 14 of the Constitution.

6. In view of what has been held by the Supreme Court in para 13 of the judgment in the case of Indian Council of *Legal Aid and Advice Vs. Bar Council of India and another* (supra), the Madras High Court has declared a similar Rule framed by the State Bar Council of Tamil Nadu *ultra vires* and unconstitutional in the case of *M. Radhakrishnan Vs. The Secretary, The Bar Council of India and another* AIR 2007 Madras 108 in the following terms :

"14. We cumulatively considered above the acceptability of the various factors projected for imposing the upper age limit. We make it clear that we are not underestimating the rule-making power of the Bar Council of

Tamil Nadu, at the same time, we cannot uphold the validity of a provision, even though it arises out of the rule-making power of the authority with proper jurisdiction, when it is apparently stained with arbitrariness and inequality and infringes Article 14 of the Constitution. Thus, we have no other option except to declare the impugned Rule-S(A) as void and unconstitutional."

7. Similarly in the matter of *Lal Chand Saini Vs. Union of India and others* decided on 21.9.2007 disposing of Civil Writ Petition No.10864 of 2006 and other allied matters a Division Bench of the Punjab and Haryana High Court held that Rule 2-B of Rule 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961 debarring a person who had crossed the age of 45 years is *ultra vires* the Act and the Constitution of India and while doing so has held as under :

"25. To condemn a class of persons and brand them, as the cause for the alleged fall in standards in the legal profession, in the absence of any material or statistical data, is an arbitrary exercise of the rule making power, as also unreasonable, unjust and violative of Article 14 of the Constitution of India. An entire class of persons, above the age of 45, have been classified as perpetrators of the ills that pervade the legal profession. Such a classification would, in our considered opinion, be unwarranted. Isolated instances of mal-practice by late entrants into the profession cannot be utilized to condemn an entire class of duly qualified persons aged above 45 years so as to treat them differently. Our above conclusions are fully covered by the ratio laid down by the Hon'ble Supreme Court in *Indian Council of Legal Aid and Advice etc. etc.* (supra), Rule 2-B, as framed, is, therefore, violative of the principles of equality, enshrined in Article 14 of the Constitution.

26. If, as canvassed by counsel for the Bar Council of Punjab and Haryana, the legal profession is facing a crisis of quality, the remedy lies elsewhere and not in erecting walls of exclusion to shut out persons otherwise qualified. We have no doubt, in view of the authoritative pronouncement of the Hon'ble Supreme Court in *Indian Council of Legal Aid and Advice etc. etc.* (supra), that the rule, as enacted, is not only violative of Article 14 of the Constitution but also unreasonable and arbitrary.

27. This noble profession that swears by the principles of equality, fraternity, and liberty, would be ill-advised to raise such barriers in this age of globalization. To condemn a person for his age, or to condemn a class of persons above 45 as perpetrators of ills, as alleged by counsel of the Bar Council, would be unjust, unfair and arbitrary. The State Bar Council, an institution of great significance power and prestige, would be well advised to take steps to ensure better legal education, periodic post enrolment education and courses for members of the legal fraternity so as to enhance the efficiency and glory of this noble profession.

28. With the aforementioned observations, we hold that though the Bar council of the Punjab and Haryana has the rule making power to prescribe conditions for enrolment of law graduates to the rolls of the State Bar Council, Rule 2-B of Rule 28(2)(d) of the Rules, is illegal, being unreasonable, arbitrary and violative of Article 14 of the Constitution of India and is, therefore, struck down "

8. On perusal of paragraph 13 of the judgment of the Supreme Court in the case of Indian Council of *Legal Aid and Advice Vs. Bar Council of India and another* (supra), it is apparent that the Supreme Court has held introduction of the maximum age of 45 years for enrollment as discriminatory and violative of Article 14 of the Constitution of India. In the present case the respondent/State Bar Council has not placed any facts, figures, statistics or documents or brought on record any material before this Court in support of the prescription of a maximum age of 45 years for enrollment nor has any material been brought on the record to establish as to how debarring entry of the persons above the age of 45 years would either benefit the legal profession or would adversely affect the standard of the legal profession or pollute its sanctity. In the absence of any such material the law as laid down by the Supreme Court in the case of *Indian Council of Legal Aid and Advice Vs. Bar Council of India and another* (supra), squarely applies to the present case also and renders the impugned rule prescribing the maximum age of 45 years for entry in the legal profession as arbitrary and discriminatory and, therefore, violative of Article 14 of the Constitution of India. We also draw support for the conclusion recorded by us from the judgment of the Madras High Court in the case of *M. Radhakrishnan Vs. The Secretary, The Bar Council of India and another* (supra) and *Punjab and Haryana High Court in the case of Lal Chand Saini Vs. Union of India and others* (supra).

9. In the result we hold that Rule 143-A as framed by the Bar Council of Madhya Pradesh is *ultra vires* Article 14 of the Constitution of India. The rule is accordingly struck down.

10. The petitions are allowed. There shall be no orders as to costs.

Petition allowed.

I.L.R. [2008] M. P., 1979

WRIT PETITION

Before Mr. Justice Dipak Misra & Mr. Justice R.S. Jha

8 April, 2008*

ANSHUL TOMAR ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

Constitution, Article 226 - *Admissions in Medical College - NRI Quota - Wards - Petitioners admitted in Medical Courses in NRI Quota - Their admissions*

*W.P. No.13393/2007 (Jabalpur)

cancelled by Committee on the ground that they are neither children nor Wards of NRI - All the petitioners securing first division marks in 10+2 Examination - Held - Term "Ward" has been given broader meaning by Supreme Court in the case of Ruchin Bharat Patel - Nothing on record to show that N.R.I. had acted with malafide manner - Merit has not been given complete go by - Admissions upheld - Decision of Committee quashed - Petition allowed. (Paras 11-13)

संविधान, अनुच्छेद 226 – चिकित्सा महाविद्यालय में प्रवेश – एनआरआई कोटा – प्रतिपाल्य – याचियों का चिकित्सा पाठ्यक्रमों में एनआरआई कोटे में प्रवेश – समिति द्वारा उनके प्रवेश इस आधार पर निरस्त किये कि वे एनआरआई के न तो संतान हैं और न ही उनके प्रतिपाल्य हैं – सभी याचियों ने 10+2 परीक्षा में प्रथम श्रेणी के अंक अर्जित किये थे – अभिनिर्धारित – उच्चतम न्यायालय ने रुचिन भारत पटेल के मामले में "प्रतिपाल्य" शब्द का व्यापक अर्थ किया है – अभिलेख पर यह दर्शाने के लिए कुछ नही है कि एनआरआई ने दुर्भावनापूर्ण तरीके से कृत्य किया – योग्यता को पूर्णतः अनदेखा नहीं किया गया – प्रवेश मान्य किये गये – समिति का निर्णय अभिखण्डित – याचिका मंजूर।

Cases referred :

C.A. No. 4480/2006 decided on 13-11-2006, (2005) 6 SCC 537.

Brian Da' Silva with *B. Vede*, for the petitioner.
Samdarshi Tiwari, G.A., for the respondent No.1.
P.K. Kaurav, for the respondent No.2.
Ashok Lalwani, for the respondent No.3.

ORDER

The Order of the Court was delivered by DIPAK MISRA, J. :–In this batch of writ petitions the petitioners have called in question the substantiality of the decision taken by the Committee for Admission Procedures for Professional Institutions ("hereinafter referred to as 'the Committee') whereby the Committee has called the the admissions of the petitioners to the respondent No.3, R.D.Gardi Medical College. Ujjain (for short 'the College') on the ground that they were not entitled to be admitted under the Non Resident Indian (NRI) quota. That being the centripodal issue in all the writ petitions they were heard analogously and are disposed of by a singular order. For the sake of clarity and convenience the facts of Writ Petition 13500/2007 are adumbrated herein.

2. The petitioners have taken admission in the respondent-college in respect of 15% NRI quota on the foundation that they have been sponsored by the NRI. It is contended that the College was satisfied with regard to the status of NRI sponsorship of the students/candidates but the Committee took up the matter and cancelled the admission on the ground that they are neither the children of NRIs nor the wards. It is averred in the petition that the petitioners come within the concept of students sponsored by NRIs and meet the requirement in that regard and hence, the finding of the Committee is totally illegal, unjust and improper.

3. Be it noted that in pursuance of the order dated 07.2.2008 written notes of submissions have been filed by the Committee as well as by the College. The

Committee in its written note of submissions has filed the result sheet of DMAT. 2006 and the records relating to various students. The basic stand of the Committee is that the students are not the children of NRIs and there is no material NRIs have supported or looked after them except that they have paid their fees.

4. The respondent-College in its written note of submissions has stated that the bonafides of the petitioners were scrutinized and they have been treated as the wards of NRIs and on that basis they were granted admissions. It is also highlighted by the respondent-College that most of the students have secured First Division in the qualifying examination i.e. (10+ 2) and a chart in that regard has also been filed. It is contended that the merit has not been completely given a go-by. It is putforth that for taking admission under the NRIs auota. apnearing in the Common Entrance Test is not necessary. It is also putforth that Institution has not mis-utilized the NRI quota. Reliance has been placed upon the case of *Ruchin Bharat Patel Vs. Parents Association for M.D. Students and others* (Civil Appeal No.4480/2006 decided on 13.11.2006) wherein certain directions were issued for admission of students under NRI quota. Additionally specific submissions have been made how the students have been sponsored and fulfill the requisite criteria.

5. We have heard Mr. B.Vede. Mr.Mohd.Ali and Mr.Sheel Nagu. learned counsel for the petitioners. Mr.Samdarshi Tiwari. learned Government Advocate for the State. Mr.P.K.Kaurav. learned counsel for the respondent-Committee and Mr. Ashok Lalwani. learned counsel for the respondent-College.

6. At the outset we must state that there is no cavil over the fact that the petitioners have been sponsored by the Non Indian Residents (NRIs). but the controversy relates to their relationship with the students. Thus. two questions which emerge for consideration are whether the petitioners could have been admitted without appearing in the Common Entrance 'test and whether they can be regarded as the wards of the NRIs. In this context, we may refer with profit to paragraph 131 of the decision rendered in the case of *P.A.Inamdar V's. State of Maharashtra.* (2005) 6 SCC537. In the said paragraph it has been held as under:-

> "131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ("NRI" for short) for NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. Infact, the term "NRI" in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to brine more money get admission. During the course of hearing it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their

level of education and also to enlarge their education activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15% in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilised *bona fide* by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

7. Placing reliance on the aforesaid paragraph it is submitted bv the learned counsel for the petitioners that there is no warrant to appear in the Common Entrance Test for giving admissions to the students under the NRI quota. At this juncture, we made a query from Mrs.indira Nair, learned senior counsel appearing for Medical Council of India as to whether the Medical Council of India has issued any directions for insisting upon the students who are admitted under the NRI quota not to undergo the Common Entrance Test. Mrs. Indira Nair, learned senior counsel fairly submitted that as far as students who take admission under NRI quota have to satisfy the eligibility criteria of 10 + 2 Examination as provided under the Medical Council of India Admission Undergraduate Regulations, 1997 and they are not reauired to undereo Common Entrance Test examination. Learned senior counsel submitted that the decision of the M.C.I. in that regard is in consonance with Paragraph 131 of *P.A.Inamdar* (supra).

8. In view of the aforesaid, we accept the submission of the learned counsel for the petitioners that they were not required to appear in the Common Entrance Test examination and their admissions are justified as they have qualified in the 10+2 examination.

9. The next aspect that requires to be adverted to is whether such seats filled under the NRI quota sponsorship have been utilized bonafidely by the NRI for their children or wards. In this context, we may refer with profit to the decision rendered in *RuchinBharat Patel* (supra). True it in. their Lordships have delivered the deicison while dealing interlocutory application. In the said decision it has been held as under:-

"Normally, the admissions to the medical colleges should have been finally concluded before 30th September. This year's admission is long overdue and if this 15% if the students are not allowed to be admitted under NRI quota there may be financial loss to these colleges and the seats shall also go waste. In view of the peculiar circumstances of the case, for this year we are taking a practical view of the situation and we feel that the students to these colleges may be admitted under the following directions and we make it clear that this is exclusively for this year only as a one time arrangement because of the peculiar circumstances of the case.

1) The students be admitted as NRIs in NRI quota as against 15%. At least one of the parents of such students should be an NRI and shall ordinarily be residing abroad as an NRI.

2) The person who sponsors the student for admission should be a first degree relation of the student and should he ordinarily residing abroad as an NRI.

3) If the student has no parents or near. relatives or taken as a ward by some other-nearest relative such students also may be considered for admission provided the guardian has *bonafide* treated the student as a ward and such guardian shall file an affidavit indicating the interest shown in the affairs of the student and also his relationship with the student and such person also should be an NRI and ordinarily residing abroad.

Even if these parameters are applied and sufficient number of students are not available for this year as against admission to 15% quota, the colleges would be liberty to fill up the remaining seats from the State list and if the number of candidates admitted as against 15% quota is very much less and the colleges are unable to raise sufficient funds they would be at liberty to approach the Committee to restructure the fees.

It is clarified that the students who will be admitted against the NRI quota should have the basic qualification fixed by the Medical Council of India/Dental Council of India for admission in Medical/Dental graduate courses."

10. At this juncture, it is worth noting that Pravesh Niyantran Samiti (Medical Education). Mumbai while dealing with the issue relating to admissions to be granted admissions in NRI seats dealt with the eligibility facets. After reproducing the paragraph from *Ruchin Bharat Patel* (supra) the Committee opined thus:-

"Based upon the decision of Hon'ble - Supreme Court referred herein above dated 13th November 2006 has laid down a criteria for admission in NRI quota, the Samiti decides and resolves the criteria for granting the admissions in NRI quota, as under:

1) If the mother or father of student is NRI and residing abroad ordinarily, then, either of the situations so held will be considered to be proper

2) If the first degree relation of the student is NRI and residing abroad ordinarily, then in such circumstances also. qua this year. should be considered eligible. It is natural that such definition would include the real brother and sister over and above the mother-father of the first degree relation.

3) As per the definition revised by the Hon'ble Apex Court, interpretation of clause 3 thereof as not made limited but if made in a broad prespective, then, it is clear that the person who wanted to consider such student as ward (palya), then, he be considered to be proper subject to compliance of the following conditions:

a) He should be the nearest relation.

b) In the definition of the nearest relation. committee has considered following relative having blood relations.

i) Real brother and sister of father i.e. real uncle and real aunt.

ii) Real brother and sister of mother i.e. real maternal uncle and maternal aunt.

iii) Father and mother of,father i.e. grand father and grand mother.

iv) Father and mother of mother i.e. maternal grandfather and maternal grand mother.

v) First degree - paternal and maternal cousins.

vi) Such person should be NRI.

c) Such person should ordinarily he residing abroad.

d) Such person should have looked after such student as the guardian of the student and evidence to that effect must have been produced before the committee by such person.

e) There should be affidavit with aforesaid,fact. The Samiti directs the AMUPMDC and the Institutes/Colleges to follow the above guidelines strictly while granting the admissions in NRI quota in respect of the First Year Health Science course for the academic year 2007-08 and onwards."

11. In view of the aforesaid. we are inclined to think that the term 'ward' has been given a broader meaning in *Ruchin Bharat Patel* (supra). We have reproduced the guidelines of Mumbai Committee to show that they are in consonance with the guidelines setforth by *Ruchin Bharat Patel* (supra). Nothing has been placed on record to show that NRIs have acted in a malafide manner.

12. Regard being had to the amplified meaning of the term 'ward' and in the absence of any malafide and further on the foundation that the merit has not been completely given a go-by, we are inclined to quash the decision of the Committee and hold that the admission of the petitioners under the NRI quota are valid and the petitioners are entitled to prosecute their studies under the said College. If any examination has been held in the meantime wherein the petitioners could not appear

the College shall conduct a separate examination for them and all concerned shall co-operate with the same.

13. The writ petitions are allowed accordingly. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

Petition allowed.

I.L.R. [2008] M. P., 1985
WRIT PETITION
Before Mr. Justice Abhay M. Naik
22 April, 2008*

R.P. UPADHYAYA ... Petitioner
Vs.
STATE OF M.P. & anr. ... Respondents

Constitution, Article 311 - *Back Wages - D.P.C. kept the recommendations of petitioner for promotion in sealed cover as he was facing criminal trial - Later on, petitioner acquitted for want of evidence - Petitioner given notional promotion with seniority as he was found suitable after opening of sealed cover - Back wages not given on the ground of no work no pay - Held - Respondents have not made any exercise to determine whether petitioner in the light of judgment could be said to have been found blameworthy in least or totally unblameworthy - Claim of petitioner could not have been legally declined without assigning any reason - Respondents directed to decide the matter - Petition disposed of.*

(Paras 12 & 13)

संविधान, अनुच्छेद 311 – पिछला वेतन – डी.पी.सी. ने याची की पदोन्नति की अनुसंशा को बंद लिफाफे में रखा क्योंकि वह दाण्डिक विचारण का सामना कर रहा था – बाद में साक्ष्य के अभाव में याची दोषमुक्त हुआ – याची को कल्पित वरीयता के साथ पदोन्नति प्रदान की गई क्योंकि बंद लिफाफे को खोलने पर वह योग्य पाया गया – काम नहीं तो वेतन नहीं के आधार पर पिछला वेतन नहीं दिया गया – अभिनिर्धारित – प्रत्यर्थियों ने यह अवधारित करने के लिऐ कोई कार्य ही नहीं किया कि निर्णय के आलोक में याची को कम से कम दोषी या पूर्णतः निर्दोष माना जायेगा – याची के दावे को बिना कोई कारण बताये वैध रूप से इंकार नहीं किया जा सकता – प्रत्यर्थियों को मामले का विनिश्चय करने का निदेश दिया – याचिका निपटाई गई।

Cases referred :

(1994) 1 SCC 541, 2006 (4) MPHT 140, 2003 (4) MPLJ 274, 2001 (2) MPHT 19.

L.N. Namdeo, for the petitioner.
Jaideep Singh, G.A, for the respondents.

ORDER

ABHAY M. NAIK, J. :–Facts of the writ petition are in a narrow compass that a Criminal Case punishable under Section 161 IPC read with Section 5 of the Prevention

*W.P. No. 17017/2003 (Jabalpur)

of Corruption Act, 1947 was registered against the petitioner in the year 1984 when he was working as a Tahsildar in Distt. Rewa. After due sanction, the case was tried and the petitioner was ultimately acquitted by the Court of Special Judge, Rewa in case No.12/94 on 1.2.1997 (Annexure/P-1). Acquittal attained finality for want appeal by the State Government. A Departmental Promotion Committee was convened on 27/28.10.1988 for considering the promotions on the post of Deputy Collector from the post of Tahsildar. Petitioner's case was kept in sealed cover due to pendency of the criminal case whereas certain Tahsildars junior to the petitioner were promoted on 28.8.1989. After acquittal in the criminal case, the petitioner made representation for his consideration for promotion which was ignored. He submitted O.A. No.77/93 wherein the M.P. State Administrative Tribunal vide its order dated 23.3.1999 (Annexure/A-2) directed the State Government to open the sealed cover and give effect to the recommendations of the D.P.C. within a period of three months. It was observed by the Tribunal that the principle of 'no work, no pay' would obviously be not applicable if the petitioner has been on merits honourably exonerated of the charges framed against him. But if he has been acquitted by extending benefit of doubt or due to non-availability of evidence due to acts attributable to the petitioner, then the competent authority shall pass an appropriate order regarding payment of back salary etc. keeping in view the observations made in paragraph-7 of the *Janki Raman's case* reported as AIR 1991 SC 2010 *(Union of India Vs. Janki Raman and others)*. Pursuant to this order, the sealed cover was opened and the petitioner was found suitable for being promoted to the post of Deputy Collector. Accordingly, by order dated 12.6.2000 (Annexure/A-3) the petitioner was promoted as Deputy Collector by giving him notional promotion with retrospective effect from 28.8.1989, that is the date from which his juniors were promoted as Deputy Collector but without pay and allowances. Petitioner was not aggrieved by the seniority which was correctly assigned, however, he made a representation for back wages w.e.f. 28.8.1989 to 3.11.1993 that is the date on which he took-over the charge of Deputy Collector. The representation was rejected on 23.11.2000. Aggrieved by the same, the petitioner preferred O.A. No.837/2001 before the M.P. State Administrative Tribunal which on account of its abolition stood transferred to this Court.

2. Contention of the petitioner is that he was completely exonerated from the criminal charge and has not been visited with the penalty even of censure and also that his acquittal in the criminal proceedings has not been proved to be due to non-availability of evidence due to the acts attributable to him hence he is entitled to get arrears of pay and allowances for the intervening period from 28.8.1989 to 3.11.1993 in view of the principles of law laid down in *Janki Raman's case* (supra).

3. Respondents in their return, contended that the petitioner has not been exonerated honourably. He was acquitted due to non-availability of evidence which does not amount to bonafide exoneration of the charges. Accordingly, the petitioner is not entitled to back wages as has been rightly held by the authorities while rejecting the representation. Reliance has been placed on the decision of

Hon'ble Supreme Court in the case of Management of *Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal* (1994) 1 SCC 541.

4. In view of the pleadings and material on record (including the additional pleadings and additional documents), the crucial question before this Court is whether the petitioner is entitled to the salary and allowances of the post of Deputy Collector for the period from 28.8.1989 to 3.11.1993. The M.P. State Administrative Tribunal vide its order Annexure/A-2 dated 23.3.1999 directed as follows :-

> "In view of this situation, the present petition is partially allowed and it is directed that the recommendation of the Departmental Promotion Committee, pertaining to grant or otherwise of promotion of the petitioners, kept in the sealed cover be now opened positively within a period of one month from the date of communication of this order and the said recommendation should be given effect to within a period of 3 months of communication of this order to the authorities concerned. If according to the said recommendation of the Departmental Promotion Committee, promotion is granted to the petitioner with retrospective effect, then an order should also be passed by the competent authority regarding the aspect as to whether the petitioner shall be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent. Principle of "no work no pay" would obviously be not applicable if the petitioner has been on merits honourably exonerated of the charges framed against him. But if he has been acquitted by extending benefit of doubt or due to non-availability of evidence due to acts attributable to the petitioner, then the competent authority concerned shall pass an appropriate order regarding payment of back salary etc. Keeping in view observations made in para No.7 of the judgment delivered in *Janki Raman's case* reported in AIR 1991 SC at page 2010 *(Union of India Vs. Janki Raman and others).* This exercise be completed within three months of communication of this order to the respondents no.1 & 2."

5. Although, the Tribunal directed to pass an appropriate order keeping in view the law laid down by the Apex Court in *Janki Raman's case* (supra), other judgments of Hon'ble Supreme Court of India are obviously to be taken into consideration in view of Article 141 of the Constitution of India which lays down that law declared by the Supreme Court shall be binding on all Courts within the territory of India. Accordingly, this Court is required to examine the claim of the petitioner with regard to back salary and allowances in the light of various pronouncements discussed below.

6. Special Court of Rewa in its judgment Annexure/A-1 dated 1.2.1997 has clearly observed in paragraph-43 that the evidence of the prosecution is not sufficient to prove the offence against the petitioner punishable under Section 161 IPC and Section 7, 13(1)(d) read with Section 1(2) of Prevention of Corruption

Act. Accordingly, the petitioner was acquitted for want of evidence as clearly observed in paragraph-43 itself.

7. Shri Namdeo, learned counsel placed reliance on the Division Bench decision of this Court in the case of *Union of India and others Vs. Mohd. Sharif Khan* 2006(4) M.P.H.T. 140 to contend that in criminal jurisprudence, there is no difference between "clean acquittal", "honourable acquittal" or "acquittal based on giving benefit of doubt". Accordingly, it is contended that there is no justification on the part of the respondents to reject the prayer for back wages on the ground that acquittal of the petitioner was not honourable. He further referred to the single bench decision of this Court in the case of *Seeta Charan Banwari Vs. M.P. Rajya Bhumi Vikas Nigam and another* 2003(4) M.P.L.J. 274. Accordingly, it is contended that the petitioner could not work during the subject period because he was not allowed to work on the post of Deputy Collector. Shri Namdeo, learned counsel also relied upon the Division Bench decision of this Court in the case of *State of M.P. and another Vs. Shankar Lal Sahu and another* 2001(2) M.P.H.T. 19 which though is based on Janki Raman's case, does not provide any specific guidance for the question involved herein.

8. In *Janki Raman's case* (supra) it is held :-

> "The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not where the employee remains away from work for his own reasons, although the work is offered to him."

However, in the same case it has been further observed :-

> "We are therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings."

9. It is true that in criminal jurisprudence no phraseology such as "acquitted honourably" or "clean acquittal" has to be employed necessarily by Criminal Courts. Yet the interpretation clause of the Indian Evidence Act, 1872 defines "Proved", "Disproved" and "Not proved" in the following manner :-

> "Proved" - A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
>
> "Disproved" - A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers

its non-existence so probable that prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved" - A fact is said not to be proved when it is neither proved nor disproved.

10. An employee is said to be completely exonerated when he is not found blameworthy in the least. It implies that the charges against such employee must be found to be disproved. If an employee is exonerated on account of insufficient evidence, he cannot necessarily said to be completely exonerated for the purpose of the back wages, though, he may be said to be exonerated fully for the purpose of reinstatement, when he was removed on account of criminal proceedings. In case of any other interpretation, an employee against whom the criminal charges are disproved and an employee against whom the criminal charges are merely not proved for want of sufficient evidence will be on same footing for the purpose of back wages which perhaps may not be the intention of the Apex Court while mentioning that an employee is completely exonerated when he is not found blameworthy in the least. It is true that even in case of acquittal on account of want of proper and sufficient evidence, an accused may not be blamed but it is equally true that he cannot be said to have been found totally unblameworthy as required by the Apex Court in *Janki Raman's case* (supra). Interpretation clause contained in Section 3 of the Evidence Act has drawn a clear distinction between the words "not proved" and "disproved". Accordingly, a criminal charge is said to be not proved when it is neither proved nor disproved. It may be on account of shortage of evidence or any other technical reason that an accused may be acquitted because the charge is not proved. On the other hand, a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. It is a later situation which entitles an employee acquitted of criminal charges to claim back wages as of right. An employee who is acquitted on account of insufficiency of evidence, or on account of any technical flaw, cannot therefore legally claim the back wages as of right by invoking the law laid down by the Apex Court in *Janki Raman's case.*

11. In a later case of *Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal* (1994) 1 SCC 541 the Apex Court was dealing with the concept of 'honourable acquittal". In regulation 46 of the Reserve Bank of India, there was a provision where an employee has been dismissed in pursuance of sub-section (3) and the relevant conviction is set aside by the higher Court and the employee is acquitted honourably, he will be reinstated in service. In this case, the employee was acquitted by the High Court by giving the benefit of doubt. Bank refused to reinstate the employee. Central Government Industrial Tribunal

ordered the Bank to reinstate the employee. The Bank reinstated him in service. However, with regard to the difference in the amount paid to the employee towards subsistence allowance, he submitted an application before Central Government Labour Court which was allowed. The matter came-up before Hon'ble Supreme Court which observed that when the High Court on November, 21 gave the benefit of doubt, the Bank rightly refused to reinstate him in the services on the ground that it was not an honourable acquittal as required by regulation 16(4). The Apex Court further observed :-

> "The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay an allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible to keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

12. Broadly speaking, cases of acquittal may be divided in following categories :-

(i) acquittal based on the finding that the charges are disproved.

(ii) all possible evidence is produced but the same is insufficient to uphold the employee guilty of charges.

(iii) certain important evidence is withheld for the reasons best known to prosecution causing shortage of cogent evidence to uphold the guilt.

(iv) acquittal due technical flaws like limitation or want of necessary sanction etc.

(v) acquittal for want of proper and sufficient evidence due to the acts attributable to the employee himself.

In category (i) & (ii), the accused may be definitely said to have been found totally unblameworthy or not blameworthy in the least and shall be entitled to full back wages & allowances as of right In case of acquittal under category (v) the employee would not be entitled to back wages. However, in cases of acquittal

under category (iii) & (iv), an accused cannot be said to have been found totally unblameworthy and the departmental authority shall have to examine each such case meticulously without entertaining an anti-employee feeling. Apex Court in Janki Raman's case has held that an employee is entitled to full back wages if he is not found blameworthy in the least in criminal proceedings. At times, criminal courts do not give specific finding about unblameworthiness of the accused and acquit the accused by extending benefit of doubt. An employee/accused cannot be blamed in such matter and cannot be made to suffer for such verdicts of criminal courts. Absence of finding about unblameworthiness due to working manner of criminal courts does not necessarily lead to an inference against the employee. In such a situation there would be greater responsibility on departmental authority to examine the case of an employee with greater caution to ascertain that whether accused employee may be said to be blameworthy and if yes, to what extent. Accordingly, back wages may be granted or denied in appropriate proportions.

13. In the light of the aforesaid discussion, it may be seen that the respondents have not decided the claim of the petitioner with regard to back wages and allowances in the light of aforesaid parameters. Annexure/A-5 dated 23.11.2000 is totally an unreasoned order. Respondents have not made any exercise to determine whether the petitioner in the light of the judgment of the criminal court could be said to have been found blameworthy in the least or totally unblameworthy in the incidence leading to his trial in the criminal case. Without making such an exercise, the claim of the petitioner could not have been legally declined in the impugned manner.

14. In the result, petition is allowed in part to the extent that Annexure/P-5 is hereby quashed. Respondents are hereby directed to determine on the basis of judgment of criminal court that whether the petitioner was found totally unblameworthy. In case, if, the petitioner is found blameworthy then to what extent he may be blamed. Accordingly, his claim for back wages and allowances may be decided without entertaining an anti-employee feeling. It is made clear that in case, if, the petitioner is found entitled to the back wages and allowances, he would also be entitled to interest @ 6% per annum from the date of entitlement. Necessary orders and payment shall follow the same. The entire aforesaid exercise shall be made within a period of three months from the date of receipt of certified copy of this order.

15. Petition, accordingly stands disposed of in the aforesaid terms.

No order as to costs.

Petition disposed of.

I.L.R. [2008] M. P., 1992

WRIT PETITION

Before Mr. Justice S.K. Seth

2 May 2008*

JUNIOR DOCTORS ASSOCIATION & anr. ... Petitioners

Vs.

THE CHIEF COMMISSIONER OF INCOME TAX & ors. ... Respondents

A. Income Tax Act (43 of 1961), Section 4 - ***Charge of Income Tax - Whether TDS is attracted on stipend paid to PG students - Held - Stipend is not being paid for any kind of service rendered by a PG student - Stipend paid is to meet the cost of education and would be in nature of scholarship - TDS not attracted in respect of stipend paid to PG students - Petition allowed.*** (Paras 17 & 18)

क. आयकर अधिनियम (1961 का 43), धारा 4 – आयकर का भार – क्या स्नातकोत्तर छात्रों को प्रदत्त स्टाईपंड पर टीडीएस आकृष्ट होता है – अभिनिर्धारित – स्टाईपंड स्नातकोत्तर छात्र द्वारा दी गई किसी प्रकार की सेवा के लिए प्रदत्त नहीं किया जाता – प्रदत्त स्टाईपंड शिक्षा के खर्च को पूरा करने के लिए है और छात्रवृत्ति की पकृति का है – स्नातकोत्तर छात्रों को प्रदत्त स्टाईपंड के संबंध में टीडीएस आकृष्ट नहीं होता – याचिका मंजूर।

B. Words and Phrases - ***Stipend - Scholarship - Stipend is a compensation paid for services rendered for the benefit of other - Scholarship is paid for the maintenance of a scholar or student - Both have different connotations and can not be used as synonyms.*** (Para 10)

ख. शब्द और वाक्यांश – स्टाईपंड – छात्रवृत्ति – स्टाईपंड एक प्रतिकर है जो दूसरों के लाभ के लिए दी गई सेवाओं के लिए प्रदत्त किया जाता है – छात्रवृत्ति विद्यार्थी या छात्र के भरण–पोषण के लिए प्रदत्त की जाती है – दोनों भिन्न भावार्थ (केनोटेशन) रखते हैं और समानार्थी के रूप में प्रयुक्त नहीं किये जा सकते।

Cases referred :

(1981) 128 ITR 527, (1984) 147 ITR 4, (1986) 161 ITR 544, (1990) 184 ITR 533, (1993) 202 ITR 129, (2002) 254 ITR 404.

G.M. Chaphekar with *S.K. Jain,* for the petitioners.

R.L. Jain with V. Mandalik, for the respondent No.1.

Anand Pathak, D.G.A. for the respondent No. 2/State.

ORDER

S.K. Seth, J. :–The only question involved in this petition is whether stipend paid by the State Government to the students who are prosecuting Post Graduate Diploma/Degree Courses, is an income under the head of salary and as such, is liable to Tax Deduction at Source (TDS) under the Income Tax ACT, 1961 ?

2. In this petition, the order impugned is dated 28.12.2006 read with letter dated 8.3.2000 of the income tax Officer (TDS)-I, Indore.

*W.P. No.1309/2007 (Indore)

3. There is no factual controversy involved. Suffice it to say that petitioner No. 2 is a member of petitioner No. 1 Society. It is a duly registered society and comprises of members who are prosecuting Post Graduation Diploma or Degree Courses in different branches of Medical Science.

4. State Government by Order dated 23.12.2005 (Ann. D) sanctioned revised Stipend w.e.f. 1.1.2006 for the Junior Doctors. So far as Junior Doctors who are prosecuting Post Gradation Diploma/ Degree Courses are concerned, revised fixed monthly stipend payable was as per the following rate :-

First Year Degree/Diploma	Rs. 14,000/-
Second Year Degree/Diploma	Rs. 14,500/-
Third Year Degree/Diploma	Rs. 15,000/-

5. On 28.12.2006, Dean, MGM Medical College, Indore informed all P.G. students regarding TDS on the stipend amount if gross amount exceeds Rs. 1,00,000/- and if any one desires that there should be no TDS then such student was required to furnish necessary exemption certificate, failing which TDS would be deducted before the end of the Financial Year 2006-2007. Said document is available on record as Annexure 'F'. This led to filing of the present petition for the following relief:-

> "(i) It be declared that scholarship paid/payable to the students of the post-degree/post-diploma courses of medical sciences is exempt from Income Tax.
>
> (ii) The Respondent No. 2 be directed by an appropriate writ not to deduct TDS from the scholarship of the members of the petitioner No.1
>
> (iii) The respondent No. 1 be directed by an appropriate writ to refund the tax with interest recovered from members of the Petitioner 1."

6. Shri Chaphekar, learned senior counsel appearing for the petitioners, submitted that stipend paid to students prosecuting P.G. Diploma or Degree Courses is not salary as known commonly, but is a misnomer for scholarship to defray the cost of education. He submitted that there is no relationship of employer and employee between the State and the PG students. Thus, according to him stipend partake the character of scholarship and is not liable to income tax under any head including 'salary'. In support of his contention he cited various authorities.

7. Respondent No. 1, 2 and 3 in separate replies justified the collection of TDS from the stipend treating it to be salary as it was payable under particular head under the budget allocation as mentioned in Annexure 'C'. Shri Jain, learned Senior Counsel for Revenue as well as the State Counsel, in this connection referred to Annexure R-5, order of the State Government dated 8.3.1999 that in addition to fixed monthly stipend, person would also get 'Dearness Allowance', therefore, stipend partake the character of 'salary'; 'remuneration' or 'perquisite'. Reliance is also placed on the Post Graduate Medical Education Regulation, 2000 framed

by the Medical Council of India as well as on the order dated 8.3.2000 passed by the ITO(TDS)-I, Indore. In addition to above defences, learned counsels appearing for respondents also referred to Webster's Dictionary, explaining the meaning of word 'stipend' and P. Ramanatha Aiyer's Advanced Law lexicon 3rd Edition to explain the meaning of 'Perk'. To sum up, the case of respondents is that what members of petitioner No. 1 get is either a salary or a perk but not scholarship and as such TDS is as per law and does not call for interference.

8. Before embarking upon the journey, it would be useful to notice the relevant legal position in brief. Section 4 of the Indian Income Tax Act, 1961 (herein after referred to as 'the Act' for short) is the charging section and provides for charging of tax after computation on 'the total income of the previous year of a person'. Computation of total income from different heads including 'salary' is provided in Chapter IV of the Act. The word 'salary' has not been defined in the Act, however, **incomes which do not form salary of total income** have been enumerated in Section 10 of the Act. For the case in hand Section 10(16) would be relevant, hence, it is reproduced below for ready reference:-

'10(16) Scholarship granted to meet the cost of education'

9. Section 17 defines the expression "salary" for purposes of Sections 15 and 16 which deal with "Salary" as one of the head of income. Now, the Act does not define the expression "salary" conceptually but, merely proceeds to state what is included therein and what is excluded therefrom, therefore, it is necessary to examine whether stipend paid to PG students is a salary, perquisite or profits in lieu of salary.

10. Words 'stipend' and 'scholarship' have not been defined in the Act. According to Webster Dictionary word 'stipend' means Settled pay or compensation for services, whether paid daily, monthly, or annually. "service' is defined to mean an act of serving; the occupation of a servant; the performance of labour for the benefit of another, or at another's command; attendance of an inferior, hired helper, slave, etc., on a superior, employer, master, or the like; also, spiritual obedience and love. One of the meaning ascribed to the word 'Scholarship' in the same dictionary is 'Maintenance for a scholar; a foundation for the support of a student'. . Thus it is clear that the word "stipend' and 'Scholarship' have two different connotations and can not be used as synonyms. Stipend is a compensation paid for service rendered for the benefit of other, whereas scholarship is paid for the maintenance of a scholar or student (emphasis is added). It is in this background we have to see whether amount paid to PG students is really a stipend or scholarship.

11. In *A.Ratnakar Rao vs. Addl. Commissioner of Income Tax, Bangalore* reported in [1981] 128 ITR 527, the question before the Division Bench of Karnataka High Court was whether stipend received by an Indian Doctor to undergo training in pediatrics in a foreign hospital was correctly brought to tax as

income? The Division Bench while answering the reference in favour of the assessee, held that if stipend/fellowship money received is to further the education and training of the recipient and that such payment does not represent compensation for service to patients, then such payment is excluded from the income under Section 10(16) of the Act and the whole amount received by the assessee stands exempted except the amount received as compensation for part time job.

12. Next case down the line is from Madras High Court reported in [1984] 147 ITR 4-*Commissioner of Income Tax Tamil Nadu vs. V.K.Balachandran.* Facts there were in brief are as under. Assessee, a Professor of Mathematics in the Ramanujam Institute was given grant-in-aid of $10,000 and other fringe payments during the academic year 1970-71 by the Princeton Institute of Advanced studies, New Jersey. Assessee claimed exemption under Section 10(16) of the Act from payment of income tax in respect of grant-in-aid received by him. ITO turned down the plea of assessee but on appeal, the AAC upheld the contention of assessee that grant-in- aid was not a salary in absence of relationship of employee and employer between the assessee and the foreign Institute and the amount paid to the assessee was for doing the research work as a student of mathematics. It was observed by their Lordship as under :-

> "In s. 10(16), scholarship is used in that sense of some thing in educational opportunity which is given free. The basic postulate of a scholarship in cl. (16) as earlier mentioned is that it is an income receipt. Nonetheless it is excluded from the total income by being brought under s.10. The view of the income-tax statute of a 'scholarship' therefore differs from the popular or dictionary, view of 'scholarship'. Whereas under the popular view, scholarship is education made available gratis, the sense in which the same expression is used in the I.T. Act is positive payment made to a scholar for pursuit of his education. If the scholarship is made free, it would not naturally come within the ambit of s. 10(16). In the sense of payment made for studies, scholarship necessarily means some payment made to person to meet the cost of education, the payment being made to the person pursuing the education and incurring the cost thereof.
>
> There are, two considerations which together, make up the concept of a 'scholarship for meeting the cost of education' within the meaning of s.10(16). One is that the scholarship is payment intended to be income receipt in the hands of scholar. The other one is that whatever is paid is intended to meet the cost of education, the question whether the quantum of payment is adequate, or is or is not in excess of requirement are all beside the point. A scholarship may only meet the partial cost of education. Still it would be a scholarship within the meaning of s. 10(16). Again, a scholarship might, in a given case, prove to be more than enough for meeting the cost of education, and the scholar may make a saving out of it, or even spent the surplus otherwise. It is not the appropriation of the scholarship

that matters. If the whole object is to meet the cost of education of a person, then that is enough. No further enquiry is called for in order to exclude the amount from the taxable total income under s. 10(16)."

13. Another decision relevant is of the Bombay High Court in the matter of *Commissioner of Income Tax vs. M.N. Nadkarni* reported in [1986] 161 ITR 544. The Division Bench of Bombay High Court comprising of Justice Kania and Justice Bharucha, JJ (as both of their Lordship then were), held that particular amount (scholarship) paid by the Company to the wards of the managing staff to meet the cost of education, is not a perquisite and as such is not liable to be taxed as a salary income.

14. Shri Jain also referred to Division Bench decision of Madras High Court in the case of *Dr. V. Mahadev vs. Commissioner of Income tax* reported in [1990] 184 ITR 533. That was a case where assessee joined a medical school in the University of Massachusetts. Internship in a hospital for the specified period was compulsory and the assessee was paid wages representing overtime charges and that Federal and State Taxes were deducted from it. It was in this context, the High Court on reference held that amount paid to the assessee was not scholarship within the meaning of Section 10(16) of the Act.

15. Shri Jain learned counsel for Revenue next referred to a Division Bench decision of *Orissa High Court in case of Commissioner of Income Tax vs. Bijay Kishore Kapoor* reported in [1993] 202 ITR 129. The point for consideration there was whether addition to salary, commission received from the employer was a salary income, or income from other sources. In that case, employer paid the commission and showed in the accounts the payment of commission under the head 'Salary' and after deducting tax at source, amount was paid to assessee. Assessee showed the amounts under the head 'Income from other sources' and claimed deductions. That was not accepted by the A.O., however in appeal, Appellate Assistant Commissioner of income Tax accepted the contention of assessee. Same position was maintained by the ITAT. At Revenue's instance, reference was made to the High Court. High Court while answering the reference held that payment of commission was an income under the head of 'Salary' and no deduction was permissible except, as provided in Section 16(i) the Act.

16. Last case to which reference was made was from *Punjab & Haryana High Court in Commissioner of Income Tax vs. Dr. Mrs. Usha Verma* reported in [2002] 254 ITR 404. Again that was case of Doctor employed in a Government Medical College and was attending to Out Door Patients in paying clinic attached to the College. Assessee claimed income derived from 'paying clinic' was an income from other sources. It was not accepted by the High Court on the ground that by virtue of the employment, assessee was permitted to work in the 'paying clinic' and was her share in the fee was given by the Government on the basis of rates fixed by the Government, therefore it was not held to be a 'business income'.

The fact situation prevailing above referred three decisions were altogether different from facts of the case in hand. Thus, we are of the opinion that these cases do not help in any manner to advance the case of Revenue. Nor the Medical Council Post Graduate Medical Education Regulations, 2000 help the Revenue.

17. On the other hand, Pre-P.G. Entrance Test conduct of examination and Admission Rules clearly show that **PG courses are full time courses and students undergoing PG Course are not allowed to do private practice or part time job during the entire period of study** (emphasis is added). Admittedly, there is no relationship of employer and employee between the State Government and a student doing PG Course. A PG student may be required to examine or attend to a patient but that part of course and stipend is not being paid for any kind of service rendered by a PG Student. Thus, it is obvious that stipend paid to a PG student is to meet the cost of education and thus would be in the nature of a 'scholarship'. Learned counsels for respondents were certainly not justified in saying that PG student getting stipend is also getting "Dearness Allowance". First of all, the order sanctioning the payment of stipend clearly states that no dearness allowance would be payable on the stipend money. And this position has been reinforced by statement of the Dean MGM Medical College at the close of arguments as is recorded in the order sheet. That being the legal position it is enough and no further enquiry is called for in order to exclude the amount from the taxable total income under s. 10(16) of the Act.

18. In view of the foregoing discussion, we are of the opinion that the learned ITO (TDS)-I Indore was erroneous in his approach when he advised Dean that TDS would be attracted in respect of stipend paid to PG Students. In view of the foregoing discussion, we allow the writ petition and quash the order dated 28.12.2006 read with letter dated 8.3.2000. We further direct that if any sum is/ was deducted as TDS from the Stipend, it shall be refunded forthwith to such PG Student (whether decree or Diploma course).

19. In view of the foregoing discussion this petition is allowed and impugned order is hereby set aside. There shall be no orders as to costs.

Petition allowed.

I.L.R. [2008] M. P., 1997

WRIT PETITION

Before Mr. Justice S.K. Gangele

8 May, 2008*

STATE OF M.P. & ors. ... Petitioners

Vs.

HARIRAM & ors. ... Respondents

Industrial Relation Act, M.P. (27 of 1960), Section 108-A, Industrial Employment (Standing Orders) Rules, M.P., 1963 - ***Payment of salary to a***

*W.P. No.1306/2008(S) (Gwalior)

***classified employee** - Respondent worked on daily wages basis as Chowkidar for 6 months - Under the standing orders he has been classified as permanent for the post of Chowkidar with salary for the post - But, pay scale of Chowkidar denied by employer - Application u/s 108-A of Act filed before Labour Court for recovery of amount as per pay scale of Chowkidar which was allowed - Order challenged by employer in writ petition.- Held - Admittedly, there is no pay scale prescribed of the employee who has been classified as permanent under standing orders - However, pay scale of Chowkidar has been prescribed - When the respondent (employee) has been classified as Chowkidar then certainly he is entitled to get the pay scale of Chowkidar.* (Paras 8 to 10)

औद्योगिक संबंध अधिनियम, म.प्र. (1960 का 27), धारा 108–ए, औद्योगिक नियोजन (स्टेंडिंग ऑर्डर्स) नियम, म.प्र., 1963 – वर्गीकृत कर्मचारी को वेतन का भुगतान – प्रत्यर्थी ने दैनिक वेतनभोगी चौकीदार के रूप में 6 माह कार्य किया – उसे स्टेंडिंग ऑर्डर्स के अधीन पद के वेतन सहित चौकीदार के पद के लिए स्थायी के रूप में वर्गीकृत किया गया – किन्तु नियोजक द्वारा चौकीदार का वेतनमान देने से इंकार – चौकीदार के वेतनमान के अनुसार राशि की वसूली के लिए श्रम न्यायालय के समक्ष अधिनियम की धारा 108–ए के अन्तर्गत आवेदन पेश, जो मंजूर किया गया – आदेश को नियोजक ने रिट याचिका में चुनौती दी – अभिनिर्धारित – स्वीकृत रूप से ऐसे कर्मचारी जिन्हें स्टेंडिंग ऑर्डर्स के अन्तर्गत स्थायी वर्गीकृत किया गया हो उनके लिए कोई वेतनमान विहित नहीं है – तथापि, चौकीदार का वेतनमान विहित है – जब प्रत्यर्थी (कर्मचारी) को चौकीदार के रूप में वर्गीकृत किया गया है तब वह निश्चित रूप से चौकीदार का वेतनमान पाने का हकदार है।

Cases referred :

(2005) 1 SCC 639, (2006) 2 SCC 716, 2002 (1) MPLJ 385, 1993 JLJ 55.

Ami Prabal, Dy.A.G., for the petitioners.

B.P. Singh, for the respondent No.1.

ORDER

S.K. GANGELE, J. :–Petitioners have filed the petition challenging the orders, Annexure P-1 dated 16.11.2007 and Annexure P-2 dated 17.08.2007 passed by the Industrial Court, Gwalior and Labour Court, Gwalior.

2. Initially the respondent - employee filed an application before the Labour Court under the provisions of Madhya Pradesh Industrial Relations Act for his classification on the post of Chowkidar and also challenged the order of termination of service dated 04.07.1995. He pleaded that he had been working on daily wage basis as Chowkidar w.e.f. 01.07.1990. He completed six months satisfactory service and was entitled to be classified on the post of Chowkidar. Contrary to this the department issued a notice dated 04.07.1995 terminating his services which is illegal. The Labour Court vide order dated 10.02.2000 allowed the application of the respondent - employee and quashed the notice dated 04.07.1995 and also ordered classification of the employee from 24.07.1993 on the post of Chowkidar with payment of salary for the post w.e.f. 24.07.1993.

3. Petitioners filed an appeal against the aforesaid order, which was also dismissed by the Industrial Court vide order dated 23.04.2002. Thereafter, petitioners further filed a petition before this Court, which was registered as Writ Petition No. 2140/2003 and same was also dismissed vide order dated 18.07.2003. Thereafter, the Executive Engineer vide order dated 12.10.2004 classified the respondent - employee as permanent Labourer and further ordered that respondent - employee shall be entitled minimum pay as fixed by the Labour Commissioner.

4. After the order of the Executive Engineer the respondent - employee filed an application under section 108-A of the Madhya Pradesh Industrial Relations Act before the Labour court for recovery of an amount of Rs.2,66,551/-. He pleaded that the Labour Court ordered to pay the pay scale to him for the post of Chowkidar w.e.f. 24.07.1993, hence the respondent - employee was entitled to receive the aforesaid pay scale and salary accordingly. Along with the application he also filed a chart and stated that he was entitled an amount of Rs.2,66,551/-. Before the Labour Court the petitioners stated that the respondent - employee had already been classified as permanent but he is not entitled the pay scale of Chowkidar. The Labour Court rejected the contention and ordered for payment of an amount of Rs.2,66,551/- and also issued RRC (Revenue Recovery Certificate) to this effect. Against the aforesaid order petitioners filed an appeal before the Industrial Court. That appeal has also been dismissed vide order dated 16.11.2007. Now, the petitioners filed present writ petition.

5. Learned counsel for petitioners has submitted that the respondent - employee is not entitled the regular pay scale of Chowkidar and Labour Court has committed an error of law in granting the pay scale and issuing RRC in favour of the respondent - employee. Learned counsel further submitted that in view of the provisions of Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963 and Annexures to the Standard Standing Orders the respondent - employee is only entitled benefits accrued in relation with the aforesaid Standard Standing Orders. In support of her contention learned Deputy Advocate General relied upon *Mahendra L. Jain others v. Indore Development Authority and others* 2005 (1) SCC 639 and *M.P. State Agro Industries Development Corporation Ltd. and another* 2006 (2) SCC 716. Contrary to this, learned counsel for the respondent - employee has submitted that the respondent - employee has already been classified as permanent. There is order of Labour Court for payment of pay scale of Chowkidar and that has been affirmed up to the High Court. In such circumstances, the Labour Court has rightly ordered issuance of RRC. In support of his contentions learned counsel relied upon the judgments of this Court in *Engineer-in-Chief, P.H.E.D. and others v. Budha Rao Magarde and others* 2002 (I) MPLJ 385 and *Vandna Singh (Smt.) v. Steel Authority of India Ltd. and another* 1993 JLJ 55.

6. The respondent - workman on an application filed by him before the Labour Court has been classified as permanent on the post of Chowkidar vide order dated

10.02.2000. It has further been ordered by the Labour Court that the respondent - employee is entitled pay scale of permanent post of Chowkidar w.e.f. 24.07.1993. Against the aforesaid order an appeal was filed which was also dismissed and the writ petition filed was also dismissed. Thereafter, the petitioners did not file any further appeal or proceedings. Hence, the order has attained finality. It is clear from the order of the Labour Court that the Labour Court has clearly directed to pay the pay scale of Chowkidar to the respondent - employee w.e.f. 24.07.1993.

7. As per Annexure which is Standard Standing Orders under the Madhya Pradesh Industrial Employment (Standing Orders (Rules) 1963 the Standing Order 2 prescribes classification of employees, which is as under ;-

"2. Classification of Employees.- Employees shall be classified as - (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv)Baadlies, (v) apprentices, and (vi) temporary :

(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

(ii) A 'permanent seasonal employee' is an who has completed service for a period equal to 2/3 of the duration or a season or three months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purposes of these orders :

(iii) A 'probationer' means an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate;

(iv) A 'badli' employee means an employee who is employed on the post of a permanent employee, or a probationer or a permanent seasonal employee who is temporarily absent;

(v) An 'apprentice' means a learner; provided that no employee shall be classified as an apprentice if he has had training for an aggregate period of one year; provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award, or by agreement with the representative of employees;

(vi) 'temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee. within the meaning of clause (i) above."

8. When an employee or worker has already been classified as permanent then he had got certain benefits. In the Standard Standing Orders the pay scale of permanent employee has not been prescribed. However, it is an admitted fact that in the department also there is no pay scale prescribed of the employee who has been classified as permanent by the Labour Court under the aforesaid Standing Orders. However, the pay scale of Chowkidar has been prescribed. When the respondent - employee has been classified as Chowkidar then certainly he is entitled to get the pay scale of the afore said post also. Apart from this, the Labour Court has also ordered for payment of salary of permanent post of Chowlidar to the respondent - employee and that order has attained finality. Hence, the arguments advanced by the learned counsel for petitioners that the respondent - employee is not entitled the pay scale of Chowkidar which has been prescribed for regularly recruited employees cannot be accepted.

9. The aforesaid point has already been answered by the learned Single Judge of this Court in *Engineer-in-Chief, P.H.E.D. and others v. Budha Rao Magarde and others*, 2002 (1) MPLJ 385, where learned Single Judge has held as under :-

> "12. The next contention of the learned Government Advocate is that clauses (i) and (vi) of SSO 2 merely confer a status without any corresponding obligation to pay them wages or salary in the regular pay scale of the posts. Learned Government Advocate has proceeded further to submit that by acquiring a status, a person gets apprised of the nature of the duties that he is required to discharge as employee engaged on daily wages can, without such status, be employed in different sections. It is difficult to comprehend that a person acquires permanent status only as a 'tag' without attendant benefit of salary of the posts relating to the nature of the work carried out by such an employee. In the present case each of the employees has specifically referred to the work of the service rendered by him in connection with a post. To illustrate, in W.P. No. 3510/2000 the claim of the employee was that he was working as a Lab Assistant while in W.P. No. 3056/2000 the claim was that the employee was working on the post of Sweeper. Thus, specific duties performed relating to specific posts were duly pleaded and not specifically denied. Such a status acquired by an employee does not give him any other advantage except the advantage of pay. In *M.P.S.R.T.C. vs. Harish* (Supra), itself on conferal of the deeming status of permanent employee, direction for payment of salary on the post was made which indicates that it goes without saying that when a person acquires a permanent status, he automatically becomes entitled to the salary of the said post. In *State of M.P. Vs. Ram Prakash* (supra) the observations of the Division Bench which are relevant in this context read as extracted below:
>
> "12. For all the foregoing reasons, we have no hesitation to hold that our interference with the order or award passed by the Labour Court on

25.6.1987 (Annexure - P/3) is not warranted, the claim of the respondent being legally as also constitutionally justified, whether in Surendra Kumar Saxena or Brij Kishre Sharma (supra) would not, in terms, apply to respondent's case for that reason. His entitlement would also be so determined (under the "Annexure" of 1963 Rules) in respect of his claim for being treated as permanent employee. Therefore, he would be entitled to be paid not only the minimum of salary in the pay scale applicable to Lower Division Clerks / Typist appointed on regular basis; he would rather be entitled to be paid salary in the pay scale applicable to them. In other words, he would also be entitled to increments envisaged under that pay scale because we have held that he is entitled to be endowed with the status of a "permanent employee" in terms of the statutory provisions aforesaid."

From the above decision it is clear that once an employee acquires the status of permanent employee he is required to be paid the salary / wages of the post and he cannot be continued on the wages on which he had initially been appointed or continued till he had become permanent."

Learned Division Bench of this Court in *Vandana Singh (Smt.) v. Steel Authority of India Ltd. and another,* 1993 JLJ 55 has held as under with regard to entitlement of pay scale :-

"In the result, the petition is allowed with costs. The petitioner is declared as ;a regular and permanent employee, who shall be entitled to the pay scale of Rs.1425-2205 from 20.2.1990 with regular increments and all ancillary benefits attached to the post. The difference of salary shall be payable to petitioner only from 20.2.1990. Resp9ondents to pay the costs of petitioner in this petition. Counsel's fee Rs.1000/- if already certified."

10. On the basis of above principle of law laid down in the afore mentioned decisions of this Court it is clear that upon classification an employee is entitled to get the pay scale of the post on which he has been classified as permanent.

11. The judgments relied upon by the learned Deputy Advocate General are with regard to the right of an employee to be classified under the provisions of certified Standing orders and the powers of the Court. That point is not involved in the present case. The point involved in the present case is that the respondent has already been classified and ordered for payment of regular pay scale of the post.

12. In my opinion, the Labour Court has not committed any error of law in computing the salary of the respondent - employee on the basis of regular pay scale of the post of Chowkidar. However, the Learned Deputy Advocate General has submitted that the department has not submitted cogent evidence before the Court with regard to correct amount and pay scale which has to be paid to the respondent - employee.

13. Looking to the above facts of the case, the petition of the petitioner is disposed of with the following directions ;-

(1) That, the orders Annexure P-1 dated 16.11.2007 and Annexure P-2 dated 17.08.2007 passed by the Industrial Court, Gwalior and Labour Court, Gwalior are up-held. However, if there is any ambiguity with regard to entitlement of the pay scale to the respondent - employee the department is free to pass appropriate orders after giving notice in this regard to the employee within a period of four weeks. If with in the aforesaid period no order be passed then the respondent - employee will be entitled the amount which has been ordered by the Labour Court and the industrial Court. It has further been ordered that the respondent - employee be also paid regular pay scale as per the order of the Labour Court. No order as to costs.

Order accordingly.

I.L.R. [2008] M. P., 2003

WRIT PETITION

Before Mr. Justice S. Samvatsar

13 May, 2008*

OMPRAKASH LAKHWANI (DR.) ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

Constitution, Article 226 - *Service Law* - *Resp. No.6 appointed as Assistant Professor in Orthopaedics - Appointment challenged by petitioner on ground that resp. No.6 has obtained M.S. (Orthopaedics) degree from Jiwaji University, Gwalior which is not recognised by Medical Council of India - Held - Resp. No.6 was given admission in Orthopaedics from All India quota and subject of Orthopaedics is being taught in Jiwaji University for last 35 years - State Govt. has been giving appointment to persons obtaining degree from Jiwaji University - Admittedly, the course of Orthopaedics in Jiwaji University not recognised by Medical Council of India and thus when the Medical Council of India and M.P. Medical Council slept over the matter and permitted to commit illegality resp. No.6 cannot be made to suffer on that count - Petition dismissed.* (Para 20)

संविधान, अनुच्छेद 226 – सेवा विधि – प्रत्यर्थी क्रमांक 6 अस्थि रोग विज्ञान में सहायक प्राध्यापक के रूप में नियुक्त – नियुक्ति को याची द्वारा इस आधार पर चुनौती दी गई कि प्रत्यर्थी क्रमांक 6 ने एम.एस. (अस्थि रोग विज्ञान) की डिग्री जीवाजी विश्वविद्यालय, ग्वालियर से प्राप्त की जो भारतीय चिकित्सा परिषद् द्वारा मान्यता प्राप्त नहीं – अभिनिर्धारित – प्रत्यर्थी क्रमांक 6 को अस्थि रोग विज्ञान में प्रवेश अखिल भारतीय कोटे से दिया गया था और जीवाजी विश्वविद्यालय में पिछले 35 वर्षों से अस्थि रोग विज्ञान पढ़ाया जा रहा है – राज्य सरकार जीवाजी विश्वविद्यालय से डिग्री प्राप्त करने वाले व्यक्तियों को नियुक्तियाँ दे रही है – स्वीकृत रूप से भारतीय चिकित्सा परिषद द्वारा जीवाजी विश्वविद्यालय के अस्थि

*W.P. No.2943/2004 (Gwalior)

रोग विज्ञान के पाठ्यक्रम को मान्यता प्राप्त नहीं और इस प्रकार जब भारतीय चिकित्सा परिषद् एवं म.प्र. चिकित्सा परिषद् इस मामले में चुप्पी साधे हैं और अवैधानिकता कारित होने की अनुमति दिये हुए हैं, प्रत्यर्थी क्रमांक 6 को इस बिन्दु पर पीड़ित नहीं किया जा सकता – याचिका खारिज।

Case referred :

AIR 1991 SC 1514.

R.D. Jain with *D.P.S. Bhadoriya & Rajmani Bansal,* for the petitioner.
Vivek Khedkar, G.A., for the respondent Nos.1, 2 & 5.
C.R. Roman, for the respondent No.3.
J.D. Suryavanshi, for the respondent No.4.
R.K. Shrivastava with *Ravindra Shrivastava,* for the respondent No.6.

ORDER

S.SAMVATSAR, J.:- This writ petition is filed by the petitioner challenging the contractual appointment of respondent No.6 Dr.S.K.Neema to the post of Assistant Professor in the Department of Orthopedics in G.R. Medical College, Gwalior on the ground that his appointment is contrary to the rules framed by the Medical Council of India.

2. Facts of the case, briefly stated, are that the petitioner had obtained his MBBS degree from Jiwaji University, Gwalior in the year 1994. He had successfully completed three years post graduate course in Orthopedics from M.G.M. College, Indore in the year 2003. After completing his MS course in the year 2003, he applied for the post of Assistant Professor on contractual basis in pursuance of an advertisement issued by the Directorate of Medical Education, Madhya Pradesh which is Annexure P/8. This advertisement was issued on 22/7/2004 inviting applications for various posts. Petitioner as well as respondent No.6 applied for the said post. After facing selection process, the selection committee found respondent No.6 to be more meritorious and appointed him as Assistant Professor in G.R. Medical College at Gwalior. Petitioner was also selected in the said selection, but he was placed lower in merit than respondent No.6 hence he was posted at Rewa Medical College.

3. Contention of the learned counsel for the petitioner is that the course i.e. M.S. (Orthopedics) is not recognised by the Medical Council of India in G.R. Medical College, Gwalior from where respondent No.6 has obtained M.S.(Orthopedics) degree, hence, he is not eligible for appointment to the said post.

4. Counsel for the petitioner has invited attention of this Court to clause 6 of the advertisement (Annexure P/8) according to which, it is necessary that a candidate must have a degree in the subject from the institution recognised by Medical Council of India. Thus, according to the advertisement, it is necessary that the candidate must have got a degree from the institution where the course is recognised by Medical Council of India.

5. Counsel for the petitioner invited attention of this Court to the document Annexure P/12 which is a list issued by Madhya Pradesh Medical Council, Bhopal of various courses in various colleges in the State of Madhya Pradesh which are not recognised. As per the list Annexure P/12, M.S.(Orth.) is not recognised in G.R. Medical College, Gwalior. Said course, is however, recognised in M.G.M. Medical College, Indore from where the petitioner obtained his degree in MS (Orthopedics). Thus, as per the petitioner, respondent No.6 is not eligible to be appointed as Assistant Professor.

6. Respondents 1,2, 5, 3 and 4 and 6 have filed their separate returns. After perusal of these returns, it is virtually an admitted position that MS (Orthopedics) is not recognised in G.R. Medical College, Gwalior, still respondent No.6 is appointed against the post of Assistant Professor in the Department of Orthopedics. Parties, at the time of arguments, have admitted that said course is being run by G.R. Medical College, Gwalior for more than 25 years and the students who clear the said examination are being appointed by the State Government.

7. The contention of Shri R.D.Jain, learned Senior Advocate appearing on behalf of the petitioner is, thus, that the illegality which is committed by the Authorities for long years cannot be permitted to be perpetuated. Hence, appointment of respondent No.6 be cancelled.

8. Learned counsel for the petitioner has also invited attention of this Court to the schedule appended to the Indian Medical Council Act, 1956 to demonstrate that the subject of Orthopedics is not recognised in G.R. Medical College, Gwalior.

9. There is no dispute to the fact, in the present case, that the course of MS (Orthopedics) is not recognised in G.R. Medical College, Gwalior. However, the question is what is its effect.

10. Learned counsel appearing for the State of Madhya Pradesh, Medical Council of India, Madhya Pradesh Medical Council and G.R. Medical College, Gwalior have admitted that the course of MS (Orthopedics) is run in G.R. Medical College, Gwalior for large number of years. It is also contended that for recognition of the said course, the Medical Council of India had conducted inspections of the College vide Annexure R/1 annexed with the return of respondent No.6 whereby the Medical Council of India had recommended for recognition of the course of MS (Orthopedics) in G.R. Medical College, Gwalior. But till today, no recognition is granted by the Medical Council of India.

11. In the present case, an advertisement was issued by the State for contractual appointment to the post of Assistant Professor and both – the petitioner and respondent No.6 – had applied. There is no dispute that the essential qualification for appointment to the post of Assistant Professor is having MS degree from an institution in the course recognised by the Medical Council of India.

12. Respondent No.6, in his return, has also contended that petitioner himself is

not eligible for appointment as he does not possess requisite three years experience as laid down by the Medical Council of India. Annexure P/5 is the copy of the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 issued by the Medical Council of India. As per the said regulations, the essential qualification for the post of Assistant Professor is requisite recognised post graduate qualification in the subject with three years teaching experience in a recognised medical college as Resident/Registrar/Demonstrator/Tutor. Contention of the learned counsel for the respondent No.6 is that the petitioner had obtained degree in MS (Orthopedics) in the year 2003 and therefore, he was not eligible for appointment to the post of Assistant Professor in the year 2004 for want of teaching experience.

13. So far as eligibility of the petitioner is concerned, this Court need not go into the said question as this petition is not filed challenging the appointment of the petitioner, but is filed challenging the appointment of respondent No.6.

14. Having heard learned counsel for the parties, I find that the Apex Court in the case of *Dr.Arun Kumar Agrawal vs. The State of Bihar,* AIR 1991 SC 1514 has considered the similar situation. In that case also, Patna Medical College and Hospital, Patna had issued advertisement and selection committed had made appointments after considering the merits of the candidates. It was argued that the candidate who is selected did not fulfill criterion of passing post graduate degree from an institution where the said course was recognised and the Apex Court has held that whether the post graduate course is started by the University with the consent of Medical Council of India and where the State has recognised the said degree imparted by the University, plea raised that the candidate has obtained decree in such course which was not recognised in the institution has no value and dismissed the petition.

15. Contention of Shri R.D.Jain, learned Senior Advocate for the petitioner is that, in that case, there was consent by the State Government and the Medical Council of India which is not present in the present case. Hence, the facts of the aforesaid case are quite distinguishable.

16. In the present case, I find that respondent No.6 was a candidate from All India Quota. He was allotted a seat in MS (Orthopedics) by Director of Medical Education on the basis of his merits. At the time of allotment of seat, the Director of Medical Education must have knowledge that said course is not recognised by Medical Council of India. Thus, the State Government had consented to the admission of respondent No.6 in G.R. Medical College, Gwalior.

17. Apart from that, at the time of admission of respondent No.6, the State Authorities were fully conscious of the fact that said course was not recognised and still the respondent No.6 was appointed by the State. This clearly shows that there was implied consent by the State Government, firstly at the time of admission and secondly at the time of appointment in service. Now it cannot be said that the

State Government had not consented to this fact. It is an admitted position that the course of MS (Orthopedics) is run for the last more than 25 years in G.R. Medical College and candidates who have cleared the said post graduate course are being appointed by the State Government from time to time. Thus, in the present case, objection about not having consent of the State Government cannot be maintained.

18. So far as Madhya Pradesh Medical Council, respondent No.4 is concerned, it cannot be presumed that they are not aware of this illegality. It is true that illegality cannot be permitted to be perpetuated, all the same, it is the respondents Authorities which are indulging in continuing such illegality and the innocent students who come from outside the State and getting admission are made to suffer without any fault on their part.

19. Considering this aspect of the matter, I find that the judgment of the Apex Court in the case of *Dr. Arun Kumar Agrawal* (supra) is fully applicable in the present case and there is no illegality in the appointment of respondent No.6. At the most, it can be said that there is some irregularity in his appointment for which respondent No.6 cannot be held to be responsible.

20. It is not disputed that there are number of courses which are not recognised by the Medical Council of India. Students are admitted to such courses as per the allotment made by the Director of Medical Education in spite of the fact that the Director of Medical Education is fully aware of the fact that said courses are not recognised by the Medical Council of India. Medical Council of India and the Madhya Pradesh Medical Council are also watching this illegality for number of years as silent spectators and thus, all these Authorities are playing with the career of the students which cannot be permitted to be done. If the Medical Council of India and Madhya Pradesh Medical Council permitted to watch the game as silent spectators and continue the illegality in admissions, then the very purpose of establishing these Authorities will be frustrated. In such a situation, it is for the aforesaid Authorities to see that in future, no candidate is allotted seat in post graduate degree course in the Institutions which are not recognised. Therefore, they are directed not to admit any student in future against any course which is not recognised by the Medical Council of India in a particular Institution.

21. In the result, this petition deserves to be dismissed and is hereby dismissed with the directions issued in Paragraph 20 herein above.

Petition dismissed.

I.L.R. [2008] M. P., 2008
WRIT PETITION
Before Mr. Justice S.C. Sharma
14 May, 2008*

AMAR SHARMA ... Petitioner
Vs.
SMT. SEEMA SHARMA ... Respondent

Family Courts Act (66 of 1984), Section 10, Civil Procedure Code, 1908, Order 26, Rule 10A - *Family Court ordered for a second DNA test keeping in view letter of Director, C.D.F.D. wherein it was requested to the Court for taking resampling of blood for conducting re-test - However, Family Court was not justified in ordering for DNA test from a place of choice of husband - It is clarified that the report of first DNA test cannot be taken on record, the same has to be ignored in toto.* (Paras 12-14 & 16)

कुटुंब न्यायालय अधिनियम (1984 का 66), धारा 10, सिविल प्रक्रिया संहिता, 1908, आदेश 26 नियम 10ए – कुटुंब न्यायालय ने सी.डी.एफ.डी. के संचालक के पत्र, जिसमें पुनः जाँच करने के लिए रक्त का पुनः नमूना लेने का न्यायालय से अनुरोध किया गया था, को ध्यान में रखते हुए दूसरे डीएनए जाँच का आदेश दिया – तथापि कुटुंब न्यायालय का पति की पसंद के स्थान पर डीएनए जाँच के लिए आदेश देना न्यायसंगत नहीं – यहाँ यह स्पष्ट किया कि डीएनए जांच की पहली रिपोर्ट अभिलेख पर नहीं ली जा सकती और इसे पूर्णतः अनदेखा किया जाए।

Case referred :
2004 Cr.L.J.3086.

Sanjay Dwivedi, for the petitioner.
J.P. Mishra, for the respondent.

ORDER

S.C. SHARMA, J.:– Regard being had to the similitude of the controversy involved in these two writ petitions, they were heard analogously together and disposed of by this singular order.

2. The petitioner, Smt. Seema Sharma in W.P.No.1309 of 2008 is aggrieved by an order dated 23rd January, 2008 passed by the Additional Principal Judge, Family Court, Gwalior in case No.142-A of 2006 by which an application filed by the husband / respondent under section 151 of the Code of Civil Procedure read with section 195 and 340 of the Code of Criminal Procedure for conducting the second DNA (deoxyribonucleic acid) test in respect of the petitioner, her husband and her daughter has been ordered.

3. The grievance of the petitioner is that an application for divorce under section 13(1)(i)(ia) (ib) of the Hindu Marriage Act,1955 was filed by the respondent against the petitioner making various kinds of allegations. It was alleged that the present petitioner / non-applicant was transferred on 19th March, 1996 as District Women

*W.P. No.845/2008 (Gwalior)

and Child Development Officer, Indore and she was posted at Indore till March, 1997. It has been further alleged in the divorce petition that the husband and wife were living separately and no-cohabitation took place between them. It has also been alleged that on 21st December, 1996, the present petitioner (non-applicant) gave birth to a child at Agra. As there was serious dispute in respect of parentage of the minor girl, an application was preferred under section 10 of the Family Courts Act, 1984 read with Order XXVI rule 10(A) of the Code of Civil Procedure for conducting the DNA test in respect of the petitioner, respondent and the child. The application was allowed by the Court vide order dated 15th October, 2005 and the Family Court directed for holding a DNA test. The DNA test was conducted at the Centre for DNA Finger Printing and Diagnostics, Hyderabad (hereinafter referred to as the CDFD). However, before the report could be submitted in the matter, allegations were made against the authorities who have conducted the DNA test and it was prayed before the Family Court that a second DNA test be ordered. The Director, CDFD also inquired into the matter and immediately placed one of the officer concerned under suspension. The matter was also reported to the Central Vigilance Commission (hereinafter referred to as the CVC). Smt. V. Naga Sailaja was placed under suspension on 05th July, 2006 on the basis of the complaints made by the present respondent, i.e.., husband of the petitioner. The Director, CDFD has also written a letter dated 29th February, 2008 to the Family Court, Gwalior which has been brought on record by the petitioner in W.P.No.845 of 2008 which reads as under:.

> "Regarding the DNA test report in the case, in order to remove misgivings if any in this matter, CDFD had requested the Hon'ble Court vide CDFD letter Ref No. DCDFD/LDFS/2006/1763 dated 28th September, 2006, to direct the concerned individuals namely Smt. Seema Sharma, Kumari Kritika Sharma and Shri Amar Sharma to come once again to the CDFD for collection of blood samples. The undersigned requests once against that the Hon'ble Court may direct that concerned to come to CDFD for collection of their blood samples, and the CDFD will bear the travel expenses of the individuals (by Sleeper Class). Alternatively, with the approval of the Hon'ble Court, a qualified official of CDFD will be deputed on a suitable date to collect the blood samples of the concerned before the Hon'ble Judge."

4. Thus, it is evident that the Director, CDFD himself has written to the Family Court for conducting second DNA test in the matter.

5. The prayer made by the petitioner before this Court is that the Family Court has erred in law and facts in ordering the second DNA test from New Delhi. The Family Court vide the impugned order has directed for DNA test from a laboratory which is situated in Delhi and the said laboratory was suggested by the respondent / husband for conducting a second DNA test. Thus, the petitioner / wife is only aggrieved by the direction given by the Family Court for conducting the second DNA test at New Delhi and prayed for calling the first DNA report from CDFD.

6. The respondent / husband has filed W.P.No.845 of 2008 (Amar Sharma vs. Smt. Seema Sharma) and he has challenged the same order passed by the Family Court dated 23rd January, 2008. His Contention is that once the Family Court has ordered for second DNA test, there appears to be no justification in calling the first DNA report which was conducted at CDFD. It has been further stated by him that the Family Court vide order dated 15th October, 2005 directed the parties to appear for DNA test at CDFD and the said order was challenged by the respondent, Smt. Seema Sharma by filing W.P.No.5544 of 2005 which was affirmed by this Court. The petitioner, however, admitted that all the three parties went to Hyderabad for DNA test and on 15th May, 2006 blood samples of the parties were drawn. The CDFD which was expected to send the report had not forwarded the same and in the meanwhile, one Smt. V.N.Shailaja who was the Technical Officer, Grade-I posted at CDFD has approached the petitioner and demanded Rs.5.00 lacs for submitting a favourable report of the DNA test. It has also been alleged by the petitioner / husband that Smt. V.N.Shailaja has also threatened that in case the demand is not met, an incorrect DNA test report will be submitted proving that the blood sample of the child was matching with that of the petitioner and the respondent.

7. The petitioner, Amar Sharma further stated in the petition that he has reported the matter to the CVC and also the other competent authorities. It was also stated that the matter was enquired into and the Technical Officer, Grade-I was placed under suspension. However, the Director, CDFD vide letter dated 28th September, 2006 requested the Family Court for collection of blood sample afresh in order to remove all the misgivings in the matter and tendered unconditional apology for the inconvenience caused in the matter. Thereafter, the suspension of the technical officer was revoked and the matter has been closed. A report has also been placed on record that the petitioner, Amar Sharma in W.P.No.845 of 2008 has not forwarded further evidence in the matter and therefore no further action was taken in the matter.

8. The Family Court by the impugned order dated 23rd January, 2008 has ordered for second DNA test and at the same time directed for taking the first DNA test report on record. This part of the order passed by the Family Court is challenged by the petitioner / husband in this petition. The Family Court ordered for conducting fresh DNA test of the parties in the laboratory situated at Delhi suggested by the petitioner, Amar Sharma in W.P.No.845 of 2008.

9. The controversy involved in the present case is as to whether the second DNA test should be held at a place suggested by Amar Sharma - petitioner / husband and whether the first DNA test report conducted by the CDFD be called or not.

10. In the present case though both the parties have challenged the impugned order, the husband (petitioner in W.P.No.845 of 2008) wants the DNA test to be

carried out at a laboratory suggested by him at New Delhi and the wife (petitioner in W.P.No.1309 of 2008) wants the first DNA test report conducted by the CDFD be taken on record.

11. After hearing learned counsel for the parties at length and carefully considering the entire material available on record, it is evident that serious allegations were levelled against the technical officer who took the blood sample of the parties at CDFD and she was also placed under suspension for some time. It was only for want of evidence, the matter was dropped and the Director, CDFD has categorically tendered unconditional apology by writing a letter to the Family Court. The Director, CDFD has arrived at a conclusion that holding a second DNA test in the matter is inevitable, and therefore, as the parties have made all kinds of wild allegations, the first DNA test conducted in the matter deserves to be ignored.

12. So far as the question of conducting second DNA test is concerned, it cannot be ordered at a choice place of Amar Sharma (petitioner in WP No.845 of 2008). The laboratories are established under the Ministry of Home Affairs, Government of India and its Directorate of Forensic Science under which DNA fingerprinting is done at Forensic Laboratories situated at various places through out the country. Under the Directorate of Forensic Science at national level there are six laboratories which are in existence at various places, which include, Kolkata, Chandigarh, Hyderabad and Delhi. The laboratory situated at Chandigarh is having national level state-of-the-art forensic facilities for DNA fingerprinting, and therefore, this Court is of the opinion that the DNA fingerprinting in respect of the petitioner, Smt. Seema Sharma in W.P.No.1309 of 2008, her husband/ petitioner in W.P.No.845 of 2008 and the child can safely be done at Chandigarh.

13. In view of the above, the order passed by the Family Court is modified to the extent that the DNA fingerprinting of the parties involved in the present petition be done at Centre for Forensic Science Laboratory, Chandigarh (hereinafter referred to as the CFSL, Chandigarh) which is under the Ministry of Home Affairs. It is needless to mention that the Director, CFSL, Chandigarh shall monitor taking of blood samples and shall also draw finger prints so also other tests necessary for submitting the requisite report. The report analysed by the investigating officer shall also be monitored and verified by the Director, CFSL, Chandigarh personally and the said authority shall thereafter forward the report along with a certificate to that effect to the Family Court at Gwalior. It is needless to mention that in case no Director is posted at CFSL, Chandigarh then in that case, the officer who is holding highest rank at the CFSL, Chandigarh will personally monitor the entire DNA fingerprinting exercise in the matter.

14. So far as the grievance of the petitioner, Smt. Seema Sharma (W.P.No.1309 of 2008) regarding taking on record the first DNA fingerprinting report is concerned, this Court does not find any good reason for calling the report from CDFD since

the Director, CDFD himself has tendered unconditional apology and requested the Family Court for re-sampling of the blood. This Court is of the firm opinion that the first DNA fingerprinting, if any, done in the matter is not at all required to be placed on record as fresh DNA fingerprinting has been ordered in the matter.

15. The matter relating to DNA fingerprinting and the order for conducting the second DNA test was subjected to judicial scrutiny before the Gujrat High Court in the case of *Vishal Motising Vasava vs. State of Gujrat* (2004) Cri.L.J. 3086 and it was observed in paragraphs 6,7, and 8 as under:

> "6. Having considered the above and the order, dated 25/11/2003 passed by the learned Session Judge, it appears that the order passed by the learned Sessions Judge for allowing second DNA test to be conducted of the petitioner cannot be said without jurisdiction or illegal which would cause any great injustice to the party. As such, the order can be said to be discretionary order which would not call for interference by this Court. I find it proper not to observe further and leave it at that stage, more particularly, in view of the fair stand taken by the learned advocate for the petitioner that the petitioner has also no objection for second DNA test to be conducted at any hospital in Gujarat State.
>
> 7. So far as the insistence of the original complainant for getting the DNA test to be conducted at Hyderabad only and not at any other place and acceptance of such request by the learned Sessions Judge in the impugned order, deserves interference. The complainant may be justified at the most in insistence for second DNA test to be conducted. However, such insistence cannot be stretched to the extent of getting the test conducted at a particular laboratory of the choice of the complainant. If such contentions at the instance of the complainant are accepted, it may leave room to large number of other manipulations and complications. It will be for the State to modulate and regulate such procedure to be undertaken since it will be the duty of the State to ensure that the criminal justice is properly administered in the State. The State for various reasons may decide to get such test to be conducted at the nearest laboratory or in an appropriate case the Court may direct the State to get such test conducted at a particular laboratory, but certainly the complainant cannot be said to have any vested right to get such test conducted at a particular laboratory only. Further, no extraordinary circumstances are recorded by the learned Sessions Judge for accepting the contention of the original complainant to get DNA test conducted at Hyderabad only. It has not come on record that the laboratories for conducting DNA test situated in Gujarat are either not useful or the report may create doubtful situation. In absence of such material on record, in my view, the learned Sessions Judge has committed error in accepting the contention of the original complainant that the DNA test shall and must be conducted at a laboratory situated at Hyderabad only.

8. In view of the aforesaid discussion, the order dated 25/11/2003 passed by the learned Sessions Judge below, application Exh. 94 in Sessions Case No. 36/02 shall operate to the extent of ordering the second DNA test of the petitioner by comparing the blood of the child – Piyush. However, the order will stand modified to the extent that such DNA test shall be conducted at any laboratory situated in Gujarat State. It will be for the learned Sessions Judge to decide after hearing both sides for the place of the laboratory anywhere in Gujarat. As and when such test will be conducted for the purpose of blood sample or otherwise, the State shall make arrangements for ensuring that the petitioner is kept present personally for such purpose and the petitioner shall be at liberty to keep his advocate present at the time when blood samples are to be conducted. The original complainant shall also be at liberty to remain present either with her parents or advocate of her choice."

16. This Court is fully in agreement with the judgment delivered by the Gujarat High Court in the case of *Vishal Motising Vasava* (supra). In the present case, the Family Court having left with no other choice ordered for a second DNA fingerprinting test keeping in view the letter written by the Director, CDFD wherein it was informed to the Court for taking re-sampling of the blood for conducting re-test. However, the Family Court was not justified in ordering for DNA fingerprinting test from a place of choice of the husband of Smt. Seema Sharma, and therefore, the impugned order is set aside to that extent. It is, however, clarified that once the Director, CDFD himself has admitted that fresh DNA fingerprinting has to be done in the matter, the report of first DNA test cannot be taken on record, therefore, the same has to be ignored in toto.

17. With the aforesaid, both the petitions stand disposed of.

Petition disposed of.

I.L.R. [2008] M. P., 2013
WRIT PETITION
Before Mr. Justice Shantanu Kemkar
5 June, 2008*

NIRAJ PRATIBHA J.V. ... Petitioner
Vs.
INDORE DEVELOPMENT AUTHORITY ... Respondent

Constitution, Article 226 - ***Tender - Disqualification in technical bid*** - *Petitioner claimed experience of work by its lead partner as Sub-Contractor - Condition of eligibility criteria required work in same name and capacity - Held - Experience as contractor can not be equated with that of Sub-Contractor - Unless the decision is arbitrary, unfair or based on malafides,*

*W.P. No.2417/2008 (Indore)

the court will not interfere in decision taken in commercial matter relating to contracts - Petition dismissed. (Para 12)

संविधान, अनुच्छेद 226 – निविदा – तकनीकी बोली में अयोग्यता – याची ने अपने प्रमुख भागीदार का उप–ठेकेदार के रूप में कार्य के अनुभव का दावा किया – योग्यता के मापदंड की शर्त उसी नाम व हैसियत से कार्य करना अपेक्षित करती है – अभिनिर्धारित – ठेकेदार का अनुभव उप–ठेकेदार के समतुल्य नहीं हो सकता – जब तक विनिश्चय मनमाना, अनुचित या दुर्भावना पर आधारित न हो, न्यायालय संविदा से संबंधित वाणिज्यिक मामले में लिये गए विनिश्चय में हस्तक्षेप नहीं करेगा – याचिका खारिज।

A.S. Garg with *Aditya Garg*, for the petitioner.

A.S. Kutumble with *Manoj Dwivedi & Sudarshan Joshi*, for the respondent.

ORDER

SHANTANU KEMKAR, J.:– Feeling aggrieved by the non consideration of its financial bid the petitioner a Joint Venture Company of Niraj Cement Structurals Ltd. and Pratibha Industries Ltd. has filed this petition under article 226 of the Constitution of India seeking direction to the respondent to treat the petitioner qualified in technical bid and to direct the respondent to open its financial bid.

2. On 15.2.2008, the respondent, an authority constituted under Nagar Tatha Gram Nivesh Adhiniyam, 1973, published a notice inviting tender for construction of Western Ring Road (R.W.2) of 75m. Wide in scheme no. 151 from MR-10 Ujjain Road junction to Airport- Pithampur Road junction as per Bus Rapid Transit System (for short 'B.R.T.S.') under Jawaharlal Nehru National Urban Renewal Mission (Phase-1). Thereafter the respondent amended the tender amount, amount of earnest money; the date of submission of bid; dates of opening of technical and financial bids. Accordingly, as per amendments, the bid was required to be submitted upto 01.3.2008. Opening of technical bid was on or before 14.3.2008 and opening of financial bid was fixed on 20.3.2008 at 4.00 pm.

3. The case of the petitioner is that it has submitted its bid on 14.3.2008 with all the necessary documents fulfilling the eligibility criteria required for opening the technical bid. On 19.3.2008 vide annexure P-8 the respondent informed to the petitioner the extension of date of opening of the financial bid from 20.3.2008 to 28.3.2008. Having received this intimation dated 19.3.2008 (Annexure P-8), the petitioner sent its representative to attend the opening of the financial bid on 28.3.2008. However the petitioner's financial bid was not opened and its representative was informed by the respondent that since the petitioner did not qualify the eligibility criteria in the technical bid, it has been held disqualified for opening of the financial bid. Being aggrieved by the said act of respondent, petitioner has filed this petition.

4. The petitioner averred in the petition that a three stage procedure for opening and evaluation of bid has been mentioned at Clause-E of the tender form. Clause 24.1 (a)(b) and (c) on which the petitioner placed reliance reads thus:-

24.Bid Opening.

24.1. xxxx xxxxx xxxxx

A three stage procedure will be adopted in opening and evaluating the proposal.

(a) In first stage the envelop of Bid security shall be opened and checked. In case requisite bid security is not found the technical and financial proposal of the bidder shall not be entertained and shall be returned unopened..

(b) In the second stage, the technical proposal shall be opened and eligibility and bid capacity of the firm will be ascertained on the basis of qualification criteria as specified in this document. **The financial proposal of only those bidders, who are declared technically qualified, shall be opened. The schedule of opening of the financial proposal shall be intimated to only those bidders who are declared technically qualified, by the Authority.** (emphasis supplied).

(c) In the third stage, the financial proposal of the bidders who are declared qualified on the basis of technical evaluation shall be invited to be present in order to witness the opening of financial proposal. The financial bids shall be evaluated on the basis of rates quoted by the bidder.

5. On the strength of underlined portion of sub-clause (b) of Clause 24.1, the petitioner averred that since vide Annexure P-8 the petitioner was intimated by the respondent, the schedule of opening of the financial proposal it is deemed that the petitioner is declared technically qualified. In the circumstances, it was not open for the respondent to say that the petitioner did not qualify in the technical bid. In the premises, it is averred that the action of the respondent in not opening its financial bid is contrary to the terms of the tender conditions.

6. The respondent in its reply has averred that the technical bids of all the bidders were opened as per the Schedule on 14.3.2008. The technical bids were bulky in volumes; it contained various datas furnished by the bidders. The scrutiny and verification required considerable time and as such it could not be possible for the Tender Evaluation Committee constituted by the respondent to report the result of the scrutiny and as such the date of opening of the financial bid was required to be extended from 20/3/2008 to 28.3.2008. Thus, due to non receipt of the recommendation from the Tender Evaluation Committee, all the bidders were informed the extended date of opening of the financial bid from 20.3.08 to 28.3.2008. It is stated that the letters issued by the respondent intimating the extension of date of opening of financial bid which were sent to all the bidders who submitted their bids will not give any right to the petitioner so as to contend that by receipt of such letter, it qualified technically and became eligible for opening of its financial bid. It is further stated that on opening of the petitioner's technical bid, it was found that the petitioner did not fulfill the eligibility criteria as per clause-3 of the tender conditions. The respondent placed on record the decision of the Tender

Evaluation committee as Annexure R-10 spelling out the reasons for rejection of the petitioner's technical bid. According to the respondent, for better and enhanced connectivity and for rapid movement of the traffic, the construction of RW-2 as per the norms of B.R.T.S. is to be completed in schedule time. In order to award the contract of such a prestigious nature the respondent is duty bound to ascertain that only the competent bidder may be awarded the contract. In order to award this important and prestigious award, following eligibility criteria was prescribed in the tender document.

3. Eligibility criteria

3.1 Eligibility criteria for sole applicant firm or lead partner in case of JV shall be as under:-

(1) Minimum experience of successful completion of four/six laning of Highways (NH/SH/Equivalent); Firm should have successfully completed similar job of at least one single highway project of four/six laning costing at least 50 crore and should have executed work amounting 40crore in one single year fro any completed work in same name and capacity last five years under one single work order (certificate issued by Principal Employer (Central Govt./Local Bodies only) should be submitted alongwith Technical Bid).

OR

Minimum experience of successful completion of civil infrastructure project: Firm should have successfully completed at least on single civil infrastructure project (i.e. Roadwork/Bridge work) of 100 crore and should have executed work amounting 40 crore in one single year for any completed work in same name and capacity in last five years under one single work order (certificate issued by Principal Employer (Central Govt./ State Govt/ Local Bodies only) should be submitted along with Technical Bid).

In support of above the bidder should enclose not more than 5 relevant certificates.

(ii) Annual average turnover: Minimum Average Annual construction turnover of the firm as per the audited balance sheet for the immediate last five years should be equivalent to the 50% (fifty percent) of cost of the project.

Note:

(a) The experience should be as on the date of submission of bid document.

(b) This successful completion certificate should be clearly marked separately in the Technical Proposal.

(c) The financial year means year starting from 1st April to 31st March of next year.

(iii) MINIMUM NETWORTH of the bidder should be minimum 10% of the probable amount of the contract as mentioned in Para 1 of the invitation for bid.

Note: The bidders are requested to enclose only requisite and relevant data in prescribed format shall be considered only. Information in other format shall be liable for rejection.

3.2 In case of JV, lead partner must fulfill all of above requirements and other JV partner should fulfill minimum 50% of above mentioned criteria fixed for lead partner for Experience, Average Annual Turnover and Net worth (as mentioned in clause 3.1 (i), (ii) & (iii) above).

OR

JV partner should fulfill minimum 75% of above mentioned criteria fixed for lead partner for Average Annual Turnover and Net worth.

Joint Venture shall not have more than two firms.

3.2 (i) A Bidder shall not have a conflict of interest. All Bidders found to be in conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in the bidding process, if they;

a) Have controlling share holder in common; or

b) Receive or have received any direct or indirect subsidy from any of the them; or

c) Have the same legal representative for purposes of this Bid; or

d) Have a relationship with each other directly or through common third parties that put them in a position to have access to information about or influence on the Bid of another bidder, or influence the decision of the Authority regarding the Bidding process.

3.2(ii) Government owned enterprises shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law and that they are not a dependent agency of the Authority.

3.2 (iii) In case of Joint venture, the firm, which has submitted experience certificates to meet the Eligibility requirements, will act as the lead firm representing the Joint Venture. The duties, Responsibilities, and powers of such lead firm shall be specifically included in the MOU/agreement. It is expected that the lead partner would be authorized to incur liabilities and to receive instructions and payments for and on behalf of the Joint Venture. For a JV to be eligible for bidding, the experience of lead partner and other partner should be an indicated in date sheet.

3. 2(iv) A firm can bid for project either as a sole bidder or in the form of joint venture with other construction firms. However, alternative proposals

i.e. one as sole or in JV with other contractor and another in association/JV with any other contractor for the same package will be summarily rejected. In such cases, all the involved proposals shall be rejected.

3.2(v) Bidder should submit information in relevant forms.

3.3. Available Bid Capacity

The available bid capacity of the bidders shall be assessed at the time of Technical evaluation. The bidders to be eligible for award of work shall have the bidding capacity more than the total estimated cost of the works as indicated in the bid document. The available bid capacity will be calculated as under:

Assessed Available Bid Capacity (A* N*2-B), where

A. Maximum value of construction turnover in civil engineering works executed in any one year during the last five years (updated to price level of the year in which contract is to be awarded).

B. Value of balance works of existing contract commitments. (for next two years)

N. Number of years prescribed for the present contract. (Period upto 6 months to be taken as half year and more than 6 months and up to 12 months as one year)

Note: 1. Certificate duly signed or counter signed by the Engineer-in-charge should be submitted in support of the above.

2. Contractor should submit the bid capacity assessment format (Form Exp-2.4) duly filled and signed by him.

3.4 Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have;

a) Made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification documents; and/or

b) record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc; and /or

c) Participated in the bidding for the other work and had quoted unreasonably high bid prices/low bid prices and could not furnish rational justification to the authority.

7. It is further stated by the respondent in its reply that the audited balance sheets of five financial years of the petitioner's lead partner did not tally with the balance sheets furnished by the same lead partner in its previous bid submitted for awarding of contract to the respondent for MR-9. The balance sheet of 2006-07 submitted by the lead partner and audited by Ajay B. Garg, a chartered Accountant

and the balance sheet of the same year audited by another Chartered Accountant CN Shanbag and Company were showing different figures. It is further averred that the petitioner did not satisfy the eligibility criteria in respect of experience. The lead partner claimed experience of widening of 4/6 lanes and strengthening of existing 2 lane carriage way of National Highway-60 in the State of Orissa . The said contract was not awarded to the lead partner but was awarded to Larsen & Turbo Ltd. (**for short 'L&T'**) by National Highway Authority of India Ltd. (**for short 'NHAI'**).. The lead partner was awarded sub contract by the L&T of the portion of the work allotted to it by the NHAI. Thus the lead partner executed part of the work as sub contractor and for this reason the petitioner did not satisfy the experience criteria of the tender document. It is also stated that the petitioner's lead partner and the other partner did not disclose all the works in hand and have disclosed only the works allotted to it by the respondent. In the circumstances, the petitioner's bid capacity could not be assessed. The respondent also averred the unsatisfactory performance of the lead partner and the other partner in the work allotted to them by the respondent as also by the Indore Municipal Corporation.

8. A Rejoinder and an affidavit have been filed by the petitioner explaining the circumstances under which the other work allotted by the respondent to the lead partner could not be completed in speedy way. In regard to the experience claimed, it is stated that in the tender document there is no bar of claiming experience as sub contractor, therefore, it is argued that rejection of the petitioner's bid on this count amounts to change in the tender condition which is impressible. The petitioner placed reliance on the judgment of the Supreme Court passed in the case of *Monarch Infrastructures (P) Ltd. Vs. Commissioner Ulhasnagar Munnicipal Corporation and others* (2005) 5 SCC 287. So for as the alleged discrepancies of the financial statements of the year 2006-07 it is stated that the report of G. N. Shanbag & Company Chartered Accountant was submitted for the previous bid on or before 22.6.2007 which was not finally audited report as by that date the statutory period of getting the financial record audited was not complete. It is further averred that the lead partner was not having any incomplete work except shown in Form No.IV on 14.3.2008, the date of submission of bid. There was no suppression or misrepresentation on the part of the petitioner in regard to the works in hand. As regards the other partner, the data's of the lead partner only are relevant for assessment of the bid capacity as per the tender condition, therefore, there is no question of disclosure of other works except shown in Form IV by the other partner. It is further stated that in the letter dated 19.3.2008, the respondent, has nowhere mentioned that the technical bids have not been scrutinized and therefore the petitioner's financial bid ought to have been opened.

9. In reply to the Rejoinder, the respondent has stated that all the bidders including the petitioner were informed on 19.3.2008 about the extended date of opening of the financial bid. In support the postal receipts have been filed to demonstrate that all the bidders were informed about extension of the date of opening of the financial bid.

10. I have heard learned senior counsel for both the parties and also gone through the pleadings and the documents filed by them.

11. There cannot be a dispute that the project in question of which the tenders were invited, is a time bound and huge money involved project. In order to get the work under the project performed within the stipulated period, the bids were invited by the respondent with the aforesaid conditions in regard to eligibility including experience bid capacity of the bidder etc.. It is revealed from the decision of the tender evaluation committee the petitioner was adjudged disqualified in the technical bid on various counts. Before dealing with the grounds of rejection of the petitioner's bid, it would be appropriate to deal with the first ground raised by the petitioner based on clause 24.1(b) & (c) of the tender document. From the amendment in the dates of the submission and opening of the technical and financial bids, it is clear that the opening of the technical bid was scheduled on 14.3.2008 and the opening of the financial bid was scheduled on 20.3.2008. The technical bids were opened on 14.3.2008 as per schedule. Having regard to the nature and volume of the documents required to be submitted and submitted by all the bidders alongwith the technical bid, the contention of the respondent that the scrutiny and verification process of the documents submitted alongwith the technical bids could not be completed and in the circumstances all the bidders were informed on 19.3.2008, the extended date for opening the financial bid appears to be fully justified. On the basis of such letter by which the bidders were informed the extended date of opening of the financial bid in which there is no declaration that the petitioner is technically qualified, the petitioner who is otherwise disqualified in the technical bid can not claim any right to be declared qualified in the technical bid and seek consideration of its financial bid. In the letter Annexure P-8, it is nowhere mentioned that the petitioner is declared technically qualified. In this view of the matter the petitioner's contention that having received intimation about extension of the date of opening of financial bid, it became eligible for opening of its financial bid is wholly misconceived and cannot be accepted.

12. On going through the reasons assigned by the Tender Evaluation Committee it is revealed that one of the grounds for holding the petitioner to be disqualified in the technical bid is that the petitioner has failed to fulfill the requirement of minimum experience prescribed by the respondent. The petitioner claimed experience on the basis of work done by its lead partner as sub contractor of L&T which was awarded contract by NHAI.. A perusal of Form Ex.P.2.1 in regard to general construction experience and from the perusal of the certificate issued by L & T. filed by the petitioner, it is clear that petitioner did only part of the single work order which was issued by the NHAI in favour of L&T and did not perform the entire work. The main contract was between the NHAI and L & T. and the L&T which was assigned the contract in its turn sub contracted part of its work to the lead partner of the petitioner. Thus, the petitioner was rightly held to be not fulfilling the criteria of having minimum experience as fixed in the aforesaid clause of the tender document. The contention of the petitioner that in the tender document it was not mentioned that the work experience

as sub-contractor will not be accepted, has no force. The condition no.3.1(i) of Eligibility Criteria is very clear and according to which minimum experience of successful completion of four/six laning of highways (NH/SH/equivalent) and the Firm should have successfully completed similar job or at least one single highway project of four/six laning costing at least 50 crore and should have executed work amounting to 40 crore in one single year of any completed work in **same name and capacity** last five years under one single work order **(Certificate issued by Principal employer (Central Govt./Local bodies only) should be submitted alongwith technical bid. (emphasis supplied).** In the light of this condition there is no scope for the petitioner to contend that the work done by it as sub contractor through the contractor of the Principal employer NHAI deserves to be considered as fulfillment of the requirements of experience. The condition about the experience has to be interpreted in the manner it has been incorporated in the tender document any deviation of it so as to include the sub contractor also would be adding something which is not in the condition. When the condition is clear, there is no scope of interpretation of it in the way the petitioner suggests which would dilute the condition of experience of the bidder. The requirement of submission of certificate issued by Principal employer (Central Govt./ local bodies only) makes the condition clear that the bidder has to be the contractor and not a sub contractor of the contractor of the Principal employer. The nature of the duties and responsibilities of the sub contractor of the contractor of the Principal employer and the duties and responsibilities of the contractor of the Principal employer cannot be equated. In this view of the matter when there is no provision for allowing a sub-contractor to claim experience as such, the contention of the petitioner that by rejecting its experience as a sub contractor, there is change in the tender condition is wholly misconceived and cannot be accepted. Thus the judgment of the Supreme Court in the case of *Monarch Infrastructures (P) Ltd.* (supra) has no application to the facts of this case.

13. Although the Tender Evaluation Committee has disqualified the petitioner on other grounds also, which have been refuted and tried to be explained by the petitioner, however, as I am in agreement of the decision of the Tender Evaluation Committee of the respondent in respect of the non fulfillment of the experience criteria by the lead partner of the petitioner, I do not feel it necessary to deal with those grounds as the question to deal those grounds would have arisen only if the petitioner had been held to be qualified in criteria about having minimum experience.

14. Thus in my considered view the decision of the respondent not to pen the petitioner's financial bid needs no interference in this writ petition filed under article 226 of the Constitution of India. It is now well settled that unless the decision is arbitrary, unfair, or based upon malafides, the court will not interfere in the decision taken in such commercial matters relating to award of the contracts.

15. Having held so, I have no option but to dismiss this petition. Accordingly the petition is dismissed, however, with no orders as to costs.

Petition dismissed.

I.L.R. [2008] M. P., 2022

WRIT PETITION

Before Mr. Justice S.C. Sharma

16 June, 2008*

GWALIOR CITIZEN SAKH SAHAKARITA MARYADIT ... Petitioner

Vs.

UNION OF INDIA & ors. ... Respondents

Income Tax Act (43 of 1961), Sections 132, 131, 142(1) - *Search and Seizure - Petitioner/Assessee Cooperative Society engaged in banking transactions - A search held by Income Tax Department at its business premises - Action challenged on the ground that search and seizure was not in consonance with provisions of Section 132 - Held - Large amount of income of Society remained unaccounted and escaped from assessment/taxation - Investment and valuable will never be revealed if notice u/s 142(1) or 131 are issued - Sufficient material available and the action is with due application of mind - Information not taken from third source thus action cannot be said to be malafide or having no rational nexus - Petition dismissed.* (Para 27)

आयकर अधिनियम (1961 का 43), धाराएँ 132, 131, 142(1) – तलाशी और अभिग्रहण – याची/निर्धारिती सहकारी सोसायटी बैंकिंग संव्यवहार करती थी – आयकर विभाग द्वारा उसके कारबार परिसर की तलाशी ली गई – कृत्य को इस आधार पर चुनौती दी गई कि तलाशी और अभिग्रहण धारा 132 के उपबन्धों के अनुकूल नहीं थी – अभिनिर्धारित – सोसायटी की आय की बड़ी रकम बेहिसाब और निर्धारण/कराधान से छोड़ दी गई – यदि धारा 142(1) या 131 के अधीन सूचनापत्र जारी किये जाते तो निवेश और मूल्यवान कभी भी प्रकट नहीं होते – पर्याप्त सामग्री उपलब्ध और कार्यवाही मस्तिष्क के सम्यक् प्रयोग में है – सूचना अन्य स्रोत से नहीं ली गई इसलिए कार्यवाही दुर्भावनापूर्ण या कोई युक्तिसंगत संबंध न रखने वाली नहीं कही जा सकती – याचिका खारिज।

Cases referred :

(1997) 89 Com Cases 362 (SC), AIR 1999 Cal 106, (1969) 2 SCC 324, AIR 1970 SC 292, 70 ITR 293, 204 ITR 334, 46 (1992) DLT (DB), 155 ITR 166, 180 ITR 365, (1967) 63 ITR 219 (SC), 260 ITR 80, 262 ITR 338.

J.K. Sibbal & V.K. Bharadwaj with Sumesh Dhawan & A.V. Bhardwaj, for the petitioner.

Rohit Arya & R.D. Jain with S.N. Seth, for the respondent Nos.3 & 4.

ORDER

S.C. SHARMA, J. :- The petitioner before this Court under Article 226 / 227 of the Constitution is a co-operative society registered under section 8(2) of the Madhya Pradesh Swayatta Sahakarita Adhiniyam, 1999 (hereinafter referred to as the Adhiniyam of 1999). The petitioner is aggrieved by the action on the part of the respondents / Department Nos.2 to 5 (hereinafter referred to as the Department) by which search has been conducted at the business premises of the petitioner.

2. The contention of the petitioner / society is that the Department has without

*W.P. No.1569/2008 (Gwalior)

following the procedure contemplated under section 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act of 1961), conducted illegal search. It has been further stated that as per the requirement of law for conducting the search and seizure under section 132 of the Act of 1961, the Department were required to record the reasons regarding the satisfaction in terms of section 132 of the Act of 1961 and thereafter warrant of authorisation should have been issued as per the provisions of section 132 of the Act of 1961. The petitioner has stated that the whole search and seizure made by the Department on 28th and 29th March, 2008 per se illegal and contrary to the statutory provisions and is liable to be set aside.

3. The petitioner / society is registered with its main object and activities to promote co-operative banking transactions only to the members of the society and inter alia to :

"(a) inculcate an attitude and habit for saving in the members;

(b) management of safe investment of the members;

© arranging need based loans and finances to the members;

(d) providing other economic facilities and services for this purpose the society is having share money of the members, saving accounts, daily deposit accounts, recurring deposit accounts, fixed deposit accounts etc. for which complete accounts and records are maintained;

(e) to provide other service like payment of telephone, electric bills and preparations of bank drafts as pr instructions of the members;

4. It has been stated that the petitioner / society is an assessee under the provisions of the Act of 1961 and submitting assessment returns since the year 2002-03. It has been further stated that on 28th March, 2008, the Additional Director, Income Tax (Investigation) along with other officers of the Department visited the business premises of the petitioner / society and made surprise search in presence of the police personnel. The petitioner has also stated that warrant of authorization issued by the competent authority under section 132 of the Act of 1961, for conducting the search was not shown by the investigating authority. The petitioner has further pleaded before this Court that in view of various pronouncements made by the Hon'ble Apex Court, the provisions of section 132 of the Act of 1961 is a complete code in itself and it makes it clear that where the Director General or Director or the Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as the case may be empowered in this behalf by the Board, in consequence of information has reason to believe that any person to whom the summons under sub-section (1) of section 37 of the Indian Income Tax Act, 1922 or under sub-section (1) of section 131 of the Act of 1961 or a notice under sub-section (4) of section 22 of the Indian Income Tax Act, 1922

or under sub-section (1) of section 142 of the Act of 1961 was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce or cause to be produced, such books of accounts or other documents as required by such summons or notice and when a person avoiding the notice issued under Section 142(1) or 131, it would be amounting to sufficient reasons to believe for issuance of warrant for search.

5. It is the contention of the petitioner that the provisions of sections 142(1) and 131 of the Act of 1961 have not been followed in the matter and without making a detailed enquiry as required under section 132 of the Act, and without recording reasons to believe the action of respondents to conduct sudden search in the premises of the petitioner by the Department is bad in law.

6. The petitioner has further stated that without following the procedure prescribed under section 132 of the Act of 1961, the sudden search and raid was conducted by the officials of the Department and cash amounting to Rs.30 lacs was seized by the Department. It has been further stated that the cash found with the petitioner / society was reflected in the cash books and the Department went to the extent of seizing all the accounts of the society. The petitioner / society has raised various grounds challenging the search and seizure conducted by the Department and stated that the action of the Department is absolutely contrary to the well settled procedure as contemplated under section 132 of the Act of 1961. It has been further stated that the Department was not having any knowledge of undisclosed property or undisclosed accounts of the petitioner and the Department was required to go through the returns to arrive at a conclusion that there was reason to believe that the petitioner has some undisclosed income and then only further action could have taken under section 132 of the Act. The petitioner has prayed before this Court for quashing the entire proceedings and has also prayed for releasing of the bank accounts and cash which has been seized by the Department.

7. The Department has filed a return and it has been stated in the return that the search and seizure in the case of the petitioner / society was conducted after recording reasons by the competent authority, i.e., Director, Income Tax (Investigation) and the Additional Director, Income Tax (Investigation) III, Bhopal. It has been submitted by the Department that the petitioner / society was doing the business and the authority was given by the Director, Income Tax (Investigation) and the authorisation of warrant of search under section 132 of the Act of 1961 was issued by the Director, Income Tax (Investigation), Bhopal in respect of residential premises of the Chairman of the society, Shri Akhil Singhal and the survey authorisation under section 133-A of the Act of 1961 and subsequently warrant of authorisation under section 132(1) of the Act of 1961 was issued by the Additional Director, Income Tax (Investigation), Bhopal in respect of business premises of the society. It has been further stated that the search was held and

the orders were passed on the basis of credible information/evidence based upon the bank account statement and the secret enquiries conducted in the matter which reveals the modus operandi and functioning of the petitioner / society. After due satisfaction and recording reasons to believe that the conditions stipulated in section 132 (1), (a) or (b) and (c) were duly fulfilled and the necessary warrant of authorization was issued.

8. It has been further stated that the reasons for issuing the warrant of authorization is duly available on record and the same shall be produced before this Court at the time of hearing. The Department has further stated that it is incorrect on the part of the petitioner to say that the search and seizure was conducted on 28th and 29th March, 2008 without any warrant of authorization in the matter.

9. The Department has also denied that the search and seizure made on 28th March, 2008 and 29th March, 2008 is contrary to the statutory provisions. It has been further stated in the return that the due procedure as prescribed under section 132 of the Act of 1961 for making search to find out the undisclosed income or property with the society was followed and there has been no irregularity of any kind in conducting the search and seizure by the Department. There was sufficient material with the authorities to believe that the conditions prescribed under section 132 (1) (a), (b) and (c) of the Act of 1961 were fulfilled to conduct the search and seizure in the business premises of the petitioner/society.

10. It has also been stated in the return that the society was involved in various activities including providing accommodation payment facilities to its members who are businessmen and traders at Gwalior by issuing cheques and demand drafts to outstation parties in consideration of huge cash deposits on daily basis to effect transactions of their unaccounted money. The society has received payment through inward clearing and it is withdrawn in cash by the concerned person. It has been further stated that very nominal members of the society were effecting payments and receipts through the bank account of the society and not from their own bank account which clearly reflects that these transactions of payments and receipts are probably not recorded in their books of account. The investment and income from such transactions is unaccounted and undisclosed to the Department thereby causing huge revenue loss to the Government by way of evading Income Tax, Sales Tax, VAT, Excise Duty etc., The Department have further stated in the return as under:

> "there is a stark difference between the "stated objects and activities" and the "actual object and activities" undertaken by the society which is clear form the analysis of balance sheet as on 31.3.2007 and various bank account of the assessee which shows that the volume magnitude of Saving deposits, Recurring Deposits, Daily Deposits and fixed deposits for the financial year 2006-07 and cumulative figure as 31.3.2007 are of relatively much smaller amount.

Type of Deposits	Amount as on 31.3 06	Amount during F.Y.2006-07	Amount as on 31.3.07
1 Saving Account	36,34,908	(-) 8,19,909	28,14,999
2 Recurring Deposit	1,23,138	(+) 4,58,435	5,81,593
3 Current Account	72,61,972	(-) 38,70,375	33,91,626
4 Fixed Deposit	92,38,766	(-) 16,60,594	75,78,172
Total	2,02,58,734	(-) 58,92,413	1,43,66,390

Similarly amount of loan advanced to the members were of very small amount which is as under:-

1.	Member Loans on DOC	611298	(-) 280449	330839
2.	Member loans on GURE	3295018	(-) 290665	3004353
3.	Staff loan	251148	(-) 64015	187133
	Total	4157464	(-) 635129	3522325

As against this, the total deposits and total payments relating to nominal members in the bank accounts of the society for the financial year 2006-07 exceeded Rs.100 Crores and similarly, the total payments and total deposits of the Samiti for the financial year 2007-08 exceeds Rs.200 Crores. This shows that the deposits received by the assessee from the members as per the stated objects under the head saving deposit, recurring deposit, fixed deposit and daily deposit were less than 1 ½ % of the total deposits transacted in the bank account of the Samiti and similarly the loan advanced by the Samiti to its members were even less than ½ % of total payments made by the society from its various bank accounts.

The above facts clearly indicates that the objects mentioned in the object clause / byelaws of the society are only for the fulfillment of statutory requirement of Cooperative laws whereas the actual business activities of the Samiti is providing accommodation payments /deposits facilities to businessmen by making them nominal members thereby assisting and abetting routing of unaccounted money through the bank account of the society which remain undisclosed to the department as these transactions are not recorded by the members in their books of account. In this regard, the society has specifically amended its object by incorporating the clause to appoint "nominal members" who are only allowed to avail the facility of issue of cheques at par and demand draft and at that same time they are not eligible for any divided on shares, participation in other activities and availing of loan. This amended "object clause" of the society of issue of cheques at par and demand draft, is the only operative object and activity of the society which primarily tantamount to a banking activities for which the

society is neither a bank registered under the RBI Act nor it is registered as a NBFC with RBI. Thus, the activities under taken by the Samiti of providing the facilities of issue at par cheques and demand draft to its members (mostly nominal members) apparently made for this purpose only is an illegal activity. In these circumstances, the Samiti does not retain its cooperative status of a separate entity and the corporate/ cooperative veil attached to the society is to be lifted so as to expose any person who have committed a fraud upon the public from their sheltered position.

In fact the petitioner society is doing the business on behalf of the nominal members by helping them in concealing unaccounted money and the corporate veil has to be lifted as held by the Hon'ble Supreme Court in the case of *Delhi Development Authority Vs. Skipper Construction Company Pvt Ltd* (1997) 89 Com cases 362 (SC) and for this purpose alone the entire search/survey action has been taken and the enquiry is in progress. It may be seen that the activity of the Samiti in helping in channelising of apparently unaccounted fund required detailed investigation to lift the corporate veil. In fact the Hon'ble *Kolkata High Court in case of Bijay Kumar Agarwal Vs. Ratan Lal Bagaria* AIR 1999 Col.106 has laid down the five principles where lifting of corporate veil can be reported depending upon:

a) the relevant statutory or other provisions;
b) the object sought to be achieved;
c) the impugned conduct;
d) the involvement of public interest;
e) the interest of the affected parties.

Therefore, in view of the above legal position, this case is perfect case to lift the cooperative veil and treat the Samiti as any other business entity like AOP working in connivance with local traders of Gwalior."

11. The Department has also given a large number of examples in respect of the irregularities committed by the Society and has categorically stated that the search was authorized and has been conducted in accordance with the provisions of section 132 (1) of the Act of 1961 after analyzing the credible information gathered by the Department. The competent authority examined the evidence gathered by the Department in accordance with the provisions of section 132 of the Act of 1961 and only thereafter the warrant of authorization was issued for conducting the surprise search in respect of the affairs of the petitioner / society.

12. The basic question involved in this petition is as to whether the action of the department in conducting the search and seizure is in consonance with the provisions of Section 132 of the Act of 1961 or not and whether the proceedings initiated by the Department under section 132 of the Act of 1961 are liable to be quashed by this Court or not?

13. The respondent / Department has produced the entire material before this Court at the time of hearing and after hearing the learned senior counsel for the parties and after going through the pleadings including the rejoinder filed by the petitioner, it is evident that the search and seizure was conducted by the respondent on 28th March, 2008 and 29th March, 2008.

14. Section 132 of the Act of 1961 reads as under:

"132 (1) Where the [Director General or Director] or the [Chief Commissioner] [or any such [Joint Director] or [Joint Commissioner] as may be empowered in this behalf by the Board], in consequence of information in his possession, has reason to believe that-

(a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income Tax Act 1922(11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section(1) of section 142 of this Act was issued to produce, or cause to be produced any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as reqired by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purpose of the Indian Income Tax Act 1922 (11 of 1922) or this Act (hereinafter in this section referred to as the undisclosed income or property).

15. To understand and appreciate the power exercised under Section 132 of the Income Tax Act, 1961 it is necessary to refer to certain citations in the field.

16. In *Income-Tax Officer, Special Investigation Circle-B. Meeruth vs. Messrs Seth Brothers and others etc.*, 1969(2) SCC 324 = AIR 1970 SC 292, it has been held that the said provision does not confer any mandatory authority upon the Revenue Officers. It is incumbent upon the authority to record reasons for the belief and must issue an authorization in favour of the designated officer to search the premises and exercise the powers set out therein. In the said case a reference was made to the case of *Income Tax Officer, A-Ward, Agra and others vs. Firm Madan Mohan Damma Mal and another*, 70 ITR 293 wherein

it was observed that issue of a search warrant by the Commissioner is not a judicial or quasi judicial act. The Apex Court after analysing various facets in paragraph 21 has dealt with the jurisdiction of the High Court under Article 226 of the Constitution of India. In the said paragraph, it has been observed that a writ petition can be entertained where assail is to the validity of the action on the ground of absence of power or on a plea that the proceedings were taken maliciously or for a collateral purpose. But normally the High Court in such a case does not proceed to determine merely on affidavits important issues of fact especially where serious allegations of improper conduct are made against public servants.

17. In *Harmel Singh and another vs. Union of India and others,* 204 ITR 334 it has been held that in order to justify the action, the authorities must have relevant material on the basis of which they could form an opinion that they have to believe that action under Section 132 would be justifiable. In the absence of any relevant material the authority would be acting in excess of his powers and in violation of the mandatory requirements of Section 132. If such action is challenged under Article 226 of the Constitution of India the Court comes to the conclusion that there was no relevant material before the authority to form an opinion under Section 132, the Court in exercise of powers under Article 226 of the Constitution of India can interfere.

18. The *High Court of Delhi in L.R. Gupta and others vs. Union of India and others,* 46 (1992) Delhi Law Times (DB) scanning the ingredients of Section 132 of the Income-Tax Act has opined that jurisdiction under Section 132 can be exercised on the formation of a belief and the belief is to be formed on the basis of receipt of information by the authorising officer and the information must be something more than a more rumour or a gossip or a hunch. There must be some material which can be regarded as information. The satisfaction must be based on the ground what a prudent man would believe.

19. In *Dr. Pratap Singh and another vs. Director of Enforcement and others,* 155 ITR 166 the Apex Court has opined that it is not obligatory on the part of the authority while issuing a warrant to disclose the material on which he has reasons to believe that search is necessary.

20. In *Kusum Late vs. Commissioner of Income Tax and others,* 180 ITR 365 the Court came to hold that search and seizure under Section 132 of the Act would be legal only if the Director of Inspection in consonance of information in his possession has recorded the reason to believe that the income was undisclosed. In the said case the Bench came to hold that relying on the judgment rendered in *Jain and Jain vs Union of India;* [1982] 134 ITR 655 wherein it has been held that belief of authority cannot be a mere pretence nor can it be mere doubt or suspicion. A reference was made to the decision rendered in *S. Narayanappa vs. CIT,* [1967] 63 ITR 219 (SC) wherein it has been held that it is open to the Court to examine the question whether the reasons for the belief have a rational

connection or a relevant bearing to the information of the belief and are not extraneous or irrelevant to the purpose of the section.

21. In *Union India Vs. Ajit Jain and another,* 260 ITR 80 it has been held that for a valid search there should be information which provides reason for believing that the person concerned is in possession of money or other assets either wholly or in part which has not been disclosed. Be it noted, in the said case the High Court had found that the CBI had given an information simplicitor that cash was found in possession of an individual and the search has taken place on the basis of the said information. It is worth-noting that it was held by the High Court sufficiency or otherwise of the information cannot be examined by the court in the writ jurisdiction, the existence of information and its relevance to the formation of the belief is open to judicial scrutiny because it is the foundation of the condition precedent for exercise of a serious power of search of a private property or person, and to prevent violation of the privacy of a citizen. The formation of opinion has to be in good faith and not a mere pretence. The words 'reason to believe' mean that a reasonable man, under the circumstances, would form a belief which will impel him to take action under the law.

22. In *Deputy Director of Income-Tax (Investigation) and others Vs. Mahesh Kumar Agrwal,* 262 ITR 338 it has been held that the conditions precedent which are required to be fulfilled for action to be taken under Section 132 of the Act are that the officer must be in possession of information on the basis of which he has reason to believe that the concerned person has not produced or would not cause to be produced the books of accounts and the condition has to be fulfilled before decision to issue a notice under Section 132(1) of the Act is taken. The information must exist before the opinion is formed. It has also been held therein that the authorized officer must actively apply his mind to the information in his possession and form an opinion that there are reasons to believe. Such opinion must be formed on the basis of the material available at that time. The material must have rational nexus or bearing to the reasons for information of the belief. In the said case it has been held that although a matter relating to search is open to judicial scrutiny, the court cannot sit in appeal over the opinion formed, if there are materials and the opinion is formed on such material. The Court would not examined whether the material possessed is adequate of sufficient to form an opinion.

23. Regard being had to the aforesaid position of law and it is to be seen whether in the case at hand there are materials on record. The Revenue has produced the record which shows formation of opinion by the Additional Director of Income Tax (Investigation). The said opinion has been confirmed by the higher authorities. The issue that emerges for consideration is whether the formation of opinion is contrary to reasonability or irrelevant having no nexus or the formation of opinion is without any material but some kind of suspicion or there is assumption with regard to existence of material.

24. To apply law to the facts, I have carefully perused the order forming the opinion. In the said order, there is reference to the information received from the FIU Unit along with annexed statements in which large amount of cash deposit and other inward clearings were credited. Copies of printout of the bank transactions of the societies received from FIU Unit have been taken note of. A secret enquiry was carried out by the investigating agency and the *modus operandi* has been cataloged in the official record as under:-

> "(a) that through these societies payments are being arranged mostly for outstation payments throughout India. The person / parties on whose behalf these payments are made are ought to be members of the society or are local traders of Gwalior who deposit their unaccounted cash or cheques in the bank account of these societies to effect the payments. The daily cash and cheques collection and payments made are of huge amount in the ranges of crores of rupees on daily basis.
>
> (b) that the very fact that the members of these Samities are making payment through the demand draft and pay orders prepared / issued from the bank accounts of these two Samities and not from their own bank account indicates that these payments / receipts are not disclosed in their bank account or if these are disclosed then the assessee might not have due explanation as to the source of payments / deposits.
>
> (c) that the payments in demand drafts, pay orders and through cheques from the bank account of these societies are made primarily to facilitate the local traders of Gwalior to make payments towards their unaccounted / unrecorded purchases from outside parties who insist for immediate payments in cash or otherwise. As the large amount of payments in cash can not be effected due to normal safety reasons, these traders are carrying the demand drafts / pay orders prepared by tehse two societies from their own bank account and thus settle their own account for outstation purchases. For this service, societies must be charging certain fee / commissions from these members. Most of the time the purchase and sales in respect of good acquired through these DD / pay orders are remained unaccounted and the investment and the profit earned of these transactions are remained escaped from assessment."

25. Formation of opinion shows that there has been maintenance of accounts in various banks. It has also enumerated evidence. During investigation it has been found that the society has been engaged primarily to provide accommodation, payment in terms of DD and cheques on behalf of the members and the local traders. A reference has been made to copies of bank accounts from Punjab National Bank and Vijaya Bank.

(I) Vijaya Bank, Gwalior in Account No.OD-250019 (period September, 2005 to August, 2006). During this period, the total deposits made in the

account were of to the tune of Rs.23,07,16,580/- and withdrawals on account of payments to the parties through draft and out ward clearing of cheques were of Rs.23,33,68,866/-. Out of the total deposits the amount deposited in cash are to the tune of Rs.10 crores.

(II) Punjab National Bank in A/c No.1965 (period 05.07.2006 to 16.08.2007). During this period the total deposits made in this account were of to the tune of Rs.41,51,37,361 and withdrawals by way of cheques for preparing the drafts were of Rs.41,30,16,252/-. Out of the total deposits, the amount deposited in cash are to the tune of Rs.9 crores.

(III) Punjab National Bank in Account No.55916 (period December, 2006 to August, 2007). During this period, the deposits were of to the tune of Rs.65,89,58,166 and the withdrawals by way of payments through demand draft and out ward clearing cheques were of Rs.66,79,51,302/-. Out of the total deposits, the amount deposited in cash are to the tune of Rs.2 crores.

Further it is also gathered that the Society has bank accounts with UCO Bank, State Bank of India, ICICI and Bank of Rajasthan.

26. Salient features of these Bank accounts have been noted. They read as under:

(b) The *modus operandi* of the Societies is that they collect cash or cheques from traders of Gwalior and give them Demand Drafts i the name of outstation parties for their trading business through the bank accounts of the society. Daily deposits both the cash and through cheques runs into crores of rupees.

(c) In the bank account of these two societies huge amount deposited in cash and immediately equivalent amount of cheques or demand draft are issued in favour of certain parties on the instructions of person who deposited the cash.

(J) For example at Flag A-2 (Vijaya Bank) on 16.11.2005 cash amounting to Rs.5,00,000/- were deposited against which immediate payment by way of transfer amounting to Rs.5,00,400/- was effected on the same day. Similary, on 25.10.2005 a cash deposit of Rs.6,00,000/- was made against which payment through cheque amounting to Rs.6,00,000/- was made in favour of M/s Shakti Trading.

(ii) It is seen at Flag A-3 - On 29.11.2005 cash deposit of Rs.12,50,000/- was made against which demand draft through self cheque for Rs.19,87,339/- was issued. Again on 06.12.2005 cash deposit of Rs.10,00,000/- was made against which payments were made by issue of cheques favouring yourself for issue of draft amounting to Rs.21,24,573/-.

(iii) Flag A-4 shows that on 13.12.2005, cash of Rs.10,00,000/- was

deposited and 3 (three) cheques totalling of Rs.9,83,100/- was given to Sriniwas Cables (Rs.4,00,000/-) Saroj (Rs.5,83,100/-). Again on 27.12.2005 cash of Rs.7,50,000/- was deposited and payment through two cheques for Rs.3.00 lacs and Rs.4.50 lacs were issued in favour of Sriniwas Cable.On 29.12.2005, against cash deposit of Rs.6,00,000/- cheque to Sriniwas Cable was R.3,50,000/- and outward transfer through two demand drafts for Rs.4,19,572/- were issued.

(iv) At flag A-5, on 20.01.2006 cash deposit of Rs.10.00 lacs were made against which payments were made through two cheques for Rs.4.00 lacs in favour of Sriniwas Cable. On 21.01.2006 cash of Rs.5,00,000/- was deposited and inward transfer for DD was made for Rs.4,50,405/-. On 23.01.2006, cash deposit of Rs.10,00,000/- was made and 4 cheques totaling to Rs.8,90,000/- were issued to Srinivas Cable and another two cheques for Rs.3,44,000/- were issued to Saroj.

Through out the period similar transactions have been taken place in these accounts.

Further, it has been observed that the Samiti has received credits through cheques / inward clearing in small amount of Rs.5-6 cheques of equivalent amount say Rs.49000/- and all the cheques are in same sequential number issued by one person / party from his cheque book which indicate that the Bank account from which the payments are received / credited in the society account is not disclosed by the assessee in his books of accounts and he wants to make the payments in small amount to remain un-noticed as otherwise that person could have been made payment by one cheque of Rs.2,94,000/- (Rs.49000 x 6 cheques). These facts are evidenced by various entries appearing in the account No.55916 of Punjab National Bank, Gwalior.

First Example: Flag B-1

S.No.	Date	Cheque No.	Amount deposited
1	03/01/07	148231	49815
2	03/01/07	148230	49815
3	03/01/07	148229	49815
4	03/01/07	148228	49815
5	03/01/07	148227	49815
6	03/01/07	148226	49815
7	03/01/07	148225	49815
8	03/01/07	148224	49815
9	03/01/07	148223	49815
10	03/01/07	148222	49815

Second Example: Flag B-2

S.No.	Date	Cheque No.	Amount deposited
1	08/01/07	171499	49800
2	08/01/07	171500	49800
3	08/01/07	177751	49800
4	08/01/07	171751	49800
5	08/01/07	171753	49800
6	08/01/07	171754	49800
7	08/01/07	171755	49600

Third example:Flag B-3

S.No.	Date	Cheque No.	Amount deposited
1	January 2007	205834	2,00,000
2	January 2007	205835	2,00,000
3	January 2007	205836	2,00,000

Fourth example: Flag B-4

S.No.	Date	Cheque No.	Amount deposited
1	February 2007	697738	49815
2	February 2007	697739	49815
3	February 2007	697740	49815
4	February 2007	697741	49815
5	February 2007	697742	49815
6	February 2007	697651	49815
7	February 2007	697652	49815
8	February 2007	697653	49815
9	February 2007	697654	49815
10	February 2007	697655	49815

(d) Similarly, it has been observed that while making payments by demand drafts through cheques though the payments are made to one party on one particular point of time the same have been made by making different cheques of equivalent amount of same date which indicate that the person does not want to make single payment of big consolidated amount just to avoid of being noticed from tax authority implying that the such transactions are unaccounted transaction for which assessee (concern parties) do not have any valid source. The examples are as under:

1. First Example: Flag C-1

S.No.	Date	Issued Cheques	Payment Amount (Rs.)	Name of the party
1	February 2007	928607	500000	M/s C P Industries.
2	February 2007	928606	500000	M/s C P Industries.
3	February 2007	928605	500000	M/s C P Industries

2. Second Example: Flag C-2

S.No.	Date	Issued Cheques	Payment Amount (Rs.)	Name of the party
1	February 2007	928647	500000	M/s Asha Oil Indu.
2	February 2007	928648	500000	M/s Asha Oil Indu.
3	February 2007	928649	500000	M/s Asha Oil Indu.

27. Thereafter there is reference of income tax return on record. On a scrutiny of the same, it transpires that the business of the society and the family members are largely unaccounted and the income earned by providing the payment facilities to the members of the local traders are remained unaccounted as income tax returns are not filed in most of the cases. The authority concerned has drawn inference which is apt to reproduce hereinbelow:

> "The above facts shows that these societies are being used as facilitator of providing accommodation entries in terms of payments through demand draft, pay orders and cheques on behalf of members and traders of Gwalior from the bank account of the societies. **These payments most likely not reflected in the bank accounts of the persons / parties in whose behalf these payments are made as had these payments are accounted for by these traders then there is no reason why they have not routed these payments from their own bank accounts rather than the accounts of societies.** These payment transaction are mostly being made to effect the outstation purchases by the local traders. These purchases remains unaccounted and not disclosed in the Income Tax eturn by these traders and the investment in these purchases represents the unaccounted/undisclosed investment of the traders which remain escaped from taxation.
>
> The above Samities are co-operative society and are being managed and controlled by Shri Akhil Singhal, Shri Narendra Singhal, Shri Ravindra Singhal and Shri Sumit Goyal. All these persons are relaatives of Shri Akhil Singhal. **Further, it has been gathered that Shri Narendra Singhal and his son Shri Prashant Singhal is also operating another similar kind of Samiti in the name and style of M/s Hindustan Sakh Sahkarita Maryadit, Dal Bazar, Gwalior.** As per local enquiry and market report none on these Samities are filling their Income Tax returns. This regard the PAN data base of the Department was also searched and it was found that none of the above society have been allotted any PAN which confirmed that these societies do not filed their I.T. Returns.
>
> **The perusal of three bank account for around one year period revealed that through these three accounts total accommodation payments in terms of cheques and demand drafts were isued to the extent of Rs.130 Crores. The Samities charge commission on his**

service charges for providing this services. In the similar case at Katni, it has been found that the rate of commission/service charges for providing these accommodation payments is @ Rs.1/- per thousand. If this rate is applied then a minimum of Rs. 13,00,000/- income has accrued to the society in respect of these three bank account transactions. Similar income are accruing to other societies most of these societies and person who are managing them are not filing their IT Return therefore, this commission income is remained escaped from taxation.

Thus the entire operations of the Societies of providing accommodation payment entires are not declared to the Income Tax Department and the income earned in the form of commission/fees for providing such facilities are mostly escaped from assessment. Further, the sources of these payments contributed by the members of the society and other local traders on whose behalf payments were made are not accounted for by these persons in their books of account which implies that all these transactions are represents the unaccounted transaction of these traders/members of the societies. Therefore, the sources of investment in respect of these transactions are remained unexplained and met from the undisclosed sources of these members /traders which have escaped from assessment / taxation.

In this regard it may be mentioned that as per the latest amended provisions of Section 292C, the assessee has to clearly establish the ownership and belongingness of the entires through which large amount of deposits and withdrawals on account of payments through demand drafts and outwards clearing cheques are transacted, otherwise as per the provisions of Sec. 292C, all the books of accounts, documents, money and valuable and other part of books of account found during the course of search and survey U/s 132(1) / 133A shall be presumed to be belong to such person and the content of those documents shall be treated as true.

Further on the ground floor of the building at Naya Bazar Gwalior, Cloth trading business is being carried out in the name and style of M/s Dwarkadas Baboolal. The said firm is found to be owned by Shri Baboolal Singhal who is a father of Shri Akhil Singhal the Chairman of above mentioned co-operative societies. As per local enquiries it has been found that the turn over of said firm is in crores of rupees and earn huge profit even than no income tax return is been filed in respect of such firm.

The above facts shows Shri Akhil Singhal, his father Shri Baboolal Singhal, Shri Ravindra and Shri Narendra Singhal are earning huge income by running of co-operative society by the name of M/s The Gwalior Citizen Sakh Sahakarita Maryadit, M/s New Central Sakh Sahakari Samiti and M/s Hindustan, Sakh Sahakarita Maryadit and business of m/s Dwarkadas

Baboolal of cloth trading. Through these three samities they are facilitating the local traders of Gwalior and the members of the societies by issue of demand drafts and pay orders in lieu of cash deposits and other inwards clearing for which these traders/members have no valid sources. Thus large amount of the income in respect of these three samities, the family of Shri Akhil Singhal, Nasrendra Singhal, Ravindra singhal and large number of members and local traders of the Gwalior are remained unaccounted and escaped from assessment/taxation. Through these means Shri Akhil Singhal and his family members have generated huge incomes and created assets and wealth which are not disclosed to the income tax department. These investment and valuable will never be revealed to the department if notice u/s 142(1) or Summons u/s 131 are issue to them. Therefore, it would be in the fitness of thing, that if the Director of Income Tax (Investigation) Bhopal deemed it fit, than warrant of authorization u/s 132(1) may be issue in respect of following persons / premises as detailed in the note."

28. Be it noted that the decision of the Deputy Director (Investigation) has been concurred with by the Additional Director (Investigation). From the aforesaid facts which have been brought on record it is extremely difficult to accept the plea put forth by the learned counsel appearing on behalf of the assessee-petitioner that there is no material on record and the material has no rational nexus or it has been done on mala fide. In fact ample data has been given. The reason to believe is based on materials available. There is application of mind and there is a rational nexus. It is not a case where action has been taken on mere suspicion. It is not a case where on receipt of such information from third source action has been taken. In the case at hand the Revenue has formed an opinion on the basis of material collected. Sufficiency of materials cannot be gone into by this Court. True it is, action under Section 132(1) of the Act of 1961 is a serious matter and intrudes in the privacy of a citizen but the fact remains once there is an opinion and there is rationality and there is application of mind, this Court under Article 226 of the Constitution cannot interfere in the matter at this stage of these proceedings.

29. In view of the above, finding no case made out for interference, petition stands dismissed.

Petition dismissed.

I.L.R. [2008] M. P., 2038

WRIT PETITION

Before Mr. Justice Shantanu Kemkar

24 June, 2008*

MAHESH KUMAR SWARNAKAR ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

A. Constitution, Articles 226/227 - *Voluntary Retirement - Petitioner applied on 01.09.2005 seeking voluntary retirement w.e.f. 01.12.2005 - Application accepted on 05.10.2006 - Petitioner withdrew the said application on 06.10.2006 - Held - Premature acceptance of application for voluntary retirement would not impede or deny his right to withdraw application before the effective date - He had right to withdraw or revoke it before it became effective - Not allowing the petitioner to withdraw the application for voluntary retirement is wholly illegal and unjustified - Order quashed - Petitioner directed to be reinstated - Petition allowed.* (Paras 6, 7 & 9)

क. संविधान, अनुच्छेद 226/227 – स्वैच्छिक सेवानिवृत्ति – याची ने स्वैच्छिक सेवानिवृत्ति 01.12.2005 से प्रभावी होना चाहते हुए 01.09.2005 को आवेदन दिया – आवेदन 05.10.2006 को स्वीकृत हुआ – याची ने उस आवेदन को 06.10.2006 को वापस लिया – अभिनिर्धारित – स्वैच्छिक सेवानिवृत्ति के आवेदन की समयपूर्व स्वीकृति उसके प्रभावशील होने के दिनांक से पूर्व उसे वापस लेने में न तो बाधक होगी और न उसके अधिकार से इंकार किया जायेगा – उसे प्रभावी होने के पूर्व वापस लेने या रद्द करने का अधिकार है – याची को उसका स्वैच्छिक सेवानिवृत्ति का आवेदन वापस लेने की मंजूरी न देना पूर्णतः अवैध और अनुचित – आदेश अभिखण्डित – याची को सेवा में बहाल करने का निदेश दिया – याचिका मंजूर।

B. Back wages - *Award of back wages is not automatic and the Courts are required to examine the facts and circumstances of the case - Petitioner willing to work but not permitted to work - Held - Petitioner entitled to arrears of salary and allowances w.e.f.01.12.2005.* (Para 8)

ख. बकाया वेतन – बकाया वेतन का अवार्ड स्वचालित नहीं है और न्यायालयों से मामले के तथ्यों एवं परिस्थितियों की जांच अपेक्षित है – याची कार्य करने के लिये तत्पर परन्तु उसे कार्य करने की अनुमति नहीं – अभिनिर्धारित – याची 01.12.2005 से बकाया वेतन और भत्ते पाने का हकदार।

Cases referred :

1988 SCC (L&S) 126, 1989 (Suppl.) (2) SCC 175, 2000 AIR SCW 4031, 2006 LAB. L.C. 1818, 2007 (1) MPHT 173.

D.M. Kulkarni, for the petitioner.

Arvind Gokhale, G.A., for the respondent No.1.

S. C. Bagadiya with *G.K. Mandhaniya,* for the respondent Nos. 2 to 5.

ORDER

SHANTANU KEMKAR, J.:–Petitioner was appointed on the post of Sub -engineer on 26.6.82 in Mandi Samiti, Neemuch. On 4.10.03, he had applied for voluntary

*W P. (S) No.359 2006 (Indore)

retirement. The Fifth respondent vide letter dated 19.12.03 (Annexure P-10) informed the petitioner to submit the application for voluntary retirement in the prescribed form No.28. Thereafter vide letter dated 1.9.05 (Annexure P-11), petitioner submitted an application seeking voluntary retirement w.e.f. 1.12.05. The, respondents vide letter dated 5.10.2005 (Annexure P-2) accepted the petitioner's application for voluntary retirement w.e.f. 1.12.05.

2. However on 6.10.2005, the petitioner submitted an application stating therein that he does not want to retire and his application of seeking voluntary retirement be treated as cancelled. The said application dated 6.10.05 (Annexure P-12) was forwarded by Fifth respondent Dy. Director to the Second Respondent Managing Director of MP Rajya Krishi Vipanan Board (**for short the, 'Board'**) vide letter dated 10.10.05 (Annexure P-13) : However, no orders were passed on the said application for withdrawal of application of voluntary retirement and the petitioner was relieved from his services by the respondent vide order dated 1.12.05 (Annexure P-4). On the same day itself, petitioner attended the office and submitted an application Annexure P-14, expressing his willingness to perform his duties and to continue his services, but, was not allowed to work and taken back in service. .Aggrieved, the petitioner has filed this petition under article 226/227 of the Constitution of India.

3. Though in the petition, petitioner has sought for the relief in regard to promotion also, but, at the time of hearing, learned counsel for petitioner confined the prayer to the extent of directing the respondent/s to take back the petitioner in service with arrears of salary and allowances payable to him from 1.12.05 reserving the right to seek promotion in case petitioner succeeds by way of separate proceedings.

4. Contention of the petitioner's counsel is that after having withdrawn the application of voluntary retirement much prior to the effective date of his retirement, the action of the respondents in not allowing to withdraw the petitioner's application of voluntary retirement, is illegal and deserves to be quashed. According to him the respondents were not entitled to refuse to grant approval for withdrawal of the said application. In support of this contention, he placed reliance on the judgments of Supreme Court passed in the cases of *Balram Gupta Vs. Union of India* (1988 SCC (L&S) 126); *Punjab National Bank Vs. PK Mittal* (1989 (supplementary) (2) SCC 175); *Union of India Vs. Wing Commander T. Parthasarathy* (2000 AIR SCW 4031); *Jitendra Dev Barma Vs. State of Tripura & Anr.*(Gauhati High Court) 2006 LAB. LC. 1818); and a Division Bench judgment of this court in the case of *Director General Vs. Employees State Insurance Corporation and another* (2007 (1) MPHT 173 (DB)).

5. On the other hand, learned Sr. Counsel Shri SC Bagadiya appearing for respondents' no.2 to 5 has supported the action taken by the respondents contending that petitioner's application of seeking voluntary retirement having been accepted on 5.10.05, the petitioner was having no right to withdraw the same. He argued

that in the application for withdrawal of voluntary retirement, petitioner did not show any reason which shows that his conduct was not such requiring any attention on his application for withdrawal of voluntary retirement. He further argued that in case it is held that respondent Board has illegally not acceded to the petitioner's aforesaid application of withdrawal, at least the petitioner may not be awarded salary of the period in view of the fact that he himself was responsible for the situation.

6. Admittedly, petitioner had sought voluntary retirement vide application dated 1.9.05 w.e.f. 1.12.05. Much prior to the aforesaid effective date of retirement, he had submitted an application seeking withdrawal of the same. In the circumstances, in view of the law laid down by Supreme Court in the cases of *Union of India Vs. Wing Commander* (supra); *Punjab National Bank Vs. PK Mittal* (supra) and *Balram Gupta* (supra); the premature acceptance of petitioner's application for voluntary retirement would not impede or deny the right of petitioner to withdraw application for his voluntary retirement. Before the effective date, petitioner had right and was entitled to withdraw or revoke the request earlier made before it is really and effectively became effective. Merely because no reason has been put forward by the petitioner in his application of withdrawal of his voluntary retirement, it cannot be said that petitioner's conduct was not as such so as to warrant the respondent Board to act upon the said application.

7. In view of the aforesaid legal position, I have no hesitation to hold that the action taken by respondent board in not allowing the petitioner to withdraw his application for voluntary retirement, is wholly illegal and unjustified and the same cannot be sustained, consequently, the order of relieving the petitioner dated 1.12.2005(Annexure P 4) is hereby quashed.

8. True it is that award of back wages is not automatic and the courts are required to examine the facts and circumstances of the case to award or deny the back wages. In the present case, it has not been disputed by the respondents that on 1.12.05 itself, petitioner submitted an application showing his willingness to continue to work and to perform his duties. The Supreme Court in the case of *JN Shrivastava* (supra) in similar circumstances negative the contention of the employer that no back salary should be allowed to the appellant as the appellant did not work and therefore, on principles of **'No work no pay'**, the amount of back salary should not be given to the appellant by holding that this submission does not bear scrutiny as the appellant was always ready and willing to work, but the respondent did not allow him to work after 31.1.1990. The Supreme Court awarded all the monetary benefits by treating him to have continuously worked. In the present case, in view of the aforesaid fact that the petitioner was ready and willing to serve but he was not allowed to work, in my considered view, he would be entitled to receive arrears of salary and other allowances from 1.12.05.

9. Accordingly, the petition succeeds and is hereby allowed. The respondents are directed to reinstate the petitioner in service with salary w.e.f. 1.12.2005 and

other consequential benefits So far as the petitioner's claim for promotion, it will be open for the petitioner to agitate his grievance by way of separate proceedings if need so arises. No orders as to the costs.

Petition allowed.

I.L.R. [2008] M. P., 2041
WRIT PETITION
Before Mr. Justice S.K. Gangele
1 July, 2008*

PREM NARAYAN BHAGEL & ors. ... Petitioners
Vs.
BANCHANDRA & ors. ... Respondents

Motor Vehicles Act (59 of 1988), Section 147, Motor Vehicles Rules, M.P., 1994, Rule 240 - *Powers of Executing Court - Claims tribunal passed an award in favour of claimants (petitioners) that owner & driver would be severally & jointly liable, and further directed that Insurance Company shall make the payment to the claimants and thereafter Insurance Company shall recover the amount from owner - Insurance Company deposited the amount of award in the Executing Court - Executing Court ordered that until & unless the owner shall furnish the security of the amount of compensation, the amount be not paid to claimants - Order challenged in writ petition - Held - Executing Court has no power to impose such condition which was not part of the original award - Petition allowed.* (Para 12)

मोटर यान अधिनियम (1988 का 59), धारा 147, मोटर यान नियम, म.प्र., 1994, नियम 240 – निष्पादन न्यायालय की शक्तियाँ – दावा अधिकरण ने दावेदारों (याचियों) के पक्ष में अवार्ड पारित किया कि स्वामी और चालक संयुक्ततः और पृथकतः दायी होंगे, और निदेशित किया कि बीमा कम्पनी दावेदारों को भुगतान करेगी और तत्पश्चात् बीमा कम्पनी स्वामी से राशि वसूल करेगी – बीमा कम्पनी ने अवार्ड की राशि निष्पादन न्यायालय में जमा की – निष्पादन न्यायालय ने आदेशित किया कि जब तक स्वामी प्रतिकर की राशि की प्रतिभूति पेश न करे तब तक दावेदारों को राशि का भुगतान न किया जाए – आदेश को रिट याचिका में चुनौती दी – अभिनिर्धारित – निष्पादन न्यायालय को ऐसी कोई शर्त आरोपित करने की शक्तियाँ नहीं हैं जो मूल अवार्ड का भाग नही थी – याचिका मंजूर।

Cases referred :

AIR (33) 1951 SC 189, (2005) 6 SCC 481, 2004 ACJ 724, 2006 ACJ 1336, 2004 ACJ 2094, AIR 1960 SC 388, (1996) 5 SCC 728, 2004 ACJ 721.

P.C. Chandil, for the petitioners.
B.N. Malhotra, for the respondent No.3.
None, for the respondent No.1 & 2, though served.

ORDER

S.K. GANGELE, J.:–Petitioners have filed this petition challenging the order

*W.P. No.1173/2008(S) (Gwalior)

dated 12.02.2008 passed in execution proceedings registered as Claim Execution No. 19/06X07.

2. Petitioners - claimants filed a claim application before 3rd Additional Motor Accident Claims Tribunal (Fast Track Court), Dabra, district Gwalior with regard to payment of compensation on account of death of one Kishan Lal Bhagel. The aforesaid application was registered as Claim Case No. 19/06. Learned Claims Tribunal passed an award on 23.08.2007 and held that respondents No. 1 and 2 would be severally and jointly liable to pay an amount of Rs.1,59,500/- to the petitioners - claimants. The Claims Tribunal further directed that respondent No. 3 shall make the payment to the claimants and thereafter it shall recover the amount from the respondent No.2, Ramswaroop. Respondent No.3 is an Insurance Company. The Directions issued by the Claims Tribunal are in Hindi, which have been reproduced in verbatim as under :-

"1. अनावेदक कमांक–1 व 2 संयुक्ततः व पृथकतः आवेदकगण को प्रतिकर राशि 1,59,500/– रूपए (एक लाख उनसठ हजार पांच सौ) का भुगतान करें ।

2. उक्त प्रतिकर की राशि का भुगतान अनावेदक कमांक–3 बीमा कंपनी आवेदकगण को करेगी, भुगतान के पश्चात् बीमा कंपनी भुगतान की गई प्रतिकर राशि को अनावेदक कमांक–2 रामस्वरूप से वसूल करने की अधिकारी होगी ।

3. उक्त प्रतिकर की राशि पर आवेदन पत्र प्रस्तुति दिनांक 16.06.05 से भुगतान होने की तिथि तक सात प्रतिशत वार्षिक की दर से ब्याज भी अदा किया जावे ।

4. क्लेम आवेदन का व्यय अनावेदक कमांक 1 व 2 वहन करेगें ।

5. अधिवक्ता शुल्क 500/– रूपए (पॉच सौ) नियत की जाती है । तदनुंसार व्यय तालिका बनाई जावे ।

3. Petitioners filed an execution proceeding before the trial Court. In the meanwhile respondent No.3 deposited the amount, as directed by the Claims Tribunal, in the Executing Court. The Executing Court vide impugned order ordered that until and unless the respondent No.2 shall not furnish security of the amount of compensation, the amount be not paid to the petitioners.

4. Learned counsel for the petitioners has submitted that the directions issued by the Executing Court are arbitrary, illegal and contrary to the award. The Executing Court has no jurisdiction to differ from the terms and conditions of the award passed by the Claims Tribunal. In support of his contentions, learned counsel relied upon judgments in *V. Ramaswami Aiyengar & others v. T.N.V. Kailasa Thevar,* AIR (33) 1951 SC 189 and *M/s TCI Finance Ltd. v. Calcutta Medical Centre Ltd. & another,* 2005 (6) Supreme 481. Contrary to this, learned counsel for respondent No. 3 has submitted that the Executing Court has directed furnishing of security as per law and it has powers to issue such direction. In support of this contention learned counsel relied upon the judgments of Hon'ble the Supreme Court in *Shaikh Israj v. Rekha and others.* 2004 ACJ 724; *National Insurance Co.*

Ltd. v. Kusum Rai and others, 2006 ACJ 1336 and *National Insurance Co. Ltd. v. Challa Bharathamma and others*, 2004 ACJ 2094.

5. Undisputed facts of the case are that the petitioners filed a claim application before the Claims Tribunal as per the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act of 1988'). The learned Claims Tribunal passed an award and ordered for payment of compensation of Rs.1,59,500/-. The directions issued by the Claims Tribunal has been reproduced above in verbatim which are in Hindi. The direction No.2 of the Claims Tribunal is that respondent No. 3 shall pay the amount to the petitioners and thereafter it shall recover the same from respondent No. 2. There is no condition mentioned by the learned Claims Tribunal in the award that the amount of compensation be paid to the petitioners only if respondent No.2, owner of the offending vehicle furnishes a security to the aforesaid amount before the Executing Court. It is also a fact that respondent No.3 did not file any review application or further appeal against the award and directions issued by the Claims Tribunal have become final.

6. Section 147 of the Act of 1988 prescribes procedure with regard to recovery of amount from Insurer as arrears of Land Revenue. The State Government has also framed Rules, named as "the Madhya Pradesh Motor Vehicles Rules, 1994" (hereinafter referred to as 'the Rules of 1994") in exercise of powers conferred by Sections 28, 38, 65, 95, 96, 107, 111, 138, 159, 176, 211 and 213 of the Motor Vehicles Act, 1988 (No. 59 of 1988). Rule 240 thereof prescribes procedure to be followed by the Claims Tribunal in holding enquiries, which is as under :-

> "240. Procedure to be followed by Claims Tribunal in holding enquiries .- Application of certain provisions of Code of Civil Procedure 1908; Save as otherwise expressly provided in the Act or these rules, the following provisions of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) namely, those contained in Order V, Rules 9 to 13 and 15 to 20, Order IX, Order XVIII, Rule 3 to 10, Order XVI, Rules 2 to 21, Order XVII, Order XXI and Order XXIII, Rules 1 to 3 shall apply to proceedings before a Claims Tribunal in so far as they may be applicable thereto."

7. Order XXI of the Code of Civil Procedure prescribes procedure with regard to execution of decrees and orders. It is clear from the aforesaid provisions that the Executing Court while executing the award passed under the provisions of Motor Vehicles Act bound by the provisions of Order XXI of the Code of Civil Procedure.

8. The Hon'ble Supreme Court in *V. Ramaswami Aiyengar & others v. T.N.V. Kailasa Thevar*, AIR (33) 1951 SC 189 has held as under with regard to powers of the Executing Court :-

> "(a) Civil P.C. (1908), S.38 - Powers of executing Court.
>
> The duty of an executing Ct. is to give effect to the terms of the decree It

has no power to go beyond its terms. Though it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation. (Para 8)"

The aforesaid principle has further been affirmed by Hon'ble the Supreme Court in *Topanmal Chhotamal v. M/s Kundomal Gangaram and others*, AIR 1960 SC 388.

9. In *Rameshwar Dass Gupta v. State of U.P. and another*, (1996) 5 SCC 728 the Hon'ble Supreme Court held as under :-

"An executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC. In view of the fact that it was a money claim, what was to be computed was the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder, the executing court exceeded its jurisdiction in stepping out and granting a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution. The order of the executing was without jurisdiction and therefore, void.

though the High Court normally exercises its revisional jurisdiction under Section 115 CPC but once it is held that the executing court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, there was no illegality in the order passed by the High Court in interfering with the setting aside the order directing payment of interest."

10. It is true that in some judgments with regard to the Motor Vehicles Act cited by the learned counsel for respondent No.3, Hon'ble the Supreme Court has passed the observation that the Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. The relevant direction is as under issued by the Hon'ble Supreme Court in *National Insurance Co. Ltd. v. Kusum Rai and others*, 2006 ACJ 1336.

"16. In *Nanjappan*, 2004 ACJ 721 (SC), this court opined :

"(8) Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's case*, 2004 ACJ 428 (SC), that the insurer shall pay the quantum of compensation fixed by the Claims Tribunal, about which there was no dispute raised, to respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject- matter of

determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with the law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

11. However, the aforesaid directions have been issued by Hon'ble the Supreme Court on an appeal filed by the Insurance Company against the award passed by the Claims Tribunal and against the order passed by the High Court in appeal.

12. In the present case, the question before this Court is that whether the Executing Court has power to impose certain conditions which have not been mentioned in the award and decree. In the present case the Executing Court has imposed a condition that the amount of compensation as awarded by the Claims Tribunal shall not be paid to the claimants - petitioners until and unless the owner of the offending vehicle shall not furnish a security before the Tribunal of the aforesaid amount. There is no such direction issued by the Claims Tribunal in the award. In my opinion, as per the principle of law laid down by Hon'ble the Supreme Court, quoted above, the Executing Court has no power to impose such conditions.

13. Consequently, the petition of the petitioners is disposed of with the following directions :-

(1) That the order passed by the Executing Court, Annexure P-1 dated 12.02.2008 is hereby quashed upto the extent that the amount deposited by respondent No.3 shall not be paid to the petitioners until and unless respondent No.2, owner of the offending vehicle, shall not furnish security of the amount of compensation.

(2) It is hereby directed that the amount of compensation under the impugned award be paid to the petitioners - claimants as deposited by respondent No.3 as per the award and the Executing Court may proceed further against respondent No.2, the owner of the offending vehicle, as per law.

(3) No order as to cost.

Petition disposed of.

I.L.R. [2008] M. P., 2046

WRIT PETITION

Before Mr. Justice S.C. Sharma

2 July, 2008*

SATYANARAYAN GUPTA ... Petitioner

Vs.

M.P. HOUSING BOARD & ors. ... Respondents

Civil Services (Pension) Rules, M.P., 1976, (Work Charged & Contingency Paid Employees) Pension Rules, M.P., 1979, Grah Nirman Mandal Adhiniyam, M.P., 1972, (3 of 1973) Section 15, Housing Board Regulations, M.P., 1977, Regulation 3 - *Petitioner appointed as Time Keeper on 25.07.1973 as a Work Charge & Contingency Employee in the M.P. Housing Board - Regularised on the post of Assistant on 14.03.1995 - Retired on 30.08.2003 but was denied pension - Held - Provisions of Rules 1976 & Rules 1979 are applicable to employees who have been rendered their services as Work-Charge & Contingency paid employees also in the M.P. Housing Board - Petitioner entitled for pension.* (Paras 7-11)

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, (कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारी) पेंशन नियम, म.प्र., 1979, गृह निर्माण मण्डल अधिनियम, म.प्र., 1972, (1973 का 3) धारा 15, गृह निर्माण मण्डल विनियम, म.प्र., 1977, विनियम 3 – याची की नियुक्ति तारीख 25.07.1973 को मध्य प्रदेश गृह निर्माण मण्डल में कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारी के रूप में हुई – 14.03.1995 को वह सहायक के पद पर नियमित हुआ – तारीख 30.08.2003 को वह सेवानिवृत्त हुआ किन्तु उसे पेंशन देने से इंकार किया गया – अभिनिर्धारित – नियम 1976 और नियम 1979 के उपबंध ऐसे कर्मचारियों को लागू होते हैं जिन्होंने म.प्र. गृह निर्माण मण्डल में कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारियों के रूप भी अपनी सेवाएँ दी हैं – याची पेंशन के लिए हकदार।

Case referred :

1995 Supp. (4) SCC 748.

Vivek Jain, for the petitioner.

Anil Sharma, for the respondents/Board

O R D E R

S.C. Sharma, J:- The petitioner before this Court who is a retired employee of Madhya Pradesh Housing Board, has filed this present petition under Articles 226/227 of the Constitution being aggrieved by action on the part of the respondents / Board in not paying him pension and other retiral dues.

2. It has been stated in the writ petition that the petitioner was appointed as a time keeper in the work-charge establishment by an order dated 25th July, 1973 for a period of three months (Annexure P/1). It has also been stated in the writ petition that the petitioner continued to serve under the work-charge establishment of the M.P. Housing Board with the satisfaction of the higher authorities and he was subsequently placed in the time scale of time keeper by an order dated 05th

*W.P. No.304/2004(S) (Gwalior)

October, 1973. The petitioner has further stated that his case was considered for regularization in regular establishment on the post of Office Assistant and an order dated 06th August, 1986 was issued regularizing him on the post of Assistant. However, the order of regularization was not given effect to as the petitioner was not holding the requisite qualification at the relevant point of time and was holding a degree of 'Madhyama' which was not recognized by the authorities. The petitioner's case was again subsequently considered for regularization as an Assistant and by an order dated 14th March, 1995 his service were regularized. The petitioner was regularized as a Assistant under the regular establishment and he continued to work on the same post till his retirement i.e. 30th August, 2003. It has also been stated by the petitioner that he has put in a total 30 years of service with the respondents/Board and has received the General Provident Fund to the tune of Rs. 81,202/- which was sanctioned by the authorities vide order dated 28th August, 2003. It has also been stated by the petitioner that he has put in 22 years of service under the work-charge establishment and followed 8 years of service under the regular establishment and therefore he is entitled for grant of pension keeping in view the provisions of Madhya Pradesh (Work Charge and Contingency Paid Employees) Pension Rules, 1979 (hereinafter referred to as 'the Rules of 1979') read with M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred to as 'the Rules of 1976').

3. The respondents/Board have filed a reply and in the reply it has been stated by the respondents that the Madhya Pradesh Housing Board has adopted the M.P. Civil Services (Pension) Rules, 1976 and as per the provisions of the Rules of 1976, the qualifing service required for entitlement to pension is 10 years and as the petitioner is having 8 years, 3 months and 25 days regular service, therefore, under the provisions of the Rules of 1976 , the petitioner is not entitled for grant of pension as claimed by him. It has also been stated by the respondents that the Rules dealing with the payment of pension in respect of work-charge contingency paid employees known as Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 have not been adopted by the Housing Board and therefore because the Rules of 1979 have not been adopted by the Housing Board, the question of counting the services of the petitioner rendered by him as work-charge employee does not arise. The respondents have further submitted that the petitioner has not put in 10 years regular service under the regular establishment, and, therefore, he is not entitled for grant of pensionary benefits. The respondents have also relied upon a judgment rendered by this Court in the case of *Chandrika Prasad Pandey vs. The M.P. Housing Board* (WP No. 5997/2001) passed on 29th August, 2003 stating that the identical placed employees were denied the benefit of pension. It has also been stated by the respondents that the petitioner is entitled only for gratuity amounting to Rs. 61,526/- and after deductions, an amount of Rs. 50,526/- has been paid to the petitioner and therefore, the petitioner is not entitled for any relief whatsoever kind.

4. The petitioner has also filed a rejoinder and in the rejoinder it has been stated by the petitioner that the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 are very much applicable to the M.P. Housing Board. It has also been stated on behalf of the petitioner that in case petitioner was not covered under the Pension Rules of 1979 and in case the provisions of Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 were not applicable, the Housing Board should have deducted the requisite contribution and should have forwarded the requisite contribution to the Employee Provident Fund Commissioner, entitling the petitioner to receive pension from the Employee Provident Fund Organization. In the present case, the respondents/Board is not paying the pension to the the petitioner. On the one hand, the respondents/Board has not paid the pension on the ground that the Rules of 1979 are not applicable in the case of the petitioner and on the other hand as the contribution were not deducted as per the scheme framed under the provisions of Employee Provident Funds and Miscellaneous Provisions Act, 1952, the petitioner was not made a member of pension scheme under the Employees Provident Fund and Misc. Provision Act, 1951. The petitioner is not receiving pension from the Employees Provident Fund Organization also. The petitioner has also given examples of five employees who have retired in the year 1986 onwards stating categorically on affidavit that the employees referred in the rejoinder were also working as work-charge employees and they are being paid the pension by the Housing Board.

5. The respondents/Board in the additional return has denied the averments made in the rejoinder and it has been stated that because the petitioner has not completed 10 years of service as required under the Rules of 1979, he is not entitled for pension. It has also been stated by the respondents that the M.P. Housing Board Regulations, 1977 have been framed by the Housing Board in exercise of powers conferred by virtue of provisions of Madhya Pradesh Grah Nirman Mandal Adhiniyam, 1972 (hereinafter referred to as 'the Adhiniyam of 1972') and a notification has been issued by the Housing Board dated 11th September, 1996 by which the M.P. Civil Services (Pension) Rules, 1976 only have been adopted. As the Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 rules have not been adopted, the question of granting pension to the petitioner by taking into account the services rendered by him as work-charged employee, does not arise. In respect of employees cited by the petitioner, it has been stated by the respondents that the employees have retired long back and the petitioner has not impleaded them as respondents and therefore, the respondents are not in a position to comment upon the plea raised by the petitioner. It has been further submitted that if some wrong has been done in respect of other employees, the benefit cannot be extended to the petitioner.

6. After carefully consideration of the arguments advanced by the learned counsel for the parties, it is evident that the petitioner was initially appointed under

the work-charge establishment on 25th July, 1973 and thereafter his services were regularized vide order dated 14th March, 1995, the petitioner has retired on attaining the age of superannuation on 30th August, 2003. As accepted by the respondents/ Board that the petitioner has put in 8 years, 3 months and 25 days as regular service under the regular establishment. In the present case, undisputedly, the petitioner has worked 22 years under the work-charge establishment and 8 years of service under the regular establishment.

7. The State of Madhya Pradesh has enacted Madhya Pradesh Grah Nirman Mandal Adhiniyam, 1972 which is an Act to provide for the incorporation and regulation of Housing Board in the State of Madhya Pradesh for th purpose of taking measures to deal with and satisfying the need of (housing accommodation and to undertake development scheme) and for the matter connected therewith. The aforesaid Act was enacted on 31st July, 1973, and Madhya Pradesh Housing Board was incorporated under the Act of 1972. Section 15 of the Madhya Pradesh Grah Nirman Mandal Adhiniyam, 1972 reads as under:-

> **"15. Conditions of service of officers and servants:-**
>
> (1)The remuneration and other conditions of service of the officers and servants of the Board appointed under Section 14, shall be such as may be determined by regulations.
>
> (2)Until regulations are made under sub-section (1), the remunerations and conditions of service of officers and servants of the Board shall be governed by the rules, orders and instructions relating to remuneration and conditions of service applicable to the officers and servants of the corresponding grade in the service of the State Government."

8. The M.P. Housing Board in exercise of powers conferred under Section 103 of the Madhya Pradesh Grah Nirman Mandal Adhiniyam, 1972 (3 of 1973) has issued regulations known as Madhya Pradesh Housing Board Regulations, 1977, which have been confirmed and approved by the State. The Regulations 3 of the Regulations of 1977 reads as under:-

> "3. Application of certain rules applicable to Government servants:- The Madhya Pradesh Civil Services (Medical Attendance) Rules, 1958, the Madhya Pradesh Civil Services (Conduct) Rules, 1965 and the Madhya Pradesh Civil Services (Classification, Control and Appeals) Rules, 1966, as amended from time to time, shall apply to the officers and servants of the Board as they are applicable to a Government servant of similar status to the extent they are not inconsistent with the provisions of the Act and these regulations."

The regulations of 1977 does not deal with the payment of pension to an employee of M.P. Housing Board. There is a categoric stand on the part of the

respondents/Board that the M.P. Civil Services (Pension) Rules, 1976 were made applicable to the employees of the Housing Board by issuing a notification by the M.P. Housing Board on 11th September, 1996. The notification dated 11th September, 1996 reads as under:-

मध्यप्रदेश गृह निर्माण मण्डल, मुख्यालय
पर्यावास भवन – जेल रोड
भोपाल

।। कार्यालयीन आदेश कमांक 6311/11•09•1996

मध्यप्रदेश शासन, आवास एवं पर्यावरण विभाग के स्वीकृति आदेश क0 एफ0 23 153 | 94/32–1 दिनांक 13,08,96 एवं दिनांक 2,9,96 के अनुसार मध्यप्रदेश गृह निर्माण मण्डल के अधिकारियों/कर्मचारियों को राज्य शासन के कर्मचारियों की भांति पेंशन योजना लागू की जाती है ।

(2) यह योजना मण्डल द्वारा स्वयं के वित्तीय स्त्रोंतों से संचालित की जाना है । इस हेतु भविष्य निधि योजना में मण्डल अंशदान की राशि को पेंशन निधि में परिवर्तित किया जाता है ।

(3) उक्त योजना का लाभ दिनांक 1,7,73 को अथवा उसके पश्चात सेवानिवृत्त/दिवंगत नियमित मण्डल कर्मचारियों/अधिकारियों को प्राप्त होगा । इस हेतु सेवानिवृत्त कर्मचारी जिन्होनें अंशदायी भविष्य निधि की मण्डल अंशदान की राशि प्राप्त कर ली है उन्हें यह राशि मण्डल द्वारा किए गये भुगतान दिनांक के रकम वापस लौटाने की दिनांक तक 6% ब्याज सहित रकम वापस करना होगा । यदि पूर्व में किसी कर्मचारी को ग्रेच्युटी एक्ट 1972 के अन्तर्गत ग्रेच्युटी का भुगतान किया गया है तो इन नियमों के अंतर्गत निर्धारित ग्रेच्युटी राशि में से उसका समायोजन किया जायेगा ।

(4) यह योजना 1,7,73 से सेवानिवृत्त कर्मचारी पर लागू होगी । दिनांक 1,7,73 के पूर्व मण्डल सेवा में भर्ती होने वाले कर्मचारी को यह अधिकार होगा कि वे चाहें तो अंशदायी भविष्य निधि के सदस्य रह सकते है, किन्तु इस हेतु उन्हें इस आदेश के प्रसारण से 3 माह के अन्दर अंशदायी भविष्य निधि में रहने का विकल्प देना होगा । विकल्प निर्धारित समय में प्राप्त न होने पर यह माना जाएगा कि उन्होंनें पेंशन योजना स्वीकार कर ली है ।

गृह निर्माण आयुक्त
मध्यप्रदेश गृह निर्माण मण्डल,भोपाल

9. From a bare perusal of the aforesaid notification dated 11th September, 1996, it is evident that the Housing Board has resolved to grant the benefit of pension to its employees. It is also evident from the aforesaid notification that the necessary permission has been accorded by the State Government vide order dated 13th August, 1996 and 02nd September, 1996. The learned counsel appearing for the Housing Board has also produced the aforesaid notifications which are referred in the notification dated 11th September, 1996 and from a bare perusal of the notifications dated 13th August, 1996 and 02nd September, 1996, it is evident that the benefit of pension has been extended to the employees of the M.P. Housing Board. The notification dated 11th September, 1996, nowhere states that it is only

the M.P. Civil Services (Pension) Rules, 1976 which is being adopted by the Housing Board. By virtue of the notification dated 11th September, 1996, the benefit of pension which is admissible to the employees of the State Government has been extended to the employees of the M.P. Housing Board meaning thereby that it is not only the M.P. Civil Services (Pension) Rules, 1976 which has been made applicable, but the provisions of M.P. (work-charge and contingency paid employees) Pension Rules, 1979 will also be applicable in the case of the employees of the Housing Board. The notification makes them applicable in respect of employees of the Housing Board. The judgment referred to by the respondents/Board which is on record, is a judgment relating to an employee who has earlier worked as a daily wager, this Court while deciding the W.P. No. 5997/01 has dismissed the writ petition as it was case of a daily wager, who was regularized subsequently. The period spent as a daily wager was not counted towards qualifying service. The case of the petitioner is distinguishable on fact. The petitioner is certainly not a daily wager but he was worked as work-charge employee receiving a regular pay scale and his services were later on regularized under the regular establishment and therefore the judgment referred by the respondents/Board passed in W.P. 5997/01 dated 29th August, 2003, is distinguishable.

10. The learned counsel for the respondents/Housing Board has also referred to a judgment of the Apex Court in the case of *State of Punjab and others vs. Dev Dutt Kaushal and others* 1995 suppl. {4} SCC 748. After careful consideration of the aforesaid judgment cited by learned counsel, it is evident that in the aforesaid case, the question of computing services rendered by an individual in a private college for the purpose of pension was considered by the Apex Court. In the present case, the petitioner has not served under any private organization and he has served the Housing Board right from the inception of his service and therefore the judgment cited by the respondents/Board is again distinguishable.

11. Keeping in view the totality of circumstances and also keeping in view the notification dated 11th September, 1996 as it was resolved by the Housing Board to extend the benefit of pension to its employees, there remains no manner of doubt that the provisions of M.P. Civil Services (Pension) Rules, 1976 and the provisions of M.P. (Work-charge and Contingency Paid Employees) Pension Rules, 1979 are applicable in the present case and not only in the present case but also in all cases of other employees who have been rendered their services as work-charge employees. The petitioner is entitled for payment of pension by virtue of the provisions of M.P. (Work-charge and Contingency Paid Employees) Pension Rules, 1979 and also M.P. Civil Services (Pension) Rules, 1976. The respondents/Housing Board is, therefore, directed to consider the case of the petitioner and to grant him pension by taking into account the total period of service rendered by the petitioner as work-charge employee and as a regular employee. The petitioner shall be entitled for arrears of pension also.

12. The exercise of passing the order in the matter and paying pension along with arrears, in the light of the aforesaid observations, shall be concluded within a period of six months from today.

13. With the aforesaid observation, writ petition stands allowed. No order as to costs.

Petition allowed.

I.L.R. [2008] M. P., 2052

WRIT PETITION

Before Mr. Justice S.K. Kulshrestha & Mrs. Justice Manjusha P. Namjoshi

22 July, 2008*

RIZWAN @ RIJJU ... Petitioner

Vs.

STATE OF M.P. & ors. ... Respondents

National Security Act (65 of 1980), Sections 3(2), 8, 14(1) - Revocation of detention orders - Non-communication of information regarding right of detenu to file representation to Central Government - Held - It was mandatory that detenu was apprised of his right to make representation also to Central Government - As that was not done, therefore, right of detenu under Article 22(5) of Constitution impinged and curtailed - Detention order though can be maintained, the further detention cannot be allowed - Petition allowed. (Para 10)

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराएँ 3(2), 8, 14(1) – निरोध के आदेशों का प्रतिसंहरण – बन्दी को केन्द्रीय सरकार को अभ्यावेदन पेश करने के अधिकार की जानकारी संसूचित नहीं की – अभिनिर्धारित – यह आज्ञापक था कि बन्दी को उसके केन्द्रीय सरकार को अभ्यावेदन पेश करने के अधिकार से अवगत कराना था – चूंकि ऐसा नहीं किया गया, इसलिए संविधान के अनुच्छेद 22(5) के अधीन दिये गये बंदी के अधिकार का आघटन (impinged) और न्यूनता (curtailed) हुई – निरोध का आदेश यद्यपि पोषण किया जा सकता है, आगे निरोध में रखना मंजूर नहीं किया जा सकता – याचिका मंजूर।

Case referred :

(2008) 1 SCC 195.

P. Newalkar, for the petitioner.

Girish Desai, Dy.A.G., for the respondents.

ORDER

The Order of the Court was delivered by

S.K. KULSHRESTHA, J. :–This petition for a writ of Habeas Corpus has been filed by detenu Rizwan @ Rijju S/o Abdul Gaffar through his mother Raisabee assailing the order of detention dated 25th March, 2008 (Annexure-P/1), passed by the District Magistrate, Indore in exercise of the power conferred upon him by Section 3(2) of the National Security Act, 1980 (here-in-after referred to as "the Act") in pursuance whereof, he has been taken into custody and detained. In support of the order of detention, grounds (Annexure-P/4) as required by Section 8 of the Act, have been furnished to the detenu within the period prescribed therein.

---

*W.P No.3426/2008 (Indore)

2. In the grounds of detention, it is stated that on the festival of Holi, he had, on 22/3/2008 gone to the petrol pump and asked the Manager Manish Chouhan to give him petrol, who on his refusal, was abused by the detenu stating that he was supplying petrol to Hindus, but not to Muslims. Immediately thereafter, he alongwith his companions shot a bullet from the firearm which missed the said manager, but went through the window pane which broke. The bullet had caused damage to the pump and its machinery. There was every chance of spark and conflagration. The other grounds namely the ground No.1 refers to commission of an offence by him under Sections 323, 294, 506 read with Section 34 of the I.P.C.

3. The learned counsel for the petitioner has submitted that ground No.1 refers only to the trivial offence under the provisions of Indian Penal Code, which does not constitute any activity prejudicial to the public order but relates to law and order. Learned counsel submits that even the ground No.2 in which it is stated that he fired a bullet which missed the manager of the petrol pump and struck the glass, also does not constitute sufficient material for coming to the conclusion that it was prejudicial to the public order. Learned counsel has also submitted that although in the grounds of detention, it has been stated that the detenu has a right to file representation against his detention to the State Government [Additional Chief Secretary M.P. Government, Home (C) Department, Bhopal] and also to the Advisory Board and he has also a right to appear before the Advisory Board, nothing has been stated about the right of the detenu to file representation to the Central Government, with the result, the guarantee under Article 22(5) of the Constitution of India stands breached and defeated.

4. The short question that arises in the present case is as to whether on account of non-communication to the petitioner that he has a right to represent against his detention to the Central Government, the order of detention is vitiated.

5. Learned counsel for the petitioner has not entered the arena in-so-far-as the ground No.2 is concerned and its consequence being prejudicial to the public order. He has confined his argument to the effect that since he has not been apprised that he could make representation to the Central Government, the detention deserves to be quashed.

6. Learned counsel for the State has invited attention to the decision of the Supreme Court in *Union of India v. Harish Kumar* [2008 (1) S.C.C.195] in which in para 10 of the report, their Lordships have observed as under:-

> "The infraction of the constitutional right to make a representation on account of non-intimating the detenu about his right to make a representation or the opinion of the Advisory Board and the order of detention not being made within the period prescribed under law does not get into the satisfaction of the detaining authority while making an order of detention under Section 3(1) of the COFEPOSA Act. If the detaining authority on the basis of the materials before him did arrive at his satisfaction with regard to the necessity for

passing an order of detention and the order is passed thereafter, the same cannot be held to be void because of a subsequent infraction of the detenu's right or of non-compliance with the procedure prescribed under law. On such infraction and for non-compliance with the procedure prescribed under law, the further detention becomes illegal. But it does not affect the validity of the order of detention itself issued under Section 3 (1) of the Act by the detaining authority". (Emphasis Supplied)

7. Before proceeding to consider the case in the light of law, as here-in-above enumerated, by the Apex Court, it would be advantageous to refer to the provision for representation as contained in the act.

Section 14 (1) of the Act reads as extracted below:-

Revocation of detention orders-(1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1987 (10 of 1897), a detention order may, at any time, be revoked or modified:-

(a) notwithstanding that the order has been made by an officer mentioned in Sub-section (3) of Section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

8. It is quite luculent from the provisions contained in Clause-A that not only the State Government but the Central Government also can revoke the detention even in the case of the order passed by the Detaining Authority exercising powers under Section 3(2) read with the authorisation contained in sub-section 3 thereof.

9. The learned Dy.A.G., has pointed out that even if an infraction is complained, it is only the further detention which becomes illegal and not the order of detention.

10. Considering the fact that Central Government is also authorised to revoke the detention at any time, be it a detention order passed by the District Magistrate under Section 3(2) read with the power conferred under Section 3(3) of the Act or the State Government, we are of the considered view that it was mandatory that the detenu was apprised of his right to make representation also to the Central Government. It having not been done, we are of the considered view that the right of the detenu under Article 22(5) of the Constitution of India has been impinged and curtailed and the detention order though can be maintained, the further detention cannot be allowed.

11. In the result, this petition succeeds. The further detention of the detenu in pursuance of the order (Annexure-P/1) dated 25/3/2008 passed by the learned District Magistrate, Indore is set aside. It is directed that detenu be now released from custody, if not required in connection with any other offence.

Petition Succeeds.

I.L.R. [2008] M. P., 2055

APPELLATE CIVIL

Before Mr. Justice A.K. Shrivastava & Mr. Justice S.A. Naqvi

24 January, 2008*

ORIENTAL INSURANCE CO. LTD., BILASPUR ... Appellant

Vs.

INDRAPAL & ors. ... Respondents

A. Motor Vehicles Act (59 of 1988), Sections 149, 166 - *Whether on account of cancellation of policy, still insurer is liable to pay compensation - Yes, authorised agent of insurer collected premium in cash from insured - Insured also received cover note - Authorized agent issued cheque for the amount of premium in favour of insurer which was dishonoured - Policy cancelled due to dishonour of cheque - Held - Insurer is liable for act of his agent - Cannot be absolved of its liability.* (Paras 12 to 16)

क. मोटर यान अधिनियम (1988 का 59), धाराएँ 149, 166 – क्या पॉलिसी के रद्द होने पर भी बीमाकर्ता प्रतिकर अदा करने के लिए दायी है – हाँ, बीमाकर्ता के प्राधिकृत अभिकर्ता ने बीमाकृत से प्रीमियम की राशि नगद प्राप्त की – बीमाकृत को कवर नोट भी प्राप्त हुआ – प्राधिकृत अभिकर्ता ने प्रीमियम की राशि के लिए बीमाकर्ता के हित में चैक जारी किया जो अनादृत हुआ – चैक के अनादृत होने के कारण पॉलिसी रद्द की गई – अभिनिर्धारित – बीमाकर्ता उसके अभिकर्ता के कृत्य के लिए दायी है – उसके दायित्व से मुक्त नहीं हो सकता।

B. Motor Vehicles Act (59 of 1988), Section 166 - *Compensation - Claimant sustaining 40% permanent disability - Remained under treatment for six months - Compensation enhanced from Rs.57,000/- to Rs.1,52,000/- - Interest @ 7% p.a. on enhanced amount payable from the date of filing of claim petition.* (Paras 17, 18)

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर – दावेदार को 40% स्थाई निःशक्तता हुई – छः माह तक उपचार चला – प्रतिकर 57,000/– रुपये से बढ़ाकर 1,52,000/– रुपये किया – बढ़ी हुई राशि पर 7% वार्षिक ब्याज दावा पेश करने की तारीख से देय।

Cases referred :

(1904) 2 King's Bench 10, AIR 1915 PC 121.

Rakesh Jain, for the appellant.

Anil Dwivedi, for the respondent No. 1.

Shiv Kumar Dubey, for the respondent Nos.2 & 3.

ORDER

The Order of the Court was delivered by A.K. SHRIVASTAVA, J.- These two appeals have arisen out of an award dated 26th August, 2004 passed by learned II Additional Motor Accidents Claims Tribunal, Shahdol in Claim Case No. 11/2001.

2. M.A.No.70/2005 has been filed by the Insurer praying to dismiss the claim

*M.A. No.70/2005 (Jabalpur)

application by setting aside the impugned award and M.A.No.456/2005 has been filed by the claimant for enhancement of the award. Since both these appeals have arisen out of a common award, they are being disposed of by this common order.

3. In brief the case of claimant Indrapal as borne out from the application under section 166 of the Motor Vehicles Act, 1988 (in short **'the Act'**) is that on 7.4.2000 he was going to his village in a bus which was being driven by Awadhesh Patel and was owned by Ram Prasad Pandey, who were arrayed as non-applicants no. 2 and 1, respectively in the claim petition. As soon as the claimant alighted from the bus, driver started and drove the bus rashly and negligently, as a result of which he fell down and rear wheel of the bus ran over the claimant, on account of which his left leg was brutally crushed and he also received injury in his right toe. The claimant sustained compound fracture as a result of which he became disabled. The claimant was treated in hospitals at Kotma, Shahdol and Bilaspur and is still undergoing the treatment. He is now unable to walk. On these premised submissions, an application under section 166 of the Act was filed before the Claims Tribunal praying therein to pass an award for a sum of Rs.6,10,000/- against the owner, driver and Insurer jointly and severally.

4. The owner and driver filed joint written statement and admitted the accident but denied that bus was being driven rashly and negligently by the driver. The Insurer by filing separate written statement pleaded that on account of failure of payment of amount of premium, because the cheque was dishonoured, hence both, Cover Note and policy were cancelled by the Insurer vide its letter dated 24.8.1999 and intimation was given to the owner of the bus, namely, Ram Prasad Pandey as well as to RTO, Bilaspur by registered post. Thereafter, owner of the bus did not obtain any new policy after paying premium and therefore the Insurer is not liable to pay any compensation.

5. On the basis of above-said pleadings, learned Tribunal framed as many as five issues and after recording the evidence of the parties, came to hold that amount of premium was received by the agent of the Insurer from the bus owner and the agent issued and submitted a cheque in the office of the Insurer which was dishonoured and, therefore, the Insurer cannot be exonerated from its liability. The learned Tribunal also came to hold that the driver of the bus was rash and negligent as a result of which the accident occurred in which claimant received injuries and hence, the Tribunal passed an award of Rs.57,000/- with 9% annual interest from the date of the filing of the claim petition.

6. In this manner the above-said two appeals have been filed.

7. The contention of Shri Rakesh Jain, learned counsel for the Insurer is that on 7.4.2000 the accident occurred and the policy which was for a period from 13.7.1999 to 12.7.2000 was cancelled because the cheque dated 10.7.1999 was dishonoured and this was also intimated to Ram Prasad Pandey, the owner of the offending vehicle as well as to RTO, Bilaspur by sending intimation through Speed

Post on 22.7.1999. Thus, according to learned counsel since the policy was cancelled and thereafter the owner of the bus never obtained new policy by depositing the premium therefore no liability can be fastened on the Insurer.

8. On the other hand, Shri Shiv Kumar Dubey, learned counsel appearing for the owner and driver argued that Anil Sav (NAW-2), who is Assistant Administrative Officer of the Insurance Company in his evidence has admitted that amount of premium through cheque issued by the agent of the Insurance Company was deposited in the Bank which was dishonoured and, therefore, Insurer is liable for the act of its agent and for this reason the learned Tribunal has rightly fastened the liability on the Insurer jointly and severally along with the owner and driver of the offending vehicle.

9. Shri Anil Dwivedi, learned counsel for the claimant by pressing his appeal (M.A.No.456/2005) has submitted that looking to the injuries sustained by the claimant award of Rs.57,000/- passed by learned Claims Tribunal is on lower side.

10. Having heard learned counsel for the parties, we are of the view that M.A. No.70/2005 filed by the Insurer deserves to be dismissed and M.A.No.456/2005 filed by the claimant deserves to be allowed in part.

11. It is not disputed that after receiving the cheque no. 331804 dated 10.7.1999 towards payment of premium Cover Note no.485808 was issued by the Insurance Company to the owner of vehicle. Thus, issuance of the Cover Note of the policy is not disputed. On going through para 24 of the written statement filed on behalf of Insurance Company it is gathered that when the said cheque was presented in the Bank, same was dishonoured as a result of which Cover Note and Insurance Policy were cancelled by the Insurance Company on 24.8.99 and the intimation in this regard was sent to the owner of the vehicle, namely, Ram Prasad Pandey and also to RTO, Bilaspur by registered post.

12. The moot question which is to be decided is whether on account of cancellation of policy, still the Insurance Company is liable to pay compensation. We do not find any force in the contention of learned counsel for the Insurer that after the cancellation of the policy, no new policy was obtained by the owner of the bus and, therefore, the Insurance Company is not liable to pay compensation because it has been specifically admitted by the Assistant Administrative Officer of the Insurance Company Anil Sav (NAW-2) that cheque of the payment of premium amount was issued by the agent of the Insurance Company and the same was not given by owner of the bus Ram Prasad Pandey and the Insurance company is also taking action against the agent. Further he has admitted that three different cheques which were issued by the agent were also dishonoured and for his latches Insurance Company is taking action against his agent. Witness No. 3 of Insurance Company Mathura Prasad Soni, who is Development Officer of the Insurance Company has also admitted that Vijay Kumar Tiwari was the agent of his company. The agent of the Insurance Company was under him and

this witness was supervising the work of the agent. This witness received complaint against agent Vijay Kumar Tiwari that after collecting cash amount of premium from the persons he was not depositing the amount so collected in the Bank and was also issuing Kachchi receipts to the persons from whom he collected the money. He has further admitted that vide cheque no.331804 premium of Rs.10,546/- was deposited. In the evidence of owner of the bus Ram Prasad Pandey, it has come that he paid the amount of premium in cash to Vijay Kumar Tiwari, who is the agent of the Insurance Company. Thus, it is proved that agent of the Insurer collected the cash amount of the premium from owner of the bus and the agent issued cheque under his signature to the Insurer in respect to the payment of premium amount collected in cash by him and the said cheque was dishonoured and, therefore, according to us, since Vijay Kumar Tiwari was the agent of the Insurance Company, any defaulting act of the agent, principal i.e. Insurer is liable. It is inter se dispute between the Insurance Company and its agent but the owner of the vehicle has nothing to do, as after paying the amount of premium in cash to the agent of the Insurer his act was over. He also received the Cover Note of the policy. According to us, if on account of the fault of the agent of the Insurer cheque of the amount of premium which he (agent) deposited under his signature was dishonoured, the owner of the vehicle cannot be made responsible and, therefore, Insurer cannot be absolved from its liability.

13. It is proved that the amount of premium in cash was collected by Vijay Kumar Tiwari, agent of the Insurer and he was an authorised agent of the Insurance Company and, therefore, the principal i.e. Insurer is liable for the act of its agent. In this regard section 226 of Indian Contract Act, 1872 and illustration (b) to this section is very clear. In *Hambro v. Burnand and others* (1904) 2 King's Bench 10 the scope of contract made by agent in name of principal, but in his own interests has been taken into consideration and it has been specifically held that where an agent, contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not known to the other party to the contract, the principal cannot, if the other party has acted bona fide, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, and not in those of his principal. Hence according to us, the principal (Insurance Company) is bound by the act of his agent with all its results. Their Lordship has further held that where authority was given to underwrite policies of insurance in the name of principal according to the ordinary course of business at Lloyd's and the agent in fraud of the principal, underwrite certain guarantee policy, it was held that the principal was bound by the act of his agent. We are of the firm view that Section 226 of the Contract Act assumes that the contract or act of the agent is one, which, as between the principal and third persons, is binding on the principal.

14. We are borrowing sufficient light from **Halsbury's Laws of England (fourth**

Edition - Volume I) page 491, paras 817 and 818. In para 817 it has been laid down that as a general rule, a principal is responsible for all acts of his agent within the authority of the agent, whether the responsibility is contractual or tortious. Para 818 speaks that a principal is not exempt, where he would otherwise be liable in respect of an act done or bound by a contract made by his agent, by reason of the fact that the agent in doing it was acting in fraud of the principal, or otherwise to his detriment. A third party dealing in good faith with an agent, who acts within the apparent scope of his authority, and purports to act as agent, is not prejudiced by the fact that the agent is using his authority for his own benefit and not that of his principal. At this juncture, we have also gone through **Corpus Juris Secumdum Volume III** from pages 138 to 140. In para 231 at Page 138 it has been enunciated that a principal will be liable to third persons for all acts committed by the agent in his behalf within the actual or apparent scope of his agency. In the same paragraph 231 at page 141 very clearly it has been laid down that liability of principal will be present even though the acts are the result of the agent's fraud. Sufficient light has been thrown in this para in respect to the liability of principal for the acts done by his agent to third persons and we would like to quote that passage which runs as under :-

> " A principal is liable for the acts or his agent within his express authority, because the act of such agent is the act of the principal. Where the agent acts within the scope of the authority which the principal holds him out as possessing, nor knowingly permits him to assume, the principal is made responsible, because to permit to dispute the authority of the agent in such a case would be to enable him to commit a fraud upon innocent third parties."
>
> (Emphasis supplied)

15. The view of this Court is that if the contract is entered into or act done professedly on behalf of the principal, and is within the scope of the actual authority of the agent, there is no difficulty. The motive of the agent is immaterial in such a case and the principal is bound though the contract may be entered into and the act done fraudulently in furtherance of the agent's own interests, and contrary to the interests of the principal, provided the person dealing with the agent in good faith. We may further add that the transaction within the authority of the agent is valid, irrespective of whether same is beneficial to the principal or not. The Privy Council in the case of *Bank of Bengal v. Ramanatham Chetty* AIR 1915 PC 121 has held that the principal was liable for the act of the agent, the borrowing by the agent being an essential incident of the business and if authority is established the mere fact that the principal did not receive any benefit does not rid him of his liability. Thus, according to us, even where agent of the Insurance Company has defrauded his principal, or the transaction made by him is to the detriment of the principal, the principal i.e. Insurance Company will still be bound by the transaction made by the owner of the vehicle because the owner of the vehicle has acted in

good faith, and his act is within the apparent scope of authority of the agent. There is no evidence on record that the owner of the vehicle has not acted in good faith and it was not in the domain of the agent to collect the cash amount of premium for the principal i.e. Insurance Company from the owner of the vehicle. Therefore, according to us the Insurer was not having any authority to cancel the policy.

16. Thus, according to us, learned Claims Tribunal did not commit any error in holding that the Insurer is also liable for the payment of compensation jointly and severally along with the owner and driver of the offending vehicle.

17. We shall now advert ourselves to the appeal filed by the claimant for the enhancement of the award. On going through the impugned award as well as the pleadings and evidence placed on record, we are of the view that learned Claims Tribunal rightly came to the conclusion that on account of rash and negligent act of the driver of the offending vehicle, claimant Indrapal sustained serious injuries. On account of the accident and injuries sustained by the claimant he has to walk with the aid of crutches. On going through the disability certificate and looking to the evidence of the claimant as well as of Dr. O.P. Choudhary, we are of the view that claimant has sustained 40% disability. Dr. O.P.Choudhary (AW-3) has stated that he examined the claimant on 7.4.2000 (wrongly typed as "2002" because in medical report Ex.P-6 date 7.4.2000 has been mentioned) and found an incised wound, from buttock to thigh and there was avulsion of skin and the blood was oozing from the wound. On touching the knee cracking sound was heard and observed by the doctor. This doctor has also proved MLC certificate Ex.P-6 which was brought by him, a copy of which Ex.P-6-A is in the record of Tribunal. The doctor has further stated that there was fracture of left patella bone.

18. The learned Tribunal came to hold that the claimant/appellant was earning Rs.2,000/- per month and he had undergone treatment for six months as well as he has become permanent disabled up-to the extent of 40%. The learned Tribunal has awarded Rs.25,000/- towards partial disablement which according to us is on lower side. Since the appellant had become disabled up-to 40%, according to us, he is entitled to get Rs.80,000/- under this head. The learned Tribunal has awarded a sum of Rs.15,000/- for treatment. According to us, the same is also on lower side. The appellant had undergone treatment for more than six months at different hospitals in different cities, therefore, according to us, he is entitled for Rs.30,000/- under this head. For pain and sufferings he is entitled for Rs.10,000/-. For loss of estate learned Tribunal has awarded a sum of Rs.12,000/-. However, learned Tribunal has not awarded any amount under the heads of special diet, conveyance etc. and we hereby assess Rs.20,000/- for the same. Thus, according to us, the appellant/claimant is entitled to get Rs.1,52,000/- (Rs. One lac and fifty two thousand only). He shall also be entitled for the interest at the rate of 7% per annum on the enhanced amount of compensation from the date of filing of the claim petition.

19. For th ·asons stated here-in-above, M A.No.70/2005 which has been filed

by the Insurance Company is hereby dismissed and M.A.No.456/2005 filed by the claimant/appellant is hereby allowed to the extent indicated here-in-above with costs. Counsel's fee Rs.2,000/-, if pre-certified.

Appeal dismissed.

I.L.R. [2008] M. P., 2061
APPELLATE CIVIL
Before Mr. Justice Arun Mishra & Mr. Justice S.A. Naqvi
19 February, 2008*

RAJNEESH KUMAR DWIVEDI ... Appellant
Vs.
M/S. K.P. ENTERPRISES & anr. ... Respondents

A. **Workmen's Compensation Act (8 of 1923), Sections 2(1)(l), 4 -** *Total disablement - Mental disablement - Claimant was driving jeep which turned turtle as steering had become free and brakes had failed - Claimant sustained injuries and became permanently mentally disabled - Application for compensation dismissed by Commissioner as not covered u/s 4(1)(c)(ii) r/w Schedule I - Held - Explanation II of Section 4(1)(c) makes it clear that in case of injury which is not specified in Schedule I, still compensation can be claimed in case of permanent total disablement - Claim petition was wrongly dismissed by Commissioner - Appeal allowed.* (Para 9)

क. कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 2(1)(एल), 4 – पूर्ण निःशक्तता – मानसिक निःशक्तता – दावेदार जिस जीप को चला रहा था वह पलट गई क्योंकि उसके स्टेरिंग और ब्रेक ने काम करना बंद कर दिया – दावेदार को क्षतियाँ हुईं और वह स्थायी रूप से मानसिक निःशक्त हो गया – कमिश्नर द्वारा प्रतिकर का आवेदन खारिज कर दिया गया क्योंकि वह धारा 4(1)(सी)(ii) सहपठित अनुसूची I से आच्छादित नहीं था – अभिनिर्धारित – धारा 4(1)(सी) का स्पष्टीकरण 2 यह स्पष्ट करता है कि क्षति अनुसूची I में न बताई गई हो, फिर भी पूर्ण स्थायी निःशक्तता के मामले में प्रतिकर का दावा किया जा सकता है – कमिश्नर द्वारा दावा याचिका गलत रूप से खारिज की गई – अपील मंजूर।

B. **Workmen's Compensation Act (8 of 1923), Section 4 -** *Amount of Compensation - Claimant suffering 100% disability - Claimant was earning Rs.2,450 per month inclusive of allowance - 60% of monthly wages multiplied by relevant factor i.e., 207.98 - Claimant entitled to get Rs. 3,05,730.60 with interest @ 12% per annum.* (Para 9)

ख. कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 4 – प्रतिकर की राशि – दावेदार 100% निःशक्तता से ग्रसित – दावेदार भत्तों को मिलाकर 2,450 रुपये प्रतिमाह अर्जित कर रहा था – मासिक मजदूरी के 60% से सुसंगत कारक अर्थात् 207.98 से गुणा किया – दावेदार 3,05,730.60 रुपये 12% वार्षिक ब्याज के साथ प्राप्त करने का अधिकारी है।

---

*M.A. No.3035/2005 (Jabalpur)

Cases referred :

2005 ACJ 479 (Karnataka), 1995 ACJ 373 (Kerala), 2004 ACJ 333 (Karnataka), 1995 ACJ 493, 1991 JLJ 56, AIR 1976 SC 222, 1985 MPWN 222, 1988 (56) FLR 460 (MP), 1987 JLJ 281, 1997 III LLJ (Supp) 128, 2003 ACJ 44.

Neeraj Ashar, for the appellant.

Virendra Verma, for the respondent No.2.

ORDER

The Order of the Court was delivered by ARUN MISHRA, J. :–The appeal has been preferred under Section 30 of Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") aggrieved by Order dated 22.8.2005 passed by Commissioner for Workmen's Compensation, Labour Court, Satna in Case No.30/2001 WC Act Non Fatal.

2. It is not in dispute that claimant Rajneesh Kumar Dwivedi was driving Jeep (MP-19/2616), while he was taking the jeep to garage, the steering of the Jeep became free and there was failure of brakes due to that jeep turned turtle as a result threof the claimant sustained injuries. He was referred to neurologist from Satna to Jabalpur. Salary of the claimant was Rs. 2,000 per month, beside Rs.15 used to be paid to him by way of allowance, he has become permanently mentally disabled due to the injuries.

3. The owner in the reply contended that jeep was not owned by M/s K.P. Enterprises or Kamal Transport, claimant was not employed as driver by them, thus, they were not liable.

4. The insurer in the reply denied the liability to make payment of compensation interalia on the ground that claimant himself was negligent, he was not holding valid and effective driving licence as on the date of accident, claimant was not receiving the salary as claimed.

5. The Tribunal has found that 100% mental disability has been incurred due to the injuries sustained in the accident, salary of the claimant was Rs. 2,000 per month, in addition he used to receive a sum of Rs. 15 per day by way of allowance, respondent no.1 has been found to be the owner of the vehicle, claim petition has been dismissed on the ground that mental disability was not covered under Section 4(1)(c)(ii) read with Schedule I of the Act, thus, compensation could not be awarded to the claimant within the purview of the Act as no physical disability has been incurred and it was permissible to award compensation in case of physical disability, the application preferred by the claimant/appellant has been dismissed, consequently the appeal has been preferred.

6. The following substantial questions of law have been framed by this Court:-

> "(i) Whether due to the fact that mental disability has not been included in Schedule I read with Section 4(1) (c) II of the Workmen's Compensation Act, 1923 was right in dismissing the application filed by the workman/appellant ?
>
> (ii) Whether the Tribunal was justified in dismissing the claim petition

inspite of holding that the 100% mental disability has been incurred by the claimant due to injuries sustained by him in the course of employment ?"

7. It is not in dispute that 100% mental disability has been incurred by the claimant due to injuries sustained in the accident. Question arises whether the disability incurred being not covered under Schedule I of the Act, it is permissible to award compensation under the Act. Definition of "partial disablement" and "total disablement" is given under Section 2(1) (g) and 2(1)(1) of the Act, same are quoted below:-

"2.Definitions-(1) In this Act unless there is anything repugnant in the subject or context-

(g) "partial disablement" means' where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified (in Part II of Schedule I) shall be deemed to result in permanent partial disablement.

(I) "total disablement" means such disablement, whether of a temporary or parmanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: (provided that permanent total disablement shall be deemed to result from every injury specified in Part I to Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more."

Relevant portion of sub-section (1) of Section 4 is quoted below:-

"4. Amount of compensation-(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(b) Where permanent total disablement results from the injury	an amount equal to (sixty percent) of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of (ninety thousand rupees whichever is more:

Explanation I- For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second

column of Schedule IV as against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II-Where the monthly wages of a workman exceed (four thousand rupees), his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be (four thousand rupees) only;

(c) Where permanent partial disablement results from the injury	(i) in the case of an injury in part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
	(ii) in the case of an injury not specifided in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I-Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II-In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss earning capacity in relation to different injuries specified in Schedule I;

Clause (b) of sub-section (1) of Section 4 of the Act provides that where permanent total disablement results from the injury, an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees whichever is more has to be awarded. Sub-clause (i) of clause (c) of sub-section (1) of Section 4 of the Act provides that in case of permanent partial disablement resulting from the injury in case of injuries specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement has to be awarded. In case of injury not specified in Schedule I, such percentage of the compensaiton payable in the case of permanent total disablement as is proportionate to the loss of earning capacity

(as assessed by the qualified medical practitioner) permanently caused by the injury is the criteria for determination of the compensation. The definition of "total disablement" makes it clear that it is such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement. Proviso makes it clear that total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in said Part II against those injuries, amounts to one hundred percent or more. "Partial disablement" means, where the disblement is of a temporary nature, such disablement as reduces the earning capacity of a workmen in any employment in which he was engaged at the time of the accident resulting in the disablement. Proviso makes it clear that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. A bare reading of explanation II of Section 4(1)(c) makes it clear that in case injury is not specified in Schedule I, still the compensation has to be paid, in the case of permanent total disablement as is proportionate to the loss of earning capacity. For that reliance can be placed on the evidence of qualified medical practitioner.

8. The Apex Court in *National Insurance Co. Ltd. vs. Mubasir Ahmed and another* 2007 ACJ 845, in the context of cases relating to the injuries which were not specified in Schedule I and such cases are covered by Section 4(1)(c) II has thus:-

> "7. These cases related to injuries which were not specified in Schedule I and such cases are covered by section 4(1) (c) (ii) Explanation. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due reagard to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded.
>
> 8. Loss of earning capacity is, therefore not a substitute for percentage of the physical disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100 per cent loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the facts situation. Coming to question of liability to pay interest, section 4-A (3) deals with that question. The provision has been quoted above."

In *New India Assurance Co. Ltd. and another v. Subhas* 2005 ACJ 479 (Karnataka), My Lord Justice R.V. Raveendran, J. (as he then was) has considered the question whether Commissioner for Workmen's Compensation has power to decide that workman has suffered permanent total or partial disablement as a result of injuries on the basis of evidence led before him, provision of Section 4(1)(c)(ii) was considered. The Court has observed that the terms "permanent disablement" and "temporary disablement" are not defined. Disablement in the context, refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. The term "loss of earning capacity" is also not defined. It refers to the "economic disability" as result of physical disability. Determination of loss of earning capacity requires to be done in two stages, that is, assement of physical disability which involves ascertainment of the injuries sustained and its impact on the functioning of the human body and second part is assessment of loss of earning capacity. First part is the funcion of medical practitioner. As a result of amendment made in Section 4(1)(c) (ii) of the Act by inserting words "as assessed by the qualified medical practitioner" after the words "as is proportionate to the loss of earning capacity". As a result of the amendment, qualified medical practitioner, short, the QMP is required to assess not only the percentage of physical disability but also assess the percentage of loss earning capacity based on the physical disability. There are three divisions of disabilities under Section 4, that is, permanent total disablement, permanent partial disablement and temporary disablement. Temporary disablement is dealt with in Section 4(1)(d). Clause (b) of sub-section (1) of Section 4 deals with determination of compensation in cases of permanent total disablement resulting from employment injury. What is to be determined under Section 4 (1)(b) is whether the injuries suffered by the workman have infact resulted in permanent total disablement or not. There is no need to decide the percentage of loss of earning capacity as a consequence of such permanent total disablement. It is assumed that the loss of earning capacity is 100 percent when there is permanent total disablement. Where the injury is one which is not enumerated in Part I of Schedule I, and there is a dispute as to whether the workman has suffered permanent total disablement as a result of the injury, the Commissioner has the jurisdiction to decide such a dispute under Section 19 of the Act. Clause (b) of section 4(1) does not contemplate any assessment by a QMP where the workman has suffered permanent total disablement. But in cases where the injuries do not fall under Schedule I to the Act if the workman claims that the injuries have resulted in permanent total disablement, the question whether the disablement is a permanent total disablement or not is basically a matter for medical assessment by a QMP. The Commissioner has however the discretion either to act on the assessment by the QMP or to refer the workman to an independent QMP for examination and assessment of disability.

Permanent partial disablement has been dealt with in clause (c) of Section 4(1). It is attracted when the workman claims compensation alleging that employment injury has resulted in permanent partial disablement or when the Commissioner does not accept a claim of permanent total disablement and decides that the disablement is only

partial. In the case of permanent partial disablement, the compensation depends not the extent of permanent partial disablement, but on the loss of earning capacity resulting from such permanent partial disablement. Where the injuries resulting in the parmanent partial disablement are those specified in Part II of Schedule I, then the percentage of loss of earning capacity is as specified in said schedule. But it is open to the workman to establish by evidence a higher percentage of loss of earning capacity, than what is specified in the said Schedule. Referring to the various decisions such as *New India Assurance Co. Ltd. v. Sreedharan* 1995 ACJ 373 *(Kerala), Shivalinga Shivangowda Patil v. Erappa Basappa Bhavihala* 2004 ACJ 333 *(Karnataka), A.S. Sharma v. Union of India* 1995 ACJ 495 (Gujrat), following conclusions have been recorded in *New India Assurance Co. Ltd. and another v. Subhas (supra)* in para 37:-

"37. We therefore answer point No. (iii) as follows:-

(a) The Commissioner's power to decide whether a workman has suffered permanent total disablement or permanent partial disablement, as a result of the injuries, on the basis of evidence let in before him, remains unaffected by amendment to section 4(1)(c)(ii) by Act 22 of 1984 inserting the words "as assessed by the qualified medical practitioner".

(b) If the Commissioner holds that the workman has suffered permanent total disablement, on account of injuries other than those specified in Part I of Schedule I to the Act, he can proceed on the basis that it has resulted in 100 per cent loss of earning capacity;

(c) Where the Commissioner holds that the workman has suffered permanent partial disablement on account of non-scheduled injuries, the Commissioner should determine the "loss of earning capacity" based on the assessment by a qualified medical practitioner. If the Commissioner is not satisfied about the correctness of the assessment made by a qualified medical practitioner, at the instance of the workman or the employer, the Commissioner may have the workman examined by an independent qualified medical practitioner and act on the assessment by such independent qualified medical practitioner."

In *Shankarlal v. General Manager, Central Railway and another* 1991 JLJ 56 a Single Bench of this Court has observed that even in the case of non-scheduled injury, Court has to determine percentage of loss of earning capacity, in case workman rendered unfit for the job he was performing, disablement is total and not partial. Raliance was placed on *Pratap Narain Singh Deo v. Shrinivas Sabata* AIR 1976 SC 222 in which the Apex Court has laid down in a case of a carpenter who in the course of his employment sustained injuries, as a result of which his left arm above elbow was amputated, he became unfit and disablement was held to be total and not partial. In *MPSRT Corporation v. Jabbar Khan* 1985 MPWN 222 A driver whose

left thigh was fractured and who received injury in head, his leg shortened by 3 Inches, he was not in a position to do any work, the disability was held to be 100% not partial. In *Babu Khan v. Kamal Sethi and another* 1988 (56) FLR (MP) considering a case of driver who received a non-scheduled injury, this Court held that the in capacity to be judged in relation to the work in which the workman was employed, the workman was totally unfit to perform his work as a driver, the disablement was total and not partial. In case of *Factory Manager, J.C. Mills v. Employees' State Insurance Corporation, Gwalior,* 1987 JLJ 281 this Court held that even if injury is not covered by item I of Part II of Schedule I of the Act, note appended to the schedule clarifies that is a complete loss of use of any limb or member referred to in this schedule, it shall be deemed to be the equivalent of the loss of that limb or member. *In New India Assurance Co.Ltd. v. Surendra Kumar Sendha and another* 1997 III LLJ (Supp.) 128 Orissa High Court has observed that even if injuries sustained by the applicant are not included in Part I or II in Schedule I of the Act, assessment of compensation can be made only on basis of evidence produced by applicant regarding loss of earning capacity. Full Bench of Karnataka High Court in *Shivalinga Shivanagowda Patil and another v. Erappa Basappa Bhavihala* 2004 ACJ 333 has laid down that it is open to adduce acceptable evidence that after injury not only he is not able to do the work which he was performing before the accident, but he was not able to do any other work, the loss of earning capacity could be assessed on the basis of such evidence. In *New India Assurance Co. Ltd. v. Bharat Yadav and another* 2003 ACJ 44 a Division Bench of Calcutta High Court has observed that it is incumbent upon the Commissioner to assess actual loss of earning capacity on the basis of assessment by medical practitioner.

9. The explanation II of Section 4(1)(c) makes it clear that in the case of injury not specified in Schedule I, still the compensation can be claimed in the case of permanent total disablement. Section 4(1) (b) makes it clear that where permanent partial disablement results from the injury, an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor has to be awarded. In the instant case, thus, Commissioner for Workmen's Compensation has erred in dismissing the claim petition on the ground that injury was not covered under Part I or Part II of Schedule I of the Act. It is clear that claimant has suffered permanent total disablement, he has rendered unfit to do any kind of job much less job of driver which he was doing. Thus, loss of earning capacity has to be taken as 100% as opined by Dr.V.K.Panse (CW.5), examined on behalf of the claimant, also in the instant case. Thus, claimant is entitled for 60% of the monthly wages multiplied by relevant factor. Wages of the claimant were 2450 per month inclusive of allowance as found by the Tribunal, 60% of the same comes to Rs. 1470 per month, to be multiplied by relevant factor of 207.98 applicable at the age of 30 years, thus, total compensation comes to **Rs. 3,05,730.60 (Rs. Three Lacs Five Thousand Seven Hundred Thirty and Sixty Paisa Only)**.Claimant is entitled for interest at the rate of 12% per annum

on the aforesaid compensation on expiry of period of one month from the date of accident as provided in Section 4-A of the Act till realization. Liability to make payment of compensation along with interest is held to be joint and several of the owner and insurer. Thus, Tribunal was not justified in rejecting the claims, thus, we answer the substantial questions of law in favour of appellant.

10. We place on record appreciation to the independent valuable assistance rendered by Shri Virendra Verma, Advocate.

11. Resultantly, the appeal is allowed. Compensation of Rs. 3,05,730.60 (Rs. Three Lacs Five Thousand Seven Hundred Thirty and Sixty Paisa only) is awarded to the claimant. Claimant is entitled for interest at the rate of 12% per annum on the aforesaid compensation on expiry of period of one month from the date of accident as provided in Section 4-A of the Act till realization. Liability to make payment of compensation along with interest is held to be joint and several of the owner and insurer. No costs.

Appeal allowed.

I.L.R. [2008] M. P., 2069
APPELLATE CIVIL
Before Mr. Justice A.K. Shrivastava
27 February, 2008*

PRAHLAD ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Specific Relief Act (47 of 1963), *Section 38 - Perpetual Injunction -* *Plaintiff found in settled possession of Government land - Several times fine was imposed for encroaching Government land - Possession was not peaceful and hostile to the State Government - Plaintiff entitled for decree of perpetual injunction - However, State Government shall be free to take possession back after adopting due procedure of law.* (Paras 10 & 11)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 38 – शाश्वत व्यादेश – वादी शासकीय भूमि के सुस्थापित कब्जे में पाया गया – शासकीय भूमि पर अतिक्रमण करने के लिए कई बार जुर्माना आरोपित किया गया – कब्जा शांतिपूर्ण व राज्य शासन के प्रतिकूल नहीं था – वादी शाश्वत व्यादेश की डिक्री पाने का हकदार – तथापि, राज्य शासन विधि की सम्यक प्रक्रिया अपनाने के बाद कब्जा वापस लेने के लिये स्वतंत्र होगा।

B. Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, M.P. (30 of 1984), Section 7 - *Appellant member of Scheduled Caste and landless person - Found in settled possession of Government land - Does not possess any other land except Government/suit land - He may file application u/s 7 of* Adhiniyam to authorized officer. (Para 12)

*S.A. No.1330/2006 (Jabalpur)

ख. कृषि प्रयोजन के लिये उपयोग की जा रही दखल रहित भूमि पर भूमिस्वामी अधिकारों का प्रदान किया जाना (विशेष उपबंध) अधिनियम, म.प्र. (1984 का 30), धारा 7 – अपीलार्थी अनुसूचित जाति का सदस्य और भूमिहीन व्यक्ति – शासकीय भूमि के सुस्थापित कब्जे में पाया गया – शासकीय/वादग्रस्त भूमि के अलावा कोई अन्य भूमि कब्जे में नहीं – वह प्राधिकृत अधिकारी को अधिनियम की धारा 7 के अधीन आवेदन पेश कर सकता है।

A.K. Jain, for the appellant.

T.M. Dhamdar, for the respondent/State.

JUDGMENT

A.K. Shrivastava, J. :–The plaintiff has preferred this second appeal against the impugned judgment and decree passed by learned Additional District Judge, Gadarwara, Distt. Narsinghpur in Civil Appeal No.50-A/2005 dated 16th May, 2006 dismissing his appeal and thereby affirming the judgment and decree of learned trial Court dismissing the suit for declaration and injunction of plaintiff/appellant.

2. In brief, the suit of plaintiff is that the suit property is agricultural land, the description whereof has been mentioned in the plaint, is being possessed by him. The father of plaintiff Bihari was possessing the suit property up to 1978-79 when he died and after his death appellant is possessing the suit property peacefully and continuously as owner in the knowledge of defendant and, hence, he has perfected his title by way of adverse possession on the suit property. It has also been pleaded in the plaint that Tahsildar, Gadarwara tried to remove the possession of the plaintiff several times and also imposed the fine but the plaintiff was never dispossessed from the suit property. In this manner, it has been prayed that it be declared that plaintiff has perfected title on the suit property by way of adverse possession.

3. Despite the defendant was served, no appearance was put on its behalf and the trial Court proceeded ex-parte against it. The plaintiff thereafter adduced his evidence and submitted the revenue record w.e.f.1978 to 2003-04 in which the ownership of the State Government is mentioned and the name of plaintiff's father namely Bihari and thereafter the name of plaintiff is mentioned as trespasser. The plaintiff also examined himself and his witnesses Chunnilal and Mithulal in order to prove his possession.

4. Learned trial Court on the basis of the evidence placed on record came to hold that the appellant is in possession of the suit property but he has not perfected his title by adverse possession, since he himself submitted applications Ex.P/23 to P/25 to the Collector to allot the land to him on Patta. Eventually, learned trial Court dismissed the suit. The appeal which was filed by plaintiff has also been dismissed by impugned judgment and decree.

5. In this manner, this second appeal has been filed by the plaintiff.

6. This Court admitted this second appeal on the following substantial question of law :

"Whether learned two Courts below erred in substantial error of law by not decreeing the suit of perpetual injunction of plaintiff though found him to be in possession from 1978 to 2004 ?"

7. The contention of learned counsel for the appellant is that two Courts below on the basis of the documentary evidence came to hold that the appellant is possessing the suit property and, therefore, it was incumbent upon the learned courts below to decree the suit of perpetual injunction.

8. On the other hand, Shri T.M. Dhamdar, learned counsel for the respondent/ State, argued in support of the impugned judgment and has submitted that plaintiff has not at all perfected his title by way of adverse possession and, therefore, rightly the suit has been dismissed by learned two Courts below.

9. Having heard learned counsel for the parties, I am of the view that this appeal deserves to be allowed to the extent ;that plaintiff is entitled to a decree of permanent injunction.

REGRADING SUBSTANTIAL QUESTION OF LAW :

10. On going through the pleadings of the plaintiff, it is gathered that there is specific averments of his that he is possessing the suit property for last several years. Earlier, his father Bihari was possessing the same. On going through the revenue record which the plaintiff has filed from 1978 to 2004, it is gathered that the possession of the plaintiff has been mentioned and he is shown as trespasser. True, in between 1978 to 2004 for several times fine was imposed by Tahsildar against the plaintiff on account of encroaching the land of State Government but the fact remain as such that plaintiff is in settled possession of the suit property, though it cannot be said that his possession is peaceful and hostile to the State Government. Since plaintiff is in settled possession of the suit property, I am of the view that he is entitled for a decree of perpetual injunction.

11. Substantial question of law is, thus, answered that since long settled possession of plaintiff from 1978 to 2004 has been proved by the revenue record Ex.P/1 to P/4, the plaintiff is entitled for a decree of perpetual injunction. The suit of plaintiff is, accordingly, partly decreed and it is held that he is entitled for a decree of perpetual injunction. However, the State Government shall be free to take possession back from plaintiff after adopting due procedure as prescribed under the law.

12. On going through the record, it is gathered that plaintiff appears to be a member of Schedule Caste and is a landless person and except the suit property, he is not possessing any other agricultural land. To rehabilitate such type of persons, the State of Madhya Pradesh has enacted The Madhya Pradesh Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, 1984. The rules namely The Madhya Pradesh Krishi Prayojan Ke Liye Upyog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upbandh)

Niyam, 1986 are also framed. The plaintiff, if so advised, may submit application under Section 7 of the said Adhiniyam to the authorised officer on or before 15th May, 2008. The authorised officer after holding due enquiry may decide the said application of the plaintiff in accordance with law and if the said authority comes to the conclusion that appellant is a landless person as envisaged under the said Adhiniyam and Rules, necessary order conferring Bhumiswami right to him may be passed under the said Adhiniyam.

13. Let the decision be taken by authorised officer on or before 31st May, 2009. Till the application is decided, the respondent may not take possession from the plaintiff according to the procedure as prescribed under the law. It is, however, made clear that in case appellant fails to file application on or before 15/5/2008 the respondent shall be free to take the possession of the suit property after adopting due procedure of law.

14. With the aforesaid observations, this appeal is allowed to the extent indicated herein above. Looking to the facts and circumstances, parties are directed to bear their own costs.

Appeal allowed.

I.L.R. [2008] M. P., 2072
APPELLATE CIVIL
Before Mr. Justice N.K. Mody
8 April, 2008*

BAHUBAL ... Appellant
Vs.
SHAFI MOHAMMAD ... Respondent

Specific Relief Act (47 of 1963), Section 16(c) - *Suit for specific performance of contract of sale - Plaintiff - Should plead and prove that he was having sufficient funds to pay balance consideration and also to bear the expenses of registration - In absence of this evidence - Not entitled for decree for specific performance.* (Para 8)

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16(सी) – विक्रय की संविदा के विनिर्दिष्ट पालन के लिये वाद – वादी – अभिवचन करना एवं साबित करना चाहिए कि उसके पास प्रतिफल की अतिशेष राशि प्रदाय करने एवं पंजीयन के व्यय वहन करने के लिये पर्याप्त निधि है – इस साक्ष्य के अभाव में – विनिर्दिष्ट पालन की डिक्री का हकदार नही।

P. Bhargat, for the appellant.
S.A. Mev, for the respondent.

JUDGMENT

N.K. Mody, J. :– Being aggrieved by the judgment and decree dated 22nd March 1996 passed by First Additional District Judge, Ratlam in Civil Suit No.11-A/

*F.A. No.83 1996 (Indore)

96, whereby the suit filed by respondent was decreed and it was directed that appellant will execute the sale deed in favour of respondent after receipt of payment of Rs.18,000/- as balance consideration within a period of two months and shall handover the possession of the suit property and the counter claim filed by the appellant was dismissed, the present appeal has been filed.

2. Short facts of the case are that the respondent Shafi Mohammad filed a suit for specific performance and for award of compensation on 16.01.1988 alleging that appellant is owner of the suit property, which is a house bearing house No.40 situated at Chandra Shekhar Azad Marg, Village Taal Tehsil Alot Distt. Ratlam. It was alleged that vide agreement dated 04.02.1987 appellant agreed to sale the suit property for a consideration of Rs.45,000/- and took a sum of Rs.20,000/- as earnest money. It was alleged that it was agreed that the balance amount shall be paid to the appellant at the time of execution of sale deed. It was alleged that at the time of execution of agreement possession of second and third floor of suit house was given to the respondent. Further case of the respondent was that on 18.03.1987 appellant took a sum of Rs.7,000/- towards sale consideration of which the endorsement was made on the sale agreement dated 04.02.1987. It was alleged that the total amount of Rs.27,000/- was received by the appellant towards the sale consideration. Further case of the respondent was that after the agreement, respondent got issued a public notice in the news paper Swadesh, whereby the objections were invited. It was alleged that respondent was always ready and willing to perform his part of the agreement, but since the appellant was not prepared, therefore, respondent asked the appellant telegraphically on 29.04.1987 to execute the sale deed. It was alleged that inspite of that appellant did not turn up to the office of Sub-Registrar for execution of sale deed. It was alleged that appellant failed to execute the sale deed as per terms of agreement as agreed between the parties. It was prayed that appellant be directed to execute the sale deed, after accepting the balance amount and handover the possession of part of the suit property which was not delivered to the appellant. In alternative it was prayed that appellant be directed to pay double of the amount of Rs.27,000/- which was paid by the appellant as earnest money.

3. Appellant filed the written statement wherein it was not disputed that appellant entered into an agreement to sell the suit property to the respondent. Contention of the appellant was that as per the agreement sale deed was to be executed on or before 30.04.87. 30th of April 1987 was, a holiday because of Parshuram Jayanti. It was alleged that appellant was ready to execute the sale deed on 01.05.87. Appellant remained present in the office of the sub-registrar for executing the sale deed, but the respondent did not appear. On the contrary a telegram was sent by the respondent on 29.04.87 and also a registered letter to create evidence against the appellant. It was alleged that since the respondent did not get the sale deed executed by making the payment of balance amount, therefore, the suit filed by the respondent deserves to be dismissed. So far as,

earnest money is concerned, it was alleged that the same stands forfeited. It was alleged that respondent is not entitled for double of the amount of earnest money. It was prayed that suit filed by the appellant be dismissed. In counter claim it was prayed that a decree be passed against the respondent for handing over the possession of suit property.

4. On the basis of pleadings of the parties, learned Trial Court framed the issues, recorded the evidence and decreed the suit filed by the respondent, whereby the appellant was directed to execute the sale deed within two months and the counter claim filed by the appellant was dismissed against which the present appeal has been filed.

5. Shri P.Bhargat, learned counsel for the appellant submits that the learned Court below committed error in decreeing the suit filed by the respondent. Learned counsel submits that since the respondent failed to prove his readiness and willingness to make the payment of the balance sale consideration within the time stipulated in the agreement, therefore, no decree of specific performance could have been passed in favour of respondent. It was also alleged that since the respondent himself prayed for a money decree of double of the amount of the sale consideration, therefore, learned Court below committed error in directing the appellant to execute the sale deed.

6. Learned counsel for the respondent submits that the relief of specific performance is a discretionary relief, which has been granted by the learned Court below in favour of respondent, therefore, the judgment and decree passed by the learned Court below could not be disturbed in appeal. It was prayed that the appeal filed by the appellant be dismissed.

7. Arguments heard. To prove the case respondent filed the agreement dated 22/01/86 as Ex.P/1, News Paper-Swadesh dated 09.02.87 Ex.P/3, certified copy of telegram, receipt of telegram, receipt of registry, draft notice and other documents Ex.P/4 to P/6. Respondent examined himself as PW/1 and Sujanmal Jain as PW/2. Appellant also examined himself as DW/1 and Shaitanmal as DW/2.

8. From perusal of the record, it is evident that respondent himself has prayed in the suit that in alternative appellant be directed to return the amount of Rs.45,000/- and damages Rs.5,000/-. Ex.P/4 shows that the respondent has deposited a sum of Rs.18,000/- in the SB A/c with State Bank of Indore. There is nothing on record to show that the respondent was having sufficient funds to purchase the stamps and to pay the registry fee. The respondent has not even stated in his examination in chief that respondent was having the money to get the sale deed registered. Since the respondent has filed the suit for specific performance, therefore, it was the duty of the respondent to plead and prove that the respondent was having sufficient funds to pay balance consideration and also to get the sale deed executed and also to bear the expenses of registration. In absence of this evidence there was not justification on the part of learned Court below in not

granting the alternative relief claimed by the respondent. The respondent himself has prayed that appellant be directed to pay double of the amount of the earnest money i.e. Rs.44,000/-, therefore, there was no reason to grant the relief for specific performance to the respondent. Since the respondent is continuing in possession of the part of the suit property, therefore, the respondent was also duly compensated with interest.

9. In view of this, the appeal filed by the appellant is allowed. Judgment and decree passed by the learned court below is set aside. The suit filed by the respondent is decreed in part. Appellant is directed to pay a sum of Rs.44,000/- to the respondent. Since respondent is in possession of two storey of the suit property, therefore, respondent shall not be entitled of interest on this amount. Upon depositing the amount as indicated above within two months respondent shall handover the possession of the suit property to the appellant failing which the appellant shall be entitled to get possession of the suit property through Court. Appellant shall also bear the cost of litigation throughout.

Appeal allowed.

I.L.R. [2008] M. P., 2075

APPELLATE CIVIL

Before Mr. Justice N.K. Mody

15 April, 2008*

ORIENTAL INSURANCE COMPANY LTD. ... Appellant

Vs.

ANJALI GUPTA (Ku.) ... Respondent

Consumer Protection Act (68 of 1986), Section 12, Arbitration and Conciliation Act, 1996, Section 11(5) - Insurance policy - Whether after availing remedy under Consumer Protection Act and having award in her favour respondent can have recourse to proceed under arbitration - Held - State Consumer Grievances Redressal Commission itself has given liberty to respondent to approach for arbitration - Apart from this, writ petition challenging order of appointment of arbitrator was withdrawn by appellant - Therefore, appellant can not be allowed to raise objection about arbitration proceedings - However, since appellant was ex parte before arbitrator - Award set-aside on payment of cost - Appeal allowed. (Para 7)

उपभोक्ता संरक्षण अधिनियम (1986 का 68), धारा 12, माध्यस्थम् और सुलह अधिनियम, 1996, धारा 11(5) – बीमा पॉलिसी – क्या प्रत्यर्थी उपभोक्ता संरक्षण अधिनियम के अधीन उपचार का उपयोग करने के बाद एवं अपने पक्ष में अवार्ड पारित होने के बावजूद माध्यस्थम् के अधीन कार्यवाही का आश्रय ले सकता है – अभिनिर्धारित – राज्य उपभोक्ता विवाद प्रतितोषण आयोग ने स्वमेव प्रत्यर्थी को माध्यस्थम् को निवेदन करने की स्वतंत्रता दी – इसके अलावा मध्यस्थ की नियुक्ति के आदेश को चुनौती देने वाली रिट याचिका अपीलार्थी द्वारा वापस ले ली गई – इसलिए अपीलार्थी को माध्यस्थम् कार्यवाहियों

*Ar.A. No.15/2007 (Indore)

के बारे में आपत्ति करने की अनुमति नहीं दी जा सकती – तथापि अपीलार्थी मध्यस्थ के समक्ष एकपक्षीय रहा – अवार्ड खर्च संदाय करने पर अपास्त – अपील मंजूर।

Cases referred :

AIR 1997 SC 533, 2003(2) MPHT 5, 2005(1) MPWN SN 9, 2005(2) MPLJ 414.

C.P. Singh, for the appellant/Insurance Company.
S.R. Saraf, for the respondent.

ORDER

N.K. Mody, J:-BEING aggrieved by the order dated 12/04/2005 passed by ADJ, Barwaha, District-Khargone in case No.66/2003 whereby the application/ objections filed by appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (which shall be referred hereinafter as "A & C Act") was dismissed, the present appeal has been filed.

2. Short facts of the case are that the respondent Ku. Anjali Gupta who is also an advocate purchased shopkeeper's insurance policy from the appellant/insurance company on 14/02/2000 in respect of photocopy machine and fixed furniture valuing Rs.1,75,000/-. Again another policy was obtained by respondent on 30/04/2000 from appellant/insurance company in respect of other stocks of stationery, books, general goods and gift items valuing Rs.1,75,000/-. On 04/05/2000 due to short circuit there was a fire in the shop of respondent at about 11 pm as a result of which respondent sustained loss of property. On 05/05/2000 on the next day a claim was lodged by respondent for Rs.3,70,400/-. One DK Jain was appointed as Surveyor who has submitted the report on 23/06/2000 and assessed the loss of Rs.1,24,500/-. Being dis-satisfied by the amount assessed by Surveyor, a complaint was filed by respondent before District Consumer Forum, Mandleshwar on 15/ 08/2000. The complaint was contested by appellant. Vide order dated 23/03/2001, District Consumer Forum, Mandleswar allowed the complaint of respondent and awarded a sum of Rs.2,72,500/- alongwith interest @ 9% per annum. Being dis-satisfied with the amount awarded by District Consumer Forum, Mandleshwar appellant filed an appeal before M.P. State Consumer Grievances Redressal Commission, Bhopal which was allowed in part vide order dated 03/08/2002 and appellant was directed to make the payment of Rs.1,24,500/- as assessed by Surveyor alongwith interest to the respondent and a further direction was given that if the respondent is dis-satisfied with the quantum then respondent may raise the dispute before Arbitrator in terms and conditions of the policy or may institute the civil suit in the Court of competent jurisdiction for redressal of her grievance and for seeking relief. In compliance of this direction, respondent moved an appropriate application under Section 11 (5) of the A & C Act for appointment of Arbitrator before ADJ, Barwaha. Vide order dated 31/03/2004 the application was allowed and one Mr. VS Gavshinde, advocate was appointed as sole arbitrator. Being aggrieved by the order of appointment of Arbitrator writ petition was filed

by the appellant before this Court which was numbered as 447/2004 and was dismissed on 30/06/2004 as not pressed. Vide award dated 03/11/2004 the sole arbitrator allowed the claim filed by respondent and awarded a sum of Rs.1,99,000/- alongwith interest @ 13% per annum with effect from 09/10/2002. Being aggrieved by the award, an application was filed by appellant under Section 34 of the A & C Act which was contested by respondent ans was dismissed by the learned Court below vide order dated 12/04/2001 against which the present appeal has been filed.

3. Learned counsel for appellant submits that after availing the remedy available under the Consumer Protection Act, 1986 and having an order in her favour granting compensation respondent cannot have recourse to proceed for arbitration. For this contention reliance is placed on a decision in the matter of *M/s Fair Air Engineers Pvt. Ltd. Vs. N.K. Modi* AIR 1997 SC 533 wherein Hon'ble the Apex Court has observed as under :-

> "The Legislature intended to provide a remedy in addition to the consentient arbitration, which could be enforced under the Arbitration Act on the Civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, Section 34 of the Arbitration Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act. The Parliament is aware of the provisions of the Arbitration Act and the Contract Act and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent Court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

4. Learned counsel placed reliance on the decision of this Court in the matter of *Basant Kumar Vs. The United India Insurance Co. Ltd.* 2003 (2) MPHT 5 wherein this Court has observed as under :-

> " An Arbitrator cannot be allowed to sit over the order of the District Forum and State Commission particularly when the matter has been adjudicated on merits. In my opinion, considering the scheme of the Consumer Protection Act, petitioner cannot now avail the benefit of arbitration proceedings though initially it was open for him to choose the remedy before the Arbitrator. Once the matter has been entertained and decided by the District Forum; award has been passed, it is not open for the petitioner to claim further amount by having recourse to the arbitration clause in the agreement. The order passed under Consumer Protection Act is final."

5. Learned counsel submits that respondent is an advocate and an ex parte award has been obtained against the appellant/insurance company. It is submitted that there was no evidence on record to award compensation of Rs.1,99,000/-. It is submitted that out of this amount, a sum of Rs.1,05,000/- has been awarded towards loss of photocopy machine while as per surveyor report it is evident that the company of which the photocopy machine was belonging is not of Cannon make. It is submitted that while the respondent submitted the estimate of that machine which was not available in market. It is submitted that misusing her position as an advocate the respondent has obtained exorbitantly higher award in ex parte as she was duly compensated by District Consumer Forum itself. It is submitted that before the Arbitrator also the case was listed for compromise and was adjourned for 7 to 8 times. It is further submitted that without giving sufficient opportunity to adduce the evidence by Arbitrator, Arbitrator passed the award on 03/11/2004. It is submitted that learned Court below committed error in dismissing the application filed by the appellant.

6. Mr. SR Saraf, learned counsel for respondent submits that the objections filed by appellant itself are maintainable. It is submitted that the case law upon which the reliance has been placed by appellant is not at all applicable in the present case, as in the present case, State Consumer Grievances Redressal Commission itself has given a direction to respondent to approach the Court for appointment of Arbitrator. For this contention, learned counsel for respondent placed reliance on a decision in the matter of *United India Insurance Co. Ltd. Vs. M/s Rukmani Solvex* (P) Ltd. 2005 (I) MPWN SN 9 wherein this Court has given a direction to approach the Civil Court for awarding just compensation. According to terms of policy the application for appointment of Arbitrator is maintainable. Learned counsel submits that the objections raised by appellant is not covered under Section 34 of A & C Act. For this contention reliance is placed on a decision in the matter of *Hari Om Maheshwari Vs. Vinitkumar Parikh* 2005 (2) MPLJ 414 wherein a case where the objections were filed under Section 30 of the Arbitration Act, 1940 the Hon'ble Apex Court has observed that grant or refusal of an adjournment by an arbitrator do not fall within its parameters. It is submitted that in the facts and circumstances of the case, learned Court below has rightly dismissed the application which requires no interference.

7. So far as the maintainability of application filed by respondent is concerned, the law laid down in the matter of *M/s Fair Air Engineers Pvt. Ltd. and Basant Kumar (Supra)* has been taken into consideration by this Court in the matter of *United India Insurance Co. Ltd. Vs. M/s Rukmani Solvex (P) Ltd.* 2005 (I) MPWN SN 9 wherein it has been held that the application is maintainable. In the matter of *M/s Fair Air Engineers Pvt. Ltd. and also in the matter of Basant Kumar (Supra)* after affording the remedy under Consumer Protection Act the application was filed under the A & C Act while in the present case the permission was given by M.P. State Consumer Grievances Redressal Commission itself. In the aforesaid case Hon'ble Apex Court has also observed that the act intends to relieve the consumers of the combersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act. In the present case after due appreciation of facts of the case, Commission itself has given the liberty to the respondent to approach for arbitration or to file civil suit. Apart from this, the order of appointment of Arbitrator was challenged by appellant in writ petition No.447/2004 before this Court, subsequently, the writ petition was withdrawn as not pressed, therefore, at this juncture appellant cannot be allowed to raise any objection regarding maintainability of application itself. From perusal of record, it appears that the respondent is an advocate and while awarding the compensation no evidence was recorded by Arbitrator. The case proceeded ex parte against appellant and after holding that no compromise is possible on 01/08/2004, two or three short adjournments were given to appellant and award was passed in favour of respondent. Even if, it is assumed that appellant was negligent in conduction of case before the Arbitrator, then too, the fact remains that the appellant was ex parte. In the facts and circumstances of the case, at the most cost could have been imposed on the appellant. In view of this, appeal filed by appellant stands allowed. Impugned award dated 12/04/2005 passed by learned Court below and also the award dated 03/11/2004 passed by sole arbitrator stands set-aside subject to payment of cost of Rs.10,000/- which shall be deposited by the appellant with Bar Association, Barwaha. The sole arbitrator after recording of evidence of both the parties shall re-decide the claim of respondent within a period of six months. Both the parties shall remain present on **15/05/2008.** Record of the Court below be sent back.

8. With the aforesaid observations, appeal stands disposed of. No order as to costs.

Appeal disposed of.

I.L.R. [2008] M. P., 2080
APPELLATE CIVIL
Before Mr. Justice K.K. Lahoti
27 June, 2008*

JASWANT SINGH ... Appellant
Vs.
SMT. DAYAMANI & ors. ... Respondents

A. **Adverse Possession** - *In order to establish plea of adverse possession, the defendant ought to have proved his possession and must state that dispossession of rightful owner was actual, exclusive, hostile and continued over the statutory period.* (Paras 11 & 13)

क. प्रतिकूल कब्जा – प्रतिकूल कब्जे के अभिवचन को स्थापित करने के लिए प्रतिवादी को अपना कब्जा सिद्ध करना होगा और यह कथन करना होगा कि वैध स्वामी की बेदखली वास्तविक, अनन्य, विरोधी और वैधानिक कालावधि में लगातार रही थी।

B. **Transfer of Property Act (4 of 1882), Section 53A** - ***Adverse Possession*** - *Plea of adverse possession cannot be sustained when alternative plea of retention of possession by operation of Section 53A are inconsistence and plea of adverse possession cannot be found.* (Paras 10 & 13)

ख. सम्पत्ति अंतरण अधिनियम (1882 का 4), धारा 53ए – प्रतिकूल कब्जा – प्रतिकूल कब्जे का अभिवचन तब नहीं उठाया जा सकता जब प्रतिधारण का वैकल्पिक अभिवचन धारा 53ए के प्रवर्तन से विसंगत हो और प्रतिकूल कब्जे का अभिवचन नहीं पाया जाए।

Cases referred :

(1996) 1 SCC 639, (2004) 10 SCC 779, AIR 1970 SC 1779, AIR 1930 Madras 738.

A.K. Jain, for the appellant.

Ravish Agrawal with Pranay Varma, for the respondents No.1 to 5.

JUDGMENT

K.K.LAHOTI, J.:–The plaintiff has preferred this appeal aggrieved by the judgment and decree dated 31.7.1991 in Civil Appeal No.45-A/1987 by the Additional Judge to the Court of District Judge, Khurai, District Sagar by which the judgment and decree in Civil Suit No.36-A/1986 dated 10.10.1987 of the Civil Judge Class-I, Khurai was reversed. The trial Court decreed the suit of the appellant but the appellate Court dismissed by allowing the appeal.

2. This appeal was admitted on 26.10.1991 on following substantial question of law:

> "Whether inspite of statement of respondent Wilson in para 8 of his evidence, it can be held that he has prescribed his title by adverse possession?"

*S.A. No.422/1991 (Jabalpur)

3. The learned counsel for appellant submitted that the appellate Court found adverse possession of defendant/ respondent no.1 Wilson on the basis of sale deed dated 7.5.1958 Ex.D/2, but failed to take cognizance of the document Ex.P/7 dated 13.12.1958 by which the property was repurchased by Mst. Yashoda Jalaiya from Wilson in favour of plaintiff Jaswant Singh, who was minor at that time. In the document Ex.P/7, a specific averment was made by the vendor that the possession of the land shall be handed over after reaping the crop standing on the land. In view of this specific averments made in the document Ex.P/7, there was no question of claiming any adverse possession by Wilson against the appellant. The defendant, respondent Wilson ought to have pleaded and proved his adverse possession against the appellant. In absence of this, the appellate Court erred in dismissing the suit of the appellant on the basis of adverse possession of respondent.

Respondent Wilson in para 8 of his statement specifically admitted that on the date of execution of the document Ex.P/18 dated 20.5.1964, the disputed land belongs to the ownership of Jaswant Singh, but the document Ex.P/18 has wrongly been disbelieved by the appellate Court. Ex.P/18 was a document dated 20.5.1964 by which Wilson executed an agreement in favour of plaintiff and admitted the title of plaintiff. Hence there was no question of any adverse possession against appellant since 7.5.1958 as held by the appellate Court.

4. That, in the case ingredients of adverse possession were not pleaded by the defendant Wilson. He referred to para 12 of the written statement in support of his contention and placed his reliance to the Apex Court's judgments in *Mohan Lal vs. Mirza Abdul Gaffar* :(1996) 1 SCC 639 and *Karnataka Board of Wakf vs. Govt. India:* (2004) 10 SCC 779 and submitted that this appeal be allowed, the judgment and decree passed by the appellate Court be set aside and that of the trial Court be restored.

5. The learned counsel appearing for respondents supported the judgment and decree passed by the appellate Court and submitted that the appellate Court has rightly reversed the judgment and decree of the trial Court and dismissed the suit of plaintiff/appellant. In document Ex.P/7, there are specific averments that the possession of the land was not handed over to Jashoda and it was to be handedover after reaping the crop, meaning thereby that on 13.5.1958, the possession of the land was not delivered. Jashoda appeared as DW1 and she admitted in her statement that when she was at Nagpur, the defendant Wilson took possession of the land. She was at Nagpur upto 1960 and after her retirement from service, she shifted from Nagpur to village, meaning thereby that Wilson was in possession prior to 1960 and not from June-July 1965 as pleaded by the plaintiff. That the possession under an invalid deed was also an adverse possession. Reliance was placed to the Apex Court judgment in *State of West Bengal vs. Dalhousie Institute Society:* AIR 1970 SC 1779 and *Lokanadha v. Lokhono:* AIR 1930 Madras 738 and submitted that this appeal may be dismissed with costs.

6. To appreciate rival contentions of the parties, factual position in the case may be looked into.

The suit was filed by Jaswant Singh before the trial Court on 7.6.1966 on following grounds:

(i) That, at village Bagdhari, Tahsil Khurai , land S.No.23/3 area 20.02 hectare is situated. Out of this, six acres of land was in dispute which was shown by red colour in the map of plaint.

(ii) That, the aforesaid land was purchased by the god mother of plaintiff during his minority from Swedish Mission, Bagthari. She got possession of the land on behalf of the plaintiff. That on 7.5.1958, father of the plaintiff Jaipal Singh in the capacity of guardian sold disputed six acres of land to the defendant. The land was repurchased by Jashoda Jalaiya as a guardian of the plaintiff in the name of plaintiff on 13.12.1958. That after purchase of the aforesaid land, the plaintiff was in possession of the land but in June- July, 1965, the defendant no.1 again dispossessed the plaintiff from disputed six acres of land. Initially the dispossession was pleaded in June-July 1964, but by an amendment dated 13.12.89, the year was changed as 1965.

(iii) That, the defendant no.1 claimed that he purchased the land from father of the plaintiff Jal Pal Singh during his minority for a consideration of Rs.1200/- out of which an earnest money of Rs.750/- was paid and remaining amount of Rs.450/- was payable at the time of sale deed. The plaintiff disowned the aforesaid agreement and pleaded that he was not bound by the aforesaid agreement.

(iv) That, the aforesaid agreement if was executed, then it was during minority of the plaintiff and in fact the actual guardian of the plaintiff was Mst. Jashoda Jalaiya who purchased the land from her own money for plaintiff in the capacity of guardian of the plaintiff, so the natural father of the plaintiff Jaipal Singh was having no right to sell the aforesaid land. Apart from this, Jaipal Singh was not declared guardian under law so he was not the guardian of the plaintiff. Apart from this, even if such agreement is found, then it was to the detriment of the interest of plaintiff and does not bind him. The defendant no.1 himself had breached the agreement and had not paid the remaining amount to the plaintiff. No sale deed was executed within a period of three years. No willingness or readiness was shown by the defendant no.1.That the plaintiff asked for possession of the land from the defendant in June, 1973, but he had not agreed and continued with his illegal possession. He was also taking benefit of yield of the land. On these grounds, the plaintiff claimed damages for the last 3 years Rs.3000/-. Jaipal Singh was made a proforma defendant no.2. On these grounds the suit was filed for possession of the land.

(7) The defendants 2 and 3 Yashoda Jalaiya and Jai Pal Singh though filed written statement but had not contested the suit. The defendant no.1 contested the suit by filing a detailed written statement. The written statement of defendant no.1 was as under:

(a) That, the plaintiff was not owner of the land and in fact the owner of the land was Jaipal Singh and he himself purchased the land, but name of plaintiff was nominally written in the sale deed. Defendant no.2 is neither related nor guardian of the plaintiff. She was having no concerned to purchase the land. The natural guardian of the plaintiff was Jaipal Singh, who sold the land to defendant no.1 Wilson. He was having full right to sell the land. Defendant no.2 was neither the guardian nor was she entitled to purchase the land as a guardian of the plaintiff, in particular when natural guardian was alive. That the possession of defendant no.1 on the disputed land was continuing since 1958. In patwari papers possession of defendant no.1 was shown. The plaintiff or his father Jai Pal Singh or defendants 2 and 3 were never in possession of the land.

(b) That, Jai Pal Singh was the real owner of the land from whom defendant no.1 purchased the land and paid earnest money and remaining consideration was payable to him, to which the defendant was always ready and willing to pay. On this ground, Jai Pal Singh got entered name of defendant no. 1 in the revenue papers and possession of defendant no.1 continued. Defendant no.1 made various requests to Jai Pal Singh for execution of the sale deed, but he avoided. The plaintiff was not entitled for the possession. In additional plea, the defendant pleaded that since 1958, defendant is in possession of the land as owner of the land and even if there was any right of plaintiff it was vanished and defendant no.1 had become full owner of the land. That the suit was not filed within 12 years from the date of dispossession and was barred by limitation. That, defendant no.1 got possession of the land from Jaipal Singh and only execution of the sale deed remained for which defendant no.1 was always ready and willing, and even on the date of filing of the written statement, to execute the sale deed. So under Section 53-A of the Transfer of Property Act, plaintiff cannot dispossess defendant no.1,

(c) By way of amendment, defendant raised certain more pleas as under:

That, the possession of the defendant was since 1958, the plaintiff admitted his possession since 1964 and from that date the suit was barred by limitation. The plaintiff by amendment had changed the year from 1964 to 65. The father of the plaintiff purchased the land in the name of plaintiff, as Benami. The owner of the land was Jai Pal Singh. Jai Pal Singh paid the entire amount. Jai Pal Singh was guardian of his son. Jaipal Singh also sold the land to Kripal Singh S/o Mathew Babu by registered sale deed, but the

said sale deed was not challenged by the plaintiff after attaining majority. The plaintiff cannot challenge the agreement in favour of the defendant. On these grounds, the suit was contested by defendant no.1.

8. The trial Court framed issues, recorded evidence and arrived at following findings:

(i) That defendant no.2 Yashoda Jalaiya purchased the land for plaintiff on 20th Feb.1957 from Swedish Mission. This land was sold by the father of the plaintiff, which was again purchased by defendant Yashoda Jalaiya on 13.12.1958 for plaintiff;

(ii) that the land belongs to the plaintiff and he is the owner of the land.

(iii) That, the defendant no.1 Wilson in June- July 1965 dispossessed the plaintiff and took illegal possession of the land,

(v) That, defendant no.1 had breached the agreement by not getting the sale deed executed within three years from the date of the agreement

(vi) that, defendant no.1 had earned profit of crop from 1973-74 to 1975-76 for Rs.3,000/-

(vii) The suit was within limitation.

(viii) That, defendant no.1 Wilson was not in possession of the land since 1958.

(ix) That, Jai Pal Singh had neither written a letter dated 20th May, 1959 in favour of the defendant nor delivered possession to defendant.

(x) That, the land which was purchased in the name of plaintiff Jaswant Singh was not of the ownership of Jai Pal Singh.

(xi) That, the defendant no.3 had not pressurized defendant no.1 for the agreement dated 20.5.1964..

On the aforesaid findings, the trial Court decreed the suit for possession and mesne profit.

9. Aggrieved by the judgment and decree passed by the trial Court, defendant Wilson preferred an appeal before the Additional Judge to the Court of District Judge, Sagar, Khurai which was registered as Civil Appeal No.45-A/1987. This appeal was decided by the judgment and decree dated 31st July, 1991. The appellate Court recorded following findings:

(i) That, the possession of defendant no.1 since 1965 was not in dispute

(ii) That, the plaintiff was not firm in respect of his dispossession initially, the date of dispossession was pleaded as June July 1964 but subsequently by way of amendment it was amended as June July, 1965.

(iii) That, the plaintiff during the course of transaction was minor and he was taken care of by her God mother defendant no.2. Yashoda Jalaiya

after retirement ,since 1960 was residing at Khurai and before it she was at Nagpur.

(iv) That defendant no.2 Yashoda Jalaiya in para 12 of her statement had admitted that when she was at Nagpur, defendant Wilson took possession of the land and as per statement of Yashoda Jalaiya, defendant Wilson was in possession prior to 1960.

(v) That documents P/7, P/3 and P/18 were executed which show that after the execution of document Ex.D/1, the plaintiff was not in possession of the land.

(vi) That defendant no.1 had not taken possession with the permission of plaintiff. The possession of the defendant no.1 from beginning was adverse to the plaintiff and by Ex.P/18 which was a suspicious document, no case can be made out in favour of the plaintiff. Ex.D/1 was not accepted by the plaintiff and he cannot take benefit of it. That Wilson was in possession of the land since 7.5.1958, his possession was adverse to the plaintiff and recording these findings, in paras 65 to 71, the appellate Court allowed the appeal and dismissed the suit. These judgments and decrees are under challenge in this appeal.

10. The learned counsel for the appellant submitted that even on the basis of the documents as have been found proved by the appellate Court, no case is made out for adverse possession against the plaintiff. The defendant no.1 claimed adverse possession since 7.5.1958 but the appellate Court had not considered the document Ex.P/7 of 3.12.1958 by which the property was repurchased by Mst. Yashoda from Wilson in favour of plaintiff Jaswant. Ex.P/7 the sale deed dated 13.12.1958 was not in dispute. There was no question of recording a finding that since 7.5.1958, defendant Wilson was in possession of the land. It was necessary on the part of defendant Wilson to plead and prove his adverse possession, and the starting point of limitation when his possession became adverse to the plaintiff by some overtact. In this regard, the appellant placed reliance to the Apex Court judgment in *Mohan Lal vs. Mirza Abdul Gafoor* (1996)1 SCC 639 and submitted that the plea of adverse possession cannot be sustained when alternative plea of retention of possession by operation of Section 53A of the Transfer of Property Act was also made. Both the pleas were inconsistence and plea of adverse possession cannot be found.

11. He has also placed his reliance to a recent judgment of the Apex Court in *Karnatka Board of Wakf vs. Govt. of India* (2004) 10 SCC 799 and submitted that to establish plea of adverse possession, the defendant ought to have proved his possession adequate and in extend to say that his possession was adverse to the true owner. He must have stated that his dispossession of the rightful owner was actual, exclusive, hostile and continued over the statutory period. The starting point of limitation ought to have been pleaded and proved by the defendant. In absence of which, plea of adverse possession cannot be sustained.

12. The learned counsel appearing for respondents submitted that the plea of adverse possession recorded by the appellate Court is a finding of fact in which no interference is needed from this Court.

13. To appreciate the aforesaid contention, legal position as held in Mohan Lal and Karnataka Wakf Board may be looked into:-.

"3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from March 8, 1956, he has perfected his title by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short, 'the Act')

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription 'nec vi nec clam nec precario'. Since the appellant's claims is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.

In Karnataka Wakf Board, the Apex Court held thus:-

11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : *S M Karim v. Bibi Sakinal* AIR 1964 SC 1254, *Parsinni v. Sukhi* (1993) 4 SCC 375 and *D N Venkatarayappa v. State of Karnataka* (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who

claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. *(Dr. Mahesh Chand Sharma v. Raj Kumari Sharma* (1996) 8 SCC 128)"

14. Now in the light of the settled position of law by the Apex Court in *Mohan Lal and Karnataka Wakf Board* (supra), the factual position in the present case may be seen.

a) Mst. Yashoda purchased the property by sale deed dated 20th Feb.1957 Ex.P/5 from Mohan Domair S/o Domair of Swedish Misson Baaggthari, Khurai. At the time of purchase of the property, Jaswant Singh was minor and in the sale deed itself it has been specifically mentioned that Jaswant Singh, minor purchased the property through Smt. Yashoda Jalaiya.

Thereafter the said property was sold by Jai Pal Singh as guardian of Jaswant Singh by sale deed Ex.D/2 dated 7th May, 1958. The sale deed was in the name of Sunil Kumar S/o Wilson. Again on 13.12.1958, the property was purchased in the name of Jaswant Singh Minor through Smt. Yashoda Jalaiya from Sunil S/o Wilson. The sale deed was executed by Wilson defendant no.1. These deeds were only in respect of six acres of land and for other lands, there is no dispute in the case. Though the agreement Ex.P/18 was disputed by the defendant and even for the sake of argument if this agreement is ignored, then the fact remains that the sale deed Ex.P/7 was an admitted document between the parties by which Wilson sold the land in favour of Jaswant Singh. In the sale deed Ex.P/7, there is stipulation that the entire consideration was received by Wilson and only right to reap the crop standing on the land at the time of sale deed Ex.P/7 was retained by the vendor. If the entire document is looked into then the possession of the aforesaid land was reconveyed to the plaintiff through Smt. Yashoda Jalaiya. The defendant Wilson in the written statement has specifically pleaded that on 20th May, 1959 Jaipal Singh wrote a letter in favour of the defendant and the defendant was also put in possession prior to it. The defendant also pleaded in para 18 that in fact the land was purchased by Jai Pal Singh in the name of his son. The entire money was invested by Jai Pal Singh and in the same capacity, he sold another land to Kripal Singh Pal S/o Mathew on 13.5.1965. This fact specifically shows that defendant Wilson was claiming ownership in the land or possession in part performance then his plea of adverse possession was not in accordance with law settled by the Apex Court in Karnataka Wakf Board. If the defendant claimed his possession on the basis of the sale deed or in the alternative claimed his possession under Section 53A of the Transfer of Property Act, then

he was not entitled to take a plea of adverse possession as held by the Apex Court .In these circumstances, the appellate Court erred in recording a finding that the possession of the defendant Wilson was adverse to the plaintiff and dismissing the suit.

15. Apart from these, the sale deed by Jai Pal Singh in favour of Wilson dated 7.5.1958 may also be looked into. It is not in dispute that parties are Christians and the principle of Karta of family was not applicable. In absence of applicability of the principle of 'Karta', the appellate Court erred in arriving at a finding that by sale deed dated 7.5.1958 Wilson acquired right. Even for the sake of argument, if the aforesaid plea is accepted, then defendant Wilson by sale deed dated 13.12.1958 had reconveyed the property in favour of the plaintiff. In these circumstances, the plaintiff was the owner of the land and the plea of adverse possession was not at all established in the case. The plaintiff in para 3 of the plaint pleaded that in June-July 1964, the defendant no.1 dis- possessed the plaintiff. Subsequently, the year was amended by the plaintiff and in place of 1964, the year 1965 was substituted. The suit was filed on 7.5.1976. Even if for the sake of argument,if it is found that in June July, 1964, the plaintiff was dispossessed, even then in absence of proof of plea of adverse possession, the plaintiff could not have been non suited. Article 65 of the Limitation Act provides for the suit of possession of immovable property based on title limitation of 12 years shall be from the possession of the defendant when it became adverse to the plaintiff. The burden was on the defendant to prove his adverse possession against the plaintiff and in absence of it, even if, it is assumed that the plaintiff was dispossessed in June July 1964, the plaintiff cannot be non-suited. The appellate Court without considering the aforesaid factual and legal position erred in reversing the findings of the trial Court.

16. The defendant Wilson in para 8 of his statement had admitted the document Ex.P/18.Ex. P/18 is the agreement dated 20.5. 1964 by which Jai Pal Singh as guardian of Jaswant Singh plaintiff, agreed to sell the disputed land in favour of defendant Wilson. The defendant Wilson specifically admitted this fact in his statement that the contents of Ex:P/18 were true. He admitted that on that day, he admitted land of the ownership of Jaswant Singh. The document P/18 was written on 20th May, 1964 meaning thereby on 20.5.1964 Wilson admitted title of plaintiff Jaswant Singh in the land. In view of this specific admission of Wilson in para 8 of the statement, he ought to have pleaded and proved that after execution of document, when his possession became adverse to the plaintiff. But in this case, neither such was pleaded nor it was proved. In these circumstances, the appellate Court erred in ignoring this material admission of the defendant. On the basis of the aforesaid reasons, the judgment and decree passed by the appellate Court is not sustainable under the law and accordingly the aforesaid judgment and decree are hereby set aside and the judgment and decree passed by the trial Court are restored.

17. In the result, this appeal is allowed. The judgment and decree passed by the lower appellate Court are set aside and that of the trial Court are restored. The appellant shall be entitled for the cost of the litigation from the respondent no.1. The counsel's fee is fixed at Rs.2,000. A decree be drawn accordingly.

Appeal allowed.

I.L.R. [2008] M. P., 2089
APPELLATE CIVIL

Before Mr. Justice Subhash Samvatsar & Mrs. Justice Indrani Datta
7 July, 2008*

RADHA UJJAINKAR (SMT.) ... Appellant
Vs.
STATE OF M. P. & ors. ... Respondents

Law of Torts - ***Medical Negligence - Failure of T.T. operation - No evidence that operation was not performed by the doctor by taking reasonable degree of care & skill - As the doctor was not found negligent, the liability cannot be fastened to pay damages and in that case there will not be any question of vicarious liability of employer of doctor.*** (Para 12)

अपकृत्य विधि – चिकित्सीय उपेक्षा – टी.टी. शल्यक्रिया की विफलता – कोई साक्ष्य नहीं कि चिकित्सक द्वारा शल्यक्रिया करने में युक्तियुक्त मात्रा में सावधानी और कुशलता नहीं बरती गई थी – चूंकि चिकित्सक द्वारा उपेक्षा किया जाना नहीं पाया गया, उस पर नुकसानी देने का दायित्व नहीं डाला जा सकता और ऐसी दशा में चिकित्सक के नियोजक का प्रतिनिधिक दायित्व का कोई प्रश्न ही नहीं उठता।

Cases referred :

(2005) 6 SCC 1, (2005) 7 SCC 1.

Prakash Braru, for the appellant.
S.B. Mishra, Addl.A.G., for the respondents.

J U D G M E N T

The Judgment of the Court was delivered by INDRANI DATTA, J.:–This appeal is preferred by the plaintiff/appellant against the judgment and decree dated 17.10.2003 passed by X Additional District Judge, Gwalior in Civil suit No.6B/03; whereby, the suit of the plaintiff/appellant for recovery of damages to the tune of Rs.9.16 lac with interest @15% per annum from the date of filing of suit on the ground of negligence in operation of MTP and LTT (Tubectomy) conducted by respondent No.3 Dr.P. Jain was dismissed.

2. The undisputed facts of the case are that LTT and MTP operations of the plaintiff/appellant were conducted by respondent No.3 Dr. Smt. P. Jain on 19.4.2000 at Kamlaraja Hospital, Gwalior.

---

*F.A. No.180/2008 (Gwalior)

3. Brief facts of the case are that appellant/plaintiff had already three children and she did not wish to have any more issue as they were not in a position to bear the burden of any additional issue. Appellant, therefore, gave her consent for LTT operation. LTT operation was conducted by respondent No.3 on 19.4.00 and a certificate to that effect was also issued in favour of the plaintiff/appellant and she was made to believe that her LTT operation is successful. At the time of LTT operation, appellant was pregnant and her MTP (medical termination of pregnancy) was also conducted by the respondent No.3. In the month of July, 2000, the plaintiff felt pains, therefore, she got herself examined by respondent No.3. Respondent No.3 advised her for Sonography and in Sonography it was revealed that the plaintiff was carrying a fetus of 6 months one week. When respondent No.3 did not give satisfactory reply regarding carriage, the appellant requested for termination of pregnancy but the respondent No.3 refused on the anvil of poor physical condition of the plaintiff. Thereafter, on 16.11.2000 the plaintiff gave birth to a female child. Thus, the appellant instituted a suit for recovery of damages against the respondents jointly and severally on account of her negligence while performing the LTT and MTP operations.

4. Parties led their evidence before the trial court and the suit of the appellant was dismissed by the trial Court on the ground that there was no negligence on the part of the doctor while performing the LTT and MTP operations and, therefore, the appellant is not entitled for any damages, hence this appeal.

5. Learned counsel for the appellant Shri Prakash Braru, has vehemently submitted that the trial court has failed to appreciate the evidence on record and this is a clear-cut case of negligence on the part of respondent No.3 while performing the LTT and MTP operations and thus prayed for allowing the appeal and grant of compensation.

6. Per contra, the learned counsel for respondents while denying the claim of the appellant has submitted that the appellant herself was negligent in not following the necessary instructions given to her at the time of operation and she did not take precaution, which entailed into failure of operations. It is further submitted that there was no negligence on the part of the doctor. It is further submitted that in very rare cases these operation become unsuccessful and that does not mean that it is due to negligence of the doctor.

7. We have heard the learned Counsel for the parties at length and perused the record.

8. PW-1 Smt. Radha Ujjainkar, who is present appellant, has suppressed the fact that she was pregnant before the MTP operation was conducted. PW-2 Laxmi Narayan, who is husband of appellant, specifically admitted that the fact that appellant was pregnant at the time of MTP and LTT operations. From the evidence of PW-1 and PW-2 it appears that firstly MTP operation and at the same time LTT operation of the appellant were conducted on the same day, i.e.

19.4.2000 by Dr.P. Jain. Respondent No.3 deposes in her cross-examination in para 6 that appellant was pregnant before 19.4.2000 and MTP and LTT operations were conducted by her on that date. Ex.P/2 is discharge ticket, in which, it is clearly mentioned that operation was conducted on 19.4.2000. This fact is further established by statement of DW-3 Dr. Jyoti Bindal who affirmed this fact on the basis of hospital record. She has also deposed that there are 5-10 cases in which LTT and MTP operations were unsuccessful and fetus remained for which doctors cannot be held responsible.

9. In the case of *Jacob Mathew Vs. State of Punjab and another,* 2005 (6) SCC 1 Apex Court has held that to hold in favour of existence of negligence, associated with action or inaction of a medical professional, requires an in-depth understanding of the working of a professional as also the nature of the job and of errors committed by chance, which do not necessarily involve the element of culpability. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. The classical statement of law is available in *Bolam case* (1957)2 All ER 118 that in tort, it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that a defendant charged with negligence acted in accord with the general and approved practice is enough to clear him of the charge. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence, as recognized are three "duty", "breach" and "resulting damage" that is to say; (1) the existence of a duty to take care, which is owed by the defendant to the complainant; (2) The failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (3) damage, which is both casually connected with such breach and recognized by the law, has been suffered by the complainant. If the claimant satisfies the Court on the evidence that these three ingredients are made out, the defendant should be held liable in negligence.

10. Again in the case of *State of Punjab v. Shiv Ram and others,* (2005) 7 SCC 1, a three Judges Bench of Supreme Court considered the case of failure of sterilisation operation and the question that when such claim is actionable. The Apex Court has held that claim in tort in such cases can be sustained only if there was negligence on the part of Surgeon in performing the surgery and not on account of childbirth. The proof of negligence shall have to satisfy Bolam's test, (1957) 2 All ER 118. Merely because the a woman having undergone a sterilisation operation became pregnant and delivered a child, the operating surgeon or his

employer cannot be held liable for compensation on account of unwanted pregnancy or unwanted child. The operation may fail due to natural causes, no method of sterilization is foolproof or providing 100% guarantee or success. The Supreme Court has also considered the provisions of Section 3(2) read with Explanation II of Medical Termination of Pregnancy Act, 1971, according to which medical termination of pregnancy in such cases is permissible. In this regard number of test book of Gynaecology were referred. In Jeffcoate's Principles of Gaynaecology, revised by V.R. Tindall, MSc. MD, FRCSE, FRCOG, Professor of Obstetrics and Gynaecology, University of Manchester (5th Edn.) published by Butterworth Heinemann, the question of reliability of sterilisation procedures was taken into consideration, according to which :

> "The only sterilisation procedures in the female which are both satisfactory and reliable or destruction of a portion of both fallopian tubes; and hysterectomy. No method, however, is absolutely reliable and pregnancy is reported after subtotal and total hysterectomy, and even after hysterectomy with bilateral salpingectomy.
>
> Even when tubal occlusion operations are competently performed and all technical precautions are taken, intrauterine pregnancy occurs subsequently in 0.3 per cent of cases. This is because an ovum gains access to spermatozoa through a recanalised inner segment of the tube."

11. For claiming compensation in tort, the burden always rests with the claimant to prove that the doctor was negligent in performing the operation and the basis of liability of a professional in tort is negligence unless that negligence is established primary liability cannot be fasted on the medical practitioner. Unless the primary liability is established, vicarious liability on the State cannot be imposed. The vicarious liability of the State cannot be denied if it is proved that it is the employee doctor who is found to have performed surgery negligently and if the unwanted pregnancy thereafter is attributed to such negligent act or omission on the part of the employee doctor of the State. After considering the principle of doctor's negligence in tort, the Supreme Court dismissed the appeal, set aside the judgment and decree passed by appellate court and dismissed the suit of the plaintiff.

12. In the light of above principle of law laid down by the Apex Court and from the scrutiny of evidence, it is apparent that in this case there is no evidence of negligence on the part of doctor. Trial Court found that after the sterlisation operation the plaintiff herself was not vigilant and careful and she gave birth to a female child on 16.11.00, therefore, there is no evidence that the operation was not performed by the doctor after taking reasonable degree of care and skill. It is not proved that respondent No.3 Dr.P. Jain has not exercised the ordinary skill of a medical practitioner or the operation failed because of her negligence in performing the operation. As per medical science though sterilisation operation is highly effecting as a method of contraception and successful but there cannot be

any guarantee of success in every case and failure may occur even without negligence of the doctor. To claim compensation it has to be proved that a reasonable standard of care was not taken in the operation. Since, the doctor was not found negligent, the liability cannot be fastened to pay damages and in that case there will not be any question of vicarious liability, thus, it appears that learned trial Court has not committed any illegality in dismissing the suit. Learned counsel for appellant could not point out any evidence on record that how the doctor was negligent in performing the operation.

13. In the result the appeal being devoid of substance, is hereby dismissed. No costs.

Appeal dismissed.

I.L.R. [2008] M. P., 2093
APPELLATE CRIMINAL
Before Mr. Justice S.L. Kochar
20 March, 2008*

MANOJ ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Sections 107 & 306, Evidence Act, 1872, Section 113-A - *Abetting the commission of suicide - Deceased (wife) found inside her house because of burning - No eye witness of incident - Deceased had also not disclosed anything - Possibility of receiving burn injury accidently or by some other person, is not ruled out - It is not proved that deceased committed suicide - No evidence that husband (appellant) instigated wife to commit suicide or deliberately harassing wife so that she could commit suicide - Deceased met with death after 7 years of marriage - Presumption u/s 113-A of Act not attracted - Offence u/s 306 I.P.C. not made out.* (Paras 6 & 7)

क. दण्ड संहिता (1860 का 45), धारा 107 व 306, साक्ष्य अधिनियम, 1872, धारा 113–ए – आत्महत्या के लिए दुष्प्रेरित करना – मृतक (पत्नी) उसके घर के अन्दर जली हुई पाई गई – घटना का कोई प्रत्यक्षदर्शी साक्षी नहीं – मृतक ने भी कुछ नहीं बताया – किसी अन्य व्यक्ति द्वारा जलाने से या दुर्घटनावश जलने से उपहतियाँ आयीं हों यह आशंका निराधार नहीं – यह सिद्ध नहीं कि मृतक ने आत्महत्या की – ऐसा साक्ष्य नहीं कि पति (अपीलार्थी) ने पत्नी को आत्महत्या करने के लिए दुष्प्रेरित किया या जानबूझकर पत्नी को परेशान किया ताकि वह आत्महत्या कर ले – मृतक की मृत्यु विवाह के 7 वर्ष के बाद हुई – अधिनियम की धारा 113–ए के अधीन उपधारणा आकृष्ट नहीं – भा.द.सं. की धारा 306 के अधीन अपराध सिद्ध नहीं।

B. Penal Code (45 of 1860), Section 498-A - *Husband (appellant) after consuming liquor used to beat wife (deceased) - Appellant was also having suspicion over her character and always teasing her on the score -*

*Cr.A. No.49/2008 (Indore)

Husband was scolded as well as admonished for his cruel behivour with wife but there was no improvement - Conviction u/s 498-A upheld.

(Para 8)

ख. दण्ड संहिता (1860 का 45), धारा 498–ए – पति (अपीलार्थी) मदिरा का सेवन करने के बाद अक्सर पत्नी (मृतक) को पीटता था – अपीलार्थी उसके चरित्र पर भी शंक करता था और हमेशा इस आधार पर उसे तंग करता था – पति को डांटा गया साथ ही साथ उसके पत्नी के साथ क्रूर व्यवहार के लिए भर्त्सना की गई किन्तु कोई सुधार नहीं हुआ – धारा 498–ए के अधीन दोषसिद्धि की पुष्टि।

C. Criminal Procedure Code, 1973 (2 of 1974), Sections 161 & 162 - *Statement recorded u/s 161 of Code cannot be used for impeaching the credibility of defence witness - Even when defence witness was initially a prosecution witness and prosecution did not choose to examine such witness.*

(Para 11)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 161 व 162 – संहिता की धारा 161 के अधीन अभिलिखित कथन प्रतिरक्षा साक्षी की विश्वसनीयता को अधिक्षेपित करने के लिए प्रयुक्त नहीं किया जा सकता – जबकि प्रतिरक्षा साक्षी प्रारम्भ में अभियोजन साक्षी था और अभियोजन ने ऐसे साक्षी का परीक्षण नहीं कराया।

Cases referred :

AIR 1968 SC 1390, AIR 1975 SC 1324.

Pratik Mehta, for the appellant.

Manish Joshi, P.L., for the respondent/State.

J U D G M E N T (ORAL)

S.L. Kochar, J. :–By this appeal, preferred by the appellant, he has challenged his conviction under sections 498-A and 306 of the Indian Penal Code and sentence of R.I. for three years and seven years and fine of Rs. 200/-, in default of payment of fine to suffer additional R.I. for 15 days and R.I. for five years and fine of Rs. 200/-, in default of payment of fine to suffer additional R.I. for 15 days respectively with direction to run both the substantive jail sentences concurrently, passed by the learned Addl. Sessions Judge, Jobat District Jhabua in Sessions rial No. 40/2007 by judgment dated 03.01.2008.

2. According to the prosecution deceased Sumitra was married with the appellant before 9 to 10 years. Out of this wedlock they were having two children. The appellant, after consuming liquor used to beat and harass his wife (the deceased). The appellant was also having doubt over her character and also levelling allegation to this effect. The deceased was disclosing all these facts and about behaviour of the appellant to her parents when-ever she was visiting their house. The appellant was admonished by the parents of deceased and the appellant some times assured them to correct himself and not to beat and misbehave with the deceased. On 13.11.2006, the deceased was found dead inside her house because of burning. According to the prosecution case, she committed suicide because of cruel behaviour of the appellant. The matter was reported to the

village Chowkidar Naansa who lodged the report at the Police Station and the Police registered the MARG. Dead body of the deceased was sent for postmortem examination and the same was conducted by PW-9 Dr S.N. Dawar. The postmortem examination report is Ex.P/11. After due investigation, the appellant was charge-sheeted for commission of the aforementioned offences.

3. The appellant denied the charges and pleaded not guilty. In defence he examined three witnesses whereas the prosecution, in order to establish its case has examined in total tern witnesses and adduced 15 documents. Learned trial Court, after hearing both the parties, finding the appellant guilty, convicted and sentenced him as indicated herein-above.

4. Learned counsel for the appellant has submitted that the deceased was married with the appellant before ten to twelve years and having two children, therefore, the ;provision of section 113-A of the Indian Evidence Act regarding presumption as to abatement to commit suicide by a married woman would not be attracted and there is no direct or circumstantial evidence available on record to establish that the deceased committed suicide. Learned counsel also submitted that possibility of sustaining burn accidentally or she could have ablazed by some one else can also not be ruled out. Therefore, only on the basis of the evidence of cruel behaviour, ill-treatment and beating by the appellant to the wife, offence under section 306 of the Indian Penal Code would not be made out and the appellant cannot be convicted for abatement to commit suicide. Learned counsel has submitted that even if complete prosecution case is accepted, at the most, offence under section 498-A of the Indian Penal Code would be made out against the appellant.

5. On the other hand, learned State counsel has supported the impugned judgment and finding and also submitted that there is overwhelming direct and circumstantial evidence available on record that the appellant, after consuming liquor used to beat his wife and raising suspicion upon her character and this was his routine behaviour, as stated by the witnesses, mother, father and cousins of the deceased and independent witnesses of the locality. The appellant was found inside the house when the deceased sustained burn injuries, but he did not even try to rescue her which is sufficient to bring home the guilty of the appellant for abatement to commit suicide by the deceased.

6. Having heard learned counsel for the parties and after perusing the entire record, this Court is of the view that the offence punishable under section 306 of the Indian Penal Code would not be made out against the appellant, because there is no evidence on record that the deceased committed suicide. For making out a case under section 306 of the Indian Penal Code, the first most important ingredient required to be proved beyond all reasonable doubt by the prosecution is that the deceased committed suicide, which is lacking in the instant case as there was no eye witness of the incident and the deceased had also not disclosed anything

about sustaining burn injuries. Therefore, possibility of receiving burn injuries accidentally or the same could be caused by some other person, is not ruled out. Therefore, the appellant is entitled to get benefit of this circumstance since the deceased met with death otherwise in normal circumstances after seven years of the marriage. Therefore, the provision of presumption under section 113-A of the Indian Evidence Act regarding abatement to commit suicide is not attracted.

7. The ingredients under section 107 of the Indian Penal Code regarding abatement are also not present in the instant case. No body has stated that the appellant instigated his wife to commit suicide or entered into conspiracy with some one to abate commission of suicide by his wife or deliberately knowing well harassing his wife so that because of the said harassment she could commit suicide. The ill-behaviour of the appellant was continued for a very long period, but the wife did not commit suicide. All the witnesses, close relatives of the deceased and independent witnesses have also spoecifically stated that the deceased was a woman of strong will power and courage and she could not commit suicide.

8. There is overwhelming evidence available on record in regard to cruel behaviour of the appellant with his wife. PW-1 Iman Wele, PW-2 Nirmalabai, PW-3 Vimlesh, PW-4 Kalawati, PW-5 Smt. Kamla, PW-7 Navin, father, mother, aunt, sister-in-law and neighbour respectively have stated that the appellant, after consuming liquor used to bet the deceased who was a teacher and she was disclosing these facts to them when-ever she met them. The appellant was also having suspicion over her character and always teasing her on that score. So many times, the appellant was admonished by his father-in-law and mother-in-law as well as other relatives and in spite of promise not to repeat such mis-behaviour, the appellant did not stop it. The witnesses have also stated that there was a meeting of family members of the appellant and the appellant was scolded as well as admonished for his cruel behaviour with the deceased, but there was no improvement in spite of promise .

9. PW-5 Smt. Kamla, the sister-in-law of the appellant (wife of cousin brother), has deposed that she had seen the appellant quarreling with the deceased and she disclosed several times to her about beating by the appellant after consuming liquor and suspicion on her character. The independent witness PW-7 Navin, a neighbour of the appellant, has also supported the prosecution case in this regard and there is no material on record to discard their testimony.

10. PW-9 Dr Dawar proved the postmortem report Ex.P/11 and i n his opinion the deceased died because of asphyxia due to extensive hundred percent burn injuries.

11. The appellant examined DW-1 Smt Adlina who has deposed that the appellant was having good relation with his wife. In cross-examination, she admitted that she did not disclose any-thing to the police. In cross-examination, the Prosecutor has contradicted this witness to impeach her testimony with her

case-diary statement Ex.P/13. This statement was recorded as per provision under section 161 of the Code of Criminal Procedure during the course of investigation, therefore, the same cannot be used for impeaching the credibility of the defence witness even when this witness was initially a prosecution witness and the prosecution did not choose to examine such witness (her). The statement recorded under section 161 of the Cr.P.C. can be used only as per provision under section 162 of the said Code when the witness was examined as a prosecution witness by the prosecution after declaring her hostile and in cross-examination by the defence as per provision under section 145 of the Indian Evidence Act. Since this witness did not appear as a prosecution witness, therefore, she could not be contradicted with her case-diary statement. The testimony of defence witness DW-1 Smt.Adlina, DW-2 Shilpa and DW-3 Ramsingh Solanki is of no assistance to the appellant. All these three witnesses have given general statement that the appellant and deceased were having cordial relation. In their statement, they expressed their opinion and not with regard to any particular incident. DW-3 Ramsingh Solanki was also contradicted by the Prosecutor with his case-diary statement Ex.P/15. The learned trial Court should have not allowed the ;prosecutor to use the case-diary statements recorded by the police as per provision under section 161 of the Code of Criminal Procedure to contradict or impeach the testimony of the witnesses examined in defence. (See: *Laxman Kalu V/s State of Maharashtra* (AIR 1968 Supreme Court 1390 at para 7) and *Mrs Shakila Khader etc. V/s Naushert Gama and another* (AIR 1975 SC 1324). In the latter case of Mrs Shakila Khader, the Supreme Court has observed thus:-

> "As regards the evidence of DW-1 it was wrong to have allowed him to be cross-examined by the prosecution with reference to the statement which he had given to the Police. Under Section 162 Cr.P.C. only witnesses on behalf of the prosecution could be contradicted by reference to their statements made to the police and not Court witnesses or defence witnesses. "

12. Consequently, on the basis of the foregoing legal and factual discussion, this Court is of the opinion that the conviction of the appellant under section 306 of the Indian Penal Code is not made out. Therefore, his conviction and sentence for this offence are hereby set aside. The conviction of the appellant under section 498-A of the Indian Penal Code is upheld, but his sentence is reduced from three years to six months and fine is enhanced from Rs. 200/- to Rs. 5,000/- and in default of payment of fine to suffer additional R.I. for six months. Thus, the appeal is allowed in terms as indicated herein.

13. Office is directed to send a copy of this judgment to the trial Court along with its record for compliance.

Appeal allowed

I.L.R. [2008] M. P., 2098
APPELLATE CRIMINAL

Before Mr. Justice S.K. Kulshrestha & Mrs. Justice Manjusha P. Namjoshi
26 June, 2008*

TUKARAM ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Sections 302, 309 - *Murder and attempt to commit suicide - Prosecution based on two circumstances that wife (deceased) died of poison and husband (appellant) consumed poison indicate that it was after administering poison to his wife, husband tried to commit suicide - Held - No evidence that the substance which was found in the viscera of the deceased contained the same poison as the poison consumed by the husband - It would be a far fetched conclusion that husband alone was the person who administered poison to the deceased - In view of the suspicion of the husband about her fidelity, commission of suicide by the wife was not ruled out - Conviction u/Ss. 302 & 309 I.P.C. set-aside - Appeal allowed.* (Para 10)

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 309 – हत्या और आत्महत्या कारित करने का प्रयत्न – अभियोजन दो परिस्थितियों पर आधारित कि पत्नी (मृतक) की मृत्यु विष से हुई और पति (अपीलार्थी) का विष का सेवन करना दर्शाता है कि उसकी पत्नी को विष देने के बाद पति ने आत्महत्या का प्रयत्न किया – अभिनिर्धारित – ऐसा साक्ष्य नहीं कि मृतक के विसरा में जो पदार्थ पाया गया उसी विष का पति द्वारा सेवन किया गया – यह एक दूरस्थ निष्कर्ष है कि पति ही एकमात्र वह व्यक्ति है जिसने मृतक को विष दिया – पति उसकी पत्नी की पतिव्रता के बारे में शंका करता था इसलिए पत्नी द्वारा आत्महत्या करने की आशंका निराधार नहीं – भा.द.सं. की धारा 302 व 309 के अधीन दोषसिद्धि अपास्त – अपील मंजूर।

B. Penal Code (45 of 1860), Section 302 - *Motive - In circumstancial evidence, motive acquires significance - Once prosecution failed to prove the motive alleged and there is no evidence to attach culpability to the accused, merely on suspicion, surmises & conjectures accused could not have been convicted.* (Para 11)

ख. दण्ड संहिता (1860 का 45), धारा 302 – हेतु – परिस्थितिजन्य साक्ष्य में हेतु महत्व रखता है – एक बार जब अभियोजन कथित हेतु को सिद्ध करने में असफल होता है और अभियुक्त को सदोषता से संलग्न करने लिए कोई साक्ष्य न हो तो केवल संदेह, अनुमान व अटकलबाजी से अभियुक्त को दोषसिद्ध नहीं किया जा सकता।

Amit Purohit, for the appellant.
Girish Desai, Dy.A.G., for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by **S.K. KULSHRESTHA, J.**:–This appeal is directed against the judgment dated 8.4.1999

*(Cr.) No. 21 1999 (Indore)

of the learned Second Additional Sessions Judge, Khargone in Sessions Trial No. 104/1998 by which the appellant has been convicted under Section 302 of the IPC for voluntarily causing death of his wife Kadvibai and sentenced to imprisonment for life and fine of Rs. 250/- and also under Section 309 of the IPC for attempting to commit suicide and sentenced to one month's simple imprisonment.

2. According to the case of the prosecution, the appellant suspected fidelity of his wife Kadvibai particularly with regard to her promiscuous relation with the father of the appellant. There were frequent quarrels between the spouses on account thereof. On 5.1.1998, the father of the accused had come to the village in connection with a death. On that day, the deceased Kadvibai, had left at 4 PM to collect cow dung. At 6 PM, it was learnt by Dinesh that his mother Kadvibai was lying dead in the field of Ratan Patel and the accused was also present there. On hearing the said news, the son of the deceased rushed to the place and found that Kadvibai was lying dead but the accused was not there. It was suspected that the accused had caused death of Kadvibai on suspicion with regard to her character. On report being made, inquest was held and the body was sent for post mortem examination. The post mortem examination was conducted by P.W.7 Dr. V.K.Sharma who gave Report Ex.P/8. The testimony of Dr. Sharma and the report indicate that no injury was found on the deceased but she had died asphyxial death. For determination of the case of death, the viscera was preserved and advised to be sent to the Laboratory for examination though it was suspected that it was a case of consumption of organo phosphorus poisoning.

3. Accused was also sent for medical examination. P.W.10 Dr. Yeshwant Malge examined the accused and gave report Ex.P/13. In this report it was stated that he was semiconscious but unable to give any statement. His pupil were constricted and he was exuding smell of organo phosphorus compound from his mouth and perspiration. The stomach washing had been preserved.

4. The accused was arrested and after completion of the investigation, he was prosecuted. On being indicted for the said offences, the accused stated that he was not in the house on the date of the incident as he had gone to Bhikangaon with his father-in-law and upon return, he was apprised of the incident. On finding that his wife had died, he became very upset and consumed the medicine. The learned Additional Sessions Judge, on finding that the circumstances indicated that it was the accused who had administered poison to his wife and had thereafter attempted to commit suicide, convicted and sentenced the appellant as hereinabove stated.

5. Learned Counsel for the appellant submits that material witnesses did not support the prosecution with the result the case of the prosecution rests only on the circumstantial evidence of the poison having been found in the viscera of his wife and detected in his examination by Dr. Yeshwant Malge P.W.10 as per his Report Ex.P/13. The learned Counsel, therefore, submits that since the

circumstances relied upon by the prosecution are by themselves vague and suspicious and do not point to the guilt of the appellant, the appellant deserves to be acquitted. Learned Counsel for the State however, contends that poison was found in the viscera of the deceased as also in the stomach washing of the accused. The accused was also seen sitting near the dead body and these circumstances rule out any hypothesis of the innocence of the accused. He, therefore, urges that conviction of the accused be maintained.

6. We have heard the learned Counsel for the parties and perused the record.

7. The prosecution examined 11 witnesses to prove its case. However, P.W.1 Dinesh, son of the deceased, P.W.2 Nannu, P.W.3 Baliram, P.W.4 Champalal, P.W.5 Ramlal and P.W.8 Natthu turned hostile. The case of the prosecution is, therefore, founded on the testimony of P.W.7 Dr. V.K.Sharma who suspected poison in the post mortem and gave report Ex.P/8 and Dr. Yeshwant Malge P.W.10 who suspected that the accused had consumed poison. We may, at the outset, reject the contention that since the accused had admitted that he had consumed medicine, it was the poison that was suspected by P.W.10. It has also been pointed out that although the stomach washing of the accused was preserved as deposed to by Dr. Yeshwant Malge P.W.10 and stated in the Report Ex.P.13, the said stomach washing was not sent to the Forensic Science Laboratory for confirmation of consumption of poison as admitted by P.W.10 Dr. Yeshwant Malge in his cross-examination. Thus, although a very strong suspicion arises with regard to the poisonous substance consumed by the appellant, the fact that there is no confirmation by any scientific test about the consumption of any poison, it cannot be said that the accused had consumed poison to commit suicide. Learned Counsel for the State has contended that in his examination under Section 313 of the Cr.P.C. the accused has admitted that seeing the condition of his wife, he had taken medicine. However, the said statement does not tantamount to admission of having consumed poison.

8. In respect of the death of Kadvibai, wife of the accused, viscera was sent to the Forensic Science Laboratory for examination of the chemical/poison found in her body. In its report Ex.P/14, the Forensic Science Laboratory has stated that out of the six articles sent to the Laboratory for examination/analysis, one piece of sack, one old trouser, viscera of deceased Kadvibai, the organs of the deceased and a plastic can contained organo phosphorus pesticide.

9. In his testimony P.W.11 G.S.Mujalda (Investigating Officer) has stated that the accused had given him information that he had thrown the bottle which he would get recovered. A plastic bottle containing 50 gms insecticides was seized from him vide memo Ex.P/12. If the said testimony is examined in juxtaposition with the Forensic Science laboratory report Ex.P/14, it becomes luculent that what was sent to the Forensic Science Laboratory was only a plastic can allegedly containing insecticide. In these circumstances, it cannot be said that what was

sent to the Forensic Science Laboratory was the bottle made of plastic containing 50 gm insecticides allegedly sseized from the accused. The recovery, therefore, does not connect the accused with the articles sent to the Forensic Science Laboratory. The statement of P.W.9 Mohanlal also does not further the prosecution case as he has also deposed that it was a plastic bottle that was seized. It is also alleged that a pair of trousers was sent to the Forensic Science Laboratory and according to the report Ex.P/14 foul smell of insecticide was emanating from it. there is nothing on record to suggest that the said trousers belonged to the accused. In these circumstances, insofar as the medical evidence is concerned, the prosecution not only failed to establish that the accused had consumed insecticide, but also failed to prove that the trousers seized by the Police belonged to the accused and further the bottle seized by the Police suspected of containing insecticide was not sent to the Forensic Science Laboratory but only a plastic can was sent. Accordingly, these circumstances completely rule out the complicity of the accused and his attempt to commit suicide.

10. The Trial Court has observed that there being no eye-witness to the incident, the two circumstances namely that the deceased died of poison and the accused consumed poison indicate that it was after administering poison to his wife, the accused tried to commit suicide. We have already observed that the prosecution has failed to establish that the medicine consumed by the accused was an insecticide. There is also no evidence that the substance which was found in the viscera of the deceased contained the same poison as the poison consumed by the accused. There being no nexus between the poison consumed by the deceased or administered to her, it would be a far fetched conclusion that the accused alone was the person who administered poison to the deceased. In view of the suspicion of the accused about her fidelity commission of suicide by the deceased was not ruled out. In any case, by the said solitary circumstance the innocence of the accused is not ruled out. It is trite that in case of circumstantial evidence, each circumstance should point to the guilt of the accused and should not be consistent with any hypothesis of his innocence and all the circumstances taken together should make a complete chain indicating his guilt. In the present case, it has not been proved that the accused administered poison to the deceased and on the basis of the presence of the accused as alleged and consumption of some medicine by him, it cannot be inferred that the accused was the perpetrator of the crime.

11. We may also point out that the motive furnished for commission of the said crime was that the accused was suspecting the fidelity of his wife thinking that she was having promiscuous relations with her father-in-law. In this connection P.W.3 Baliram examined by the prosecution has not supported the prosecution. P.W.1 Dinesh, son of the deceased, who lodged FIR has also not supported the prosecution. P.W.2 Nannu examined to prove extra-judicial confession has resiled from his statement and so also P.W.4 Champalal. In circumstantial evidence, motive acquires significance and once the prosecution has failed to prove the

motive alleged and further, there is no evidence to attach culpability to the accused, merely on suspicion, surmises and conjectures, the accused could not have been convicted.

12. Ex-consequentia, this appeal is allowed. The conviction of the appellant for offence punishable under Section 302 and 309 of the I.P.C. and the sentence awarded thereunder are all set-aside. The accused is acquitted of the charges. The accused is in Jail. He be released forthwith if not required in connection with any other offence.

Appeal allowed.

I.L.R. [2008] M. P., 2102
APPELLATE CRIMINAL
Before Mr. Justice S.L. Kochar
1 July, 2008*

SHAKIL ... Appellant
Vs.
STATE OF M.P. ... Respondent

A. Narcotic Drugs and Psychotropic Substances Act (61 of 1985) - Sections 8 & 15(c) - *Punishment for contravention in relation to poppy straw - 60 bags containing poppy husk were seized - 120 samples were prepared - Only one sample was sent to F.S.L. - Seized articles not produced before trial court - Held - 120 samples were representative sample of each individual bag - As one sample was sent, therefore, it cannot be said that whole 60 bags were containing poppy husk - Non-production of seized articles is also fatal - Prosecution failed to establish identity and quantity of seized articles - Conviction not sustainable - Appeal allowed.* **(Para 7)**

क. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) – धाराएँ 8 व 15(सी) – पॉपी स्ट्रा के सम्बन्ध में उल्लंघन के लिए दण्ड – 60 बोरे जिनमें पॉपी हस्क था अभिग्रहीत किये – 120 नमूने तैयार किये – केवल एक नमूना न्यायालयिक विज्ञान प्रयोगशाला को भेजा – अभिग्रहीत वस्तुएँ विचारण न्यायालय के समक्ष पेश नही कीं – अभिनिर्धारित – 120 नमूने प्रत्येक विशिष्ट बोरे के प्रतिनिधि नमूने थे – चूंकि एक नमूना भेजा गया इसलिए यह नहीं कहा जा सकता है कि सभी 60 बोरों में पॉपी हस्क था – अभिग्रहीत वस्तुओं का पेश न किया जाना भी घातक है – अभियोजन अभिग्रहीत वस्तुओं की पहचान और मात्रा को स्थापित करने में असफल रहा – दोषसिद्धि स्थिर रखने योग्य नहीं – अपील मंजूर।

B. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 52-A - *Disposal of seized narcotic drugs and psychotropic substances - Narcotic drug and psychotropic substances can be disposed off immediately after following procedure prescribed in Section 52-A - Investigating agency or prosecution should have taken recourse of these provisions - Trial court also suo-moto could have taken steps for disposal of seized articles.*

(Paras 11 & 12)

---

*Cr.A. No. 1805 (Indore)

ख. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61) – धारा 52–ए – अभिग्रहीत स्वापक औषधि एवं मनःप्रभावी पदार्थ का व्ययन – स्वापक औषधि एवं मनःप्रभावी पदार्थ का व्यय धारा 52–ए में विहित प्रक्रिया का पालन करने के बाद तत्काल किया जा सकता है – अनुसंधान एजेंसी या अभियोजन को इन उपबंधों का आश्रय लेना चाहिए था – विचारण न्यायालय स्वप्रेरणा से भी अभिग्रहीत वस्तुओं के व्ययन के लिए कार्यवाही कर सकता था।

Case referred :

2004 SCC (Cri) 2028.

Vivek Singh with *Laad.*, for the appellant.

R.S. Chouhan, G.A., for the respondent.

JUDGMENT (ORAL)

S.L. Kochar, J. :– Both these appeals are arising out of impugned judgement, therefore, decided by this common judgement.

The appellants have preferred this appeal against the impugned judgement dated 22/02/2005 passed in Special Case No. 29/2001 by learned Special Judge, (N.D.P.S Act), Neemuch, whereby convicted the appellants for the offence punishable under Section 8/15(c) or 8/29/15(c) of the Narcotic Drugs & Psychotropic Substance Act, 1985 (for short 'the Act'), sentenced to R.I for ten years and fine of Rs.1,00,000/- to each appellant, in default of payment of fine additional R.I for four years.

2. Briefly stated the prosecution case as unfolded before the Trial Court is that on 14.7.00, Head Constable Shri Shivshankar of Police Station Singoli was going to enquire the report of Marg (death) to village Palasiya via village Jhatla. In village Jhantla in the locality of Sutarks on the main road Truck No. M.P 14-G/ 5351 was standing and Hummal were loading Poppy Husk in it. On enquiry by Head Constable, driver disclosed his name Shakil s/o Ajij Qureshi. Driver also disclosed about having permit of contractor Bisan Singh. The appellant Badrilal the then Lambardar (Mukhiya) was loading Poppy husk in the truck. Head Constable Shiv Shankar perused the permit and found false, it was only for transportation of Poppy Husk of the cultivators of village Borda Dhogawa, Modijar and Sodijar. Permit was not for village Jhatla and Badrilal was illegally loading the Poppy Husk. The Head Constable Shiv Shankar having no power to investigate the matter under the provisions of N.D.P.S Act took the truck and Poppy Husk with driver Shakil and appellant Badrilal (Mukhiya) to police station Singoli. In Police Station, Station House Officer Shri Parihar was not present and had gone to Court. On arrival of Station House Officer, Head Constable Shiv Shankar intimated him about the events and Head Constable started proceeding. In presence of independent witnesses and with the consent of driver Shakil, search memorandum, identification of Poppy Husk, weighment of Poppy Husk found in the truck were prepared and out of each bag two samples each of 250 Gram in total 120 samples were separately taken and sealed by Shri S.R.Parihar. Seizure memo was prepared, because of rainy season the bags became wet. All the bags were given identifying

mark. Facsimile seal was also prepared. 2658 Kilogram Poppy Husk in 60 bags were seized. From driver Shakil Truck and its documents and from licency Shri Kishansingh Meghawat, permit of transportation, list of cultivators of opium were seized and seizure memo was prepared. On 15.7.00 at 11:10 A.M, the appellant Shakil was arrested and at 11:15 A.M, the appellant Badrilal was arrested. Their arrest memos were prepared. Station House Officer Shri Parihar recorded the F.IR on 15.7.00 at 12:10 noon vide Crime No. 83/00 under Section 8/15 and 26 of the N.D.P.S Act and started investigation. Seized narcotic drug was handed over in safe custody of Head Constable. As per provision under Section 56, detailed memorandum was sent to senior police officer, SDOP, Jawat and intimation to this effect was also sent to Special Judge under N.D.P.S Act. With covering letter of S.P, one sample out of seized Poppy Husk was sent for chemical examination to Forensic Science Laboratory, Sagar on 29.7.00. Laboratory report Ex.P/25 was received and according to this report in sample A-1 packet, Poppy Husk (pieces of Poppy capsule of opium) was found. On completion of investigation, charge sheet was filed before the Trial Court against the appellants under Section 8/15 and 8/29/15(c) of the Act.

3. Both the appellants refuted the charges, their defence was of false implication. The appellant Shakil submitted that he was sleeping in the Lodge situated infront of Singoli Petrol Pump. On 14.7.00 in the night at 1:00 A.M, he was forcibly lifted from the room of the Lodge and fastened in a false case, he examined one witness in his defence DW-1 Yushuf. The defence of appellant Badrilal was that he was called by the police personal from his house and falsely implicated in the instant case. Badrilal has denied his position as Mukhiya. The learned Trial Court after recording the statements of the witnesses of both the parties and hearing them, finding the appellants guilty, convicted and sentenced them as stated herein-above.

4. Learned counsel for the appellants have submitted two prepositions for consideration before this Court number one is that seized property was not produced before the Trial Court to establish the identity with the sample as well as quantity, therefore, conviction is not sustainable. Learned counsel placed the reliance on Supreme Court judgement rendered in case of *Jitendra and another V/s State of Madhya Pradesh* [2004 SCC (criminal)2028]. The second preposition is that against the appellants at the most offence under Section 8/26 of the Act would be made out i.e. for commission of breach of conditions of the licence, permit or authorisation, which is punishable only up to the jail sentence of three years or with fine or with both. Per contra, learned counsel for the State has supported the judgement and finding arrived at by the learned Trial Court.

5. Having heard the learned counsel for the parties and after perusing the entire record, this Court is of the opinion that there is much substance in the argument of learned counsel for the appellants on the question of non-production of the seized property of the case during the course of trial before the Court. This

question was argued before the Trial Court and learned Trial Court in paragraphs-98 & 99 has considered this aspect and held that looking to the nature of offence if out of 120 samples only one sample was sent, no illegality was committed by the Investigating Agency and argument regarding manipulation in sample advanced by the learned counsel for the appellants was baseless. Learned Trial Court has also held that defence of the appellants was that they were transporting the Poppy Husk owned by licency under the transportation permit. In view of this defence, it was admitted position by the appellants that they were transporting the Poppy Husk and because this property was not produced, same would not cause any dent to the prosecution case.

This Court has perused the accused statements of both the appellants. Defence of appellant Shakil was that he was sleeping in the Lodge of Singoli village and he was taken forcibly from the Lodge. He has nowhere admitted about seizure of Poppy Husk from the seized Truck nor stated about transportation of Poppy Husk under valid licence and permit. He denied the entire prosecution case. Appellant Badrilal has also denied the seizure of Poppy Husk and specifically stated in answer to question no. 66 that he was not the lumberdar he had no concern with Poppy Husk and he was taken by the police from his house and locked inside the police station forcibly. Nowhere he has admitted regarding transportation of seized Poppy Husk alongwith the Truck. In answer to question No. 40, he has stated that he was having valid permit for Poppy Husk, but he has nowhere admitted that under this permit he had got loaded the seized Poppy Husk in the Truck and same was going to be transported from village Jhatla. In view of this factual position, the facts mentioned in paragraph-98 of the impugned judgement by learned Trial Court are wholly incorrect, at the face of record.

6. In paragraph-99, the learned Trial Court has described that only two samples were produced in the Court, which were deposited with Naib Nazir. Because of some reasons, samples packets could not be produced in the Court during the course of recording of evidence. The learned Trial Court assigned reason of his own that either the case property was reached late in time from Mandsaur Court or Nazir (Incharge of Property) might be ion leave, because of which sample could not be produced in the Court, but afterwards sample was received from Mandsaur Court to his Court and same were deposited with Naib Nazir. The deposit slip of case property is available in the record. These reasoning for non-production of the case property in the Court at the time of examination of the prosecution witnesses, regarding search and seizure, do not appear just, legal, proper and reasonable, specially when prosecution has not offered any explanation for non-production of the case property (seized property Poppy Husk).

7. It would be apposite to mention here that PW-6 Sub-Inspector Shri S.R.Parihar was examined by the prosecution on 11.7.03 and prosecutor sought time during the course of recording of statement of this witness for production of

case property/seized drug or substance i.e. Poppy husk and in paragraph-12 of the deposition of this witness the Court has put a note to this effect, reserving right of the prosecution to produce and further examine this witness in Court, but after examination of this witness on 11.7.03 neither property was produced nor this witness was called for further examination by the prosecution. In total 60 bags were seized and from each bag two samples each of 250 Gram were taken separately and in total 120 samples were taken, these were representative sample of each individual bag, but only one sample was sent to Forensic Science Laboratory for examination, which is clear from Forensic Science Laboratory report, Ex.P/25 as well as the statement of PW-5 Head Constable Shri Mangilal, Malkhana Incharge. The sample was sent with constable Sunil Kumar, who has not been examined. On the basis of only one sample, how it could be said that in whole 60 bags Poppy husk was packed and available. The purpose of taking two sample from each bag was to send one sample of each bag to the Forensic Science Laboratory and preserve one sample in safe custody and sent the same immediately alongwith the report to the Officer Incharge of the nearest police station or the officers empowers under Section 53 of the Act for the purposes for taking such measures as may be necessary for the disposal, according to law, of such article as per provision under Section 52 of the Act. Supreme Court in case of Jitendra (supra) has considered the question of non-production of seized drugs and observed in paragraph-5 and 6 as under :-

> 5. The evidence to prove that charas and ganja were recovered from the possession of accused consisted of the evidence of the police officers and the panch witnesses. The panch witnesses turned hostile. Thus, we find that apart from the testimony of Rajendra Pathak (PW7), Angadsingh (PW8) and Sub-Inspector D. J. Rai (PW6), there is no independent witness as to the recovery of the drugs from the possession of accused. The charas and ganja alleged to have been seized from the possession of the accused were not even produced before the trial Court, so as to connect it with the samples sent to the Forensic Science Laboratory. There is no material produced in the trial, apart from the interested testimony of police officers, to show that the charas and ganja were seized from the possession of the accused or that the samples sent to the Forensic Science Laboratory were taken from the drugs seized from the possession of the accused. Although, the High Court noticed the fact that the charas and ganja alleged to have been seized from the custody of the accused had neither been produced in the Court, nor marked as articles, which ought to have been done, the High Court brushed aside the contention by observing that it would not vitiate the conviction as it had been proved that the samples were sent to the Chemical Examiner in a properly sealed condition and those were found to be charas and ganja. The High Court observed, "non-production of these commodities before the Court is not fatal to the prosecution. The defence also did not

insist during the trial that these commodities should be produced." The High Court relied on Section 465 of the Cr. P.C. to hold that non-production of the material object was a mere procedural irregularity and did not cause prejudice to the accused.

6. In our view, the view taken by the High Court is unsustainable. In the trial it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of charas and ganja were seized from the possession of the accused. The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchanama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS, Act. In this case, we notice that panchas have turned hostile so the panchanama is nothing but a document written by the concerned police officer. The suggestion made by the defence in cross-examination is worthy of notice. It was suggested to the prosecution witnesses that the landlady of the house in collusion with police had lodged a false case only for evicting the accused from the house in which they were living. Finally, we notice that the Investigating Officer was also not examined. Against this background, to say that, despite the pancha witnesses having turned hostile, the non-examination of the Investigating Officer and non-production of the seized drugs, the conviction under the NDPS, Act can still be sustained, is far-fetched.

8. In the case at hand, independent Panch witnesses PW-1 Ramsukh, PW-2 Mahesh, PW-7 Ramlal have turned hostile. The entire prosecution case is based on the statement of police officials PW-6 Shri S.R. Parihar, PW-9 Head Constable Shivshankar, the member of raiding party, PW-8 Assistant Sub-Inspector Shri Pawan Sharma, and PW-10 Assistant Sub-Inspector Shri R. P. Yadav regarding further investigation. In the light of these facts, it can not be held, only on the basis of seizure memo and oral statement of police witnesses, that 2658 kilogram Poppy husk was seized from the exclusive possession of the appellants found loaded in 60 bags in a truck.

9. It is pertinent to mention here that legislation has taken care of various contingency, which may arise regarding keeping in safe custody the seized narcotic drug till the final disposal of the trial and provided provision under Section 52 and 52 -A for disposal of persons arrested and article seized as well as disposal of seized narcotic drug and psychotropic substance, which reads as under : -

52. Disposal of persons arrested and articles seized. --

(1) Any officer arresting a person under section 41, section 42, section 43 or section 44 shall, as soonas may be, inform him of the grounds of such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to --

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4)The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

[52-A.Disposal of seized narcotic drugs and psychotropic substances.--

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of orgin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of --

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) orthe Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offences.]

10. The Central Government in exercise of powers conferred by Sub Section 1 of Section 52-A having regard to the hazardous nature, their vulnerability to theft substitution, constraints of proper storage space or any other relevant considerations, issued a notification No.381 (E) dated 29.5.89 specifying the following narcotic drug and psychotropic substances namely :-

(1) NARCOTIC DRUG- (i) Opium; (ii) Morphine; (iii) Heroin;(iv) Ganja; (v) Hashish; (vi) Codein; (vii) Thebaine; (viii) Cocaine; (ix) Poppy straw and any other manufactured drug as defined under clause (xi) of Section 2 of the Act. morphine, heroin, Ganja, Cocaine, Poppy straw and any other manufactured drug as defined under Clause XI of Section 2 of the Act.

(2) PSYCHOTROPIC SUBSTANCES :- (i)Methaqualone; (ii) T.H.C; (iii) Amphetamine; and (iv) any other psychotropic substances as defined under clause (xxiii) of Section 2 of the said act.

11. The above mentioned seized narcotic and psychotropic substances can be disposed of immediately after following the procedure prescribed in sub Section 2 to 4 of Section 52-A. The Investigating Agency as well as the prosecution should have taken recourse of these provisions so that seized drug could have been disposed of immediately and evidence could have also been preserved for the purposes of establishing the identity and quantity of the contraband article without keeping the same in custody for long period and without running a risk of its theft, change or damage because of any reason, but the Investigating Agency as well as the prosecution has not taken care of these provisions to preserve the proper specific and strong evidence against the accused persons and also failed to assign any cogent and reliable reason for non-production of seized drug though prosecution itself prayed for time to produce seized drug as clear from the statement of PW-6 Sub Inspector S.R. Parihar in paragraph-12 recorded on 11.7.03 by the learned Trial Court.

12. The learned Trial Court in para 136 of the impugned judgement given direction for disposal of the seized Poppy Husk as per provision under Section 52-A, which is of no use at-least for present case, after conclusion of trial. The seizure was effected on 14.7.00 and impugned judgement was passed on 22.2.2005 wherein direction as per provision under Section 52-A of the Act was issued by the learned Special Judge, after more than four and half year, and there is no positive material

available in the record of the case where the whole quantity of seized Poppy Husk was kept. The learned Trial Court used the provision under Section 52-A of the Act for disposal of the seized drug after conclusion of the trial whereas these provisions are made normally for use of immediately after seizure of drugs. The learned Trial Court also suo-moto could have taken steps for disposal of the seized narcotic drug as per provision under Section 52-A of the Act.

13. In view of the aforesaid discussion, this Court is of the view that non-production of the seized drug before the Court is proved fatal to the prosecution case and prosecution has failed to establish identity of the seized drug and its quantity before the Trial Court, therefore, conviction and sentence of the appellants are not sustainable on this ground alone.

14. Consequently, this appeal is allowed, impugned judgement and findings of the Trial Court are hereby set aside. The Learned Trial Court is directed to release the appellants forthwith, if not wanted in any other criminal case.

Original judgement is retained in Criminal Appeal No. 318/05 and a copy whereof be placed in the record of connected Criminal Appeal No. 451/05 .

Office is directed to send a copy of this judgement alongwith the record of the trial court to the Trial Court for its compliance.

Appeal allowed.

I.L.R. [2008] M. P., 2110

APPELLATE CRIMINAL

Before Mr. Justice S.K. Kulshrestha & Mrs. Justice Manjusha P. Namjoshi

8 July, 2008*

RAM SINGH & ors. ... Appellants

Vs.

STATE OF M.P. ... Respondent

Penal Code (45 of 1860), Sections 302, 304 Part I - ***Murder or culpable homicide not amounting to murder*** - *Appellants started pelting stones at deceased and injured witness while they alighted from bus - Both tried to run away - On account of pelting and striking from a close range deceased died instantaneously - Held - No evidence that appellants had knowledge that deceased and injured witness would return by bus - No evidence that appellants came close to the deceased and pleted stones and caused injuries - It would be perilous to infer any intention on the part of appellants to cause death of deceased - However, they had caused injury intentionally knowing that injuries were likely to cause death - Case would fall u/s 304 Part I - Appeal partly allowed.* (Paras 13, 15 & 17)

दण्ड संहिता (1860 का 45), धाराएँ 302, 304 भाग–एक – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – मृतक और घायल साक्षी जब बस से उतरे तो अपीलार्थियों

*Cr.A. No.587/2003 (Indore)

ने उन पर पत्थर फेंकना शुरू कर दिया – दोनों ने भागने का प्रयास किया – पत्थर फेंकने और कम दूरी से प्रहार करने के कारण मृतक की तत्काल मृत्यु हो गई – अभिनिर्धारित – कोई साक्ष्य नहीं कि अपीलार्थियों को इसका ज्ञान था कि मृतक और घायल साक्षी बस से वापस लौटेंगे – कोई साक्ष्य नहीं कि अपीलार्थी मृतक के नजदीक आए और पत्थर फेंके तथा क्षतियाँ कारित कीं – यह अनुमान निकालना कि अपीलार्थियों का मृतक की मृत्यु कारित करने का आशय था, जोखिमपूर्ण होगा – तथापि उन्होंने यह जानते हुए कि क्षतियों से मृत्यु कारित होना संभाव्य है साशय क्षति कारित की – मामला धारा 304 भाग–एक में आएगा – अपील अंशतः मंजूर।

Jaisingh with Mr. Chouhan, for the appellant No.1 & 2.
Sharmila Sharma, for the appellant No.3 & 4.
Girish Desai, Dy.A.G., for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by **S.K. KULSHRESTHA, J.** :–THE convicted appellants have filed this appeal under Section 374 of the Code of Criminal Procedure, against the judgment dated 29th May, 2003, of the learned Ist Additional Sessions Judge, Barwani, in Sessions Trial No. 366/2002, by which they have been convicted under Section 323/34 and each has been sentenced to rigorous imprisonment for six months and fine of Rs.100/- for causing hurt to Babla (PW 2) and under Section 302 read with Section 34 and sentenced to imprisonment for life and fine of Rs.1,000/- for voluntarily causing death of Gavdiya @ Govind.

2. The case of the prosecution discloses that on 29/9/2002, at about 5:30 p.m., Babla (PW 2) and deceased Gavdiya had gone to the village Barwani for weekly market and on return when they alighted from the Bus, accused Gangaram Bhilala, Ramsingh Bhilala resident of Gavla Bedi and Lala @ Lalu Bhilala and Silder @ Gildar resident of Dhaba Bavdi and two others started pelting stones at the deceased and the complainant Babla. When they rushed towards the hedge to save themselves from the onslaught, while Babla (PW 2) could manage to jump over the hedge, Govind was unable to do so. Gangaram and his companions then caught hold of him and dragged him upto the house of Gopal. All of them then started pelting stones at him stating that he should not be left alive as he had committed murder of Jhetra, father of accused Gangaram. On account of the pelting of the stones and striking him from a close range, the deceased died instantaneously. It was stated that in the year 1999 a case of murder of Jhetra was launched against deceased Govind and Babu, and actuated by the said past enmity, the said offence was committed.

3. A report of the incident Ex.P/2 was lodged by Babla (PW 2) at P.S. Barwani, on the basis whereof a case u/S. 302 r/w. Sec. 34 of the IPC was registered. The complainant was promptly sent for medical examination and his injuries were seen by Dr. P. S. Thakur (PW 1), who gave report Ex.P/1. As per this report, the complainant Babla had received one lacerated wound on the right side of chest, size 2½ cm x ½ cm x subcutaneous tissue deep and a haemotoma on the left side

of back, 2½ x 2 cms. Both the injuries were simple and caused by hard and blunt object, within 24 hours. In further sequel of investigation the body of deceased Govind was sent to the District Hospital for post-mortem after the inquest was completed. The post mortem was carried out by Dr. Sharadchandra Purohit (PW 8) who gave report Ex.P/14. As per the testimony of Dr. Purohit and the report Ex.P/14, the following external injuries were found on the body :

(1) Abrasion on right dorsum of hand 1" x 1"

(2) Lacerated wound on left side of cheek, in front of pinna 2" x 1" x bone deep;

(3) pinna torn into two pieces;

(4) Right pinna torn into three pieces and lobe crushed;

(5) Lacerated wound over right frontal region 2" x 1" x bony deep with bone fracture;

(6) Lacerated wound over mid of parietal region 3" x 1" x bony deep, fracture felt by fingers;

(7) Lacerated wound over occipital region 4" x 2" x bony deep, fracture felt by fingers;

(8) Mandible in two pieces;

(9) Nasal bone and front upper teeth fractured.

In the opinion of the Autopsy Surgeon, cause of death was coma due to multiple fracture of skull bone and injury to brain matter.

4. In further investigation, spot map was prepared, blood stained stones were seized from the spot, the blood stained and control earth were seized and the articles used in causing the injury were seized.

5. On accused being prosecuted, charges u/Ss. 323/34 and 302/34 were framed. The accused persons denied the charges and stated that because the deceased and Babla (PW 2) were facing a case for the murder of Jhetra, they had been falsely implicated while they were innocent. The learned Addl. Sessions Judge, however, convicted the appellants of the charges as hereinabove stated. It is against this conviction and sentence that the appellants have appealed to this Court.

6. Learned sr. counsel for the appellants submits that although the prosecution has examined 11 witnesses and out of these witnesses, Babla @ Babu (PW 2), Rajaram (PW 3) and Gopal (PW 6) were examined as eye witnesses, except for Babla @ Babu (PW 2), himself injured in the incident itself, no other eye witness has supported the case of the prosecution. It is in this backdrop that the learned sr. counsel submits that the case totally hinges on the testimony of Babla (PW 2), who cannot be believed as his testimony is replete with improbabilities, inconsistencies and discrepancies which render it thoroughly unreliable.

Learned Dy. Advocate General, per contra, has pointed out that Babla (PW 2)

was himself injured in the incident, as deposed to by Dr. P.S. Thakur (PW 1) and as revealed by MLC Report Ex.P/1. Under these circumstances, it cannot be doubted that Babla was present and he had witnessed the incident. Thus, even on the basis of the test that the evidence should be of sterling quality in the case of a single witness, the testimony of Babla (PW 2) stands the scrutiny and conviction based on his testimony and the other attending circumstances, does not call for any interference.

7. It has not been disputed that Gavdiya @ Govind has met a homicidal death. Even otherwise, the inquest held by S.R. Chopra (PW 11), Investigating Officer, coupled with the photographs taken by Kewal (PW 9) and the post mortem report given by Dr. Sharadchandra Purohit (PW 8), leave no manner of doubt that Gavdiya @ Govind has died and that his death was homicidal. The only question that survives for our consideration, therefore, is as to whether the accused persons can be convicted for the offence alleged. It has also been submitted by the learned counsel that in the most unlikely event of it having been found that the prosecution has succeeded in proving the acts of the appellants, the offence would not fall within the description of an offence punishable u/S. 302 of the IPC.

8. We have already referred to the post mortem report and the eight injuries sustained by the deceased. We have also referred to Ex.P/1, injury report of Babla (PW 2). It is, therefore, desirable to first consider the testimony of the eye witnesses.

9. Babla (PW 2) in his deposition has stated that he knew all the accused persons. He has stated that when they returned to the village and alighted from the Bus, they noticed Ramsingh s/o Narain, Gildar s/o Sildar, Lala and Gangaram along with two unknown persons. As they got down, Lala assaulted with the stick and the rest of them started throwing stones. They tried to save their lives by running away, but since the deceased could not cross the hedge, he was belaboured by the accused persons. A shortwhile later when he returned, he found that Govind was lying dead on the ground. He has deposed that Govind and accused persons were not on good terms. In this behalf the prosecution has also led evidence about the past report against the deceased and this witness by examining R.B.Tiwari (PW 10), Sub-Inspector. He rushed to the Police Station and lodged the report. He has stated that on account of non-availability of transport, though he reached the Police Station at 9:00, but as another serious incident had taken place in which the police had got entangled, his report Ex.P/2 was recorded later. Inquest was held in his presence of which inquest memo Ex.P/4 was prepared. Spot map Ex.P/5 and the seizure of stones from the place of the incident as also the samples of blood stained and control earth were taken vide Panchnama Ex.P/6.

10. In his cross examination, he has admitted that a case of murder of Jhetra was pending against him and deceased Govind and there was enmity for that reason. He has, however, tried to clarify that accused persons had falsely implicated

them in that case and he had nothing to do with it. He has also admitted that accused Lala and Gildar were nephews of Jhetra whose murder case was pending against him.

11. Significantly, he has admitted that the stones were pelted from a distance of 50 paces and he could not say as to who were the other persons with the accused. He saved his life by jumping the other side of the hedge, but since Gavdiya @ Govind could not cross, he got stalled.

12. The witness has stated that he had also been injured on account whacking of the stones. Dr. P.S. Thakur (PW 1) and his report Ex.P/1 indicating a lacerated wound on the right side of chest and a haemotoma on left side of back, corroborate him.

13. Though it is clear that on account of the report lodged against Babla (PW 2) and the deceased Gavdiya @ Govind, there was enmity between the parties, but, at the same time, nothing has been shown to indicate that the accused persons had the knowledge that the deceased and witness Babla would return by the Bus in question. It appears to be a coincidence that after they got down from the Bus, the pelting of the stones commenced which makes it doubtful that they had any foreknowledge or premeditation in this behalf. It appears that seeing them, the accused got infuriated and pelted stones at them. Though the witness has stated that the stones were hurled from 50 paces, it appears an exaggeration and it cannot be lost sight of that in view of the injuries found on the deceased and this witness, the stones must not have been thrown from a distance of 50 paces. However, the fact remains that stones were thrown from some distance and there being no evidence of the accused persons having come close to the deceased and pelted the stones and caused injuries on parietal and occipital region, it would be perilous to infer any intention on the part of the accused to cause death of Gavdiya @ Govind. They have, however, caused injury intentionally knowing full well that the injuries were likely to cause death.

14. Weapons seized from the accused persons were sent to the Forensic Science Laboratory, but the report was not received. Under these circumstances, seizure of weapons does not entail any consequence incriminating the accused persons.

15. From the evidence of the solitary eye witness Babla @ Babu (PW 2), who was himself injured, the medical report of Babla @ Babu and the Autopsy Report of Gavdiya @ Govind and the other circumstances present on record, we are convinced that though the injuries found on the deceased and on the witness Babla @ Babu had been caused by the accused persons, since the intention to cause death was not present and the incident started unexpectedly in which only stones were pelted though the witness has modulated the story and stated that Lala had caused injuries by means of a Lathi, we are of the considered view that the offence would not travel beyond an offence u/S. 304 Part I of the IPC as the injuries intended were likely to cause death. Under these circumstances, the conviction

of the four appellants for the offence u/S. 302 r/w. Sec. 34 of the IPC, is set aside and they are, in stead, found guilty of offence punishable u/S. 304 Part I of the IPC. However, conviction and sentence awarded to the appellants u/S. 323/34 do not call for any interference.

16. In the result, the appeal partly succeeds. The conviction of the appellants under Section 302/34 of the IPC and the sentence passed thereunder is set aside and the appellants are, in stead, convicted under Section 304 Part I of the Indian Penal Code and each is sentenced to rigorous imprisonment for a period of 7 (seven) years and fine of Rs.1,000/- (Rs. One thousand). In default of payment of fine, the accused in default, shall suffer further rigorous imprisonment for a period of six months. The substantive sentences shall run concurrently.

Appeal partly succeeds.

I.L.R. [2008] M. P., 2115

APPELLATE CRIMINAL

Before Mr. Justice A.K. Saxena

15 July, 2008*

LAXMI NARAYAN & anr. ... Appellants

Vs.

STATE OF M.P. .... Respondent

A. Evidence Act (1 of 1872), Section 3 - *Appreciation of evidence - It is not the law that statement of I.O. cannot be believed - If the statement of I.O. inspires confidence, such statement must be believed.* (Para 15)

क. साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्ष्य का मूल्यांकन – यह विधि नहीं है कि अनुसंधान अधिकारी के कथन पर विश्वास नहीं किया जा सकता – यदि अनुसंधान अधिकारी का कथन विश्वास प्रेरित करता हो तो ऐसे कथन पर विश्वास किया जाना चाहिए।

B. Evidence Act (1 of 1872), Section 32(3) - *Statement of relevant fact by person who is dead is relevant - Against interest of maker - Statement of an accused u/s 27 of Evidence Act who subsequently died - Cannot be used against third person for his criminal prosecution.* (Para 27)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 32(3) – उस व्यक्ति द्वारा सुसंगत तथ्य का कथन सुसंगत है जिसकी मृत्यु हो गई हो – करने वाले के हित के विरुद्ध – साक्ष्य अधिनियम की धारा 27 के अधीन अभियुक्त का कथन, जिसकी बाद में मृत्यु हो गई – तृतीय व्यक्ति के विरुद्ध उसके दाण्डिक अभियोजन के लिए प्रयुक्त नहीं किया जा सकता।

C. Penal Code (45 of 1860), Section 489-C - *Possession of forged or counterfeit currency-notes or banknotes - Appellant Mohan Singh found in possession of one counterfeit currency note of Rs.500/- - No evidence on record to conclude that appellant was having knowledge that he is in possession of counterfeit currency note or he had any intention to use the*

*Cr.A. No.961/2005 (Jabalpur)

same as genuine or it may be used as genuine - Mere possession is not sufficient to convict u/s 489-C - Appellant acquitted. (Para 35)

ग. दण्ड संहिता (1860 का 45), धारा 489–सी – कूटरचित या कूटकृत करेंसी नोटों या बैंक नोटों को कब्जे में रखना – अपीलार्थी मोहन सिंह के कब्जे में 500/– रुपये का एक कूटकृत करेंसी नोट पाया गया – अभिलेख पर कोई साक्ष्य नहीं कि जिससे यह निष्कर्ष निकाला जा सके कि अपीलार्थी को यह ज्ञान था कि उसके कब्जे में कूटकृत करेंसी नोट था या उसका कोई आशय उस कूटकृत करेंसी नोट को असली के रूप में प्रयुक्त करने का था या उसे असली के रूप में प्रयुक्त किया जा सकता था – धारा 489–सी के अधीन दोषसिद्धि के लिए केवल कब्जा पर्याप्त नहीं – अपीलार्थी दोषमुक्त।

Sharad Verma, Mrigendra Singh, Kamal Singh Rajput, Rajkamal Chaturvedi & Ku. Madhuri Chourasia, for the appellants.

Arun Nema & Vikram Singh, P.L., for the respondent.

JUDGMENT

A.K. Saxena, J. :–This judgment shall dispose off Criminal Appeal Nos.961/05, 967/05, 968/05, 968/05, 1062/05, 1074/05 and 1214/05, as these appeals have been filed by the appellants under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment dated 16.4.2005 passed by Ist Additional Sessions Judge, Sehore in Sessions Trial No.124/99 whereby the appellants Laxmi Narayan, Mangilal and Vijay Chourasia have been convicted under Section 489-B, 489-C and 120-B of I.P.C., the appellant Magvendra has been convicted under Section 120-B of I.P.C., the appellant Mohan Singh has been convicted under Section 489-C of I.P.C., the appellants Manoj Gupta and Narendra Agrawal have been convicted under Sections 489-B and 489-C of I.P.C. and they have been sentenced to rigorous imprisonment of different period, as per paragraph 85 of the judgment.

2. The prosecution story in short is that PW-1 Shiv Darshan Ram withdrew the amount of Rs.11,000/- on 21.4.1999 from Punjab National Bank, Sehore Branch. The amount was paid by the accused Madanlal, Cashier of the Bank, who has been acquitted by the trial Court. Shiv Darsham Ram received the currency notes of 500 denomination from the Bank. On 22.4.99 when his son went to LIC office to deposit the amount, the officials of LIC told him that the currency notes are counterfeit. Thereafter, this complainant reached at the Bank and repeatedly asked the officials of the Bank to take back the currency notes, but ultimately, on 23.4.99 the Cashier refused to exchange the currency notes. Thereafter, he lodged the report Ex.P/1 at police station Kotwali, Sehore where the report was registered vide Ex.P/2. He also handed over 12 currency notes of 500 denomination, which were seized by PW-19 Arvind Singh Chouhan, who prepared the seizure memo Ex.P/3. When the matter was enquired from Madanlal Vishwakarma, Cashier, he informed the police that these currency notes along with other currency notes were deposited by account holder Purnima Gandhe and Sharda Gandhe and the same were handed over to the complainant Shiv Darshan Ram. Purnima Gandhe

accused (acquitted by the Court below) was interrogated and her memorandum Ex.P/10 was prepared, who disclosed that she received these currency notes from the accused Mangilal Patel.

3. The Investigating Officer reached at Rajhans Lodge with Purnima and witnesses where the accused Mangilal was found in room No.5 of the lodge. The accused Mangilal gave the information to the Investigating Officer about one currency note and the memorandum Ex.P/4 was prepared, which was seized vide seizure memo Ex.P/6. The accused Mangilal disclosed that he received the counterfeit currency notes from accused Manorama Bajaj (deceased) and thereafter, the Investigating Officer reached at the house of Manorama Bajaj along with accused Mangilal and witnesses. The memorandum Ex.P/5 of Manorama was recorded, who disclosed that the accused Laxmi Narayan Soni handed over counterfeit currency notes to her and out of those currency notes, she handed over the currency notes amounting to Rs.45,000/- to Mangilal. One counterfeit currency note was also recovered from the possession of Manorama Bajaj and seizure memo Ex.P/7 was prepared.

4. The accused persons Purnima Gandhe, Manorama Bajaj and Mangilal were arrested and arrest memos Ex.P/36 to P38 were prepared. The enquiry was made from accused Mangilal and his memorandum Ex.P/35 was recorded in which he disclosed the names of accused Manorama Bajaj and Purnima Gandhe. He also disclosed that he deposited the currency notes with Manoj Sharma, Manager of the lodge.

5. Since, the accused Manorama Bajaj disclosed the name of the accused Laxmi Narayan, therefore, the Investigating Officer informed Savner Police, but he found that this accused has already been arrested in Maharashtra in respect of another case. Manorama Bajaj also disclosed in memorandum Ex.P/39 that accused Laxmi Narayan Soni handed over the counterfeit currency notes to Magvendra Choudhary, who was working in Bank Note Press, for checking and Laxmi Narayan also informed that Magvendra Choudhary had taken currency notes of 500 denomination. Thereafter, Magvendra Choudhary was arrested on 29.4.99 by the Investigating Officer and arrest memo Ex.P/40 was prepared.

6. The Investigating Officer also received the report Ex.P/8 from Shiv Narayan Shastri and the report Ex.P/12 from Alamdar Hussain and thereafter 22 counterfeit currency notes were seized from the possession of Alamdar Hussain vide seizure memo Ex.P/13. The Investigating Officer also seized 14 counterfeit currency notes from the possession of Shiv Narayan Shastri and seizure memo Ex.P/9 was prepared.

7. PW-19 Arvind Singh Chouhan received the information that the accused of this case Mohan Singh Verma, Ramesh Gupta and Vijay Chourasia were going to Jabalpur via Itarsi. He reached at the railway station, Itarsi and caught hold of these accused persons. One currency note of 500 denomination was recovered

from each of the appellants/accused Mohan Singh and Ramesh and both the currency notes were seized and seizure memos Ex.P/17 and P/18 were prepared. These three accused were also arrested and the arrest memos Ex.P/42 to P/44 were prepared. The memorandum Ex.P/14 of accused Ramesh Gupta was recorded and the accused Vijay Chourasia also gave the information and the memorandum Ex.P/15 was recorded. PW-16 Aishwarya Shastri seized the currency notes from the possession of Manoj Kumar Gupta and seizure memo Ex.P/19 was prepared. The Investigating Officer PW-18 Sitaram Sariyam recorded the memorandum Ex.P/27 of Manoj Gupta and thereafter, 29 currency notes of 500 denomination were recovered and seizure memo Ex.P/28 was prepared. The accused Narendra Kumar also gave the information and memorandum Ex.P/30 was prepared and thereafter, the counterfeit currency notes were seized vide seizure memo Ex.P/31. The memorandum Ex.P/33 of the accused Vijay Chourasia was recorded and one counterfeit currency note was seized vide seizure memo Ex.P/34.

8. The accused Madanlal Vishwakarma handed over the details of the matter vide letter Ex.P/46, but the Investigating Officer was not satisfied with his explanation and he was arrested. After completion of investigation, the charge-sheet was filed.

9. The trial Court tried the case against 11 accused persons, but the accused Manorama Bajaj expired during the pendency of the trial and the accused Ramesh Gupta was an absconder. The accused Purnima Gandhe and Madanlal were acquitted of all the charges under Section 489-B, 489-C, 489-E and 120-B of I.P.C. whereas, the accused Laxmi Narayan, Mangilal and Vijay Chourasiya were acquitted only of the charge under Section 489-E of I.P.C. The accused Mohan Singh and Narendra were acquitted of the charges under Sections 489-E and 120-B of I.P.C. and the accused Manoj Gupta was acquitted of the charge under Section 120-B of I.P.C., but as per pargraph 85 of the judgment, seven accused/ appellants have been convicted under different Sections of I.P.C. and sentenced for a rigorous imprisonment of different period.

10. Almost, all the appeals have been filed on the grounds that there was no sufficient evidence against the appellants. There was no evidence to prove the memorandums prepared under Section 27 of the Evidence Act and no counterfeit currency notes were recovered from the possession of appellants. The judgment of the trial Court is totally against the evidence and law.

11. The investigation was started on the basis of report Ex.P/1 lodged by PW-1 Shiv Darshanram Yadav. This report was lodged on 23.4.1999 in respect of counterfeit currency notes and it was against Madanlal, who was acquitted of all the charges by the trial Court. This witness also proved the seizure of counterfeit currency notes and the seizure memo Ex.P/3. This fact has also been corroborated by PW-6 Rajendra Kumar Sharma.

12. PW-3 Shiv Narayan Shastri has also stated that the employee of Punjab National Bank gave 14 currency notes of 500 denomination and when he came to know that the notes are counterfeit, he tried to return those currency notes to Madanlal and other officers of Bank, but they refused to take those notes and thereafter, he lodged the report Ex.P/8 and the currency notes were seized vide seizure memo Ex.P/9. Almost, similar is the case of PW-5 Alamdar Hussain, who also lodged the report Ex.P/12 and counterfeit currency notes were also recovered from his possession and seizure memo Ex.P/13 was prepared.

13. Having considered the statements of these witnesses and documentary evidence, it is very much clear that currency notes were deposited in the Bank, which were handed over to these three persons by the officials of the Bank and out of those currency notes, few were recovered from their possession. As per statement of PW-19 Arvind Singh Chouhan, the accused Madanlal Vishwakarma, Cashier of the Bank was interrogated and it was found that Sharda Gandhe and Purnima Gandhe deposited those currency notes. Purnima Gandhe was an accused in this case, who has been acquitted of all the charges by the Court below.

14. PW-19 Arvind Singh Chouhan has stated that when Purnima Gandhe was interrogated, she told that she received those currency notes from Mangilal Patel, who is residing in room No.5 of Rajhans Lodge. Thereafter, he reached at room No.5 of Rajhans Lodge. The accused Mangilal Patel opened the door and thereafter, his memorandum Ex.P/35 was recorded, who disclosed the names of Manorama Bajaj and Purnima Gandhe and the fact of payment of amount in the lodge. Though, the witnesses of this memorandum have not been examined in this case, but in view of the statement given by the Investigating Officer, it is a believable fact that the appellant Mangilal stated the above facts in his memorandum.

15. In this case, there were several accused persons and several memorandums and seizure memos were prepared and there are different witnesses of these documents and some of them have been examined but few of them have been declared hostile and few witnesses could not be examined, but it has to be considered as to whether only the statements of Investigating Officers are believable or not in case where the witness of a particular document either has been declared hostile or could not be examined. It is not the law that bare statement of the Investigating Officer cannot be believed. If the statement of the Investigating Officer inspires confidence, such statement must be believed.

16. I considered the whole statement of PW-19 Arvind Singh Chouhan and found that his statement in respect of memorandum Ex.P/35 is believable. This witness has further stated that firstly, the memorandum Ex.P/4 of the accused Mangilal was prepared on 24.4.1999 in which he disclosed that he received the counterfeit currency notes from Manorama Bajaj (since deceased) and then he handed over few currency notes to Purnima Gandhe and spent some part of the

amount. He also disclosed that one counterfeit currency note is available in the pocket of his 'Kurta'.

17. PW-2 Bhagwan Singh failed to support the prosecution story in respect of this memorandum, but several facts have been corroborated by PW-6 Rajendra Kumar Sharma. It is also proved from the statements of witnesses that one counterfeit currency note was recovered from the possession of appellant Mangilal and seizure memo Ex.P/6 was prepared.

18. PW-15 Manoj Kumar Sharma deposed that during stay in the lodge, the accused Mangilal deposited the amount of Rs.40,000/- in two instalments and he issued the receipt to him. He has further stated that police came with the accused Mangilal and the register of the lodge, receipt book and currency notes were seized. He proved the seizure memo Ex.P/19, the receipt book Article 66, the copy of receipt Ex.P/21, copy of register Ex.P/22, the entries of stay of this accused Exs.P/23, P/24, P/25 and the seizure memo. This witness has categorically stated that the accused Mangilal stayed in his Lodge for a long period. The facts of seizure of counterfeit currency notes, register etc., have also been corroborated by PW-16 Aishwarya Shastri, who also investigated this case. The seizure witness PW-13 Amar Singh Chouhan has been examined in this case, who also corroborated the prosecution story in respect of above seizure. This witness was virtually not cross-examined by the defence counsel and it becomes clear from his statement and the statements of above witnesses that the appellant Mangilal stayed in the Lodge and deposited a huge amount. It is proved from the report of Bank Note Press, Dewas Ex.P/27 in this case that the currency notes seized in this case from the possession of either accused persons or the complainants, were found counterfeit and, therefore, wherever this Court finds that the currency notes were recovered from the possession of any of the appellants, those currency notes were counterfeit in view of the report of the Bank Note Press, Dewas.

19. The trial Court has rightly come to this conclusion on the basis of statements of the witnesses that the appellant Mangilal committed the offence punishable under Sections 489-B, 489-C and 120-B of I.P.C. because, it was proved by the evidence that this appellant used the counterfeit currency notes to be as genuine, knowing to believe the same to be counterfeit and he was found in possession of counterfeit currency notes with an intent to use the same as genuine. It is also proved beyond reasonable doubt that several persons were the members of the racket who were using/circulating the counterfeit currency notes intentionally and this appellant was also one of the members of the criminal conspiracy.

20. PW-19 Arvind Singh Chouhan deposed that on the basis of information received from Mangilal, he reached at the house of Manorama Bajaj, who was identified by Mangilal and thereafter, she was interrogated and her memorandum Ex.P/5 was recorded. PW-2 Bhagwan Singh was declared hostile, but during cross-examination, he has admitted that Manorama Bajaj disclosed the facts and

memorandum Ex.P/5 was prepared. PW-6 Rajendra Kumar Sharma also admitted the fact of preparation of memorandum Ex.P/5, but could not state specifically the facts of this memorandum. However, on the basis of the statements of these two witnesses, the proceedings of recording the statement of Manorama Bajaj, cannot be disbelieved, but whether the statement of the Investigating Officer is sufficient to prove the admissible facts of this memorandum or of other memorandums, it has to be considered.

21. Manorama Bajaj disclosed that she received the counterfeit currency notes from Laxmi Narayan Soni and handed over to Mangilal. PW-19 Arvind Singh Chouhan has deposed that on 27.4.1999, Manorama Bajaj also disclosed various facts vide memorandum Ex.P/39 and she also involved Magvendra Choudhary in this case. On a perusal of the statement of the Investigating Officer, I found that the information given by Manorama Bajaj in respect of involvement of the appellant Mangilal was proved beyond reasonable doubt, but whether any offence was proved against the appellants Laxmi Narayan and Magvendra Choudhary on the basis of information given by Manorama Bajaj, it has to be seen.

22. The trial Court discussed the evidence and facts of the case in respect of accused Laxmi Narayan Soni in paragraphs 24, 30, 31, 37, 43, 44, 67 and 68 whereas, in paragraphs 45 to 47, 67 and 68, the evidence against Magvendra Singh Choudhary has been discussed.

23. It is apparent from the evidence of this case that though, Manorama Bajaj disclosed the name of the appellant Laxmi Narayan, but nothing was recovered from his possession in this case. If on the basis of information given by Manorama Bajaj or on the basis of any other information, one counterfeit currency note was recovered from the possession of the appellant Laxmi Narayan and a separate charge-sheet was filed, it does not mean that this accused was involved in this case because it could not be proved in this case that the counterfeit currency note was seized from his possession in another case on the basis of information given by Manorama Bajaj. Apart from that, the accused Laxmi Narayan was acquitted in that case and this fact is apparent from the judgment Ex.D/4. In these circumstances, the finding of the trial Court that the appellant Laxmi Narayan committed the offences punishable under Sections 489-B, 489-C and 120-B of I.P.C., was totally wrong and that too against the evidence. There was no evidence against the appellant Laxmi Narayan to convict him under above mentioned Sections and, therefore, the judgment of the trial Court in respect of conviction of appellant Laxmi Narayan, is not sustainable.

24. As far as the evidence against Magvendra Singh Choudhary is concerned, the conviction of this appellant is based on the memorandum of Manorama Bajaj in which it was disclosed that she went to meet the accused Laxmi Narayan Soni with Magvendra Singh Choudhary where he examined the currency notes given by Laxmi Narayan Soni and when Laxmi Narayan came to Bhopal, he told that

Magvendra took the counterfeit currency notes from him. Though, the appellant Magvendra Choudhary was employee in Bank Note Press, Dewas, but the trial Court has committed an error in presuming that this appellant/accused must have checked the genuineness of currency notes. The trial Court also committed an error in believing that part of memorandum of Manorama Bajaj which is not admissible in evidence. It is apparent from the evidence produced on behalf of defence that Magvendra Singh Choudhary filed a case against Manorama Bajaj under Section 138 of the Negotiable Instruments Act and it can be presumed that probably, Manorama Bajaj disclosed the name of this appellant because of those proceedings.

25. The trial Court referred the provisions of sub-section (3) of Section 32 of the Evidence Act and came to this conclusion that Magvendra Choudhary was also involved in the business of circulation of counterfeit currency notes and the statement of Manorama Bajaj recorded under Section 27 of the Evidence Act, is admissible under sub-section (3) of Section 32 of this Act. In the opinion of this Court, the trial Court has committed a mistake in coming to this conclusion that on the basis of the provisions of the Evidence Act, a person who has been named in the memorandum given by another person, can be convicted even though, there is no other evidence against him.

26. The provisions of sub-section (3) of Section 32 of the Evidence Act run as follows:-

> "32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-
>
> (1) .. ..
>
> (2) .. ..
>
> (3) or against interest of maker.- When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages."

27. According to sub-section (3) of Section 32, the statement of a dead person is relevant against the interest of the maker when the statement is against the pecuniary or proprietary interest of the person or it would expose him or would have exposed him to a criminal prosecution or to a suit for damages. It has not been provided in this sub-section that the statement of a dead person can be used against the third person for his criminal prosecution. Manorama Bajaj, the maker of memorandum recorded under Section 27 of the Evidence Act, though disclosed

various facts against the appellants Laxmi Narayan and Magvendra Singh, but her memorandum cannot be used under the above provisions of the Evidence Act against the aforesaid appellants. The Court below has totally failed to consider the above provisions in proper perspective. The Court below committed an illegality in convicting these two appellants on the basis of the provisions of sub-section (3) of Section 32 of the Evidence Act. Therefore, the conviction of appellants Laxmi Narayan and Magvendra Singh was against the law. The memorandum of Manorama Bajaj could not be utilised against these two appellants in this case because there is no other evidence against these two appellants. Their conviction cannot be based only on the memorandum of other accused and in these circumstances, the appellant Magvendra Singh can be acquitted of the charge under Section 120-B of I.P.C. and the appellant Laxmi Narayan can also be acquitted of the charges under Sections 489-B, 489-C and 120-B of I.P.C.

28. PW-19 Arvind Singh Chouhan has stated in paragraph 20 of his statement after disclosing the various facts of the case that he received the information from the informer that the accused persons of this case Mohan Singh, Ramesh Gupta and Vijay Chourasiya are going to Jabalpur via Itarsi. He reached at Itarsi Railway Station and caught hold of these persons and thereafter, one currency note of 500 denomination was recovered from the possession of Mohan Singh and seizure memo Ex.P/18 was prepared. He also took the search of Ramesh Gupta. Since, the accused Ramesh Gupta is absconding, therefore, it would not be proper to consider the evidence in respect of accused Ramesh Gupta in this judgment.

29. It has been further disclosed by the above mentioned witness that he arrested all the three accused and he recorded the memorandums of Ramesh Gupta and Vijay Chourasiya. The memorandum Ex.P/15 of the accused Vijay Chourasiya was recorded, who disclosed the name of accused Manoj Gupta to whom he handed over a huge quantity of counterfeit currency notes. The witness of this memorandum is PW-8 Ramesh Singh Rathore and another witness has not been examined. This witness has been declared hostile. PW-18 Sitaram Saream has stated that Vijay Chourasiya informed about the counterfeit currency note and memorandum Ex.P/33 was recorded in which he also disclosed the names of Manoj Gupta and Narendra Agrawal and thereafter, he seized one currency note vide seizure memo Ex.P/34 from the possession of the accused Vijay Chourasia. PW-17 Shankarlal Gupta has been examined, but he was declared hostile.

30. PW-18 Sitaram Saream has stated that he recorded the memorandum Ex.P/27 of the accused Manoj Gupta and thereafter, total 29 currency notes of 500 denomination were seized from his house and seizure memo Ex.P/28 was prepared. This witness has further disclosed that the accused Narendra Kumar gave the information upon which his memorandum Ex.P/30 was prepared and thereafter, total number of 700 currency notes of 500 denomination were recovered from the bed room of this accused, which was situated inside the factory and seizure memo Ex.P/31 was prepared.

31. It has been contended on behalf of appellants Vijay Chourasiya, Manoj Gupta and Narendra Agrawal that the seizure of currency notes from the possession of these accused persons has got no connection with the case of Manorama Bajaj and others. PW-19 Arvind Singh Chouhan received the information from the informer and he failed to inform the GRP, Itarsi that he is reaching Itarsi to arrest these persons or at that time when the proceeding of seizure of the counterfeit currency notes from the possession of accused persons was in progress. There is no documentary evidence to show as to when he left the police station for Itarsi. In these circumstances, the statements of both the Investigating Officers cannot be believed without any documentary evidence.

32. No doubt, PW-19 Arvind Singh Chouhan has admitted that no rojnamcha-sahna has been filed in respect of his departure from police station and he did not inform the police of Itarsi, but only these facts are not sufficient to disbelieve the statement of the witness. It must have been disclosed in the case diary as to when Arvind Singh Chouhan left the police station, but no cross-examination has been done on the basis of case diary or no question was put to him with the permission of the Court so that this witness could have been able to reply the question after perusal of the case diary. Though, it was duty of the Investigating Officer to inform other police station if he is going in the jurisdiction of other police station for the purposes of investigation, but only this fact that this witness failed to inform the local police station of Itarsi, is not sufficient to disbelieve the whole prosecution story. Where the offence is proved beyond reasonable doubt, such type of failure in completion of the formalities, are not sufficient to disbelieve the statements of witnesses or prosecution story.

33. On a perusal of statements of PW-18 Sitaram Saream and PW-19 Arvind Singh Chouhan, I found that the appellants Vijay Chourasiya, Manoj Gupta and Narendra Agrawal were connected to each other and they were involved in exchange of counterfeit currency notes in a huge quantity and therefore, the counterfeit currency notes in a large number were recovered from the possession of Manoj Gupta and Narendra Agrawal. Considering all the facts and the evidence of this case, this Court is of the opinion that the appellants Manoj Gupta and Narendra Agrawal including the appellant Vijay Chourasiya were equally responsible for their acts and the trial Court has not committed any error in convicting the appellant Vijay Chourasiya under Sections 489-B, 489-C and 120-B of I.P.C. and the appellants Manoj Gupta, Narendra Agrawal under Sections 489-B and 489-C of I.P.C.

34. As far as the case of appellant Mohan Singh is concerned, PW-19 Arvind Singh Chouhan has stated that when he found the appellant Mohan Singh Verma, his search was taken by him and a currency note of 500 denomination was recovered from his possession and seizure memo Ex.P/18 was prepared. PW-12 Mukesh has been declared hostile and other seizure witness has not been examined. Whether on the basis of statement of PW-19 Arvind Singh Chouhan, the offence

under Section 489-C of I.P.C. was proved beyond reasonable doubt against the appellant Mohan Singh, this has to be considered by this Court because, the trial Court has convicted this appellant under Section 489-C of I.P.C.

35. According to Section 489-C of I.P.C., if a person has in his possession any forged or counterfeit currency-note knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or it may be used as genuine, the person can be convicted under this Section. No doubt, it has been disclosed by the Investigating Officer that one currency note was recovered from the possession of appellant Mohan Singh, but mere possession is not sufficient to convict this appellant under Section 489-C of I.P.C. If on the basis of mere possession, this appellant could have been convicted then, the witnesses PW-1 Shiv Darshanram Yadav, PW-3 Shiv Narayan Shastri and PW-5 Alamdar Hussain would have also been impleaded as the accused persons and could have been convicted also because the counterfeit currency notes were seized from their possession. But, this is the position of law that mere possession of counterfeit currency-note would not constitute the offence.

36. There is no evidence in this case to show that the appellant Mohan Singh came out of the coach of the train with Vijay Chourasiya and Ramesh Gupta. It is also not clear from the statement of PW-19 Arvind Singh Chouhan that Mohan Singh was going with Ramesh Gupta and Vijay Chourasiya. Vijay Chourasiya in memorandums Ex.P/15 and Ex.P/33 and Ramesh Gupta in memorandum Ex.P/14 did not disclose that they have handed over the counterfeit currency notes to the accused Mohan Singh. Therefore, there is no evidence in this case to prove beyond reasonable doubt that the appellant Mohan Singh was partner in the business of counterfeit currency notes with these two persons. Therefore, only on the basis of evidence of seizure of one counterfeit currency note, it cannot be concluded that the appellant Mohan Singh was having any knowledge that he is in possession of counterfeit currency note or he had any intention to use the same as genuine or it may be used as genuine. In these circumstances, the ingredients of Section 489-C of I.P.C. could not be proved beyond reasonable doubt in this case against the appellant Mohan Singh and the trial Court has committed an error in convicting this appellant. But this analogy cannot be applied to the case of the appellant Vijay Chourasiya in view of the evidence discussed earlier in this judgment.

37. On a perusal of evidence produced on behalf of the prosecution in this case, this Court is of the opinion that the trial Court has wrongly convicted the appellants Laxmi Narayan, Magvendra Singh and Mohan Singh, but the trial Court has rightly convicted the appellants Mangilal Patel, Vijay Chourasiya, Manoj Gupta and Narendra Agrawal. The offences for which these four appellants have been convicted, were proved beyond reasonable doubt by the prosecution.

38. For the aforesaid reasons, the appeals filed by the appellants Mangilal, Vijay Chourasiya, Manoj Gupta and Narendra Agrawal are rejected and the conviction of the appellants Mangilal and Vijay Chourasiya under Sections 489-B, 489-C and

120-B of I.P.C., the conviction of the appellants Manoj Gupta and Narendra Agrawal under Sections 489-B and 489-C of I.P.C. is maintained whereas, the appellant Laxmi Narayan can be acquitted of the charge under Section 489-B, 489-C and 120-B of I.P.C. The appellant Magvendra Singh can be acquitted of the charge under Section 120-B of I.P.C. and the appellant Mohan Singh can be acquitted of the charge under Section 489-C of I.P.C.

39. As far as the sentence part is concerned, the appellants Mangilal and Vijay Chourasiya have been sentenced for a period of six years rigorous imprisonment under two Sections and for a period of one year under another Section whereas, the appellants Manoj Gupta and Narendra Agrawal have been sentenced for a period of six years rigorous imprisonment under one Section and one year rigorous imprisonment under another Section. Having considered their involvement in a very serious offence, which is against the economy of the country and the seizure of counterfeit currency notes in large number, this Court is of the opinion that the jail sentences awarded to these appellants, are not on a higher side.

40. For the aforesaid reasons, I do not find any merit in the appeals filed by the appellants Mangilal, Vijay Chourasiya, Manoj Gupta and Narendra and their appeals are dismissed whereas, the appeals preferred by the appellants Laxmi Narayan, Magvendra Singh and Mohan Singh are allowed and the appellant Laxmi Narayan is acquitted of the charges under Sections 489-B, 489-C, 120-B of I.P.C., the appellant Magvendra Singh Choudhary is acquitted of the charge under Section 120-B of I.P.C. and the appellant Mohan Singh is acquitted of the charge under Section 489-C of I.P.C.

41. The appellants Laxmi Narayan and Magvendra Singh are in jail. They be set at liberty forthwith, if not required in any other case.

42. The counterfeit currency notes shall be disposed of in accordance with the rules and if there is no rule, the same and other property shall be disposed of in accordance with paragraphs 87 and 88 of the judgment of the trial Court.

Order accordingly.

I.L.R. [2008] M. P., 2126
APPELLATE CRIMINAL
Before Mr. Justice S.L. Kochar
24 July, 2008*

BHARAT SINGH & anr. ... Appellants
Vs.
STATE OF M.P. ... Respondent

A. Penal Code (45 of 1860), Section 397 - *Robbery with attempt to cause death or grievous hurt - Three persons assaulted complainant and*

*Cr.A. No.622/2007 (Indore)

snatched Rs.1,000/- - One accused given benefit of doubt - Two persons convicted as Rs.1,000/- was seized from one and lathi from another - Held - No evidence that seized lathi was used for beating complainant - No specific overt act attributed to any of appellant for causing grievous hurt - Because of acquittal of one accused, appellants also entitled for getting benefit regarding causing grievous hurt. (Para 6)

क. दण्ड संहिता (1860 का 45), धारा 397 – मृत्यु या घोर उपहति कारित करने के प्रयत्न के साथ लूट – तीन व्यक्तियों ने परिवादी पर हमला किया और 1,000/– रुपये छीन लिये – एक अभियुक्त को संदेह का लाभ दिया गया – दो व्यक्तियों को दोषसिद्ध किया गया क्योंकि एक से 1,000/– रुपये और दूसरे से लाठी अभिग्रहीत की गई – अभिनिर्धारित – ऐसा कोई साक्ष्य नहीं कि अभिग्रहीत लाठी परिवादी को मारने के लिये प्रयुक्त की गई – घोर उपहति कारित करने के लिए किसी अपीलार्थी पर कोई विनिर्दिष्ट दोषारोपण नहीं – एक अभियुक्त की दोषमुक्ति के कारण अपीलार्थीगण भी घोर उपहति कारित करने के संबंध में लाभ पाने के हकदार।

B. Penal Code (45 of 1860), Sections 34, 397 - *Robbery or dacoity with attempt to cause death or grievous hurt - Individual act of each accused has to be established - Cannot be convicted with aid of Section 34 of I.P.C.* (Para 6)

ख. दण्ड संहिता (1860 का 45), धाराएँ 34, 397 – मृत्यु या घोर उपहति कारित करने के प्रयत्न के साथ लूट या डकैती – प्रत्येक अभियुक्त का वैयक्तिक कृत्य स्थापित करना पड़ता है – भा.द.सं. की धारा 34 की सहायता से दोषसिद्ध नहीं किया जा सकता।

C. Penal Code (45 of 1860), Section 394, Criminal Procedure Code, 1973 (2 of 1974), Section 320 - *Compromise - Appellants convicted u/s 394 I.P.C. - They are first offenders - Matter has already been compromised by parties - However application for compromise was rejected as offence is not compoundable - Held - Considering the circumstances they are sentenced to imprisonment which they have already undergone (one year two months & 26 days) and fine of Rs.4000/- - Fine amount be paid to complainant by way of compensation.* (Paras 7 & 8)

ग. दण्ड संहिता (1860 का 45), धारा 394, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 – समझौता – अपीलार्थियों को भा.द.सं. की धारा 394 के अधीन दोषसिद्ध किया गया – वे प्रथम अपराधी हैं – पक्षकारों द्वारा मामले में पहले ही समझौता हो गया – तथापि समझौते का आवेदन खारिज कर दिया गया क्योंकि अपराध शमनीय नही – अभिनिर्धारित – परिस्थितियों को विचार में लेते हुए उन्हें वे जितनी सजा (एक वर्ष दो माह व 26 दिन) भुगत चुके थे उतने ही कारावास और 4000/– रुपये जुर्माने का दण्डादेश दिया – परिवादी को जुर्माना राशि प्रतिकर के रूप में संदाय की जाए।

Case referred :

AIR 1975 SC 905.

M.S. Chouhan & Virendra Sharma, for the appellants.

R.S. Chouhan, D.G.A., for the respondent.

J U D G M E N T (ORAL)

S.L. KOCHAR, J.:–The appellants have filed this appeal, challenging their conviction U/S.394 read with Sec.397 of the IPC and sentence of RI for 07 years and fine of Rs.2000/-, in default of payment of fine to undergo RI for three months, passed by learned Sessions Judge, Dewas in ST No.65/2006 judgment dated 7/5/2007.

2. According to the prosecution case, on 8/3/2002 in the evening at 7.30 p.m complainant Bherulal was preparing for cooking food in his hut situated in village Patlavada. At that moment appellants asked Bherulal for giving food to them, Bherulal served them food, thereafter appellants and acquitted co-accused Mangilal asked Bherulal about selling of gram crop and also directed him to stand up, thereafter Bharatsingh caught his mouth and Manoharsingh brought a lathi. He started beating him. Appellants also taken away Rs.1000/- from his pocket. Bherulal was shifted for treatment to Government Hospital, Dewas. The Assistant Surgeon sent the written report (Ex.P.9) to police station that injured was brought to the hospital assaulted by thieves as disclosed by his companions. On the basis of this report, police reached in the hospital and started enquiry in which it was found that appellants and acquitted co-accused Mangilal assaulted Bherulal and also looted cash of Rs.1000/-. Bherulal sustained fracture of right femur bone and end of humerus bone. Accused persons were nabbed and at their instance, Rs.1000/- was seized. On due investigation, charge sheet was filed against the appellants for commission of offence U/Ss.394/397, 351, 325 and 506-II of the IPC.

3. The accused persons refuted the charges. They have examined two witnesses in defence. The learned trial Court, while acquitting accused Mangilal, convicted the appellants as mentioned herein above.

4. Learned counsel for appellants have submitted that complainant and appellants have amicably settled their dispute and compromised the issue. The applications were filed for grant of permission to compound the offence before this Court which were considered on 6/2/2008 and after due verification, both the applications were dismissed because offences are not compoundable. Learned counsel has also submitted that offence U/S.397 of the IPC is not made out against the appellants even if the complete prosecution case is accepted and in view of amicable settlement between the parties, for the offence U/S.394 of the IPC, appellants may be sentenced to the period already undergone.

5. On the other hand, learned counsel for State has supported the impugned judgment passed by the trial Court.

6. Having heard the learned counsel for parties and after perusing the entire record, this Court is of the view that offence U/S.397 of the IPC is not made out against the appellants because according to the statement of complainant Bherulal all the three accused persons named Bharatsingh, Manoharsingh and acquitted

co-accused Mangilal assaulted him and caused injuries and fracture of left arm. Out of these three accused persons, Mangilal has been acquitted by the trial Court. It appears that the learned trial Court has given benefit of doubt to accused Mangilal because nothing was seized from his possession whereas from appellant Bharat, Rs.1000/- cash was seized and from Manoharsingh lathi was seized. On due consideration, this Court hardly find any distinction between the case of present appellants and acquitted co-accused Mangilal who was equally named by the complainant for taking active part in the incident of his beating and snatching of Rs.1000/-. Seizure of Rs.1000/- is of no avail because same were not identified by the complainant and there is no evidence adduced by the prosecution that the seized Rs.1000/- were the same currency notes looted from the possession of the complainant. For lathi also there is no evidence on record that same lathi was used for beating the complainant. In view of the general statement for beating against all the three accused persons and there is no specific overtact attributed to any of the appellant for causing grievous injury, because of acquittal of co-accused Mangilal present appellants would also entitle for getting benefit regarding causing of grievous injury. For the offence U/S.397 of the IPC, the accused cannot be convicted with the aid of Sec.34 of the IPC. See *Phool Kumar Vs. Delhi Admkinistration* [AIR 1975 SC 905] and individual act of each accused has to be established by the prosecution. In the case at hand, there is no evidence on record to establish as to which of the appellant caused grievous injury to the complainant. Possibility of causing grievous injury by acquitted co-accused Mangilal is also not ruled out because the complainant as well as other witnesses have also stated that Mangilal also took equal part in beating of the complainant. In this view of the matter, offence U/S.397 of the IPC against the appellants would not be made out and appellants would be liable only for commission of offence U/S.394 of the IPC; voluntarily causing hurt while committing robbery.

7. Learned counsel for appellants have submitted on the question of sentence that appellants are the first offenders, appellants and complainant have settled their dispute amicably and leading peaceful life in the village maintaining friendly relation. The appellants are the labourer by occupation and having responsibility to maintain their family consisting wife, children and parents. During the course of trial, they were on bail and never misused the liberty granted by Court of law. After this incident occurred in the year 2002, now in these six years, there is no complaint whatsoever against the appellants regarding their involvement in any other criminal case, therefore, they may be sentenced to the period already undergone.

8. Having heard the learned counsel for parties and considering the arguments urged by the learned counsel for appellants as mentioned herein above, this Court is of the view that ends of justice would be served to sentence the appellants to the period already undergone (one year two months and 26 days) and fine of Rs.4,000/-; to each appellant in default of payment of fine they shall suffer additional RI for one year. Out of realisation of the fine amount, Rs.4000/- be paid as

compensation to the complainant Bherulal. Rs.1000/- seized from the accused persons be also returned to the complainant because the appellants have not claimed this amount. The learned trial Court is directed to release the appellants forthwith upon their depositing fine amount and if not wanted in any other criminal case. Office is directed to send copy of this judgment along with the record to the trial Court.

9. The appeal is allowed in part in the terms indicated herein above.

Appeal allowed in part.

I.L.R. [2008] M. P., 2130

CRIMINAL REVISION

Before Mr. Justice B.M. Gupta

6 May, 2008*

ARORA DISTILLERIES PVT. LTD. (M/S.) ... Applicant

Vs.

M/S VIJAY ASSOCIATES & anr. ... Non-applicants

Negotiable Instruments Act (26 of 1881), Section 138 - *Applicant sending notice for dishonouring of cheque on the basis of oral information received from the Bank - Trial court did not frame charge u/s. 138 as the offence was not made out as there was no written intimation by the Bank - Held - Obligation of issuance of notice by the payee starts from the date of receiving an information in writing from the bank with regard to dishonour of the cheque - If even on an unwritten or oral information the payee opts to issue legal notice of demand under Section 138 of the Act, then subsequently he becomes estopped from taking defence that, as the written information was received subsequently, he was not obliged to issue notice, hence, prior to receiving written information, the limitation ought not to be counted from the first notice - Petition dismissed.* (Paras 6 & 7)

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – आवेदक ने बैंक से प्राप्त मौखिक सूचना के आधार पर चैक के अनादृत होने का नोटिस भेजा – विचारण न्यायालय ने धारा 138 के अधीन आरोप विरचित नहीं किया क्योंकि बैंक से कोई लिखित सूचना न होने से अपराध नहीं बनता था – अभिनिर्धारित – पाने वाले की नोटिस जारी करने की बाध्यता चैक के अनादर होने के सम्बन्ध में बैंक से लिखित सूचना प्राप्त होने के दिन से आरम्भ होती है – यदि अलिखित या मौखिक सूचना पर भी पाने वाला अधिनियम की धारा 138 के अधीन मांग का सूचनापत्र जारी करना चुनता है तो तत्पश्चात् वह बचाव लेने से बिबंधित हो जाता है कि चूंकि लिखित सूचना बाद में प्राप्त हुई थी, वह नोटिस जारी करने के लिए बाध्य नहीं था, इसलिए लिखित सूचना प्राप्त करने के पूर्व, प्रथम सूचनापत्र से परिसीमा की गणना नहीं की जानी चाहिए – पुनरीक्षण खारिज।

Case referred :

2001 (1) Crimes 401.

Ashok Kaushik & Sanjay Mishra, for the applicant.

*Cr.R. No.253/2004 (Gwalior)

Sanjay Gupta, for the non-applicants.

ORDER

B.M. GUPTA, J.:–This revision is for impugning the order dated 1st March, 2004, passed by Session Judge, Vidisha, in Criminal Revision No.89/03, whereby the learned Judge has modified the order dated 24th April, 2003 passed by Additional Chief Judicial Magistrate, Vidisha in Criminal Case No.444/02, framing of the charge against the respondents for the offence punishable under Section 420 of IPC only, while the complaint was filed for the offence punishable under Section 138 of the Negotiable Instruments Act,1981(hereinafter referred to as the Act) along with Sections 406 and 420 of IPC. While modifying the order, the learned Judge has observed that no charge under Section 420 of IPC and 138 of the Act is made out and only a charge under Section 406 of IPC is made out.

2.(A) The facts which are not disputed by the parties in brief are, that one complaint dated 28/4/93 has been filed by the petitioner against the respondents for the offence punishable under Section 420 read with Section 406/34 of IPC and also under Section 138 of the Act. It is alleged in the complaint that the petitioner is having a legal plant along with machineries fitted thereon, for production of liquor. Vide agreement dated 14/5/92, this plant was given to the respondents for ten years on the terms, that for first three months Rs. 33,333/- per month, thereafter upto five years Rs. 65,000/- per month and subsequent to that Rs. One lac per month was to be paid by the respondents to the petitioner. The aforesaid amount was to be paid in advance upto 10th of every month and in default of payment, Rs. 5,00/- per day was to be paid as penalty. From the very beginning the petitioner entered into this contract having intention of dishonesty and cheating in their mind. Initially the amount for first three months was paid, thereafter they avoided making payment. Some allegations have been mentioned in paragraph 5 of the complaint with regard to an offence under Section 406 of IPC which are now not relevant to be reproduced, as with regard to that offence, a separate order has been passed by this Court today in M.Cr.C. No. 4414/2004.

2 (B) It is further alleged in the complaint, that when demand was made, one cheque amounting to Rs. two lacs was drawn by the respondent no.1 on behalf of the respondents in favour of the complainant, which was dishonoured. On 5/1/93, on the basis of the oral information received by him, the petitioner sent a notice to the respondents informing that the amount of cheque is to be paid. Thereafter, the respondent no.1 orally informed the petitioner that within a few days he will deposit the amount in the bank, but despite that the bank did not pay the amount and informed in writing about dishonour of the cheque on 26/3/93. Thereafter, another notice was issued by the petitioner on 3/4/93 which was neither replied nor the payment was made. On the basis of these averments after recording evidence at before charge stage, the learned Magistrate framed charge on 24/4/2003 under Section 420 of IPC only and negated framing of the charge under Section 406 of IPC and under Section 138 of the Act.

2(C). Feeling aggrieved by the aforesaid order of the learned Magistrate, the respondents filed criminal revision no. 89/03 praying therein that charge under Section 420 of IPC is not made out. Vide impugned order dated 1/3/2004 passed by learned Sessions Judge, Vidisha, it has been observed that only charge under Section 406 of IPC is made out and no charge under Section 138 of the Act and 420 of IPC is made out. Feeling aggrieved by that order of the learned Judge dated 1/3/2004, the present criminal revision no. 253/04 has been filed by the petitioner praying therein that charge under Section 420 of IPC and under Section 138 of the Act also ought to have been framed.

3. Parties have not argued anything with regard to the offence under Section 420 of IPC, nor the same has been pressed during arguments on behalf of the petitioner. With regard to offence under Section 138 of the Act, it is only submitted by Shri Kaushik for the petitioner, that as per paragraph 8 of the complaint, notice issued on 5/1/93 was without receiving any written information from the bank. It was issued only on an oral information. The period of limitation can be counted from the notice after receiving the written information about dishonouring of the cheque from the bank, as observed by the Kerala High Court in the case of John v. George Jacob, 2000 (1) Crimes 401. As per the averment in paragraph 8, the petitioner received written information on 26/3/93. Thereafter, he issued notice on 3/4/93 and on that notice the complaint has been filed on 28/4/93 which is within time. With regard to the service of the notice, as to on what date the first or second notice was served, Shri Kaushik could not reply.

4. Countering the contention Shri Gupta has submitted that upon perusal of notice dated 5/1/93, it appears that the same was given under Section 138 of the Act. Even upon oral information if the notice has been issued, the limitation starts from that notice. It is not necessary that notice is required to be issued only after receiving written information from the bank. With regard to the order of the Kerala High Court in the case of *John* (supra), Shri Gupta has submitted that in that case no notice was issued on oral information. He has further submitted that as observed by the Apex Court in the case of *Sadanandan Bhadran v. Madhavan Sunil Kumar,* AIR 1998 SC 3043, limitation starts from the first notice and not from the second notice and in view of this, the observation of the learned Judge in paragraph 13 and 14 of the impugned order that the complaint under Section 138 of the Act is barred by limitation is not erroneous.

5. Considering the aforementioned contentions of the rival parties, interpretation of Section 138 provisio (b) is only required. The provision goes as under:-

> **138. Dishonour of cheque for insufficiency, etc., of funds in the account-** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to

honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term which may be extended to two years), or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) .....

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(c) .....

Explanation- .....". (emphasis supplied)

Both the parties have admitted that the earlier existing words- 'within fifteen days' for issuance of notice has been subsequently amended. The words – 'within fifteen days'- have been substituted by Section 7 of the Act of 55 of 2002 which came in force from 6th February, 2003 by the words– 'within thirty days' –. Thus, prior to this, the period prescribed was fifteen days. It is also admitted that both the notices have been given in the year 1993 which is a period prior to the aforesaid date 6/2/03. Hence, at that time, the time of fifteen days was provided. Considering this period, this Court has to pass this order.

6. In aforementioned provision, only high lighted words therein require interpretation. Upon perusal, the notice was required to be given by the payee within a period of fifteen days of the receipt of information by him, from the bank regarding the return of cheque as unpaid. Admittedly, in the present case, the first notice was issued on 5th January, 1993, on the ground that the payee, the petitioner herein, had received an oral information that the amount of cheque is not being paid. Upon this knowledge, the following notice was issued on 5th January, 1993.

"प्रति,
श्री विजय एसोसिएट्स,
2–ए, इन्द्रपुरी भोपाल
द्वारा– श्री एस.के.आनन्द पार्टनर
विषयः–चैक क0 102427 देना बैंक भोपाल दि. 17.11.92 के डिस ऑनर होने विषयक
संदर्भः– हमारा पत्र दि.26.12.92
प्रिय महोदय,
आपके द्वारा हमें माह सितम्बर 92, अक्टूबर 92, नवम्बर 92 एवं रॉयटीरियल के आंशिक भुगतान पेटे रूपये दो लाख का एक चैक क्र. 102427 जो कि देना बैंक भोपाल

का दि.17.11.92 का दिया गया था, हमारे बैंकर स्टेट बैंक ऑफ इन्दौर ने हमें इसके बगैर भुगतान के वापिस आने बावत् सूचित किया है । एवं इसकी सूचना दि.26.12.92 को आपको दी गयी थी एवं आपको तुरन्त भुगतान बावत् लिखा गया था। आपके पार्टनर श्री संजय जायसवाल एवं आप स्वयं ने भी एक दो रोज में रकम जमा करने बावत् बैंक अधिकारियों को सूचित (मौखिक रूप से) किया था । लेकिन आज दिन तक उक्त रकम आप द्वारा भुगतान नहीं की गई है । आप द्वारा उक्त चैक हमारी देयताओं को चुकाने के लिए दिया था एवं इसका डिस ऑनर होना बैंकिक कानून की विधि (संशोधन) अधिनियम 1988 की धारा 4 द्वारा लागू परक्राम्य लिखित अधिनियम 1881 की धारा 138 का उल्लंघन है । अतः आपसे निवेदन है कि पत्र प्राप्ति के तुरन्त बाद 15 दिन के अन्दर आप उक्त रकम का भुगतान कर हमसे रसीद प्राप्त कर लेवें । इति दि. 05.1.93

भवदीय
संचालक
वास्ते अरोरा डिस्टलरीज प्रा.लि.
पुरानी सब्जी मंडी,विदिशा(म.प्र.)"
(Emphasis supplied)

Upon perusal of the highlighted part in the afore-quoted notice, it appears that the bank of the petitioner had informed him with regard to the fact that the amount of the cheque is not being paid. Upon perusal of the notice as a whole, it also appears that the amount was not being paid on account of insufficiency of fund in the account concerned and it contains all the requirements of a valid notice. In the aforementioned circumstances, whether the aforesaid unwritten information or knowledge received by the petitioner, fulfills the requirement of the afore-quoted highlighted part of Section 138 provision (b) or not, it is to be seen. While drawing attention on an order of Single Bench of Kerala High Court in the case of *John* (supra) it is emphasized on behalf of the petitioner ,that notice was not required to be issued upon unwritten information. The period of limitation starts from the period when the payee receives the information in writing from the bank with regard to dishonour of the cheque. As per the facts of the case of *John* (supra) the validity of notice issued by the payee was challenged only on the ground, that after having oral information, notice was to be given by the payee and the limitation was to start from that period. In that case, although an oral information was received by the payee earlier to receiving the written information, he issued notice after receiving of the written information. If the limitation was to be counted from the date of oral information, the notice issued was beyond the period of fifteen days and if the limitation was to be counted from the date of written information, the notice issued by the payee was within time. The learned Judge has observed that the obligation of issuance of notice by the payee, starts only after receiving an information in writing. It is not obligatory on the payee to issue any notice upon oral or unwritten information. It is rightly submitted by Shri Gupta on behalf of the respondent, that in the aforesaid case of Kerala High Court, no notice was given on the oral information and on this ground the present case is having different facts. In my

considered opinion also, the obligation of issuance of notice by the payee starts from the date of receiving an information in writing from the bank with regard to dishonour of the cheque.

7. Whether the aforesaid observation with regard to the obligation of issuance of notice by the payee, only after receiving the information in writing, will invalidate the first notice in this case also? Now it is to be seen. Upon perusal of the aforequoted notice dated 5/1/93, it appears that the same has been issued by the petitioner upon receiving an information (unwritten) from his bank. After receiving such information, the petitioner opted to issue notice under Section 138 of the Act to the respondents. Once he opted this, in my considered view, subsequently he cannot take this defence, that as the notice has been given before receiving the information in writing, hence, the same is not valid. If the notice was not given by him upon that oral information, ofcourse, there was no obligation upon him as observed hereinabove, but once he has opted to issue notice without waiting the written information and only upon receiving the oral or unwritten information he has issued the notice, he has estopped from saying that his first notice ought not to be considered as a valid notice and the limitation ought not to be counted from the date of issuance of the first notice.

8. Thus, after a deep consideration, it is observed that (1) it is not obligatory upon the payee to issue notice of demand under Section 138 of the Act, before receiving of information in writing from the bank with regard to dishonour of the cheque, and (2) however, if even on an unwritten or oral information the payee opts to issue legal notice of demand under Section 138 of the Act, then subsequently he becomes estopped from taking defence that, as the written information was received subsequently, he was not obliged to issue notice, hence, prior to receiving written information, the limitation ought not to be counted from the first notice. As observed by the Apex Court in the case of *Sadanandan Bhadran* (supra), limitation will be counted on the basis of the first notice and not on the basis of the second notice. In this case also in view of this observation of the Apex Court, the limitation will be counted from the first notice given by the payee, the petitioner herein from 5/1/93 and not from the subsequent notice dated 3/4/93. As provided by Section 142 of Cr.P.C., a complaint is to be filed within thirty days from the date of accruing of the cause of action, i.e. fifteen days time after receiving of the notice. Thus, counting from 5/1/93, fifteen days plus thirty days, total forty five days, the complaint was required to be filed. In this case, it has been filed on 28/4/93. If the limitation is counted from the first notice, then apparently and admittedly the complaint is barred by time.

9. In view of the above, if the charge under Section 138 of the Act has not been framed by the Court below, there appears no error in the impugned order on this ground. Consequently, the revision is dismissed.

Revision dismissed.

I.L.R. [2008] M. P., 2136

MISCELLANEOUS CIVIL CASE

Before Mr. Justice K.K. Lahoti

26 June, 2008*

CHANDRESHWAR JHA (M/S) ... Applicant

Vs.

NORTHERN COALFIELDS LTD. & anr. ... Non-applicants

Arbitration and Conciliation Act (26 of 1996), Section 11, Civil Procedure Code, 1908, Section 11 - *Res judicata - Application filed u/s 11 of Act for appointment of arbitrator - Application dismissed by ADJ - Order not challenged before higher forum - Fresh application filed u/s 11 of Act before High Court for appointment of arbitrator - Held - At the relevant time, ADJ was having jurisdiction to decide the matter - Order of ADJ ought to have been challenged before higher forum - Once applicant has invoked the jurisdiction of competent Court and application was dismissed - Subsequent application cannot be entertained merely on ground that now the jurisdiction lies with High Court - Subsequent application barred by principle of Res judicata in the light of Supreme Court's judgment in S.B.P. & Co.'s case - Application dismissed.* (Para 11)

माध्यस्थम् एवं सुलह अधिनियम (1996 का 26), धारा 11, सिविल प्रक्रिया संहिता, 1908, धारा 11 – प्रांग्न्याय – मध्यस्थ की नियुक्ति के लिए अधिनियम की धारा 11 के अन्तर्गत आवेदन पेश – अपर जिला न्यायाधीश ने आवेदन खारिज किया – आदेश को उच्चतर फोरम के समक्ष चुनौती नहीं दी गई – मध्यस्थ की नियुक्ति के लिए अधिनियम की धारा 11 के अन्तर्गत नया आवेदन उच्च न्यायालय के समक्ष पेश किया – अभिनिर्धारित – सुसंगत समय पर अपर जिला न्यायाधीश को मामले के विनिश्चय का क्षेत्राधिकार था – अपर जिला न्यायाधीश के आदेश को उच्चतर फोरम के समक्ष चुनौती देना चाहिए था – एक बार आवेदक ने सक्षम न्यायालय के क्षेत्राधिकार का आह्वान (invoke) किया और आवेदन खारिज कर दिया गया – पश्चात्वर्ती आवेदन केवल इस आधार पर प्रवर्तनीय नहीं कि अब उच्च न्यायालय को क्षेत्राधिकार प्राप्त हो गया है – उच्चतम न्यायालय द्वारा एस.बी.पी. एण्ड कम्पनी के मामले में दिये निर्णय के आलोक में पश्चात्वर्ती आवेदन प्रांग्न्याय के सिद्धांत से बाधित है – आवेदन खारिज।

Cases referred :

(2005) 8 SCC 618, (2002) 2 SCC 388, AIR 1954 SC 9, AIR 1942 Nag 119.

Amrit Rupra, for the applicant.

Grishm Jain, for the non-applicants.

ORDER

K.K.Lahoti, J. :–This application is directed under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to decide the dispute between the parties. The facts of the case are that the petitioner being a works contractor was registered with the respondents since 8.12.1984. On 27.3.1997 an agreement for replacement of damaged doors and windows

*M.C.C. No.298/2005 (Jabalpur)

including Chawkhats of colony at Garbi project was entered in between the applicant and respondent No.1 for a contract valued of Rs.23,40,552.14p to be completed within six months from the date of commencement of the work. The aforesaid agreement consist Clause 9, about settlement of the dispute and for referring the dispute to the Chief Managing Director, NCL for decision.

2. That the petitioner completed the work in the month of August, 1997 and running bills were paid by respondent No.1 but the final bill of the applicant was kept pending for want of sanction of revised estimate as the contract value of the work was considerably enhanced above the award value. On 20.11.98, the Chief Manager of the respondent No.1 passed an order instructing all projects to withhold the payments of the applicant due to dispute of the quality of the shutters. No opportunity of hearing was extended to the applicant and the contract registration of the applicant was kept in abeyance. On 8.12.98 the applicant made a representation before the respondents to re-consider the order dated 20.11.1998 on the ground that the defects as pointed out by the respondents were rectified. Thereafter the applicant challenged order dated 20.11.1988 before the High Court in W.P. 3645/98. The aforesaid writ petition was finally dismissed by order dated 16.8.1999 by which the High Court found that it was not a case of black listing of the petitioner. The opportunity was required only when the person is black listed for all time. Petitioner represented to the concerned authorities and the registration of the petitioner was kept in abeyance for which no opportunity of hearing was necessary. The High Court held that it was not necessary on the part of the respondents to give petitioner an opportunity of hearing before passing a final order and with the aforesaid discussion, petition was dismissed as per order Annexure A-7. Against the order dated 16.8.1999 L.P.A. No. 438/99 was preferred, but by order Annexure A-8 dated 1.12.1999 it was dismissed as withdrawn.

3. The applicant requested to the respondents under clause 9 of the Agreement for appointment of an Arbitrator to decide the dispute between the parties. The applicant raised its claim for Rs. 24.2 lakhs and interest. The respondent No.1 on 22.5.2000 refused to appoint an Arbitrator. Applicant filed an application under section 11 of the Arbitration and Conciliation Act, 1996 before the Additional District Judge, Sidhi. The application was contested by the respondents and by a reasoned order Annexure A-10 dated 4.3.2003, the application was rejected on the ground that clause 9 of the Agreement was cancelled and there was no agreement between the parties for the appointment of an Arbitrator. It is not in dispute that the order Annexure A-10 was not challenged by the applicant and has attained finality.

4. Now this application has been filed on the ground that after passing of the order dated 4.3.2003 the applicant inspected the original document produced by respondent No.1 and was surprised to know that clause 9 of the Agreement was cancelled without any signatures of the applicant but the certified copy supplied by the respondent was not with the deletion of Clause 9 of the Agreement. Then the applicant approached to the respondent's headquarters for further action. During

the discussion with the respondents it revealed to the applicant that though Clause 9 of the Agreement was deleted but there was a clause in tender notice dated 30.12.1996 to refer the dispute to CMD, NCL. The applicant got copy of the order dated 4.1.2002 and 5.2.2003. Under the clause of tender notice dated 30.12.1996 Annexure A/12 and A/13, the Applicant on 5.5.2003 again made a representation to respondent No.2 for settlement of the dispute on the ground that the tender dated 30.12.1996 forming part of the agreement provided settlement of the dispute. Earlier demand notice dated 26.6.2000 was served 3 years back and the claim of the applicant was enhanced from 24.2 lakh to 48.49 lakhs. Various representations were made to the respondents by the applicant but without any result so notice dated 31.7.2004 was served on respondent No.2 to appoint an Arbitrator as per the provisions of the Agreement within a period of 30 days.

Respondent No.2 sent a reply dated 10.9.2004 Annexure A-17 stating that that the agreement with the applicant was without any arbitration clause and the applicant was advised to contact the concerned project Engineer for the finalization of the contract. The applicant met with the Project Engineer of respondent No.1 and made a request to finalized the contract as per letter dated 10.9.2004 but without any result. The present application has been filed in view of the demand notice dated 5.5.2003 alleging a fresh cause of action.

5. Respondent opposed the application stating that the application is highly belated, it was filed beyond a period of 3 years from the date of accrual of cause of action and is barred by limitation under Art.137 of the Limitation Act. The petitioner's prayer made on 20.6.2000 was under alleged clause 9 of the Agreement, while there was no such clause in the Agreement.

That the District Judge, Sidhi vide order dated 4.3.2003 rejected the similar prayer made by the petitioner which has attained finality and for similar relief second prayer cannot be made as it is barred by the principles of rejudicata. The alleged arbitration Clause 9 alongwith other clauses was scored out. The applicant had entered into an agreement in which there was no arbitration clause. Clause of settlement of dispute only empowers the CMD to decide the difference between the parties and his decision was final and binding except the provisions made in clause 10 of the agreement. Clause 10 of the agreement is filed as Annexure R-1 alongwith the reply. That the petitioner's 97% payments were already made, the petitioner had not completed the work, rectified the defects and put the answering respondents at a loss.

6. The petitioner has also filed application on 11.12.2006 seeking condonation of delay and exclusion of time, spent in legal proceedings, I.A. No. 12663/06 stating that earlier application was filed before the District Judge, Sidhi which was erroneously rejected by him, while there was an Arbitration Clause between the parties for the settlement of the dispute which came into the knowledge of the petitioner on 4.3.2003 and such time may be excluded for computing the period of limitation. It is further submitted that earlier claim was for Rs. 25 lakh, now it has

increased for Rs. 48.25 Lakh for which the District Judge was not having jurisdiction and the jurisdiction lies with this Court, so this application may be entertained.

7. The respondents opposed the application contending that at the relevant time the claim was below Rs.25 lakh and the applicant rightly filed an application before the District Judge which was dismissed by him. As the aforesaid order has attained finality so this application is barred by limitation and resjudicata, and may be dismissed.

8. To appreciate the contentions of the parties, it will be pertinent to mention here that a preliminary point emerges for the consideration of this Court, that whether this application is barred by resjudicata ?

9. In this case it is not in dispute that earlier in respect of same contract, applicant raised his claim before the respondent and filed an application for constitution of an Arbitral Tribunal before the District Judge, Sidhi. The aforesaid application was decided by District Judge, Sidhi vide order dated 4.3.2003 Annexure A-10. At the relevant time the application was not opposed by the respondents that the District Judge, Sidhi was having no jurisdiction to decide the application. The Apex Court in *SBP & Co. vs. Patel Engineering Ltd.* (2005 VOl.8 SCC 618) held that under section 11(6) of the Arbitration and Conciliation Act, jurisdiction lies with the Chief Justice of High Court or his nominee and the jurisdiction lies with the High Court but in para 47 of the judgment, the Apex Court held thus :-

> x) (Ed.: Para 47(x) & (xii) corrected vide Official Corrigendum No. F.3/ Ed. B.J./99/2005 dated 20-10-2005.) Since all were guided by the decision of this Court in *Konkan Railway Corpn. Ltd. & anr. Vs. Rani Construction Pvt. Ltd.* [(2000) 8 SCC 159] and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or arbitral tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.
>
> (xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the concerned High Court or a Judge of that court designated by the Chief Justice.

The aforesaid judgment specifically lay downthat the earlier orders passed in view of the law laid down by the Apex Court in *Konkan Railway Corporation Ltd vs. Rani Construction Ltd.* 2002 Vol. II SCC 388 were saved though the aforesaid judgment was overruled by the Apex Court.

The Apex Court further held that the jurisdiction lies only with the Chief

Justice of the High Court or his nominee to appoint an Arbitrator but earlier orders passed by the District Judge as delegate of the Chief Justice were saved. So the earlier orders which were passed by the District Judge remain unaffected and the orders which were passed by the District Judge earlier in the light of the judgment of the Apex Court in *Konkan Railway* (supra) were found with jurisdiction.

10. The Apex Court in *Jeevantha vs. Hanumanta* [AIR 1954 SC 9] held that competency of the Court must have existed at the date of former suit. In order to determine whether a Court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of that Court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. If at that time such a Court would have been competent to try the subsequent suit, had it been then brought, the decision of such Court would operate as *'res judicata'* although subsequently by a rise in the value of the property that Court had ceased to be a proper Court, so far as regards its pecuniary jurisdiction, to take cognizance of a suit relating to that very property. The Apex Court held in para 4 thus :-

> It seems to us that this rule of law was overlooked in all the Courts below. The property in dispute in the two suits is identical. At the date of the earlier suit it was assessed to land revenue in the sum of Rs. 84/- while at the date of the later suit it was assessed in the sum of Rs. 104/-. The difference in the jurisdictional value has arisen by reason of the increase in the land revenue assessment. The circumstance, however, could not affect the plea of *'res judicata'*. The present suit, if brought in the year 1913, would have been within the competence of the Munsif who tried the first suit because the land revenue assessed on these survey members then was only Rs. 84/- and the valuation of the suit would have been Rs. 840/-, within the Munsif's pecuniary jurisdiction. This was the only ground urged against the application of the rule of *'res judicata'* to his case. In all other respects it was admitted that the case was within that rule. The result therefore is that the plaintiffs' suit is barred by *'res judicata'* by reason of the decision of the former suit decided in the year 1921.

11. In *Takechand Kapurchand and another vs. Mst. Birza Bai* [AIR 1042 Nagpur 119], a learned Judge of this Court considering the question in reference to Section 11 of the Code interpreted expression "in a court competent to try such subsequent suit" in Section 11 held that the expression referrers to the jurisdiction of the Court at the time when the first suit was brought. In view of the settled law by the Apex Court and this Court in *Tekchand* (supra), there is no iota of doubt that in respect of subsequent proceedings, the principle of resjudicata would apply if the earlier proceedings were heard and decided by a Court having jurisdiction at that point of time in this regard. In the light of this legal position, the facts of the present case may be looked into. The earlier application was decided by the Ist Additional Judge to the Court of Ist Additional District Judge, Sidhi in M.J.C. No. 4/03 on 4.3.2003 [Annexure A-10] and the application filed by the applicant

under section 11 of the Arbitration and Conciliation Act, 1996 was dismissed on merits. At the relevant time such Court was having jurisdiction to decide the matter and the aforesaid order ought to have been challenged by the applicant immediately before higher forum. Once the applicant invoked the jurisdiction of a competent Court and the application was heard and rejected, a subsequent application cannot be entertained merely on the ground that now the jurisdiction lies with the High Court and not with the District Judge. In the light of the judgment of the Apex Court in *S.B.P. & Co.* (supra) the previous judgment between the parties bars subsequent application on the principle of *resjudicata.*

12. So far as the contention raised by the applicant that by concealing the agreement between the parties earlier matter was decided or the applicant was having no knowledge in respect of the clause in tender notice dated 30.12.1996 and these facts came into notice of application after earlier decision is concerned, the applicant who got the knowledge on 5.5.2003, immediately either ought to have sought review of the order dated 4.3.2003 or ought to have challenged the order before the higher forum alongwith the aforesaid contention but the applicant remained silent for a considerable long period from 5.5.2003 to 21.2.2005 and permitted the order Annexure A-10 to attain finality. Now the applicant cannot take benefit of the aforesaid circumstances by filing same application on same set of facts.

In the result this subsequent application filed under section 11(6) of the Act is barred in view of the order Annexure A-10 on the principle of resjudicata and is accordingly dismissed with no order as to costs.

Order accordingly.

I.L.R. [2008] M. P., 2141

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice R.C. Mishra

14 March, 2008*

SHAMSHER SINGH MANGAT (LT. COL.) ... Applicant

Vs.

STATE OF M.P. ... Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Sections 173, 482 - ***Further investigation - Quashing of proceedings*** - *Charge-sheet filed against applicant before Special Judge returned back for presentation before the Court of Special Magistrate - Fresh Charge-sheet filed after recording statements of discharged accused persons as witnesses - Held - C.B.I. could have conducted further investigation only with due permission of Court - However, merely because C.B.I. had conducted further investigation without prior permission, it would not be sufficient to vitiate cognizance unless it is shown that such an investigation has caused any prejudice to applicants or had resulted in miscarriage of justice - Petition dismissed.* (Paras 6, 7 & 8)

*M.Cr.C. No. 4443/2006 (Jabalpur)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 173, 482 – अतिरिक्त अन्वेषण – कार्यवाहियों का अभिखंडित किया जाना – विशेष न्यायाधीश के समक्ष आवेदक के विरुद्ध पेश आरोप–पत्र विशेष मजिस्ट्रेट के न्यायालय के समक्ष प्रस्तुति हेतु वापस किया गया – उन्मोचित अभियुक्त व्यक्तियों के साक्षी के रूप में बयान अभिलिखित करने के बाद नया आरोप–पत्र पेश – अभिनिर्धारित – न्यायालय की सम्यक् अनुमति से ही सी.बी.आई. अतिरिक्त अन्वेषण संचालित कर सकती थी – तथापि मात्र इसलिए कि सी.बी.आई. ने पूर्व अनुमति के बिना अतिरिक्त अन्वेषण संचालित किया था, यह संज्ञान को दूषित करने के लिए पर्याप्त नहीं होगा यदि यह दर्शित नहीं किया जाता है कि ऐसे अन्वेषण ने आवेदकों को कोई प्रतिकूल प्रभाव कारित किया है या परिणामस्वरूप न्याय की विफलता हुई है – याचिका खारिज।

Cases referred :

AIR 2004 SC 2078, AIR 1960 SC 866, AIR 1955 SC 196, (2005) 1 SCC 568.

Manish Datt, for the applicant.

Jayant Nikhra, Standing Counsel for the non-applicant/CBI.

ORDER

R.C. MISHRA, J.:–These petitions, under Section 482 of the Code of Criminal Procedure (for short "the Code"), are interrelated as arisen from the same criminal proceedings pending as Special Case No.1/2003 in the Court of Special Magistrate, CBI at Jabalpur. In that case, cognizance of the offences punishable under Sections 120-B, 420, 467, 468 and 471 of the IPC has been taken against the petitioner and the co-accused S.S.Yadav, upon the charge-sheet submitted by the respondent on 29/8/03.

2. In the first petition registered as M.Cr.C. No. 4443/07, prayer has been made to quash the charge-sheet whereas in the second petition numbered as M.Cr.C. No.4522/07, order-dated 26/4/07 rejecting the application seeking production of certain documents, under Section 91 of the Code, has been sought to be set aside.

3. The investigation into the offences allegedly committed by the petitioner in pursuance of a conspiracy between him and the co-accused originated from FIR recorded on 23.07.1999, by Kewal Singh, S.P. C.B.I., Jabalpur. After due investigation, on 24.11.2001, the charge-sheet in respect of the aforesaid offences as well as the offence punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") was put up against the petitioner and his six companions in the Court of the Special Judge for CBI cases at Jabalpur. In the charge-sheet, one of the accused namely Balvir Singh was shown as absconding. However, considering the charge-sheet and the documents submitted, learned Special Judge, for the reasons recorded in the order-dated 29/06/2001 passed in Special Case No.1/06, came to the following conclusions:-

(i) no offence punishable under the Act was made out.

(ii) the charges against co-accused H.S.Airy, Kishore Pathak, S.Natrajan and S.S.Malik were groundless.

4. Accordingly, while discharging these four accused, the learned Special Judge returned the charge-sheet for the offences under the IPC as against the petitioner and co-accused S.S.Yadav for presentation to the Court of Special Magistrate, (CBI), at Jabalpur. However, the officer concerned, instead of complying with the direction carried out further investigation during which the discharged co-accused viz. H.S. Airy, Kishore Pathak, S. Natrajan and S.S. Malik were examined as witnesses. Thereafter, a fresh charge-sheet was filed in the Court of Special Magistrate on 08/05/2003.

5. Learned counsel for the petitioner has strenuously contended that no cognizance could be taken upon the fresh charge-sheet based on further investigation carried out without prior permission of the Magistrate. He is of the view that the cognizance of the offences could only be taken upon the main charge-sheet returned by the Special Judge and not upon the supplementary charge-sheet based on the further investigation in question.

6. In response, the learned counsel for CBI has submitted that the field of investigation of any cognizable offence is exclusively within the domain of investigating agency. According to him, the investigating officer was not precluded from carrying out further investigation before filing the amended charge-sheet before the Magistrate. However, the contention is apparently misconceived. As pointed out already, the respondent-CBI was only directed to put up the charge-sheet, returned by the Special Judge, before the Special Magistrate for trial of the petitioner and co-accused S.S.Yadav for the offences punishable under Sections 120-B, 420, 467 and 471 of the IPC. There cannot be any conflict with the proposition that CBI could conduct further investigation into the matter, but the only requirement was that due permission as contemplated under Section 173(8) of the Code, ought to have been obtained, before entering into such an additional investigation. For this, reference may be made to the under-mentioned observations made by the Apex Court in *Hasanbhai Valibhai Qureshi vs. State of Gujarat* AIR 2004 SC 2078 :-

> "When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law."

7. Even when, the provision of Section 173(8) of the Code was not brought on the statute book, the Supreme Court in *R.P. Kapur vs. State of Punjab* AIR 1960

SC 866 has laid down the following guideline for the investigating agency:-

> "It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive."

8. However, as pointed out already, the Special Judge, C.B.I., after taking into consideration the entire material on record, had given a categorical finding that the petitioner and co-accused S.S.Yadav deserve to be indicted with the offences under Sections 120-B, 420, 467 and 471 of the IPC. Admittedly, that order was not challenged by the petitioner. As such, it has become a final and a non reviewable order. Further, the fact that C.B.I. had conducted further investigation without a prior permission of the Magistrate, by itself, would not be sufficient to vitiate the cognizance unless it is shown that such an investigation has caused any prejudice to the petitioner and the co-accused S.S.Yadav or had resulted into any miscarriage of justice. To fortify this view, suffice would be to advert to the celebrated observation made by the Apex Court in *H.N. Rishbud vs. State of Delhi* AIR 1955 SC 196, as reproduced hereunder :

> "The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance".

9. In this view of the matter, no interference with the order taking cognizance of the offences and consequent criminal proceedings is called for.

10. Coming to the order-dated 26/04/2007, it may be seen that the prayer for production of certain documents in possession of SECL, Sohagpur and Jabalpur was made at the pre-charge stage. However, the learned Magistrate rightly rejected the corresponding application in the light of the well-settled position of law, as explicated in *State of Orrisa vs. Devendra Nath Padhi* (2005) 1 SCC 568, observing that entitlement of the accused to seek order, under Section 91 of the

Code, would ordinarily not come till the stage of defence. Accordingly, this order also deserves to be maintained.

11. For these reasons, none of the grievances as projected by the petitioners, has any merit or substance. As an obvious consequence, these petitions are dismissed.

Petition dismissed.

I.L.R. [2008] M. P., 2145

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice P.K. Jaiswal

2 July, 2008*

TEJ SINGH & ors. ... Applicants

Vs.

REWA RAM & ors. ... Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code, 1860, Sections 406, 420, 120-B - *Inherent powers of High Court - Quashing of F.I.R.* - *Applicant No.1 entered into an agreement to sell with non-applicants - Agreement not honoured - N.A. filed a complaint u/Ss. 406, 420, 120-B I.P.C. against applicants - Magistrate ordered for investigation u/s 156(3) of Cr.P.C. - Proceedings challenged before High Court for its quashment - Held - Averments in the complaint do not show that applicants had fraudulent or dishonest intention at the time of making the promise - Mere failure to subsequently keep a promise, it cannot presume that they had a culpable intention to break the promise from the beginning - No material on record to show that applicants have misappropriated or converted the property in question to their own use - It cannot be said that applicants committed any criminal conspiracy - Complaint is an abuse of process of Court and proceedings are, therefore, liable to be quashed.* (Paras 12 & 13)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता, 1860, धाराएँ 406, 420, 120–बी – उच्च न्यायालय की अन्तर्निहित शक्तियाँ – प्रथम सूचना रिपोर्ट का अभिखण्डन – आवेदक क्र. 1 ने अनावेदकों के साथ विक्रय का अनुबन्ध किया – अनुबन्ध का पालन नहीं किया – अनावेदक ने आवेदक के विरुद्ध भा.द.सं. की धारा 406, 420, 120–बी के अधीन परिवाद पेश किया – मजिस्ट्रेट ने द.प्र.सं. की धारा 156(3) के अन्तर्गत अनुसंधान करने का आदेश दिया – कार्यवाही को अभिखण्डन के लिए उच्च न्यायालय के समक्ष चुनौती दी गई – अभिनिर्धारित – परिवाद के अभिकथनों से यह दर्शित नहीं होता है कि आवेदकों का वचन देते समय कपटपूर्ण या बेईमानीपूर्ण आशय था – केवल बाद में वचन का पालन करने में विफल रहें इससे यह उपधारित नहीं किया जा सकता है कि उनका प्रारम्भ से ही वचन को तोड़ने का सदोष आशय था – अभिलेख पर ऐसी कोई सामग्री नहीं है जो दर्शाये कि आवेदकों ने दुर्विनियोग किया या प्रश्नास्पद सम्पत्ति को उनके उपयोग के लिए संपरिवर्तित किया – यह नहीं कहा जा सकता है कि आवेदकों ने

*M.Cr.C. No.3165/2008 (Gwalior)

कोई दाण्डिक षड्यंत्र कारित किया – परिवाद न्यायालय की आदेशिका का दुरुपयोग है और इसलिए कार्यवाही अभिखण्डित किये जाने योग्य है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 - *Exercise of inherent powers - Powers of High Court u/s 482 Cr.P.C. are very wide and the very plentitude of power requires great caution in its exercise - Court must be careful to see that its decision in exercise of this power is based on sound principles.* (Para 15)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अन्तर्निहित शक्तियों का प्रयोग – द.प्र.सं. की धारा 482 के अधीन उच्च न्यायालय की शक्तियाँ बहुत व्यापक और शक्ति की सम्पूर्णता इसके प्रयोग में बड़ी सावधानी अपेक्षित है – न्यायालय को ध्यान रखना चाहिए कि इन शक्तियों के प्रयोग में उसका विनिश्चय ठोस सिद्धांतों पर आधारित हो।

Cases referred :

AIR 1999 SC 1480, (2000) 2 SCC 636, AIR 2001 SC 2960, (2005) 10 SCC 228, (2005) 10 SCC 336, AIR 2007 SCW 6679.

Amit Lahoti, for the applicants.
R.K. Sharma, for the non-applicants No.1 & 2.
Mohd. Irshad, P.L., for the non-applicant No.3/State.

ORDER

P.K. JAISWAL, J. :–Heard.

2. By taking aid of inherent jurisdiction under Section 482 of Cr.P.C., petitioners had filed this petition for quashing the criminal proceedings initiated against them for an offence punishable under Sections 406, 420 and 120-B of I.P.C. and consequential order passed by the Chief Judicial Magistrate, Vidisha on 23.08.2007 by which he directed the Supdt. of Police, Vidisha to investigate the same under Section 156 (3) of Criminal Procedure Code.

3. Brief facts of the case are that the petitioner No.1 entered into an agreement to sell over an area of 9.95 hectares of Survey No.171/2/2 situated at Village Khemkheda, Tehsil and District Vidisha in favour of respondents No.1 and 2 for a consideration of Rs.9 lakhs on the ground that he is exclusive owner and title holder of the said land and he need money for his personal necessity. On 29.07.2003, he executed an agreement with the respondents No.1 and 2 vide Annexure P/3. As per agreement, on 29.07.2003 he received Rs.4 lakhs through draft and cheque from the respondents No.1 and 2. The balance amount of Rs.5 lakhs was to be paid on or before 28.07.2004, with a condition that he will execute the sale deed on or before 28.07.2004 and possession of the said land will be delivered to them. It is also averred that in case the petitioner No.1 failed to execute the sale deed, then respondents No.1 and 2 get it executed through Court at the risk and cost of the petitioner No.1. Petitioners No.2 and 3 are sons of petitioner No.1.

4. On 23.08.2007 (Annexure P/1), the respondents No.1 and 2-complainants

filed a private complaint under Section 190 of Cr.P.C. against the petitioners for the offence punishable under Sections 406, 420 and 120-B of I.P.C. on the ground that petitioners executed an agreement to sell vide agreement dated 29.07.2003 in respect of the above mentioned area for a consideration of Rs.9 lakhs and Rs.4 lakhs was paid through draft and cheque at the time of execution of the agreement and rest of the amount was to be paid on or before 28.07.2004. The respondents No.1 and 2 time and again asked the petitioner No.1 to execute the sale deed in their favour but no sale deed was executed. In the month of December 2004, the petitioner No.1 and petitioners No.2 and 3, who are sons of petitioner No.1 jointly filed an application under Section 178 of M.P. Land Revenue Code 1959 for partition of the said land. The Naib Tehsildar vide order dated 24.01.2005 (Annexure P/4) allowed the application and partitioned the land in question between them. It is averred that this partition was effected just to defeat the agreement to sell executed by the petitioner No.1 in favour of respondents No.1 and 2. In para-5 of the complaint, it is averred that at the time of execution of agreement to sell, petitioners No.2 and 3 were also present and in their presence, part of consideration was paid. Thereafter, the petitioner No.1 did not honour the agreement in spite of the fact that complainant visited him on 31.01.2005 and 30.04.2007 and requested him for execution of sale deed but no sale deed was executed. According to the complainants, the petitioners thus have cheated them. On the basis of the above fact, the Chief Judicial Magistrate directed for investigation under Section 156 (3) of Cr.P.C.

5. Learned counsel for the petitioners at the outset made statement at bar that he does not want to press this application on behalf of the petitioner No.1-Tej Singh and, therefore, the application for quashing the investigation and private complaint against the petitioner No.1-Tej Singh is dismissed, as not pressed.

6. In respect of the petitioners No.2 and 3, he submits that they were not party to the agreement to sell dated 29.07.2003 nor they were present at the time of execution of the agreement nor in the agreement, it is averred that they agreed for execution of the agreement to sell in favour of complainants and, therefore, no proceeding can be drawn against them.

7. His next submission is that it was a pure and simple case of breach of agreement to sell creating civil liability between the parties and appropriate remedy for the complainant was to file a civil suit for specific performance of agreement and not to file a criminal complaint. The arguments of the learned counsel for the petitioners No.2 and 3 is that in absence of any agreement with the petitioners No.2 and 3, on the basis of paras-4 and 5 of the complaint, no case for prosecution under Section 406, 420 and 120-B of I.P.C. is made out against them.

8. A series of cases were cited by the learned counsel for the petitioners No.2 and 3, in which it is laid down that the condition on which prosecution of criminal complaint/proceeding can be quashed by the Court. Learned counsel for the

petitioners No.2 and 3 placed reliance on the following citations which are as follows:-

1. *Nageshwar Prasad Singh Vs. Narayan Singh and another,* AIR 1999 SC 1480.

2. *G. Sagar Suri and another Vs. State of U.P. and others,* 2000 (2) SCC 636.

3. *S.N. Palanitkar and others Vs. State of Bihar and another,* AIR 2001 (SC)2960.

4. *Anil Mahajan Vs. Bhor Industries Ltd. and another,* 2005 (10) SCC 228.

5. *Uma Shankar Gopalika Vs. State of Bihar and another,* 2005 (10) SCC 336.

6. *Inder Mohan Goswami and another Vs. State of Uttaranchal and others,* AIR 2007 SCW 6679.

9. On the other hand, learned counsel for the complainant's drew my attention to paras-4, 5 and 6 of the complaint and submits that at the time of execution of the agreement, petitioners No.2 and 3 were present and in their presence, agreement was executed and it is not the case of the petitioners No.2 and 3 that in the complaint, there is no averments against them so as to infer fraudulent or dishonest intention having been made by them. Paras-4 and 5 of the complaint (Annexure P/1) reads as under:-

"4. यह कि विकयी तिथि आने के पूर्व अभियोगी कमांक 1 ने आरोपी कमांक 1 से विकय अनुबंधपत्र के मुताबिक विकय की गई भूमियों का विकयपत्र संपादित करने व शेष रूपया प्राप्त करने का कहा तो अभियुक्त कमांक 1 ने बेईमानीपूर्वक अभियोगी से लिए गए चार लाख रूपया हड़पने के उद्धेश्य से अनुबंधित भूमि का बटंवारा अपने पुत्रों के नाम से अर्थात अभियुक्त कमांक 2 व 3 के साथ षड़यंत्र करके कर लिया तथा अनुबंधित भूमि को ग्राम पटवारी के माध्यम से अपने अपने नाम नामांतरण करा लिया ताकि अभियोगी के साथ जो अनुबंध किया था उसे डिफीट किया जा सके एवं अनुबंध पत्र को बेअसर किया जा सके ।

5. यह कि जिस समय अनुबंधित भूमिका अनुबंध पत्र संपादित किया गया था उस समय उसके लड़के अभियुक्त कमांक 2 व 3 भी मौजूद थे तथा अभियुक्तगण की उपस्थिति में अनुबंधित भूमि का विकय का तया किया गया था एवं विकयधन चार लाख अंकन 4,00,000/– एडवांस उसके लड़कों के समक्ष प्राप्त किया गया था, चूंकि सभी आरोपीगण के मन में वदयान्ति थी इस कारण उन्होने अभियोगी के साथ छल करने के उद्धेश्य से उपरोक्त भूमिका विकय करने का अनुबंध कर चार लाख अंकन 4,00,000/– रूपया प्राप्त करने के लिए अभियोगीगण को उत्प्रेरित कर प्राप्त कर लिए, उसके बाद बटवारा कर भूमि अभियुक्त कमांक 2 व 3 के नाम करा दी गई ।"

10. I have heard the arguments of the learned counsel for the parties at length

and perused the pleadings of the parties, complaint and the order passed by the learned Magistrate.

11. Having taken into consideration all the materials made available on record by the parties and after hearing the learned counsel for the parties, I am satisfied that the criminal proceedings initiated by the respondents No.1 and 2 against the petitioners No.2 and 3 are wholly unwarranted. The complaint is an abuse of the process of Court and proceedings are there, therefore, liable to be quashed.

12. In the complaint, it is nowhere stated that respondents No.1 and 2 were ready to pay the balance amount of Rs.5 lakhs to the petitioner No.1. When the petitioners failed to honour the agreement to sell, no legal notice was issued to them nor complainants filed any document to prove that they were ready to pay balance amount on or before 28.07.2004 or sent a Cheque/Draft for the balance amount of Rs.5 lakhs which was part of the consideration and petitioners, in spite of that, did not honour the agreement to sell dated 29.07.2003. Merely because an agreement to sell was entered into which agreement the petitioner No.1 failed to honour, it cannot be said that the petitioners No.2 and 3 have cheated the respondents No.1 and 2.

13. Under Section 420 of I.P.C. to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning. Section 406 of I.P.C. will be attracted in case of criminal breach of trust. From the averments of the agreement to sell and complaint, it cannot be said that the breach of trust has been committed by the petitioners No.2 and 3. No agreement was executed by the petitioners No.2 and 3 and, therefore, at this stage, on the basis of the agreement and complaint, it cannot be said that petitioners No.2 and 3 have misappropriated or converted the property in question to their own use. From the averments made in the plaint and the agreement executed by the petitioner No.1 with the complainant, it cannot be said that petitioners are party to criminal conspiracy to commit an offence punishable under Section 120-B of I.P.C.

14. The basic ingredients of offence under Sections 406, 420 and 120-B of I.P.C. are altogether missing in the private complaint filed by the respondents No.1 and 2 against the petitioners No.2 and 3. Therefore, by no scratch of imagination, the petitioners No.2 and 3 can be prosecuted for offences under Sections 406, 420 and 120-B of I.P.C.

15. The Apex Court in the case of Inder Mohan Goswami and another (supra) has observed that the powers possessed by the High Court under section 482 of the Criminal Procedure Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. Para-45 is relevant which reads as under:-

"45. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Court under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases."

16. For the reasons aforementioned, this petition is partly allowed. The complaint filed by the respondents No.1 and 2 in the Court of Chief Judicial Magistrate, Vidisha on 23.08.2007 is directed to be quashed only against the petitioners No.2 and 3. Needless to say, the respondents No.1 and 2 are at liberty to pursue such other remedy under the civil law, as may be available to them.

Petition partly allowed.

I.L.R. [2008] M. P., 2150

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice A.P. Shrivastava

9 July, 2008*

RANDHEER SINGH (DR.) ... Applicant

Vs.

STATE OF M.P. ... Non-applicant

Natural Justice - *Applicant conducted the investigation and filed charge-sheet u/s 379 of IPC - The trial court finding the investigation as biased and not having conducted properly passed adverse remark against the applicant - Order challenged on the ground that no opportunity of hearing was given - Held - Before passing adverse remark against a person or authority in a trial, opportunity of hearing should be given - Application allowed.* (Para 3)

नैसर्गिक न्याय – आवेदक ने अन्वेषण संचालित किया और भा.द.सं. की धारा 379 के अधीन आरोप–पत्र पेश किया – विचारण न्यायालय ने अन्वेषण पक्षपातपूर्ण और उचित रूप से संचालित न किया जाना पाते हुए आवेदक के विरुद्ध प्रतिकूल टिप्पणी पारित की – आदेश को इस आधार पर चुनौती दी गई कि सुनवाई का कोई अवसर प्रदान नहीं किया गया – अभिनिर्धारित – विचारण में किसी व्यक्ति या प्राधिकारी के विरुद्ध प्रतिकूल टिप्पणी पारित करने के पूर्व सुनवाई का अवसर दिया जाना चाहिए – आवेदन मंजूर।

Case referred :

AIR 1987 SC 1436.

Sanjay Gupta, for the applicant.

---

*M.Cr.C. No.795/06 (Gwalior)

V.S. Chaturvedi, P.P., for the non-applicant.

ORDER

A.P. Shrivastava, J.:– This petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing the adverse remark passed by the CJM, Morena, in Criminal Case no.1039/05 vide order dated 16.01.06.

2. In brief, the facts of the case are that a report was lodged at the police station by the complainant that a golden chain was taken away by the accused persons. After investigation, the police found that the case is made out under Section 379 of IPC. Finding that the investigation was biased and not conducted properly, therefore, lower court passed the remark in the impugned order which is as follows:-

> "इस प्रकरण में धारा–392 भा.द.वि. के तहत लूट का अपराध किया है, इसलिये धारा 11, 13 म.प्र. डकैती एवं व्यपहरण अधिनियम के प्रावधान लागू होते हैं, यहां भी उल्लेखनीय है, कि पुलिस सि.ला. मुरैना के निरीक्षक आर. एस. रूहल द्वारा अन्तिम प्रतिवेदन दिया गया है और अजयपाल सिंह प्र. आरक्षक नं.– 622 थाना सिविल लाईन्स ने विवेचना की है, दोनो की ही कार्यप्रणाली सन्देह के घेरे में है। इसलिये डी. जी. पी. को आदेश–पत्रिका की प्रति भेजी जावे जो उनकी सर्विस बुक में लेखा की जाय।"

3. The grievance of the petitioner is that the remark was passed by the court without giving any opportunity of hearing to him. Further, when the remark was passed, charges were not framed against the accused persons. Therefore, before passing the remark, opportunity of hearing or show cause should have been given to the petitioner because adverse remark will affect the entire career of the petitioner. In this behalf, learned counsel for the petitioner relied on a judgment rendered by the Apex Court in the case of *S.K. Viswambaran v. F. Koyakunju and others* reported in AIR 1987 SC 1436 in which it is held as under:

> "In the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

4. Counsel for the respondent/State has also been heard. He supported the order passed by the trial court.

5. After having heard the learned counsel for the parties, I think before passing the order at least show-cause notice should have been given to the petitioner. Further, charges have not yet been framed. Therefore, in the circumstances, the

relevant portion of the impugned order which relates to the adverse remark is hereby quashed but it is directed that the trial court should give notice or opportunity of hearing to the petitioner and then proceed in accordance with law.

6. With the above direction, this M.Cr.C stands allowed. A copy of the this order be sent to the concerning court for necessary compliance.

Petition allowed.
