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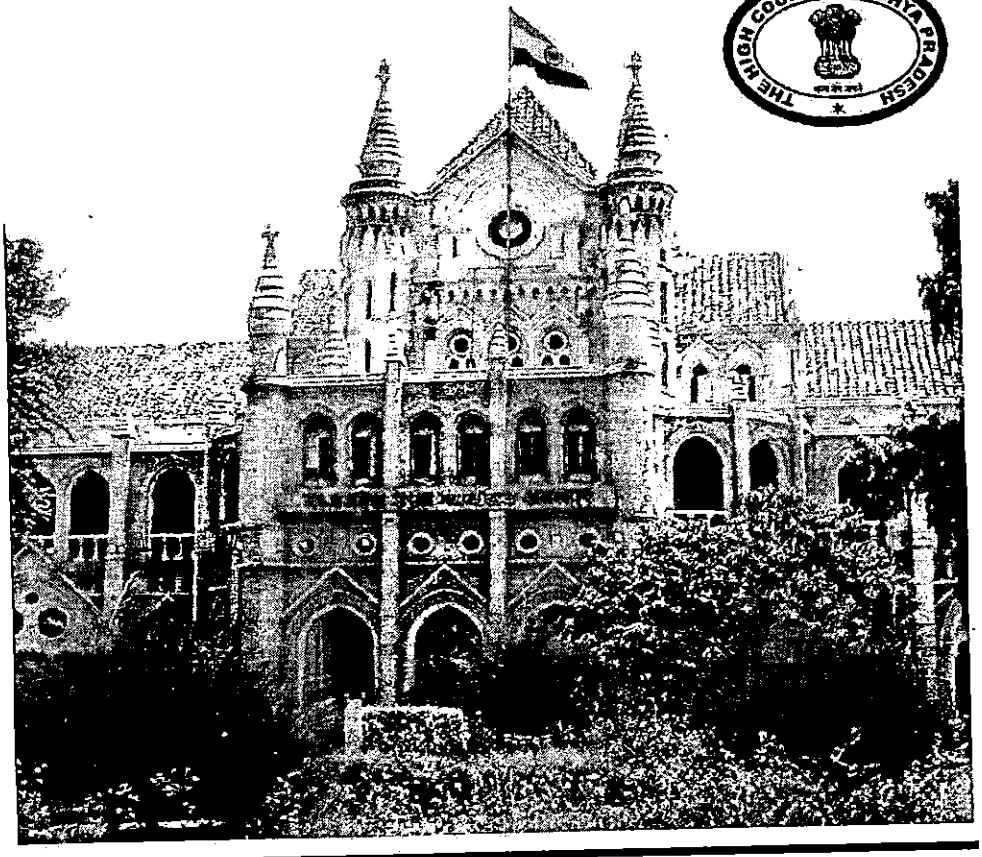
# THE INDIAN LAW REPORTS
## M. P. SERIES

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

**Year-4** **Vol.4**



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# JABALPUR 2012

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*(Note An asterisk (*) denotes Note number)*

*Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) - Arrears of Rent* - Tenant admitted that he is in arrears of rent for the last 3 years of filing suit for eviction - Tenant did not tender the arrears of rent even after the notice was sent - Ground of eviction made out. [Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd.] ...2780

*Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), (f), (o), Civil Procedure Code (5 of 1908), Order 7, Rule 11* - Suit for eviction filed before expiry of period of 2 months from the date of service of notice - Plaint to the extent of Section 12(1)(a) can be refused but relief can be granted under Section 12(1)(f) and (o) - Application for rejection of plaint was rightly rejected. [Reena Khatuja (Smt.) Vs. Murarilal Sharma] ...2856

*Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) - Bonafide Need* - It is not necessary to plead the nature of business - Not necessary to landlord to prove that he had money to invest or that he has experience to run the business - Appellant entitled for decree of eviction. [Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd.] ...2780

*Accommodation Control Act, M.P. (41 of 1961), Section 23 - Eviction - Bonafide Requirement* - Landlady had sold one shop in the year 2006 - Application for eviction in respect of another shop filed in the year 2010 - Held - Landlady may explore the possibility for remaining life keeping herself busy - If after retirement she had sold one shop and after some time if she wants to get the other shop vacated for keeping her remaining life busy, her ocular evidence cannot be disbelieved - Finding of bonafide requirement appears to be just and reasonable and do not warrant interference. [Kamal Kumar Talreja Vs. Smt. Asha Bhatnagar] ...3085

*Accommodation Control Act, M.P. (41 of 1961), Section 23-E - Legality, Propriety and Correctness* - Power of the Court is larger than the revisional jurisdiction under Section 115 of C.P.C. but may not be ascertainable at par to appellate jurisdiction - It is not permissible to High Court to come to a different finding unless such finding is unreasonable. [Kamal Kumar Talreja Vs. Smt. Asha Bhatnagar] ...3085

*Accommodation Control Act, M.P. (41 of 1961), Section 28 - Appointment of R.C.A.* - Rent Controlling Authority can be appointed

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*(Note An asterisk (*) denotes Note number)*

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 (1)(ए) – भाड़े का बकाया* – किरायेदार ने स्वीकार किया कि बेदखली का दावा प्रस्तुत करने के पिछले 3 वर्ष से उस पर भाड़ा बकाया है – नोटिस भेजे जाने के बाद भी किरायेदार ने बकाया भाड़ा जमा नही किया – बेदखली का आधार बनता है। (शारदा सिंघानिया (श्रीमति) वि. भारत पेट्रोलियम कारपोरेशन लि.) ...2780

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएं 12(1)(ए), (एफ), (ओ), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7, नियम 11* – बेदखली के लिए वाद, नोटिस तामील होने की तिथि से दो माह की अवधि समाप्त होने से पहले प्रस्तुत किया गया – धारा 12(1)(ए) के संबंध का वादपत्र अस्वीकार किया जा सकता है, किन्तु धारा 12(1)(ए)(एफ) व (ओ) के अंतर्गत अनुतोष प्रदान किया जा सकता है – वादपत्र को नामंजूर किये जाने हेतु आवेदन को उचित रूप से अस्वीकार किया गया। (रीना खतूजा (श्रीमति) वि. मुरारीलाल शर्मा) ...2856

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 (1)(एफ) – वास्तविक आवश्यकता – व्यवसाय के स्वरूप का अभिवाक् आवश्यक नही* – भूमि स्वामी के लिए साबित करना आवश्यक नहीं कि उसके पास निवेश हेतु रकम है अथवा यह कि उसे व्यवसाय करने का अनुभव है – अपीलार्थी बेदखली की डिक्री का हकदार। (शारदा सिंघानिया (श्रीमति) वि. भारत पेट्रोलियम कारपोरेशन लि.) ...2780

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23 – बेदखली – वास्तविक आवश्यकता* – भूमिस्वामिनी ने वर्ष 2006 में एक दुकान का विक्रय किया – अन्य दुकान के संबंध में बेदखली हेतु आवेदन वर्ष 2010 में प्रस्तुत किया गया – अभिनिर्धारित – भूमिस्वामिनी, शेष जीवन स्वयं को व्यस्त रखने में बिताने की संभावना को खोज सकती है – यदि निवृत्ति पश्चात् उसने एक दुकान बेच दी और कुछ समय पश्चात् अपना शेष जीवन व्यस्त रखने के लिए दूसरी दुकान को खाली कराना चाहती है, तब उसके चाक्षुष साक्ष्य पर अविश्वास नहीं किया जा सकता – वास्तविक आवश्यकता का निष्कर्ष उचित एवं युक्तियुक्त प्रतीत होता है और हस्तक्षेप की आवश्यकता नहीं। (कमल कुमार तलरेजा वि. श्रीमति आशा भटनागर) ...3085

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–ई – वैधता, औचित्य व शुद्धता* – न्यायालय की शक्ति, सि.प्र.सं. की धारा 115 के अंतर्गत पुनरीक्षण अधिकारिता से अधिक है, परंतु अपीली अधिकारिता के समानांतर सुनिश्चित नहीं की जा सकती – उच्च न्यायालय के लिए भिन्न निष्कर्ष पर पहुंचना अनुज्ञेय नही है जब तक कि ऐसा निष्कर्ष अयुक्तियुक्त न हो। (कमल कुमार तलरेजा वि. श्रीमति आशा भटनागर) ...3085

*स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 28 – भाड़ा नियंत्रण प्राधिकारी की नियुक्ति* – भाड़ा नियंत्रण प्राधिकारी की नियुक्ति कलेक्टर द्वारा केवल

by the Collector, only after obtaining approval of the State Govt. - Order appointing R.C.A. by the Collector without obtaining approval from State Govt. set aside - Collector is at liberty to appoint R.C.A. as per the provisions of Section 28 of Act, 1961. [Saurabh Kumar Jain Vs. State of M.P.] (DB)...2638

*Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 - Regulation 6 - Examination of Delinquent Officer* - Where the delinquent officer has not appeared as a witness, then the enquiry officer is required to record the statement of delinquent officer in respect of circumstances appearing against him for the purpose of enabling the delinquent officer to explain any circumstance appearing in evidence against him. [Ranjan Sarvate Vs. Allahabad Bank] ...*115

*Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 - Regulation 6 - Procedure for imposing Major Penalties - Defence Evidence* - Regulations are mandatory in nature - Application filed by the petitioner to examine defence witnesses rejected by enquiry officer on the ground that the witnesses have no relation with case - Enquiry Officer was not free to decide whether such defence witnesses are materially important or not. [Ranjan Sarvate Vs. Allahabad Bank] ...*115

*Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 4 - See - Ancient Monuments and Archaeological Sites and Remains Act, M.P. 1964, Section 3* (Archaeological Survey of India Vs. State of M.P.) (DB)...*112

*Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Section 3, Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 4* - Declaration in respect of monument - No notification issued by Central Govt. declaring the said temple as ancient monument of national importance under 1958 Act - It would be governed by 1964 Act. (Archaeological Survey of India Vs. State of M.P.) (DB)...*112

*Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Section 19* - Bade Baba temple declared as ancient monument under Section 3 of the Act - Though the said temple is not in existence, only idol of Bade Baba alone survives and the same is required to be protected and preserved - However, permission of State

राज्य सरकार का अनुमोदन अभिप्राप्त करने के पश्चात् की जा सकती है – राज्य सरकार से अनुमोदन अभिप्राप्त किये बिना कलेक्टर द्वारा भाड़ा नियंत्रण प्राधिकारी की नियुक्ति का आदेश अपास्त – कलेक्टर, अधिनियम 1961 की धारा 28 के उपबंधों के अनुसार भाड़ा नियंत्रण प्राधिकारी को नियुक्त करने के लिए स्वतंत्र है। (सौरभ कुमार जैन वि. म.प्र. राज्य) (DB)...2638

*इलाहाबाद बैंक अधिकारी कर्मचारी (अनुशासन और अपील) विनियमन, 1976 – विनियम 6 – अपचारी अधिकारी का परीक्षण* – जब अपचारी अधिकारी साक्षी के रूप में उपस्थित नहीं हुआ है तब साक्ष्य में अपचारी अधिकारी के विरूद्ध पाई गई किसी परिस्थिति को स्पष्ट करने के लिए उसे समर्थ बनाने के प्रयोजन हेतु उसके विरूद्ध पाई गई परिस्थितियों के संबंध में जांचकर्ता अधिकारी को अपचारी अधिकारी का कथन अभिलिखित करना अपेक्षित है। (रंजन सर्वटे वि. इलाहाबाद बैंक) ...*115

*इलाहाबाद बैंक अधिकारी कर्मचारी (अनुशासन और अपील) विनियमन, 1976 – विनियम 6 – गुरूतर शास्तियां अधिरोपित करने की प्रक्रिया – बचाव साक्ष्य* – विनियमन आज्ञापक स्वरूप के हैं – याची द्वारा बचाव साक्षियों का परीक्षण करने के लिए प्रस्तुत किया गया आवेदन जांचकर्ता अधिकारी द्वारा इस आधार पर अस्वीकार किया गया कि साक्षियों का प्रकरण के साथ कोई संबंध नही – जांचकर्ता अधिकारी यह विनिश्चय करने के लिए स्वतंत्र नहीं था कि क्या उक्त बचाव साक्षीगण तात्विक रूप से महत्वपूर्ण है अथवा नहीं। (रंजन सर्वटे वि. इलाहाबाद बैंक) ...*115

*प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1958 का 24), धारा 4 – देखें* – प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म. प्र., 1964, धारा 3, (आर्कियोलॉजिकल सर्वे ऑफ इंडिया वि. म.प्र. राज्य) (DB)...*112

*प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम, म.प्र. (1964 का 12), धारा 3, प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1958 का 24), धारा 4 – संस्मारक के संबंध में घोषणा* – केन्द्र सरकार द्वारा उक्त मंदिर को राष्ट्रीय महत्व का प्राचीन स्मारक घोषित करते हुए अधिनियम 1958 के अंतर्गत कोई अधिसूचना जारी नही की गई – वह अधिनियम 1964 के द्वारा शासित होगा। (आर्कियोलॉजिकल सर्वे ऑफ इंडिया वि. म.प्र. राज्य) (DB)...*112

*प्राचीन संस्मारक तथा पुरातत्वीय स्थल और अवशेष अधिनियम (1964 का 12), धारा 19* – बड़े बाबा मंदिर को अधिनियम की धारा 3 के अंतर्गत प्राचीन स्मारक घोषित किया गया – यद्यपि उक्त मंदिर अस्तित्व में नही है, केवल बड़े बाबा की मूर्ति ही बची है और उसका संरक्षण एवं संवर्धन करने की आवश्यकता है – किन्तु, मंदिर निर्माण हेतु

**Govt. would be necessary for construction of temple. (Archaeological Survey of India Vs. State of M.P.) (DB)...*112**

***Arbitration and Conciliation Act (26 of 1996), Section 8 - See - Civil Procedure Code, 1908, Order 7 Rule 11,* [Mukesh Singh Tomar Vs. Rakesh Sharma] ...2859**

***Arbitration and Conciliation Act (26 of 1996), Sections 10 & 11* - When an arbitration agreement makes a provision for appointment of named persons as arbitrator and when arbitration in accordance to the said provision is not possible due to any reason, the arbitration clause is not rendered redundant - In such cases, the matter has to be proceeded in accordance to the requirement of Section 11(6) and the arbitrator has to be appointed in accordance to the procedure contemplated therein. [National Council of Y.M.C. of India Vs. Sudhir Chandra Datt] ...3076**

***Arbitration and Conciliation Act (26 of 1996), Sections 10(1), (2) & 11 - Appointment of Arbitrators* - Merely because the arbitration agreement contemplates appointment of two arbitrators i.e. even number of arbitrators, the arbitration agreement will not become invalid - The arbitration clause can still be given effect to. [National Council of Y.M.C. of India Vs. Sudhir Chandra Datt] ...3076**

***Arbitration and Conciliation Act (26 of 1996), Sections 11, 14 & 15* - Where an arbitration agreement contemplates for appointment of named arbitrators and the arbitrators so appointed are unable to discharge their function then the power u/s 11(6) has to be invoked and it is the Chief Justice or the Judge designated by the Chief Justice, who is required to be taken action in the matter. [National Council of Y.M.C. of India Vs. Sudhir Chandra Datt] ...3076**

***Arms Rules, 1962, Rule 54, Constitution, Article 162, Seventh Schedule List I Entry V - License Fee for renewal of arms license* - Only Parliament is empowered to legislate on the subject of Arms - Parliament has enacted Arms Act, 1959 and Rules - State Govt. has no power either to legislate or take executive action in respect of arms in general in respect of imposing or enhancing licence fee either for the initial grants or the renewals - Notification/Circular dated 10.06.2011 enhancing the renewal fee quashed. [Mahendra Bhatt Vs. State of M.P.] (DB)...3021**

राज्य सरकार की अनुमति आवश्यक होगी। (आर्कियोलॉजिकल सर्वे ऑफ इंडिया वि. म. प्र. राज्य) (DB)...*112

*माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 8 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 7 नियम 11,* (मुकेश सिंह तोमर वि. राकेश शर्मा) ...2859

*माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 10 व 11* – जब माध्यस्थम अनुबंध, नामित व्यक्तियों की मध्यस्थ के रुप में नियुक्ति के लिए उपबंध करता है और जब उक्त उपबंध के अनुसरण में माध्यस्थम किसी कारण संभव नहीं है, तब माध्यस्थम खंड अनावश्यक नहीं हो जायेगा – ऐसे प्रकरणों में धारा 11(6) की अपेक्षानुसार कार्यवाही करनी चाहिए और उसमें अनुध्यात प्रक्रिया के अनुरुप मध्यस्थ को नियुक्त करना चाहिए। (नेशनल काउंसिल ऑफ वाय.एम.सी. ऑफ इंडिया वि. सुधीर चन्द्र दत्त) ...3076

*माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 10(1), (2) व 11* – मध्यस्थों की नियुक्ति – मात्र इसलिए कि माध्यस्थम अनुबंध दो मध्यस्थों की नियुक्ति अनुध्यात करता है, अर्थात, मध्यस्थों की सम संख्या, माध्यस्थम अनुबंध अवैध नहीं हो जायेगा – माध्यस्थम खंड को तब भी कार्यान्वित किया जा सकता है। (नेशनल काउंसिल ऑफ वाय.एम.सी. ऑफ इंडिया वि. सुधीर चन्द्र दत्त) ...3076

*माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 11, 14 व 15* – जहां माध्यस्थम अनुबंध नामित मध्यस्थों की नियुक्ति अनुध्यात करता है और इस प्रकार नियुक्त मध्यस्थ, अपने कर्तव्यों का निर्वहन करने में अक्षम है, तब धारा 11 (6) के अंतर्गत शक्ति का अवलंब लेना चाहिए और यह मुख्य न्यायाधिपति होंगे या मुख्य न्यायाधिपति द्वारा नामोद्दिष्ट न्यायाधिपति होंगे जिन्हें मामले में कार्यवाही करना अपेक्षित है। (नेशनल काउंसिल ऑफ वाय.एम.सी. ऑफ इंडिया वि. सुधीर चन्द्र दत्त)...3076

*आयुध नियम, 1962, नियम 54, संविधान, अनुच्छेद 162, सातवीं अनुसूची, सूची ८ प्रविष्टि ट – आयुध अनुज्ञप्ति के नवीनीकरण हेतु अनुज्ञप्ति शुल्क* – केवल संसद आयुध के विषय पर कानून बनाने के लिए सशक्त है – संसद ने आयुध अधिनियम 1959 व नियम अधिनियमित किये हैं – सामान्यतः आयुध के संबंध में तथा अनुज्ञप्ति शुल्क अधिरोपित करने या बढ़ाने के संबंध में, या तो प्रारंभिक प्रदान हेतु अथवा नवीनीकरण हेतु राज्य सरकार को, ना तो कानून बनाने की और न ही कार्यपालिक कार्यवाहीं करने की शक्ति है – नवीनीकरण शुल्क की बढोत्तरी की अधिसूचना/परिपत्र दिनांकित 10.06.2011 अभिखण्डित। (महेन्द्र भट्ट वि. म.प्र. राज्य) (DB)...3021

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*Benami Transactions (Prohibition) Act, (45 of 1988), Section 4 (1), Civil Procedure Code (5 of 1908), Order 7 Rule 11* - Suit for declaration that as the property was purchased by him benami in the name of his mother therefore, he be declared as owner - If a suit is filed after coming into force of the act, claiming any right, title or interest on the basis of any benami transaction, whether it was done prior to coming into force of the act or after coming into force of the act, would be barred u/s 4(1) - Revision allowed - Application under order 7 rule 11 is allowed. [Anand Kumar Vs. Vijay Kumar] ...3090

*Benami Transactions (Prohibition) Act, (45 of 1988), Section 4 (1) - See -Civil Procedure Code, 1908 - Order 7 Rule 11, Order 7 Rule 11(d)* [Anand Kumar Vs. Vijay Kumar] ...2554

*Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act (27 of 1996), Section 47 - Second complaint - Limitation* - First complaint which was presented within the period of limitation was quashed by Supreme Court that Company of which petitioners no. 2 & 4 are officers have not been impleaded - Second Complaint - Held - Court takes cognizance of the offence and not the offender and therefore, the number of accused person or the legal status of anyone of them did not assume any significance - Complaint presented within the prescribed period of limitation - Offences allegedly committed by them and the co-accused named in the first complaint - Accordingly, none of the second complaints could be treated as barred by time - Petition dismissed. [NTPC Vs. State of M.P.] ...2880

*Central Civil Services (Pension) Rules, 1972, Rule 54(6)(iv) - Major son suffering from disability - Family Pension* - Respondent claimed family pension being 40% disabled - Held - Merely because a person may earn his livelihood even with physical limitation cannot be construed in the given case rendering the respondent ineligible for family pension. [Union of India Vs. Shri Baba Singh] (DB)...3012

*Central Civil Services (Temporary Service) Rules, 1965, Rule 5(1) - Termination from service - False Declaration* - Petitioner made false declaration at the time of his appointment that he was never arrested and prosecuted, kept under detention or bound down/fined, convicted by a Court of law - This declaration was made in the year 2008 - Record shows that a criminal case was registered against the appellant in the year 2005 which

*बेनामी संव्यवहार (प्रतिषेध) अधिनियम (1988 का 45), धारा 4 (1), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11* – घोषणा के लिए वाद कि चूंकि सम्पत्ति को उसके द्वारा बेनामी, अपनी माता के नाम से क्रय किया गया था इसलिए उसे स्वामी घोषित किया जाए – यदि वाद को अधिनियम प्रवर्तित होने के पश्चात् किसी बेनामी संव्यवहार के आधार पर किसी अधिकार, हक या हित का दावा करते हुए प्रस्तुत किया जाता है, वह धारा 4(1) के अंतर्गत वर्जित होगा, भले ही अधिनियम के प्रभावी होने से पूर्व या अधिनियम के प्रभावी होने के पश्चात् ऐसा किया गया हो – पुनरीक्षण मंजूर – आदेश 7 नियम 11 के अंतर्गत आवेदन मंजूर। (आनंद कुमार वि. विजय कुमार) ...3090

*बेनामी संव्यवहार (प्रतिषेध) अधिनियम (1988 का 45), धारा 4(1) – देखें – सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11, आदेश 7 नियम 11 (डी)* (आनंद कुमार वि. विजय कुमार) ...2554

*भवन एवं अन्य संनिर्माण कर्मकार (नियोजन विनियमन एवं सेवा शर्तें) अधिनियम (1996 का 27), धारा 47 – द्वितीय शिकायत – परिसीमा* – प्रथम शिकायत जिसे परिसीमा अवधि के भीतर प्रस्तुत किया गया था, उच्चतम न्यायालय द्वारा अभिखण्डित की गई कि कम्पनी जिसके याचीगण क्र. 2 व 4 अधिकारी हैं, को पक्षकार नही बनाया गया – द्वितीय शिकायत – अभिनिर्धारित – न्यायालय अपराध का संज्ञान लेता है न कि अपराधी का और इसलिए अभियुक्तों की संख्या या उनमें से किसी की विधिक हैसियत कोई महत्व नही रखती – शिकायत को परिसीमा की विहित अवधि के भीतर पेश किया गया – अपराध अभिकथित रूप से उनके द्वारा तथा प्रथम शिकायत में नामित सह–अभियुक्त द्वारा कारित किये गये – तद्नुसार, द्वितीय शिकायतों में से किसी को समय वर्जित नही माना जा सकता – याचिका खारिज। (एनटीपीसी वि. म.प्र. राज्य) ...2880

*केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972, नियम 54 (6)(पअ) – वयस्क पुत्र निशक्तता से ग्रसित – परिवार पेंशन* – प्रत्यर्थी ने 40: निशक्तताः के चलते परिवार पेन्शन का दावा किया – अभिनिर्धारित – मात्र इसलिए कि कोई व्यक्ति शारीरिक मर्यादा के साथ भी अपनी अजीविका अर्जित कर सकता है, इस प्रकरण में प्रत्यर्थी, परिवार पेन्शन हेतु अपात्र होने का अर्थान्वयन नहीं किया जा सकता। (यूनियन ऑफ इंडिया वि. श्री बाबा सिंह) (DB)...3012

*केन्द्रीय सिविल सेवा (अस्थायी सेवा) नियम, 1965, नियम 5(1) – सेवा समाप्ति – मिथ्या घोषणा* – याची ने अपनी नियुक्ति के समय मिथ्या घोषणा की कि उसे न्यायालय द्वारा कभी भी गिरफ्तार एवं अभियोजित नहीं किया गया, कभी अभिरक्षा में या बंधन में नही रखा गया कभी अर्थदण्डित या दोषसिद्ध नहीं किया गया – यह घोषणा सन् 2008 में की गई – अभिलेख दर्शाता है कि अपीलार्थी के विरूद्ध सन् 2005 में आपराधिक प्रकरण दर्ज किया गया था जो घोषणा की तिथि को लंबित था – अपीलार्थी

was pending on the date of making declaration - Defence of the appellant that he was not aware of the registration and pendency of criminal case not trustworthy under the facts and circumstances of the case - Termination of services proper - Appeal dismissed. [Dharamveer Vs. The Director General of Police] (DB)...2322

*Civil Procedure Code (5 of 1908), Section 11, Order 1 Rule 10* - Plaintiff purchased the property in dispute from the decree holder who was declared owner in a suit for declaration - Plaintiff has filed a suit for eviction against tenants - Judgment debtor of earlier suit files an application for impleadment on the ground that appeal against the decree passed is pending - Title of objector cannot be decided in the suit because the earlier decision would operate as res judicata - Even if the appeal is pending the decree would still operate as res judicata - Unless and until the decree is set aside, the petitioner cannot be said to be a necessary party. [Diwakar Rao Gurjar Vs. Smt. Shobna Mishra] ...2645

*Civil Procedure Code (5 of 1908), Section 15 - Over valuation* - Plaintiff pleaded that the petitioner/defendant is in arrears of rent for the last 13 years and valued the suit accordingly - As per Section 15 of C.P.C., every suit has to be instituted in the Court of lowest grade - Valuation has a direct nexus with the relief permissible in law - If the law permits that rent can be recovered only for last 3 years, there will absolutely no justification in valuing the suit on the basis of alleged unpaid rent of 13 years - Court below is directed to return the plaint with liberty to plaintiff to present the plaint before a Court of competent jurisdiction. [Kusuma Rathore (Smt.) Vs. Sharad Sharma] ...2724

*Civil Procedure Code (5 of 1908), Section 15, Order 7, Rules 1 & 10 - Valuation of suit* - Plaintiff filed suit for declaration of sale deeds as null and void on fixed court fee - Held - As the plaintiffs are not party to the sale deeds, therefore, suit on fixed court fee is maintainable - In such situation the plaintiffs were not bound to value the suit for the purpose of jurisdiction according to the market value of the property or the sale consideration of the document mentioned in the sale deed. [Baje Rao Vs. Gulab Rao] ...2968

*Civil Procedure Code (5 of 1908), Sections 23 & 24 - Transfer of case* - Family court of Bhopal comes under the territorial jurisdiction of the Principal Seat at Jabalpur - Family Court at Gwalior comes under

का बचाव कि वह आपराधिक प्रकरण दर्ज होने एवं लंबित रहने के तथ्य से अनभिज्ञ था, प्रकरण के तथ्य एवं परिस्थितियों में विश्वसनीय नही है – सेवा समाप्ति उचित – अपील खारिज। (धरमवीर वि. द डायरेक्टर जनरल ऑफ पुलिस) (DB)...2322

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 11, आदेश 1 नियम 10* – वादी ने डिक्रीधारक जिसे, घोषणा के लिए वाद में स्वामी घोषित किया गया था, उससे सम्पत्ति क्रय की – वादी ने किरायेदारों के विरूद्ध बेदखली के लिए वाद प्रस्तुत किया – पूर्वतर वाद के निर्णित ऋणी ने पक्षकार बनाये जाने हेतु आवेदन इस आधार पर प्रस्तुत किया कि पारित की गई डिक्री के विरूद्ध अपील लंबित है – आक्षेपक के हक को वाद में निर्णित नहीं किया जा सकता क्योंकि पूर्ववर्ती निर्णय, पूर्व न्याय के रूप में प्रभावी होगा – यदि अपील लंबित है तब भी डिक्री पूर्व न्याय के रूप में प्रवर्तित होगी – जब तक कि डिक्री अपास्त नहीं की जाती, याची को आवश्यक पक्षकार नही माना जा सकता। (दिवाकर राव गुर्जर वि. श्रीमति शोभना मिश्रा) ...2645

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 15 – अतिमूल्यांकन* – वादी का अभिवाक् कि याची/प्रतिवादी पर पिछले 13 वर्षों से भाड़ा बकाया है और तद्नुसार वाद का मूल्यांकन किया – सि.प्र.सं. की धारा 15 के अनुसार, प्रत्येक वाद, निम्नतर श्रेणी के न्यायालय में संस्थित किया जाना चाहिए – मूल्यांकन का सीधा संबंध विधि में अनुज्ञेय अनुतोष के साथ होता है – यदि विधि अनुमति देती है कि केवल पिछले 3 वर्षों के भाड़े की वसूली की जा सकती है, तब 13 वर्षों के असंदत्त भाड़े के अभिकथन के आधार पर वाद का मूल्यांकन करने का आत्यंतिक रूप से कोई न्यायोचित्य नही होगा – निचले न्यायालय को वाद पत्र वापिस करने के लिए निदेशित किया गया, वादी को इस स्वतंत्रता के साथ कि वादपत्र सक्षम अधिकारिता के न्यायालय के समक्ष प्रस्तुत करे। (कुसुमा राठौर (श्रीमति) वि. शरद शर्मा) ...2724

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 15, आदेश 7, नियम 1 व 10 – वाद का मूल्यांकन* – वादी ने विक्रय विलेखों को शून्य एवं अकृत घोषित किये जाने हेतु निश्चित न्यायालय शुल्क पर वाद प्रस्तुत किया – अभिनिर्धारित – चूंकि, वादीगण विक्रय विलेखों के पक्षकार नहीं, इसलिए निश्चित न्यायालय शुल्क पर वाद पोषणीय है – ऐसी स्थिति में वादीगण अधिकारिता के प्रयोजन हेतु सम्पत्ति के बाजार मूल्यानुसार या विक्रय विलेख में उल्लेखित विक्रय प्रतिफल के अनुसार वाद का मूल्यांकन करने के लिए बाध्य नहीं थे। (बाजे राव वि. गुलाब राव) ...2968

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 23 व 24 – प्रकरण का अंतरण* – भोपाल का कुटुम्ब न्यायालय, मुख्य न्यायपीठ जबलपुर के क्षेत्राधिकार में आता है – ग्वालियर का कुटुम्ब न्यायालय, इस न्यायालय के ग्वालियर खण्डपीठ के क्षेत्राधिकार में

**the territorial jurisdiction of Bench of this court at Gwalior - Transfer petition could not be entertained at this Bench at Gwalior. [Shailey Madne (Smt.) Vs. Pankaj Kumar Madne] ...2596**

***Civil Procedure Code (5 of 1908), Section 24 - Reasonable Apprehension* - Orders of inferior Court are put to challenge before the Higher Courts as a matter of course and it is a part of game - Merely because an order of inferior court is set aside by the Superior Court and it is remitted back, and in turn, is posted before the same presiding judge, would not mean that the said judge will become biased or on remand would not be able to handle the matter dispassionately. [Narayan Acharya Vs. Kishanlal] ...*118**

***Civil Procedure Code (5 of 1908), Section 24 - Transfer - Reasonable Apprehension* - Suit was earlier dismissed under order 7 Rule 11 C.P.C. - First Appeal was allowed and the matter was remanded back - Application under order 39 Rule 1 and 2 C.P.C. filed by plaintiff allowed - Plaintiff thereafter participated in proceedings without any damour or objection - Merely because some applications filed by the plaintiff were rejected it cannot be presumed that the presiding judge is annoyed with the petitioner or he will not get justice from him - Application rejected. [Narayan Acharya Vs. Kishanlal] ...*118**

***Civil Procedure Code (5 of 1908), Section 96 - Remand of Case* - Appellants alleged that no notice of suit was served and they never appeared nor filed any written statement - Written Statement was not verified - Defendant no. 3 was minor but no guardian was appointed on his behalf by the Court - Remand of case proper. [Pop Singh Vs. Ram Singh] ...3058**

***Civil Procedure Code (5 of 1908), Section 96* - Suit for possession of the agricultural lands and houses for damages and permanent injunction - One Mahant was the guru of plaintiff and selected the plaintiff as 'Patt' disciple and successor of him and after selection plaintiff started managing the property - Mahant relinquished all his rights, interests and titles in favour of the plaintiff - Order of registration of Public Trust was not challenged within six months therefore, registration become final - Suit filed after 22 years, is barred by limitation - Held - Plaintiff is Sarvarakaar of the temple - Plaintiff managing the property - Property of the village Timarni ( lands and**

आता है – अंतरण याचिका ग्वालियर खण्डपीठ में ग्रहण नही की जा सकती। (शैली मदने (श्रीमति) वि. पंकज कुमार मदने) ...2596

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – युक्तियुक्त आशंका* – अवर न्यायालय के आदेशों को उच्चतर न्यायालयों के समक्ष स्वाभाविक रूप से चुनौती दी जाती है और यह प्रक्रिया का हिस्सा है – मात्र इसलिए कि वरिष्ठ न्यायालय द्वारा अवर न्यायालय के आदेश को अपास्त किया गया और उसे प्रतिप्रेषित किया गया और परिणामतः उसी पीठासीन न्यायाधीश के समक्ष पेश किया गया, इसका अर्थ यह नही होगा कि उक्त न्यायाधीश पक्षपाती हो जाएगा या प्रतिप्रेषित होने से मामले में निष्पक्ष कार्यवाही करने में असमर्थ होगा। (नारायण आचार्य वि. किशनलाल) ...*118

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – अंतरण – युक्तियुक्त आशंका* – वाद को पूर्व में सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत खारिज किया गया था – प्रथम अपील मंजूर की गई और प्रकरण प्रतिप्रेषित किया गया था – वादी द्वारा सि. प्र.सं. के आदेश 39 नियम 1 व 2 के अंतर्गत प्रस्तुत आवेदन स्वीकार किया गया – तत्पश्चात् वादी ने बिना किसी शिकायत एवं आक्षेप के कार्यवाही में हिस्सा लिया – मात्र इसलिए कि वादी द्वारा प्रस्तुत कुछ आवेदनों को नामंजूर किया गया, यह उपधारणा नहीं की जा सकती कि पीठासीन न्यायाधीश याची से क्षुब्ध है अथवा उसे उससे न्याय नही मिलेगा – आवेदन नामंजूर। (नारायण आचार्य वि. किशनलाल) ...*118

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – प्रकरण का प्रतिप्रेषण* – अपीलार्थीगण का अभिकथन है कि वाद का कोई नोटिस तामील नही किया गया और वे कभी उपस्थित नही हुए और न ही कोई लिखित कथन प्रस्तुत किया – लिखित कथन को सत्यापित नहीं किया गया – प्रतिवादी क्र. 3 अप्राप्तवय था परंतु न्यायालय द्वारा उसकी ओर से किसी संरक्षक को नियुक्त नहीं किया गया – प्रकरण का प्रतिप्रेषण उचित। (पोप सिंह वि. राम सिंह) ...3058

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 96* – कृषि भूमि व मकानों का कब्जा नुकसानी तथा स्थाई व्यादेश हेतु वाद – एक महंत वादी का गुरू था और वादी का पट्ट शिष्य तथा अपना उत्तराधिकारी के रूप में चयन किया और चयन पश्चात् वादी सम्पत्ति का प्रबंधन करने लगा – महंत ने अपने सारे अधिकार, हित व हक वादी के पक्ष में त्याग दिये – लोक न्यास के पंजीयन के आदेश को छः माह के भीतर चुनौती नही दी गई इसलिए, पंजीयन अंतिम हो जाता है – वाद 22 वर्ष पश्चात् प्रस्तुत, परिसीमा द्वारा वर्जित – अभिनिर्धारित – वादी मंदिर का सर्वराकार है – वादी सम्पत्ति का प्रबंधन कर रहा है – तीमरनी गांव की सम्पत्ति (भूमि व मकान) जो न्यास के रजिस्टर में दर्ज नही है, उस सम्पत्ति को महंत की व्यक्तिगत सम्पत्ति कहा जा सकता है – वादी केवल सर्वराकार व व्यवस्थापक है, अतः सम्पत्ति का प्रबंधन कर रहा है – विचारण न्यायालय

houses) which are not entered in the register of Trust, this property can be said to be the personal property of Mahant - Plaintiff is only Sarvarakaar & Vyavasthapak, hence, managing the property - Trial Court committed illegality is not appreciating the evidence on record in its proper perspective and declaring the plaintiff owner of disputed property - Appeal allowed. [Radheshyam Vs. Omkardas] ...3038

*Civil Procedure Code (5 of 1908), Section 100* - Substantial Question of Law - If the Court fails to apply the statutory mandate to the question of bonafide need, the same ceases to be a finding of fact. [Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd.] ...2780

*Civil Procedure Code (5 of 1908), Section 148A - Caveat - Original Caveator Dead* - After the death of original caveator, the Counsel has no right to argue on merits. [Chandrika Prasad Vs. Indramani (dead) Through L.Rs.] ...2964

*Civil Procedure Code (5 of 1908), Order 1 Rule 10 - Impleadment of co-owner* - Petitioner being a co-owner of property filed suit for eviction against respondents No. 1 to 3 - Co-owners were impleaded as defendants on their application - Held - Suit for eviction can be filed by any of the co-owners - Presence of all the owners is not necessary to adjudicate the suit - If after holding the trial on appreciation, it is found that the plaintiff/ petition was not entitled to file the suit alone for eviction, then in that situation, the petitioner has to face the consequence of dismissal of suit - Therefore, presence of co-owners is not necessary - Order permitting the co-owners to be impleaded as defendants set aside. [Jagdeesh Prasad Gupta Vs. Madanlal] ...2971

*Civil Procedure Code (5 of 1908), Order 6 - Pleadings - Construction* - Even if the pleadings are loosely drafted the court should not scrutinize the same with such meticulous care so as to result in genuine claim being defeated on trivial grounds. [Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd.] ...2780

*Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Amendment - Limitation* - Cause of action was available not only on the day of filing the suit but also on the date of filing the amendment application because to insert the prayer for declaration, the plaintiff was having the recurring cause of action. [Mohd. Yunus Vs. Nayeem Ahmed] ...2682

ने अभिलेख पर उपलब्ध साक्ष्य का उसके उचित परिप्रेक्ष्य में मूल्यांकन नहीं करके और वादी को विवादित सम्पत्ति का स्वामी घोषित करके, अवैधता कारित की – अपील मंजूर। (राधेश्याम वि. ओमकारदास) ...3038

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 100* – विधि का सारवान प्रश्न – यदि न्यायालय, वास्तविक आवश्यकता के प्रश्न पर कानूनी समादेश लागू करने में विफल होता है, तब वह तथ्य का निष्कर्ष नही बना रहेगा। (शारदा सिंघानिया (श्रीमति) वि. भारत पेट्रोलियम कारपोरेशन लि.) ...2780

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 ए – केवियट* – मूल केवियटकर्ता की मृत्यु – मूल केवियटकर्ता की मृत्यु के पश्चात् अधिवक्ता को गुणदोषों पर तर्क प्रस्तुत करने का अधिकार नहीं है। (चन्द्रिका प्रसाद वि. इन्द्रमणी (मृतक) द्वारा विधिक प्रतिनिधि) ...2964

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – सहस्वामी को पक्षकार बनाया जाना* – याची ने सम्पत्ति का सह स्वामी होने के नाते प्रत्यर्थी क्र. 1 से 3 तक के विरूद्ध बेदखली का वाद प्रस्तुत किया – सह स्वामियों को उनके आवेदन पर प्रतिवादीगण के रूप में पक्षकार बनाया गया – अभिनिर्धारित – बेदखली का वाद किसी भी सह स्वामी द्वारा प्रस्तुत किया जा सकता है – वाद न्यायनिर्णित करने के लिए सभी स्वामियों की उपस्थिति आवश्यक नही – यदि विचारण करने पर अधिमूल्यन पश्चात् यह पाया जाता है कि वादी/याची अकेले बेदखली हेतु वाद प्रस्तुत करने के लिए हकदार नहीं था, तब ऐसी स्थिति में, याची को वाद की खारिजी के परिणाम का सामना करना पड़ेगा – इसलिए, सह स्वामियों की उपस्थिति आवश्यक नही – सह स्वामियों को प्रतिवादीगण के रूप में पक्षकार बनाये जाने का आदेश अपास्त। (जगदीश प्रसाद गुप्ता वि. मदनलाल) ...2971

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 – अभिवचन – अर्थान्वयन* – यदि अभिवचनों को लापरवाही से ड्राफ्ट किया जाता है तब भी न्यायालय को उसकी संविक्षा ऐसी बारीकी से नही करनी चाहिए जिससे कि मामूली आधारों पर वास्तविक दावा विफल हो जाए। (शारदा सिंघानिया (श्रीमति) वि. भारत पेट्रोलियम कारपोरेशन लि.) ...2780

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – परिसीमा* – वाद कारण न केवल वाद प्रस्तुति की तिथि को विद्यमान था बल्कि सशोधन आवेदन पेश करने की तिथि को भी विद्यमान था क्योंकि घोषणा हेतु निवेदन समाविष्ट करने के लिए वादी के पास आवर्तक वाद कारण था। (मो. युनूस वि. नईम अहमद) ...2682

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*Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Amendment of Pleadings* - Whenever any amendment is proposed by any of the parties in his pleadings, and if the same appears to be an additional or different approach of the existing pleading, then such pleading could not be disallowed or rejected. [Mohd. Yunus Vs. Nayeem Ahmed] ...2682

*Civil Procedure Code (5 of 1908), Order 6 Rule 17* - Pecuniary Jurisdiction - Whenever any suit is found by any court not maintainable in the lack of pecuniary or territorial jurisdiction, then such Court has no option except to return the plaint to the plaintiff to file the same before the Court having such jurisdiction to entertain the same. [Mohd. Yunus Vs. Nayeem Ahmed] ...2682

*Civil Procedure Code (5 of 1908), Order 7 Rule 11, Arbitration and Conciliation Act (26 of 1996), Section 8* - Jurisdiction of Civil Court - Suit for enforcement of partnership-deed was filed - Suit is maintainable as the subject matter of the suit is capable of adjudication by the Civil Court only - Arbitration clause has no application. [Mukesh Singh Tomar Vs. Rakesh Sharma] ...2859

*Civil Procedure Code (5 of 1908), Order 7, Rule 11 - See - Accommodation Control Act, M.P., 1961, Sections 12(1)(a), (f), (o),* [Reena Khatuja (Smt.) Vs. Murarilal Sharma] ...2856

*Civil Procedure Code (5 of 1908), Order 7 Rule 11 - See - Benami Transactions (Prohibition) Act, 1988, Section 4 (1).* [Anand Kumar Vs. Vijay Kumar] ...3090

*Civil Procedure Code (5 of 1908), Order 7 Rule 11 - See - Representation of the People Act, 1951, Sections 77, 86, 87 & 123(6),* [Chandrabhan Singh Choudhary Vs. Kamal Nath] ...2750

*Civil Procedure Code (5 of 1908) - Order 7 Rule 11, Order 7 Rule 11(d) and Benami Transactions (Prohibition) Act, (45 of 1988), Section 4 (1) - Bar of Suit or Claim* - That the petitioner is real nephew of respondent no. 1 and out of love and affection he made purchases of land in the name of petitioner and sale consideration was paid by respondent no. 1 - All those purchased were benami - The bar is to file a suit or to make a claim and not that a particular transaction is benami or not - If suit is filed after coming into force of the Act, claiming any right title or interests on the basis of any benami transaction, whether

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it was done prior to coming in to force of the Act or after coming into force of the Act would be barred under the Sub-Sec (1) of Sec. 4 of the Act - Prohibition under the Act is squarely applicable and such a plaint was hit by order 7 rule 11 (d) of CPC - This being so, the court below was not right in rejecting the application of the petitioner - Revision allowed. [Anand Kumar Vs. Vijay Kumar] ...2554

*Civil Procedure Code (5 of 1908), Order 9, Rule 9 - Restoration of Civil Suit* - A party is bound to prove a fact which is pleaded by it before the Court - In order to prove sufficient cause as pleaded in the application, none has appeared in the witness box - In the lack of any such evidence on merely on the basis of pleadings in the application, the relief as prayed in the application would not have been granted by the Trial Court - Petition dismissed. [Bina Marry David Vs. Lilli Dayal] ...2657

*Civil Procedure Code (5 of 1908), Order 14 Rule 1 - Additional Issue* - Additional Issue with regard to non-availability of alternative accommodation was framed and plaintiff was given opportunity to lead evidence - Held - Whenever during pendency of the suit, any additional issue is framed and if such issue is related to factual matrix of the matter, then the Court is bound to extend the opportunity to both the parties to adduce evidence in that regard - Petition dismissed. [Narendra Kumar Rathi Vs. Ravindra Modi] ...2648

*Civil Procedure Code (5 of 1908), Order 16 Rule 1 and 2 - Summons to witnesses* - Provision of order 16 Rule 1 and 2 is a part of procedural law to achieve justice - Procedure cannot be so stringent unless Statute defines it in that manner - Use of word shall without any intention to close the right if the act is not done within a stipulated time and without there being any penal consequences, it cannot be held that the provision is mandatory - However, it is open for the Courts to examine the conduct of the person who is filing such application whether it is filed with bonafides or with a view to delay the proceedings or with some other oblique manner. [Raghuraj Singh Vs. Kedar Singh] ...2692

*Civil Procedure Code (5 of 1908), Order 16 Rule 14 - Representation of the People Act (43 of 1951), Section 87 - Summoning of returning officer as a Court witness* - Prayer for summoning returning officer as a Court witness was made by the respondent before closure of his evidence - Respondent can substantiate his pleadings by

तब यह अधिनियम की धारा 4 की उप–धारा (1) के अंतर्गत वर्जित होगा – अधिनियम के अंतर्गत निषेध पूर्णतः लागू होगा और उक्त वादपत्र सि.प्र.सं. के आदेश 7 नियम 11(डी) से प्रभावित होगा – ऐसी स्थिति में, अधिनस्थ न्यायालय के लिए याची का आवेदन अस्वीकार करना उचित नही था – पुनरीक्षण मंजूर। (आनंद कुमार वि. विजय कुमार) ...2554

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9, नियम 9 – सिविल वाद का प्रत्यावर्तन* – पक्षकार उस तथ्य को साबित करने के लिए बाध्य है जिसका अभिवाक् उसके द्वारा न्यायालय के समक्ष किया गया है – पर्याप्त कारण जैसा कि आवेदन में अभिवाक् किया गया है, को साबित करने के लिए कठघरे में कोई साक्षी उपस्थित नही हुआ – ऐसी किसी साक्ष्य के अभाव में, मात्र आवेदन में दिये गये अभिवचनों के आधार पर, विचारण न्यायालय, आवेदन में चाहा गया अनुतोष प्रदान नही कर सकता था – याचिका खारिज। (बीना मेरी डेविड वि. लिली दयाल) ...2657

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 1 – अतिरिक्त विवाद्यक* – वैकल्पिक स्थान की अननुपलब्धता से संबंधित अतिरिक्त विवाद्यक विरचित किया गया और वादी को साक्ष्य पेश करने का अवसर दिया गया – अभिनिर्धारित – जब कभी, वाद लंबित रहने के दौरान, कोई अतिरिक्त विवाद्यक विरचित किया जाता है और यदि उक्त विवाद्यक मामले के तथ्यात्मक ताने बाने से संबंधित है, तब उस संबंध में साक्ष्य प्रस्तुत करने हेतु दोनों पक्षकारों को अवसर प्रदान करने के लिए न्यायालय बाध्य है – याचिका खारिज। (नरेन्द्र कुमार राठी वि. रवीन्द्र मोदी) ...2648

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 16 नियम 1 व 2 – साक्षीगण को समन* – आदेश 16 नियम 1 व 2 का उपबंध, न्याय प्राप्ति के लिए प्रक्रियात्मक विधि का भाग है – प्रक्रिया कठोर नही हो सकती जब तक कि कानून उसकी परिभाषा उस ढंग से नही करता – यदि कार्यवाही निर्धारित समय सीमा के भीतर नहीं की गई है तथा कोई दाण्डिक परिणाम उपस्थित नहीं है तब अधिकार समाप्त करने के किसी आशय के बिना, शब्द **"shall"** का उपयोग किये जाने से, यह धारणा नही की जा सकती कि उपबंध आज्ञापक है – अपितु, न्यायालय ऐसा आवेदन करने वाले व्यक्ति के आचरण का परीक्षण करने के लिए स्वतंत्र है कि क्या वह सद्भाविक रूप से पेश किया गया है अथवा कार्यवाही में विलंब करने की दृष्टि से किया गया या किसी अन्य अस्पष्ट हेतु से पेश किया गया है। (रघुराज सिंह वि. केदार सिंह) ...2692

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 16 नियम 14 – लोक प्रतिनिधित्व अधिनियम, (1951 का 43), धारा 87 – निर्वाचन अधिकारी को न्यायालयीन साक्षी के रूप में बुलाया जाना* – प्रत्यर्थी द्वारा अपनी साक्ष्य की समाप्ति से पूर्व निर्वाचन अधिकारी को न्यायालयीन साक्षी के रूप में बुलाये जाने की प्रार्थना की गई – प्रत्यर्थी अपने अभिवचनों को, निर्वाचन अधिकारी के परीक्षण द्वारा प्रमाणित कर सकता है – अपने स्वयं के साक्षी

examining Returning Officer - No reasonably satisfactory explanation has been given for not summoning the Officer as his own witness - No compelling reason to summon Returning Officer as a Court witness - Application rejected. [Rajesh Kumar Vs. Devendra Singh] ...2457

*Civil Procedure Code (5 of 1908), Order 21 - Calculation of interest* - While calculating the interest, the Executing Court rightly considered the conduct of the applicants in denying the payment of compensation and long legal battle - Order of Executing Court proper. [State of M.P. Vs. Ram Pyare Dubey] ...2564

*Civil Procedure Code (5 of 1908), Order 21 - Power of Executing Court* - If a decree is specifically drawn, the Executing Court can not travel beyond the decree. [State of M.P. Vs. Ram Pyare Dubey] ...2564

*Civil Procedure Code (5 of 1908), Order 21 - Power of Executing Court to calculate interest* - High Court while granting decree did not grant any specific compensation but declared that the respondent would be entitled to compensation for the land held in his favour - As decree contains no specific amount, therefore, it has to be calculated and ascertained by Executing Court. [State of M.P. Vs. Ram Pyare Dubey] ...2564

*Civil Procedure Code (5 of 1908) Order 21 Rule 29 - Stay of Execution Proceedings* - Exparte decree was passed against petitioner - Application for setting aside exparte decree rejected - Appeal also dismissed - Suit for setting aside exparte decree pending - No interim order passed in such suit - Held - Unless and until the execution proceedings are stayed by any competent court or by any interlocutory injunction, executing court cannot go beyond the decree and cannot stay the execution - Petition dismissed. [Chandrika Prasad Vs. Indramani (dead) Through L.Rs.] ...2964

*Civil Procedure Code (5 of 1908),Order 21 Rule 84 & 85 - Deposit of auction money* - Auction purchaser is required to deposit 25% of the auction money immediately and rest of the amount within 15 days - Auction purchaser failed to deposit the remaining amount within 15 days - Sale is liable to be set aside. [Mukesh Maheshwari Vs. The United Western Bank Ltd.] ...2558

*Civil Procedure Code (5 of 1908), Order 22 Rule 4(4) - Execution of Decree - Defendant was proceeded exparte who died subsequently* - His

के रूप में अधिकारी को नही बुलाये जाने के लिए कोई युक्तिसंगत संतोषप्रद स्पष्टीकरण नहीं दिया गया है – निर्वाचन अधिकारी को न्यायालयीन साक्षी के रूप में बुलाये जाने हेतु कोई बाध्यकारी कारण नही – आवेदन अस्वीकार। (राजेश कुमार वि. देवेन्द्र सिंह) ...2457

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21* – ब्याज की गणना – ब्याज की गणना के दौरान निष्पादन न्यायालय ने आवेदकगण द्वारा प्रतिकर का भुगतान करने से मना करने के व्यवहार और लंबी कानूनी लड़ाई को उचित रुप से विचार में लिया – निष्पादन न्यायालय का आदेश उचित। (म.प्र. राज्य वि. राम प्यारे दुबे) ...2564

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*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 29 – निष्पादन कार्यवाहियों पर रोक* – याची के विरूद्ध एक पक्षीय डिक्री पारित – एकपक्षीय डिक्री अपास्त किये जाने हेतु आवेदन निरस्त – अपील भी खारिज – एकपक्षीय डिक्री अपास्त किये जाने के लिए वाद लंबित – इस दावे में कोई अंतरिम आदेश पारित नहीं – अभिनिर्धारित – जब तक कि किसी सक्षम न्यायालय द्वारा या किसी अंतवर्ती आदेश द्वारा निष्पादन कार्यवाहियों को रोका नहीं जाता, निष्पादन न्यायालय डिक्री से परे नहीं जा सकता और निष्पादन नही रोक सकता – याचिका खारिज। (चन्द्रिका प्रसाद वि. इन्द्रमणी (मृतक) द्वारा विधिक प्रतिनिधि) ...2964

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*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4(4) – डिक्री का निष्पादन* – प्रतिवादी के विरूद्ध एक पक्षीय कार्यवाही की गई जिसकी बाद में मृत्यु हो

Legal Representatives were also not brought on record - The decree would not become otiose or unexecutable on the ground that it has been passed against dead person - As defendant No. 8 was proceeded exparte in the suit and there is an exparte decree against him which is executable, therefore, the Executing Court rightly rejected the objections of judgment debtor. [Prakash Dhimar Vs. Kamal Kumar] ...2927

*Civil Procedure Code (5 of 1908), Order 39 Rule 1 and 2 - Temporary Injunction against Plaintiff* - Plaintiff was granted license to run saw mill for a period of 11 months - Petitioner was only given the permission to use the machine and not the premises - As the possession of the property in question remained with the defendant, the temporary injunction order which restrains the plaintiff/petitioner from causing any interference cannot be faulted with. [Rajesh Gupta Vs. Smt. Urvashi Marwaha] ...2359

*Civil Procedure Code (5 of 1908), Order 41 Rule 3-A - See - Limitation Act, 1963, Section 5* [Pop Singh Vs. Ram Singh] ...3058

*Civil Procedure Code (5 of 1908), Order 43 Rule 1(u) - Appeal* - Appeal under order 43 Rule 1(u) can only be heard on the grounds a second appeal is to be heard under Section 100 of C.P.C. [Pop Singh Vs. Ram Singh] ...3058

*Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 16(1) (a), 16 (1)(d), Rule 10(4), Rule 14 - Minor Penalty - Stoppage of increment without cumulative effect* - Rule specifically contemplates that on an explanation and defence submitted by the delinquent employee, there has to be a finding with regard to each imputation/misconduct - The disciplinary authority is required to consider the allegations of imputation misconduct, evaluate it in the backdrop of the explanation or defence of the employee - The competent authority has not discharged its function properly, as there is no recording of finding with regard to each misconduct - In a casual order explanation was rejected without any reason and without application of mind - Petition allowed. [Rajaram Ratnakar Vs. State of M.P.] ...2407

*Civil Service (General Conditions of Service) Rules, M.P. 1961, Rule 9 - See -Police (Gazetted) Services Recruitment Rules, M.P. 1987, Rule 6(2),* [Mahendra Singh Sikarwar Vs. State of M.P.] (DB)...2736

गई – उसके विधिक प्रतिनिधिगण भी अभिलेख पर नही लाये गये – डिक्री, इस आधार पर निरर्थक या अनिष्पादन योग्य नहीं होगी कि उसे मृत व्यक्ति के विरूद्ध पारित किया गया – चूंकि वाद में प्रतिवादी क्र. 8 पर एकपक्षीय कार्यवाही की गई और उसके विरूद्ध एकपक्षीय डिक्री है जो निष्पादन योग्य है इसलिए निष्पादन न्यायालय ने निर्णित ऋणी के आक्षेपों को उचित रूप से अस्वीकार किया। (प्रकाश ढ़ीमर वि. कमल कुमार) ...2927

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 1 व 2 – वादी के विरूद्ध अस्थाई व्यादेश* – वादी को 11 माह की अवधि के लिए सॉ. मिल चलाने की अनुज्ञप्ति प्रदान की गई थी – याची को केवल मशीन का उपयोग करने की अनुमति दी गई थी और न कि परिसर – चूंकि प्रश्नगत सम्पत्ति का कब्जा प्रतिवादी के पास रहा है, किसी प्रकार के हस्तक्षेप से वादी/याची को रोकने के अस्थाई व्यादेश के आदेश में कोई त्रुटि नहीं पाई जा सकती। (राजेश गुप्ता वि. श्रीमति उर्वशी मरवाहा) ...2359

*सिविल प्रक्रिया संहिता (1908 का 5) आदेश 41 नियम 3–ए – देखें – परिसीमा अधिनियम, 1963, धारा 5* (पोप सिंह वि. राम सिंह) ...3058

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(यू) – अपील* – आदेश 43 नियम 1(यू) के अंतर्गत अपील को केवल उन आधारों पर सुना जा सकता है जिन पर द्वितीय अपील को सि.प्र.सं. की धारा 100 के अंतर्गत सुना जाता है। (पोप सिंह वि. राम सिंह) ...3058

*सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 16(1)(ए), 16(1) (डी), नियम 10(4), नियम 14 – लघु शास्ति – बिना संचयी प्रभाव के वेतन वृद्धि रोकना* – नियम विनिर्दिष्ट रूप से अनुध्यात करता है कि अपचारी कर्मचारी द्वारा स्पष्टीकरण व बचाव प्रस्तुत किये जाने पर, प्रत्येक आरोपण/अवचार के संबंध में निष्कर्ष होना चाहिए – अनुशासनिक प्राधिकारी को चाहिए कि आरोपण/अवचार के आरोपों पर विचार करे, कर्मचारी के स्पष्टीकरण या बचाव की पृष्ठभूमि में उसका मूल्यांकन करे – सक्षम प्राधिकारी ने अपने कर्तव्यों का निर्वहन उचित रूप से नही किया, क्योंकि प्रत्येक अवचार के संबंध में कोई निष्कर्ष अभिलिखित नही किये गये – नैमित्तिक आदेश में बिना कोई कारण दिये और मस्तिष्क का प्रयोग किये बिना स्पष्टीकरण अस्वीकार किया गया – याचिका मंजूर। (राजाराम रत्नाकर वि. म.प्र. राज्य) ...2407

*सिविल सेवा (सेवा की सामान्य शर्तें) नियम म.प्र. 1961, नियम 9 – देखें – पुलिस (राजपत्रित) सेवा भर्ती नियम, म.प्र. 1987, नियम 6 (2),* (महेन्द्र सिंह सिकरवार वि. म.प्र. राज्य) (DB)...2736

*Civil Services (Pension) Rules, 1976 (M.P.), Rule 64(1)(b) - Final Order* - Appellant was facing criminal trial and attained the age of superannuation during the pendency of the trial - Provisional pension was paid - However, after the conviction the provisional pension was stopped - Words Final Order Passed by Competent Authority does not relate to final authority in respect of payment of pension but it relates in respect of the departmental or judicial proceedings - Stoppage of provisional pension after conviction proper - Appeal dismissed. [Vaidhyanath Shukla Vs State of M.P.] (DB)...2916

*Companies Act (1 of 1956), Section 433(e) - Winding up of a Company* - A procedure for winding up cannot be used as a substitute for proceeding with recovery of a debt in accordance to the common law - Winding up petition is not a legally approved means for recovery of certain dues nor is it be used to pressurize, coerce or enforce payment of a debt, which is bondafidely disputed by the respondent company - A winding up petition cannot be used as a substitute for a civil suit - If the company petition for winding up is filed with oblique motive and only to put pressure on the respondent company, the same should be dismissed. [Illume-Tech Solutions & Services Vs. Netlink Software Group Pvt. Ltd.] ...3029

*Companies Act (1 of 1956), Sections 433(e) & 434 - Winding up under - Initiating an action for winding up is a discretionary power* — Before exercising the said power, it is required to be proved from the material available on record that - (a) there is a debt; and, (b) that the respondent company is unable to pay the said debt - Even if these two conditions are satisfied, still the Court should be satisfied that a winding up order has to be passed - The company against whom the proceeding is prayed to be initiated should be shown to be commercially insolvent, its assets and liabilities are to be such that a reasonable apprehension can be made that it is insufficient to meet the existing liabilities. [Illume-Tech Solutions & Services Vs. Netlink Software Group Pvt. Ltd.] ...3029

*Competitive Examination - Model Answer - Correct answer* - A question may have more than one correct answer and the candidate will have to select the one which is more correct out of the alternative answers. [Ankit Khare Vs. The High Court of M.P.] (DB)...2372

*Competitive Examination - Model Answer - One question carries*

*सिविल सेवा (पेंशन) नियम 1976, (म.प्र.), नियम 64 (1)(बी) – अंतिम आदेश* – अपीलार्थी, आपराधिक विचारण का सामना कर रहा था और विचारण लंबित रहने के दौरान अधिवर्षिता आयु प्राप्त की – अनंतिम पेंशन अदा की गई – किन्तु, दोषसिद्धि के पश्चात् अनंतिम पेंशन रोक दी गई – शब्द, सक्षम प्राधिकारी द्वारा पारित अंतिम आदेश, पेंशन के भुगतान के संबंध में अंतिम प्राधिकारी से संबंधित नही बल्कि, विभागीय या न्यायिक कार्यवाहियों से संबंधित है – दोषसिद्धि उपरांत अनंतिम पेंशन को रोकना, उचित – अपील खारिज। (वैद्यनाथ शुक्ला वि. म.प्र. राज्य) **(DB)...2916**

*कम्पनी अधिनियम (1956 का 1), धारा 433(ई) – कम्पनी का परिसमापन* – परिसमापन की प्रक्रिया का प्रयोग, सामान्य विधि के अनुसरण में ऋण वसूली की कार्यवाही के अनुकल्प के रुप में नहीं किया जा सकता – परिसमापन याचिका, कतिपय देयकों की वसूली हेतु विधिक रुप से अनुमोदित साधन नहीं है और न ही उसका उपयोग दबाव बनाने, प्रपीड़ित करने या ऋण के भुगतान को प्रवर्तित करने के लिए किया जा सकता है जिसे सद्भाविक रुप से प्रत्यर्थी कम्पनी द्वारा विवादित किया गया है – परिसमापन याचिका को सिविल वाद के अनुकल्प के रुप में प्रयुक्त नहीं किया जा सकता – यदि परिसमापन हेतु कम्पनी याचिका को अस्पष्ट हेतु से और प्रत्यर्थी कम्पनी पर दबाव बनाने हेतु प्रस्तुत किया जाता है, उसे खारिज कर दिया जाना चाहिए। (इलयूम–टेक सलूशन एण्ड सर्विसेस् वि. नेटलिंक सॉफ्टवेयर ग्रुप प्रा.लि.) **...3029**

*कम्पनी अधिनियम (1956 का 1), धाराऐं 433(ई) व 434 – के अंतर्गत परिसमापन – परिसमापन के लिए कार्यवाही आरंभ करना वैवेकिक शक्ति है* – उक्त शक्ति का प्रयोग करने से पहले अभिलेख पर उपलब्ध सामग्री से यह साबित किया जाना अपेक्षित है कि (अ) ऋण है और (ब) यह कि प्रत्यर्थी कम्पनी उक्त ऋण का भुगतान करने में अक्षम है – यदि इन दो शर्तों की पूर्ति होती है, तब भी, न्यायालय की संतुष्टि होनी चाहिए कि परिसमापन का आदेश पारित किया जाना चाहिए – कम्पनी, जिसके विरुद्ध कार्यवाही आरंभ करने की प्रार्थना की गई है, उसे वाणिज्यिक रुप से दिवालिया दर्शाया जाना चाहिए, जिसकी आस्तियां व दायित्व ऐसे हैं कि युक्तियुक्त आशंका निकाली जा सकती है कि वह वर्तमान दायित्वों को पूरा करने के लिए अपर्याप्त है। (इलयूम–टेक सलूशन एण्ड सर्विसेस् वि. नेटलिंक सॉफ्टवेयर ग्रुप प्रा.लि.) **...3029**

*प्रतियोगिता परीक्षा – आदर्श उत्तर – सही उत्तर* – किसी प्रश्न के एक से अधिक सही उत्तर हो सकते हैं और अभ्यर्थी को वैकल्पिक उत्तरों में से अधिक सही उत्तर का चयन करना होगा। (अंकित खरे वि. द हाईकोर्ट ऑफ एम.पी.) **(DB)...2372**

*प्रतियोगिता परीक्षा – आदर्श उत्तर* – एक प्रश्न के दो सही उत्तर – अभ्यर्थी

*two correct answers* - Candidates who have marked "C" as correct answer would not get one mark although he is entitled to one mark as his answer to the question is correct - Respondents direct to take out the answer books of candidates who have failed to secure cut-off marks by one mark and shall examine whether their answer to question is "C". If the said candidate has given correct answer then he should be awarded one mark and the result of preliminary examination be re-tabulated. [Ankit Khare Vs. The High Court of M.P.] (DB)...2372

*Conduct of Election Rules, 1961, Rule 89 - Objection as to correctness of account* - Rule 89 provides complete procedure for raising objection on the correctness of account - As the Petitioner had not raised any objection before the Election Commission, the accounts cannot be challenged in the election petition. [Chandrabhan Singh Choudhary Vs. Kamal Nath] ...2750

*Conduct of Election Rules, 1961, Rule 90 - See - Representation of the People Act, 1951, Sections 77, 86, 87 & 123(6),* [Chandrabhan Singh Choudhary Vs. Kamal Nath] ...2750

*Constitution - Article 32 - Bhopal Gas Tragedy - BMHRC - Audit of Accounts* - Accounts of BMHRC and allied departments shall be audited by the Principal Auditor General (Audit), Madhya Pradesh. [Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India] (SC)...*116

*Constitution - Article 32 - Bhopal Gas Tragedy - Monitoring Committee* - State Govt. directed to provide proper infrastructure to the committees in the independent office space - Monitoring Committee would hear the complaints and can even call for the records and make its recommendations to the Govt. for taking appropriate steps - If no action is taken inspite of reminder, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions - Monitoring Committee shall have no penal jurisdiction - Suggestions of Monitoring Committee shall be primarily recommendatory and reformative in nature - Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the BMHRC and other Govt. hospitals dealing with gas victims - Jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or problems allied thereto - Committee shall not have any jurisdiction over the private Hospitals,

जिन्होंने 'सी' को सही उत्तर अंकित किया है उन्हें एक अंक नहीं मिलेगा यद्यपि उसका उत्तर सही है और वह एक अंक का हक़दार है – प्रत्यर्थीगण को निदेशित किया गया कि वे उन अभ्यर्थियों की उत्तर पुस्तिका निकाले जो एक अंक से, न्यूनतम निर्धारित अंक प्राप्त करने में असफल रहे और परीक्षण करें कि क्या उन्होंने प्रश्न का उत्तर 'सी' अंकित किया है। यदि उक्त अभ्यर्थी ने सही उत्तर दिया है तब उसे एक अंक प्रदान किया जाए और प्रारंभिक परीक्षा का परिणाम पुनः सारणीबद्ध किया जाए। (अंकित खरे वि. द हाईकोर्ट ऑफ एम.पी.) **(DB)...2372**

*निर्वाचन का संचालन नियम, 1961, नियम 89 – लेखे की सत्यता के बारे में आक्षेप* – नियम 89, लेखे की सत्यता के बारे में आक्षेप उठाने के लिए संपूर्ण प्रक्रिया उपबंधित करता है – चूंकि याची ने निर्वाचन आयोग के समक्ष कोई आक्षेप नही उठाया, लेखा को निर्वाचन याचिका में चुनौती नही दी जा सकती। (चन्द्रभान सिंह चौधरी वि. कमलनाथ) **...2750**

*निर्वाचन का संचालन नियम, 1961, नियम 90 – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धाराएं 77, 86, 87 व 123(6),* (चन्द्रभान सिंह चौधरी वि. कमलनाथ) **...2750**

*संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – बीएमएचआरसी* – लेखे की संपरीक्षा – बीएमएचआरसी व संबंधित विभागों के लेखे की प्रधान महालेखापरीक्षक (संपरीक्षा), म.प्र. द्वारा संपरीक्षा की जाएगी। (भोपाल गैस पीड़ित महिला उद्योग संगठन वि. यूनियन ऑफ इंडिया) **(SC)...*116**

*संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – अनुश्रवण समिति* – समितियों को स्वतंत्र कार्यालय स्थान पर उचित अवसंरचना उपलब्ध करने के लिए राज्य सरकार को निदेशित किया गया – अनुश्रवण समिति शिकायतों को सुनेगी और अभिलेख भी बुला सकती है और सरकार को उचित कदम उठाने के लिए अपनी अनुशंसाएं दे सकती है – यदि स्मरण पत्र के बावजूद कोई कार्यवाही नहीं की जाती, तब समिति को उच्च न्यायालय के समक्ष उचित निदेश हेतु जाने की पूर्ण अधिकारिता होगी – अनुश्रवण समिति को कोई दाण्डिक अधिकारिता नहीं होगी – अनुश्रवण समिति के सुझाव प्राथमिक रूप से अनुशंसात्मक एवं सुधारात्मक स्वरूप के होंगे – सशक्त अनुश्रवण समिति को बी. एम.एच.आर.सी. के तथा गैस पीड़ितों से संबंधित अन्य सरकारी चिकित्सालयों के कार्यों का निरीक्षण करने की पूर्ण अधिकारिता होगी – अधिकारिता, गैस पीड़ितों से संबंधित समस्याएं और/अथवा दुर्घटना से सीधे उत्पन्न होने वाली समस्याएं या सहबद्ध समस्याओं तक सीमित होगी – समिति को भोपाल के निजी चिकित्सालयों, परिचर्यागृहों व क्लीनिकों पर कोई अधिकारिता नहीं होगी – केन्द्र के साथ ही राज्य सरकार को सभी सहायता, वित्तीय या अन्य, देने के लिए निदेशित किया गया, यह सुनिश्चित करने के लिए कि विशेष संस्थानों द्वारा किये जा रहे अनुसंधान कार्यों को करने में कोई रूकावट

nursing homes and clinics at Bhopal - Union as well as State Govt. directed to render all assistance, financial or otherwise, to ensure that there is no impediment in carrying on of the research work by the specialized institutions - Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of health books etc. [Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India] (SC)...*116

*Constitution - Article 32 - Bhopal Gas Tragedy - Toxic materials/ waste* - Huge toxic materials/waste is still lying and its existence is hazardous to health - Union of India and State of M.P. are directed to take immediate steps for disposal of toxic waste in and around the factory on the recommendations of the Empowered Monitoring Committee, Advisory Committee and NIREH within six months. [Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India] (SC)...*116

*Constitution - Article 32, 226 - Bhopal Gas Tragedy* - Writ petition pending before Supreme Court is transferred to High Court for better and effective control. [Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India] (SC)...*116

*Constitution, Article 162, Seventh Schedule List I Entry V - See - Arms Rules, 1962, Rule 54* [Mahendra Bhatt Vs. State of M.P.] (DB)...3021

*Constitution, Article 215, Contempt of Courts Act (70 of 1971), Section 20 - Contempt of High Court - Limitation* - Period of one year as mentioned in Section 20 of Act, 1971 cannot be made applicable to a case of Contempt of High Court - Article 215 gives a supreme position to the High Courts compared to the lower Courts. [Sanman Singh Vs. Sumer Singh] (DB)...2768

*Constitution, Article 226 - Conduct of Litigant - Writ remedy is an equitable one* - Court certainly bear in mind the conduct of the party who invokes the jurisdiction of the High Court - Litigant must come with clean hands, clean heart, clean mind and clean objective - He should disclose all facts without suppressing anything - Litigant cannot be allowed to play hide and seek - Suppression of fact is not an advocacy - It is jugglery, manipulation, manoeuvering or misrepresentation - In case of suppression of facts, Court can refuse

ना आए – अनुश्रवण समिति को चिकित्सीय निगरानी, चिकित्सीय जानकारी का संगणकीकरण, स्वास्थ्य पुस्तकों का प्रकाशन इत्यादि, कार्यान्वित करना चाहिए। (भोपाल गैस पीड़ित महिला उद्योग संगठन वि. यूनियन ऑफ इंडिया) (SC)...*116

*संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – विषैले पदार्थ/कूड़ा* – विशाल विषैले पदार्थ/कूड़ा अभी भी पड़ा हुआ है और उसका अस्तित्व स्वास्थ्य के लिए घातक है – भारत सरकार को एवं म.प्र.राज्य को सशक्त अनुश्रवण समिति, सलाहकार समिति तथा एनआईआरईएच की अनुशंसाओं पर, कारखाने के अंदर और आसपास के विषैले कूड़े का निपटारा करने हेतु तत्काल कदम उठाने के लिए निदेशित किया गया। (भोपाल गैस पीड़ित महिला उद्योग संगठन वि. यूनियन ऑफ इंडिया) (SC)...*116

*संविधान – अनुच्छेद 32 व 226 – भोपाल गैस त्रासदी* – सर्वोच्च न्यायालय के समक्ष लंबित रिट याचिका, बेहतर एवं प्रभावी नियंत्रण के लिए उच्च न्यायालय को अंतरित की गई। (भोपाल गैस पीड़ित महिला उद्योग संगठन वि. यूनियन ऑफ इंडिया) (SC)...*116

*संविधान, अनुच्छेद 162, सातवीं अनुसूची, सूची I प्रविष्टि V – देखें – आयुध नियम, 1962,* नियम 54 (महेन्द्र भट्ट वि. म.प्र. राज्य) (DB)...3021

*संविधान, अनुच्छेद 215, न्यायालय अवमान अधिनियम (1971 का 70), धारा 20 – उच्च न्यायालय की अवमानना – परिसीमा* – अधिनियम 1971 की धारा 20 में यथा उल्लिखित एक वर्ष की अवधि को उच्च न्यायालय की अवमानना के प्रकरण में लागू नही किया जा सकता – अनुच्छेद 215 उच्च न्यायालयों को निचले न्यायालयों की तुलना में उच्चतम स्थान प्रदान करता है। (सन्मान सिंह वि. सुमेर सिंह) (DB)...2768

*संविधान, अनुच्छेद 226 – वादकारी का आचरण – रिट का उपचार एक समानता का उपचार है* – न्यायालय निश्चित रूप से उस पक्षकार का आचरण ध्यान में रखता है जो उच्च न्यायालय की अधिकारिता का अवलंब लेता है – वादकारी को निर्दोष, शुद्ध हृदय, निर्मल मन एवं स्पष्ट उद्देश्य के साथ आना चाहिए – उसे कुछ भी छुपाये बिना सभी तथ्यों को प्रकट करना चाहिए – वादकारी को लुका छिपी खेलने की अनुमति नही दी जा सकती – तथ्य का छिपाव करना वकालत नही – वह चालाकी, हेर फेर, कपट या व्यपदेशन है – तथ्यों के छिपाव की दशा में, न्यायालय प्रकरण के परीक्षण को आगे बढ़ाने से इंकार कर सकता है – न्यायालय में मुकदमेबाजी शतरंज का खेल नही – याचिका खारिज – याची को नोटिस जारी किया गया कि क्यों न उसके

to proceed further with the examination of the case - Such a litigant requires to be dealt with for Contempt of Court for abusing the process of Court - Litigation in the Court of law is not a game of chess - Petition dismissed - Notice issued to Petitioner as to why proceedings for contempt of Court be not initiated against him. [Rajendra Singh Rawat Vs. State of M.P.] ...2660

*Constitution - Article 226 - Enforcement of Contract* - UDA is a public undertaking and discharging public function and is a State within the meaning of Article 12 - Admittedly an agreement was entered into between the parties - Respondent without any justifiable reason denied the compliance of agreement - Action of UDA can be termed as arbitrary and unfair - UDA directed to comply with the conditions of agreement entered by it with petitioner. [Ambesh Grih Nirman Sahakari Sanstha Maryadit, Ujjain Vs. Ujjain Development Authority, Ujjain] (DB)...2347

*Constitution - Article 226 - Finance Code Bill (M.P.), Rule 84, Evidence Act (1 of 1872), Section 115 - Correction of date of birth in service record* - Initially date of birth was recorded on the basis of Higher Secondary Mark Sheet in 1986 - No clerical error - Never objected up to 2009 - No step for modification - Now on the basis of duplicate certificate of Primary School the change in date of birth could not be permitted under existing rule - Principle of estoppels under Section 115 of Evidence Act also do not support to petitioner - Petition dismissed. [Chintaman Masulkar Vs. State of M.P.] ...2353

*Constitution, Article 226 - Onwership of temple - Cannot be adjudicated in a summary proceedings under Article 226.* (Archaeological Survey of India Vs. State of M.P.) (DB)...*112

*Constitution, Article 243 F, Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2) - Date of Birth - Date of scrutiny* - Qualification or disqualification of a candidate has to be seen on the date of scrutiny of nomination papers. [Basanti Bai (Smt.) Vs. Smt. Premwati Bai] ...2416

*Constitution, Article 265, Municipalities Act, M.P. (37 of 1961), Section 133 - Claim for refund of Terminal Tax* - Petitioners passed on the burden of Tax on to the consumers - They are not entitled to any unjust enrichment by way of refund. [Mohan Chopada Vs. State of M.P.] ...2930

विरूद्ध न्यायालय की अवमानना की कार्यवाही आरंभ की जाये। (राजेन्द्र सिंह रावत वि. म.प्र. राज्य) ...2660

*संविधान – अनुच्छेद 226 – संविदा का प्रवर्तन* – यू.डी.ए. सार्वजनिक उपक्रम है और लोक कार्य का सम्पादन कर रहा है तथा अनुच्छेद 12 के अर्थांतर्गत राज्य है – स्वीकृत रूप से पक्षकारों के मध्य अनुबंध हुआ – प्रत्यर्थी ने बिना किसी न्यायोचित कारण के अनुबंध के अनुपालन से इंकार किया – यू.डी.ए. का कृत्य मनमाना एवं अनुचित कहा जा सकता है – यू.डी.ए. को उनके द्वारा याची के साथ किये गये अनुबंध की शर्तों का पालन करने के लिए निदेशित किया गया। (अंबेश गृह निर्माण सहकारी संस्था मर्यादित, उज्जैन वि. उज्जैन डेव्हेलपमेन्ट अथौरिटी, उज्जैन) (DB)...2347

*संविधान – अनुच्छेद 226 – वित्त संहिता बिल (म.प्र.), नियम 84, साक्ष्य अधिनियम (1872 का 1), धारा 115 – सेवा अभिलेख में जन्मतिथि का सुधार* – प्रारंभ में 1986 में उच्चतर माध्यमिक अंकसूची के आधार पर जन्मतिथि दर्ज की गई थी – कोई लिपिकीय त्रुटि नहीं – 2009 तक कभी भी आक्षेप नहीं लिया गया – संशोधन हेतु कोई उपाय नहीं किया गया – प्राथमिक शाला के अनुलिपि प्रमाणपत्र के आधार पर अब वर्तमान नियमांतर्गत जन्मतिथि में परिवर्तन की अनुमति नहीं दी जा सकती – साक्ष्य अधिनियम की धारा 115 के अंतर्गत विबंधन का सिद्धांत भी याची को कोई सहायता प्रदान नहीं करता – याचिका खारिज। (चिन्तामन मसूलकर वि. म.प्र. राज्य) ...2353

*संविधान, अनुच्छेद 226 – मंदिर का स्वामित्व – अनुच्छेद 226 के अंतर्गत संक्षिप्त कार्यवाहियों में न्यायनिर्णित नहीं किया जा सकता।* (आर्कियोलॉजिकल सर्वे ऑफ इंडिया वि. म.प्र. राज्य) (DB)...*112

*संविधान, अनुच्छेद 243 एफ, पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 35 (2) – जन्म तिथि – जांच की तिथि* – प्रत्याशी की योग्यता या अयोग्यता नामांकन पत्रों की जांच की तिथि को देखी जानी चाहिए। (बसंती बाई (श्रीमति) वि. श्रीमति प्रेमवती बाई) ...2416

*संविधान, अनुच्छेद 265, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 133 – सीमा कर के प्रतिदाय हेतु दावा* – याचीगण ने कर का भार उपभोक्ताओं पर अधिरोपित किया – प्रतिदाय के जरिए किसी अनुचित संवृद्धि के वे हकदार नहीं। (मोहन चोपड़ा वि. म.प्र. राज्य) ...2930

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*Constitution, Article 296 - Monument without owner* - Property would vest in the State Govt. (Archaeological Survey of India Vs. State of M.P.) (DB)...*112

*Constitution - Articles 341 & 342 - Caste Certificate - Migration of persons* - Father of petitioners belongs to Chamar caste and was resident of U.P. - Petitioners were born and brought up in Madhya Pradesh - Chamar caste is notified as S.C. in U.P. as well as in M.P. - Petitioners not entitled to enjoy same privilege and benefits of State of Uttar Pradesh - Cancellation of their caste certificate by High Power State Level Committee proper - However, a limited relief of protection of their professional degrees is granted - Petition disposed off. [Hansraj Singh Vs. State of M.P.] ...3001

*Consumer Protection Act (68 of 1986), Section 12 - Complaint - Jurisdiction of District Forum* - Maintainability of complaint before District Consumer Forum challenged on the ground of lack of territorial jurisdiction - Held - Petitioner has remedy of filing objection before the District Consumer Forum and have remedy of filing appeal in case objection is rejected - In view of availability of efficacious alternative remedy, petition is disposed off with liberty to approach the appropriate forum. [R.K.D.F. Institution of Science & Technology Vs. Pawan Pratap Singh] (DB)...2697

*Contempt of Courts Act (70 of 1971), Section 20 - See - Constitution, Article 215,* [Sanman Singh Vs. Sumer Singh](DB) ...2768

*Contract Act (9 of 1872), Section 55 - Lease of Land* - Giving an option for renewal of a lease of land is considered to be of the essence of Contract and therefore, if the tenant wishes to claim the privilege, he must do so strictly within the time limited for the purpose - A tenant not having exercised the option of renewal within the time limited by the Clause is not entitled to a renewal. [Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd.] ...2780

*Contract Act (9 of 1872), Sections 217, 218 & 221 - Liability of Agent* - Payment made by the debtor to the agent of the Principal absolves the debtor from the liability of payment to the Principal and the agent alone is liable and responsible to his Principal. [Zakiuddin Vs. Rajendra Kumar] ...2466

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*संविधान – अनुच्छेद 341 व 342 – जाति प्रमाणपत्र – व्यक्तियों का प्रवास* – याचीगण का पिता चमार जाति का है और उ.प्र. का निवासी था – याचीगण का जन्म व पालन पोषण मध्य प्रदेश में हुआ – चमार जाति को एस.सी. के रूप में उ.प्र. तथा म.प्र. में भी अधिसूचित किया गया है – याचीगण उत्तर प्रदेश में दिये जाने वाले विशेषाधिकार एवं लाभों के समान उपभोग लेने के हकदार नही – राज्य स्तरीय उच्चाधिकार समिति द्वारा उनके जाति प्रमाणपत्र का निरस्तीकरण उचित – किन्तु उनके व्यवसायिक डिग्रियों के संरक्षण का सीमित अनुतोष प्रदान किया गया – याचिका निराकृत। (हंसराज सिंह वि. म.प्र. राज्य) **...3001**

*उपभोक्ता संरक्षण अधिनियम (1986 का 68), धारा 12 – शिकायत – जिला फोरम की अधिकारिता* – जिला उपभोक्ता फोरम के समक्ष शिकायत की पोषणीयता को क्षेत्रीय अधिकारिता का अभाव होने के आधार पर चुनौती दी गई – अभिनिर्धारित – याची के पास जिला उपभोक्ता फोरम के समक्ष आक्षेप प्रस्तुत करने का उपचार उपलब्ध है और आक्षेप नामंजूर होने की स्थिति में अपील प्रस्तुत करने का उपचार उपलब्ध है – प्रभावकारी वैकल्पिक उपचार की उपलब्धता को दृष्टिगत रखते हुए उचित फोरम के समक्ष प्रस्तुत करने की स्वतंत्रता के साथ याचिका को निराकृत किया गया। (आर.के.डी. एफ. इंसटीट्यूशन ऑफ साइंस एण्ड टेक्नोलोजी वि. पवन प्रताप सिंह) **(DB)...2697**

*न्यायालय अवमान अधिनियम (1971 का 70), धारा 20 – देखें – संविधान, अनुच्छेद 215,* (सन्मान सिंह वि. सुमेर सिंह) **(DB)...2768**

*संविदा अधिनियम (1872 का 9), धारा 55 – भूमि का पट्टा* – भूमि के पट्टे का नवीनीकरण हेतु विकल्प देना, संविदा का मर्म समझा जाता है और इसलिए, यदि किरायेदार विशेषाधिकार का दावा करना चाहता है, उसे इस प्रयोजन हेतु आवश्यक रूप से सीमित समय के भीतर ऐसा करना होगा – किरायेदार जिसने खण्ड द्वारा सीमित समय के भीतर नवीनीकरण के विकल्प का प्रयोग नही किया, वह नवीनीकरण के लिए हकदार नहीं। (शारदा सिंघानिया (श्रीमति) वि. भारत पेट्रोलियम कारपोरेशन लि.) **...2780**

*संविदा अधिनियम (1872 का 9), धारा 217, 218 व 221 – अभिकर्ता का दायित्व* – ऋणी द्वारा स्वामी के अभिकर्ता को भुगतान किये जाने से स्वामी को भुगतान करने के दायित्व से ऋणी मुक्ति पा जाता है और केवल अभिकर्ता स्वामी के प्रति जवाबदेह तथा उत्तरदायी है। (जकीउद्दीन वि. राजेन्द्र कुमार) **...2466**

*संविदा – नीलामी – एकमात्र बोली लगाने वाला* – याची एकमात्र बोली लगाने

donot acquire any vested right for allotment of plots in absence of any acceptance - No direction can be issued to the respondents to accept the bid. [Sanjay Agrawal Vs. M.P. Housing & Infrastructure] ...2731

*Contract - Auction - Single Bidder - Rejection of Bid* - Petitioner was the single bidder and his bid was slightly higher then the offset price - In respect of other plots where several persons had applied, offer of more than double the offset price were received - There is a sufficient material to reject the single offer of the petitioner. [Sanjay Agrawal Vs. M.P. Housing & Infrastructure] ...2731

*Contract - Sale of Flat by Housing Board - Escalation of price* - If Housing Board wishes to increase the price of the flats of the plots sold by them, it can be done only if the increase can be justified and is based on actual escalation calculated on the basis of the data disclosed and available with them - Petitioners directed to make representation and the Board shall decide the matter in accordance with dictums of Hon'ble Supreme Court after hearing the parties - Petition disposed off. [Varsha Sanghi (Dr.) Vs. State of M.P.] ...2995

*Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 55(2), 66 & 78(2) - Appeal* - Dy. Registrar was nominated by Registrar in exercise of power under Section 66 to exercise all powers and jurisdiction on behalf of Registrar - Dy. Registrar has to be treated as Registrar when his order is put to challenge in Appeal - Appeal would not lie to the Joint Registrar or Registrar but the Tribunal. [M.P. Co-operative Workers Federation Vs. M.P. Co-operative Tribunal] (DB)...2975

*Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 - Dispute* - Petitioner is involved in procurement and trade of different minor forest produce - Forest produce was got insured with Insurance Company - Petitioner suffered a loss as there was an incident of fire in the godown - Dispute raised by petitioner against the Insurance Company for non-payment of complete claim - Claim was dismissed as not maintainable - Held - Business is a word of wide import - Petitioner is involved in the procurement and trade of different minor forest produce with an object to provide monetary benefits to tribals through primary co-operative societies - Forest produce was stored in furtherance of this object - Transaction of insurance was definitely in furtherance of the business of petitioner to prevent loss - Dispute falls

वाला होते हुए, प्लॉट के आवंटन हेतु, किसी स्वीकृति के अभाव में कोई निहित अधिकार अर्जित नही करता – प्रत्यर्थीगण को बोली स्वीकार करने के लिए कोई निदेश जारी नही किया जा सकता। (संजय अग्रवाल वि. एम.पी. हाउसिंग एण्ड इन्फ्रास्ट्रक्चर) ...2731

*संविदा – नीलामी – एकमात्र बोली लगाने वाला* – बोली को अस्वीकार किया जाना – याची एकमात्र बोली लगाने वाला था और उसकी बोली ऑफसेट मूल्य से थोड़ी उच्चतर थी – अन्य प्लॉट के संबंध में जहां कई व्यक्तियों ने आवेदन किया था, ऑफसेट मूल्य से दोगुने से अधिक के प्रस्ताव प्राप्त हुए थे – याची के एकमात्र प्रस्ताव को अस्वीकार करने के लिए पर्याप्त तथ्य हैं। (संजय अग्रवाल वि. एम.पी. हाउसिंग एण्ड इन्फ्रास्ट्रक्चर) ...2731

*संविदा – गृहनिर्माण मंडल द्वारा लैट का विक्रय – कीमत में बढ़ोत्तरी* – यदि गृहनिर्माण मंडल, उनके द्वारा विक्रय किये गये भूखण्डों के लैट की कीमतों में बढ़ोत्तरी करने का इच्छुक है, ऐसा केवल तभी किया जा सकता है यदि बढ़ोत्तरी को न्यायोचित ठहराया जा सकता है और उनके पास प्रकट एवं उपलब्ध डाटा के आधार पर परिगणित की गई वास्तविक बढ़ोत्तरी पर आधारित है – याचीगण को प्रत्यावेदन करने के लिए निदेशित किया गया और मंडल, मामले का विनिश्चय, माननीय सर्वोच्च न्यायालय के आदेशानुसार, पक्षकारों को सुने जाने के पश्चात् करेगा – याचिका निराकृत। (वर्षा संघी (डॉ.) वि. म.प्र.राज्य) ...2995

*सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएं 55(2), 66 व 78(2) – अपील* – रजिस्ट्रार द्वारा धारा 66 के अंतर्गत शक्ति का प्रयोग करते हुए डिप्टी रजिस्ट्रार को, रजिस्ट्रार की ओर से सभी शक्तियों का एवं अधिकारिता का प्रयोग करने के लिए मनोनीत किया गया – डिप्टी रजिस्ट्रार को रजिस्ट्रार समझा जायेगा जब उसके आदेश को अपील में चुनौती दी जाती है – अपील, संयुक्त रजिस्ट्रार या रजिस्ट्रार के समक्ष नही बल्कि अधिकरण के समक्ष प्रस्तुत होगी। (एम.पी. को–ऑपरेटिव वर्कर्स फेडरेशन वि. एम.पी. को–ऑपरेटिव ट्रिब्यूनल) (DB)...2975

*सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 – विवाद* – याची विभिन्न गौण वन उत्पाद को उपाप्त करने एवं व्यापार में सम्मिलित – वन उत्पाद को बीमा कम्पनी से बीमित कराया गया – याची ने हानि सहन की क्योंकि गोदाम में आग की घटना घटी – याची द्वारा बीमा कम्पनी के विरूद्ध पूर्ण दावे का असंदाय किये जाने से विवाद उठाया गया – दावा अपोषणीय मानते हुए खारिज किया गया – अभिनिर्धारित – कारोबार शब्द का व्यापक अर्थ है – याची विभिन्न गौण वन उत्पाद की उपाप्ति एवं व्यापार में सम्मिलित था जिसका उद्देश्य आदिवासियों को सहकारिता सोसाईटियों के जरिए आर्थिक लाभ पहुंचाना था – वन उत्पाद को इसी उद्देश्य के अग्रसरण में भंडारण किया गया था – बीमें का संव्यवहार निश्चित रूप से याची के कारोबार की हानि से बचाने के उद्देश्य से किया गया था –विवाद, अधिनियम की धारा 64 (1) सी के अंतर्गत आता है – प्रकरण को गुणदोषों पर निर्णीत करने हेतु प्रतिप्रेषित किया गया। (एम.पी. राज्य लघु वनोपज (बिजनिस एण्ड डेव्हेलपमेन्ट) सहकारी संघ मर्यादित, भोपाल वि. द

under Section 64(1) (c) of the Act - Matter remanded back to decide the same on merits. [M.P. Rajya Laghu Vanopaj (Business and Development) Sahakari Sangh Mydt. Bhopal Vs. The New India Insurance Co. Ltd.] (DB)...2747

*Criminal Procedure Code, 1973 (2 of 1974), Section 154 - F.I.R. - Delay* - Prosecutrix informed the Patel about the incident from where she was taken by her aunt - Mother of prosecutrix was called on the next day - Matter was referred to the Sarpanch of the gram panchayats - As sarpanch did not take any action, F.I.R. was lodged - Delay in lodging F.I.R. has been explained. [Vinod @ Arvind Vs. State of M.P.] ...2827

*Criminal Procedure Code, 1973 (2 of 1974), Section 156(3), 482 - See - Dowry Prohibition Act, 1961, Section 7* [Haji Sayyad Vs. State of M.P.] ...2610

*Criminal Procedure Code, 1973 (2 of 1974), Section 174 - Preparation of Panchnama of dead body* - Brother who was present at the time of preparation of Panchnama of dead body did not inform the police about harassment to his sister - Appellant entitled for benefit of doubt. [Sarjoo Vs. State of M.P.] ...2806

*Criminal Procedure Code, 1973 (2 of 1974), Section 177 - Territorial Jurisdiction* - Explosives were despatched from Dholpur under the license of M/s Ganesh Explosives, Sagar - Magazine was transferred to Rajgarh under the deed of partnership - Charge sheet filed at Sagar - Held - The present case is one of conspiracies to commit offences including punishable under Explosives Act - One of the passes are said to have been issued by the applicant within the territorial jurisdiction of Sagar Court - Merely because the consignment did not reach the destination was of no consequence - Sagar Court has territorial jurisdiction. [Alakh Kumar @ Alakh Das Gupta Vs. State of M.P.] ...3113

*Criminal Procedure Code, 1973 (2 of 1974), Section 190 - Special Court* - Charge sheet before the Special Court - Special Court must be held to be a Court of Original Criminal Jurisdiction and for all purposes, the Special Judge should be treated as Magistrate entitled to take cognizance of an offence if the police report is to the effect that no case is made out against the accused - Since the cognizance of the offence is taken by the Special Court under Section 190 of Cr.P.C., therefore, it can

न्यू इंडिया इंश्योरेन्स कं. लि.) (DB)...2747

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन – विलंब* – अभियोक्त्री ने घटना के बारे में पटेल को बताया, जहां से उसे उसकी आंटी द्वारा ले जाया गया – अभियोक्त्री की मां को अगले दिन बुलाया था – ग्राम पंचायत सरपंच को मामला निर्दिष्ट किया गया – चूंकि सरपंच ने कोई कार्यवाही नही की, प्रथम सूचना रिपोर्ट दर्ज की गई – प्रथम सूचना रिपोर्ट दर्ज करने में विलंब स्पष्ट किया गया। (विनोद उर्फ अरविन्द वि. म.प्र. राज्य) ...2827

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3), 482 – देखें – दहेज प्रतिषेध अधिनियम, 1961, धारा 7* (हाजी सैय्यद वि. म.प्र. राज्य) ...2610

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 174 – शव के पंचनामे की तैयारी* – भाई जो शव का पंचनामा तैयार किये जाते समय उपस्थित था, उसने पुलिस को अपनी बहन के उत्पीड़न के बारे में जानकारी नही दी – अपीलार्थी संदेह के लाभ का हकदार। (सरजू वि. म.प्र. राज्य) ...2806

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 – क्षेत्रीय अधिकारिता* – विस्फोटकों को मे. गणेश एक्सप्लोसिवस्, सागर की अनुज्ञप्ति के अंतर्गत धौलपुर से प्रेषित किया गया – बारूदखाने को भागीदारी विलेख के अंतर्गत राजगढ़ स्थानांतरित किया गया – आरोप पत्र सागर में प्रस्तुत किया गया – अभिनिर्धारित – वर्तमान प्रकरण, उन अपराधों को कारित करने के षड्यंत्र का प्रकरण है, जिनमें विस्फोटक अधिनियम के अंर्तगत दण्डनीय अपराध का भी समावेश है – वादपत्रों में से एक को कथित रूप से आवेदक द्वारा सागर न्यायालय की क्षेत्रीय अधिकारिता के भीतर जारी किया गया – मात्र इसलिए कि परेषण गंतव्य स्थान पर नहीं पहुंचा, यह कोई महत्व नहीं रखता – सागर न्यायालय को क्षेत्रीय अधिकारिता है। (अलख कुमार उर्फ अलख दास गुप्ता वि. म. प्र. राज्य) ...3113

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190 – विशेष न्यायालय* – विशेष न्यायालय के समक्ष आरोप पत्र – विशेष न्यायालय को आरंभिक आपराधिक अधिकारिता वाला न्यायालय माना जाना चाहिए और सभी प्रयोजनों हेतु विशेष न्यायाधीश को मजिस्ट्रेट समझा जाना चाहिए जो अपराध का संज्ञान लेने के लिए सशक्त है यदि पुलिस रिपोर्ट इस आशय की है कि अभियुक्त के विरूद्ध प्रकरण नही बनता – चूंकि, अपराध का संज्ञान विशेष न्यायालय द्वारा धारा 190 द.प्र.सं. के अंतर्गत लिया गया इसलिए वह उन व्यक्तियों के विरूद्ध कार्यवाही कर सकता है जिन्हें आरोप पत्र में

proceed against the persons who were not arraigned as accused in the Charge sheet. [Gopal Ji Singh Vs. State of M.P.] ...3122

*Criminal Procedure Code, 1973 (2 of 1974), Section 222- See - Penal Code, 1860, Section 323 & 376* [Laalu @ Balmukund Sharma Vs. State of M.P.] ...2526

*Criminal Procedure Code, 1973 (2 of 1974), Section 357 - See - Penal Code, 1860, Sections 304 Part-II, 323* [Vinay Singh Vs. State of M.P.] ...2473

*Criminal Procedure Code, 1973 (2 of 1974), Sections 397(3) & 482 - Inherent Powers* - In view of rider placed by Section 397(3), the scope is limited - Court may correct any mistake committed by the revisional Court only where, on examination of the record, it finds that there is grave miscarriage of justice or abuse of the process of the Court or the required statutory procedure has not been complied with or there is failure of justice. [Ram Sewak Patidar Vs. Narayan Singh Patidar] ...2876

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent Powers of High Court* - Criminal revision preferred against order passed by conservator of forest under section 12 (3) of M.P. Kashtha Chiran (Viniyaman) Adhiniyam - It ought to have been entertained and decided as a Civil Appeal - It would not be legally permissible to interfere, under the inherent powers, as the order to be deemed to have been passed by an Additional District Judge - Petition dismissed as not maintainable with liberty to file writ petition under article 227 of Constitution of India. [State of M.P. Vs. Aditya Narayan Shukla] ...2872

*Criminal Procedure Code, 1973 (2 of 1974), Section 482, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 2(k), Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 20 & 12 - Determination of age* - Applicant was absconding and could be apprehended after 4 years - As applicant was out of the clutches of investigating agency, therefore, investigating agency is directed to ascertain the age as per the provisions of rule 12 - Revision disposed off. [Ashfaq Vs. State of M.P.] ...2887

*Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860) Sections 498-A, 34, Dowry Prohibition Act (28 of 1961), Section 3 & 4 - Inherent powers of High Court* - Allegations

अभियुक्त के रूप में दोषारोपित नहीं किया गया है। (गोपाल जी सिंह वि. म.प्र. राज्य) ...3122

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 222 – देखें – दण्ड संहिता, 1860, धारा 323 व 376* (लालू उर्फ बालमुकुंद शर्मा वि. म.प्र. राज्य) ...2526

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 357 – देखें – दण्ड संहिता, 1860, धाराएँ 304 भाग– II, 323,* (विनय सिंह वि. म.प्र. राज्य) ...2473

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 397 (3) व 482 – अंतर्निहित शक्तियां* – धारा 397 (3) द्वारा लगाये गये उपबंध को दृष्टिगत रखते हुए, विषय क्षेत्र सीमित है – पुनरीक्षण न्यायालय द्वारा कारित किसी भूल को न्यायालय सुधार सकता है केवल तब जब अभिलेख का परीक्षण करने पर यह पाया जाता है कि न्याय की घोर हानि हुई है या न्यायालय की कार्यवाही का दुरूपयोग हुआ है या अपेक्षित कानूनी प्रक्रिया का अनुपालन नही किया गया है या न्याय नही हुआ है। (राम सेवक पाटीदार वि. नारायण सिंह पाटीदार) ...2876

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – उच्च न्यायालय की अंतर्निहित शक्तियां* – म.प्र. काष्ठ चिरान (विनियमन) अधिनियम की धारा 12 (3) के अंतर्गत वन संरक्षक द्वारा पारित आदेश के विरूद्ध आपराधिक पुनरीक्षण प्रस्तुत किया गया – उसे सिविल अपील के रूप में ग्रहण कर निर्णित किया जाना चाहिए था – अंतर्निहित शक्तियों के अंतर्गत उसमें हस्तक्षेप विधिक रूप से अनुज्ञेय नही होगा क्योंकि आदेश को अतिरिक्त जिला न्यायाधीश द्वारा पारित माना जाएगा – याचिका पोषणीय नही होने से भारत के संविधान के अनुच्छेद 227 के अंतर्गत रिट याचिका प्रस्तुत करने की स्वतंत्रता के साथ खारिज की गई। (म.प्र. राज्य वि. आदित्य नारायण शुक्ला)...2872

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम (2000 का 56), धारा 2(l), किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम 2007, नियम 20 व 12 – आयु का निर्धारण* – आवेदक फ़रार था और उसे 4 वर्ष पश्चात् गिरफ्तार किया गया – चूंकि आवेदक अन्वेषण एजेंसी की पकड़ में नही था इसलिए अन्वेषण एजेंसी को नियम 12 के उपबंधों के अनुसार आयु का निर्धारण करने के लिए निदेशित किया गया – पुनरीक्षण का निपटारा किया गया। (अशफाक वि. म.प्र. राज्य) ...2887

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45) धाराएँ 498–ए, 34, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 एवं 4 – उच्च न्यायालय की अंतर्निहित शक्तियां* – प्रथम सूचना रिपोर्ट में याची क्र. 1 व 2 के विरूद्ध

made in FIR, against petitioner nos. 1 and 2, inherently improbable - Proceedings are instituted with an ulterior motive for wreaking vengeance on them - Their prosecution is an abuse of the process of Court - Proceedings so far as they relate to petitioner nos. 1 & 2, quashed. [Kamal Nayan Singh Vs. State of M.P.] ...2894

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - Penal Code, 1860, Section 500* [Rakesh Agrawal Vs. B.S. Jaggi] ...3105

*Date of Birth (Entries in the School Register) Rules 1973, M.P. - Rule 7,8,9 - Correction of date of birth* - Rule 9 provides that no application for correction in date of birth recorded in school register shall be entertained after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary education - Respondent is still studying in Class XII and has not left the course of secondary standard - Application for correction of date of birth was made immediately on getting the mark-sheet and at the relevant time, she had not left the education or had not completed secondary education - Rules 7 and 8 provide for rectification of mistake or correction or change in date of birth by the institution itself - These rules does not restrict the Board of Secondary Education to correct the date of birth - Writ Appeal disposed of. [Board of Secondary Education Vs. Priyanka Shrivastava] (DB)...2632

*Double Jeopardy* - Two charge sheets pending before two different courts on altogether different set of allegations - Question of double jeopardy does not arise. [Alakh Kumar @ Alakh Das Gupta Vs. State of M.P.] ...3113

*Dowry Prohibition Act (28 of 1961), Section 3 & 4 - See - Criminal Procedure Code, 1973 (2 of 1974), Section 482,* [Kamal Nayan Singh Vs. State of M.P.] ...2894

*Dowry Prohibition Act (28 of 1961), Section 7, Criminal Procedure Code, 1973 (2 of 1974), Section 156(3), 482 - Statement made by aggrieved person* - Respondent no. 2 was married with daughter of applicant - Respondent no. 2 is facing trial for offence under Section 498-A of I.P.C. - Respondent no.2 filed complaint on the basis of admission of the applicant that he had given dowry in connection with marriage of his

किये गये अभिकथन अंतनिर्हित रूप से असंभाव्य – उन पर बदला निकालने के गूढ़ प्रयोजन हेतु कार्यवाहियां संस्थित की गई है – उनका अभियोजन न्यायालय की प्रक्रिया का दुरूपयोग है – कार्यवाहियां, जहां तक याची क्र. 1 व 2 से संबंधित है, अभिखण्डित। (कमल नयन सिंह वि. म.प्र. राज्य ) ...2894

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धारा 500* (राकेश अग्रवाल वि. बी.एस. जग्गी) ...3105

*जन्म तिथि (शाला पंजी में प्रविष्टि) नियम 1973, म.प्र. – नियम 7, 8, 9 – जन्म तिथि का सुधार* – नियम 9 उपबंधित करता है कि माध्यमिक स्तर की शिक्षा के अंत में बोर्ड परीक्षा का फार्म, बोर्ड को भेजे जाने के पश्चात् या, यदि विद्यार्थी माध्यमिक शिक्षा के अंत तक शिक्षण जारी नहीं रखता है, शाला छोड़ देने के पश्चात्, शाला पंजी में दर्ज जन्म तिथि के सुधार के लिए कोई आवेदन ग्रहण नहीं किया जायेगा – प्रत्यर्थी अभी भी कक्षा XII में पढ़ती है और माध्यमिक स्तर के पाठ्यक्रम को नही छोड़ा है – जन्म तिथि के सुधार का आवेदन अंक सूची प्राप्त होने के तुरंत बाद किया गया और उस समय तक, उसने शिक्षण बंद नही किया या माध्यमिक शिक्षण पूरा नहीं किया था – नियम 7 व 8, संस्था द्वारा स्वमेव जन्मतिथि का सुधार, बदलाव या गलती का परिशोधन करने के लिए उपबंधित करते हैं – यह नियम माध्यमिक शिक्षा बोर्ड को जन्म तिथि का सुधार करने से नही रोकते – रिट अपील निराकृत। (बोर्ड ऑफ सेकेन्डरी एजूकेशन वि. प्रियंका श्रीवास्तव) (DB)...2632

*दोहरा संकट* – दो भिन्न न्यायालयों के समक्ष पूर्णतः भिन्न आरोपों पर दो आरोपपत्र लंबित है – दोहरे संकट का प्रश्न उत्पन्न नहीं होता। (अलख कुमार उर्फ अलख दास गुप्ता वि. म.प्र. राज्य) ...3113

*दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 एवं 4 – देखें – दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482,* (कमल नयन सिंह वि. म.प्र. राज्य )...2894

*दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 7, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3), 482 – पीड़ित व्यक्ति का कथन* – प्रत्यर्थी क्र. 2 का विवाह आवेदक की पुत्री के साथ हुआ था – प्रत्यर्थी क्र. 2 भा.द.सं. की धारा 498–ए के अंतर्गत अपराध के विचारण का सामना कर रहा है – प्रत्यर्थी क्र. 2 ने शिकायत दर्ज की, अपीलार्थी की इस स्वीकृति के आधार पर कि उसने अपनी पुत्री के विवाह के संबंध में दहेज दिया था – अभिनिर्धारित – जब शिकायत को जांच के लिए अग्रेषित किया गया, न्यायाधीश ने अधिनियम की धारा 7(3) के उपबंध की अनदेखी की – इसके अतिरिक्त

daughter - Held - While forwarding the complaint for investigation, the Magistrate overlooked the provision of Section 7(3) of the Act - Further the word "May" in Section 156(3) makes it clear that the provision is directory and forwarding of complaint is not necessary in every case - Order passed under Section 156(3), F.I.R. and consequent proceedings quashed. [Haji Sayyad Vs. State of M.P.] ...2610

*Education - Green Card - Exemption from payment of Fee* - Petitioners were admitted in B.E. Course in the academic session of 2008-2009 and were exempted from payment of fee under the policy of the State Govt. in vogue vide circular dated 17-10-2007 - Benefit of exemption was withdrawn in the light of order dated 3-7-2009 - Held - Policy dated 3-7-2009 had in fact restored the past with certain rider - Petitioners are not hit by two exceptions as laid down in policy dated 3-7-2009 - Petitioners were exempted from tuition fee since their admission in the year 2008-2009 and the same having been granted vide circular dated 17-10-2007 which is not superseded by subsequent order/policy decision dated 3-7-2009 - Petition allowed. [Satyam Pandey Vs. University Institute of Technology, RGPV] (DB)...2379

*Electricity Act (36 of 2003), Sections 126 & 127 - Disconnection of Electricity - Appeal* - Premises of the appellant was searched and provisional assessment order was served - Appellant raised objections to the Provisional Assessment Order - Without deciding the objections and without passing the final order, electricity was discontinued - Held - Alternative remedy of filing appeal would only arise when a final order under Section 126 is passed - Electricity cannot be discontinued - Respondents directed to decide the objections and pass the final order - The appellant may thereafter if aggrieved can file an appeal - Appeal allowed. [Qutubuddin Vs. M.P. Pashchim Keshtra Vidyut Vitran Co. Ltd.] (DB)...2317

*Electricity Supply Code, M.P. 2004, Clause 5.3 - Dedicated Feeder* - Merely because a consumer has opted for getting power supply from dedicated feeder, it does not mean that no other consumer can be provided electricity from the said feeder - It is not the Intention of the Code making authority to confine the electricity supply by dedicated feeder to a solitary consumer - It is only to ensure that electricity supply is provided to the consumer from a particular feeder which is known as dedicated feeder. [K.S. Oils Ltd. Vs. M.P.K.V.V.C.L.] ...2425

धारा 156(3) में शब्द 'हो सकता है' से स्पष्ट होता है कि उपबंध निदेशात्मक है और प्रत्येक प्रकरण में शिकायत अग्रेषित करना आवश्यक नही है – धारा 156(3) के अंतर्गत पारित आदेश, प्रथम सूचना रिपोर्ट एवं तत्पश्चात् की गई कार्यवाहियां अभिखंडित। (हाजी सैय्यद वि. म.प्र. राज्य) ...2610

*शिक्षा – ग्रीन कार्ड – शुल्क के भुगतान से छूट* – याचीगण को 2008–2009 के शैक्षणिक सत्र में बी.ई. पाठ्यक्रम में प्रवेश दिया गया और परिपत्र दिनांक 17.10.2007 द्वारा, राज्य सरकार की विद्यमान नीति के अंतर्गत शुल्क के भुगतान से छूट दी गई – आदेश दिनांक 3.07.2009 के आलोक में छूट का लाभ वापस लिया गया – अभिनिर्धारित – नीति दिनांक 3.7.2009 ने वास्तव में पिछली नीति को कतिपय बदलाव के साथ पुनः स्थापित किया था – याचीगण नीति दिनांक 3.7.2009 में प्रतिपादित किये गये दो अपवादों द्वारा प्रभावित नही होते – याचीगण को सन् 2008–2009 में उनके प्रवेश लेने के बाद से शिक्षा शुल्क से छूट दी गई थी और उक्त को परिपत्र दिनांक 17.10.2007 द्वारा प्रदान किया गया था, जो पश्चात्वर्ती आदेश/नीति निर्णय दिनांक 3.7.2009 द्वारा अतिक्रमित नही होता – याचिका मंजूर। (सत्यम पाण्डे वि. यूनिवर्सिटी इन्सटीट्यूट ऑफ टेक्नॉलोजी, आर.जी.पी.व्ही.) (DB)...2379

*विद्युत अधिनियम (2003 का 36), धारा 126 व 127 – विद्युत प्रदाय बंद कर दिया जाना* – अपील – अपीलार्थी के परिसर की तलाशी ली गई और अंतरिम निर्धारण आदेश तामील किया गया – अपीलार्थी ने अंतरिम निर्धारण आदेश के विरूद्ध आक्षेप उठाये – आक्षेपों का विनिश्चय किये बिना और अंतिम आदेश पारित किये बिना विद्युत प्रदाय बंद कर दिया गया – अभिनिर्धारित – अपील प्रस्तुत करने का वैकल्पिक उपचार केवल तब उत्पन्न होगा जब धारा 126 के अंतर्गत अंतिम आदेश पारित किया गया हो – विद्युत प्रदाय बंद नही किया जा सकता – प्रत्यर्थीगण को आक्षेपों का विनिश्चय करने और अंतिम आदेश पारित करने के लिए निदेशित किया गया – तत्पश्चात् यदि अपीलार्थी व्यथित होता है, अपील प्रस्तुत कर सकता है – अपील मंजूर। (कुतुबबुद्दीन वि. एम.पी. पश्चिम क्षेत्र विद्युत वितरण कं. लि.) (DB)...2317

*विद्युत प्रदाय संहिता, म.प्र. 2004, खंड 5.3 – डेडीकेटेड फीडर* – मात्र इसलिए कि उपभोक्ता ने डेडीकेटेड फीडर से बिजली प्राप्त करने का विकल्प लिया है, इसका अर्थ यह नही कि उक्त फीडर से किसी अन्य उपभोक्ता को बिजली प्रदाय नही की जा सकती – संहिता बनाने वाले प्राधिकारी का यह आशय नही है कि डेडीकेटेड फीडर से विद्युत प्रदाय एकमात्र उपभोक्ता तक सीमित रहे – ऐसा केवल यह सुनिश्चित करने के लिए है कि उपभोक्ता को विद्युत प्रदाय विशिष्ट फीडर से किया जा रहा है जिसे डेडीकेटेड फीडर के रूप में जाना जाता है। (के.एस. ऑयल्स् लि. वि. एम.पी.के.व्ही.व्ही. सी.एल.) ...2425

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*Employees' Provident Funds and Miscellaneous Provisions Act (19 of 1952), Section 11 - Priority of payment of contributions over other debts* - Statutory authorities attached certain properties of erstwhile employer but did nothing thereafter - Financial Institution because of non-payment of loan of erstwhile employer invoked Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sold the property to the auction purchaser - Inaction after the attachment will not amount to waiver of statutory contribution - Financial Institution is liable to pay the said contribution. [Textile Mazdoor Congress Vs. State of M.P.] ...*110

*Employees' Provident Funds and Miscellaneous Provisions Act ( 19 of 1952), Section 11(2)* - Statutory contribution under the Act is the first charge on the assets of the establishment - Even if the Industry of erstwhile owner is taken over by the financial institution, said statutory liability is neither waived nor extinguished- It will stand and financial institution is bound to repay the same - Bonafide purchaser of industry who was not apprised of any charge or contribution is outstanding against the erstwhile industry not liable to pay the contribution. [Textile Mazdoor Congress Vs. State of M.P.] ...*110

*Entertainments Duty and Advertisements Tax Act, M.P. (30 of 1936), Sections 4(1),(2)(d), Municipalities Act, M.P. (37 of 1961), Section 5 - Compounding Duty - Population* - Compounding duty is 25% where the population of a place is between 25001 to 50,000 and 30% where population is 50,000 to 1 lac - Railway area was excluded from Municipal Area - No notification under Section 5 of Act, 1961 that Railway area was notified as local area - Population of Railway area cannot be included in the local municipal area - Accordingly slab of 25% is applicable - Writ appeal dismissed. [State of M.P. Vs. Bharat Bhusan Vyas] (DB)...2622

*Essential Commodities Act (10 of 1955) Section 3/7, Penal Code (45 of 1860), Sections 467, 468 & 471, Criminal Procedure Code, 1973 (2 of 1974), - Framing of charge - Powers of Revisional Court* - Driver co accused was carrying a tanker in which 20,000/- liter kerosene oil of blue colour was found - Held - Revisional jurisdiction can not embark upon re-appreciation of evidence unless the finding of fact is on the face of it illegal or perverse - It is a cardinal principle of law that in a revision, the revisional court will not interfere with the order of the

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*कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम(1952 का 19), धारा 11 – अन्य ऋणों के मुकाबले अंशदानों के भुगतान की प्राथमिकता* – कानूनी प्राधिकारियों ने भूतपूर्व नियोक्ता की कतिपय संपत्तियां कुर्क की परंतु उसके पश्चात् कुछ नही किया – भूतपूर्व नियोक्ता के ऋण के असंदाय के कारण वित्तीय संस्था ने वित्तीय अस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, 2002 का अवलंब लिया और नीलामी क्रेता को संपत्ति विक्रय की – कुर्की पश्चात् कोई कार्यवाही न की जाना कानूनी अंशदान के अधित्यजन की कोटि में नही आयेगा – वित्तीय संस्थान उक्त अंशदान का भुगतान करने के लिए दायी है। (टेक्सटाईल मजदूर कांग्रेस वि. म.प्र. राज्य) ...*110

*कर्मचारी भविष्य–निधि और प्रकीर्ण उपबंध अधिनियम(1952 का 19), धारा 11(2)* – अधिनियम के अंतर्गत कानूनी अंशदान, स्थापना की आस्तियों पर प्रथम भार है – यदि भूतपूर्व स्वामी का उद्योग वित्तीय संस्था द्वारा अधिकार में लिया जाता है तब भी उक्त कानूनी दायित्व न तो अधित्यक्त होता है न ही समाप्त होता है – वह कायम रहेगा और वित्तीय संस्था उसका प्रतिसंदाय करने के लिए बाध्य होगी – उद्योग का सद्भाविक क्रेता जिसे भूतपूर्व उद्योग के विरूद्ध बकाया किसी भार या अंशदान के बारे में जानकारी नही दी गई, वह अंशदान का भुगतान करने के लिए दायी नही है। (टेक्सटाईल मजदूर कांग्रेस वि. म.प्र. राज्य) ...*110

*मनोरंजन शुल्क और विज्ञापन कर अधिनियम, म.प्र. (1936 का 30), धाराएं 4(1), (2) (डी), नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5 – चक्रवृद्धि कर – लोक संख्या* – चक्रवृद्धि कर 25% है जहां किसी स्थान की लोकसंख्या 25001 से 50000 है और 30% है जहां लोकसंख्या 50000 से 1 लाख है – रेलवे क्षेत्र को नगरपालिका क्षेत्र से अपवर्जित किया गया – अधिनियम 1961 की धारा 5 के अंतर्गत कोई अधिसूचना नही कि रेलवे क्षेत्र को स्थानीय क्षेत्र के रूप में अधिसूचित किया गया – रेलवे क्षेत्र की आबादी को स्थानीय नगरपालिका क्षेत्र में समाविष्ट नही किया जा सकता – तद्नुसार 25% का स्तर लागू होगा–रिट अपील खारिज। (म.प्र. राज्य वि. भारत भूषण व्यास) (DB)...2622

*आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3/7, दण्ड संहिता (1860 का 45), धारा 467, 468 व 471, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) – आरोप विरचित किया जाना – पुनरीक्षण न्यायालय की शक्तियां* – सह अभियुक्त वाहन चालक टैंकर ले जा रहा था जिसमें 20,000 लीटर नीले रंग का मिट्टी का तेल पाया गया – अभिनिर्धारित – पुनरीक्षण अधिकारिता, साक्ष्य का पुनः मूल्यांकन आरंभ नही कर सकती जब तक कि तथ्य का निष्कर्ष प्रकट रूप से अवैध या अनुचित न हो – यह विधि का प्रमुख सिद्धांत है कि पुनरीक्षण में, पुनरीक्षण न्यायालय, निचले न्यायालय के आदेश में

court below, unless there is some compelling reason for doing so such as where the judgment or order of the court below is vitiated by perversity or gross illegality - The impugned order does not suffer from any illegality nor there is any error of jurisdiction - Thus, it is clear that charges are properly framed - Revision dismissed. [Rajeev Kumar Vs. State of M.P.] ...2583

*Evidence Act (1 of 1872), Section 3 - Witness - Exaggerations or improvements* - Exaggerations or improvements per se donot render the evidence brittle - It can be one of the factors to test credibility of the prosecution version - Irrelevant details which donot in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. [Major Singh Vs. State of M.P.] (DB)...2540

*Evidence Act (1 of 1872), Section 3 - Witness - Tutored* - Even if a part of deposition of a witness can be treated to be tutored, remaining part if inspires confidence can be believed at least taken into consideration for the purpose of corroboration. [Major Singh Vs. State of M.P.] (DB)...2540

*Evidence Act (1 of 1872), Section 32 - See - Penal Code, 1860, Section 302,* [Kisna Vs. State of M.P.] (DB)...2519

*Evidence Act (1 of 1872), Section 35 - See - Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2),* [Basanti Bai (Smt.) Vs. Smt. Premwati Bai] ...2416

*Evidence Act (1 of 1872), Section 44 - Fraud or Collusion in obtaining judgment - Who can challenge* - A person affected by the fraud can impeach the same and can sue to set aside the judgment and its consequences - A stranger to a proceeding can always plead and prove the fraudulent nature of the transaction, even if it be a decree of the Court - Appeal dismissed. [Hameeda Begum (Smt.) Vs. Inder Kumar Jain] ...2797

*Evidence Act (1 of 1872), Section 45 - Examination of thumb impression* - Petitioner has filed a suit for declaration for declaring the sale deeds as null on the ground that he has neither entered in any transaction of sale with the defendants nor has sold the property by executing the aforesaid sale deeds with his thumb impression - Held - Assistance of handwriting expert is necessary to adjudicate the disputed question with respect of thumb impression - Petition allowed. [Netlal Vs. Saligram] ...2961

हस्तक्षेप नही करेगा, जब तक कि ऐसा करने के लिए बाध्यकर कारण न हो जैसा कि जब निचले न्यायालय का आदेश या निर्णय अनुचितता या घोर अवैधता से दूषित हो – आक्षेपित आदेश किसी अवैधता से ग्रसित नही और न ही अधिकारिता की कोई त्रुटि हुई है – अतः यह स्पष्ट है कि आरोप उचित रूप से विरचित किये गये हैं – पुनरीक्षण खारिज। (राजीव कुमार वि. म.प्र. राज्य) ...2583

*साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षी – अतिशयोक्ति या परिवर्तन* – अतिशयोक्ति या परिवर्तन स्वयं ही साक्ष्य भंग करने में सहायता नहीं करता – अभियोजन कथा की विश्वसनीयता के परीक्षण का एक कारक हो सकता है – असंगत विवरण जो किसी भी प्रकार से साक्षी की विश्वसनीयता को कमजोर नही करते उन्हें लोप या विरोधाभास नही कहा जा सकता। (मेजर सिंह वि. म.प्र. राज्य) **(DB)...2540**

*साक्ष्य अधिनियम (1872 का 1), धारा 3 – साक्षी – पढ़ाया हुआ* – यदि साक्षी के कथन का कोई भाग पढ़ाया हुआ माना भी जाये तब भी शेष भाग जो विश्वास उत्पन्न करता हो उसे कम से कम पुष्टिकरण हेतु विचार में लिया जाना चाहिए। (मेजर सिंह वि. म.प्र. राज्य) **(DB)...2540**

*साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302,* (किसना वि. म.प्र. राज्य) **(DB)...2519**

*साक्ष्य अधिनियम (1872 का 1), धारा 35 – पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 35 (2),* (बसंती बाई (श्रीमति) वि. श्रीमति प्रेमवती बाई) ...2416

*साक्ष्य अधिनियम (1872 का 1), धारा 44 – निर्णय अभिप्राप्त करने में कपट या दुस्संधि – कौन चुनौती दे सकता है* – कपट से प्रभावित व्यक्ति उसे अधिक्षेप कर सकता है और निर्णय एवं उसके परिणामों को अपास्त करने के लिए मुकदमा कर सकता है – कार्यवाहियों में अनजान व्यक्ति, संव्यवहार के कपटपूर्ण स्वरूप का सदैव अभिकथन कर सकता है एवं साबित कर सकता है, भले ही वह न्यायालय की डिक्री है – अपील खारिज। (हमीदा बेगम (श्रीमति) वि. इंदर कुमार जैन) ...2797

*साक्ष्य अधिनियम (1872 का 1), धारा 45 – अंगूठा निशानी का परीक्षण* – याची ने विक्रय विलेखों को अकृत घोषित किये जाने हेतु घोषणा के लिए वाद प्रस्तुत किया इस आधार पर कि उसने न तो प्रतिवादीगण के साथ विक्रय का कोई संव्यवहार किया है और न ही उसने अपने अंगूठा निशानी से उपरोक्त विक्रय विलेखों के निष्पादन द्वारा सम्पत्ति का विक्रय किया है – अभिनिर्धारित – अंगूठा निशानी के संबंध में विवादित प्रश्न को न्यायनिर्णित करने हेतु हस्तलेख विशेषज्ञ की सहायता आवश्यक है – याचिका मंजूर। (नेतलाल वि. सालिगराम) ...2961

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*Evidence Act (1 of 1872), Section 64 - Admissibility of document* - Merely because of document has been exhibited is not sufficient to hold that the same has been proved - Document should be proved by relevant witness - In lack of it such document cannot be held to be proved. [Pappu @ Narendra Kumar Vs. State of M.P.] ...2486

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*साक्ष्य अधिनियम (1872 का 1), धारा 45 एवं 73 – विशेषज्ञ का मत* – हस्तलेख विशेषज्ञ द्वारा नामांकन पर्चों की लिखावट के परीक्षण हेतु निवेदन – अभिनिर्धारित – प्रत्यर्थी अभी भी उस निर्वाचन अधिकारी को साक्ष्य में बुला सकता है जिसने नामांकन पर्चा प्राप्त किया – हस्तलेख विशेषज्ञ के परीक्षण हेतु लिखावट निर्दिष्ट करने का और उसकी पहचान के बारे में मत लेने का निश्चित रूप से कोई न्यायोचित्य नही है – आवेदन सव्यय खारिज। (राजेश कुमार वि. देवेन्द्र सिंह) ...2457

*साक्ष्य अधिनियम (1872 का 1), धारा 64 – दस्तावेज की ग्राह्यता* – मात्र इसलिए कि दस्तावेज प्रदर्शित किया गया है, यह धारणा करने के लिए पर्याप्त नही होगा कि उक्त को साबित किया गया है – दस्तावेज को सुसंगत साक्षी द्वारा साबित किया जाना चाहिए – इसके अभाव के कारण ऐसा दस्तावेज साबित किये जाने की धारणा नही की जा सकती। (पप्पू उर्फ नरेन्द्र कुमार वि. म.प्र. राज्य) ...2486

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*साक्ष्य अधिनियम (1872 का 1), धारा 113 ए – उपधारणा को लागू करना* – 8–10 वर्ष पूर्व विवाह अनुष्ठापित किया गया – अधिनियम 1872 की धारा 113 ए के अंतर्गत उपधारणा लागू नहीं होगी। (सरजू वि. म.प्र. राज्य) ...2806

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*Finance Code Bill (M.P.), Rule 84 - See - Constitution - Article 226* [Chintaman Masulkar Vs. State of M.P.] ...2353

*High Court of Madhya Pradesh Rules, 2008, Chapter IX Rule 4 - Affidavit* - Affidavit should contain only facts - It shall not contain any statement which is in the nature of expression of opinion or argument. [Rajendra Singh Rawat Vs. State of M.P.] ...2660

*Hindu Succession Act (30 of 1956), Section 14 - Absolute Right* - Wife was given the right of maintenance under a compromise decree - Held - If a Hindu Female is given a right in the property in view of her pre-existing right, in such a case Section 14(1) of the Act would apply - Wife had an absolute right in view of provisions of Section 14(1) of the Act. [Pandhari Vs. Ramchandra] ...2469

*Income Tax Act (43 of 1961), Sections 30, 31 & 37 - Exemption - Expenditure whether revenue or capital in nature* - Plant suffered heavy damage due to an accident - Assessee claimed expenses incurred by it for the repairs of plant and charged the same in profit and loss account - Assessing officer came to conclusion that the entire plant was destroyed and was reconstructed by assessee and therefore treated the expenses as capital expenditure - Held - Assessment made on the basis of survey report, which was never supplied to assessee - No opportunity was given to assessee - It is open for assessing authority to collect private evidence but assessee must be informed and proper opportunity is to be given. [Prestige Foods Ltd., Indore Vs. Commissioner of Income Tax, Bhopal] (DB)...2591

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*Industrial Disputes Act (14 of 1947), Section 25-F - Retrenchment - Services of petitioner were terminated orally* - Judgment passed in the case of Secretary State of Karnataka vs. Uma Devi has no application as petitioner was not seeking regularization but had challenged his termination - Judgment passed in the case of Uma Devi has no bearing on interpretation of section 25-F - Matter remanded back. [Ravindra Shobhawat Vs. Secretary, Krishi Upaj Mandi Samiti, Badnagar] (DB)...2342

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*उच्च न्यायालय मध्य प्रदेश नियम 2008, अध्याय IX नियम 4 – शपथपत्र* – शपथपत्र में केवल तथ्यों का समावेश होना चाहिए – उसमें ऐसे किसी कथन का समावेश नही होना चाहिए जो मत या तर्क अभिव्यक्त करने के स्वरूप का है। (राजेन्द्र सिंह रावत वि. म.प्र. राज्य) ...2660

*हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 – आत्यंतिक अधिकार* – पत्नी को समझौता डिक्री के अंतर्गत भरणपोषण का अधिकार प्रदान किया गया – अभिनिर्धारित – यदि हिन्दू स्त्री को उसके पूर्व–विद्यमान अधिकार को दृष्टिगत रखते हुए, सम्पत्ति में अधिकार दिया जाता है, ऐसे प्रकरण में अधिनियम की धारा 14 (1) लागू होगी – पत्नी को अधिनियम की धारा 14 (1) के उपबंधों के अनुसार आत्यंतिक अधिकार प्राप्त है। (पंढरी वि. रामचन्द्र) ...2469

*आयकर अधिनियम (1961 का 43), धाराएं 30, 31 व 37 – छूट – क्या व्यय का स्वरूप राजस्व है अथवा पूंजी है* – दुर्घटना के कारण संयंत्र ने भारी क्षति सहन की – निर्धारिती ने संयंत्र के सुधार में उसके द्वारा उठाये गये व्यय का दावा किया और उसे लाभ–हानि लेखा में दर्ज किया – निर्धारण अधिकारी इस निष्कर्ष पर पहुंचा कि संपूर्ण संयंत्र नष्ट हुआ था और निर्धारिती द्वारा पुनःनिर्मित किया गया और इसलिए व्यय को पूंजी व्यय के रूप में माना गया – अभिनिर्धारित – सर्वेक्षण रिपोर्ट के आधार पर निर्धारण किया गया जो निर्धारिती को कभी उपलब्ध नहीं कराया गया – निर्धारिती को कोई अवसर नही दिया गया – निर्धारण प्राधिकारी, निजी साक्ष्य एकत्रित करने के लिए स्वतंत्र है परंतु निर्धारिती को सूचित किया जाना चाहिए और उचित अवसर दिया जाना चाहिए। (प्रेस्टिज फुड्स लि., इंदौर वि. कमिश्नर ऑफ इनकम टेक्स, भोपाल) (DB)...2591

*आयकर अधिनियम (1961 का 43), धारा 132बी – साधारण ब्याज* – तलाशी के दौरान रू. 60,000 की रकम जब्त की गई – याची को कर का भुगतान करने के लिए दायी नही पाया गया – उक्त जब्दशुदा रकम साधारण ब्याज के साथ लौटाए जाने योग्य। (ओम प्रकाश अग्रवाल वि. यूनियन ऑफ इंडिया) (DB)...2979

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*43, 44, Sugarcane (Regulation of Supply and Purchase) Act, M.P. 1958 (1 of 1959), Sections 19 & 20, Sugarcane (Regulation of Supply and Purchase) Rules, Rule 2(f), 35, 36, 40, 41 & 43, Sugarcane (Control) Order, Clause 3* - **Whether Market Fee can be levied to the transactions involving purchase of sugarcane by factories operating in market areas of State - Act, 1958 is a special statute enacted for regulating the supply and purchase of sugarcane to the factories and covers the entire spectrum of the transactions involving the sale and purchase of sugarcane - Mechanism for fixing the minimum price of cane is contained in clause 3 of the Control Order - Mode of payment is contained in both Act, 1958 and Control Order - Provisions of Section 36 and 37 of Market Act are irreconcilable with those contained in Section 15, 16, 19 of the Act, 1958 and clause 3 of Control Order - No special facility is provided to the Cane Growers and occupiers of the factories who purchase sugarcane at the purchasing centers or within the factory premises - Control order envisages fixation of minimum price of sugarcane by Central Govt. whereas Market Act postulates determination of prices of notified agricultural produce brought into the market yard by tender bid or open auction - Provisions of Market Act would not prevail over the Control Order and that transactions involving the purchase of sugarcane by the factories operating in the market areas would not be governed by the provisions contained in Market Act - Market Fee no leviable - Appeal dismissed. [Krishi Upaj Mandi Samiti, Narsinghpur Vs. M/s. Shiv Shakti Khansari Udyog]** (SC)...*114

*Land Acquisition Act (1 of 1894), Section 11-A - Period within which an award shall be made - Stay of proceedings by Court - Effect* - **Award was due on 31.03.2000 - There was stay of 6 years 8 months and 16 days - Period of stay liable to be excluded - Award ought to have been passed on or before 18.01.2007 - Award was passed on 31.12.2005 - After excluding the period of stay it cannot be said that the statutory provisions of Section 11-A of the Act was violated - Petition dismissed. [Geeta Bai (Smt.) Vs. State of M.P.]** ...*117

*Land Revenue Code, M.P. (20 of 1959), Section 50 - Review - Condonation of delay - Delay of 23 years* - **Sufficient Cause - Sufficient cause is required to be established - Delay of 23 years is not an ordinary delay and can be condoned only if specific reasons with accuracy and precession are shown - It cannot be condoned on a bald statement that matter has a public element - Order condoning the delay quashed.**

*(पूर्ति एवं क्रय का विनियमन) नियम, 1959, नियम 2 (एफ), 35, 36, 40, 41 व 43, गन्ना (नियंत्रण) आदेश, खण्ड 3* – क्या बाजार शुल्क उन संव्यवहारों पर उद्ग्रहित किया जा सकता है जिनमें राज्य के बाजार क्षेत्र में क्रियाशील कारखानों द्वारा गन्ने का क्रय समाविष्ट है – अधिनियम 1958 विशेष कानून है जो कारखानो को गन्ने का प्रदाय एवं क्रय विनियमित करने के लिए अधिनियम किया गया है और गन्ने के विक्रय एवं क्रय से संबंधित सभी संव्यवहारों के संपूर्ण विस्तार को आच्छादित करता है – गन्ने का न्यूनतम मूल्य निश्चित करने की प्रक्रिया नियंत्रण आदेश के खण्ड 3 में अंतर्विष्ट है – भुगतान का ढंग, अधिनियम 1958 व नियंत्रण आदेश दोनों में दिया गया है – बाजार अधिनियम की धारा 36 व 37 के उपबंध, अधिनियम 1958 की धारा 15, 16, 19 व नियंत्रण आदेश के खण्ड 3 के उपबंधों के साथ अनमेल है – गन्ना उत्पादकों एवं कारखाने के अधिष्ठाताओं को कोई विशेष सुविधा नही दी गई जो क्रय केन्द्रों से या कारखाने के परिसर में गन्ना क्रय करते हैं – नियंत्रण आदेश, केन्द्र सरकार द्वारा गन्ने का न्यूनतम मूल्य निश्चित करना परिकल्पित करता है जबकि बाजार अधिनियम, निविदा बोली या खुली नीलामी द्वारा बाजार यार्ड में लाये गये अधिसूचित कृषि उत्पाद के मूल्यों का निर्धारण परिकल्पित करता है – बाजार अधिनियम के उपबंध, नियंत्रण आदेश पर अभिभावी नहीं होंगे और बाजार क्षेत्रों में क्रियाशील कारखानों द्वारा गन्ने के क्रय से संबंधित संव्यवहार बाजार अधिनियम में अंतर्विष्ट उपबंधों द्वारा शासित नहीं होंगे – बाजार शुल्क उद्ग्रहित किये जाने योग्य नही – अपील खारिज। (कृषि उपज मंडी समिति, नरसिंहपुर वि. मे. शिवशक्ति खानसारी उद्योग) **(SC)...*114**

*भूमि अर्जन अधिनियम (1894 का 1), धारा 11–ए – अवधि, जिसके भीतर अवार्ड पारित किया जाना चाहिए – न्यायालय द्वारा कार्यवाही पर रोक – प्रभाव* – अवार्ड 31.03.2000 को नियत था – 6 वर्ष, 8 माह व 16 दिनों की रोक थी – रोक की अवधि अपवर्जित किये जाने योग्य – अवार्ड को 18.01.2007 को या उससे पहले पारित किया जाना चाहिए था – अवार्ड 31.12.2005 को पारित किया गया – रोक की अवधि अपवर्जित किये जाने के पश्चात् यह नही कहा जा सकता कि अधिनियम की धारा 11–ए के कानूनी उपबंधों का उल्लंघन किया गया – याचिका खारिज। (गीता बाई (श्रीमति) वि. म.प्र. राज्य) **...*117**

*भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 – पुनर्विलोकन – विलम्ब के लिए माफी – 23 वर्षों का विलम्ब* – पर्याप्त कारण – पर्याप्त कारण स्थापित किया जाना अपेक्षित है – 23 वर्षों का विलम्ब, साधारण विलम्ब नही है और केवल तब माफ किया जा सकता है यदि विनिर्दिष्ट कारणों को यथार्थता के साथ एवं परिशुद्धता के साथ दर्शाया जाता है – इसे केवल ऐसे कथन पर माफ नही किया जा सकता कि मामले में सार्वजनिक हित है – विलम्ब माफ करने का आदेश अभिखण्डित। (राधाचरण शर्मा वि.

[Radhacharan Sharma Vs. State of M.P.] ...2956

*Land Revenue Code, M.P. (20 of 1959), Section 248, Wakf Act 1995 - Applicability* - Whether revenue authorities can invoke this provision against alleged encroachment on wakf property - Held - No - Sec 248 empowers the revenue authorities to take action against certain kinds of lands which are mentioned in the said provision - Anterior to or later to amendment in Sec. 248, no action can be taken against the encroachment on notified Wakf property. [Baheed Khan Vs. State of M.P.] ...2385

*Limitation Act (36 of 1963), Section 5, Civil Procedure Code (5 of 1908), Order 41 Rule 3-A - Application for condonation of delay* - The Appellate Court in view of peculiar facts, decided to decide the application for condonation of delay along with appeal - However, application for condonation of delay was decided first before passing judgment - No interference called for. [Pop Singh Vs. Ram Singh] ...3058

*Limitation Act (36 of 1963), Section 5 - Condonation of Delay - Delay of 350 days* - State applied for certified copy on 1-4-2010 which was delivered on the same day - No explanation for the delay during the period of more than 6 months between 27-4-2010 and 2-11-2010 - If the officers have dealt with the matter negligently, or there is no explanation of such long delay, then the delay of more than six months without any proper explanation and cogent reason cannot be condoned - Cause shown by State for condonation of delay of 350 days not justified - Application for condonation of delay dismissed - Writ Appeal is also consequently dismissed. [State of M.P. Vs. Mahendra Solanki] (DB)...2628

*Limitation Act (36 of 1963), Section 5 - Sufficient Cause* - Sufficient cause should receive a liberal construction - Decree was passed on 06.12.1985 - Application for mutation was filed in the year 2009 - After receipt of notice for mutation, appellants applied for certified copy of judgment and decree - Period of limitation would start from the date of knowledge and not from the date of judgment and decree. [Pop Singh Vs. Ram Singh] ...3058

*Medical and Dental Post Graduate Course Entrance Examination Rules, M.P. 2012 - Rule 9(1)(a) - In Service Candidates* - Petitioners working as Medical Officers on contract basis in Reproductive Child Health Programme - Service conditions are governed by M.P. Civil Services Conduct Rules, 1965 - Persons who are Medical Officers under Reproductive Child

म.प्र. राज्य) ...2956

*भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 248, वक्फ अधिनियम 1995* – प्रयोज्यता – क्या राजस्व प्राधिकारीगण, वक्फ सम्पत्ति पर अभिकथित अतिक्रमण के विरूद्ध इस उपबंध के अवलंब ले सकते है – अभिनिर्धारित – नहीं – धारा 248 राजस्व प्राधिकारियों को कतिपय प्रकार की भूमियों के विरूद्ध कार्यवाही करने के लिए शक्ति प्रदान करती है जिन्हें उक्त उपबंधों में उल्लिखित किया गया है – धारा 248 में सशोधन से पूर्व या बाद में, अधिसूचित वक्फ सम्पत्ति पर अतिक्रमण के विरूद्ध कोई कार्यवाही नही की जा सकती। (वहीद खान वि. म.प्र. राज्य) ...2385

*परिसीमा अधिनियम (1963 का 36), धारा 5, सिविल प्रक्रिया संहिता (1908 का 5) आदेश 41 नियम 3–ए – विलम्ब की माफी के लिए आवेदन* – अपीली न्यायालय ने विशिष्ट तथ्यों को दृष्टिगत रखते हुए विलम्ब के लिए माफी के आवेदन का विनिश्चय अपील के साथ करने का निर्णय लिया – किन्तु विलम्ब के लिए माफी के आवेदन का विनिश्चय, निर्णय पारित करने से पहले किया गया – किसी हस्तक्षेप की आवश्यकता नहीं। (पोप सिंह वि. राम सिंह) ...3058

*परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – 350 दिन का विलंब* – राज्य ने प्रमाणित प्रतिलिपि के लिए 1–4–2010 को आवेदन दिया, जिसे उसी दिन प्रदान किया गया – 27–4–2010 व 2–11–2010 के बीच के 6 माह से अधिक की अवधि के विलंब हेतु कोई स्पष्टीकरण नही – यदि अधिकारियों ने प्रकरण में उपेक्षापूर्वक कार्यवाही की या ऐसे लंबे विलंब का कोई स्पष्टीकरण नही है, तब बिना किसी उचित स्पष्टीकरण या प्रबल कारण के 6 माह से अधिक का विलंब माफ नही किया जा सकता – राज्य द्वारा 350 दिन के विलंब की माफी के लिए दर्शाया गया कारण न्यायोचित नही – विलंब की माफी का आवेदन खारिज – परिणामतः रिट अपील भी खारिज। (म.प्र. राज्य वि. महेन्द्र सोलंकी) (DB)...2628

*परिसीमा अधिनियम (1963 का 36), धारा 5 – पर्याप्त कारण* – पर्याप्त कारण का उदार अर्थान्वयन किया जाना चाहिए – डिक्री 06.12.1985 को पारित – नामांतरण हेतु आवेदन वर्ष 2009 में प्रस्तुत किया गया – नामांतरण हेतु नोटिस प्राप्ति के पश्चात्, अपीलार्थीगण ने निर्णय व डिक्री की प्रमाणित प्रतिलिपी के लिए आवेदन किया – परिसीमा की अवधि, ज्ञात होने की तिथि से आरंभ होगी और न कि निर्णय व डिक्री की तिथि से। (पोप सिंह वि. राम सिंह) ...3058

*चिकित्सा और दंत स्नातकोत्तर पाठ्यक्रम प्रवेश परीक्षा नियम, म.प्र. 2012 – नियम 9 (1)(ए) – सेवारत अभ्यर्थी* – याचीगण रिप्रोडक्टिव चाईल्ड हेल्थ प्रोग्राम में संविदा आधार पर चिकित्सा अधिकारियों के रूप में कार्यरत – सेवा शर्तें, म.प्र. सिविल सेवा आचारण नियम, 1965 द्वारा शासित – व्यक्ति जो रिप्रोडक्टिव चाईल्ड हेल्थ प्रोग्राम के अंतर्गत चिकित्सा अधिकारी है और ग्रामीण क्षेत्रों में पांच वर्षों तक सेवाएं दी है, सेवारत अभ्यर्थी के रूप में समझे जाने के हकदार है – अपितु, याचीगण वृत्तिका के लिए

Health Programme and have served in rural areas for five years are entitled to be treated as in service candidate - However, petitioners are not entitled for stipend. [Anand Das Sharma (Dr.) Vs. State of M.P.] (DB)...2453

*Motor Vehicles Act (59 of 1988), Sections 3(a) & 66 - Transport Vehicle owned by Central or State Government - Permit* - No pleading to the effect that the offending vehicle which was owned by Union of India was being used for government purposes unconnected with commercial purposes - Benefit of Section 66 cannot be extended. [Harish Kori Vs. Raju K. Rajvardhan] ...3069

*Motor Vehicles Act (59 of 1988), Section 166 - Compensation* - Appellant a student doing the work of distribution of news paper - Notional income can be accepted Rs. 15,000 - Multiplier of 15 would apply - In view of 35% disability future loss of earning comes to Rs. 5250 - Amount of Rs. 1 lacs deserves to be awarded in the head of causing impotency for the injuries - Appellant entitled to Rs. 2,84,865 after adding medical expenses etc. [Harish Kori Vs. Raju K. Rajvardhan] ...3069

*Motor Vehicles Act (59 of 1988), Section 166 - See - Succession Act, 1925, Section 372,* [Chandra (Smt.) Vs. Ranveer Singh Ramavtar] ...2847

*Municipalities Act, M.P. (37 of 1961), Section 5 - See - Entertainments Duty and Advertisements Tax Act, M.P., 1936, Sections 4(1),(2)(d),* [State of M.P. Vs. Bharat Bhusan Vyas] (DB)...2622

*Municipalities Act, M.P. (37 of 1961), Sections 127,129 & 355 - Levy of Terminal Tax* - State Government prescribed the rate of terminal tax by M.P. Terminal Tax (Assesment & Collection) on the Goods Exported from Madhya Pradesh Municipal Limits, Rules 1996 - Resolution of Municipal Council prescribing higher rate of terminal tax, is without any authority of Law. [Mohan Chopada Vs. State of M.P.] ...2930

*Municipalities Act, M.P. (37 of 1961), Section 133 - See - Constitution, Article 265* [Mohan Chopada Vs. State of M.P.] ...2930

*Nagar Thatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachano Ka Vyayan Niyam, M.P. 1975 - Rule 3 - Transfer of Land* - Property belongs to the State Government which on constitution of the authority vested in it - Rule 3 imposes a bar against transfer of Government land vested in or managed by the authority except with the

हकदार नही। (आनंद दास शर्मा (डॉ.) वि. म.प्र. राज्य) (DB)...2453

*मोटर यान अधिनियम (1988 का 59), धाराएं 3(ए) व 66 – केन्द्र या राज्य सरकार के स्वामित्व का परिवहन वाहन – अनुज्ञापत्र* – इस आशय का कोई अभिवाक् नहीं कि उल्लंघन करने वाला वाहन जो भारतीय गणराज्य के स्वामित्व का था, उसे वाणिज्यिक प्रयोजनों से असंबद्ध शासकीय प्रयोजन हेतु उपयोग किया जा रहा था – धारा 66 का लाभ नहीं दिया जा सकता।-(हरीश कोरी वि. राजू के. राजवर्धन) ...3069

*मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर* – अपीलार्थी, एक विद्यार्थी है जो समाचार पत्र बांटने का काम करता था – काल्पनिक आय रू. 15,000/– स्वीकार की जा सकती है – 15 का गुणक लागू होगा – 35% निशक्तता को दृष्टिगत रखते हुए भविष्य के उपार्जन की हानि रू. 5250 होती है – रू. 1 लाख की रकम, नपुंसकता कारित करने के शीर्ष में, क्षतियों के लिए अवार्ड करने योग्य है – अपीलार्थी, चिकित्सीय खर्चे इत्यादि जोड़ने के पश्चात् रू. 2,84,865' का हकदार है। (हरीश कोरी वि. राजू के. राजवर्धन) ...3069

*मोटर यान अधिनियम (1988 का 59), धारा 166 – देखें – उत्तराधिकार अधिनियम, 1925, धारा 372,* (चन्द्रा (श्रीमति) वि. रनवीर सिंह रामावतार) ...2847

*नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 5 – देखें – मनोरंजन शुल्क और विज्ञापन कर अधिनियम, म.प्र., 1936, धाराएं 4(1), (2) (डी),* (म.प्र. राज्य वि. भारत भूषण व्यास) (DB)...2622

*नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 127, 129 व 355 – सीमा कर का उद्ग्रहण* – राज्य सरकार ने म.प्र. नगरपालिक सीमाओं से निर्यात किये जाने वाली वस्तुओं पर सीमा कर (निर्धारण और संग्रहण), नियम 1996 द्वारा सीमा कर की दर विहित की है – नगरपालिका परिषद द्वारा सीमा कर की उच्च दर विहित करने के संकल्प को कोई विधिक प्राधिकारिता प्राप्त नहीं है। (मोहन चोपड़ा वि. म.प्र. राज्य)...2930

*नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 133 – देखें – संविधान, अनुच्छेद 265* (मोहन चोपड़ा वि. म.प्र. राज्य) ...2930

*नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र. 1975 – नियम 3 – भूमि का अंतरण* – सम्पत्ति राज्य सरकार की है जिसने प्राधिकरण का गठन होने पर उसमें निहित किया – नियम 3, राज्य सरकार की सामान्य या विशेष मंजूरी के बिना प्राधिकरण में निहित या उसके द्वारा प्रबंधित सरकारी भूमि के अंतरण के विरुद्ध वर्जन अधिरोपित करता है – प्राधिकरण यह सुनिश्चित करने के लिए बाध्यताधीन है कि वह अधिनियम एवं नियमों के उपबंधोनुसार

general or special sanction of the State Government - The authority is under an obligation to ensure that it functions according to the provisions of the act and the Rules - Property of the public, which has to be dealt with in a fair, transparent and rational manner. [Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority] (DB)...2946

*Nagar Thatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachano Ka Vyayan Niyam, M.P. 1975 - Rule 5 & 6 - Transfer of the Authority Land* - No attempt was made by the Authority to ascertain the market value either by holding a public auction or by inviting tenders - The action of the Authority in not ascertaining the market value of the property by a fair and transparent manner can not be approved. [Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority] (DB)...2946

*Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8(c), 29, 27-A, 15(c), 29, 67 - Confessional Statement* - Charges against applicant were framed on the basis of confessional statement of co-accused - No substance was seized from the possession of the applicant - Co-accused making confessional statement was having license and the quantity of poppy straw recovered from his possession was within the limits of licence issued - Violation of any condition of license is punishable under Clause 19 of the license - As the co-accused who had made the confessional statement had not committed any offence under the N.D.P.S. Act, therefore, his confessional statement would not be covered under Section 67 of the Act - Charges framed against the applicant set aside. [Shiv Shankar Agrawal Vs. Union of India] ...2864

*Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(b) - Joint Possession* - 10 plants of ganja standing in the aangan which is in joint possession of three brothers - Special Judge did not commit any illegality in taking cognizance of the offence against the non-charge sheeted brothers - Even a strong suspicion leading to presumption as to possibility as against certainly makes out a case for framing of charge and the trial judge is required to record reasons only if he decides to discharge the accused. [Gopal Ji Singh Vs. State of M.P.] ...3122

*National Council for Teacher Education Act (73 of 1993), Section 15, Regulations 2009, Regulation 8(3) - Starting New Course* - Petitioners were granted permission to start B.Ed. Course from the session 2009-2010 - Petitioners can be permitted to start new course only after completing 3

कार्य करेगा – लोक सम्पत्ति के साथ निष्पक्ष, पारदर्शक एवं युक्तिसंगत ढंग से कार्यवाही करनी चाहिए। (नीतू तेजकुमार भगत वि. जबलपुर डेव्हेलपमेन्ट अथौरिटी) **(DB)...2946**

*नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र. 1975 – नियम 5 व 6* – प्राधिकरण की भूमि का अंतरण – प्राधिकरण द्वारा या तो सार्वजनिक नीलामी करके या निविदायें बुलाकर बाजार मूल्य निर्धारित करने के लिए कोई प्रयास नहीं किया गया – निष्पक्ष एवं पारदर्शक ढंग से सम्पत्ति का बाजार मूल्य निर्धारित नहीं करने की प्राधिकरण की कार्यवाही को अनुमोदित नहीं किया जा सकता। (नीतू तेजकुमार भगत वि. जबलपुर डेव्हेलपमेन्ट अथौरिटी) **(DB)...2946**

*स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8(सी), 29, 27–ए, 15 (सी), 29, 67 – संस्वीकृति कथन* – सह अभियुक्त के संस्वीकृति कथन के आधार पर आवेदक के विरूद्ध आरोप विरचित किये गये – आवेदक के कब्जे से कोई पदार्थ जब्त नही किया गया – संस्वीकृति कथन करने वाले सह अभियुक्त के पास अनुज्ञप्ति थी और उसके कब्जे से बरामद गांजे की मात्रा जारी की गई अनुज्ञप्ति की सीमाओं के भीतर थी – अनुज्ञप्ति की किसी शर्त का उल्लंघन, अनुज्ञप्ति के खण्ड 19 के अंतर्गत दण्डनीय है – चूंकि, सह अभियुक्त जिसने संस्वीकृति कथन किया है, उसने छक्कै अधिनियम के अंतर्गत कोई अपराध कारित नही किया है इसलिए उसका संस्वीकृति कथन अधिनियम की धारा 67 के अंतर्गत नही आयेगा – आवेदक के विरूद्ध विरचित आरोप अपास्त। (शिव शंकर अग्रवाल वि. यूनियन ऑफ इंडिया) **...2864**

*स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20 (बी) – संयुक्त कब्जा* – गांजे के 10 पौधे आंगन में लगे थे जो तीन भाईयों के संयुक्त कब्जे में है – विशेष न्यायाधीश ने दोषारोपित नहीं किये गये भाईयों के विरूद्ध अपराध का संज्ञान लेने में कोई अवैधता कारित नही की – निश्चितता के विरूद्ध संभावना की उपधारणा की ओर ले जाने वाला प्रबल संदेह भी आरोप विरचित करने हेतु प्रकरण गठित करता है और विचारण न्यायाधीश को कारण अभिलिखित करना केवल तब अपेक्षित है यदि वह अभियुक्त को आरोपमुक्त करने का निश्चय करता है। (गोपाल जी सिंह वि. म.प्र. राज्य) **...3122**

*राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम (1993 का 73), धारा 15, विनियमन 2009, विनियम 8 (3) – नये पाठ्यक्रम को आरंभ करना* – याचीगण को सत्र 2009–2010 से बी.एड. पाठ्यक्रम आरंभ करने की अनुमति प्रदान की गई – याचीगण को नया पाठ्यक्रम आरंभ करने की अनुमति केवल 3 शैक्षणिक सत्रों को पूरा करने के पश्चात्

academic sessions - Application seeking permission to start new course of D.Ed. was made prior to completing 3 academic sessions - Application was rightly rejected as premature - Petition dismissed. [Sparsh Education and Welfare Society Vs. National Council for Teacher Education] (DB)...2412

*National Security Act (65 of 1980), Section 3(2) - Order of detention* - Action of the petitioner had disturbed the even tempo of life - Act of the petitioner had affected the public order - The same is sufficient to justify the order of detention. [Haji Abdul Rajjak Vs. State of M.P.] (DB)...2428

*National Security Act (65 of 1980), Section 3(2) - Preventive Detention* - Delay in execution of order of detention - Residential address given by petitioner not controverted by Police - Delay of four years and seven months in executing the order of detention not explained - Order of detention liable to be quashed as respondents have failed to offer any satisfactory explanation for non-execution of order of detention - Petition allowed. [Mohd. Sartaj Vs. State of M.P.] (DB)...3007

*Negotiable Instruments Act (26 of 1881), Section 138 - Examination by Handwriting Expert* - Offence is a strict liability offence - Declination to send the documents for examination and opinion of the handwriting expert would amount to depriving the accused of the opportunity of rebutting the presumption - Application allowed. [Ram Sewak Patidar Vs. Narayan Singh Patidar] ...2876

*Negotiable Instruments Act (26 of 1881), Section 138 - Withdrawal of Complaint* - Prayer for withdrawal of complaint at defence stage on the ground of compromise cannot be allowed without following the guideline of depositing 10% of the cheque amount, as laid down by Apex Court in the case of Damodar S. Prabhu Vs. Sayed Babalal. [Raghunath Singh Patel Vs. Chandra Pal Singh Parihar] ...3112

*Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, M.P., 2000 - Sections 4,5,7 - Refund of Money invested in Chit Fund Company* - Petitioner has filed the petition for refund of money invested by him with the respondent no. 3 - Properties of respondent no.3 company has already been attached under Section 4 of Act, 2000 - Special Court constituted under Section 7 is empowered to direct for equitable distribution among depositors - Petitioner directed to approach the Competent Authority who will apply to the Special Court along with certificates - Special Court will

ही दी जा सकती है – डी.एड. का नया पाठ्यक्रम आरंभ करने की अनुमति चाहने का आवेदन, 3 शैक्षणिक सत्रों के पूरा होने से पूर्व किया गया था – आवेदन समय पूर्व होने के कारण उचित रूप से अस्वीकार किया गया – याचिका खारिज। (स्पर्श एजूकेशन एण्ड वेलफेयर सोसायटी वि. नेशनल कांउसिल फॉर टीचर एजूकेशन) **(DB)...2412**

*राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध का आदेश* – याची के कृत्य ने जीवन की संतुलित गति भंग की – याची के कृत्य से लोक व्यवस्था प्रभावित हुई – निरोध के आदेश को न्यायोचित मानने के लिए यह पर्याप्त है। (हाजी अब्दुल रज्जाक वि. म.प्र. राज्य) **(DB)...2428**

*राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निवारक निरोध* – निरोध के आदेश के निष्पादन मे विलम्ब – याची द्वारा दिया गया निवासी पता पुलिस द्वारा विवादित नहीं – निरोध के आदेश के निष्पादन में चार वर्ष और सात माह का विलम्ब स्पष्ट नहीं किया गया – निरोध का आदेश अभिखण्डित किये जाने योग्य क्योंकि प्रत्यर्थीगण, निरोध के आदेश का निष्पादन नही किये जाने का कोई संतोषजनक स्पष्टिकरण पेश करने में विफल रहे – याचिका मंजूर। (मोहम्मद सरताज वि. म.प्र. राज्य) **(DB)...3007**

*परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – हस्तलेख विशेषज्ञ द्वारा परीक्षण* – अपराध कड़े दायित्व का अपराध है – दस्तावेजों को परीक्षण एवं राय हेतु हस्तलेख विशेषज्ञ के पास भेजने से इंकार करना, अभियुक्त को उपधारणा खण्डित करने के अवसर से वंचित करने की कोटि में आएगा – आवेदन मंजूर। (राम सेवक पाटीदार वि. नारायण सिंह पाटीदार) **...2876**

*परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – शिकायत को वापिस लेना* – बचाव के प्रक्रम पर समझौते के आधार पर शिकायत वापिस लेने के लिए निवेदन को चेक राशि का 10 % जमा करने के दिशानिर्देश का पालन किये बिना मंजूरी नहीं दी जा सकती जैसा कि उच्चतम न्यायालय द्वारा दामोदर एस. प्रभु वि. सैयद बाबालाल के प्रकरण में प्रतिपादित किया गया है। (रघुनाथ सिंह पटेल वि. चन्द्रपाल सिंह परिहार) **...3112**

*निक्षेपकों के हितों का संरक्षण अधिनियम, म.प्र. 2000 – धाराएं 4, 5 व 7 – विट फंड कंपनी में निवेश किये गये धन की वापसी* – याची ने प्रत्यर्थी क्रं. 3 के पास उसके द्वारा निवेश किये गये धन की वापसी हेतु याचिका दायर की – प्रत्यर्थी क्रं. 3 कंपनी की संपत्तियॉं, अधिनियम 2000 की धारा 4 के अंतर्गत पूर्व में ही कुर्क की जा चुकी – धारा 7 के अन्तर्गत गठित विशेष न्यायालय जमाकर्ताओं के बीच समान वितरण हेतु निदेश देने के लिए सक्षम है – याची को निदेशित किया गया कि वह प्रमाण पत्रों सहित सक्षम प्राधिकारी के समक्ष उपस्थित हों, जो विशेष न्यायालय में आवेदन करे – विशेष न्यायालय जमा राशियों का एवं उस पर प्रोद्भुत ब्याज के भुगतान के दायित्व का परीक्षण करेगा और जमाकर्ताओं के बीच समान वितरण हेतु आवश्यक आदेश जारी

verify the liability of payment of deposits and interests accrued and shall pass necessary order for equitable distribution amongst the depositors and even if after auctioning/selling the property of the Company, if the Court finds that it is not sufficient to cover the shortfall, shall impose such fine on the Company or its Directors to cover the shortfall. [Omkar Singh Vs. State of M.P.] (DB)...*108

*Non-Gazetted Class III Services (Collegiate Branch) Recruitment and Promotion Rules, M.P.1974 - Amendment of rules in 1991* - Amendment in the year 1991 providing that Laboratory Attendants having qualification for appointment on the post of Laboratory Technician only would be promoted - This amendment was already held prospective and similarly situated employees were directed to be given promotion - Order of State Administrative Tribunal was upheld by Supreme Court also - Nothing is left to be adjudicated as the claim of the identically placed persons was already decided by Tribunal duly affirmed by the Apex Court - Order for promotion of the petitioners giving benefit of promotion w.e.f. 16-12-1994 be immediately issued - However, petitioners would be entitled to the notional fixation of their pay on the promotional post of laboratory technician. [Ashok Kumar Chouksey Vs. State of M.P.] ...2675

*Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2), Evidence Act (1 of 1872), Section 35- Date of Birth* - Birth certificate issued by Registrar birth and death would prevail over the school certificate. [Basanti Bai (Smt.) Vs. Smt. Premwati Bai] ...2416

*Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2) - See - Constitution, Article 243 F,* [Basanti Bai (Smt.) Vs. Smt. Premwati Bai] ...2416

*Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 95, Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, M.P., 2011, Rule 6(7) - Power to frame rules* - Transfer of petitioners who were working as Panchayat Secretary was challenged as the transfer policy has not been framed by Commissioner as per the requirement of Rule 6(7) - Section 95 gives power to State Govt. to frame rules for carrying out the purpose of Adhiniyam - Authority who is competent to frame statutory rules, can always issue executive instructions on the subject - Enabling provision available under the Act cannot be restricted by the Rules made thereunder - Rule 6(7) gives power to frame a policy by the Commissioner but it cannot be said that the powers to frame

करेगा और तब भी यदि कंपनी की सम्पत्ति की नीलामी/विक्रय के बाद भी यदि न्यायालय यह पाता है कि कमी की पूर्ति हेतु यह पर्याप्त नहीं है तो कंपनी या इसके निदेशकों पर कमी की पूर्ति हेतु ऐसा जुर्माना लगायेगा। (ओमकार सिंह वि. म.प्र. राज्य) (DB)...*108

*अराजपत्रित तृतीय श्रेणी सेवाएं (कोलिजिएट ब्रांच) पदस्थापना एवं पदोन्नति नियम, म.प्र. 1974 – 1991 में नियमों का संशोधन* – वर्ष 1991 में किया गया संशोधन उपबंधित करता है कि प्रयोगशाला परिचर जो प्रयोगशाला तकनीशियन के पद पर नियुक्ति हेतु अर्हता रखते हैं केवल उन्हें पदोन्नति दी जाएगी – इस संशोधन को पहले ही भविष्यलक्षी माना गया था और समान रूप से स्थित कर्मचारियों को पदोन्नति प्रदान करने के लिए निदेशित किया गया था – राज्य प्रशासनिक अधिकरण के आदेश को उच्चतम न्यायालय द्वारा भी कायम रखा गया – कुछ भी न्यायनिर्णित करने के लिए नही बचता क्योंकि समान रूप से स्थित व्यक्तियों का दावा, अधिकरण द्वारा पहले ही निर्णित किया जा चुका है जिसे उच्चतम न्यायालय द्वारा सम्यक् रूप से अभिपुष्ट किया गया है – याचीगण को पदोन्नति का लाभ दिनांक 16–12–1994 से प्रभावी रूप से देते हुए पदोन्नति का आदेश शीघ्र जारी किया जाए – किन्तु याचीगण, प्रयोगशाला तकनीशियन के पदोन्नति पद पर उनके वेतन के काल्पनिक निर्धारण के हकदार होंगे। (अशोक कुमार चौकसे वि. म.प्र. राज्य) ...2675

*पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 35 (2), साक्ष्य अधिनियम (1872 का 1), धारा 35 – जन्म तिथि* – जन्म एवं मृत्यु पंजीयक द्वारा जारी जन्म प्रमाण पत्र, शाला प्रमाण पत्र पर अभिभावी होगा। (बसंती बाई (श्रीमति) वि. श्रीमति प्रेमवती बाई) ...2416

*पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 35 (2) – देखें – संविधान, अनुच्छेद 243 एफ,* (बसंती बाई (श्रीमति) वि. श्रीमति प्रेमवती बाई) ...2416

*पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 95, पंचायत सेवा (ग्राम पंचायत सचिव भर्ती और सेवा शर्तें) नियम, म.प्र., 2011, नियम 6 (7) – नियम विरचित करने की शक्ति* – पंचायत सचिव के रूप में कार्यरत याचीगण के स्थानांतरण को चुनौती दी गई क्योंकि स्थानांतरण नीति को आयुक्त द्वारा नियम 6 (7) की अपेक्षाओं के अनुरूप विरचित नही किया गया – धारा 95 राज्य सरकार को अधिनियम के उद्देश्य को पूरा करने के लिए नियम विरचित करने की शक्ति प्रदान करती है – प्राधिकारी जो कानूनी नियम विरचित करने के लिए सक्षम है, विषय पर कार्यपालिक अनुदेश सदैव जारी कर सकता है – अधिनियम के अंतर्गत उपलब्ध सामर्थ्यकारी उपबंध को उसके अधीन बनाए गये नियमों द्वारा निर्बंधित नही किया जा सकता – नियम 6 (7) आयुक्त द्वारा नीति विरचित करने की शक्ति प्रदान करता है परंतु यह नही कहा जा सकता कि विषय पर नीति विरचित करने की शक्तियां केवल आयुक्त

policy on the subject is restricted only to Commissioner - By Executive Instructions Rules can be supplemented but no executive instruction can supplant the rules - By transfer policy framed by State as the rules are not supplanted, no interference is warranted on this count - Petition dismissed. [Awadhesh Kumar Sharma Vs. State of M.P.] ....*113

*Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, M.P., 2011, Rule 6(7) - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 95,* [Awadhesh Kumar Sharma Vs. State of M.P.] ...*113

*Partnership Act (9 of 1932), Sections 58, 59 & 60 - Registration of Firm - Place of Business* - Petitioner firm was registered under the Act as it is having its place of business within the territorial jurisdiction of Sub-Registrar - After the retirement of one of the partners, partnership deed was reconstituted and place of business of firm was stated to be at Rajasthan - Application for alteration in the principal place of business was rejected by the Sub-Registrar being beyond his jurisdiction - Held - Act provides for effecting registration in any area in which the firm carries on business - It is not mandatory for registering the firm only at the place where its principal place of business is situated - Sub-Registrar directed to pass appropriate orders. [Divya Marble (M/s.) Vs. State of M.P.] ...2718

*Penal Code (45 of 1860), Sections 100, 302, 304 Part I - Private Defence* - Accused persons were in possession of land in dispute - Complainant party had gone there along with revenue authorities for getting the demarcation - As the complainant party had reached on the field along with revenue officer for placing marks of boundary on it, therefore, apprehension in the mind of the appellants would be justified upto limited extent only - Deceased no. 1 received 17 injuries and Deceased no. 2 received 4 injuries which indicates that appellants had exceeded their right of private defence - As the appellants had acted in a cruel manner to some extent therefore, they are guilty under Section 304 Part I - Appellants sentenced to 10 years R.I. on each count - Appeal partly allowed. [Om Prakash Vs. State of M.P.] (DB)...2836

*Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 32 - Dying Declaration* - The deceased was set on fire by the appellants while she was alone in the house - She narrated the incident to her husband when he came back from the fields - In 1st dying declaration

तक सीमित है – कार्यपालिक अनुदेशों द्वारा नियमों की अनुपूर्ति की जा सकती है किन्तु कोई कार्यपालिक अनुदेश नियमों को नही हटा सकता – राज्य द्वारा विरचित स्थानांतरण नीति चूंकि नियमों को हटाती नही, इस कारण हस्तक्षेप की कोई आवश्यकता नही – याचिका खारिज। (अवधेश कुमार शर्मा वि. म.प्र. राज्य) ...*113

*पंचायत सेवा (ग्राम पंचायत सचिव भर्ती और सेवा शर्तें) नियम, म.प्र., 2011, नियम 6 (7) – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 95.* (अवधेश कुमार शर्मा वि. म.प्र. राज्य) ...*113

*भागीदारी अधिनियम (1932 का 9), धाराएं 58, 59 व 60 – फर्म का पंजीयन – कारोबार का स्थान* – याची फर्म को अधिनियम के अंतर्गत पंजीकृत किया गया क्योंकि उसके कारोबार का स्थान उप–पंजीयक के क्षेत्राधिकार के भीतर था – भागीदारों में से एक की निवृत्ति पश्चात्, भागीदारी विलेख पुनर्गठित किया गया और फर्म के कारोबार का स्थान राजस्थान में होने का कथन किया गया – कारोबार के प्रमुख स्थान में बदलाव का आवेदन उपपंजीयक द्वारा, उसकी अधिकारिता से परे होने के कारण अस्वीकार किया गया – अभिनिर्धारित – किसी भी क्षेत्र में पंजीयन करने के लिए अधिनियम उपबंधित करता है जहां फर्म अपना कारोबार चलाती है – फर्म को केवल उस स्थान पर पंजीयन कराना आज्ञापक नहीं जहां उसके कारोबार का प्रमुख स्थान स्थित है – उप पंजीयक को समुचित आदेश पारित करने के लिए निदेशित किया गया। (दिव्या मार्बल (मे.) वि. म.प्र. राज्य) ...2718

*दण्ड संहिता (1860 का 45), धाराएं 100, 302 व 304 भाग– I – प्राईवेट प्रतिरक्षा* – अभियुक्तगण के पास विवादित भूमि का कब्जा था – शिकायतकर्ता पक्षकार, राजस्व प्राधिकारियों के साथ वहां सीमांकन करवाने गया था – चूंकि शिकायतकर्ता पक्ष, खेत पर सीमा पर निशान लगाने के लिए राजस्व अधिकारी के साथ गया था इसलिए, अपीलार्थीगण के मन में आशंका केवल सीमित विस्तार तक न्यायोचित होगी – मृतक क्र. 1 को 17 क्षतियां व मृतक क्र. 2 को 4 क्षतियां कारित हुई जो दर्शाती हैं कि अपीलार्थीगण ने अपने निजी प्रतिरक्षा के अधिकार का अत्याधिक प्रयोग किया है – चूंकि अपीलार्थीगण ने कुछ हद तक क्रूरता से कार्य किया इसलिए वे धारा 304 भाग I के अंतर्गत दोषी हैं – अपीलार्थीगण को प्रत्येक आरोप के लिए 10 वर्षों के सश्रम करावास से दण्डादिष्ट किया गया – अपील अंशतः मंजूर। (ओमप्रकाश वि. म.प्र. राज्य) (DB)...2836

*दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन* – अपीलार्थीगण द्वारा मृतिका को जला दिया गया जब वह घर में अकेली थी – उसका पति खेत से जब घर आया तब उसने उसे घटना की जानकारी दी – नायब तहसीलदार द्वारा अभिलिखित किये गये प्रथम मृत्युकालिक कथन में उसने अपीलार्थीगण द्वारा उसे आग लगाने का कोई कारण नही बताया जबकि द्वितीय

recorded by Naib Tahsildar, she did not attribute any motive to the appellants for setting her on fire whereas in the 2nd dying declaration she alleged that appellant no.1 was having evil eye on her - However, in the earliest report made by the husband of the deceased, it was alleged that when he came back from the fields he found the smoke coming out of the house and the door was opened with the help of sabbal and found that the deceased was sitting in a burnt condition and merely asked for treatment - In view of the earliest statement/information given by the husband to the police, the dying declarations made by the deceased do not appear to be trustworthy - Appeal allowed. [Kisna Vs. State of M.P.] (DB)...2519

*Penal Code (45 of 1860), Section 302 - Murder - Circumstantial Evidence* - Appellant used to quarrel with his wife and had a quarrel with her in the late night, the appellant and deceased were seen together, the dead body of the deceased was found in the house, the appellant absconded from the place of occurrence and was arrested after about 5 days, weapon of offence as seized at his instance and the death of the wife of the appellant was homicidal in nature - Guilt of the appellant is proved beyond reasonable doubt. [Tunnu @ Rajesh Kumar Vs. State of M.P.] (DB)...2498

*Penal Code (45 of 1860), Section 302 - Murder - Evidence of eye witnesses inspire confidence* - Sharp edged weapons were also recovered at the instances of the appellants - Oral Evidence corroborates the Medical Evidence as 10 incised wounds were found - Fatal injuries were also caused on the vital part of the body of the deceased - Appellants had intended to commit the murder of deceased - Appeal dismissed. [Major Singh Vs. State of M.P.] (DB)...2540

*Penal Code (45 of 1860), Section 302 or 302 Part II - Murder or Culpable Homicide not amounting to murder*- Appellant used to visit the house of the deceased because of love relations - On the insistence of deceased that he should keep her as his wife, appellant kicked her and picked up kerosene, sprinkled it and set the deceased on fire - When she caught fire and shouted, he extinguished the fire to save her and did not try to run away from the spot - Held - It can be appreciated that the incident occurred in a sudden impulse without any premeditation on the part of appellant - Appellant did not intend to inflict the injuries on deceased which she ultimately sustained - Appellant guilty of committing offence under Section 304 Part II and sentenced to 10 years R.I. [Jham Singh Pawar Vs. State of M.P.] (DB)...2503

मृत्युकालिक कथन में उसने यह अभिकथन किया कि अपीलार्थी क्रमांक 1 उस पर बुरी नजर रखता था – किन्तु मृतिका के पति द्वारा की गई अविलम्ब रिपोर्ट में यह अभिकथित किया गया है कि जब वह खेत से लौटा उसने पाया कि घर से धुंआ निकल रहा था और सब्बल की मदद से दरवाजा खोला गया एवं पाया कि मृतिका जली हुई अवस्था में बैठी थी और सिर्फ इलाज के लिए कहा – पति द्वारा पुलिस को दिये गये आरंभिक कथन/सूचना के प्रकाश में मृतिका द्वारा दिये गये मृत्युकालिक कथन विश्वास योग्य प्रतीत नही होते – अपील मंजूर। (किसना वि. म.प्र. राज्य) **(DB)...2519**

*दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य* – अपीलार्थी अपनी पत्नी से अक्सर झगड़ा किया करता था और उसने देर रात उससे झगड़ा किया, अपीलार्थी तथा मृतिका एक साथ देखे गये, मृतिका का शव घर में पाया गया, अपीलार्थी घटना स्थल से फरार हो गया और उसे 5 दिन पश्चात् गिरफतार किया गया, उसकी निशानदेही पर हथियार की जब्ती की गई और अपीलार्थी की पत्नी की मृत्यु मानववध स्वरूप की थी – अपीलार्थी की दोषिता युक्तियुक्त संदेह से परे साबित की गई। (टुन्नू उर्फ राजेश कुमार वि. म.प्र. राज्य) **(DB)...2498**

*दण्ड संहिता (1860 का 45), धारा 302 – हत्या – प्रत्यक्षदर्शी साक्षियों का साक्ष्य* विश्वास उत्पन्न करता है – अपीलार्थीगण की निशानदेही पर धारदार शस्त्रों को भी बरामद किया गया – मौखिक साक्ष्य से चिकित्सीय साक्ष्य की पुष्टि होती है कि 10 कटे घाव पाये गये थे – मृतक के शरीर के कोमलांगों पर भी घातक क्षतियां कारित की गई – अपीलार्थीगण का आशय मृतक की हत्या कारित करना था – अपील खारिज। (मेजर सिंह वि. म.प्र. राज्य) **(DB)...2540**

*दण्ड संहिता (1860 का 45), धारा 302 या 302 भाग II – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानववध* – अपीलार्थी का मृतिका के घर पर प्रेम संबंधा के कारण आना जाना था – मृतिका के इस आग्रह पर कि उसे पत्नी के रूप में उसको रखना चाहिए, अपीलार्थी ने उसे लात मारी और मिट्टी का तेल उठाकर मृतिका पर छिड़ककर उसे आग लगा दी – जब उसे आग लगी और चिल्लायी, उसने उसे बचाने के लिए आग बुझाई और घटना स्थल से भागने का प्रयास नही किया – अभिनिर्धारित – यह मूल्यांकन किया जा सकता है कि घटना अचानक आवेग में अपीलार्थी की ओर से बिना किसी पूर्व चिंतन के घटित हुई – अपीलार्थी का आशय मृतिका को क्षतियां पहुंचाना नही था जो उसने अंतिमतः सहन की – अपीलार्थी, धारा 304 भाग II के अंतर्गत अपराध कारित करने का दोषी एवं 10 वर्ष सश्रम कारावास से दण्डादिष्ट किया गया। (झाम सिंह पवार वि. म.प्र. राज्य) **(DB)...2503**

## INDEX

*Penal Code (45 of 1860), Section 302 or 304 Part I - Culpable Homicide not amounting to murder* - Accused persons tried to collect Mahua forcibly despite the resistance offered by deceased - Evidence also shows that some of the accused persons carried the deceased to Police Station - However, as they caused multiple serious injuries to the deceased by sticks, it can be inferred that they either intended to cause death or to cause such bodily injuries to deceased as were likely to cause his death - Conviction altered to 304 Part I and sentenced to R.I. for 10 years - Appeal partly allowed. [Mahadev @ Jhadha Vs. State of M.P.] (DB)...2532

*Penal Code (45 of 1860), Section 302 / 304 Part I - Culpable Homicide not amounting to murder* - Deceased died due to a solitary head injury caused by appellant - Appellant was provoked all of a sudden on a trivial issue - Appellant did not use any conventional weapon to inflict injury - Appellant convicted under Section 304 Part I and sentenced to 10 years RI. [Tunnu @ Rajesh Kumar Vs. State of M.P.] (DB)...2498

*Penal Code (45 of 1860), Sections 304 Part-II, 323, Probation of Offenders Act (20 of 1958), Section 6, Criminal Procedure Code, 1973 (2 of 1974), Section 357* - Acquitted co-accused abused deceased with filthy language and asked that why he is spreading rumor that he married his daughter after obtaining the money - Appellant lashed with stick came there and gave a blow of such stick on the head of deceased - Co accused and his son also gave blows of stick on the person of deceased - During such incident deceased was also subjected to threat of his life - Held - Considering the age i.e. 19 years, of the appellant he is held entitled to be extended benefit of mandatory provision of Section 6 of the Probation of Offenders Act and directed to pay compensation of Rs. 25,000/- to natural heirs and legal representatives of victim - Conviction of the appellant affirmed under Section 323, 304 Part II, IPC - Appeal allowed in part. [Vinay Singh Vs. State of M.P.] ...2473

*Penal Code (45 of 1860), Section 306 - Abetment to commit suicide* - No date, occasion or specific particular on which the appellant or any other gave alleged harassment or cruelty to the deceased - Appellant cannot be held to have instigated the deceased to commit suicide. [Sarjoo Vs. State of M.P.] ...2806

*Penal Code (45 of 1860), Section 323 - Sentence* - Incident took place near about 20 years back - Appellant has not remained in jail even for

*दण्ड संहिता (1860 का 45), धारा 302 या 304 भाग– I– हत्या की कोटि में न आने वाला आपराधिक मानव वध* – अभियुक्त व्यक्तियों ने मृतक द्वारा विरोध किये जाने के बावजूद बलपूर्वक महुआ एकत्रित करने का प्रयास किया – साक्ष्य भी दर्शाता है कि कुछ अभियुक्तगण मृतक को पुलिस थाने ले गये – चूंकि उन्होंने मृतक को लाठियों से कई गंभीर क्षतियॉ कारित की, यह निष्कर्ष निकाला जा सकता है कि उनका आशय या तो मृतक की मृत्यु कारित करना या उसे ऐसी शारीरिक क्षति कारित करना था जिससे उसकी मृत्यु संभावित थी – दोषसिद्धि 304 भाग I में परिवर्तित की गयी और 10 वर्ष के सश्रम कारावास से दण्डादिष्ट किया गया – अपील अंशतः मंजूर। (महादेव उर्फ झाधा वि. म.प्र. राज्य) **(DB)...2532**

*दण्ड संहिता (1860 का 45), धारा 302/304 भाग I – हत्या की कोटि में न आने वाला आपराधिक मानव वध* – मृतिका की मृत्यु अपीलार्थी द्वारा सिर पर कारित एक मात्र चोट के कारण हुई – अपीलार्थी, मामूली विवाद पर अचानक उत्तेजित हुआ – अपीलार्थी ने चोट कारित करने के लिए किसी परम्परागत हथियार का उपयोग नहीं किया – अपीलार्थी को धारा 304 भाग I के अन्तर्गत दोषसिद्ध किया गया और 10 वर्ष के सश्रम कारावास से दण्डादिष्ट किया गया। (टुन्नू उर्फ राजेश कुमार वि. म.प्र. राज्य) **(DB)...2498**

*दण्ड संहिता (1860 का 45), धाराएँ 304 भाग– II, 323, अपराधी परिवीक्षा अधिनियम (1958 का 20), धारा 6, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 357* – दोषमुक्त सहअभियुक्त ने मृतक को अभद्र भाषा में गालियां दीं और पूछा कि वह यह अफवाह क्यों फैला रहा है कि उसने अपनी पुत्री की शादी पैसा प्राप्त करने के बाद की – अपीलार्थी लाठी से सुसज्जित होकर वहां आया और उक्त लाठी का एक वार मृतक के सिर पर किया – सह अभियुक्त और उसके पुत्र ने भी लाठियों से मृतक पर वार किया – उक्त घटना के दौरान मृतक को उसकी मृत्यु का भय भी दिया गया – अभिनिर्धारित – अपीलार्थी की उम्र 19 वर्ष को विचार में लेते हुए अपीलार्थी अपराधी परिवीक्षा अधिनियम की धारा 6 के आज्ञापक उपबंध के विस्तार का लाभ पाने का हकदार है और प्रतिकर के रुप में रुपये 25000/– मृतक के प्राकृतिक वारिस और विधिक प्रतिनिधि को भुगतान करने के लिए निदेशित किया गया – अपीलार्थी की भा.द.सं. की धारा 323, 304 भाग II के अंतर्गत दोषसिद्धि की पुष्टि की गई – अपील अंशतः मंजूर। (विनय सिंह वि. म.प्र. राज्य) **...2473**

*दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण* – मृतिका के साथ अपीलार्थी या किसी अन्य ने अभिकथित उत्पीड़न या क्रूरता का व्यवहार किये जाने की कोई तारीख, अवसर या विनिर्दिष्ट विशिष्टि नही – अपीलार्थी ने मृतिका को आत्महत्या कारित करने के लिए उकसाये जाने की धारणा नही की जा सकती। (सरजू वि. म.प्र. राज्य) **...2806**

*दण्ड संहिता (1860 का 45), धारा 323 – दण्डादेश* – घटना करीब 20 वर्ष पूर्व घटित हुई – अपीलार्थी एक दिन के लिए भी कारागृह में नही रहा – किन्तु, इस तथ्य

a single day - However, considering the fact that during last 20 years, the appellant has suffered the mental agony of his case and has also appeared before the Trial Court as well as Appellate Court, jail sentence is set aside and a fine of Rs. 1000 is imposed. [Parvat Singh Vs. Khanjuwa] ...2491

*Penal Code (45 of 1860), Section 323 & 376, Criminal Procedure Code, 1973 (2 of 1974), Section 222- Inferior offence* - Offence under Section 323 cannot be said to be inferior offence punishable under Section 376 - Appellant could not have been convicted without framing charge under Section 323 of I.P.C. [Laalu @ Balmukund Sharma Vs. State of M.P.] ...2526

*Penal Code (45 of 1860), Section 354 - Outraging the modesty* - Appellant undressed the prosecutrix and directed her to lie down on his pant, which was placed on the earth and thereafter, he lied down upon the prosecutrix and in the meantime, the witnesses came to the spot, the appellant ran away - As the appellant had used some criminal force upon the prosecutrix to outrage her modesty, he is guilty of committing offence punishable under Section 354 of I.P.C. [Lal Singh Gond Vs. State of M.P.] ...2510

*Penal Code (45 of 1860), Section 354 - Outraging the modesty* - Prosecutrix a minor girl was detained by appellant who was unknown to the prosecutrix - Indecent act of removal of cloths must have been done - Appellant is guilty of committing offence punishable under Section 354 - Sentenced to 6 months R.I. and a fine of Rs. 500. [Vinod @ Arvind Vs. State of M.P.] ...2827

*Penal Code (45 of 1860), Section 363 - Kidnapping* - Appellant induced prosecutrix to go with him to the bushes near the Nala and therefore, who was taken few yards away from the place where she was playing - She was not taken away from the guardianship of her maternal grand father - Prosecutrix was taken to a nearby place, so that they could not be seen by the others - Act of the appellant doesnot amount to kidnapping. [Lal Singh Gond Vs. State of M.P.] ...2510

*Penal Code (45 of 1860), Sections 363 & 366 - Kidnapping* - Prosecutrix went along with appellant in the night on her own - As prosecutrix was below 18 years of age, she was taken away from the guardianship of her parents without their consent - Appellant guilty of committing offence under Section 363 and not under Section 366 of I.P.C. - Trial Court had awarded sentence of 2 years for offence under Section

का विचार करते हुए कि 20 वर्षों के दौरान अपीलार्थी ने अपने प्रकरण में मानसिक पीड़ा सहन की है और विचारण न्यायालय तथा अपीली न्यायालय के समक्ष उपस्थित हुआ है, कारावास का दण्डादेश अपास्त किया गया और रू. 1000 का अर्थदण्ड अधिरोपित किया गया। (पर्वत सिंह वि. खंजुवा) ...2491

*दण्ड संहिता (1860 का 45), धारा 323 व 376, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 222 – निम्नतर अपराध.* – धारा 323 के अंतर्गत अपराध को धारा 376 के अंतर्गत दण्डनीय अपराध से निम्नतर नहीं कहा जा सकता – अपीलार्थी को भा. द.सं. की धारा 323 के अंतर्गत आरोप विरचित किये बिना दोषसिद्ध नही किया जा सकता था। (लालू उर्फ बालमुकुंद शर्मा वि. म.प्र. राज्य) ...2526

*दण्ड संहिता (1860 का 45), धारा 354 – लज्जा भंग करना* – अपीलार्थी ने अभियोक्त्री को निर्वस्त्र किया और उसे जमीन पर रखे अपने पतलून पर लेट जाने के लिए निदेशित किया और इसके बाद वह अभियोक्त्री पर लेट गया और उसी समय साक्षीगण घटनास्थल पर आये, अपीलार्थी भाग गया – चूंकि अपीलार्थी ने अभियोक्त्री पर उसकी लज्जा भंग करने के लिए कुछ आपराधिक बल का प्रयोग किया, वह भा.द.सं. की धारा 354 के अंतर्गत दण्डनीय अपराध कारित करने का दोषी है। (लाल सिंह गौंड वि. म.प्र. राज्य) ...2510

*दण्ड संहिता (1860 का 45), धारा 354 – लज्जा भंग करना* – अभियोक्त्री एक अप्राप्तवय बालिका को अपीलार्थी द्वारा निरूद्ध किया गया जो अभियोक्त्री के लिए अनजान था – कपड़े हटाने का अशिष्ट कार्य अवश्य ही किया गया होगा – अपीलार्थी धारा 354 के अंतर्गत दण्डनीय अपराध कारित करने का दोषी – 6 माह के सश्रम कारावास एवं रू. 500 के अर्थदण्ड से दण्डादिष्ट किया गया। (विनोद उर्फ अरविन्द वि. म.प्र. राज्य) ...2827

*दण्ड संहिता (1860 का 45), धारा 363 – व्यपहरण* – अपीलार्थी ने अभियोक्त्री को अपने साथ नाले के पास की झाड़ियों में चलने के लिए उत्प्रेरित किया और इसलिए, उसे उस स्थान से कुछ गज दूर ले जाया गया जहां वह खेल रही थी – उसे उसके नानाजी के संरक्षण से नही ले जाया गया – अभियोक्त्री को नजदीक के स्थान पर ले जाया गया जिससे कि अन्य लोग देख न सके – अपीलार्थी का कृत्य व्यपहरण की कोटि में नहीं आता। (लाल सिंह गौंड वि. म.प्र. राज्य) ...2510

*दण्ड संहिता (1860 का 45), धारा 363 व 366 – व्यपहरण* – अभियोक्त्री रात में अपीलार्थी के साथ स्वयं गई थी – चूंकि अभियोक्त्री 18 वर्ष की आयु से कम की है, उसे उसके माता पिता के संरक्षण से बिना उनकी सहमति के ले जाया गया – अपीलार्थी भा.द.सं. की धारा 363 के अंतर्गत और न कि धारा 366 के अंतर्गत अपराध कारित करने का दोषी – विचारण न्यायालय ने भा.द.सं. की धारा 363 के अंतर्गत अपराध के लिए 2 वर्षों का दण्डादेश प्रदान किया और चूंकि अपीलार्थी पहले ही 3 वर्षों तक कारागृह में रहा है इसलिए विचारण न्यायालय द्वारा पारित दण्डादेश में कोई हस्तक्षेप नही किया

363 of I.P.C. and as the appellant has already remained in jail for 3 years, therefore, no interference is made in the sentence passed by the Trial Court - Appeal partly allowed. [Arman Ali Vs. State of M.P.] ...2817

*Penal Code (45 of 1860), Section 376 - Age of Prosecutrix - Determination - Parents of the prosecutrix were not examined* - Entry in School register was made on the basis of information given by parents who were not examined - Age disclosed by the prosecutrix was merely hearsay - Evidence of sister who is aged about 17 years stated about the age of prosecutrix as 14 years - Sister was 3 years at the time of birth of the prosecutrix thus She is also a hearsay witness - No other documentary evidence was filed - Prosecution failed to prove that prosecutrix was aged about 14 years. [Arman Ali Vs. State of M.P.] ...2817

*Penal Code (45 of 1860), Section 376 - Determination of age - Ossification test* - Ossification test was not conducted on the advise of Director Medico Legal Institute - Investigating agency cannot refuse to investigate on any point of dispute - Whether Educational Record is believable or not is to be decided by Court and not by Doctor, even Director of Medico Legal Institute - It appears that Ossification test was refused due to some ulterior motive which creates an adverse inference against prosecution. [Arman Ali Vs. State of M.P.] ...2817

*Penal Code (45 of 1860), Section 376 - Determination of Age - Parents of prosecutrix were not examined* - No basis is shown by which the date of birth of the prosecutrix was recorded in school register - No ossification test was conducted - An adverse inference has to be drawn - Considering the entire situation prosecutrix appears to be above 16 years of age but below 18 years of age. [Arman Ali Vs. State of M.P.] ...2817

*Penal Code (45 of 1860), Section 376 - Rape* - Appellant undressed the prosecutrix and lay down over her - Prosecutrix in her examination in chief stated specifically that the appellant could not do anything because at that juncture, the witnesses reached to the spot and on seeing them, the appellant fled away - Appellant guilty of committing offence punishable under Section 376/511 of I.P.C. - Appeal partly allowed. [Santosh Kumar Vishwakarma Vs. State of M.P.] ...2481

*Penal Code (45 of 1860), Section 376 - Rape* - Photographs of prosecutrix with the appellant shows that she was in love with the appellant

गया – अपील अंशतः मंजूर। (अरमान अली वि. म.प्र. राज्य) ...2817

*दण्ड संहिता (1860 का 45), धारा 376 – अभियोक्त्री की आयु – निर्धारण* – अभियोक्त्री के माता–पिता का परीक्षण नही किया गया – शाला पंजी में प्रविष्टि माता पिता द्वारा दी गई जानकारी के आधार पर की गई थी जिनका परीक्षण नही किया गया – अभियोक्त्री द्वारा प्रकट की गई उम्र मात्र अनुश्रुति थी – बहन जो करीब 17 वर्ष की आयु की है, अपनी साक्ष्य में उसने अभियोक्त्री की उम्र 14 वर्ष बताई – अभियोक्त्री के जन्म के समय बहन 3 वर्ष की थी, अतएव वह भी अनुश्रुत साक्षी है – कोई अन्य दस्तावेजी साक्ष्य प्रस्तुत नही किया गया – अभियोजन यह साबित करने में विफल रहा कि अभियोक्त्री करीब 14 वर्ष के आयु की थी। (अरमान अली वि. म.प्र. राज्य)...2817

*दण्ड संहिता (1860 का 45), धारा 376 – आयु का निर्धारण – ओसीफिकेशन जांच* – निदेशक, चिकित्सा विधिक संस्था की सलाह पर ओसिफिकेशन जांच नही की गई – अन्वेषण एजेंसी विवाद के किसी बिंदू पर अन्वेषण करने से इंकार नही कर सकती – क्या शैक्षणिक अभिलेख विश्वसनीय है अथवा नही, इसका निर्णय न्यायालय द्वारा किया जाएगा और न कि चिकित्सक द्वारा, भले ही वह चिकित्सा विधिक संस्था का निदेशक हो – यह प्रतीत होता है कि ओसिफिकेशन जांच से इंकार किसी अंतरस्थ हेतु से किया गया था जिससे अभियोजन के विरूद्ध प्रतिकूल निष्कर्ष निर्मित होता है। (अरमान अली वि. म.प्र. राज्य) ...2817

*दण्ड संहिता (1860 का 45), धारा 376 – आयु का निर्धारण – अभियोक्त्री के माता पिता का परीक्षण नही किया गया* – शाला पंजी में अभियोक्त्री की जन्म तिथि अभिलिखित किये जाने का कोई आधार दर्शाया नही गया – कोई ओसिफिकेशन जांच नही की गई – प्रतिकूल निष्कर्ष निकालना होगा – संपूर्ण स्थिति का विचार करते हुए अभियोक्त्री 16 वर्ष से अधिक किन्तु 18 वर्ष से कम आयु की होना प्रतीत होता है। (अरमान अली वि. म.प्र. राज्य) ...2817

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अपीलार्थी ने अभियोक्त्री को निर्वस्त्र किया और उसके ऊपर लेट गया – अभियोक्त्री ने अपने मुख्य परीक्षण में विनिर्दिष्ट रूप से कथन किया है कि अपीलार्थी कुछ नही कर सका क्योंकि उसी समय, साक्षीगण घटनास्थल पर पहुंचे और उन्हें देखकर अपीलार्थी भाग गया – अपीलार्थी, भा. द.सं. की धारा 376/511 के अंतर्गत दण्डनीय अपराध कारित करने का दोषी – अपील अंशतः मंजूर। (संतोष कुमार विश्वकर्मा वि. म.प्र. राज्य) ...2481

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अपीलार्थी के साथ अभियोक्त्री की तस्वीरें दर्शाती है कि वह अपीलार्थी से प्रेम करती थी – अभियोक्त्री अपीलार्थी के साथ कमरे में पूरी रात रही परंतु कोई शोर नही मचाया – अभियोक्त्री का

- Prosecutrix remained with the appellant in the room for the whole night but did not raise any hue or cry - Conduct of prosecutrix clearly indicates that nothing was done by the appellant forcefully and therefore she was a consenting party. [Arman Ali Vs. State of M.P.] ...2817

*Penal Code (45 of 1860), Section 376/511 - Age of Prosecutrix - Kotwari Book* - Entry of Kotwari Book is a conclusive proof of the birth of a particular child because the entry was made immediately after the birth of the child. [Vinod @ Arvind Vs. State of M.P.] ...2827

*Penal Code (45 of 1860), Section 376/511 - Age of Prosecutrix - Ossification Test - Age between 14-16 years* - Doctor found that secondary sex characterstics of prosecutrix were not fully developed - Pubic hair were scanty and other organs were not fully developed - Looking to the physical appearance of the prosecutrix, two years cannot be added on the upper side. [Vinod @ Arvind Vs. State of M.P.] ...2827

*Penal Code (45 of 1860), Section 376/511 - Age of Prosecutrix - Ossification Test* - Age between 15-16 years - Doctor found that secondary sex characterstics of prosecutrix were not fully developed and menaces (sic: menses) were not started - Looking to the physical appearance of the prosecutrix, two years cannot be added on the upper side. [Lal Singh Gond Vs. State of M.P.] ...2510

*Penal Code (45 of 1860), Section 376/511 - Attempt to commit rape* - No External or Internal injury was found - Hymen was found intact - Appellant did not remove his underwear before lying upon the prosecutrix - It cannot be said that he attempted to commit the rape. [Lal Singh Gond Vs. State of M.P.] ...2510

*Penal Code (45 of 1860), Section 376/511 - Attempt to commit rape* - No injury was found - Hymen was found intact - Prosecutrix did not raise any hue and cry when her undergarments were removed though the place of incident was very much near to the public road - There was nobody to stop the appellant from committing the intercourse if he had intended to do so - As no penetration was found therefore, his overt act doesnot fall within the purview of attempt to commit rape. [Vinod @ Arvind Vs. State of M.P.] ...2827

*Penal Code (45 of 1860), Section 379 - Theft* - Recovery of stolen currency from alleged place not proved - Entry of arrival and returning, description of work done neither produced nor exhibited - Co-accused

आचरण स्पष्ट रूप से उपदर्शित करता है कि अपीलार्थी द्वारा बलपूर्वक कुछ भी नही किया गया और इसलिए वह सम्मत पक्षकार थी। (अरमान अली वि. म.प्र. राज्य) ...2817

*दण्ड संहिता (1860 का 45), धारा 376/511 – अभियोक्त्री की आयु – कोटवारी बही* – कोटवारी बही की प्रविष्टि, किसी विशिष्ट बालक के जन्म का निश्चायक प्रमाण है क्योंकि प्रविष्टि बालक के जन्म के तुरंत बाद की गई थी। (विनोद उर्फ अरविन्द वि. म.प्र. राज्य) ...2827

*दण्ड संहिता (1860 का 45), धारा 376/511 – अभियोक्त्री की आयु – ओसीफिकेशन जांच – आयु 14–16 वर्ष के बीच* – चिकित्सक ने पाया कि अभियोक्त्री के द्वितीय यौन लक्षण पूर्णतः विकसित नहीं हुए थे – जनेन्द्रियों के बाल और अन्य अवयव पूर्णतः विकसित नहीं हुए थे – अभियोक्त्री की शारीरिक संरचना देखते हुए, दो वर्ष अधिक नही जोड़े जा सकते। (विनोद उर्फ अरविन्द वि. म.प्र. राज्य) ...2827

*दण्ड संहिता (1860 का 45), धारा 376/511 – अभियोक्त्री की आयु – ओसिफिकेशन जांच – आयु 15–16 वर्ष के बीच* – चिकित्सक ने पाया कि अभियोक्त्री के द्वितीय यौन लक्षण पूर्णतः विकसित नही हुए थे और उसका मासिक धर्म आरंभ नही हुआ था – अभियोक्त्री की शारीरिक संरचना देखकर, दो वर्ष अधिक नही जोड़े जा सकते। (लाल सिंह गौंड वि. म.प्र. राज्य) ...2510

*दण्ड संहिता (1860 का 45), धारा 376/511 – बलात्कार का प्रयास – कोई बाह्य या आंतरिक चोट नही पायी गई – हायमन अक्षत पाया गया* – अभियोक्त्री पर लेटने से पहले अपीलार्थी ने अपना अंडरवियर नही हटाया – यह नही कहा जा सकता कि उसने बलात्कार का प्रयत्न किया था। (लाल सिंह गौंड वि. म.प्र. राज्य) ...2510

*दण्ड संहिता (1860 का 45), धारा 376/511 – बलात्कार का प्रयत्न – कोई चोट नही पाई गई – हाईमन सही सलामत पाया गया* – अभियोक्त्री ने कोई शोर नही मचाया जब उसके अंतर्वस्त्र हटाये गये यद्यपि घटनास्थल, सार्वजनिक पथ के बहुत नजदीक था – अपीलार्थी को संभोग कारित करने से रोकने वाला कोई नही था यदि यह उसका आशय होता – चूंकि कोई प्रवेशन नही पाया गया इसलिए प्रत्यक्ष कृत्य, बलात्कार कारित करने के प्रयत्न की कोटि में नही आता। (विनोद उर्फ अरविन्द वि. म. प्र. राज्य) ...2827

*दण्ड संहिता (1860 का 45), धारा 379 – चोरी – अभिकथित स्थान से चुराई गई मुद्रा की बरामदगी साबित नहीं* – आने और जाने की प्रविष्टि, किये गये कार्य का विवरण न तो प्रस्तुत किया गया और न ही प्रदर्शित किया गया – सह–अभियुक्त समान

acquitted on the basis of same evidence - Findings against principle of parity - Revision allowed - Applicant acquitted from charge. [Ramcharan Vs. State of M.P.] ...2575

*Penal Code (45 of 1860), Sections 379, 411, 120-B & 201* - Police Head Constable seized 29.851 kg. of silver from possession of the respondent - After investigation challan was filed - Judicial Magistrate First Class finding respondent not guilty for any offence, acquitted him - Property seized from the respondent, was also directed to be released in favour of the respondent - However, during this period the property was misappropriated by the police officials - Held - The property was seized on behalf of the State by its employee and property was mis-appropriated by its employee - The State is liable to return the property, after the decision of the case - Single Judge rightly directed to return the seized property or its value as on date - Writ appeal dismissed. [State of M.P. Vs. Motilal] (DB)...2331

*Penal Code (45 of 1860), Section 402* - Assembly for the purpose of committing dacoity - Seized weapons not produced - Police officer who conducted the raid, prepared the seizure memo and lodged F.I.R. himself investigated the matter - Acquittal of appellants under Section 399 and conviction under Section 402 of I.P.C. is self contradictory - Appeal allowed. [Jitendra Soni Vs. State of M.P.] ...2549

*Penal Code (45 of 1860), Sections 467, 468 & 471 - See - Essential Commodities Act, 1955, Section 3/7*[Rajeev Kumar Vs. State of M.P.] ...2583

*Penal Code (45 of 1860) Sections 498-A, 34 - See - Criminal Procedure Code, 1973, Section 482,* [Kamal Nayan Singh Vs. State of M.P.] ...2894

*Penal Code (45 of 1860), Section 500, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Defamatory article - Quashment of proceedings* - News item published in news paper that the respondent is behaving in an erratic and uncivilized manner in his bid to project himself as a police wala gunda - Trial of Editor is yet to commence - Inquiry preceding issuance of process did not reflect any prima facie involvement of anyone of the applicants - Order issuing process is set aside - However, nothing shall preclude the Magistrate from proceeding against the applicants under Section 319 of Cr.P.C. if from the evidence adduced during trial of Editor, their complicity in selection and publication of defamatory news item is established. [Rakesh Agrawal Vs. B.S. Jaggi] ...3105

साक्ष्य के आधार पर दोषमुक्त – निष्कर्ष समानता के सिद्धांत के विरुद्ध – पुनरीक्षण मंजूर – आवेदक आरोप से दोषमुक्त। (रामचरन वि. म.प्र. राज्य) ...2575

*दण्ड संहिता (1860 का 45), धाराएं 379, 411, 120–बी व 201* – प्रधान पुलिस आरक्षक ने प्रत्यर्थी के कब्जे से 29.851 कि.ग्रा. चांदी जब्त की – अनुसंधान पश्चात् चालान प्रस्तुत किया गया – न्यायिक मजिस्ट्रेट प्रथम श्रेणी ने प्रत्यर्थी को किसी अपराध का दोषी नही पाते हुए उसे दोषमुक्त किया – प्रत्यर्थी से जब्त सम्पत्ति प्रत्यर्थी के पक्ष में मुक्त किये जाने के लिए भी निदेशित किया गया – किन्तु इस दौरान पुलिस अधिकारियों द्वारा सम्पत्ति का दुर्विनियोजन किया गया – अभिनिर्धारित – सम्पत्ति को राज्य की ओर से उसके कर्मचारी द्वारा जब्त किया गया था और सम्पत्ति का दुर्विनियोजन उसी के कर्मचारी द्वारा किया गया – प्रकरण के विनिश्चय के उपरांत राज्य, सम्पत्ति लौटाने के लिए दायी है – एकल न्यायाधिपति ने उचित रूप से जब्त सम्पत्ति अथवा उसका उस समय का प्रचलित मूल्य वापिस करने के लिए निदेशित किया – रिट अपील खारिज। (म.प्र. राज्य वि. मोतीलाल) (DB)...2331

*दण्ड संहिता (1860 का 45), धारा 402* – डकैती कारित करने के उद्देश्य से जमाव – जब्दशुदा शस्त्रों को प्रस्तुत नही किया गया – पुलिस अधिकारी, जिसने छापा संचालित किया, जब्ती मेमो तैयार किया और प्रथम सूचना रिपोर्ट दर्ज की, उसी ने स्वयं मामले की विवेचना की – अपीलार्थीगण की धारा 399 के अंतर्गत दोषमुक्ति एवं भा.द. सं. की धारा 402 के अंतर्गत दोषसिद्धि अपने आप में विरोधाभासी है – अपील मंजूर। (जितेन्द्र सोनी वि. म.प्र. राज्य) ...2549

*दण्ड संहिता (1860 का 45), धारा 467, 468 व 471 – देखें – आवश्यक वस्तु अधिनियम, 1955, धारा 3/7* (राजीव कुमार वि. म.प्र. राज्य) ...2583

*दण्ड संहिता (1860 का 45) धारा 498–ए, 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482,* (कमल नयन सिंह वि. म.प्र. राज्य ) ...2894

*दण्ड संहिता (1860 का 45), धारा 500, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – मानहानिकारक लेख – कार्यवाहियां अभिखण्डित की जाना* – समाचार पत्र में प्रकाशित समाचार कि प्रत्यर्थी स्वयं को पुलिस वाला गुंडा दिखाने के उसके प्रयास में सनकी और असभ्य ढंग से व्यवहार कर रहा है – संपादक का विचारण अभी आरंभ नही हुआ है – आदेशिका जारी करने से पूर्व जांच में आवेदकगण में से किसी का अंतर्ग्रस्त होना प्रथम दृष्ट्या परिलक्षित नहीं होता – आदेशिका जारी करने का आदेश अपास्त – किन्तु मजिस्ट्रेट को आवेदकगण के विरूद्ध द.प्र.सं. की धारा 319 के अंतर्गत कार्यवाही करने से कुछ भी प्रवारित नहीं करेगा, यदि संपादक के विचारण के दौरान प्रस्तुत किसी साक्ष्य से मानहानिकारक समाचार के चयन व प्रकाशन में उनकी सह–अपराधिता स्थापित की जाती है। (राकेश अग्रवाल वि. बी.एस. जग्गी) ...3105

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*Police (Gazetted) Services Recruitment Rules, M.P. 1987, Rule 6(2), Police Executive (Gazetted) Service Recruitment and Promotion Rules, M.P. 2000, Civil Service (General Conditions of Service) Rules, M.P. 1961, Rule 9 - Seniority - Continuous officiation - Promotion Quota* - Respondents were promoted on officiating basis on the post of Dy. S.P. - Tribunal directed to take the period of service rendered on officiation before confirmation into consideration for reckoning their seniority - Held - Though the promotees have a right of consideration for confirmation as per Rule 9 of Rules 1961 but at the same time Rule 6(2) of Rules, 1987 which provides 50% quota by promotion should not be breached - Promotees officiating on promoted post in excess of their quota even if adjudged suitable for confirmation will not be entitled for their promotion from the initial date but from the date on which substantive vacancy with their quota occurs - Petition partly allowed. [Mahendra Singh Sikarwar Vs. State of M.P.] (DB)...2736

*Police Regulations, M.P. - Regulation 270 - Power of Review* - ADGP reviewed the punishment order and cancelled the punishment of fine and remitted the matter to I.G. for further review - Regulation 270 does not contemplate such a situation where one reviewing authority may undertake review partially by cancelling the punishment order and then midway transferring to another authority - The power can be exercised by any of the superior authorites - Once a superior authority (ADGP) holds that the punishment is less/minor, no discretion is left to be exercised by IG - Show cause notice is empty formality - However, liberty is reserved to the ADGP/Authority, who has passed order to complete the exercise under regulation 270 - If the said authority deems it fit to continue with the proceedings, he may complete the same within six months from the date of production of certified copy of this order, failing which any action pursuant to order shall stand abated - Petition is allowed. [Suresh Pal Singh Vs. State of M.P.] ...2395

*Prevention of Food Adulteration Act (37 of 1954), Section 7(ii), 16(1)(a)(i), Prevention of Food Adulteration Rules, 1955, Rule 49(29) - Drinking Water* - Sample of water was collected on 8-6-2001 and complaint was filed on 25-9-2006 - Rule 49(29) is applicable to Mineral Water and not drinking water - Even otherwise, the Rule 49(29) remained inoperative till 30-6-2001 - Complaint was also filed after the period of 3 years commencing from the date of offence - No offence is made out on the

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*पुलिस (राजपत्रित) सेवा भर्ती नियम, म.प्र. 1987, नियम 6 (2), पुलिस कार्यपालिक (राजपत्रित) सेवा भर्ती एवं पदोन्नति नियम, म.प्र. 2000, सिविल सेवा (सेवा की सामान्य शर्तें) नियम म.प्र. 1961, नियम 9 – ज्येष्ठता – निरंतर स्थानापन्नता* – पदोन्नति कोटा – प्रत्यर्थीगण को डिप्टी एस.पी. के पद पर स्थानापन्न आधार पर पदोन्नत किया गया – अधिकरण ने उनकी ज्येष्ठता विचार में लेने हेतु स्थायीकरण से पूर्व स्थानापन्न पर दी गई सेवा की अवधि विचार में लेने के लिए निदेशित किया – अभिनिर्धारित – यद्यपि नियम 1961 के नियम 9 के अनुसार पदोन्नत व्यक्तियों को स्थाईकरण हेतु विचार में लिये जाने का अधिकार है परंतु उसी के साथ नियम 1987 के नियम 6(2) जो पदोन्नति द्वारा 50: कोटा उपबंधित करता है का उल्लंघन नही होना चाहिए – पदोन्नत व्यक्ति जो अपने कोटा से अधिक पदोन्नत पद पर स्थानापन्न है, यदि स्थाईकरण हेतु उपयुक्त भी ठहराये गये हो तब भी वे उनकी पदोन्नति हेतु प्रारंभिक तिथि से हकदार नही होंगे बल्कि उस तिथि से होंगे जब उनके कोटा में मौलिक रिक्ति उत्पन्न होगी – याचिका अंशतः मंजूर। (महेन्द्र सिंह सिकरवार वि. म.प्र. राज्य) **(DB)...2736**

*पुलिस विनियमन, म.प्र. – विनियम 270 – पुनर्विलोकन की शक्ति* – ए.डी.जी. पी. ने शास्ति आदेश का पुनर्विलोकन किया और अर्थदण्ड की शास्ति निरस्त करते हुए, मामला और आगे पुनर्विलोकन हेतु आई.जी. को प्रतिप्रेषित किया – विनियम 270 उक्त स्थिति को अनुध्यात नही करता जब एक पुनर्विलोकन प्राधिकारी शास्ति का आदेश निरस्त करके आंशिक रूप से पुनर्विलोकन करता है और फिर बीच में ही अन्य प्राधिकारी को अंतरित करता है – शक्ति का प्रयोग, वरिष्ठ प्राधिकारियों में से किसी एक के द्वारा किया जा सकता है – एक बार वरिष्ठ प्राधिकारी (ए.डी.जी.पी.) यह धारणा करता है कि शास्ति कम है/लघु है, तब आई.जी. द्वारा प्रयोग करने के लिए कोई विवेकाधिकार नही बचता – कारण बताओं नोटिस मात्र औपचारिकता है – अपितु, आदेश पारित करने वाले ए.डी.जी.पी/प्राधिकारी को विनियम 270 के अंतर्गत कार्यवाही पूर्ण करने की स्वतंत्रता सुरक्षित है – यदि उक्त प्राधिकारी, कार्यवाही को जारी रखना उचित समझे, वह उसे इस आदेश की प्रमाणित प्रतिलिपि प्रस्तुत करने की तिथि से छः माह के भीतर पूर्ण कर सकेगा, ऐसा न करने पर, आदेश के अनुसरण में की गई किसी कार्यवाही का उपशमन हो जाएगा – याचिका मंजूर। (सुरेश पाल सिंह वि. म.प्र. राज्य) **...2395**

*खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7(ii), 16(1)(a)(i), खाद्य अपमिश्रण निवारण नियम, 1955, नियम 49(29)– पेय जल* – 8.6.2001 को पानी का नमूना संग्रहित किया गया था और शिकायत 25.9.2006 को दर्ज की थी – नियम 49 (29) मिनरल वाटर पर लागू होगा और पेय जल पर नही – अन्यथा भी, नियम 49 (29), 30.6.2001 तक प्रवर्तन में नही था – शिकायत भी अपराध घटित होने के 3 वर्ष बाद दर्ज की गई थी – प्रत्यक्षतः शिकायत के आधार पर कोई अपराध नही बनता – कार्यवाहियां अभिखण्डित। (प्रकाश देसाई वि. म.प्र. राज्य) **...2602**

basis of the face value of the complaint - Proceedings quashed. [Prakash Desai Vs. State of M.P.] ...2602

*Prevention of Food Adulteration Rules, 1955, Rule 49(29) - See - Prevention of Food Adulteration Act, 1954, Section 7(ii), 16(1)(a)(i)* [Prakash Desai Vs. State of M.P.] ...2602

*Prevention of Insults to National Honour Act (69 of 1971), Section 2 - Disrespect* - Petitioner, a Union Minister and President of M.P. Congress Committee arrived in a party meeting in official car whereon National Flag was having a hole - On being apprised, he made a fun of it by saying it is similar to that of State Government - Held - Article 51(a) of Constitution of India enjoins a duty on every Citizen to respect National Flag - However, allegation do not prima facie make out a case under section 2 of Act, 1971 - Proceedings quashed. [Kantilal Bhuria Vs. Sanjay Sarvaria] ...2606

*Prisoners' Release on Probation Rules, M.P 1964, Rule 4 (Amended)* - Rule 4 has been amended on 24.03.2008 therefore, all applications, pending for the premature release under the Provisions of M.P. Prisoners Release on Probation Act, 1954 are to be decided in the light of the amended rules. [Prakash Singh Thakur Vs. State of M.P.] (DB)...2911

*Probation of Offenders Act (20 of 1958), Section 6 - See - Penal Code, 1860, Sections 304 Part-II, 323* [Vinay Singh Vs. State of M.P.] ...2473

*Professional Examination Board (Service & Recruitment) Rules, 1966, Professional Examination Board (Service & Recruitment) Rules, 1999* - Rules are not statutory in nature. [Ashok Mishra Vs. State of M.P.] ...*106

*Professional Examination Board (Service & Recruitment) Rules, 1999 - See -Professional Examination Board* (Service & Recruitment) Rules, 1966, [Ashok Mishra Vs. State of M.P.] ...*106

*Public Interest Litigation - Delay* - Delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. [Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority] (DB)...2946

*Public Trusts Act, M.P. (30 of 1951), Sections 8 & 14 - Limitation to file suit - Section 8 specifically prescribes limit* - Person having interest in public trust and aggrieved by order of Registrar of Public Trust should institute a civil suit within 6 months - No provision for enlargement of

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*खाद्य अपमिश्रण निवारण नियम, 1955, नियम 49(29) – देखें – खाद्य अपमिश्रण निवारण अधिनियम, 1954, धारा 7(ii), 16(1)(a)(i)* (प्रकाश देसाई वि. म.प्र. राज्य) ...2602

*राष्ट्र गौरव अपमान निवारण अधिनियम (1971 का 69), धारा 2 – अनादर* – याची, एक केन्द्रीय मंत्री एवं अध्यक्ष, म.प्र. कांग्रेस समिति, पार्टी की मीटिंग में शासकीय वाहन से आये जिस पर लगे हुए राष्ट्रीय ध्वज में छेद था – उनका ध्यान आकर्षित करने पर वह व्यंग्य करते हुए बोले कि यह राज्य सरकार के समान है – अभिनिर्धारित – भारतीय संविधान का अनुच्छेद 51(ए) निर्देशित करता है कि राष्ट्रीय ध्वज का आदर करना प्रत्येक नागरिक का कर्तव्य है – चूंकि आरोप प्रथम दृष्ट्या अधिनियम 1971 की धारा 2 के अंतर्गत प्रकरण गठित नही करते – कार्यवाहियां अभिखण्डित। (कान्तीलाल भूरिया वि. संजय सरवरिया) ...2606

*बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 4 (संशोधित)* – नियम 4 को 24.03.2008 को संशोधित किया गया है इसलिए, म.प्र. बंदियों को परिवीक्षा पर छोड़ा जाना अधिनियम, 1954 के उपबंधों के अंतर्गत समय पूर्व मुक्त किये जाने हेतु सभी लंबित आवेदनों का विनिश्चिय संशोधित नियमों के आलोक में किया जाना चाहिए। (प्रकाश सिंह ठाकुर वि. म.प्र. राज्य) (DB)...2911

*अपराधी परिवीक्षा अधिनियम (1958 का 20), धारा 6 – देखें – दण्ड संहिता, 1860, धाराएँ 304 भाग– II, 323* (विनय सिंह वि. म.प्र. राज्य) ...2473

*व्यावसायिक परीक्षा मंडल (सेवा और भर्ती) नियम, 1966, व्यावसायिक परीक्षा मंडल (सेवा और भर्ती) नियम, 1999 – नियम कानूनी स्वरूप के नही है।* (अशोक मिश्रा वि. म.प्र. राज्य) ...*106

*व्यावसायिक परीक्षा मंडल (सेवा और भर्ती) नियम, 1999 – देखें – व्यावसायिक परीक्षा मंडल (सेवा और भर्ती) नियम, 1966,* (अशोक मिश्रा वि. म.प्र. राज्य) ...*106

*लोक हित वाद – विलम्ब* – विलम्ब से अनुतोष का दावा विफल नहीं हो सकता जब तक कि दूसरे पक्ष की स्थिति इतनी परिवर्तित न हो गई हो, जिसे दूसरे पक्षकार पर, समय सीमा के व्यपगमन या निष्क्रियता के कारण, वापस नहीं लिया जा सकता। (नीतू तेजकुमार भगत वि. जबलपुर डेव्हेलपमेन्ट अथौरिटी) (DB)...2946

*लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएं 8 व 14 – वाद प्रस्तुत करने की परिसीमा – धारा 8 विनिर्दिष्ट रूप से सीमा विहित करती है* – व्यक्ति जो लोक न्यास में हित रखता है और लोक न्यास के रजिस्ट्रार के आदेश से जो व्यथित है, उसे 6 माह के भीतर सिविल वाद संस्थित करना चाहिए – परिसीमा बढ़ाये जाने के लिए कोई

limitation - Limitation Act would not be applicable for condonation of delay - Limitation would start from the date when order was passed u/s 14 of the Act - Appeal dismissed. [Prahlad Kushwaha Vs. Rani Devmati] ...2774

*Representation of the People Act (43 of 1951), Sections 77, 86, 87 & 123(6), Civil Procedure Code (5 of 1908), Order 7 Rule 11, Conduct of Election Rules, 1961, Rule 90 - Dismissal of Election Petition - Cause of Action - Corrupt Practice - Excess Expenditure* - Excess expenditure must be incurred by candidate or by any person authorized by the candidate or his election agent - Any expenditure incurred by third person who is not authorized by a candidate or by an election agent will not be a corrupt practice. [Chandrabhan Singh Choudhary Vs. Kamal Nath] ...2750

*Representation of the People Act (43 of 1951), Sections 77, 86,87, 123(6), Civil Procedure Code (5 of 1908), Order 7 Rule 11, Conduct of Election Rules, 1961, Rule 90 - Dismissal of Election Petition - Cause of Action - Pleadings - Material Facts* - It is necessary to aver the fact that the candidate has incurred the expenditure or has authorized any person to incur the expenditure or that his election agent has incurred the expenditure and further the candidate has undertaken the liability to reimburse - These would constitute the material facts of an election petition - As material facts are lacking, the election of the respondent no.1 cannot be declared as void - Election petition dismissed. [Chandrabhan Singh Choudhary Vs. Kamal Nath] ...2750

*Representation of the People Act (43 of 1951) - Section 87 - See - Civil Procedure Code, 1908, Order 16 Rule 14* [Rajesh Kumar Vs. Devendra Singh] ...2457

*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(v) - Sentence* - Appellants have undergone the mental agony for more than 18 years - Sentence of 3 years is reduced to 6 months and a fine of Rs. 3000. [Jhallu Vs. State of M.P.] ...2812

*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(v) - Wrongful dispossession* - Only path which is the only way to come in and go out of the complainant house was closed by the appellants - Right of way was restored by Naib Tahsildar - However, thereafter again the path was closed by construction wall and an Iron Gate - Appellants guilty of committing offence under Section

उपबंध नही – विलंब की माफी के लिए परिसीमा अधिनियम लागू नही होगा – अधिनियम की धारा 14 के अंतर्गत पारित किये गये आदेश की तिथि से परिसीमा आरंभ होगी – अपील खारिज। (प्रहलाद कुशवाहा वि. रानी देवमती) ...2774

*लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 77, 86, 87 व 123(6), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11, निर्वाचन का संचालन नियम, 1961, नियम 90 – निर्वाचन याचिका की खारिजी – वाद हेतुक – भ्रष्ट आचरण* – अधिक व्यय – अधिक व्यय को प्रत्याशी द्वारा या प्रत्याशी द्वारा प्राधिकृत किसी व्यक्ति द्वारा या उसके अभिकर्ता द्वारा वहन किया जाना चाहिए – तृतीय व्यक्ति द्वारा वहन किया गया कोई व्यय भ्रष्ट आचरण नही होगा, जो प्रत्याशी द्वारा अथवा निर्वाचन अभिकर्ता द्वारा प्राधिकृत नही है। (चन्द्रभान सिंह चौधरी वि. कमलनाथ) ...2750

*लोक प्रतिनिधित्व अधिनियम (1950 का 43), धाराएं 77, 86, 87 व 123(6), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11, निर्वाचन का संचालन नियम, 1961, नियम 90 – निर्वाचन याचिका की खारिजी – वाद हेतुक – अभिवचन – तात्विक तथ्य* – इस तथ्य का प्रकथन करना आवश्यक है कि प्रत्याशी ने व्यय वहन किया है या किसी व्यक्ति को व्यय वहन करने के लिए प्राधिकृत किया है या यह कि उसके अभिकर्ता ने व्यय वहन किया और इसके अतिरिक्त प्रत्याशी ने प्रतिपूर्ति के दायित्व का वचन दिया – यह निर्वाचन याचिका के तात्विक तथ्य गठित करते हैं – चूंकि तात्विक तथ्यों का विलोप है, प्रत्यर्थी क्र.1 के निर्वाचन को शून्य घोषित नहीं किया जा सकता – निर्वाचन याचिका खारिज। (चन्द्रभान सिंह चौधरी वि. कमलनाथ) ...2750

*लोक प्रतिनिधित्व अधिनियम, (1951 का 43) – धारा 87 – देखें – सिविल प्रक्रिया संहिता 1908, आदेश 16 नियम 14* (राजेश कुमार वि. देवेन्द्र सिंह) ...2457

*अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3 (1)(v) – दण्डादेश* – अपीलार्थीगण 18 वर्षों से अधिक मानसिक पीड़ा सहन की है – 3 वर्ष के दण्डादेश को घटाकर 6 माह और अर्थदण्ड रू. 3000 किया गया। (झल्लू वि. म.प्र. राज्य) ...2812

*अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3 (1)(v) – सदोष बेकब्जा करना* – अपीलार्थी द्वारा एकमात्र मार्ग जो शिकायतकर्ता के मकान से अंदर आने और बाहर जाने का एकमात्र रास्ता है, बंद कर दिया गया – नायब तहसीलदार द्वारा मार्गाधिकार पुनःस्थापित किया गया – किन्तु तत्पश्चात्, दीवार निर्माण कर एवं लोहे का गेट लगाकर मार्ग पुनः बंद कर दिया गया – अपीलार्थीगण अधिनियम की धारा 3 (1)(v) के अंतर्गत अपराध कारित करने के दोषी

3(1)(V) of the Act. [Jhallu Vs. State of M.P.] ...2812

*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(vi) (x) - Caste* - There is no ocular or documentary evidence to prove the caste of the complainant - Merely on the basis of weakness of the defence or his counsel, it could not be said that the respondent has proved that his caste and community is covered under the Act. [Parvat Singh Vs. Khanjuwa] ...2491

*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) - Original FIR not produced* - MLC was prepared after 20 days of incident - As per MLC injuries were received within 48 hours - Prosecution story is suspicious - Appeal allowed. [Pappu @ Narendra Kumar Vs. State of M.P.] ...2486

*Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 13 & 34 - Jurisdiction of Civil Court* -Suit was filed for declaration that the sale deed executed in favor of the borrower was null and void and for possession - Debts Recovery Tribunal has no jurisdiction to decide the question whether persons other than the mortgager had title in the mortgaged property - Validity of sale deed of property mortgaged with Bank cannot be decided by DRT - If sale deed is held to be wholly or partially invalid, it will immediately affect the validity of the mortgage of that property - Suit for declaration and possession was maintainable - Petition allowed. [Prabha Jain (Smt.) Vs. Central Bank of India] (DB)...2800

*Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002) - Sections 14 & 17 - Appeal* - Appeal under Section 17 of the Act, lies against the order passed by Collector under Section 14. [Ram Singh Vs. State of M.P.] ...2987

*Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Sections 14 & 17 - Appeal - By whom* - Appeal under Section 17 can be filed by any affected person and not only by bank or financial institution. [Ram Singh Vs. State of M.P.] ...2987

*Service Law - Absorption - Meaning - Absorption and Promotion* - Petitioner's absorption and promotion were cancelled on the ground that he did not have 5 years qualifying service - In view of paucity of employees,

है। (झल्लू वि. म.प्र. राज्य) ...2812

*अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(vi) (x) – जाति* – शिकायतकर्ता की जाति साबित करने के लिए कोई चक्षुदर्शी या दस्तावेजी साक्ष्य नही – मात्र बचाव पक्ष या उसके अधिवक्ता की कमजोरी के आधार पर यह नही कहा जा सकता कि प्रत्यर्थी ने साबित किया है कि उसकी जाति व समुदाय अधिनियम के अंतर्गत आती है। (पर्वत सिंह वि. खंजुवा) ...2491

*अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x) – मूल प्रथम सूचना रिपोर्ट प्रस्तुत नही* – एम.एल.सी. घटना के बीस दिन पश्चात् तैयार की गई – एम.एल.सी. के अनुसार क्षतियां 48 घंटो के भीतर की थी – अभियोजन कहानी संदेहास्पद – अपील मंजूर। (पप्पू उर्फ नरेन्द्र कुमार वि. म.प्र. राज्य) ...2486

*वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54), धारा 13 व 34 – सिविल न्यायालय की अधिकारिता* – कब्जे के लिए एवं इस घोषणा के लिए वाद प्रस्तुत किया गया कि उधार लेने वाले के पक्ष में निष्पादित विक्रय शून्य एवं अकृत है – **DRT** को इस प्रश्न का विनिश्चय करने की कोई अधिकारिता नही कि क्या बंधन सम्पत्ति में बंधनकर्ता के अलावा किसी व्यक्ति का हक है – बैंक को बंधक सम्पत्ति विक्रय विलेख की विधिमान्यता को **DRT** द्वारा निर्णित नहीं किया जा सकता – यदि विक्रय विलेख को पूर्णतः या अंशतः अविधिमान्य होने की धारणा की गई तो इससे उस सम्पत्ति के बंधक होने की विधिमान्यता पर तुरंत प्रभाव पड़ेगा – घोषणा एवं कब्जे हेतु वाद पोषणीय था – याचिका मंजूर। (प्रभा जैन (श्रीमति) वि. सेन्ट्रल बैंक ऑफ इंडिया) **(DB)...2800**

*वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धाराएं 14 व 17 – अपील* – अधिनियम की धारा 17 के अंतर्गत अपील, कलेक्टर द्वारा धारा 14 के अतर्गत पारित आदेश के विरूद्ध होगी। (राम सिंह वि. म.प्र. राज्य) ...2987

*वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धाराएं 14 व 17 – अपील* – किसके द्वारा – धारा 17 के अंतर्गत अपील किसी भी प्रभावित व्यक्ति द्वारा प्रस्तुत की जा सकती है और न कि केवल बैंक द्वारा या वित्तीय संस्था द्वारा। (राम सिंह वि. म.प्र. राज्य) ...2987

*सेवा विधि – संविलियन – अर्थ – संविलियन एवं पदोन्नति* – याची का संविलियन एवं पदोन्नति को इस आधार पर निरस्त किया गया कि उसकी 5 वर्ष की अर्हक सेवा नही थी – कर्मचारियों की कमी को दृष्टिगत रखते हुए 5 वर्षों की अर्हक

qualifying service of 5 years was relaxed as one time measure - Case of petitioner was considered and was granted promotion - Lien of petitioner in his parent department was also terminated - Petitioner has already worked for more than 16 years and has acquired experience - Cancellation of his absorption and promotion orders was quashed - Petition allowed. [Ashok Mishra Vs. State of M.P.] ...*106

*Service Law - Adverse confidential Report - Communication* - Any entry which is adverse is required to be shown to the employee to apprise him with respect to performance of his duties so that he may improve the working in future. [Rajesh Kumar Saxena Vs. State of M.P.] ...2920

*Service Law - Adverse confidential report - Communication* - If any adverse entry is made in annual confidential report, the same has to be communicated within a month and if any representation is made the same is to be decided within 30 days - In case of any inquiry in respect of representation the same is to be concluded within 3 months. [Rajesh Kumar Saxena Vs. State of M.P.] ...2920

*Service Law - Adverse confidential report - Expunction* - Entry was made to the effect that complaints against behaviour and delay caused by petitioner are being received and he is required to improve his work - No proof of any complaint - Representation was rejected by a single line order - Adverse entry expunged - Respondents directed to regrade the petitioner after expunging adverse entries - Review DPC be called to consider the case of petitioner - Petition allowed. [Rajesh Kumar Saxena Vs. State of M.P.] ...2920

*Service Law - Age of Superannuation* - AICTE Regulation which provided for age of superannuation as 65 years was adopted by State Govt. on 19-10-2010 - Appellants superannuated on 31-8-2010 - Held - Unless and until the benefit of notification is made applicable specifically, such benefit is not available to the employees - As the appellants had already attained the age of superannuation therefore, they are not entitled for the benefit of the regulation - Appeal dismissed. [Pradeep Agnihotri Vs. State of M.P.] (DB)...2904

*Service Law - Appointment - Excellent sports person* - Scheme provided for appointment of excellent sports person on the post of Lecturer in Govt. Higher Secondary School - Recommendation was sent for

सेवा को एक बार के उपचार के रूप में शिथिल किया गया – याची के प्रकरण पर विचार किया और पदोन्नति प्रदान की गई – याची का मूल विभाग में पुनर्ग्रहणाधिकार (लियन) भी समाप्त किया गया – याची ने पहले ही 16 वर्षों से अधिक कार्य किया है और अनुभव अर्जित किया है – उसके संविलियन एवं पदोन्नति के आदेशों का निरस्तीकरण अभिखंडित किया गया – याचिका मंजूर। (अशोक मिश्रा वि. म.प्र. राज्य) ...*106

*सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – संसूचना* – कोई प्रविष्टि जो प्रतिकूल है उसे कर्मचारी को दिखाया जाना अपेक्षित है जिससे उसे अपने कर्तव्यों के संपादन के बारे में जानकारी हो सके ताकि वह भविष्य में कार्य मे सुधार कर सके। (राजेश कुमार सक्सेना वि. म.प्र. राज्य) ...2920

*सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – संसूचना* – यदि वार्षिक गोपनीय प्रतिवेदन में कोई प्रतिकूल प्रविष्टि की जाती है, उसे एक माह के भीतर संसूचित किया जाना चाहिए और यदि कोई अभ्यावेदन किया जाता है उसका 30 दिनों के भीतर विनिश्चय किया जाना चाहिए – अभ्यावेदन से संबंधित किसी जांच की स्थिति में उसे 3 माह के भीतर समाप्त किया जाना चाहिए। (राजेश कुमार सक्सेना वि. म.प्र. राज्य) ...2920

*सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – विलोपन* – इस आशय की प्रविष्टि की गई कि याची द्वारा कारित विलम्ब एवं उसके आचरण के विरूद्ध शिकायतें प्राप्त हो रही है और उसे अपने कार्य में सुधार लाना अपेक्षित है – किसी शिकायत का कोई प्रमाण नही – एक पंक्ति के आदेश द्वारा अभ्यावेदन अस्वीकार किया गया – प्रतिकूल प्रविष्टि को हटाया गया – प्रत्यर्थीगण को प्रतिकूल प्रविष्टियों को हटाये जाने के पश्चात् याची को पुनः पदक्रमित करने के लिए निदेशित किया गया – याची के प्रकरण पर विचार करने के लिए पुनर्विलोकन विभागीय पदोन्नति समिति को बुलाया जाये – याचिका मंजूर। (राजेश कुमार सक्सेना वि. म.प्र. राज्य) ...2920

*सेवा विधि – अधिवर्षिकी आयु* – ए.आई.सी.टी.ई. विनियमन जो अधिवर्षिकी आयु 65 वर्ष के लिए उपबंधित करता है, राज्य सरकार द्वारा 19.10.2010 को अंगीकृत किया गया – अपीलार्थीगण 31.8.2010 को सेवानिवृत्त किये गये – अभिनिर्धारित – जब तक कि अधिसूचना का लाभ विनिर्दिष्ट रूप से लागू नही किया जाता, ऐसा लाभ कर्मचारियों को उपलब्ध नही – चूंकि अपीलार्थीगण पहले ही अधिवर्षिकी आयु प्राप्त कर चुके हैं इसलिए वे विनियम के लाभ के हकदार नही – अपील खारिज। (प्रदीप अग्निहोत्री वि. म.प्र. राज्य) (DB)...2904

सेवा विधि – नियुक्ति – उत्कृष्ट खिलाड़ी व्यक्ति – शासकीय उच्चतर माध्यमिक शाला में व्याख्याता के पद पर उत्कृष्ठ खिलाड़ी व्यक्ति की नियुक्ति के लिए योजना उपबंधित करती है – व्याख्याता के पद पर याचीगण की नियुक्ति की अनुमोदना भेजी

petitioner's appointment on the post of Lecturer - Petitioner was given appointment on the post of Upper Division Teacher, however, similarly situated persons were given appointment on the post of Lecturer - No explanation as to why similar treatment was not given to the petitioner - Respondents to look into the claim of the petitioner for his upgradation on the post of Lecturer - If it is found that the petitioner should have been appointed on the post of Lecturer, such appointment be made - Such appointment would be prospective and not retrospective in all senses - Petition disposed off. [Mahavir Prasad Jain Vs. State of M.P.] ...2688

*Service Law - Date of Birth* - Date of birth on duplicate school leaving certificate and certificate of class V not acceptable - Age comes 15-16 years on the date of entrance in department - Seems concocted document - Cannot be permitted to take benefit of his own wrong - No averment regarding original certificate - Present document never submitted earlier - Appeal dismissed. [Mahesh Chandra Khare Vs. Municipal Council, Bhind] (DB)...2619

*Service Law - Departmental Enquiry - Acquittal in criminal case*- Charge in departmental enquiry was found proved on the basis of a statement made by petitioner before the Civil Police Authorities - Held - Petitioner cannot be held guilty in departmental enquiry merely on the basis of statement made before police authorities in a criminal case, in which he has been honorably acquitted. [Parvinder Singh (Ex. ASI/M) Vs. Union of India] ...*109

*Service Law- Departmental Enquiry - Criminal Case - Stay - Criminal case and departmental enquiry on similar charges* - Once a departmental enquiry was pending in respect of the same charges, in all fairness, the respondents should have deferred the departmental enquiry, till the pendency of the criminal case. [Parvinder Singh (Ex. ASI/M) Vs. Union of India] ...*109

*Service Law - Disciplinary Proceedings - Appeal - Duties of Appellate Authority* - Appellate Authority is required to examine whether the procedure laid down in the rules has been complied with and if not, whether such non-compliance has resulted in violation of any provision of the Constitution of India or in the failure of justice. [M.M. Mudgal Vs. State of M.P.] ...2651

गई – याची को उच्च श्रेणी शिक्षक के पद पर नियुक्ति दी गई किन्तु समान परिस्थिति वाले व्यक्तियों को व्याख्याता के पद पर नियुक्ति दी गई – कोई स्पष्टीकरण नहीं कि याची के साथ समान व्यवहार क्यों नहीं किया गया – व्याख्याता के पद पर उन्नयन के लिए याची के दावे पर प्रत्यर्थी विचार करे – यदि यह पाया जाता है कि याची को व्याख्याता के पद पर नियुक्त किया जा सकता था तो ऐसी नियुक्ति दी जाये – ऐसी नियुक्ति सभी अर्थों में भविष्यलक्षी होगी न कि भूतलक्षी – याचिका निराकृत। (महावीर प्रसाद जैन वि. म.प्र. राज्य) ...2688

*सेवा विधि – जन्म तिथि – द्वितीय शाला त्याग प्रमाणपत्र व कक्षा V का प्रमाणपत्र स्वीकार्य नहीं* – विभाग में प्रवेश की तिथि को आयु 15–16 वर्ष बनती है – कूटरचित दस्तावेज प्रतीत होता है – उसके स्वयं के दोष का लाभ लेने की अनुमति नहीं दी जा सकती – मूल प्रमाणपत्र के संबंध में कोई प्राक्कथन नही – वर्तमान दस्तावेज पूर्व में कभी भी प्रस्तुत नही किया गया – अपील खारिज। (महेश चन्द्र खरे वि. म्यूनिसिपल काउंसिल, भिण्ड) (DB)...2619

*सेवा विधि – विभागीय जांच – आपराधिक प्रकरण में दोषमुक्ति* – सिविल पुलिस प्राधिकारियों के समक्ष याची द्वारा दिये गये कथन के आधार पर विभागीय जांच में लगाया गया आरोप सिद्ध होना पाया गया – अभिनिर्धारित – आपराधिक प्रकरण में मात्र पुलिस प्राधिकारियों के समक्ष दिये गये कथन के आधार पर याची को दोषी नही ठहराया जा सकता जिसमें उसे ससम्मान दोषमुक्त किया गया है। (परविन्दर सिंह (एक्स. ए.एस.आई/एम) वि. यूनियन ऑफ इंडिया) ...*109

*सेवा विधि – विभागीय जांच – आपराधिक प्रकरण – रोक – समान आरोपों पर आपराधिक प्रकरण एवं विभागीय जांच* – जब समान आरोपों के संबंध में विभागीय जांच लंबित थी, समुचित रूप से प्रत्यर्थीगण को, आपराधिक प्रकरण के लंबित रहने तक विभागीय जांच आस्थगित करना चाहिए थी। (परविन्दर सिंह (एक्स.ए.एस.आई/एम) वि. यूनियन ऑफ इंडिया) ...*109

*सेवा विधि – अनुशासनिक कार्यवाहियां – अपील – अपीली प्राधिकारी के कर्तव्य* – अपीली प्राधिकारी से अपेक्षित है कि वह परीक्षण करे कि क्या नियमों में प्रतिपादित प्रक्रिया का अनुपालन किया गया और यदि नही तो क्या उक्त अननुपालन के फलस्वरूप भारत के संविधान के किसी उपबंध का उल्लंघन हुआ है अथवा न्याय हानि हुई है। (एम. एम. मुदगल वि. म.प्र. राज्य) ...2651

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*Service Law - Disciplinary Proceedings - Complainant, Prosecutor, Witness and Judge - Same Authority* - Two charge sheets were issued alleging lodging of false complaint against superior officers of bank and also casting aspirations and accusations against various officers including the Chairman - Chairman directed for departmental enquiry - Chairman appeared as a witness in the enquiry - Chairman issued show cause notice after receiving the inquiry report - However, the punishment order was passed by a different person - Held - Main allegation is against the Chairman who issued the charge sheet although he himself was the complainant, he appeared as a witness, acted as a prosecutor, a judge and was instrumental in taking the impugned action as he himself had issued show cause notice to the petitioner - A person should not be a judge in his own cause - Fundamental principle of Natural Justice applies in quasi judicial proceedings - Doctrine of necessity does not apply - As the same person had acted as a complainant, prosecutor, witness and a judge, the entire proceedings are vitiated - Petitioner be reinstated in service with all consequential benefits. [Raj Bahadur Khare Vs. Madhya Bharat Gramin Bank, Pradhan Karyalaya, Sagar] ...2436

*Service Law - Disciplinary Proceedings - Enquiry Report - Application of mind* - Enquiry officer without considering the defence has merely agreed with the prosecution case - It shows complete non-application of mind - Enquiry Report is vitiated. [Vinod Kumar Shrivastava Vs. State of M.P.] ...*111

*Service Law - Disciplinary Proceedings - Imposition of Penalty* - Recommendation of Vigilance Commission - Circular issued by Ministry of Finance has already been quashed by Apex Court - Even if at all the matter was referred to the Vigilance Officer and any information was obtained, it was not to be implemented by the Disciplinary officer. [Ranjan Sarvate Vs. Allahabad Bank] ...*115

*Service Law - Disciplinary Proceedings - Misconduct* - Allegations of using derogatory language in letters addressed to superior officers - Petitioner applied for grant of education loan for the higher studies of his son - In his various communications, he had merely expressed his frustration on inaction on the part of his superior officers in not sanctioning the loan - Such frustration cannot be termed as derogatory. [Vinod Kumar Shrivastava Vs. State of M.P.] ...*111

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*सेवा विधि – अनुशासनात्मक कार्यवाहियां – शिकायतकर्ता, अभियोजक, गवाह और न्यायाधीश – समान प्राधिकारी* – बैंक के वरिष्ठ अधिकारियों के विरूद्ध झूठी शिकायतें दर्ज कराने के साथ ही चेयरमेन सहित कई वरिष्ठ अधिकारियों पर आरोप लगाने का अभिकथन करते हुए दो आरोप पत्र जारी किये गये – चेयरमेन ने विभागीय जांच के लिए निदेशित किया – जांच में चेयरमेन गवाह के रूप में उपस्थित हुए – चेयरमेन ने जांच प्रतिवेदन प्राप्त करने के पश्चात् कारण बताओ नोटिस जारी किया – किन्तु दंडादेश किसी अन्य व्यक्ति द्वारा पारित किया गया – अभिनिर्धारित – मुख्य आरोप चेयरमेन के विरूद्ध है कि जिसने आरोप पत्र जारी किया और आक्षेपित कार्यवाही उसी के माध्यम से की गई क्योंकि उसने स्वयं याची को कारण बताओ नोटिस जारी किया – व्यक्ति को अपने स्वयं के प्रकरण में जज़ नही होना चाहिए – नैसर्गिक न्याय का मूलभूत सिद्धांत अर्ध न्यायिक कार्यवाहियों में लागू होता है – आवश्यकता का सिद्धांत लागू नही होगा – चूंकि उसी व्यक्ति ने शिकायतकर्ता, अभियोजक, साक्षी एवं जज़ के रूप में कार्यवाही की है, संपूर्ण कार्यवाहियां दूषित हो जाती है – याची को सभी परिणामिक लाभों के साथ सेवा में बहाल किया जाए। (राज बहादुर खरे वि. मध्य भारत ग्रामीण बैंक, प्रधान कार्यालय, सागर) ...2436

*सेवा विधि – अनुशासनिक कार्यवाहियां – जॉच प्रतिवेदन – मस्तिष्क का प्रयोग* – जांचकर्ता अधिकारी प्रतिरक्षा को विचार में लिए बिना, अभियोजन मामले से सहमत हुआ – यह पूर्णतः मस्तिष्क का प्रयोग नही किया जाना दर्शाता है – जांच प्रतिवेदन दूषित। (विनोद कुमार श्रीवास्तव वि. म.प्र. राज्य) ...*111

*सेवा विधि – अनुशासनिक कार्यवाहियां – शास्ति अधिरोपित करना – सर्तकता आयोग की अभिशंसा* – वित्त मंत्रालय द्वारा जारी परिपत्र पहले ही सर्वोच्च न्यायालय द्वारा अभिखण्डित किया गया है – यदि प्रकरण सतर्कता अधिकारी को निर्दिष्ट भी किया गया हो और कोई जानकारी अभिप्राप्त की गई हो तब भी उसे अनुशासनिक अधिकारी द्वारा क्रियान्वित नही किया जाना था। (रंजन सर्वटे वि. इलाहाबाद बैंक) ...*115

*सेवा विधि – अनुशासनिक कार्यवाहियां – अवचार* – वरिष्ठ अधिकारियों को प्रेषित पत्रों में अप्रतिष्ठाकारक भाषा का उपयोग करने के आरोप – याची ने अपने पुत्र की उच्च शिक्षा हेतु शैक्षणिक ऋण प्रदान किये जाने के लिए आवेदन किया – अपने विभिन्न संसूचनाओं में उसने अपने वरिष्ठ अधिकारियों की ओर से ऋण मंजूर नही किये जाने की कार्यहीनता पर मात्र हताशा अभिव्यक्त की – उक्त हताशा को अप्रतिष्ठाकारक नही माना जा सकता। (विनोद कुमार श्रीवास्तव वि. म.प्र. राज्य) ...*111

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*Service Law - Disciplinary Proceedings - Powers of Court* - Normally Courts are not to act as appellate authority and they cannot substitute their own findings with respect to the guilt of a delinquent officer - However, the Courts can examine the correctness of conducting the departmental enquiry and if it is found that enquiry was not properly conducted, the Courts are authorized to put a knot on the order of penalty. [Ranjan Sarvate Vs. Allahabad Bank] ...*115

*Service Law - Equality - Judgments* - In service Jurisprudence, equality is to be granted in terms of the law laid down by the Courts of law. [Ashok Kumar Chouksey Vs. State of M.P.] ...2675

*Service Law - Major Penalty or Minor Penalty* - Withholding of increment with cumulative effect - Withholding of increment with cumulative effect will not only cause prejudice, monetary loss to the Govt. employee while in service but the loss will also be caused after the retirement of the employee and even the family pension will also be affected - It cannot be treated as a minor penalty. [M.M. Mudgal Vs. State of M.P.] ...2651

*Service Law - Misconduct* - Misconduct means, conduct arising from ill motive; acts of negligence, errors of judgment or innocent mistake do not constitute such misconduct. [Vinod Kumar Shrivastava Vs. State of M.P.] ...*111

*Service Law - Recoveries - Natural Justice* - Show cause notice was issued and after considering the reply amount of Rs. 1,54,950 was directed to be recovered - Appellate Authority remitted the case for reconsideration of the amount to be recovered after fixing the liabilities of other erring employees - Disciplinary authority directed for recovery of Rs. 34,679 - Before arriving at the amount to be recovered, no opportunity was required to be given as the appellate authority had not exonerated the petitioner - Order directing for recovery upheld. [O.P. Patel Vs. State of M.P.] ...2983

*Service Law - Recruitment - Preference - Election Duty* - Persons who were deployed for election duties have been treated at par with surplus employees by the State Govt - Whenever posts are notified to be filled from surplus employees, Petitioners and similarly placed persons should also be given the opportunity to participate in selection. [Gyanendra Pandey Vs. State of M.P.] ...2727

*Service Law - Seniority - Ad hoc appointment* - Appellant was

*सेवा विधि – अनुशासनिक कार्यवाहियां – न्यायालय की शक्तियां* – सामान्यतः न्यायालयों को अपीली प्राधिकारी के रूप में कार्य नही करना चाहिए और वे अपचारी अधिकारो की दोषिता के बारे में अपने स्वयं के निष्कर्षों को प्रतिस्थापित नही कर सकते – अपितु न्यायालय विभागीय जांच के संचालन की शुद्धता का परीक्षण कर सकता है और यदि यह पाया जाता है कि जांच उचित रूप से संचालित नहीं की गई थी तो न्यायालय शास्ति के आदेश पर बंधन लगाने के लिए प्राधिकृत है। (रंजन सर्वटे वि. इलाहाबाद बैंक) ...*115

*सेवा विधि – समानता – निर्णय* – सेवा विधिशास्त्र में, न्यायालयों द्वारा प्रतिपादित शर्तों के अनुसार समानता प्रदान करनी होती है। (अशोक कुमार चौकसे वि. म.प्र. राज्य) ... 2675

*सेवा विधि – गुरूतर शास्ति या लघु शास्ति* – संचयी प्रभाव से वेतनवृद्धि को रोका जाना – संचयी प्रभाव से वेतनवृद्धि को रोका जाना शासकीय कर्मचारी को न केवल सेवा में रहते प्रतिकूल प्रभाव, आर्थिक हानि कारित करेगा बल्कि कर्मचारी की सेवानिवृत्ति के पश्चात् भी हानि कारित करेगा और यहां तक कि परिवार पेन्शन भी प्रभावित होगी – इसे लघु शास्ति नहीं माना जा सकता। (एम.एम. मुदगल वि. म.प्र. राज्य) ...2651

*सेवा विधि – अवचार* – अवचार का अर्थ है, दोषपूर्ण हेतु से उत्पन्न आचरण, उपेक्षा के कृत्य, निर्णय की त्रुटियां या निर्दोष भूल, उक्त अवचार गठित नही करते। (विनोद कुमार श्रीवास्तव वि. म.प्र. राज्य) ...*111

सेवा विधि – वसूलियां – नैसर्गिक न्याय – कारण बताओ नोटिस जारी किया गया और जवाब पर विचार करने के पश्चात् रू. 1,54,950 की रकम की वसूली के लिए निदेशित किया गया – अपीली प्राधिकारी ने अन्य दोषी कर्मचारियों का दायित्व निश्चित करने के बाद वसूल किये जाने वाली रकम का पुनर्विचार करने हेतु प्रकरण प्रतिप्रेषित किया – अनुशासनिक प्राधिकारी ने रू. 34,679 की वसूली हेतु निदेशित किया – वसूल की जाने वाली रकम तय होने से पूर्व, कोई अवसर दिया जाना आवश्यक नही था क्योंकि अपीली प्राधिकारी ने याची को दोषमुक्त नहीं किया था – वसूली के लिए निदेशित करने के आदेश की पुष्टि की गई। (ओ.पी. पटेल वि. म.प्र. राज्य) ...2983

*सेवा विधि – भर्ती – प्राथमिकता – चुनाव ड्यूटी* – व्यक्ति जिन्हें चुनाव ड्यूटी हेतु अभिनियोजित किया गया उन्हें राज्य सरकार द्वारा अधिशेष कर्मचारियों के समान माना गया – जब कमी पदों को अधिशेष कर्मचारियों से भरा जाना अधिसूचित किया जाता है, याचीगण और समान रूप से स्थित व्यक्तियों को चयन में सहभागी होने का अवसर प्रदान करना चाहिए। (ज्ञानेन्द्र पाण्डे वि. म.प्र. राज्य) ...2727

*सेवा विधि – वरिष्ठता – तदर्थ नियुक्ति* – अपीलार्थी तदर्थ आधार पर छः माह

appointed on adhoc basis for a period of six months or till appointment is made by Mini P.S.C. - Appellant was subsequently selected by Mini P.S.C. - In the merit list prepared by Mini P.S.C., appellant was placed at serial no. 93 and his seniority was fixed below the writ petitioners - Appointment order specifically provided that the inter se seniority shall be fixed in accordance to the merit given in the appointment letter - Appellant cannot get advantage of his ad hoc appointment for fixing the seniority as the appellant could not point out that under which service conditions rules, the appointment of appellant on ad hoc basis was made - As the ad hoc appointment was only with a further stipulation of facing the Mini P.S.C., the period of ad hoc appointment cannot be computed for fixing the inter se seniority - Appeal dismissed. [Ram Naresh Singh Tomar Vs. State of M.P.] (DB)...2334

*Service Law - Statutory Rules - Recruitment* - In absence of any Statutory rule, appointment cannot be held to be illegal. [Ashok Mishra Vs. State of M.P.] ...*106

*Service Law - Termination - Unauthorized Absence - Appellant was a member of Armed Forces* - He remained on unauthorized absence for 35 days - Medical certificates produced by him do not show that the illness of the appellant was serious - He could have undergone treatment while on duty in the company - It was incumbent upon him to send atleast an application for extending the leave if he was ill - Disciplinary and Appellate Authorities have taken into account each and every aspect of the matter - Appellant being the member of Armed Forces was supposed to discharge the duties in disciplined manner - Punishment of removal from services cannot be said to be disproportionate - Appeal dismissed. [Badshah Singh Vs. State of M.P.] (DB)...2613

*Service Law - Transfer - Stay of Operation of transfer order* - Appellant permitted to make representation pointing out his problems to the employer - No interim order till the decision of the representation can be issued as when the Court cannot entertain the writ petition, it cannot grant interim relief. [Karan Singh Vs. State of M.P.] (DB)...2636

*Service Law - Transfer* - Surplus list of employees was to be prepared in descending order - Petitioner is undisputedly senior to respondent no. 4 - Petitioner cannot be treated as surplus - Her transfer on the ground of being surplus is bad - Transfer order quashed. [Sushila Tiwari Vs. State of M.P.] ...2399

की अवधि के लिए या मिनी पी.एस.सी. द्वारा नियुक्ति होने तक नियुक्त किया गया था – तत्पश्चात् अपीलार्थी का चयन मिनी पी.एस.सी. द्वारा किया गया – मिनी पी.एस.सी. द्वारा तैयार की गई वरियता सूची में अपीलार्थी का स्थान अनुक्रमांक 93 पर था और उसकी वरिष्ठता रिट याचिकार्ताओं के नीचे सुनिश्चित की गई थी – नियुक्ति आदेश विनिर्दिष्ट रूप से उपबंधित करता है कि परस्पर वरिष्ठता, नियुक्ति पत्र में दी गई वरियता के अनुसार सुनिश्चित होगी – वरिष्ठता सुनिश्चित करने के लिए अपीलार्थी को तदर्थ नियुक्ति का लाभ नहीं दिया जा सकता क्योंकि अपीलार्थी यह स्पष्ट नहीं कर सका है कि किन सेवा शर्तों नियमों के अन्तर्गत अपीलार्थी को तदर्थ आधार पर नियुक्ति दी गई थी – चूंकि तदर्थ नियुक्ति केवल मिनी पी.एस.सी. का सामना करने की अतिरिक्त शर्त के साथ की गई थी, तदर्थ नियुक्ति की कालावधि की गणना परस्पर वरिष्ठता सुनिश्चित करने के लिए नहीं की जा सकती – अपील खारिज। (राम नरेश सिंह तोमर वि. म.प्र. राज्य) **(DB)...2334**

*सेवा विधि – कानूनी नियम – भर्ती* – किसी कानूनी नियम की अनुपस्थिति में, नियुक्ति को अवैध नही माना जा सकता। (अशोक मिश्रा वि. म.प्र. राज्य) **...*106**

*सेवा विधि – सेवा समाप्ति – अनाधिकृत अनुपस्थिति* – अपीलार्थी सशस्त्र बल का सदस्य था – वह 35 दिनों के लिए अनाधिकृत रूप से अनुपस्थित रहा – उसके द्वारा प्रस्तुत चिकित्सीय प्रमाणपत्र यह नही दर्शाता कि अपीलार्थी की बीमारी गंभीर थी – वह कम्पनी में कार्यरत रहते हुए उपचार करवा सकता था – यदि वह अस्वस्थ था तो उसे अवकाश बढ़ाने के लिए कम से कम आवेदन करना अत्यावश्यक था – अनुशासनिक व अपीली प्राधिकारियों ने मामले के प्रत्येक पहलू को विचार में लिया – सशस्त्र बल का सदस्य होने के नाते अपीलार्थी से अपने कर्तव्यों का निर्वहन अनुशासनात्मक ढंग से करने की आशा थी – सेवा से हटाये जाने की शास्ति अननुपातित नही कही जा सकती – अपील खारिज। (बादशाह सिंह वि. म.प्र. राज्य) **(DB)...2613**

*सेवा विधि – स्थानांतरण – स्थानांतरण आदेश के प्रवर्तन पर रोक* – अपीलार्थी को अपनी परेशानियों को नियोक्ता को दर्शाते हुए अभ्यावेदन करने की अनुमति दी गई है – अभ्यावेदन के विनिश्चय तक कोई अंतरिम आदेश जारी नहीं किया जा सकता जैसा कि जब न्यायालय रिट याचिका ग्रहण नहीं कर सकता, वह अंतरिम अनुतोष प्रदान नहीं कर सकता। (करण सिंह वि. म.प्र. राज्य) **(DB)...2636**

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*Service Law - Transfer* - Transfer order can be assailed where there is some breach of statutory provisions, based on malafide or there is some arbitrariness - Mere fact that in a district, transfer orders affected more than 10% of the employees, can not be a ground to interfere in the transfer order. [Rajendra Kumar Shiv Vs. State of M.P.] (DB)...2901

*Specific Relief Act (47 of 1963), Section 6 - Suit for possession* - Applicant failed to prove that he was ever inducted as tenant in suit shop or was ever dispossessed as claimed by him - In absence of any proof that he was dispossessed within six months from the date of filing the suit, the suit is not maintainable - Revision dismissed. [Kesh Kumar Vs. Raju @ Rajkumar] ...3102

*Specific Relief Act (47 of 1963), Section 16 - Readiness and Willingness* - Former refers to financial capacity and the later refers to the conduct of the plaintiff wanting performance. [Sita Devi Soni Vs. Sharad Kant Soni] ...2789

*Specific Relief Act (47 of 1963), Section 16 - Specific Performance of Contract - Readiness and Willingness - Framing of issue* - It is the statutory requirement and duty of the Court to frame issue and address itself to the issue of readiness and willingness - Even if the defendant has not taken the defence, it is mandatory to the Court to frame issue with reference to Section 16 and decide it - Matter remanded back to trial court to frame the issue and decide the said after the parties are permitted to lead evidence. [Sita Devi Soni Vs. Sharad Kant Soni] ...2789

*Succession Act (39 of 1925), Section 63 - Succession - Will - Execution - Burden of proof - Will an unregistered and hand written* - Plaintiff has admitted that testator was old and unable to speak and sign - Scriber of will admitted that will was not dictated by testator - No recital in will that it was read over and explained to testator - Attesting witness has also stated that he does not know that who wrote the will - A closer look of will shows that thumb impression of testator was obtained on a plan paper before it was actually written - Defendant was living with testator for the last more than 12 years and the plaintiff was residing separately - Last rites of testator were performed by defendant - It can be safely held that love and affection of testator lay with defendant - Will is encircled by suspicious circumstances - Judgment and decree passed by Trial Court set aside -

*सेवा विधि – स्थानांतरण* – स्थानातंरण आदेश को चुनौती दी जा सकती है जहां कुछ कानूनी उपबंधों का उल्लंघन हुआ हो, असद्भावना पर आधारित हो या कोई मनमानापन हो– मात्र तथ्य कि किसी जिले में 10 प्रतिशत से अधिक कर्मचारीगण स्थानातंरण आदेशों से प्रभावित हुए हैं, स्थानातंरण आदेश में हस्तक्षेप का आधार नहीं हो सकता। (राजेन्द्र कुमार शिव वि. म.प्र. राज्य) **(DB)...2901**

*विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6 – कब्जे के लिए वाद* – आवेदक यह साबित करने में असफल रहा कि उसे कभी वाद दुकान में किरायेदार के रूप में रखा गया था या उसे कभी बेकब्जा किया गया था जैसा कि उसके द्वारा दावा किया गया है – किसी प्रमाण के अभाव में कि उसे वाद प्रस्तुति की तिथि से छः माह के भीतर बेकब्जा किया गया था, वाद पोषणीय़ नही – पुनरीक्षण खारिज। (केश कुमार वि. राजू उर्फ राजकुमार) **...3102**

*विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 – तैयारी और रजामंदी* – पहले वाला वित्तीय क्षमता की ओर संकेत करता है और बाद का पालन चाहने वाले वादी के आचरण की ओर संकेत करता है। (सीता देवी सोनी वि. शरदकांत सोनी) **...2789**

*विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 16 – संविदा का विनिर्दिष्ट पालन – तैयारी और रजामंदी – विवाद्यकों को विरचित किया जाना* – विवाद्यक विरचित करना एवं तैयार और रजामंदी के विवाद्यक का निपटारा करना, न्यायालय का कर्तव्य और कानूनी अपेक्षा है – यदि प्रतिवादी ने बचाव नही लिया है तब भी, न्यायालय के लिए धारा 16 के निर्देशानुसार विवाद्यक विरचित करना और उसका विनिश्चय करना आज्ञापक है – प्रकरण को विवाद्यक विरचित करने तथा पक्षकारों को साक्ष्य प्रस्तुत करने की अनुमति देने के पश्चात् उसका विनिश्चय करने हेतु विचारण न्यायालय को प्रतिप्रेषित किया गया। (सीता देवी सोनी वि. शरदकांत सोनी) **...2789**

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*Succession Act (39 of 1925), Sections 281 & 276 - Verification of petition of probate* - Provisions of Section 281 are Directory and not Mandatory - It is not necessary on the part of the applicant who files application to get probate to get the application verified by the attesting witness to the Will. [Ramesh Chandra Vs. Mahendra Kumar Sahu] ...3054

*Succession Act (39 of 1925), Section 372, Motor Vehicles Act (59 of 1988), Section 166 - Succession Certificate* - For release of amount of compensation granted under Motor Vehicles Act, 1988, Succession certificate should not be insisted from the legal heirs on the death of an individual as compensation amount cannot be treated as debt or security. [Chandra (Smt.) Vs. Ranveer Singh Ramavtar] ...2847

*Succession Act (39 of 1925), Section 372 - Succession certificate* - Second marriage was void as it was performed without obtaining decree of divorce - Subsequent grant of decree of divorce would not validate the second marriage - Order granting succession certificate set aside - Revision allowed. [Deepak Kumar Chouksey Vs. Superintendent, Office of Distt. Ayurvedic Officer, Sagar] ...3095

*Sugarcane (Regulation of Supply and Purchase) Act, M.P. 1958 (1 of 1959), Sections 19 & 20 - See - Krishi Upaj Mandi Adhiniyam, M.P. 1972, Chapter-VI (Regulation of Trading) Sections 2, 3, 4, 5, 7, 19, 31, 32, 36, 37, 38, 39, 43, 44,* [Krishi Upaj Mandi Samiti, Narsinghpur Vs. M/s. Shiv Shakti Khansari Udyog] (SC)...*114

*Torts - Actionable Negligence* - Well situated in the Mandi premises was covered with slab - Meeting was convened by Mandi Samiti upon the said covered well - Stone slabs fell down resulting in death of several persons on account of drowning - Mandi Samiti was having domain, control as well as possession over the entire area of Mandi Samiti - No notice was displayed nearby the area that covered area of well should not be used for access or to sit or to convene any meeting - Action of Mandi Samiti comes within the definition of actionable negligence - Principle of strict liability applies to Municipality also - Matter remanded back for deciding the suits and for assessing the compensation. [Santoshdevi (Smt.) Vs. State of M.P.] (DB)...3046

कुमार तिवारी वि. शंकरलाल) (DB)...3065

*उत्तराधिकार अधिनियम (1925 का 39), धाराएं 281 व 276 – प्रोबेट याचिका का सत्यापन* – धारा 281 के उपबंध निदेशात्मक है न कि आज्ञापक – प्रोबेट प्राप्त करने हेतु आवेदन प्रस्तुत करने वाले आवेदक की ओर से यह आवश्यक नहीं कि आवेदन को वसीयत के. अनुप्रमाणक साक्षी द्वारा सत्यापन करवाये। (रमेश चन्द्र वि. महेन्द्र कुमार साहू) ...3054

*उत्तराधिकार अधिनियम (1925 का 39), धारा 372, मोटर यान अधिनियम (1988 का 59), धारा 166 – उत्तराधिकार प्रमाणपत्र* – मोटर यान अधिनियम, 1988 के अंतर्गत प्रदान की गई प्रतिकर की रकम मुक्त किये जाने हेतु किसी व्यक्ति की मृत्यु उपरांत उत्तराधिकार प्रमाणपत्र के लिए उसके विधिक वारिसों से आग्रह नहीं करना चाहिए क्योंकि प्रतिकर राशि को ऋण या प्रतिभूति के रूप में नही समझा जा सकता। (चन्द्रा (श्रीमति) वि. रनवीर सिंह रामावतार) ...2847

*उत्तराधिकार अधिनियम (1925 का 39), धारा 372 – उत्तराधिकार प्रमाणपत्र* – द्वितीय विवाह शून्य था क्योंकि उसे विवाह विच्छेद की डिक्री अभिप्राप्त किये बिना संपन्न किया गया था – विवाह विच्छेद की डिक्री को पश्चात्वर्ती प्रदान करना द्वितीय विवाह को विधिसम्मत नही बनाएगा – उत्तराधिकार प्रमाणपत्र प्रदान करने का आदेश अपास्त – पुनरीक्षण मंजूर। (दीपक कुमार चौकसे वि. सूपरइंटैंडेंट. ऑफिस ऑफ डिस्ट्रिक्ट आयुर्वेदिक ऑफीसर. सागर) ...3095

*गन्ना (पूर्ति एवं क्रय का विनियमन) अधिनियम, म.प्र. 1958 (1959 का 1), धाराएं 19 व 20 – देखें – कृषि उपज मण्डी अधिनियम, म.प्र. 1972, अध्याय–VI* (व्यापार का विनियमन), धाराएं 2, 3, 4, 5, 7, 19, 31, 32, 36, 37, 38, 39, 43 व 44 (कृषि उपज मंडी समिति, नरसिंहपुर वि. मे. शिवशक्ति खानसारी उद्योग) (SC)...*114

*अपकृत्य – अनुयोज्य उपेक्षा – मंडी परिसर में स्थित कुंआ स्लैब से ढका था* – उक्त ढके हुए कुंए पर मंडी समिति द्वारा मीटिंग बुलाई गई – पत्थर के स्लैब गिर गये जिसके परिणामस्वरूप डूबने से कई लोगों की जाने गईं – मंडी समिति के संपूर्ण क्षेत्र पर मंडी समिति का अधिकार, नियंत्रण तथा कब्जा था – क्षेत्र के आसपास कोई सूचना प्रदर्शित नहीं की गई थी कि कुंए के ढके हुए क्षेत्र का उपयोग प्रवेश हेतु या बैठने के लिए या कोई मीटिंग करने के लिए नहीं किया जाए – मंडी समिति की कार्यवाही, अनुयोज्य उपेक्षा की परिभाषा के अंतर्गत आती है – सम्यक् दायित्व का सिद्धांत, नगरपालिका को भी लागू होता है – वाद का विनिश्चय करने हेतु तथा प्रतिकर का निर्धारण करने हेतु मामला प्रतिप्रेषित। (संतोषदेवी (श्रीमति) वि. म.प्र. राज्य) (DB)...3046

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*Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Section 4 - Abatement of legal proceedings - Possession* - Notice to deliver the possession was issued on 9-9-1996 after declaring the land surplus - Possession was taken by the revenue officials - Neither erstwhile owners, nor any of the petitioners took any objection with respect of any of the aforesaid order, or against the notice issued for taking over the possession - Panchnama of taking possession itself is sufficient to draw an inference that the possession of the land was taken over on 13-3-1999 - As the possession was already taken therefore, the representation of the petitioners by holding that possession was already taken doesnot call for any interference - Petition dismissed. [Kranti Kumar Jain Vs. State of M.P.] ...2701

*Wakf Act (43 of 1995), Sections 54 & 55* - Prescribes a complete methodology and code to remove encroachment on Wakf Property - Wakf

*अपकृत्य – उपेक्षा – परिमाषित।* (संतोषदेवी (श्रीमति) वि. म.प्र. राज्य) **(DB)...3046**

*विश्वविद्यालय अनुदान आयोग अधिनियम (1956 का 3), धाराएं 2 (एफ), 22 व 23 – विश्वविद्यालय – उपाधियां प्रदत्त करने का अधिकार* – दूरस्थ शिक्षा परिषद् का अनुमोदन अभिप्राप्त किये बिना कोई मुक्त विश्वविद्यालय स्थापित नही किया जा सकता तथा किसी मुक्त विश्वविद्यालय द्वारा अपने प्रचालन क्षेत्र के बाहर अथवा उस राज्य की क्षेत्रीय सीमा से परे जहां वह स्थित है, कोई दूरस्थ शिक्षा केन्द्र स्थापित नही किया जा सकता और इसलिए म.प्र. राज्य में स्थित दूरस्थ शिक्षा केन्द्रों के द्वारा याचीगण को जारी की गई अंकसूचियां स्पष्ट रूप से विधि का उल्लंघन है और राज्य सेवा में नियोजन या उच्चतर शिक्षा हेतु उसे मान्यता नहीं दी जा सकती। (रश्मि रजक (श्रीमति) वि. यूनियन ऑफ इंडिया) **...*120**

*विश्वविद्यालय अनुदान आयोग अधिनियम, (1956 का 3) – विनियमन 2009* – विनियमन 17–7–2009 से प्रभावी रूप से लागू हुआ – विनियमन प्रवर्तन में भविष्यलक्षी है – उस तिथि से पूर्व अभिप्राप्त की गई उपाधियों/अंकसूचियों की विधिमान्यता का निश्चित रूप से परीक्षण किया जा सकता है। (रश्मि रजक (श्रीमति) वि. यूनियन ऑफ इंडिया) **...*120**

*नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम (1976 का 33), धाराएं 6 व 10 – क्रेताओं को नोटिस* – याचीगण द्वारा भूमि का क्रय, विक्रय विलेख दिनांक 1–2–1982 के जरिए किया गया – चूंकि संव्यवहार नियुक्त तिथि अर्थात् 9–9–1976 के पश्चात् हुआ, इसलिए सक्षम प्राधिकारी उक्त पश्चात्वर्ती संव्यवहारों का न तो नोटिस लेने को बाध्य था और न ही अधिकतम सीमा अधिनियम की कार्यवाही के संबंध में याचीगण को कोई नोटिस जारी करने के लिए बाध्य है। (क्रांती कुमार जैन वि. म.प्र. राज्य) **...2701**

*नगर भूमि (अधिकतम सीमा और विनियमन) निरसन अधिनियम (1999 का 15), धारा 4 – विधिक कार्यवाहियों का उपशमन – कब्जा* – भूमि के अधिशेष घोषित किये जाने के पश्चात्, दिनांक 9–9–1996 को कब्जा सौंपने के लिए नोटिस जारी किया गया – राजस्व अधिकारियों द्वारा कब्जा लिया गया – न तो भूतपूर्व स्वामियों ने और न ही किसी याची ने उपरोक्त किसी आदेश के संबंध में या कब्जा लेने के लिए नोटिस के विरूद्ध कोई आक्षेप उठाया – कब्जा लेने का पंचनामा अपने आप में यह निष्कर्ष निकालने के लिए पर्याप्त है कि भूमि का कब्जा 13–3–1999 को लिया गया – चूंकि कब्जा पहले ही लिया जा चुका है, इसलिए याचीगण का अभ्यावेदन यह धारणा करते हुए कि कब्जा पहले ही लिया गया था, किसी हस्तक्षेप की मांग नही करता – याचिका खारिज। (क्रांती कुमार जैन वि. म.प्र. राज्य) **...2701**

*वक्फ अधिनियम (1995 का 43), धाराएं 54 व 55* – वक्फ सम्पत्ति पर किया गया अतिक्रमण हटाने के लिए संपूर्ण विधि एवं संहिता विहित करती है – वक्फ अधिनियम

**Act is a special Central Act which prescribes this methodology - Thus, sec 248 cannot be pressed into service against Wakf Property. [Baheed Khan Vs. State of M.P.] ...2385**

***Workmen's Compensation Act (8 of 1923), Section 30 - Compensation*** **- Claimant was working as Conductor - Doctor has stated that claimant has suffered 40% disability but on account of fracture of hip bone, workmen is totally disable to discharge the work of conductor - Permanent disability of the workmen is 100% as he cannot discharge the work of conductor. [National Insurance Co. Ltd. Vs. Ramkishore Mishra] ...*119**

***Workmen's Compensation Act (8 of 1923), Section 30 Third Proviso*** **- Amount payable under the order appealed against - Amount payable include the interest awarded - As only principal amount has been deposited and not the amount of interest, appeal is not maintainable in view of bar envisaged under Section 30. [National Insurance Co. Ltd. Vs. Ramkishore Mishra] ...*119**

***Workmen's Compensation Act (8 of 1923), Section 30 Third Proviso - Liability of Insurer*** **- Insurer Company found liable to pay compensation jointly and severally - As the vehicle was insured whatever the liability was fastened upon the employer was also fastened upon the Insurance Company - Third Clause is applicable to the insurer also. [National Insurance Co. Ltd. Vs. Ramkishore Mishra] ...*119**

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एक विशेष केन्द्रीय अधिनियम है जो यह विधि विहित करता है – अतः धारा 248 को वक्फ सम्पत्ति के विरूद्ध जोर डालकर लागू नही किया जा सकता। (वहीद खान वि. म. प्र. राज्य) ...2385

*कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 – प्रतिकर* – दावाकर्ता कन्डक्टर के रूप में पदस्थ था – चिकित्सक का कथन है कि दावाकर्ता ने 40% निःशक्तता सहन की परंतु कूल्हे की हड्डी के अस्थिभंग के कारण, कर्मकार, कन्डक्टर के कार्य का निर्वहन करने के लिए पूर्णतः निःशक्त है – कर्मकार की स्थायी निःशक्तता 100% है क्योंकि वह कन्डक्टर के कार्य का निर्वहन नहीं कर सकता। (नेशनल इंश्योरेन्स कं. लि. वि. रामकिशोर मिश्रा) ...*119

*कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 तृतीय परंतुक* – आदेश, जिसके विरुद्ध अपील की गई है, के अंतर्गत देय रकम – देय रकम में अवार्ड किया गया ब्याज समाविष्ट है – चूंकि केवल मूल रकम जमा की गई और न की ब्याज की रकम, धारा 30 के अंतर्गत परिकल्पित वर्जन को दृष्टिगत रखते हुए अपील पोषणीय नहीं। (नेशनल इंश्योरेन्स कं. लि. वि. रामकिशोर मिश्रा) ...*119

*कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 तृतीय परंतुक – बीमाकर्ता का दायित्व* – बीमाकर्ता कम्पनी को संयुक्त एवं पृथक रूप से प्रतिकर का भुगतान करने के लिए दायी पाया गया – चूंकि वाहन बीमित था, जो भी दायित्व नियोक्ता पर था वह बीमा कम्पनी पर भी था – तृतीय खण्ड, बीमाकर्ता पर भी लागू होगा। (नेशनल इंश्योरेन्स कं. लि. वि. रामकिशोर मिश्रा) ...*119

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*Short Note (SC)*
**(116)*
***Before Mr. S.H. Kapadia, Chief Justice of India,***
***Mr. Justice A.K. Patnaik & Mr. Justice Swatanter Kumar***
W.P. (C) No. 50/1998 decided on 9 August, 2012

BHOPAL GAS PEEDITH MAHILA UDYOG
SANGATHAN & ors. ...Petitioners
Vs.
UNION OF INDIA & ors. ...Respondents

*A.* ***Constitution - Article 32, 226 - Bhopal Gas Tragedy -*** **Writ petition pending before Supreme Court is transferred to High Court for better and effective control.**

*क. संविधान – अनुच्छेद 32 व 226 – भोपाल गैस त्रासदी –* सर्वोच्च न्यायालय के समक्ष लंबित रिट याचिका, बेहतर एवं प्रभावी नियंत्रण के लिए उच्च न्यायालय को अंतरित की गई।

*B.* ***Constitution - Article 32 - Bhopal Gas Tragedy - Monitoring Committee -*** **State Govt. directed to provide proper infrastructure to the committees in the independent office space - Monitoring Committee would hear the complaints and can even call for the records and make its recommendations to the Govt. for taking appropriate steps - If no action is taken inspite of reminder, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions - Monitoring Committee shall have no penal jurisdiction - Suggestions of Monitoring Committee shall be primarily recommendatory and reformative in nature - Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the BMHRC and other Govt. hospitals dealing with gas victims - Jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or problems allied thereto - Committee shall not have any jurisdiction over the private Hospitals, nursing homes and clinics at Bhopal - Union as well as State Govt. directed to render all assistance, financial or otherwise, to ensure that there is no impediment in carrying on of the research work by the specialized institutions - Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of health books etc.**

*ख. संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – अनुश्रवण समिति*

– समितियों को स्वतंत्र कार्यालय स्थान पर उचित अवसंरचना उपलब्ध करने के लिए राज्य सरकार को निदेशित किया गया – अनुश्रवण समिति शिकायतों को सुनेगी और अभिलेख भी बुला सकती है और सरकार को उचित कदम उठाने के लिए अपनी अनुशंसाएं दे सकती है – यदि स्मरण पत्र के बावजूद कोई कार्यवाही नहीं की जाती, तब समिति को उच्च न्यायालय के समक्ष उचित निदेश हेतु जाने की पूर्ण अधिकारिता होगी – अनुश्रवण समिति को कोई दाण्डिक अधिकारिता नहीं होगी – अनुश्रवण समिति के सुझाव प्राथमिक रूप से अनुशंसात्मक एवं सुधारात्मक स्वरूप के होंगे – सशक्त अनुश्रवण समिति को बी.एम.एच.आर.सी. के तथा गैस पीड़ितों से संबंधित अन्य सरकारी चिकित्सालयों के कार्यों का निरीक्षण करने की पूर्ण अधिकारिता होगी – अधिकारिता, गैस पीड़ितों से संबंधित समस्याएं और/अथवा दुर्घटना से सीधे उत्पन्न होने वाली समस्याएं या सहबद्ध समस्याओं तक सीमित होगी – समिति को भोपाल के निजी चिकित्सालयों, परिचर्यागृहों व क्लीनिकों पर कोई अधिकारिता नहीं होगी – केन्द्र के साथ ही राज्य सरकार को सभी सहायता, वित्तीय या अन्य, देने के लिए निदेशित किया गया, यह सुनिश्चित करने के लिए कि विशेष संस्थानों द्वारा किये जा रहे अनुसंधान कार्यों को करने में कोई रूकावट ना आए – अनुश्रवण समिति को चिकित्सीय निगरानी, चिकित्सीय जानकारी का संगणकीकरण, स्वास्थ्य पुस्तकों का प्रकाशन इत्यादि, कार्यान्वित करना चाहिए।

*C.* ***Constitution - Article 32 - Bhopal Gas Tragedy - Toxic materials/waste*** **- Huge toxic materials/waste is still lying and its existence is hazardous to health - Union of India and State of M.P. are directed to take immediate steps for disposal of toxic waste in and around the factory on the recommendations of the Empowered Monitoring Committee, Advisory Committee and NIREH within six months.**

*ग. संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – विषैले पदार्थ/कूड़ा* – विशाल विषैले पदार्थ/कूड़ा अभी भी पड़ा हुआ है और उसका अस्तित्व स्वास्थ्य के लिए घातक है – भारत सरकार को एवं म.प्र.राज्य को सशक्त अनुश्रवण समिति, सलाहकार समिति तथा एनआईआरईएच की अनुशंसाओं पर, कारखाने के अंदर और आसपास के विषैले कूड़े का निपटारा करने हेतु तत्काल कदम उठाने के लिए निदेशित किया गया।

*D.* ***Constitution - Article 32 - Bhopal Gas Tragedy - BMHRC - Audit of Accounts*** **- Accounts of BMHRC and allied departments shall be audited by the Principal Auditor General (Audit), Madhya Pradesh.**

*घ. संविधान – अनुच्छेद 32 – भोपाल गैस त्रासदी – बीएमएचआरसी – लेखे की संपरीक्षा* – बीएमएचआरसी व संबंधित विभागों के लेखे की प्रधान महालेखापरीक्षक (संपरीक्षा), म.प्र. द्वारा संपरीक्षा की जाएगी।

The order of the Court was delivered by : **SWATANTER KUMAR, J.**

*NOTES OF CASES SECTION*

***Short Note***

****(117)***

***Before Mr. Justice Sanjay Yadav***

W.P.No. 3101/2006 (Jabalpur) decided on 14 December, 2012

GEETA BAI (Smt.) & ors. ...Petitioner

Vs.

STATE OF M.P. & ors. ...Respondents

***Land Acquisition Act (1 of 1894), Section 11-A - Period within which an award shall be made - Stay of proceedings by Court - Effect -*** **Award was due on 31.03.2000 - There was stay of 6 years 8 months and 16 days - Period of stay liable to be excluded - Award ought to have been passed on or before 18.01.2007 - Award was passed on 31.12.2005 - After excluding the period of stay it cannot be said that the statutory provisions of Section 11-A of the Act was violated - Petition dismissed.**

*भूमि अर्जन अधिनियम (1894 का 1), धारा 11–ए – अवधि, जिसके भीतर अवार्ड पारित किया जाना चाहिए – न्यायालय द्वारा कार्यवाही पर रोक – प्रभाव –* अवार्ड 31.03.2000 को नियत था – 6 वर्ष, 8 माह व 16 दिनों की रोक थी – रोक की अवधि अपवर्जित किये जाने योग्य – अवार्ड को 18.01.2007 को या उससे पहले पारित किया जाना चाहिए था – अवार्ड 31.12.2005 को पारित किया गया – रोक की अवधि अपवर्जित किये जाने के पश्चात् यह नही कहा जा सकता कि अधिनियम की धारा 11–ए के कानूनी उपबंधों का उल्लंघन किया गया – याचिका खारिज।

**Cases referred :**

*(2010) 3 SCC 353, (2011) 8 SCC 161, (1994) 5 SCC 686, (2007) 9 SCC 779,* (2000) 4 SCC 322, (1991) 4 SCC 531, (1995) Supp. (2) SCC 423, (1997) 7 SCC 430.

*Raveesh Agrawal with K.S. Jha,* for the petitioner.
*Vivek Agrawal,* G.A. for the respondents Nos. 1, 2 & 3.
*Sanjay Agrawal,* for the respondent No.4.
None for the respondent No.5.

***Short Note***

****(118)***

***Before Mr. Justice Sujoy Paul***

W.P.No. 6624/2012 (Gwalior) decided on 1 October, 2012

NARAYAN ACHARYA ...Petitioner

Vs.

KISHANLAL & ors. ...Respondents

***A. Civil Procedure Code (5 of 1908), Section 24 -***

***Reasonable Apprehension*** **- Orders of inferior Court are put to challenge before the Higher Courts as a matter of course and it is a part of game - Merely because an order of inferior court is set aside by the Superior Court and it is remitted back, and in turn, is posted before the same presiding judge, would not mean that the said judge will become biased or on remand would not be able to handle the matter dispassionately.**

*क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – युक्तियुक्त आशंका* – अवर न्यायालय के आदेशों को उच्चतर न्यायालयों के समक्ष स्वाभाविक रूप से चुनौती दी जाती है और यह प्रक्रिया का हिस्सा है – मात्र इसलिए कि वरिष्ठ न्यायालय द्वारा अवर न्यायालय के आदेश को अपास्त किया गया और उसे प्रतिप्रेषित किया गया और परिणामतः उसी पीठासीन न्यायाधीश के समक्ष पेश किया गया, इसका अर्थ यह नही होगा कि उक्त न्यायाधीश पक्षपाती हो जाएगा या प्रतिप्रेषित होने से मामले में निष्पक्ष कार्यवाही करने में असमर्थ होगा।

***B. Civil Procedure Code (5 of 1908), Section 24 - Transfer - Reasonable Apprehension*** **- Suit was earlier dismissed under order 7 Rule 11 C.P.C. - First Appeal was allowed and the matter was remanded back - Application under order 39 Rule 1 and 2 C.P.C. filed by plaintiff allowed - Plaintiff thereafter participated in proceedings without any damour or objection - Merely because some applications filed by the plaintiff were rejected it cannot be presumed that the presiding judge is annoyed with the petitioner or he will not get justice from him - Application rejected.**

*ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 24 – अंतरण – युक्तियुक्त आशंका* – वाद को पूर्व में सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत खारिज किया गया था – प्रथम अपील मंजूर की गई और प्रकरण प्रतिप्रेषित किया गया था – वादी द्वारा सि.प्र.सं. के आदेश 39 नियम 1 व 2 के अंतर्गत प्रस्तुत आवेदन स्वीकार किया गया – तत्पश्चात् वादी ने बिना किसी शिकायत एवं आक्षेप के कार्यवाही में हिस्सा लिया – मात्र इसलिए कि वादी द्वारा प्रस्तुत कुछ आवेदनों को नामंजूर किया गया, यह उपधारणा नहीं की जा सकती कि पीठासीन न्यायाधीश याची से क्षुब्ध है अथवा उसे उससे न्याय नही मिलेगा – आवेदन नामंजूर।

**Cases referred :**

(2008) 3 SCC 659, 2009 (5) MPHT 450, (2010) 8 SCC 401, 2004 AIHC 3135, 1999(1) MPJR 577, 1979 MPLJ 305, AIR 1996 AP 34, 2001(1) MPWN SN 35, (2010) 8 SCC 329

*Pawan Dwivedi,* for the petitioner.

*N.K. Gupta,* for the respondents No. 4 to 8.

*Short Note*
**(119)*
***Before Mr. Justice A.K. Shrivastava***
M.A.No. 695/2011 (Jabalpur) decided on 13 September, 2012

NATIONAL INSURANCE CO.LTD. ...Appellant
Vs.
RAMKISHORE MISHRA & ors. ...Respondents

*A.* ***Workmen's Compensation Act (8 of 1923), Section 30 Third Proviso*** **- Amount payable under the order appealed against - Amount payable include the interest awarded - As only principal amount has been deposited and not the amount of interest, appeal is not maintainable in view of bar envisaged under Section 30.**

*क.* *कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 तृतीय परंतुक* – आदेश, जिसके विरुद्ध अपील की गई है, के अंतर्गत देय रकम–देय रकम में अवार्ड किया गया ब्याज समाविष्ट है – चूंकि केवल मूल रकम जमा की गई और न की ब्याज की रकम, धारा 30 के अंतर्गत परिकल्पित वर्जन को दृष्टिगत रखते हुए अपील पोषणीय नहीं।

*B.* ***Workmen's Compensation Act (8 of 1923), Section 30 Third Proviso - Liability of Insurer*** **- Insurer Company found liable to pay compensation jointly and severally - As the vehicle was insured whatever the liability was fastened upon the employer was also fastened upon the Insurance Company - Third Clause is applicable to the insurer also.**

*ख.* *कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 तृतीय परंतुक – बीमाकर्ता का दायित्व* – बीमाकर्ता कम्पनी को संयुक्त एवं पृथक रूप से प्रतिकर का भुगतान करने के लिए दायी पाया गया–चूंकि वाहन बीमित था, जो भी दायित्व नियोक्ता पर था वह बीमा कम्पनी पर भी था – तृतीय खण्ड, बीमाकर्ता पर भी लागू होगा।

*C.* ***Workmen's Compensation Act (8 of 1923), Section 30 - Compensation*** **- Claimant was working as Conductor - Doctor has stated that claimant has suffered 40% disability but on account of fracture of hip bone, workmen is totally disable to discharge the work of conductor - Permanent disability of the workmen is 100% as he cannot discharge the work of conductor.**

*ग.* *कर्मकार प्रतिकर अधिनियम (1923 का 8), धारा 30 – प्रतिकर* – दावाकर्ता कन्डक्टर के रूप में पदस्थ था – चिकित्सक का कथन है कि दावाकर्ता ने 40% निःशक्तता सहन की परंतु कूल्हे की हड्डी के अस्थिभंग के कारण, कर्मकार, कन्डक्टर के कार्य का निर्वहन करने के लिए पूर्णतः निःशक्त है – कर्मकार की स्थायी निःशक्तता 100% है क्योंकि वह कन्डक्टर के कार्य का निर्वहन नहीं कर सकता।

**Cases referred :**

2004(2) MPLJ 445 (F.B.), 1998(1) MPLJ 188, 2007 AIR SCW 1265.

*Amrut Ruprah,* for the appellant.
*Narendra Chouhan,* for the respondent Nos.1(a) to (d).

***Short Note***
****(120)***
***Before Mr. Justice R.S. Jha***

W.P.No. 9903/2010 (Jabalpur) decided on 27 September, 2012

RASHMI RAJAK (Smt.) ...Petitioner
Vs.
UNION OF INDIA & ors. ...Respondents

*A.* ***University Grants Commission Act (3 of 1956), Sections 2(f), 22 & 23 - University - Right to confer degrees*** **- No Open University without having obtained approval of Distance Education Council and that no Distance Education Centre could have been established by an open university outside the area of its operation or beyond the territorial limit of the State in which it is situated and therefore, the marksheets issued to the petitioners through Distance Education Centers situated in State of M.P. is clearly in violation of law and cannot be recognized for higher education or employment in State Service.**

*क. विश्वविद्यालय अनुदान आयोग अधिनियम (1956 का 3), धाराएं 2 (एफ), 22 व 23 – विश्वविद्यालय – उपाधियां प्रदत्त करने का अधिकार* – दूरस्थ शिक्षा परिषद् का अनुमोदन अभिप्राप्त किये बिना कोई मुक्त विश्वविद्यालय स्थापित नही किया जा सकता तथा किसी मुक्त विश्वविद्यालय द्वारा अपने प्रचालन क्षेत्र के बाहर अथवा उस राज्य की क्षेत्रीय सीमा से परे जहां वह स्थित है, कोई दूरस्थ शिक्षा केन्द्र स्थापित नही किया जा सकता और इसलिए म.प्र. राज्य में स्थित दूरस्थ शिक्षा केन्द्रों के द्वारा याचीगण को जारी की गई अंकसूचियां स्पष्ट रूप से विधि का उल्लंघन है और राज्य सेवा में नियोजन या उच्चतर शिक्षा हेतु उसे मान्यता नहीं दी जा सकती।

*B.* ***University Grants Commission Act (3 of 1956) - Regulations 2009*** **- Regulations came into force w.e.f. 17-7-2009 - Regulations are prospective in operation - Validity of the degrees/ marksheets obtained prior to that date can definitely be examined.**

*ख. विश्वविद्यालय अनुदान आयोग अधिनियम, (1956 का 3) – विनियमन 2009* – विनियमन 17–7–2009 से प्रभावी रूप से लागू हुआ – विनियमन प्रवर्तन में भविष्यलक्षी है – उस तिथि से पूर्व अभिप्राप्त की गई उपाधियों/अंकसूचियों की विधिमान्यता का निश्चित रूप से परीक्षण किया जा सकता है।

**Cases referred :**

W.P. No. 3290/2012, (2005) 5 SCC 420, 2007(4) MPLJ 54.

*Harmeet Ruprah,* for the petitioner.
*Purushendra Kaurav,* for the respondent University.
*B.P. Pandey,* Dy.G.A. for the State.

**I.L.R. [2012] M.P, 2901**
**WRIT APPEAL**

***Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain***
W.A.No. 1035/2012 (Jabalpur) decided on 10 September, 2012

RAJENDRA KUMAR SHIV ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

***Service Law - Transfer* - Transfer order can be assailed where there is some breach of statutory provisions, based on malafide or there is some arbitrariness - Mere fact that in a district, transfer orders affected more than 10% of the employees, can not be a ground to interfere in the transfer order. (Para 10)**

*सेवा विधि – स्थानांतरण* – स्थानातंरण आदेश को चुनौती दी जा सकती है जहां कुछ कानूनी उपबंधों का उल्लंघन हुआ हो, असद्भावना पर आधारित हो या कोई मनमानापन हो – मात्र तथ्य कि किसी जिले में, 10 प्रतिशत से अधिक कर्मचारीगण स्थानातंरण आदेशों से प्रभावित हुए हैं, स्थानातंरण आदेश में हस्तक्षेप का आधार नहीं हो सकता।

**Cases referred :**

AIR 1991 SC 532, AIR 1993 SC 2444, (2010) 10 SCC 1.

*Sanjay K. Agrawal,* for the appellant.
*P.K. Kaurav,* Dy. A.G. for the respondents.

**ORDER**

The Order of the court was delivered by :
**K.K. LAHOTI, J.** - This appeal is directed against an order dated 29.8.2012 in W.P. 13703 of 2012 by which a writ petition preferred by the appellant against the transfer order dated 14.7.2012, transferring the appellant from Gam Panchayat, Kudwa, Janpad Panchayat Kurai, within the same district Seoni, in the same capacity of Panchayat Secretary, was dismissed.

2. This order has been assailed mainly on the ground that the transfer of the appellant was contrary to the transfer policy framed in compliance of sub rule 7 of Rule 6 of Madhya Pradesh Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules 2011. It is also submitted by Shri Agrawal that the policy which was framed in compliance of sub rule-7 of the aforesaid Rules was statutory one and if there was breach of any of the

condition of the policy, it amounts to breach of statutory policy and could have been enforced under the law and the learned Single Judge erred in dismissing the writ petition. That the breach which is alleged before this Court is that the transfer orders were affecting more than 10% of the Panchayat Secretaries in the district which was contrary to the policy Annexure P-2.

3. Shri P.K. Kaurav, learned Dy. A.G. supported the order and submitted that the policy of the transfer is by way of instructions and cannot be enforced under the law. He has placed reliance of the judgment of *Smt. Shipi Bose Vs. State of Bihar* [AIR 1991 SC 532] and *Union of India vs. S.L.Abbas* [ AIR 1993 SC 2444].

4. Learned counsel appearing for the appellant relied on a judgment of the Apex Court in *ICICI Bank Ltd. vs. Official Liquidator of APS Star Industries Limited* and ors [(2010) 10 SCC 1]

5. To appreciate the rival contentions of the parties, it would be appropriate if the factual position of the case may be stated. The petitioner was working as the Secretary in Gram Panchayat Kudwa, Janpad Panchayat Kurrai district. Seoni. By order dated 14.7.2012, the Chief Executive Officer, Zila Panchayat, Seoni has transferred him in the same capacity from Gram Panchayat, Kudwa to Gram Panchayat Suktara within the same Janpad Panchayt, Kurai.

6. For ready reference sub rule 7 Rule 6 of the aforesaid Rules reads thus :-

> "(7) The Gram Panchayat Secretary may be transferred on administrative ground or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner Panchayat Raj. The Gram Panchayat Secretary may be transferred, if necessary, after proper enquiry of the complaints on the recommendation of the Chief Executive Officer, Janpad Panchayat."

7. The aforesaid Rule specifically provide that the Gram Panchayat Secretary may be transferred on administrative grounds or on the basis of his application within the district in accordance with the transfer policy issued by the Commissioner, Panchayat.

8. In this case, the appellant has been transferred by the Chief Executive

Officer who is a competent authority and merely there was some complaints in respect of excess transfers in the district, the appropriate authority could have considered this grievance but on the aforesaid ground the transfer order can not be quashed. Though the aforesaid sub section 7 provides for framing of the policy but it is settled law that the transfer policies are instructions of the Government which cannot be enforced in law. See *S.L. Abbas* and *Shilpi Bose* (supra).

9. So far as the judgment relied by the learned counsel for the appellant in *ICICI Bank* (supra) is concerned, in the aforesaid case the guidelines issued by the Reserve Bank of India in respect of core banking were subject matter before the Apex Court. It was not a case of transfer and the Apex Court considering the peculiar aspects of the case held that the aforesaid instructions may be given affect to but in respect of transfer of an employee, law is well settled by the Apex Court in which it has been held that the policy of the transfer is only instructions and cannot be enforced in a court of law.

10. The transfer order can be assailed where there is some breach of statutory provisions, based on malafide or there is some arbitrariness but in the present case merely on the ground that in the district, transfer orders were affected more than 10% of the employees cannot be a ground to interfere in the transfer order of the appellant. This appeal is without merit and is dismissed at the admission stage.

11. At this stage, learned counsel for the appellant submitted that a representation against the transfer has already been filed before the Collector, Seoni. No other person has joined at the place where the appellant was working. The Collector, Seoni may be directed to decide the representation expeditiously.

12. Shri Kaurav, learned counsel appearing for the State has no objection in issuing directions to the Collector, Seoni to decide the representation expeditiously.

13. In view of the aforesaid, while disposing of this appeal, we direct the Collector, Seoni to decide the representation of the petitioner expeditiously, if already not decided.

No order as to costs.

*Appeal disposed of*

**I.L.R. [2012] M.P, 2904**

**WRIT APPEAL**

***Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain***

W.A.No. 1087/2012 (Jabalpur) decided on 29 October, 2012

PRADEEP AGNIHOTRI ...Appellant

Vs.

STATE OF M.P. & ors. ...Respondents

***Service Law - Age of Superannuation*** **- AICTE Regulation which provided for age of superannuation as 65 years was adopted by State Govt. on 19-10-2010 - Appellants superannuated on 31-8-2010 - Held - Unless and until the benefit of notification is made applicable specifically, such benefit is not available to the employees - As the appellants had already attained the age of superannuation therefore, they are not entitled for the benefit of the regulation - Appeal dismissed.** **(Para 16)**

*सेवा विधि – अधिवर्षिकी आयु* – ए.आई.सी.टी.ई. विनियमन जो अधिवर्षिकी आयु 65 वर्ष के लिए उपबंधित करता है, राज्य सरकार द्वारा 19.10.2010 को अंगीकृत किया गया – अपीलार्थीगण 31.8.2010 को सेवानिवृत्त किये गये – अभिनिर्धारित – जब तक कि अधिसूचना का लाभ विनिर्दिष्ट रूप से लागू नही किया जाता, ऐसा लाभ कर्मचारियों को उपलब्ध नही – चूंकि अपीलार्थीगण पहले ही अधिवर्षिकी आयु प्राप्त कर चुके हैं इसलिए वे विनियम के लाभ के हकदार नही – अपील खारिज।

**Cases referred :**

(2001) 3 SCC 135, (2006) 10 SCC 587, W.P. No. 5267/2010

*K.C. Ghildiyal,* for the appellant.

*P.K. Kaurav,* Dy. A.G. for the State.

**ORDER**

The Order of the court was delivered by : **K.K. Lahoti, J.** - This order shall decide Writ Appeal No.1087/2012 (Pradeep Agnihotri vs. State of Madhya Pradesh & others) and Writ Appeal No.1088/2012 (Pramod Mishra vs. State of Madhya Pradesh & others),

arising out of the common order dated 23/08/2012, in two separate petitions by the Single Bench.

2. A short question arises for our consideration in the appeals is whether by virtue of Regulation issued by the All India Council for Technical Education (AICTE) dated 05/03/2010, appellants herein were entitled to continue in his services till attaining the age of 65 years or Circular dated 19/10/2012 issued by the State of Madhya Pradesh Technical Education and Training Department of Ministry, by which the aforesaid Regulations were given prospective effect with effect from the date of issuance of the order, will govern the age of superannuation.

3. To decide the issue, the facts are taken from the Writ Appeal No.1087/2012 for the convenience.

4. The appellant was working on the post of Workshop Superintendent in the Government Polytechnic College Nowgaon, District Chhatarpur. He has attained the age of superannuation on 31/08/2010. Prior to his attaining the age of superannuation, the All India Council for Technical Education (AICTE) issued a notification dated 05/03/2010 by which age of superannuation was enhanced to 65 years.

5. The appellants herein have claimed that they were entitled to continue in services till attaining the age of 65 years and they were wrongly superannuated on attaining the age of 62 years. It was submitted before the Single Bench that the State Government was having no jurisdiction to give effect to the aforesaid notification w.e.f. 19/10/2010, but the appellants were entitled for the benefit of regulation from the date of issuance of notification i.e. 05/03/2010. Learned Single Judge has considered the matter and found that the petitioners/appellants were employees of the State. The State Government was having power to give effect to the aforesaid Regulation from a subsequent date and was not bound to make the Regulation effective from 05/03/2010. Considering the aforesaid, learned Single Judge found that the State Government has given effect to the aforesaid Regulation from 19/10/2010 and the appellants who were superannuated prior to this date were not entitled for any relief and dismissed the writ petitions. Aggrieved by the aforesaid order, appellants have preferred these writ appeals.

6. Learned counsel for the appellants submitted that the notification dated 05/03/2010 was issued by the All India Council for Technical Education

(AICTE) in exercising the power under Section 23(1) read with Section 10(i) & (v) of the All India Council for Technical Education Act, 1987 (hereinafter referred to as and Act of 1987), so the aforesaid Regulations were binding on the State Government. It was submitted that as per Regulation, the age of superannuation was extended till 65 years then the appellants were entitled for the same benefit. It was also submitted that though in clause 3 & 4 of the applicability of the scheme provides that this scheme may be extended, but hindi version of the same Regulation provides that aforesaid benefit is extended to all Polytechnic Technical Institutions, meaning thereby that from the date of issuance of notification, the appellants were entitled for the extended benefit of the age of superannuation.

7. Shri P.K.Kaurav, learned counsel for the State supported the order and submitted that as per the Regulation, it was to be given effect to the State Government by issuing an order to the appellants and other similar situated employees. The State Government by notification dated 19/10/2010 have extended the benefit of the aforesaid scheme to all the employees prospectively so the persons who were employed on 19/10/2010 were entitled for the benefit and other persons who were already superannuated, were not entitled for the aforesaid benefit.

8. To consider the aforesaid arguments, we have gone through the record to ascertain factual position of the case.

9. In this case, it was not disputed that the appellants were superannuated on 31/08/2010. The Regulation was notified on 05/03/2010 by the All India Council for Technical Education (AICTE). The State Government have given effect to the aforesaid notification, in particularly in respect of the age of superannuation, vide order dated 19/10/2010 (Annexure R-1) and the aforesaid Regulation was made applicable to all the Teachers who were working on the date of issuance of order i.e. on 19/10/2010.

10. The relevant paragraph of the Regulation dated 05/03/2010 about the age of superannuation, reads thus:-

> **Age of Superannuation:-**
>
> (i) In order to meet the situation arising out of the shortage of teachers in Technical Institutions and the consequent vacant positions therein, the age of superannuation for teachers in echnical Institutions has been enhanced to sixty five years, vide

the Department of Higher Education letter No. F.No. 1-19/ 2006-U.II dated 23/03/2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period.

The applicability of the scheme clause reads thus:-

**Applicability of the Scheme:-**

(i) This scheme shall be applicable to teachers in Technical Institutions and other equivalent cadres of Library and for Physical Education personnel in all the AICTE approved institutions. The implementation of the revised scales shall be subject to the acceptance of all the conditions mention in this letter as well as Regulations to be framed by the AICTE in this behalf.

(ii) This scheme does not extend to the posts of professionals like System Analysis, Senior Analysis, Research Officers etc., who shall be treated at par with similarly qualified personnel in research/Scientific organizations of the Central Government.

(iii) This scheme may be extended to all Polytechnic Technical Institutions coming under the purview of State Legislatures.

(iv) The entire liability on account of revision of pay scales etc. of Polytechnic teachers shall be that of the State Government.

State Government, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this scheme, and may give effect to the revised bands /scales of pay from a date on or after 01/01/2006. However, appropriate steps to achieve the goals and objectives of MHRD's "Sub-Mission on polytechnics" may be taken.

11. As the hindi version of the aforesaid notification has been referred by the learned counsel for the appellants, so the aforesaid provision is also

reproduced which reads thus:-

"स्कीम की प्रयोज्यता:–

(i) यह स्कीम तकनीकी संस्थाओं में शिक्षकों तथा समस्त अभातशिप अनुमोदित संस्थाओं ये पुस्तकालय के अन्य समकक्ष संवर्गों तथा शारीरिक शिक्षा कार्मियों के लिए लागू होगी। संशोधित वेतनमानों का कियान्वयन इस पत्र में उल्लिखित तथा इस संबंध में अभातशिप द्वारा तेयार किए जाने वाले विनियमों की स्वीकृति के अध्यधीन होगा।

(ii) यह स्वकीम व्यावसायिक पदो जैसे प्रणाली विश्लेषक, वरिष्ठ विश्लेषक, अनुसंधान अधिकारी आदि तक विस्तारित नहीं की गई है, जिन्हें केन्द्रीय सरकार के शोध/वैज्ञानिक संगठनों में समान अहक कार्मिकों के समकक्ष माना जाता है।

(iii) यह स्कीम राज्य विधानमण्डलों के अंतर्गत आने वाली समस्त पॉलीटेक्नीक तकनीकी संस्थाओं पर लागू होगी।

(iv) पॉलीटेक्नीक शिक्षकों के वेतनमानों के संशोधन आदि के परिणामस्वरूप समस्त दयता राज्य सरकार की होगी। राज्य सरकार, अन्य स्थानीय परिस्थितियों की ध्यान में रखते हुए, अपने विवेक के अनुसार, इस स्कीम में उल्लिखित वेतनमानों से उच्च वेतनमान लागू करने पर भी निर्णय ले सकेगी तथा संशोधित वृद्धि/वेतनमानों को 1.1.2006 को अथवा उसके पश्चात की तारीख को प्रवृत्त कर सकेगी। तथापि, मानव संसाधन विकास मंत्रालय के पॉलीटेक्नीकों पर सब–मिशन या लक्ष्यों तथा उद्देश्यों को प्राप्त करने के लिए उपयुक्त कदम उठाए जाएंगे।

(Emphasis supplied)

12. From perusal of the aforesaid, it is apparent that the hindi version of the scheme provides that the scheme shall be applicable to all the Polytechnic Institutions which are under the State Government. The English version of the aforesaid clause specifically provides that the scheme may be extended to all the Polytechnic Technical Institutions coming under the purview of State legislatures. If there is some ambiguity between the hindi version and english version, the english version has to be given effect. [See: *Park Leather Industry vs. State of U.P.* (2001) 3 SCC 135 and *Prabhat Kumar vs. UPSC* (2006) 10 SCC 587]. The english version of this Regulation provides that the scheme was to be extended to all the Polytechnic Technical Institutions coming under the purview of State legislatures. The State Government vide notification (Annexure R-1) dated 19/10/2010 has given effect to the aforesaid scheme

from the date of issuance of notification that is 19/10/2010 and any teacher who was in service on that date was entitled for the benefit of such scheme and was entitled to continue till attaining the age of 65 years.

13. A Division Bench of this Court have considered this aspect in Dr. *R.K.Chapra & others Vs. State of Madhya Pradesh* in Writ Petition No.5267/2010, considering similar provision held thus:-

> "The State Government vide order dated 16/04/2010, Annexure P-10 has taken a decision to implement the scheme with certain modifications. The age of superannuation as recommended in the scheme for the Central Government teaching staff has been enhanced from 62 years to 65 yeas. However, the same has been made applicable with effect from the date of order i.e. 16/04/2010. From perusal of the scheme framed by the Central Government, it is apparent that aforesaid scheme is not binding on the State Government. In our opinion, the contention of learned counsel for petitioners that petitioners who are teachers working in the Department of Higher Education of Government of M.P., are also entitled to get the same benefit which has been granted to teaching staff of the universities, is misconceived. Supreme Court while dealing with the claim of servants with regard to parity of pay scales with their counter part in the university in *State of W.B. vs. Tropical School Employee Union* and other, (1996) 8 SCC 294 in paragraph 5 held as under:-
>
> *"Shri M.N.Krishnamani, the learned senior counsel for the respondents, contended that the teaching staff are receiving the scale of pay prescribed by the UGC and the respondents are assisting the teaching staff. When similar persons working in the universities are receiving the pay scales prescribed by the UGC the respondents are also equality entitled to the same. We fail to appreciate the stand. The employees of the universities are not the government servants. They are governed by their own regulations and statues under the respective enactments. The respondents on their own admitted position being the government servants, cannot get high scale of the pay then*

*prescribed for the post. Under those circumstances, the High Court was wholly unjustified in extending the benefit of pay scales prescribed by the UGC to the non-teaching medical staff and also to class-IV government employees.*

In view of the aforesaid enunciation of law by the Supreme Court, we hold that the order dated 16/04/2010 passed by the State Government can neither be treated as arbitrary nor discriminatory."

14. Apart from this, the Regulation of the AICTE was not applicable immediately on notification of Gazette on 05/03/2010, but it was to be extended by the State Government in the Polytechnic Institutions of the State Government and until and unless such Regulation is extended to the Polytechnic Institutions of the State Government, such benefit was not available to the employees of such institution coming under the purview of State legislatures. It is not in dispute that the appellants were working in Government Polytechnic Colleges, in the State of Madhya Pradesh and such benefit was available to the appellants only after extending such benefit of the Regulation to the employees.

15. In view of the law laid down by the Apex Court in *State of W.B. vs. Tropical School Employee Union and others* (referred in the order of Dr. R.K.Chapar) and the Division Bench in *Dr. R.K.Chapar* , there is no doubt that such Regulation was to be made applicable to the employees of Polytechnic Technical Institutions in the State and until and unless it is made applicable specifically, such benefit was not available to the employees because of specific clause of applicability of the Scheme.

16. In view of the aforesaid, learned Single Bench has rightly held that such scheme was made applicable to the employees w.e.f. 19/10/2010 and the appellants who had already attained the age of superannuation, were not entitled for the same benefit. In view of aforsaid, we do not find any error in the order passed by the learned Single Judge.

17. At this stage, Shri Ghildyal, submitted that because of ad-interim writ issued by the Single Bench, both the appellants have continue in the services till the decision of the Writ Court, out of two appellants, one Pradeep Agnihotri was paid monthly salary while Promod Mishra has not been paid fully. It was submitted that appellant Pramod may also be paid his salary till he had discharged the duty.

18. The prayer made by Shri Ghildiyal is opposed by Shri P.K.Kaurav, but considering the fact that out of two employees, one Pradeep Agnihotri has been paid his salary for the period he had discharged his duty while Pramod Mishra has not been paid for the same, the respondent is directed to release the payment to Shri Pramod Mishra also for the period, for which he had discharged his duty, within a period of three months.

19. With the aforesaid modification, both the appeals are dismissed at admission stage, with no order as to costs.

CC as per rules.

*Appeal dismissed.*

## I.L.R. [2012] M.P, 2911
## WRIT APPEAL

***Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain***

W.A.No. 875/2011 (Jabalpur) decided on 30 October, 2012

PRAKASH SINGH THAKUR ...Appellant

Vs.

STATE OF M.P. & ors. ...Respondents

***Prisoners' Release on Probation Rules, M.P 1964, Rule 4 (Amended)*** **- Rule 4 has been amended on 24.03.2008 therefore, all applications, pending for the premature release under the Provisions of M.P. Prisoners Release on Probation Act, 1954 are to be decided in the light of the amended rules. (Para 6)**

*बंदियों का परिवीक्षा पर छोड़ा जाना नियम, म.प्र. 1964, नियम 4 (संशोधित)* – नियम 4 को 24.03.2008 को संशोधित किया गया है इसलिए, म.प्र. बंदियों को परिवीक्षा पर छोड़ा जाना अधिनियम, 1954 के उपबंधों के अंतर्गत समय पूर्व मुक्त किये जाने हेतु सभी लंबित आवेदनों का विनिश्चिय संशोधित नियमों के आलोक में किया जाना चाहिए।

**Cases referred :**

2011(3) MPLJ 682, W.P. No. 9034/2008, W.P. No. 15189/2008.

*D.D. Bhargawa,* for the appellant.

*Vijay Pandey,* Dy. A.G. for the respondents.

**ORDER**

The Order of the court was delivered by : **K.K. LAHOTI, J.** - This order shall decide W.A. No.875 of 2011, W.A. 903 of 2011, W.A. No. 915 of 2011 and R.P. No. 427 of 2011 in which a common question of law is involved for the consideration of this Court. For the convenience facts are taken from W.A.No. 875 of 2011 (Prakash Singh Thakur vs. State of M.P. and others).

2. All the appellants/petitioners are suffering sentence for life under Section 302 IPC alongwith some more provisions under the IPC. It is also not in dispute that these persons have not completed actual sentence of 14 years and before completion of the aforesaid period, they have applied for their premature release under the provisions of M.P. Prisoners Release on Probation Act, 1954 (hereinafter referred to as "Act"). The sole contention of the petitioner before this Court is that the Rule 4 of M.P. Prisoners Release on Probation Rules, 1964 (hereinafter referred to as "the Rules") have been amended vide notification dated 24.3.2008 while the applicants were convicted prior to it, so the earlier rule as was in statute book prior to 24.3.2008 shall be applicable in the matter of all the appellants and they are entitled to release on probation even without completion of actual sentence of 14 years. Reliance is placed to a Division Bench of this Court in *Santosh Kumar Dubey vs. State of M.P. & another* (2011(3) MPLJ 682) and submitted that in view of the judgment in *Santosh Kumar,* the appellants may be directed to be considered for premature release on probation by the respondents even without completion of 14 years of actual sentence.

3. Shri Vijay Pandey, learned Dy. A.G. submitted that the controversy involved in the case has already been decided by the Division Bench of this Court in *Gouri Shankar vs. State of M.P. and others* (W.P. No. 9034 of 2008) and other cases on 16.3.2009. Thereafter a full Bench of this Court also considered this aspect in *Anni @ Ramesh vs. State of M.P. & others* (W.P.15189 of 2008) and validity of the aforesaid provisions has been up held. It is further submitted by Shri Pandey that the proviso of Rule 4 of the Rules has been given effect to from the date of its amendment in Rule 4 of the Rules and all the matters which are to be considered after the amendment are to be considered in the light of the amended Rule and not as per the unamended Rule, even the applications of the prisoners were filed and rejected earlier. It is submitted that the law laid down by the Division Bench in *Gouri Shankar*

(supra) was not brought into the notice of this Court while deciding the case of *Santosh Kumar* and also of Full Bench in the case of *Anni @ Ramesh.* It is submitted that in the light of the earlier judgments of the Supreme Court, the learned Single Judge has rightly dismissed the writ petitions and all the appeals have no merit and may be dismissed. Rule 4 of Rules provides as under :-

> **"4. Eligibility for release** – Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years without remission, whichever is less, may be released by the Government on licence.
>
> Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No.45 of 1860)or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence:
>
> Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission in sentence:
>
> Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds."

4. The aforesaid rule specifically provide that the eligibility of the release shall be after undergoing sentence of 14 years of actual imprisonment without remission. The Division Bench of this Court considering the validity and applicability of the aforesaid provision in *Gouri Shankar* (supra) held thus :-

21. On a reading of the aforesaid decision, it becomes vivid that the Division Bench ad analyzed the scheme of the Act and the Rules and found that thre was no provision which falls within the mischief of the mandatory rule of 14 years as an essential condition for the release from prison and, therefore, directions were issued in the said case. The said decision was not dealing with the constitutional validity of the Rules. In the cases at hand, the conditions have been prescribed. An exception has been carved out by the provisos added to Rule 4. The submission of the learned Government Advocate is that regard being had to the sweeping criminal activities and the rate of heinous offences, mercenary killings and the path paved by some who have taken the killings to be profession and political murders, the rules have been amended. In this context, we may note with profit how a Division Bench of this Court in W.P. No.1618/2006 had observed the abuse of the provisions. The Division Bench in the aforesaid case has expressed thus :-

*"We are, therefore, of the opinion that all the cases where probationers have been released and where appeals are pending or on mere completion of 5 years or 6 years should be reviewed again. Board is directed to review all the cases and shall also decide the application of the petitioner in the light of the directions given above. Order rejecting the application of the petitioner passed by the Board is quashed with a direction to the Board to reconsider the case in the light of judgment in the case of Arvind Yadav v. Ramesh Kumar and others and State of M.P. vs. Bhola (supra) and earlier order passed. As petitioner has remained in jail for more than 13 years, Board is directed to reconsider the case of the petitioner within a period of two months from today."*

22. The Division Bench had also observed that where prayer for bail has been rejected, the convicts have been released on licence.

23. In view of our aforesaid analysis, wedo not find the Rule to be ultra vires the Section 433-A of the Code or any of

the provisions of the Act according it is declared as intra-vires.

*1. The next limb of submission of Mr. Bhargava and Mr. Pateria, learned counsel, is that the cases of the petitioners should have been considered under the old rules as the amended provisions rule cannot be made applicable to them. To bolster the said submission, they have commended us to the decisions rendered in Mahendra Singh (supra) and State of Haryana v. Bhup Singh and others, JT 2009(1) SC 535. To appreciate the said submission, we have carefully perusaed both the decisions. It is perceivable that the decision in Bhup Singh (supra) is based on Mahendra Singh. In the case of Mahendra Singh (supra), their Lordships were dealing with the validity of the policy decision vis a vis Prison Rules and in that context, held that the Rules would prevail keeping in view that the right to as for remission of sentence by a life convict would be under the law as was prevailing on the date on which the judgment of conviction and sentence was passed. In the case at hand, the Rules have been amended. Needless to emphasize, they are statutory in nature. They have been framed in exercise of powers vested under Section 9 of the 1954 Act. They are not executive instructions. In view of the aforesaid, the decisions rendered in Mahendra Sing (supra) and Bhup Singh (supra) are distinguishable.*

5. A full Bench of this Court in *Anni* (supra) also ccnsidered this aspect in para 15 of the judgment which reads thus:-

"15. We also find that the restrictions of periods of actual imprisonment introduced by the proviso for becoming a prisoner eligible to be considered for release under the Act is in consonance with section 433A of the Code of Criminal Procedure introduced by the Parliament which provides for restriction on powers of remission or commutation in certain cases. According to section 433A a life convict, for an offence for which death is one of the punishments, cannot be reased from prison unless he has served at least 14 years of

imprisonment. The Constitutional validity of section 433A was challenged before the Supreme Court *Maru Ram vs. Union of India* AIR 1980 SC 2147 but was upheld by the Constitution Bench. Otherwise also, merely because a life convict has undergone 14 years of imprisonment does not acquire a right to be released prematurely and he only becomes eligible for being considered to be released on probation."

6. It appears that the question involved in these appeals has already been considered specifically by the Division Bench in *Gouri Shankar* (supra) and by the Full Bench in *Anni @Ramesh* as quoted hereinabove. Both the judgments were not brought into the notice of the Single Bench while deciding the case of Santosh Kumar and it appears that without taking note of the aforesaid judgment, the judgment of Santosh Kumar was passed, while the factual position is that in *Gouri Shankar* (supra) the Rule has been held to be applicable in all the pending matters and the Division Bench has held that in all the matters pending on the date of amendment shall be considered in the light of the amended rules and the aforesaid rules shall be applicable.

7. In view of the aforesaid, if the learned Single Judge has dismissed the petition, on the ground that without completion of actual period of fourteen years sentence, the applications filed by the petitioners/appellants were premature, no fault is found. These appeals are found without merit and are dismissed with no order as to costs.

*Appeal dismissed*

**I.L.R. [2012] M.P, 2916**

**WRIT APPEAL**

***Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain***

W.A.No. 1245/2012 (Jabalpur) decided on 7 November, 2012

VAIDHYANATH SHUKLA ...Appellant

Vs.

STATE OF M.P. & Ors. ...Respondents

***Civil Services (Pension) Rules, 1976 (M.P.), Rule 64(1)(b)*** **- Final Order - Appellant was facing criminal trial and attained the age of superannuation during the pendency of the trial - Provisional pension was paid - However, after the conviction the provisional pension was stopped -**

**Words Final Order Passed by Competent Authority does not relate to final authority in respect of payment of pension but it relates in respect of the departmental or judicial proceedings - Stoppage of provisional pension after conviction proper - Appeal dismissed. (Para 10)**

*सिविल सेवा (पेंशन) नियम 1976, (म.प्र.), नियम 64 (1)(बी)* – अंतिम आदेश – अपीलार्थी, आपराधिक विचारण का सामना कर रहा था और विचारण लंबित रहने के दौरान अधिवर्षिता आयु प्राप्त की – अनंतिम पेंशन अदा की गई – किन्तु, दोषसिद्धि के पश्चात् अनंतिम पेंशन रोक दी गई – शब्द, सक्षम प्राधिकारी द्वारा पारित अंतिम आदेश, पेंशन के भुगतान के संबंध में अंतिम प्राधिकारी से संबंधित नही बल्कि, विभागीय या न्यायिक कार्यवाहियों से संबंधित है – दोषसिद्धि उपरांत अनंतिम पेंशन को रोकना, उचित – अपील खारिज।

**Cases referred :**

(1995) 2 SCC 513, AIR 1996 SC 2449, 1995 (2) SLJ SC 89.

*Ajeet Singh,* for the appellant.
*Samdarshi Tiwari,* G.A. for the respondents.

**ORDER**

The Order of the court was delivered by : **K.K. LAHOTI, J.** - This appeal shall decide W.A.No.1245/2012 & W.A.No.1246/2012, in which similar question of law is involved on similar facts.

2. The facts are taken from W.A.No.1245/2012 for the convenience.

3. This appeal is directed against an order dated 9.10.2012 in W.P.No.21844/2011, by which the writ petition preferred by the appellant challenging the action of the respondents by which provisional pension was stopped, has been dismissed.

4. Learned counsel for petitioner submits that until and unless a specific order is passed by the Governor for stopping the provisional pension the authorities could not have stopped the pension. The petitioner has placed reliance to Rule 64(1)(b) of the M.P.Civil Services (Pension) Rules, 1976 (hereinafter referred to as 'Pension Rules' for short) in support of his contention.

5. We have perused the record.

6. The facts of the case are that appellant was working as Head Master

at Govt. Middle School Umari Sankul Kendra Govt. High School Belwa Sursari Singh Block Sirmour, District Rewa. A criminal case was registered against him, when he was in service and challan was filed before the Special Judge, Rewa for an offence under sections 467, 468, 471, 201 and 120-B of the IPC read with section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The appellant was also placed under suspension on 6.2.2007 because of filing of challan against the appellant. During the pendency of criminal proceedings appellant had attained the age of superannuation, however after attaining superannuation appellant was allowed provisional pension, as is permissible under Rule 64(1) (b) of the Pension Rules. Ultimately the appellant was convicted on 30.9.2011 and after conviction of the appellant the aforesaid provisional pension was stopped by the concerned Head Principal. This caused appellant to file writ petition.

7. The learned Single Judge considered the facts and found that after conviction of the appellant, the appellant was not entitled for provisional pension and the aforesaid provisional pension was allowed during the pendency of criminal proceedings against the appellant and after conviction of the appellant, the appellant was not entitled for provisional pension. The learned Single Judge also considered that merely an appeal was filed and his sentence was suspended will not be a ground to treat that the appellant was not convicted, as the effect of suspension of sentence would be that the appellant would not suffer jail sentence, however his sentence shall be subject to decision in the appeal. Reliance was placed by the learned Single Judge to the Judgment of Apex Court in *Rama Narang Vs. Ramesh Narang and others* [(1995) 2 SCC 513], *State of Tamil Nadu Vs. A.Jagannath* (AIR 1996 SC 2449) and *Deputy Director Education Vs. S.Nagoor Meer*a [1995(2) SLJ SC 89].

8. To appreciate the contention of the appellant it would be appropriate that if the provisions as contained in relevant rule 64(1) (b) of the Pension Rules are referred, which reads thus :-

> **"64. Provisional Pension where departmental or judicial proceeding may be pending - (1) (a) ...**
>
> (b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed

by the competent authority."

9. The aforesaid provision specifically provides that an employee after attaining the age of superannuation shall be entitled for provisional pension to be drawn by the Head of the office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

10. In this case the judgment was passed by the Special Judge, Rewa, by which the appellant was convicted. So far as the phraseology used that " final order passed by the competent authority" it does not relate to the final authority in respect of payment of pension, but it relates in respect of the departmental or judicial proceedings, which are referred in clause (b) of sub-rule (1) of Rule 64. The criminal proceedings remained pending after the retirement till the passing of the sentence and after conviction and sentence, the appellant was not entitled for provisional pension and even in this regard it was not necessary to pass another order by the competent Departmental authority. The aforesaid provisional pension was to meet out the contingency, so that the employee may get provisional pension till the finality of the proceedings, but as soon as the proceedings are concluded by the Criminal Court, convicting a retired employee, he would not be entitled for further pension until and unless his conviction is stayed or is set aside by the higher authority.

11. In view of the aforesaid, we do not find any error in the order passed by the learned Single Judge in dismissing the writ petition.

12. At this stage, learned counsel for appellant submitted that the appellant Vaidhyanath Shukla was not allowed provisional pension for two months before the date of conviction, for which he was entitled as per clause (b) of sub-rule (1) of Rule 64 of the Pension Rules, but this aspect has not been considered by the Single Judge.

13. On raising such contention, Shri Samdarshi Tiwari, learned G.A., submitted that the appellant was entitled for provisional pension till the date of his conviction and if any such amount has not been paid, on filing a representation in this regard, the Head of the office shall release aforesaid remaining amount of provisional pension to the appellant, if already not paid.

14. With the aforesaid clarification, this appeals is dismissed, with no order as to costs.

*Appeal dismissed*

**I.L.R. [2012] M.P, 2920**
**WRIT PETITION**
***Before Mr. Justice K.K.Trivedi***
W.P.No. 23986/2003 (Jabalpur) decided on 14 May, 2012

RAJESH KUMAR SAXENA ...Petitioner
Vs.
STATE OF M.P. & anr. ...Respondents

*A. Service Law - Adverse confidential Report* - **Communication - Any entry which is adverse is required to be shown to the employee to apprise him with respect to performance of his duties so that he may improve the working in future. (Para 6)**

*क. सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – संसूचना* – कोई प्रविष्टि जो प्रतिकूल है उसे कर्मचारी को दिखाया जाना अपेक्षित है जिससे उसे अपने कर्तव्यों के संपादन के बारे में जानकारी हो सके ताकि वह भविष्य में कार्य मे सुधार कर सके।

*B. Service Law - Adverse confidential report - Communication* - **If any adverse entry is made in annual confidential report, the same has to be communicated within a month and if any representation is made the same is to be decided within 30 days - In case of any inquiry in respect of representation the same is to be concluded within 3 months. (Para 6)**

*ख. सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – संसूचना* – यदि वार्षिक गोपनीय प्रतिवेदन में कोई प्रतिकूल प्रविष्टि की जाती है, उसे एक माह के भीतर संसूचित किया जाना चाहिए और यदि कोई अभ्यावेदन किया जाता है उसका 30 दिनों के भीतर विनिश्चय किया जाना चाहिए – अभ्यावेदन से संबंधित किसी जांच की स्थिति में उसे 3 माह के भीतर समाप्त किया जाना चाहिए।

*C. Service Law - Adverse confidential report - Expunction* - **Entry was made to the effect that complaints against behaviour and delay caused by petitioner are being received and he is required to improve his work - No proof of any complaint - Representation was rejected by a single line order - Adverse entry expunged - Respondents**

**directed to regrade the petitioner after expunging adverse entries - Review DPC be called to consider the case of petitioner - Petition allowed. (Para 12)**

*ग. सेवा विधि – प्रतिकूल गोपनीय प्रतिवेदन – हटाया जाना* – इस आशय की प्रविष्टि की गई कि याची द्वारा कारित विलम्ब एवं उसके आचरण के विरूद्ध शिकायते प्राप्त हो रही है और उसे अपने कार्य में सुधार लाना अपेक्षित है – किसी शिकायत का कोई प्रमाण नही – एक पंक्ति के आदेश द्वारा अभ्यावेदन अस्वीकार किया गया – प्रतिकूल प्रविष्टि को हटाया गया – प्रत्यर्थीगण को प्रतिकूल प्रविष्टियों को हटाये जाने के पश्चात् याची को पुनः पदक्रमित करने के लिए निदेशित किया गया – याची के प्रकरण पर विचार करने के लिए पुनर्विलोकन विभागीय पदोन्नति समिति को बुलाया जाये – याचिका मंजूर।

**Cases referred :**

AIR 1996 SC 1661, 1999 (1) SCC 241, AIR 2008 SC 2513.

*K.S. Wadhwa,* for the petitioner.
*D.K. Bohre,* P.L. for the respondents.

**ORDER**

**K.K. TRIVEDI, J.** - This petition was originally filed as original application before Madhya Pradesh Administrative Tribunal and has come on transfer before this Court after closer of the Tribunal and is registered as Writ Petition.

2. The claim made in this petition by the petitioner is for quashment of the adverse entry recorded in the confidential reports of the years 1993 and March 1994 as also a direction to respondents to promote the petitioner on the post of Junior Auditor/Accountant Grade-II, w.e.f the date his juniors were promoted with all consequential benefits. It is contended by the petitioner that he was communicated the adverse entry recorded in his annual confidential report ending 31st March 1993 belatedly. The petitioner filed a representation but the said representation was rejected. Similarly the adverse entry in the annual confidential report ending 31st March 1994 was communicated to the petitioner belatedly, against which again a representation was made by the petitioner but instead of considering the same in appropriate manner, by communication of the orders in the years 1995-1997 it was said that the representation of the petitioner is rejected. It is contended that infact the adverse entry deliberately was made to deny promotion to the petitioner and

the same was communicated only at the eve of Departmental Promotion Committee meeting in the year 1994. Because of such adverse entry, the claim of the petitioner was not appropriately considered for promotion and juniors to him were promoted by an order dated 09/05/1994. This lead the petitioner to file the present petition before Madhya Pradesh Administrative Tribunal: On the basis of these submissions the relief(s) aforesaid have been claimed.

3. In response to the notice of the petition respondents have filed a reply. They contended that the Departmental Promotion Committee meeting was held in which the case of the petitioner was considered but since there were adverse entry recorded in the annual confidential report of the petitioner for the year March ending 1993, he was not found fit for promotion. Such entry was communicated to the petitioner. Similarly it is contended that there were adverse entry for the year ending March 1994 which too was communicated to the petitioner. A representation made against the adverse entry was considered and rejected by the respondents. Subsequently the Departmental Promotion Committee meeting was held on 05/04/1999 in which the case of the petitioner was considered. The petitioner was granted an opportunity to appear before the committee to explain his conduct. There were reports with respect to integrity of the petitioner and a show cause notice was issued to him. Thereafter, receiving the information and comments with respect to adverse entry made against the petitioner in his confidential report appropriate orders were passed. Thus, it is contended that no wrong was committed in passing the order impugned and as such the petitioner is not entitled to any relief whatsoever.

4. Refuting such allegations made in the return of respondents a rejoinder has been filed by the petitioner stating that he has filed reply to the show cause notice and thereafter nothing was done in that respect. Without holding an inquiry how it could be said that integrity of the petitioner was doubtful. It is further submitted that malafidely only on the comments by those who were prejudiced against the petitioner, the representations of the petitioner were decided. It is contended that infact the adverse entries were to be communicated to the petitioner within time as per circular of the State Government in General Administration Department issued on 9th March 1992. Prior to this also the circulars were issued prescribing a period within which the adverse entry was to be communicated and within which the representation if any made against the said entry was to be considered. Thus, it is contended that since the adverse entry was not communicated to the petitioner within time, there was no justification of making of such adverse entry in the confidential report of the

petitioner, the orders were not rightly passed on the representation of the petitioner, therefore, the entire stand of the respondents is liable to be ignored and the petitioner is entitled to grant of relief as claimed in the petition.

5. Heard learned counsel for parties at length and perused the record.

6. The object of writing of annual confidential reports is well known in the service jurisprudence. The confidential reports of an employee is to be written only for the purposes of adjudging his service abilities. If an employee of the department, who was having the excellent service record or satisfactory service record, started showing downfall in performance or discharge of his duties, the entries are required to be made in the annual confidential report. Such entries whether adverse or not, are required to be shown to the said employee to apprise him or her with respect to performance of duties so that he or she may improve the working in future. The object of recording of annual confidential report would he frustrated in case it is not timely communicated. This being the reason, the State Government has issued the circular time and again directing as to how the adverse part of the annual confidential reports are to be communicated, within which period the said communication is to be made and within which period the representation if any made against such entry, is required to be decided. This has been reiterated in the circular dated 9th March 1992, wherein all the circulars previously issued right from 1979 up to 1990 have been referred. The State Government has very categorically provided a time mechanism for writing of the confidential report. The initiation of annual confidential report is to be done by 15th April. The Reviewing Officer is required to give his comments by 1st of May. The approving authority is required to record his comments by 15th May. If any adverse entry is recorded, the same is to be communicated within 30 days from the aforesaid final date mentioned in the circular. If any representation is made against the said adverse entry, the same is to be decided within a month. If any inquiry is required to be conducted with respect to the representation made against the adverse entry, that has to be completed within a period of three months. This indicate that intention of the State Government is to apprise the employee concerned against whom the adverse entry is recorded, with respect to such adverse entry and to complete the process of finalizing the representation etc. made against such entry within the stipulated period so that nobody may face any prejudice or inconvenience in case of promotion. This being so, it was necessary on the part of the respondents to communicate the adverse entry to the petitioner timely.

7. From the record it is clear that adverse entry was recorded in the

annual confidential report of the petitioner ending 31st March 1993 but the same was sent for communication only on 09/03/1994. This was grossly in violation of the instructions of the State Government. Further the entry made against the petitioner in this particular year, in confidential report was to the effect that the complaints against the behaviour and delay caused by the petitioner were being received and the petitioner was to improve his working and behaviour. Whether any complaints made against the petitioner were enquired into and whether any fact was found proved or not, is not clear from such entry. How could it be treated as an adverse entry against the petitioner when there was no proof of such complaints made against the petitioner or atleast when no inquiry whatsoever was conducted against the petitioner. The petitioner while making representation has categorically stated that he was not in a habit of misbehaving with anybody only his way of talking was such. He categorically contended that none of his superior officers or colleagues have made a complaint against him that he has ever used derogatory language while conversanting. To this effect whether any comments were called, whether any information was obtained or not is not clear. Nothing has been placed on record to indicate as to how such a fact was found proved against the petitioner. Even the comments received from the authorities nowhere indicates that there were complaints. On the other hand some officers of the University where the petitioner at that time was working made the comments that the petitioner was behaving in such improper manner. From such comments it is also not clear that the inquiry in respect of such a conduct of the petitioner was ever conducted or not. Merely one officer who has initiated the annual confidential report, has made comments in this respect, how could it be said that the adverse entry was properly made against the petitioner. One more aspect is required to be examined. While considering the representation made against adverse entry recorded in the annual confidential report, the previous confidential reports are required to be examined and it is to be judged whether any prejudicial comments have been made by the reporting officer or not. Nothing has been placed on record to indicate that the representation of the petitioner was considered in this cogent manner. Thus, a single line rejection order issued in respect of such a representation of the petitioner, specially when a belated communication of adverse entry was made, cannot be sustained. On the other hand such adverse entry was liable to be ignored or expunged, on the ground that the adverse entry was not communicated within time or expeditiously.

8. As far as the adverse entry for the annual confidential report ending

31st March 1994 is concerned it was recorded that the petitioner is a cunning, arrogant and harsh employee. It was recorded that integrity of the petitioner is not beyond doubt. It was recorded that the petitioner was discharging the duty as per his wish. It was again recorded that the petitioner was dis-curtious to his superior. This entry was communicated to the petitioner vide memo dated 03/02/1995. Again such entry was communicated after the period prescribed by the State Government. Again it is to be seen that the entries were made by the very same officer as the petitioner was posted in the same establishment at that time. The officer who has initiated annual confidential report for the year 1993 has written the annual confidential report for the year 1994. Obviously once the adverse comments were recorded in the previous confidential report the same were reflected again in the next confidential report. The petitioner has made a representation against such adverse part of confidential report and has categorically contended that all these comments were made out of the prejudices. There were no complaints received against the petitioner with respect to his integrity. No inquiry whatsoever was conducted in that respect and therefore such an entry was nothing but a prejudicial act of the reporting officer. The fact remains that adverse comments with respect to the integrity of an employee are not be made cursorily. On the other hand a detailed inquiry is required to be conducted and then only it is to be noted down in the annual confidential report. If this is not done, the adverse entry cannot be sustained. It is clear from the record available that no inquiry in that respect was conducted up to the date the entry was made in his confidential report. Only a show cause notice was issued on 18/02/1994 with respect to disposal of case of one of the retired Principal but even after filing of reply to such a show cause notice, no final decision, was taken by respondents. If there was no proof of doubtful integrity of the petitioner, such was not to be recorded in his confidential report. Apart from the fact that the communication, of the entry was not timely made, it is also clear from the documents available on record that such entries could not have been made against the petitioner, without holding an inquiry.

9. The another aspect is more important which has not been denied in appropriate manner by respondents. Admittedly the annual confidential reports were being examined for the purposes of holding a Departmental promotion committee meeting for the purposes of consideration of cases for promotion. As is indicated in the return, the said committee meeting was scheduled to be held on 9/10th March 1994. The first adverse entry was communicated to the

petitioner on 09/03/1994. This itself is clear that only because respondents were not willing to consider the case of the petitioner for promotion in appropriate manner, such entry was communicated to the petitioner just on the eve when the Departmental Promotion Committee meeting was to be held. This itself is enough to show that there was bias and prejudice in the mind of the respondents-authorities in sending communication with respect to the adverse entry recorded in the confidential report of the petitioner for the year ending 31st March 1993. Upon their own showing as they have contended, the annual confidential reports up to years 1989-1993 were to be considered in respect of the persons who were to be considered for promotion on the said Departmental Promotion Committee meeting held on 9/10th March 1994. Thus, the contention raised by the petitioner that out of prejudice he was communicated the adverse entry in ACR of 1993 at such belated stage cannot be ruled out. Had it been a case that the entries were made at the relevant time, it was the responsibility of the departmental authorities to communicate the same to the petitioner within time so that the representation if any made against such entry would have been decided by the time Departmental Promotion Committee meeting was convened.

10. Merely because the petitioner was called upon to appear before the Departmental Promotion Committee to explain his conduct in the year 1999 will not absorb all the responsibilities of respondents. The respondents were duty bound to communicate the adverse entry to the petitioner within time and were required to consider the representation made against such adverse entry by the petitioner, within time, but this was not done.

11. Though all these facts have categorically been averred in the rejoinder filed by the petitioner, however, nothing in rebuttal has been placed by respondents. The have not disputed that the petitioner filed a detailed reply to the show cause notice issued to him. They have not disclosed whether any inquiry was conducted in that respect or any order was passed with respect to issuance of such a show cause notice. This is enough proof of lapses on the part of respondents. The petitioner cannot be made to suffer on account of lapses on the part of respondents. The settled law is that if the annual confidential report is coming in way, for promotion it is to be treated as adverse and if not communicated within time, it is to be expunged. It is also settled law that in case of expunging of the adverse remarks the review Departmental promotion Committee is required to be held to reconsider the claim for promotion in view of the law laid down by the Apex Court in *U.P. Jal Nigam and others*

*Vs. Prabhat Chandra Jain and others*, AIR 1996 SC, 1661, *U.P. Jal Nigam Vs. S.C. Atri and another* 1999 (1) SCC 241 & *Dev Dutt Vs. Union of India and others*, AIR 2008 SC 2513. It would be appropriate for this Court to direct reconsideration of the case of the petitioner for grant of promotion as in this case it is found that the adverse entries were improperly made.

12. In view of the foregoing discussion and keeping in view the fact as have come on record, this petition deserves to be and is hereby allowed. The order rejecting the representation of the petitioner against the adverse annual confidential reports are quashed. The respondents are commanded to expunge the adverse entry recorded in the confidential reports of the petitioner for the years 1992-1993 & 1993-1994 and to regrade the said annual confidential reports of the petitioner after expunging of the adverse remarks. The respondents are directed to convene a review Departmental Promotion committee and to consider the case of the petitioner for grant of promotion on the post of junior Auditors/Accountant Grade-II w.e.f 09/05/1994 the date when his juniors were promoted on the said post. In case the petitioner is found fit for such promotion, he be granted such benefit of promotion with retrospective effect from the date the juniors to him were promoted on the said post. Needless to say that the petitioner would also be entitled to all consequential benefits of such promotions such as pay allowances and seniority. The aforesaid exercise be completed within a period of four months from the date of receipt of certified copy of the order passed today.

13. In the facts and circumstances of the case there shall be no order as to costs.

*Petition allowed.*

**I.L.R. [2012] M.P, 2927**

**WRIT PETITION**

***Before Mr. Justice A.K. Shrivastava***

W.P.No. 2129/2010 (Jabalpur) decided on 9 August, 2012

PRAKASH DHIMAR & ors. ...Petitioners

Vs.

KAMAL KUMAR & ors. ...Respondents

***Civil Procedure Code (5 of 1908), Order 22 Rule 4(4) - Execution of Decree - Defendant was proceeded exparte who died***

***subsequently*** **- His Legal Representatives were also not brought on record - The decree would not become otiose or unexecutable on the ground that it has been passed against dead person - As defendant No. 8 was proceeded exparte in the suit and there is an exparte decree against him which is executable, therefore, the Executing Court rightly rejected the objections of judgment debtor. (Paras 7 & 8)**

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4(4) – डिक्री का निष्पादन – प्रतिवादी के विरूद्ध एक पक्षीय कार्यवाही की गई जिसकी बाद में मृत्यु हो गई* – उसके विधिक प्रतिनिधिगण भी अभिलेख पर नही लाये गये – डिक्री, इस आधार पर निरर्थक या अनिष्पादन योग्य नहीं होगी कि उसे मृत व्यक्ति के विरूद्ध पारित किया गया – चूंकि वाद में प्रतिवादी क्र. 8 पर एकपक्षीय कार्यवाही की गई और उसके विरूद्ध एकपक्षीय डिक्री है जो निष्पादन योग्य है इसलिए निष्पादन न्यायालय ने निर्णित ऋणी के आक्षेपों को उचित रूप से अस्वीकार किया।

*J.A. Shah,* for the petitioners.
*Akhilesh Jain,* for the respondents Nos. 1, 2 & 4.

**ORDER**

**A.K. Shrivastava, J. -** By this petition under Article 227 of the Constitution of India the petitioners are challenging the validity of the impugned order dated 8.10.2009 passed by learned Executing Court in Execution Case No.35-A/1999 whereby the objections raised by the judgment debtors/ petitioners have been rejected.

2. The facts necessary for the disposal of this petition are that a suit for removal of the encroachment was filed by the respondents 1 to 4. The suit was decreed. According to the decree-holders/respondents 1 to 4, the defendants 1 to 8 have encroached upon the bylane of the highway, as a result of which his approach to the bylane from his house has been totally obstructed.

3. Learned Trial Court framed Issue No.5 and 6 specifically whether the defendants 2 to 8 have encroached upon the bylane of the highway, as a result of which the plaintiffs are facing great difficulty to approach the highway on account of the said encroachment. After recording the evidence of the parties the suit of plaintiff was decreed against the defendants 5, 7 and 8, namely, Prakash Dhimar, Hariram and Raghuvar Jamadar. The petitioner No.3 is said to be the adopted son of 8th defendant-Raghuvar Jamadar. When the decree

was put to execution, an objection was raised on behalf of the judgment-debtors that the decree has been passed against dead person since before passing the judgment and decree 8th defendant Raghuvar had died and without bringing the L.Rs on record the decree which has been passed has been passed against a dead person and thus, it is null and void. This objection was opposed by the decree-holders.

4. The learned Executing Court dismissed the objections and directed to execute the decree. In this manner this petition has been filed.

5. The contention of Shri Shah, learned counsel for the petitioners is that since 8th defendant Raghuvar had died long back on 15.11.2001 when the suit was pending, therefore, the judgment and decree of learned Trial Court which was passed on 13.8.2004 was against a dead person and if that would be the position the decree cannot be executed.

6. However, Shri Akhilesh Jain, learned counsel for the decree-holder argued in support of the impugned order and submitted that while deciding Issues No.5 and 6 categorically it has been held by Executing Court that defendants 5, 7 and 8 have encroached upon the particular piece of land, the description whereof has been mentioned in the impugned order and therefore, their encroachment should be removed. Learned counsel further submits that deceased Raghuvar was arrayed as defendant No.8 in the suit and he was served with the summons of the suit, however, he did not remain present in the Trial Court, therefore, vide order dated 28.8.1999 he was proceeded ex parte and thereafter, on 15.11.2001 he had died and if that would be the position, in terms of Order XXII Rule 4(4) of the CPC it was not necessary to bring the L.Rs of deceased-defendant who was proceeded ex parte. Learned counsel has also invited my attention to para 5 of the judgment of the Trial Court dated 13.8.2004 wherein it has been mentioned that which of the defendant has encroached upon how much area of the public bylane approaching the highway. Hence, it has been put forth by learned counsel that the decree is also executable against the L.Rs of deceased-defendant Raghuvar. Learned counsel further submits that in the execution proceedings, the L.R of Raghuvar has been brought on record and he is petitioner No.3 in this petition.

7. Having heard learned counsel for the parties, I am of the view that this petition deserves to be dismissed.

8. On bare perusal of the judgment dated 13.8.2004 passed by the

learned First Civil Judge, Class-I, Khurai in Civil Suit No.37-A/1999 it is gathered that Raghuvar was arrayed as defendant No.8. On bare perusal of the judgment it appears that said Raghuvar did not file any written-statement. Undisputedly, Raghuvar was proceeded ex parte on 28.9.1999 since he did not appear and an ex parte decree was passed against him while decreeing the suit of plaintiffs. Thus, according to me, if the said defendant who was proceeded ex parte and he had died later on 15.11.2001 and if his L.Rs were not brought on record, the decree would not become otiose or unexecutable on the ground that it has been passed against dead person. In this regard, rightly the Order XXII Rule 4(4) of the CPC has been relied by learned counsel for the respondents/decree-holder. Since Raghuvar was proceeded ex parte in the suit and there is an ex parte decree against him which is executable, therefore, the learned Executing Court rightly rejected the objections of judgment debtor.

9. For the reasons stated herein-above, I do not find any merit in the petition. The same is hereby dismissed. No costs.

*Petition dismissed*

**I.L.R. [2012] M.P, 2930**

**WRIT PETITION**

***Before Mr. Justice R.S. Jha***

W.P. No. 8539/2009 (Jabalpur) decided on 25 September, 2012

MOHAN CHOPADA ...Petitioner

Vs.

STATE OF M.P. & ors. ...Respondents

***A. Municipalities Act, M.P. (37 of 1961), Sections 127,129 & 355 - Levy of Terminal Tax*** **- State Government prescribed the rate of terminal tax by M.P. Terminal Tax (Assesment & Collection) on the Goods Exported from Madhya Pradesh Municipal Limits, Rules 1996 - Resolution of Municipal Council prescribing higher rate of terminal tax, is without any authority of Law. (Paras 4 & 13)**

*क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 127, 129 व 355 – सीमा कर का उद्ग्रहण* – राज्य सरकार ने म.प्र. नगरपालिक सीमाओं से निर्यात किये जाने वाली वस्तुओं पर सीमा कर (निर्धारण और संग्रहण), नियम 1996

द्वारा सीमा कर की दर विहित की है – नगरपालिका परिषद द्वारा सीमा कर की उच्च दर विहित करने के संकल्प को कोई विधिक प्राधिकारिता प्राप्त नहीं है।

***B. Constitution, Article 265, Municipalities Act, M.P. (37 of 1961), Section 133 - Claim for refund of Terminal Tax*** **- Petitioners passed on the burden of Tax on to the consumers - They are not entitled to any unjust enrichment by way of refund. (Paras 24 & 30)**

*ख. संविधान, अनुच्छेद 265, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 133 – सीमा कर के प्रतिदाय हेतु दावा* – याचीगण ने कर का भार उपभोक्ताओं पर अधिरोपित किया – प्रतिदाय के जरिए किसी अनुचित संवृद्धि के वे हकदार नहीं।

**Cases referred :**

2000(2) MPLJ 291, 2000(2) MPHT 477, 2004(2) MPLJ 482, 2005(5) SCC 347, 2003(2) MPLJ 340, 2003(2) MPLJ 26, (1997) 5 SCC 536, (2000) 2 SCC 172, (2011) 2 SCC 258, (1998) 8 SCC 384.

*Ishteyaq Husain,* for the petitioner.
*R.P. Tiwari,* G.A.for the respondents/State.
*A.K. Pathak,* for the respondent/Municipal Council Umariya.
*S.P. Gupta,* for the respondent/Van Vikas Nigam.

**ORDER**

**R.S. JHA, J. -** All these petitions have been filed by the petitioners who are dealers in timber and have purchased timber from the Forest Depot at Umariya and have been subjected to terminal tax by the Municipal Council, Umariya at rates which have been revised from time to time. All the petitioners have assailed the rate of terminal tax levied by the Municipal Council, Umariya on identical grounds. As all these petitions are identical and involve similar and identical issues, they are heard and decided concomitantly.

2. The short facts leading to the filing of the present petitions are that the petitioners, who are dealers in timber and have saw-mills in Jabalpur, have filed these petitions being aggrieved by the rates of terminal tax determined and recovered by the Municipal Council, Umariya under the provisions of M.P. Municipalities Act, 1961 (hereinafter referred to as 'the Act').

3. It is stated that the petitioners have purchased timber from the Forest Depot, Umariya and on the said purchase the Municipal Council, Umariya initially levied 0.50% terminal tax on the price of the timber by notification dated 06.03.1984 (Annexure P/1). On 13.02.1994 (Annexure P/4) this rate was enhanced from 0.50% to 1.50%. From 31.10.2000 (Annexure P/6) it was enhanced from 1.50% to 2.00% and from 30.07.2003 (Annexure P/8) it was enhanced from 2.00% to 3.00%.

4. It is stated by the learned counsel for the petitioners that the petitioners continued to pay terminal tax at the rate enhanced by the Municipal Council from time to time till the year 2009. It is stated that in 2009 they came to know that this court, in W.P. No. 3277/99 and W.P. No. 5215/99 decided on 04.04.2002 and 26.08.2002 respectively, had quashed the enhancement of rate of terminal tax made by the Municipal Council, Umariya beyond the rate prescribed by the State Government by the M.P. Terminal Tax (Assessment and Collection) on the Goods Exported from Madhya Pradesh Municipal Limits, Rules 1996 (for short "the Rules of 1996"), in respect of liquor and Mahua and therefore, the petitioners filed representations seeking information in this regard before the Municipal Council, Umariya in the month of June, 2009 which are annexed as Annexure P/11 along with the respective petitions. The petitioners also sought information under the Right to Information Act from the respondent/Municipal Council, Umariya regarding the notifications on the basis of which terminal tax was being imposed. As there was no response from the respondent/Municipal Council, Umariya, the petitioners have filed the present petitions before this court.

5. The terminal tax imposed by the Municipal Corporation is challenged by the petitioners on two grounds, firstly; that the tax levied by the Municipal Council, Umariya is contrary to the provisions of the Rules of 1996 as the rate at which the tax is sought to be recovered by the Municipal Council, Umariya, is more than the rate prescribed by the State Government and therefore, in view of the decisions of this court rendered in the case of *Chief Municipal Officer, Kymore Vs. Eternit Everest Ltd.* and another 2000(2) MPLJ 291, the same deserves to be quashed and secondly; the manner in which the tax is being recovered from the petitioners is contrary to the procedure prescribed by law as the respondents are recovering the tax by stopping the trucks and vehicles of the petitioners which is contrary to the law laid down by this court in the case of *Moolji Bhai and 78 others Vs. State of MP and another* 2000(2) MPHT 477. On the aforesaid grounds the petitioners have also sought

refund of the excess tax collected by the Municipality.

6. The respondent/Municipal Council, Umariya has filed a return and submitted that the tax that has been imposed and is being levied by the Municipal Council is in accordance with the provisions of sections 127 and 129 of the M.P. Municipalities Act, 1961 by passing a resolution and determining the rate of tax. It is further submitted by the learned counsel for the respondent/ Municipal Council, Umariya that in view of the Division Bench decision of this court rendered in the case of *Vyapar Mandal Mandi, Morena Vs. State of MP and others* 2004 (2) MPLJ 482 , recovery being made by the Municipal Council at the depot itself, without installing any barrier or Naka, is in accordance with law and does not call for any interference by this court. The claim for refund has also been opposed by the respondents.

7. I have heard the learned counsel for the parties at length.

8. Before I advert to the issues raised by the petitioners in the present petitions, it would be appropriate to refer the relevant provisions of the M.P. Municipalities Act, 1961. Section 127 of the Act enumerates the taxes that can be levied under the provisions of the M.P. Municipalities Act by the concerned Municipality. Section 127(1) of the Act enumerates obligatory taxes while section 127(6) of the Act, enumerates optional taxes which the council may impose. Section 127(6) of the Act, provides that in addition to the tax specified in subsection (1) the council may impose the tax enumerated therein subject to any general or special order which the State Government may make in this behalf. Section 127(6) (n) of the Act provides for imposition of terminal tax on goods or animals exported from the limit of the council.

9. In exercise of powers conferred under section 355 read with sections 127 and 129 of the Act, the State Government has notified the 1996 Rules. Sub Rule (2) of Rule 1 provides that the rules shall come into force from the date the Municipality decides to impose the terminal tax on goods exported from the municipal limits with a proviso appended thereto to the effect that in case the council has already imposed the said tax, the rules shall come into force from the date of their publication i.e. 07.03.1997.

10. The proposed schedule prescribing the rate of terminal tax appended to the Rules provides for imposition of terminal tax at the rate of 0.50% on all sort of timber used for building construction by the Municipal Council. Prior to coming into force the rules of 1996 w.e.f. 07.03.1997 various municipalities

in the State of M.P. were imposing terminal tax and other taxes on various rates by passing a resolution under section 129 of the Act. Even after coming into force the Rules of 1996, some of the municipalities continued to levy terminal tax at higher rates than the rates prescribed by the rules.

11. The power and authority of the municipality to levy tax at higher rates than the rates prescribed by the Rules of 1996 was assailed before this court in the case of *Chief Municipal Officer, Kymore Vs. Eternit Everest Ltd. and another* 2000(2) MPLJ 291. In the aforesaid decision the Division Bench of this court held that while the Municipal Council or Nagar Panchayat concerned had the power to impose terminal tax by passing a resolution under section 129 of the Act on obtaining the approval of the State Government at the rates decided by them prior to coming into force the Rules of 1996, however, after coming into force the Rules of 1996, the Municipal Council or the Nagar Panchayat were bound to levy terminal tax at the rate prescribed by the Rules of 1996 and not above the same in view of the express provisions of section 127 (6) of the Act which specifically prescribes that the tax enumerated in that subsection would be subject to any special and general order issued by the State Government. The judgment of this court in the aforementioned case travelled to the Supreme Court and has been affirmed by the judgment rendered in the case of *Associated Cement Companies Ltd. Vs. State of MP and another* 2005(5) SCC 347.

12. As far as the Municipal Council, Umariya is concerned, they continued to enhance the rates of terminal tax by passing resolutions even after coming into the force the Rules of 1996 as is evident from the documents Annexures P/5, P/6 and P/8 and therefore, certain persons who were exporting liquor and Mahua from the limit of Municipal council, Umariya filed petitions before this court assailing the enhancement of terminal tax which were registered as W.P. Nos. 3277/99 and 5215/99 . Relying on the decision of this court rendered in the case of *Chief Municipal Officer, Kymore* (supra), this court allowed W.P. No. 5215/99 by order dated 04.04.2002 reported as 2003(2) MPLJ 340, *Lal Narayan Singh Vs. Chief Municipal Officer, and another)* quashing the resolution of the municipal council to impose terminal tax at higher rates than the rates prescribed by the Rules of 1996. Writ Petition No. 3277/99 was decided in similar terms by order dated 26.08.2002, reported as 2003(2) MPLJ 26 *Gajanand Agrawal Vs. State of MP and another).*

13. In view of the aforesaid pronouncements of law by this court as well

as the Supreme Court, the issue regarding powers of the municipalities to levy tax above the rates prescribed by the Rules of 1996 is no longer res integra and stands specifically concluded by the aforesaid judgment wherein it has been held that the Municipal Council, Umariya or for that matter any other Municipality or Nagar Panchayat cannot levy terminal tax above the rates prescribed by the Rules of 1996.

14. In view of the aforesaid facts and circumstances, the law laid down by this court and the Supreme Court in the case of *Chief Municipal Officer, Kymore* (supra) which was followed by this court in the case of Municipal Council, Umariya itself in the decisions reported in 2003(2) MPLJ 26 *Gajanand Agrawal Vs. State of MP and another* and 2003(2) MPLJ 340, *Lal Narayan Singh Vs. Chief Municipal Officer, and another,* I am of the considered opinion that the resolution of the Municipal Council, Umariya prescribing higher rate of terminal tax than the rate prescribed in the Rules of 1996 even after coming into force of the aforesaid Rules of 1996, with effect from 07.03.1997, is without any authority of law as the Municipal Council, Umariya is bound to levy terminal tax at the rates prescribed by the State Government in the Rules and therefore, the Municipal Council, Umariya can levy terminal tax on all sort of timber used for building construction only at the rate of 0.50% w.e.f. 07.03.1997 and not above or beyond the aforesaid rates till they are revised by the State itself. Consequently, the decisions of the respondent/ Municipal Council, Umariya levying terminal tax at the rate above 0.50% after 07.03.1997 are hereby quashed.

15. It is next contended by the learned counsel for the petitioners that the terminal tax recovered by the Municipal Council, Umariya after coming into force of the Rules of 1996, above 0.50% be directed to be refunded to the petitioners.

16. It is pertinent to note that inspite of the aforesaid two decisions of this court quashing the notification of Municipal Council, Umariya to levy terminal tax on higher rates than those prescribed in the Rules of 1996, the Municipal Council, Umariya again decided to enhance the rate of terminal tax from 2% to 3% by notification dated 30.07.2003 (Annexure P/8) and the petitioners without assailing the same continued to pay terminal tax till 2009.

17. It is alleged by the learned counsel for the petitioners that they came to know about the aforesaid decisions of this court only in the year 2009 and therefore, they immediately filed representations before the respondent/

Municipal Council in the month of June, 2009 asking them to furnish information regarding the decisions and notification issued by Municipal Council, Umariya imposing terminal tax and the authority to do so, however, the petitioners did not make any representation regarding refund of the tax paid by them.

18. The aforesaid prayer of the petitioners is vehemently opposed by the counsel for the Municipal Council, Umariya on the ground that the petitioners continued to pay enhanced rate of terminal tax even after coming into force the Rules of 1996 w.e.f. 07.03.1997 without any objection till 2009. It is submitted that as the petitioners objected to the enhanced rate of terminal tax for the first time in 2009 the claim for refund made by them deserves to be rejected on the principle of waiver, estoppal and limitation.

19. The learned counsel for the respondents has further objected to the prayer for refund on the ground that the terminal tax being an indirect tax burden of which is passed on to the consumers as has been done by the petitioners in the present case therefore, in view of the principle of unjust enrichment no order of refund in favour of the petitioners can be ordered by this court.

20. The petitioners, in order to support their claim for refund, have filed an affidavit stating that the petitioners purchase timber logs in lots which are brought to the sawmills where they are cut and sized depending upon their quality and thereafter sold at different rates depending upon the quality of the sized timber and therefore many a times the petitioners have to incur loss. It is further stated that the sized wood is not immediately sold and the stock remains unsold for months thereby diminishing its value. The petitioners have also stated in the affidavit that they have not passed on the liability to the consumers and have not recovered the amount of excess terminal tax paid to the Municipal Council from their consumers. In support of the statement, the learned counsel for the petitioners by way of an example has stated (during arguments as well as in the written submissions) that in case the petitioners purchase timber from the Umariya Depot for Rs.1000/- they have to pay 3% terminal tax thereon as a result of which timber purchased from Umariya Depot would cost Rs.1030/- whereas the timber purchased by them from any other depot where the terminal tax is in accordance with the Rules of 1996 would cost Rs.1005/-. He further states that in case the price of 10 cubic meter of timber is fixed at Rs.10/- which includes Rs.8/- as cost of timber and Rs.2/- as profit and the petitioners sell 10 cubic meter of such timber they would earn Rs.100/- out of

which Rs.20/- would be the profit while Rs.80/- would be the cost of the wood. But in case the timer is purchased from Umariya Depot their profit would only be Rs.17.50/- in place of Rs.20/- and therefore, they would suffer loss of profit of Rs.2.50/- on the sale of 100 cubic meter of timber out of the logs purchased from the Umariya Depot and in such circumstances and on the strength of the aforesaid illustration it is submitted that the principle of unjust enrichment would not be applicable to deny the relief of refund to the petitioners as the petitioners have suffered loss in profit.

21. The learned counsel for the respondent/Municipal Council, Umariya per contra submits that the petitioners have infact transferred the tax liability upon the consumers and they have not given any details to establish to the contrary, and therefore, have failed to rebut the presumption of passing of the tax liability to the consumers. It is stated that in view of the aforesaid lack of details, the contention of the petitioners deserves to be rejected.

22. I have perused the affidavit filed by the petitioner and considered the submissions made by the learned counsel for the petitioners.

23. From a perusal of the record it is apparent that the petitioners have not filed any bills of sale to indicate that they have not charged or passed on the terminal tax to the consumers which they have paid to the Municipal Council. In fact the very example stated by the learned counsel for the petitioners before this court itself amounts to an admission of the fact and also establishes that the petitioners have infact transferred the tax liability to the consumers and have therefore, earned less profit. In view of the aforesaid, I am of the considered opinion that the petitioners have failed to establish that they have suffered the liability themselves and have not passed on the tax liability to the consumers.

24. Though several judgments have been cited before this court by both the learned counsel for the parties, I do not deem it necessary to refer to all of them as the issue of refund involved in the present case stands squarely covered by Nine Judge Bench decision of the Supreme Court in the case of *Mafatlal Industries Ltd. and others Vs. Union of India and others* (1997) 5 SCC 536. The majority opinion in the aforesaid judgment is contained in paragraphs 78 to 86 in which the Supreme Court has held that any claim of refund of the tax whether it is based on (a); the ground that the tax was levied under an unconstitutional provisions, or (b); on the ground of misinterpretation/ misapplication/ erroneous interpretation of the Act/Rules or notification or

erroneous finding of fact or in violation of fundamental principles of judicial procedure or (c); on the ground of mistake of law, cannot be automatically allowed even if it is found to be justified as it is subject to the principle of unjust enrichment as well as equitable considerations such as waiver, estoppal and limitation. The conclusions recorded by the majority in the aforesaid judgment have been summarized in paragraph 108 of the judgment which is quoted below for ready reference.

> "108. The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.
>
> (i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 and of this Court under Article 32 cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

The said enactments including Section 11-B of the Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are selfcontained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11-B of the Central Excises and salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal which is not a departmental organ but to this Court, which is a civil court.

(ii) Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. This principle is, however, subject to an exception: Where a person approaches the High Court or the Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on another ground; this is for the reason that so far as he is concerned, the decision has become final and cannot be reopened on the basis of a decision on another person's case; this is the ratio of the opinion of Hidayatullah, C.J. in *Tilokchand Motichand Vs. H.B. Munshi* (1969) 1

SCC 110 and we respectfully agree with it.

Such a claim is maintainable both by virtue of the declaration contained in Article 265 of the Constitution of India and also by virtue of Section 72 of the Contract Act. In such cases, period of limitation would naturally be calculated taking into account the principle underlying clause (c) of sub-section (1) of Section 17 of the Limitation Act, 1963. A refund claim in such a situation cannot be governed by the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be, since the enactments do not contemplate any of their provisions being struck down and a refund claim arising on that account. In other words, a claim of this nature is not contemplated by the said enactments and is outside their purview.

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.

(iv) It is not open to any person to make a refund claim on the basis of a decision of a court or tribunal rendered in the case of another person. He cannot also claim that the decision of the court/tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well-established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund.

(v) Article 265 of the Constitution has to be construed in the light of the goal and the ideals set out in the Preamble to the Constitution and in Articles 38 and 39 thereof. The concept of economic justice demands that in the case of indirect taxes like Central Excises duties and Customs duties, the tax collected without the authority of law shall not be refunded to the petitioner plaintiff unless he alleges and establishes that he has not passed on the burden of duty to a third party and that

he has himself borne the burden of the said duty.

(vi) Section 72 of the Contract Act is based upon and incorporates a rule of equity. In such a situation, equitable considerations cannot be ruled out while applying the said provision.

(vii) While examining the claims for refund, the financial chaos which would result in the administration of the State by allowing such claims is not an irrelevant consideration. Where the petitioner-plaintiff has suffered no real loss or prejudice, having passed on the burden of tax or duty to another person, it would be unjust to allow or decree his claim since it is bound to prejudicially affect the public exchequer. In case of large claims, it may well result in financial chaos in the administration of the affairs of the State.

(viii) The decision of this Court in *STO v. Kanhaiya Lal Mukundlal Saraf* AIR 1959 SC 135 must be held to have been wrongly decided insofar as it lays down or is understood to have laid down propositions contrary to the propositions enunciated in (i) to (vii) above. It must equally be held that the subsequent decisions of this Court following and applying the said propositions in Kanhaiya Lal have also been wrongly decided to the above extent. This declaration — or the law laid down in Propositions (i) to (vii) above — shall not however entitle the State to recover the taxes/duties already refunded and in respect whereof no proceedings are pending before any authority/Tribunal or Court as on this date. All pending matters shall, however, be governed by the law declared herein notwithstanding that the tax or duty has been refunded pending those proceedings, whether under the orders of an authority, Tribunal or Court or otherwise.

(ix) The amendments made and the provisions inserted by the Central Excises and Customs Law (Amendment) Act, 1991 in the Central Excises and Salt Act and the Customs Act are constitutionally valid and are unexceptionable.

(x) By virtue of sub-section (3) to Section 11-B of the Central Excises and Salt Act, as amended by the aforesaid Amendment

Act, and by virtue of the provisions contained in sub-section (3) of Section 27 of the Customs Act, 1962, as amended by the said Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision whereunder the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactments. No suit for refund of duty is maintainable in that behalf. So far as the jurisdiction of the High Courts under Article 226 of the Constitution — or of this Court under Article 32 — is concerned, it remains unaffected by the provisions of the Act. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of Section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them.

xi) Section 11-B applies to all pending proceedings notwithstanding the fact that the duty may have been refunded to the petitioner/plaintiff pending the proceedings or under the orders of the Court/Tribunal/ Authority or otherwise. It must be held that *Union of India v. Jain Spinners* (1992) 4 SCC 389 and *Union of India v. ITC* 1993 Suppl. (4) SCC 326 have been correctly decided. It is, of course, obvious that where the refund proceedings have finally terminated — in the sense that the appeal period has also expired — before the commencement of the 1991 (Amendment) Act (19-9-1991), they cannot be reopened and/or governed by Section 11-B(3) [as amended by the 1991 (Amendment) Act]. This, however, does not mean that the power of the appellate authorities to condone delay in appropriate cases is affected in any manner by this clarification made by us.

(xii) Section 11-B does provide for the purchaser making the claim for refund provided he is able to establish that he has not passed on the burden to another person. It, therefore, cannot be said that Section 11-B is a device to retain the illegally collected taxes by the State. This is equally true of Section 27 of the Customs Act, 1962."

25. The decision in the case of *Mafatlal* (Supra) has been followed subsequently by the Supreme Court in the cases of *Union of India Vs. Raj Industries* (2000) 2 SCC 172, *Automotive Tyre Manufacturers Association Vs. Designated Authority* (2011) 2 SCC 258 and *A.P Rice Bran Solvent Extractors Association Vs. Union of India* (1998) 8 SCC 384 and various other cases.

26. In view of the aforesaid law laid down by the Supreme Court in the case of *Mafatlal* (supra), I am of the considered opinion that the claim for refund made by the petitioners in the instant case deserves to be rejected as, in the instant case, the petitioners have passed on the burden of terminal tax to the consumers and have failed to establish to the contrary though the burden was on them to do so.

27. It is next contended by the learned counsel for the petitioners that the respondents/Municipal Council cannot install barriers, check posts, etc. for making recovery of terminal tax by intercepting the trucks and vehicles of the petitioners in view of the decisions of this court in the case of *Moolji Bhai and 78 others Vs. State of MP and another* 2000(2) MPHT 477.

28. The aforesaid contention of the learned counsel for the petitioners is opposed by the learned counsel for the respondent on the ground that the respondents have not installed any barrier or check posts to recover tax as alleged by the petitioners and with a view to facilitate payment of tax by the petitioners they have made arrangement for payment and recovery of tax at the time of sale at the forest depot itself which is permissible and is in accordance with law in view of the decision rendered by this court in the case of *Vyapar Mandal Mandi, Morena VS. State of MP and others* 2004 (2) MPLJ 482.

29. As it is not a disputed fact that the respondents have not established any check posts or barriers to recover the terminal tax therefore, the contention of the learned counsel for the petitioners based on the decision rendered in the case of *Moolji Bhai and 78 others Vs. State of MP and another* 2000(2)

MPHT 477 is factually misplaced and misconceived and is accordingly rejected. As the Municipal Council has not installed any check posts or barriers and is only facilitating recovery of tax by making arrangement for making payment and deduction of tax at the depot itself and the petitioners have been paying the same without any protest since so many years, therefore, I do not find any reason to issue orders/direction in this regard, in view of the law laid down by the Division Bench of this court in the Case of *Vyapar Mandal Mandi, Morena VS. State of MP and others* 2004 (2) MPLJ 482.

30. In view of the aforesaid, while the petitions of the petitioners so far as they relate to the challenge to the decision of the Municipal Council, Umariya to impose terminal tax at higher rates than prescribed in the rules 1996 after 07.03.1997 are allowed and the decision and the notification issued by the Municipal Council, Umariya to the contrary are hereby quashed, the claim for refund made by the petitioners stands rejected in view of the fact that the petitioners have passed on the burden of tax onto the consumers and therefore, are not entitled to any unjust enrichment by way of refund in view of the decisions of the Supreme Court in the case of *Mafatlal* (supra) *and others*.

31. As a result of the aforesaid discussions, the petitions filed by the petitioners are partly allowed to the extent indicated above, namely, the decisions and notifications issued by the Municipal Council, Umariya imposing terminal tax over and above the rates prescribed in the Rules of 1996 after 07.03.1997, are hereby quashed but the claim for refund made by the petitioners is hereby rejected.

32. At this stage, it is submitted by the learned counsel for the petitioners that the Municipal Council, Umariya was well aware of the fact that the levy of terminal tax above the rates prescribed in the Rules of 1996 was unjust, illegal and contrary to law, in view of the decision rendered in the cases of *Gajanand Agrawal Vs. State of MP and another* 2003(2) MPLJ 26 and *Lal Narayan Singh Vs. Chief Municipal Officer, and another* 2003(2) MPLJ 340, wherein the Municipal Council, Umariya itself was the respondent and the rates of terminal tax imposed by them were quashed by this court inspite of which the Municipal Council, Umariya continued to recover terminal tax at the enhanced rate from the petitioners, therefore, even if the claim of the petitioners for refund is rejected by this court the act of the Municipal Council in deliberately and knowingly perpetuating the illegality should not be approved and cost should be imposed upon the respondent/Municipal Council, Umariya.

33. The aforesaid contention of the learned counsel for the petitioners is vehemently opposed by the learned counsel appearing for the respondent/ Municipal Council, Umariya on the ground that the petitioners continued to pay tax without assailing the same. However, this court cannot ignore the fact that the Municipal Council, Umariya was well aware of the fact that the recovery of terminal tax at rates higher than the rate prescribed in the Rules of 1996 was illegal in view of the decisions of this court in the cases of *Gajanand Agrawal Vs. State of MP and another* 2003(2) MPLJ 26 and *Lal Narayan Singh Vs. Chief Municipal Officer, and another* 2003(2) MPLJ 340, inspite of which it deliberately and knowingly continued to recover tax at enhanced rate from the petitioners and infact passed resolutions to the contrary thereby perpetuating the illegality. The Municipal Council, Umariya is a local authority having constitutional recognition and is therefore, bound to follow the law and cannot be permitted to subject its citizens to unjust recovery of tax without having any regard for the law and the decisions of this court.

34. In the circumstances, while the petitions are partly allowed in the above stated terms, a cost of Rs.1500/- per petition is imposed upon the Municipal Council, Umariya for perpetuating the illegality even after decisions of this court in the year 2002 which shall be paid by the respondent/Council within one month.

A copy of this order be placed in the record of the connected petitions.

*Petition partly allowed*

**I.L.R. [2012] M.P, 2946**

**WRIT PETITION**

***Before Mr. Sushil Harkauli, Acting Chief Justice &***
***Mr. Justice Alok Aradhe***

W.P. No. 3151/2011 (Jabalpur) decided on 26 September, 2012

NEETU TEJKUMAR BHAGAT & anr. ...Petitioners

Vs.

JABALPUR DEVELOPMENT AUTHORITY & ors. ...Respondents

*A.* ***Public Interest Litigation - Delay*** **- Delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. (Para 12)**

क. लोक हित वाद – विलम्ब – विलम्ब से अनुतोष का दावा विफल नहीं हो सकता जब तक कि दूसरे पक्ष की स्थिति इतनी परिवर्तित न हो गई हो, जिसे दूसरे पक्षकार पर, समय सीमा के व्यपगमन या निष्क्रियता के कारण, वापस नहीं लिया जा सकता।

***B. Nagar Thatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachano Ka Vyayan Niyam, M.P. 1975 - Rule 3 - Transfer of Land*** **- Property belongs to the State Government which on constitution of the authority vested in it - Rule 3 imposes a bar against transfer of Government land vested in or managed by the authority except with the general or special sanction of the State Government - The authority is under an obligation to ensure that it functions according to the provisions of the act and the Rules - Property of the public, which has to be dealt with in a fair, transparent and rational manner. (Para 9)**

*ख. नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र. 1975 – नियम 3 – भूमि का अंतरण* – सम्पत्ति राज्य सरकार की है जिसने प्राधिकरण का गठन होने पर उसमें निहित किया – नियम 3, राज्य सरकार की सामान्य या विशेष मंजूरी के बिना प्राधिकरण में निहित या उसके द्वारा प्रबंधित सरकारी भूमि के अंतरण के विरुद्ध वर्जन अधिरोपित करता है – प्राधिकरण यह सुनिश्चित करने के लिए बाध्यताधीन है कि वह अधिनियम एवं नियमों के उपबंधोनुसार कार्य करेगा – लोक सम्पत्ति के साथ निष्पक्ष, पारदर्शक एवं युक्तिसंगत ढंग से कार्यवाही करनी चाहिए।

***C. Nagar Thatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachano Ka Vyayan Niyam, M.P. 1975 - Rule 5 & 6 - Transfer of the Authority Land*** **- No attempt was made by the Authority to ascertain the market value either by holding a public auction or by inviting tenders - The action of the Authority in not ascertaining the market value of the property by a fair and transparent manner can not be approved. (Para 10)**

*ग. नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र. 1975 – नियम 5 व 6 – प्राधिकरण की भूमि का अंतरण* – प्राधिकरण द्वारा या तो सार्वजनिक नीलामी करके या निविदायें बुलाकर

बाजार मूल्य निर्धारित करने के लिए कोई प्रयास नहीं किया गया – निष्पक्ष एवं पारदर्शक ढंग से सम्पत्ति का बाजार मूल्य निर्धारित नहीं करने की प्राधिकरण की कार्यवाही को अनुमोदित नहीं किया जा सकता।

**Cases referred :**

(2011) 5 SCC 29, 2006 (1) MPHT 523, (2000) 8 SCC 262, AIR 1979 SC 1628, AIR 1980, SC 1992, AIR 1987 SC 1109, (1996) 6 SCC 530, (1992) 2 SCC 598, (1999) 4 SCC 450, (2007) 9 SCC 78, (2006) 3 SCC 434.

*Sharad Verma,* for the petitioners.

*R.N. Singh with Avinash Patel,* for the respondent No.1.

*Rajendra Tiwari, R.P. Agrawal & Rohit Arya with Sanjay Agrawal, Anuj Agrawal,* for the respondents No. 2 & 3.

*Swapnil Ganguly*, P.L. for the respondent No.4.

**O R D E R**

The Order of the court was delivered by : **ALOK ARADHE, J.** - The core issue involved in both the writ petitions is whether a public asset can be disposed of without ascertaining its market value in a fair and transparent manner. In order to appreciate the controversy involved in the writ petitions, for the facility of reference, we are referring to the facts from W.P. No.3151/2011.

2. . The erstwhile Town Improvement Trust, Jabalpur prepared a scheme namely Scheme No.18, Civic Centre, Jabalpur which later on was transferred to Jabalpur Development Authority. In the said scheme, an area admeasuring approximately 1232.169 sq.meters was reserved for construction of Cafeteria on the ground floor and the Library on the first floor. The area situate adjoining to area earmarked for Cafeteria, has been earmarked for children park and for a water body and is in existence. The Jabalpur Development Authority (hereinafter referred as the "Authority') constructed a building admeasuring 700.99 sq.meters with two halls on the aforesaid land for the purpose of establishment of Cafeteria. Under an agreement dated 18.6.1987, two halls in the building were allotted for running the Cafeteria on licence, without issuing any notice inviting tender. In the year 1992, the licence was renewed in favour of a partnership firm comprising three persons including respondent No.2 for running the Cafeteria for a period of 5 years i.e. from 18.7.1992 to 27.7.1997.

The said licence was renewable with enhancement of licence fee. During the currency of the licence, the licencee expressed its willingness to take the open terrace admeasuring 8074 sq.feet on rent and therefore the aforesaid terrace was allotted on licence for a period of three years on 1.1.1995. The Housing and Environment Department, Government of Madhya Pradesh by order dated 24.8.1997 directed the Chief Executive Officer of the Authority to cancel the licence, as the same was granted without inviting any tenders. The Authority was further directed to invite tenders and to allot the same to the highest bidder on licence. In compliance of the aforesaid order, the Authority issued notice of eviction to the licencee. The licencee thereafter filed a writ petition namely W.P. No.3022/97 in which the High Court granted stay with regard to proceeding for eviction initiated against the licencee. The licencee thereafter submitted a representation on 7.8.1999 that it is willing to pay entire arrears of rent and shall withdraw the writ petition if the licence is renewed. In order to resolve the dispute, instructions were sought from the State Government by the Authority. Thereupon, the State Government vide communication dated 27.10.1999 instructed the Authority to decide the issue pertaining to renewal of the agreement at its' level keeping in view the interest of the Authority and the litigation which was pending before the High Court.

3. The Authority thereafter took a decision to renew the licence at an enhanced amount of rent subject to the condition that the arrears of rent would be deposited and the pending writ petition would be withdrawn from the High Court. It is pertinent to mention here that certain cart vendors had been vending food articles by encroaching upon the land situate adjoining to the property in question which belongs to the Authority. The encroachment could not be removed despite the repeated efforts. Thereupon, the Authority took special permission of the State Government to sell the land. The State Government vide order dated 3.10.2003 granted permission to the Authority to allot the land at the rate of Rs.1595/- per sq.ft. to the aforesaid cart vendors.

4. Thereafter, a meeting of the officials of various department authorities was held on 1.2.2006 under the Chairmanship of Minister of State, Urban Administration and Housing & Environment Department in which various issues pertaining to development projects undertaken by the Development Authorities in the State of Madhya Pradesh were discussed. In the said meeting, the development authorities were directed to consider the issue of advisability of retaining various properties which had been rented out as against the possibility of receiving a lump-sum amount by disposal of such properties. In pursuance

of the aforesaid meeting, the State Government issued a circular dated 29.4.2006 by which the Development Authorities were directed to ascertain whether the amount which is received by way of rent in respect of a property is adequate or not. In case the Development authority found that the amount which is being fetched by rent in respect of a property is inadequate, suitable action was directed to be taken for disposal of such property. In purported compliance of the aforesaid circular, the Authority obtained the valuation reports from three valuers in respect of the property in question. The aforesaid three valuers assessed the market value of the property at Rs.4,05,19,170/-. However, the valuer of the Estate Branch of the Authority assessed the market value of the property in question @ Rs.4,25,55,420/. The Authority thereafter taking into account the aforesaid valuation reports as well as the guideline issued by the Collector with regard to market value of the properties of the year 2007, held negotiation with private respondents. The private respondents expressed their willingness to pay an amount of Rs.4,25,55,425/-. Accordingly, an order of allotment was issued in favour of one Chandra Kumar Dengra on 1.12.2007 and a lease deed was executed on 3.7.2010 for a period of 30 years on payment of premium of Rs.2,76,97,149/- in respect of an area admeasuring 8629 Sq.ft. Thereafter, by another lease deed dated 28.8.2010, Cafeteria building admeasuring 4269 Sq.ft. was leased out to one Naveen Kumar Bhatia and Smt. Sheetal Bhatia on payment of premium of Rs.1,48,48,276/- for a period of 30 years. In the aforesaid factual background, the petitioners have approached this Court.

5. Learned counsel for the petitioners submitted that the property in question has been leased out to private respondents in violation of Rules 5 and 6 of Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (hereinafter referred to "1975 Rules"). It was further submitted that market value of the property in question was assessed on the rates fixed by the Collector in the year 2007 whereas, the lease deeds were executed in the year 2010. No attempt was made by the Authority to auction the property in question. In support of their submissions, learned counsel for the petitioners have placed reliance in the cases of *Akhil Bharti Upbhokta Congress Vs. State of Madhya Pradesh,* (2011) 5 SCC 29, *Vijay Kumar Tiwari Vs. State of M.P.*, 2006(1) MPHT 523 and an order dated 8.5.2006 of the Division Bench of this Court in the case of *Bhrampuri Sahakari Grih Nirman Samiti Maryadit Vs. Jabalpur Development Authority* and three others.

6. On the other hand, learned senior counsel for respondent No.1 submitted that Rules 5 and 6 of the 1975 Rules do not apply to the property in question as the land in question belongs to the State Government which has vested in the Authority. Learned senior counsel for respondent No.1 in this regard has invited the attention of this Court to averments made in para 19 of the additional return. It is further submitted that Rule 3 of the Rules apply to the facts of the case. It is further submitted that property in question was in occupation of licencee for a long time and therefore with a view to avoid litigation and in view of the circular (Annex.P/1), the decision was taken to allot the property in question on lease. The market value of the property was ascertained on the basis of the valuation reports and the guideline which was issued by the Collector. It is also urged that there is no substantial change between the guidelines of the Collector between the years 2007 to 2010. However, learned senior counsel for the Authority fairly conceded that no attempt was made by the Authority to ascertain the market value of the property in question from the open market.

7. Learned Panel Lawyer for the State submitted that the property in question has been transferred in violation of Rule 3 of the 1975 Rules, in as much as, no permission from the State Government was taken before leasing out the same to the private respondents. Learned Panel Lawyer has supported the stand taken by the petitioners. Learned senior counsel for the private respondents submitted that they had paid 25% of the amount of premium in the year 2007 and the balance amount was paid in the year 2010. Thereafter, N.O.C. was obtained from the Authority on 27.8.2010. The map was sanctioned by Municipal Corporation, Jabalpur on 22.10.2010. The attention of this Court was invited to the certificate of the Chartered Accountant to show that as on 31.3.2010, the private respondents had taken a loan of Rs.2.83 Crores. It was further submitted that the writ petitions suffer from delay and latches and should not be entertained. It was also urged that petitioners have not disclosed the market value on which the property could be sold. It was also submitted that Authority had taken a policy decision which does not call for any interference in absence of plea of malafides. In support of their submissions, learned senior counsel for private respondents have placed reliance on a decision in the case of *Netai Bag and others Vs. State of West Bengal and others*, (2000) 8 SCC 262.

8. We have considered the respective submissions made by learned counsel for the parties. In *R.D. Shetty Vs. International Airport Authority*

*of India,* AIR 1979 SC 1628, it was held that power or discretion of the Government in the matter of grant of larges including award of jobs, contract, quotas, licence etc. must be confined or structured by rational, relevant and non-discriminatory standard and if the Government departs from such standards or norms in a particular case, the action of the Government is liable to be struck down. The Government cannot act in a manner which would benefit a private party at the cost of the State, as such an action would be both unreasonable and contrary to public interest. The Government therefore cannot give a contract or lease out its property for a consideration less than the highest that can be obtained for it unless ofcourse there are other consideration which render it reasonable and in public interest to do so. See: *Kasturilal Lakshmy Reddy Vs. State of J&K,* AIR 1980, SC 1992. It is well settled in law that State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. The public interest is the paramount consideration. One of the methods of securing public interest when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule yet it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule, but then the reasons for departure must be rational and should not be suggestive of discrimination. See: *Sachidanand Pandey Vs. State of West Bengal,* AIR 1987 SC 1109. A transparent and objective procedure has to be evolved for disposal of the property which is based on reason, fair play and non-arbitrariness. See: *Common Cause Vs. Union of India* (1996) 6 SCC 530 and *Akhil Bharti Upbhokta Congress* (supra).

9. Before proceeding further, it would be appropriate to notice Rules 3, 5 and 6 of the 1975 Rules, which read as under:-

> "3. No Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government given in that behalf.
>
> 5. Transfer of the Authority land shall be as under-
>
> (a) By direct negotiations with the party; or
>
> (b) By public auction; or
>
> (c) By inviting tenders; or

(d) Under concessional terms.

6(1) In the case of disposal of land by direct negotiations the Authority land shall be disposed off at a premium fixed by the Authority in accordance with the general or special sanction given by the State Government to the scale of premium to be fixed and all the Authority land transferred in accordance therewith, shall be liable to ground rent of two percent of the premium."

Rule 3 of the 1975 Rules, imposes a bar against transfer of Government land vested in or managed by the authority except with the general or special sanction of the State Government.

10. The Authority has been constituted for making better provisions for preparation and development of plans and to ensure town planning. The Authority is under an obligation to ensure that it functions according to the provisions of the Act and the Rules. The property in question is the property of the public, which has to be dealt with in a fair, transparent and rational manner. In the instant case, admittedly, no attempt was made by the Authority to ascertain the market value either by holding a public auction or by inviting tenders. The market value of the property in question could have been ascertained by the Authority only by making its intention known to public to dispose of the property by lease, in accordance with the modes well-known to law for disposal of the public property namely either by inviting tenders or by holding auction. The valuation reports in our considered opinion could not have formed the basis to ascertain the market value of the property for the simple reason that potentiality of the property in question has not been taken into consideration while preparation of the valuation reports. Similarly, the guidelines issued by the Collector could not furnish a reasonable basis for ascertaining the market value of the property for the reason that the guidelines are prepared by the Collector only for the purpose of payment of stamp duty. Therefore, the action of the Authority in not ascertaining the market value of the property by a fair and transparent manner cannot be approved.

11. Admittedly, the property in question belongs to the State Government which on constitution of the authority vested in it. Rule 3 of the 1975 Rules provides that no Government land vested in or managed by the Authority

shall be transferred except with the general or special sanction of the State Government given in that behalf. The Authority while dealing with property of the State Government which has vested in it, acts like an agent of the State Government. There are two limitations imposed by law which control the discretion of the authority in granting largess, firstly with regard to the terms on which largess may be granted and other in regard to the persons who may be recipients of such largess. Therefore, under Rule 3 of the 1975 Rules, the Authority is required to take an approval from the State Government with regard to the manner of disposal of the land as well as the value on which it is proposed to be transferred, as the Authority is the custodian of the property of the Government. In the instant case, the Authority has not obtained the sanction as required under Rule 3 of the Rules. Thus, the property has been transferred in violation of Rule 3 of the 1975 Rules.

12. Now we may advert to the objection raised on behalf of private respondents that since the writ petitions suffer from delay and latches and, therefore, the writ petitions are liable to be dismissed. The lease deeds were executed on 3.7.2010 and 28.8.2010. The writ petitions have been filed before this Court in January, 2011 and in April, 2011, i.e. within 5 months and 9 months respectively, from the date of execution of the lease deeds. It is well settled in law that in considering the question of delay, the test is not of physical running of time. See: *M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and others* (1992) 2 SCC 598. The delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. However, the question of delay has to be examined in the facts of each case. See: *Hindustan Petrol Corporation Vs. Dolly Das,* (1999) 4 SCC 450 and *M.P. Ram Mohan Raja Vs. State of Tamil Nadu* (2007) 9 SCC 78. It is equally well settled legal proposition that delay and latches alone shold not be sole ground for throwing out public interest litigation. Keeping in view the magnitude of public interest, the Court may consider the desirability to relax the rigours of accepted norms. See: *Bombay Dyeing & Mfg. Co. Ltd.(3) Vs. Bombay Environmental Action Group* and others (2006) 3 SCC 434

13. From the return which has been filed on behalf of the private respondents, we find that the NOC was obtained from the Authority on

27.8.2010. The building sanction was granted and the map was approved on 22.10.2010 by Municipal Corporation, Jabalpur. The private respondents have stated that they have completed the construction of the basement however, the construction of the ground floor could not be made due to an interim order which was passed by this Court on 5.8.2011. While making reference to the certificate of the Chartered Accountant, it was submitted that respondent No.2 had taken a loan of Rs.2,83,23,898/-. We have gone through the certificate issued by the Chartered Accountant (Annex.R-2/13) which shows that respondent No.2 has taken unsecured loan of Rs.1,87,05,290/- from relatives and friends and secured loan of Rs.96,18,608/-. However, it is pertinent to mention here that details of loan taken from the relatives and friends have not been disclosed. In the facts of the case, the position of private respondents has not been altered which cannot be retracted. In other words, the private respondents can be compensated for the construction which has been raised by them. In any case, the writ petitions have not been filed after an inordinate delay. Besides that, keeping in view the magnitude of public interest, we are not inclined to accept the submission made by learned senior counsel for private respondents that writ petitions should be dismissed on account of delay and latches.

14. In view of the preceding analysis, the lease deeds dated 3.7.2010 and 28.8.2010 executed in favour of private respondents are hereby quashed. The Authority is directed to issue a notice inviting tender for disposal of the property in question on lease. It will be open for the private respondents as well, to participate in the aforesaid process. In case the bids submitted by private respondents are found to be the highest, the lease deeds would be executed in their favour in respect of property in question. However, in case the bids of private respondents are not found to be the highest, in such an eventuality, the respondent No.1 authority shall refund the amount spent by private respondents on the construction of property in question from the bid amount which will be received by the Authority subject to private respondents furnishing an account of the amount spent by them in raising the construction, which shall be duly supported by the documents.

15. With the aforesaid directions, the writ petitions are disposed of.

*Petition disposed of*

**I.L.R. [2012] M.P, 2956**
**WRIT PETITION**
***Before Mr. Justice Sujoy Paul***
W.P.No. 6199/2012 (Gwalior) decided on 8 October, 2012

RADHACHARAN SHARMA ...Petitioner
Vs.
STATE OF M.P. ...Respondent

***Land Revenue Code, M.P. (20 of 1959), Section 50 - Review - Condonation of delay - Delay of 23 years - Sufficient Cause*** **- Sufficient cause is required to be established - Delay of 23 years is not an ordinary delay and can be condoned only if specific reasons with accuracy and precession are shown - It cannot be condoned on a bald statement that matter has a public element - Order condoning the delay quashed.**
**(Para 12)**

*भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 – पुनर्विलोकन – विलम्ब के लिए माफी – 23 वर्षों का विलम्ब – पर्याप्त कारण* – पर्याप्त कारण स्थापित किया जाना अपेक्षित है – 23 वर्षों का विलम्ब, साधारण विलम्ब नही है और केवल तब माफ किया जा सकता है यदि विनिर्दिष्ट कारणों को यथार्थता के साथ एवं परिशुद्धता के साथ दर्शाया जाता है – इसे केवल ऐसे कथन पर माफ नही किया जा सकता कि मामले में सार्वजनिक हित है – विलम्ब माफ करने का आदेश अभिखण्डित।

**Cases referred :**

1992 JLJ 458, (2008) 17 SCC 448, AIR 1998 SC 2276, (2010) 8 SCC 685, (2012) 3 SCC 563, 2012 AIR SCW 2412, ILR 2000 MP 1329

*V.K. Bharadwaj with Raja Sharma,* for the petitioner.

*Praveen Newaskar,* Dy.G.A. for the respondent/State.

**O R D E R**

**Sujoy Paul, J.** - By invoking the jurisdiction of this Court under Article 227 of the Constitution, the petitioner has called in question the order dated 25.7.2012 passed by the Administrative Member of Board of Revenue.

2. By the impugned order, the Board has allowed an application for condonation of delay filed by the State Government. It is relevant to mention

here that the impugned order Annexure P-1 is passed in a proceeding which were instituted by the State Government under Section 50 of the Madhya Pradesh Land Revenue Code (M.P.L.R.C.) after 23 years. In other words, the main matter was decided by the Board of Revenue 23 years back and review is filed after 23 years along with an application for condonation of delay. The said application was allowed by the authority below on the singular ground that prima facie it appears that a public interest is involved in this matter and, therefore, delay needs to be condoned. By condoning the delay, the matter is posted for arguments.

3. Shri V.K.Bharadwaj, learned senior counsel criticized this order by submitting that the order is bad in law and delay of almost 23 years could not have been condoned by the authority below. He relied on various judgments on this subject.

4. Shri Newaskar, learned Dy.G.A., on the other hand, supported the order and placed reliance on certain provisions of the M.P.L.R.C. to submit that application for condonation of delay can be filed in proceedings under Section 50 of the M.P.L.R.C. He further submits that provisions of Limitation Act are made applicable for proceedings of Section 50 of the Act.

5. I have heard the learned counsel for the parties and perused the record.

6. This is not in dispute between the parties that the authority below has condoned the delay of 23 years. In view of the rival contentions of the parties, the question is whether at this stage when main matter is pending before the authority below, any interference is warranted? More so, when it is always open for the petitioner to challenge the final order by appropriate proceedings in which he can always raise the objection regarding condonation of delay as well.

7. Secondly, whether reason assigned for condonation of delay, i.e., public interest after 23 years amounts to 'sufficient cause'? A Division Bench of this Court in 1992 JLJ 458 *(Laxmi Bai and others v. Nagaram Khilawandas)* held as under:-

> "In our opinion, the apprehension is without any foundation. The appellants were litigating within time throughout upto this Court. In our opinion, the right of the appellants to challenge the orders of the appellate Court rejecting their applications under section 5 of the Limitation Act by petition under Article

227 of the Constitution of India is not, in an manner, hampered or prejudiced merely because of the long pendency of the second appeals, which were are dismissing as incompetent. We, therefore, reject these second appeals as incompetent under section 100 of the Civil Procedure Code. We also reject the applications for conversion of memo of appeal into writ petition."

8. In (2008) 17 SCC 448 (*Pundlik Jalam Patil (dead) by Lrs. Vs. Executive Engineer, Jalgaon Medium Project and another*), the Apex Court held that a party cannot be permitted to invoke any right after long time because the time elapsed because of his own negligence.

9. In AIR 1998 SC 2276 *(P.K.Ramachandran Vs. State of Kerala and another)*, it was held that in absence of any reasonable or satisfactory explanation, delay cannot be mechanically condoned.

10. In (2010) 8 SCC 685 *(Balwant Singh (dead) Vs. Jagdish Singh and others)*, the Apex Court held as under:-

"Even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to an applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of its acting vigilantly."

11. In (2012) 3 SCC 563 (*Postmaster General and others Vs. Living Media India Limited and another*), the Apex Court declined to condone the delay of 427 days on the ground that "sufficient cause" is not shown. In 2012 AIR SCW 2412 *(Maniben Devraj Sah v. Municipal Corporation of Brihan Mumbai)*, the Apex Court held as under:-

> "In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."
>
> (emphasis supplied)

12. On the basis of these judgments, it is clear that "sufficient cause" is required to be specifically established. Twenty three years delay is not an ordinary delay and, therefore, such delay can be condoned only if specific reasons with accuracy and precession are shown for condonation of delay. It cannot be condoned on a bald statement that matter has a public interest element. If this bald statement or reason is accepted mechanically, then delay can be condoned even after 25 years or 50 years. The Apex Court in *Maniben* (supra) held that even when "public interest" is pleaded, the State is required to show the "sufficient cause". The delay cannot be condoned as a matter of course by accepting the plea of public interest.

13. In a similar issue this Court in 2000 (ILR) 1329 *(Ravi Narayan Vs. State and others)* held as under:-

> "The Courts cannot ignore the fact that public at large deposes confidence in the Judicial system and they wish to say that some end should be brought to the litigation. Though from the plain language of Section 51 it does not appear that length of time would curtail or curb the powers of the authority to review

its order but by the judicial dictum it has been circumscribed. The words 'at any time' in view of the judgments of the Supreme Court, this Court and other Courts will have to mean 'within reasonable time'. The period in which powers can be exercised should be reasonable period. A man is entitled to feel that after a final order in his favour he is free and is entitled to use and enjoy his property and chattel. If it enters in his mind that some authority on some day may exercise suo-motu review or revisional powers then it would be almost impossible for such person to enjoy the property which is in his possession. There must be some end to the litigation. If the things are kept in suspension and no finality is attached even to a final order it is going to shatter the public faith in the system. The law nowhere provides that the things may be kept in animated suspension so that someone or the other whenever wants transfusion of life into the suspended article may bring it back to life. The law is to be respected and justice is to be done by those who have authority to dispense justice. One cannot forget that interpretation of the law should be in accordance with equity, fair play and justice. At some point somebody is entitled to say that enough is enough. Somebody must permit the deads to remain burried in their graves."

14. On the basis of aforesaid analysis, I am unable to hold that the petition under Article 226/227 is not maintainable against order Annexure P-1. This Court can exercise the power of judicial review against an order by which delay is mechanically condoned after more than 02 decades. When the order impugned is passed mechanically without there being any "sufficient cause" petitioner can not be made to face the entire litigation. On the basis of reason shown, delay of 23 years could not have been condoned. Consequently, the impugned order cannot be permitted to stand. The same is accordingly set aside. No cost.

*Order accordingly.*

**I.L.R. [2012] M.P, 2961**
**WRIT PETITION**
***Before Mr. Justice U.C. Maheshwari***
W.P.No. 12380/2010 (Jabalpur) decided on 10 October, 2012

NETLAL ....Petitioner
Vs.
SALIGRAM & ors. ...Respondents

***Evidence Act (1 of 1872), Section 45 – Examination of thumb impression*** **- Petitioner has filed a suit for declaration for declaring the sale deeds as null on the ground that he has neither entered in any transaction of sale with the defendants nor has sold the property by executing the aforesaid sale deeds with his thumb impression - Held - Assistance of handwriting expert is necessary to adjudicate the disputed question with respect of thumb impression - Petition allowed.** **(Para 6)**

*साक्ष्य अधिनियम (1872 का 1), धारा 45 – अंगूठा निशानी का परीक्षण* – याची ने विक्रय विलेखों को अकृत घोषित किये जाने हेतु घोषणा के लिए वाद प्रस्तुत किया इस आधार पर कि उसने न तो प्रतिवादीगण के साथ विक्रय का कोई संव्यवहार किया है और न ही उसने अपने अंगूठा निशानी से उपरोक्त विक्रय विलेखों के निष्पादन द्वारा सम्पत्ति का विक्रय किया है – अभिनिर्धारित – अंगूठा निशानी के संबंध में विवादित प्रश्न को न्यायनिर्णित करने हेतु हस्तलेख विशेषज्ञ की सहायता आवश्यक है – याचिका मंजूर।

*Sanjay Sarwate,* for the petitioner.
*H.K. Verma,* for the respondent Nos. 1 to 11 & 14.
*Shital Dubey,* P.L.for the respondent No. 13/State.

**ORDER**

**U.C. MAHESHWARI, J. -** The counsel of the private parties submits that the presence of respondent no.12 is not required for adjudication of this petition, the same can be adjudicated effectively only in the presence of the petitioner and respondents no.1 to 11, 13 and 14. Consequently, the notice of this petition, against respondent no. 12, if the same has not served, is hereby

dispensed with.

2. In the available circumstances, with the consent of the parties, this petition is heard finally.

3. The petitioner/plaintiff has filed this petition under Article 227 of the Constitution of India, for quashment of the order dated 19.03.10 (Annexure P-3), passed by Vth Civil Judge Class-II, Balaghat, in Civil Original Suit No.50-A/2009, dismissing his application filed under Section 45 of Indian Evidence Act, to get examine the alleged thumb impressions of the seller on the disputed both the sale deeds dated 09.05.1980. As alleged by the respondents, the same were executed by the present petitioner/plaintiff in favour of Bhursi Bai and Bhagwati Bai.

4. The petitioner's counsel after taking me through the petition as well as the papers placed on record, submits that the petitioner had neither entered in any transaction of sale with Bhursi Bai and Bhagwati Bai nor sold the property by executing the aforesaid sale deeds with his thumb impression. He further said that the impugned suit has been filed by him for declaring the aforesaid both the sale deeds to be ab-initio void, contending that aforesaid both the sale deeds were made and got registered with the forged thumb impression of some other person in the name of petitioner with respect of his property. In such premises, the petitioner/plaintiff wants to get examined the thumb impressions of both the sale deeds with his actual, genuine and natural thumb impression and prayed to premit the petitioner by allowing his application to get examined the thumb impressions of the sale deeds with his genuine thumb impression by allowing this petition.

5. On the other hand, counsel of private respondents submits that the petitioner/plaintiff could prove his case by examining himself and the witnesses and in such premises, the examination of thumb impression of the sale deeds with his actual, natural and genuine thumb impression is not necessary. In such premises, by justifying the impugned order prayed for dismissal of this petition.

6. Having heard, keeping in view the arguments advanced, after going through the papers placed on the record along with the impugned order, I am of the considered view that to adjudicate the aforesaid disputed question with respect of thumb impressions of the petitioner/plaintiff on the alleged disputed sale deed, the assistance of handwriting expert appears to be necessary. Apart

this, the parties of the case have a right to adduce the relevant evidence including the evidence of expert in support of their respective case and the petitioner/plaintiff has filed the impugned application bonafidely at the initial stage of the case before recording his evidence. In this situation the trial court ought to have allowed the impugned application but the same has been wrongly dismissed. Thus it is held that the trial court has committed grave error in dismissing the application of the petitioner.

7. In view of the aforesaid discussion by allowing this petition, the impugned order dated 19.03.10 (Annexure P-3), till the extent of dismissing the aforesaid application is set aside. Pursuant to it such application is allowed and the petitioner is permitted to get examine the thumb impressions of said sale deeds with his genuine and actual thumb impression by handwriting expert. In such premises, the petitioner is extended the liberty to file appropriate application in this regard in the trial court by stating the name of handwriting expert and subject to order of such court on such application petitioner/plaintiff may call the handwriting expert before the court to collect the requisite informations and document along with 'the actual, genuine and natural thumb impression of the petitioner/plaintiff to compare with the alleged thumb impression of the petitioner/plaintiff on the disputed documents for giving the expert report in that respect.

8. Simultaneously, the respondent/defendant is also extended a liberty to get examine the same from the handwriting expert of his choice in rebuttal. Pursuant to it, it is also observed that the parties shall be at liberty to examine such handwriting experts in support of their respective cases at the trial.

9. The revision petition is allowed as indicated above.

10. Considering the oral submission of the petitioner's counsel, it is directed that in compliance of some earlier order, if petitioner has deposited Rs.1,000/- with the trial court then subject to proper verification, the same be refunded to him.

*Petition allowed.*

**I.L.R. [2012] M.P, 2964**

**WRIT PETITION**

***Before Mr. Justice U.C. Maheshwari***

W.P.No. 15948/2012 (Jabalpur) decided on 11 October, 2012

CHANDRIKA PRASAD ...Petitioner

Vs.

INDRAMANI (Dead) THROUGH L.R.s. & ors. ...Respondents

*A. Civil Procedure Code (5 of 1908), Section 148A - Caveat - Original Caveator Dead* - **After the death of original caveator, the Counsel has no right to argue on merits. (Para 2)**

*क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 148 ए – केवियट – मूल केवियटकर्ता की मृत्यु* – मूल केवियटकर्ता की मृत्यु के पश्चात् अधिवक्ता को गुणदोषों पर तर्क प्रस्तुत करने का अधिकार नहीं है।

*B. Civil Procedure Code (5 of 1908) Order 21 Rule 29 - Stay of Execution Proceedings* - **Exparte decree was passed against petitioner - Application for setting aside exparte decree rejected - Appeal also dismissed - Suit for setting aside exparte decree pending - No interim order passed in such suit - Held - Unless and until the execution proceedings are stayed by any competent court or by any interlocutory injunction, executing court cannot go beyond the decree and cannot stay the execution - Petition dismissed. (Para 9)**

*ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 29 – निष्पादन कार्यवाहियों पर रोक* – याची के विरूद्ध एक पक्षीय डिक्री पारित – एकपक्षीय डिक्री अपास्त किये जाने हेतु आवेदन निरस्त – अपील भी खारिज – एकपक्षीय डिक्री अपास्त किये जाने के लिए वाद लंबित – इस दावे में कोई अंतरिम आदेश पारित नहीं – अभिनिर्धारित – जब तक कि किसी सक्षम न्यायालय द्वारा या किसी अंतवर्ती आदेश द्वारा निष्पादन कार्यवाहियों को रोका नहीं जाता, निष्पादन न्यायालय डिक्री से परे नहीं जा सकता और निष्पादन नही रोक सकता – याचिका खारिज।

**Case referred :**

AIR 2004 KARNATAKA-336.

*R.N.Tiwari,* for the petitioner.
*K.K.Sharma,* for the caveator.
Respondents No. 1 to 4, subject to order are yet to be notices.
*P.Dharmadhikari,* G.A. for the respondent No.5.

**ORDER**

**U.C. MAHESHWARI, J.** - Shri K.K.Sharma, counsel for the original Caveator ,namely,Indramani submits that the caveator has passed way. Such submission is taken on record.

2. It is noted that after death of original caveator, such counsel has no right to argue on merits of the matter.

3. Heard on question of admission.

4. The petitioner/judgment debtor/the defendant of COS No.132-A/93 decided on 25.10.96 by III Civil Judge II Rewa , has filed this writ petition under Article 227 of the Constitution of India for quashment of the order dated 3.9.12 passed by III Civil Judge-II, Rewa in Execution Case No.132-A/93-11 whereby his application filed under Order 21 rule 29 of the CPC for grant of stay till disposal of COS No.1-A/12 filed for declaring the aforesaid decreed to be ab initio void pending in the court of V Civil Judge Class II, Rewa has been dismissed.

5. After taking me through the papers placed on the record along with the impugned order, petitioner's counsel argued that initially the aforesaid COS No.132-A/93 was proceeded ex-parte against him and was also decreed ex-parte. Thereafter, instead to file any appeal against such exparte judgment and decree, he filed an application under Order 9 rule 13 of the CPC which was registered as MJC No.88/02. On consideration, the same was dismissed by the trial court vide order dated 6.12.04. Against that, he preferred M.A.No.13/05. On consideration, by affirming the order of the trial court, the same was dismissed by the II ADJ, Rewa vide order dated 9.12.05.

6. Subsequent to aforesaid, in pendency of the execution proceedings of the aforesaid ex-parte decree, the petitioner/judgment debtor filed COS No.1-A/12 for declaring the aforesaid ex-parte judgment and decree to be ab-initio void and not executable against him. Pursuant to it, some perpetual injunction has also been prayed in it. Such suit is still pending for adjudication in which his application for issuing ad interim injunction against the decree under

execution is also pending. In such factual background, he argued that when the decree under execution has been passed ex-parte and to set aside the same his suit is pending then till disposal of the suit, by virtue of Order 21 rule 29 of the CPC, under the discretionary power of the court, the further proceedings of the execution case, ought to have been stayed by the executing court. But contrary to the record and such provision, by dismissing his impugned application filed under Order 21 rule 29 of the CPC, the executing court has proceeded to execute the ex-parte decree. He fairly submitted that till today his interlocutory application filed in COS No.1-A/12, has neither been considered nor any order has been passed on merits on the same. Even no interim order has been passed on such application. In continuation, he said that if the execution proceeding is not stayed then in such circumstance under execution of the decree, the petitioner will be dispossessed from the disputed property and will suffer in a lot. Besides that many other complications may happen between the parties. In support of his contention, by placing his reliance on a decision of the Karanataka High Court in the matter of *Smt Sundra Bai and others Vs. Smt Sonubai*-AIR 2004 Karnataka-336, he prayed for admission of this petition.

7. Having heard the counsel, keeping in view his arguments, I have carefully gone through all the papers annexed with the petition along with the impugned order.

8. It is undisputed fact, as stated above, that initially the civil suit was filed by the predecessor-in-title of the respondents, namely, Indramani against the present petitioner with respect of possession and redemption of the immovable mortgaged property. The same was decreed ex-parte against the petitioner. Subsequent to it, an application under Order 9 rule 13 of the CPC was filed for setting aside such ex-parte decree. On consideration, such proceedings was also dismissed by the trial court. On challenging such order in the Misc. appeal, the same was also dismissed by affirming the order of the trial court. On challenging the appellate court order in C.R.No.136/06 before this court, on consideration, vide order dated 30.11.2011, such revision has also been dismissed. So, in such premises, the aforesaid ex-parte decree had attained finality between the parties and thereafter if the respondents who are the successors of the principal decree holder, are going to execute the aforesaid decree then the executing court did not have any other option except to proceed to execute the decree according to its terms and directions and such way was adopted by the executing court.

9. True it is that subsequent to exhausting the remedy to set aside the ex-parte decree, the petitioner has filed the COS No.1-A/11 in the court of Civil Judge Class II, Rewa and in such suit he has also filed an application for issuing ad interim injuction against the operation and execution of the impugned decree under execution but till today neither exparte nor bi-parte order has been passed by such court in such matter and in this matter nothing of that suit could be taken into consideration otherwise the right of the petitioner to prosecute said suit on merits may be prejudiced. However, taking note of it that in such civil suit also no injunction as prayed by the petitioner, has been granted, I am of the considered view that unless such decree is stayed by any competent court with appropriate order or any interlocutory injunction is granted against the execution of such decree, the executing court cannot stop its hands to execute the same and pursuant to it, considering the objections of the petitioner filed under Order 21 rule 29 of the CPC, the executing court cannot go beyond the decree and this court while sitting in the superintending jurisdiction, against the order of the executing court, cannot interfere in such order which has been passed by such court under its vested jurisdiction and in accordance with the procedure and the settled proposition of the law.

10. It is noted that Article 227 of the Constitution of India does not give any independent right to pass any order to this court but that gives the authority to this court to examine the legality, perversity, error or anything with respect of propriety of the law in the order impugned and, in such premises, I have not found any case in favor of the petitioner for interference in the order impugned even for admission of this petition.

11. So far the case law cited on behalf of the petitioner in the matter of *Smt Sundra Bai* (supra) is concerned, it is suffice to say that in that case it was held that in pendency of the civil suit against the decree at the instance of the judgment debtor, the power to stay the execution proceedings should be invoked by the executing court in judicial manner and not in the arbitrary manner and only in exceptional circumstances and, ultimately, such petition filed by the judgment debtor was dismissed by the Karnataka High Court. Hence the case law cited on behalf of the petitioner is not helping to the petitioner.

12. In view of the aforesaid discussion, I have not found any exceptional ground in the present matter to stay the impugned execution proceedings. I am of the considered view that if any stay is granted against the execution

then the decree holder or his legal representatives may be deprived to get and enjoy the fruits of validly passed decree in their favor which is not the intention of the legal procedure or the system.

13. So far the apprehension of the petitioner that in pendency of the civil suit if under execution of the decree he is dispossessed from the disputed property then he has to suffer in a lot. Such apprehension does not have any water because subject to securing any interim or final order by the petitioner in the aforesaid COS No.1-A/12, he shall be at liberty to restore the earlier position by adopting the procedure provided under section 144 of the CPC because such provision is enacted only for that purpose.

14. However, it is made clear that any observations or findings given by the trial court in the order impugned or by this court in the present order, shall not come in the way of the petitioner to prosecute the aforesaid pending COS No.1-A/12 and the application filed in such case. The trial court shall decide such suit and application on its own merits in accordance with the procedure provided under the law.

15. In view of the aforesaid I have not found any illegality, irregularity, perversity, infirmity or anything against the propriety of the law in the order impugned which requires any interference before this court under Article 227 of the Constitution of India, hence this petition is hereby dismissed at the initial stage of motion hearing.

C.C as per rules.

*Petition dismissed*

**I.L.R. [2012] M.P, 2968**

**WRIT PETITION**

***Before Mr. Justice U.C. Maheshwari***

W.P.No. 15909/2012 (Jabalpur) decided on 12 October, 2012

BAJE RAO & ors. ...Petitioners

Vs.

GULAB RAO & ors. ...Respondents

***Civil Procedure Code (5 of 1908), Section 15, Order 7, Rules 1 & 10 - Valuation of suit*** **- Plaintiff filed suit for declaration of sale deeds as null and void on fixed court fee - Held - As the plaintiffs are**

**not party to the sale deeds, therefore, suit on fixed court fee is maintainable - In such situation the plaintiffs were not bound to value the suit for the purpose of jurisdiction according to the market value of the property or the sale consideration of the document mentioned in the sale deed. (Para 5)**

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 15, आदेश 7, नियम 1 व 10 – वाद का मूल्यांकन* – वादी ने विक्रय विलेखों को शून्य एवं अकृत घोषित किये जाने हेतु निश्चित न्यायालय शुल्क पर वाद प्रस्तुत किया – अभिनिर्धारित – चूंकि, वादीगण विक्रय विलेखों के पक्षकार नहीं, इसलिए निश्चित न्यायालय शुल्क पर वाद पोषणीय है – ऐसी स्थिति में वादीगण अधिकारिता के प्रयोजन हेतु सम्पत्ति के बाजार मूल्यानुसार या विक्रय विलेख में उल्लेखित विक्रय प्रतिफल के अनुसार वाद का मूल्यांकन करने के लिए बाध्य नहीं थे।

*Pranay Verma,* for the petitioners.
*Sharda Dubey,* P.L. for the respondent No.4/State.

**ORDER**

**U.C. MAHESHWARI, J.** - Heard on the question of admission.

2. The petitioners/defendants have filed this petition under Article 227 of Constitution of India, for quashment of order dated 03.08.12 (Annexure P-6) passed by Civil Judge, Class-II, Multai, District Betul, in Civil Original Suit No.59-A/2010, whereby their application filed under Order 7 Rule 1 read with Rule 10 of the C.P.C., has been dismissed.

3. The petitioners counsel after taking me through the averments of the petition as well as the papers placed on record, argued that the respondents no.1 to 3 herein filed the impugned suit on fixed court fees for declaring disputed deed ab-initio void with consequential relief for perpetual injunction and in response of summons of the suit, the petitioners herein filed the impugned application (Annexure P-4) under Order 7 Rule 1 read with Rule 10 of the C.P.C. for returning the suit to the plaintiff to file the same before the competent court having the pecuniary jurisdiction over the matter in the light of market value of the disputed property or in any case, the valuation of the property made in the alleged sale deed, in such premises he said that according to the market value or valuation of the sale deed i.e. Rs.60,000/-, the suit is not

entertainable by the Court of Civil Judge, Class-II.

4. Keeping in view the aforesaid arguments, I have carefully gone through the papers placed on the record, it is undisputed fact that in the alleged disputed sale deed, the respondents no.1 to 3 is not a party. As such no-one respondents had execute the alleged sale deed and in this background they have filed the suit against the petitioners with a prayer for declaring such sale deed ab-initio void and consequently for issuing the perpetual injunction. It is settled proposition of law that whenever the person who is not a party of the alleged document files the suit only for declaration to declare such document ab-initio void perpetual injunction on fixed court fees then such suit remains entertainable before the court which has jurisdiction to hear and decide the suit filed on such fixed valuation and/or court fees.

5. In such situation, the party like respondents no.1 to 3 was neither bound to value the suit for the purpose of jurisdiction according to the market value of the property or the sale consideration of the document mentioned in the alleged sale deed or to file the suit before the court having pecuniary jurisdiction over the matter in view of the market value or the sum of the consideration of the sale deed of such property.

6. In the aforesaid premises, I have not found any illegality, infirmity, perversity or anything against the propriety of law in the order impugned passed by the trial court. Consequently, this petition being devoid of merits, is hereby dismissed at the stage of motion hearing.

7. However, it is made clear that in the light of the written statement of the petitioner, if any issue in this regard is/has been framed by the trial court then after recording the evidence in the matter on appreciation such issue shall be decided by such court on it's own merits without influencing from any observations and findings made by the trial court in the order impugned or by this court in the present order.

8. The petition is hereby dismissed with aforesaid observations and directions.

*Petition dismissed.*

**I.L.R. [2012] M.P, 2971**
**WRIT PETITION**
***Before Mr. Justice U.C. Maheshwari***
W.P.No. 7008/2012 (Jabalpur) decided on 12 October, 2012

JAGDEESH PRASAD GUPTA ...Petitioner
Vs.
MADAN LAL & ors. ...Respondents

***Civil Procedure Code (5 of 1908), Order 1 Rule 10 - Impleadment of co-owner*** **- Petitioner being a co-owner of property filed suit for eviction against respondents No. 1 to 3 - Co-owners were impleaded as defendants on their application - Held - Suit for eviction can be filed by any of the co-owners - Presence of all the owners is not necessary to adjudicate the suit - If after holding the trial on appreciation, it is found that the plaintiff/petition was not entitled to file the suit alone for eviction, then in that situation, the petitioner has to face the consequence of dismissal of suit - Therefore, presence of co-owners is not necessary - Order permitting the co-owners to be impleaded as defendants set aside.** **(Para 8)**

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – सह स्वामी को पक्षकार बनाया जाना* – याची ने सम्पत्ति का सह स्वामी होने के नाते प्रत्यर्थी क्र. 1 से 3 तक के विरूद्ध बेदखली का वाद प्रस्तुत किया – सह स्वामियों को उनके आवेदन पर प्रतिवादीगण के रूप में पक्षकार बनाया गया – अभिनिर्धारित – बेदखली का वाद किसी भी सह स्वामी द्वारा प्रस्तुत किया जा सकता है – वाद न्यायनिर्णित करने के लिए सभी स्वामियों की उपस्थिति आवश्यक नही – यदि विचारण करने पर अधिमूल्यन पश्चात् यह पाया जाता है कि वादी/याची अकेले बेदखली हेतु वाद प्रस्तुत करने के लिए हकदार नहीं था, तब ऐसी स्थिति में, याची को वाद की खारिजी के परिणाम का सामना करना पड़ेगा – इसलिए, सह स्वामियों की उपस्थिति आवश्यक नही – सह स्वामियों को प्रतिवादीगण के रूप में पक्षकार बनाये जाने का आदेश अपास्त।

**Case referred :**

AIR 1976 SC 2335.

*Subhash Gupta,* for the petitioner.

*Manoj Sanghi,* for the respondents No. 1 to 4.
None for the respondents No. 5 & 6 although served.

**ORDER**

**U.C. MAHESHWARI, J.** - Although this case is listed today for admission and consideration of the stay application but in the available scenario of the matter, with the consent of the parties, the same is heard finally.

2. The petitioner/plaintiff has filed this petition under Article 227 of Constitution of India, being aggrieved by the order dated 23.04.12 (Annexure P-6) passed by 6th Civil Judge Class-II, Sagar, in C.O.S. No.1O-A/12, allowing application of the respondents no.4 to 6 filed under Order 1 Rule 10 of the C.P.C., permitting them to implead as a party in the matter and pursuant to it, such respondents no.4 to 6 have been directed to be impleaded as defendants in the suit of the present petitioner.

3. The petitioner's counsel after taking me through the petition as well as the papers placed on record along with impugned order, submits that the present petitioner being co-owner of the disputed premises has filed the impugned suit for eviction against the respondents no.1 to 3 without impleading the respondents no.4 to 6 as party in the suit. In continuation he said that as per settled proposition of law one co-owner can very well file eviction suit against the tenant without impleading any co-owner as party in the suit. So in such premises, even in the absence of the respondents no.4 to 6, the eviction suit could be adjudicated effectively only in presence of the petitioner. He further argued that it is apparent from the application that the respondents no.4 to 6 have not come with any specific cause of action against the respondents no.1 to 3 to file the aforesaid suit or to support the petitioner in the impugned suit. In such premises, also only in presence of petitioner and the respondents no.1 to 3, the effective decree of eviction could be passed and the presence of respondents no.4 to 6 is not necessary. As such tenant has no right to challenge the right of the land lordship of the co-owner with respect of disputed premises. He has also said that in case, he is failed in proving his land lordship of the premises in dispute in the lack of impleading the respondents no.4 to 6 then in that situation his suit may be dismissed by the trial court. Thus, in such premises also the presence of respondents no.4 to 6 are not required. He further argued that besides the aforesaid settled proposition of law, the petitioner/plaintiff being sole dominus litus of his suit

could not be insisted to join any other person like respondents no.4 to 6 as defendant or plaintiff in the present matter. With these submissions, he prayed for setting aside the impugned order by dismissing the application of respondents no.4 to 6 by allowing this petition.

4. The aforesaid prayer is opposed by Shri Manoj Sanghi, learned counsel for the respondents no.1 to 4 saying that the respondents no.4 to 6 being co-owner of the property have every right to join the proceedings filed against the tenant or any other person with respect of their property, as such in their absence no effective decree could be passed against tenant in civil litigation. In continuation, he said that mere on the whims of the petitioner/plaintiff, the respondents no.4 to 6 could not be deprived to keep their continue observation to protect their right in the impugned suit and in such premises, the trial court has not committed any error in allowing the application of respondents no.4 to 6 and prayed for dismissal of this petition.

5. Having heard, keeping in view the arguments, I have carefully gone through the papers annexed with the petition along with the impugned order. Prima facie it appears that the respondents no.4 to 6 are co-owner of the property with the petitioner in which the respondents no.1 to 3 being tenant is in possession. In such premises, the present petitioner being co-owner of the property had a right to file the impugned suit for eviction against the respondents no.1 to 3 without impleading the respondents no.4 to 6 or even without their consent in this regard.

6. In the aforesaid circumstances, to consider the impugned application of the respondents no.4 to 6, the trial court ought to have considered the fact stated in such application, according to which no cause of action to file the impugned suit against the tenant respondents no.1 to 3 have been stated. In the lack of any such cause of action the presence of respondents no.4 to 6 to adjudicate the impugned suit is not required. On the other hand the petitioner/ plaintiff has filed the impugned suit being co-owner/land lord of the property by mentioning the available cause of action to him. As per settled proposition of law as laid down by the Apex Court 'in the matter of *Shri Ram Pasricha Vs. Jagannath* and Others, reported A.LR. 1976 SC 2335, holding that the suit filed by the co-owner is entertainable and could be decreed because co-owner is owner of every part of the property along with the other co-owners unless the property is divided or partitioned between them.

7. Keeping in view the aforesaid principle, on examining the case at hand,

I have not found any circumstance in the matter in which it could be held that in the suit between co-owner land lord the petitioner and the tenant the respondents no.1 to 3, the presence of the alleged co-owners the respondents no.1 to 3 is necessary to adjudicate the suit.

8. It is also made clear that after holding the trial on appreciation, if it is found that the petitioner/plaintiff was not entitled to file the suit alone for eviction then in that situation the petitioner has to face the consequence of dismissal of the suit. So in such premises also, the presence of the respondents no.4 to 6 is not necessary in the impugned matter.

9. Apart from above, it is settled proposition of law that the petitioner/ plaintiff being sole dominus litus of his suit/litigation could not be insisted either by the court or some other persons to implead any other person like the respondents no.4 to 6 in his suit either as plaintiff or the defendant, specially when he is ready to face all the consequences of the absence of co-owners of the property on the record. Therefore, in this premises also, the impugned order could not be sustained at this stage.

10. In view of the aforesaid discussion by allowing this petition, the impugned order dated 23.04.12 (Annexure P-6), is hereby set aside. Consequently, the application of the respondents no.4 to 6 (Annexure P-4), is hereby dismissed. While dismissing the application, it is made clear that the respondents no.1 to 3 shall be at liberty to take all the probable and available defense in the matter including the defense that suit is not maintainable in the absence of other co-owner but such question shall be considered by the trial court after recording the evidence at the stage of appreciation in accordance with the procedure prescribed under the law and also without influencing from any observations or findings made by such court in the order impugned or by this court in the present order because the impugned order has been passed at the interlocutory stage of the suit and before recording the evidence on merits.

The petition is allowed as indicated as indicated above.

*Petition allowed.*

**I.L.R. [2012] M.P, 2975**
**WRIT PETITION**

***Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav***
W.P.No. 2395/2001 (Jabalpur) decided on 1 November, 2012

M.P. CO-OPERATIVE WORKERS FEDERATION & anr. ...Petitioners
Vs.
M.P. CO-OPERATIVE TRIBUNAL & ors. ...Respondents

***Cooperative Societies Act, M.P. 1960 (17 of 1961), Sections 55(2), 66 & 78(2) - Appeal*** - **Dy. Registrar was nominated by Registrar in exercise of power under Section 66 to exercise all powers and jurisdiction on behalf of Registrar - Dy. Registrar has to be treated as Registrar when his order is put to challenge in Appeal - Appeal would not lie to the Joint Registrar or Registrar but the Tribunal.** **(Paras 15 & 16)**

*सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएं 55(2), 66 व 78(2) – अपील* – रजिस्ट्रार द्वारा धारा 66 के अंतर्गत शक्ति का प्रयोग करते हुए डिप्टी रजिस्ट्रार को, रजिस्ट्रार की ओर से सभी शक्तियों का एवं अधिकारिता का प्रयोग करने के लिए मनोनीत किया गया – डिप्टी रजिस्ट्रार को रजिस्ट्रार समझा जायेगा जब उसके आदेश को अपील में चुनौती दी जाती है – अपील, संयुक्त रजिस्ट्रार या रजिस्ट्रार के समक्ष नही बल्कि अधिकरण के समक्ष प्रस्तुत होगी।

**Cases referred :**

AIR 1963 SC 1503, AIR 1969 SC 724, 1972 MPLJ 997, (1951) 2 All ER 589, (2011) 3 SCC 139.

*Avinash Patel*, for the petitioner.

*Abhijeet Bhowmik*, for the respondents.

**ORDER**

The Order of the court was delivered by : **SANJAY YADAV,J.** - Short but subtle issue which crops up for consideration in this writ petition is as to whether under M.P. Cooperative Societies Act, 1960 against an order passed by the nominee of the Registrar appointed under sub-section (1) of Section 66 to exercise all powers and jurisdiction on his behalf of Registrar an appeal would lie to Registrar or before the Additional Registrar or before the M.P. Cooperative Tribunal.

2. Relevant facts briefly are, petitioner No. 2 being aggrieved by dispensation of his service raised dispute under Section 55 (2) read with Section 66 of M.P. Cooperative Societies Act, 1960 before Registrar Cooperative Societies, Bhopal which was registered as Case No. 64(55)-20/98. Registrar, Cooperative Societies, in exercise of his powers under sub-section (1) of Section 66 nominated Deputy Registrar, Cooperative Societies, Bhopal to decide the dispute. The dispute was re-registered as Case No. 64 (55)-29/1998. Deputy Registrar vide his order dated 23.12.1999 allowed the claim of the petitioner No. 2 which in turn was put to challenge before Joint Registrar, Cooperative Societies in an appeal. Joint Registrar Cooperative Societies despite of objection being raised regarding maintainability of appeal passed an interim order on 29.12.1999; whereby, operation of order dated 23.12.1999 was stayed. Thereagainst, petitioner preferred an appeal before M.P. State Cooperative Tribunal, Bhopal under Section 78 (2) of 1960 Act on the ground that since Joint Registrar was not having any jurisdiction to entertain an appeal, an interim order passed by him was non-est in the eyes of law.

3. The Tribunal placing reliance on the decision in *Roop Chand v. State of Punjab* (AIR 1963 SC 1503), *Ramrao and another v Narayan* and another (AIR 1969 SC 724), *Rahas Bihari Das and others v. State of Orissa* and others (AIR 1995 Orissa 23), *Deputy Registrar, Cooperative Societies, Bilaspur v. Narayan Prasad Mishra* and another (1972 MPLJ 997) held that nominee of Registrar since acts on behalf of Registrar is his subordinate and subject to his control and since there is no separate provision in the Act providing for an appeal against the order of nominee the appeal would be tenable before Registrar or Joint Registrar under Section 78 (1) of the Act. It is this finding of the Cooperative Tribnal which is being assailed vide this petition under Article 227 of the Constitution of India.

4. Answer to the issue which crops up for consideration lies in the interpretation of Section 66 of 1960 Act and more particularly its sub-section (3) which creates a legal fiction.

Section 66 of 1960 Act provides for :

> 66. Settlement of dispute.-(1) The Registrar may, on receipt of the reference of dispute under section 64 (or sub-section (2) of Section 55) decide the dispute himself, or transfer it for disposal to a nominee or board of nominees to be appointed by the Registrar.
>
> (2) When a dispute is transferred under sub-section (1) for

disposal by a nominee or a board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from such nominee or board of nominees and may decide the dispute himself or transfer it again to any other nominee or board of nominees appointed by him for decision.

(3) The decision of a nominee or a board of nominees to whom any dispute is transferred for decision under this section shall, for the purposes of this Act, be deemed to be the decision of the Registrar

5. The dispute which the legislature has empowered the Registrar to settle under sub-section (1) of the Act of 1960 either relates to terms of employment, working conditions and disciplinary action taken by a society against its employee/ employees, i.e, disputes arising between the Society and its employee [under Section 55 (2)] or the dispute touching the constitution, management or business, or the liquidation of the Society [under Section 64 (1)].

6. Besides the powers conferred on the Registrar, Cooperative Societies to decide the above disputes, the legislature has further empowered the Registrar vide sub-section (1) of Section 66 to even transfer such dispute to be decided by a nominee or Board of nominee to be appointed by him.

7. Furthermore, in the eventuality as find mention under sub-section (2) of Section 66 having not occurred, an order passed by the nominee or Board of nominee, as per sub-section (3) of Section 66, would be deemed to be the decision by Registrar. What would it mean; whether a nominee in the teeth of the fiction created by sub-section (3) is reduced to a status of merely an 'agent' or a "little more than an agent"as has been construed by the Tribunal.

8. The Tribunal seems to have lost sight of the aspect that the conferment of power in Registrar, Cooperative Societies to transfer the dispute to a nominee or Board of nominee is by the legislature under Section 66 (1) and not by the State Government which enjoys certain powers under sub-section (2) of Section 3 of 1960 Act, which stipulates that, the officers appointed under sub-section (1) of Section 3 to assist the Registrar shall within such areas as the State Government may specify, exercise such powers and perform such duties conferred and imposed on the Registrar by or under the Act, 1960 as the State Government, by Special or general order direct.

9. Apparently, as borne out from Section 66 that a nominee or Board of

nominee to whom the dispute is transferred for its decision is not an appointee under Section 3 of the Act. In that event, the Tribunal would have been to some extent justified in holding such appointee as a sub-ordinate of the Registrar. Or in case a nominee is to be treated as 'an 'agent' or little more than that, the act of his must further be qualified by an express provision seeking ratification by Registrar.

10. The Scheme of Section 66, however, does not suggest such course. The Tribunal, therefore, is not justified in assessing the exercise of power by Registrar of appointing a nominee as conferred by Section 66 (1), on the touchstone of the provisions contained under Section 3 of 1960 Act.

11. As for legal fiction the law is trite that it is within the competence of legislature to enact a deeming provision for the purpose of assuring existence of a fact which does not, really exist (please see Justice G.P. Singh's : Principles of Statutory Interpretations, 13th Edition :2012 : Chapter 5 Synopsis 5 at page 381).

12. In the case at hand a nominee by the Registrar to decide the dispute referred to, since is deemed to be a Registrar as per sub-section (3) of Section 66 of 1960 Act, treating him merely as an agent or 'little more than an agent would tantamount to re-legislate which is impermissible in a judicial review.

13. Thus even when 'outside the bounds of the legal fiction the difference between the reality and the fiction may still persist in the provision of the same Act, which creates the fiction ....." (Principles of Statutory Interpretation : (supra) at page 392), the fiction when created is to be treated as real in the context such fiction is created, as aptly observed by Lord Asquith who stated in *East End Dwelling Co. Ltd v. Finsbury Borough Council* (1951) 2 All ER 587 P. 589 (referred to as Note 22 Principles of Statutory Interpretations (supra) page 383) that "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, much inevitably have flowed from or accompanied it -. The Statute says that you must imagine a certain state of affairs, it does not say that having doe so, you must cause or permit your imagination to boggle when it comes to the inevitably corollaries of that state of affair."

14. We further observe from the order passed by the Tribunal that the decision relied upon by Tribunal pertains to different enactment interpreting provisions different than Section 66 of 1960 Act. The law is settled that "The dictum stated

in every judgment should be applied with reference to the facts of the case as well as its cumulative impact. Similarly, a statute should be construed with reference to the context and its provisions to make a consistent enactment i.e. *ex viceribus actus" (Offshore Holdings Private Ltd. v. Bangalore Development Authority* and others - (2011) 3 SCC 139, paragraph 85).

15. This being the state of law regarding legal fiction, the present case when examined from above point of view leaves no iota of doubt that the Deputy Registrar Co-operative Societies who decided the dispute under Section 55-(2) of 1960 Act as nominee of the Registrar has to be treated as Registrar, when his order is put to challenge in Appeal, which as per clause (b) of sub-section (1) of Section 78 of 1960 Act lie before the Tribunal.

16. In view whereof an appeal before Joint Registrar being not tenable, the Tribunal was not justified in affirming the order by an authority having, no jurisdiction.

17. In the result the impugned order is quashed and the appeal pending before the Joint Registrar Cooperative Societies is held to be not tenable and, therefore, dismissed. The appellants, i.e., respondents herein would be at liberty to move proper forum within thirty days from the date of communication of this order and if an appeal is filed within said period the Tribunal shall entertain the same on merit without being influenced by the order passed herein.

18. The petition is allowed to the extent above. No costs.

*Petition allowed*

**I.L.R. [2012] M.P, 2979**

**WRIT PETITION**

***Before Mr. Justice Krishn Kumar Lahoti & Mrs. Justice Vimla Jain***

W.P.No. 6094/2008 (Jabalpur) decided on 5 November, 2012

OM PRAKASH AGRAWAL ...Petitioner

Vs.

UNION OF INDIA & ors. ...Respondents

***Income Tax Act (43 of 1961), Section 132B - Simple Interest -*** **Amount of Rs. 60,000 was seized during search - Petitioner was not found liable to make payment of tax - Amount so seized is liable to be returned with simple interest.** **(Para 6 )**

*आयकर अधिनियम (1961 का 43), धारा 132बी – साधारण ब्याज* – तलाशी के दौरान रू. 60,000 की रकम जब्त की गई – याची को कर का भुगतान करने के लिए दायी नही पाया गया – उक्त जब्दशुदा रकम साधारण ब्याज के साथ लौटाए जाने योग्य।

*Sapan Usrethe*, for the petitioner.
*Sanjay Lal*, for the respondents.

**ORDER**

The Order of the court was delivered by : **K.K. LAHOTI, J.** - Petitioner has sought following reliefs:-

"A. The Hon'ble Court may be pleased to direct the respondent to release the cash of Rs.60,000/- which was seized during the course of search on 13.12.02 alongwith interest as provided u/s 132(B) of the Income Tax Act.

B. Any other relief, which this Hon'ble Court deems fit, may also be granted.

C. Costs of the petition."

Facts of the case are:-

(1) That a search was conducted in the premises of the petitioner on 12.12.2002 under the warrant of authorisation dated 12.12.2002. During the search, a cash amount of Rs.60,000/- was seized from the premises of the petitioner on 13.12.2002. The assessment proceedings took place and ultimately on 27.12.2004, an assessment order was passed by the respondent no.3 by which it was found that the petitioner was liable to make payment of tax to a tune of Rs.1,77,749/-. An appeal against this order was filed, which was allowed by the Commissioner of Income Tax (AI), Jabalupr on 15.12.2005, by which all the additions which were made by the respondent No.3 were deleted and no liability on the petitioner was found. Meaning thereby that immediately after15.12.2005, the petitioner was entitled for refund of the amount which was seized during search and seizure.

(2) Thereafter, petitioner moved various applications to the respondents for refund of the amount alongwith interest. On

6.9.2006, an order was passed by the Assistant Commissioner of Income Tax Circle-1(1), Jabalpur by which the appellate order was to be given effect to.

(3) As no action was taken by the respondents for refund of the aforesaid amount, the petitioner filed this petition on 13.5.2008 claiming aforesaid relief and during pendency of this petition, the seized amount Rs.60,000/- has been refunded to the petitioner on 31.7.2008. Now only question remains in respect of payment of interest on the seized amount as per provisions of Section 132(B) (4)(a)(b) of the Income Tax Act, 1961.

2. The learned counsel for petitioner submitted that petitioner is entitled for statutory interest from the date of seizure till the date the aforesaid amount was refunded. As per statement made by the respondents, a cheque has been issued by the respondents. The petitioner submitted that the aforesaid cheque has not been received by the petitioner till this time. It is submitted that the petitioner is entitled for the statutory interest on the aforesaid amount from the date of seizure till its payment to the petitioner. The petitioner also prays for interest on the amount of interest which fell due on 31.7.2008 from the respondents.

3. Shri Sanjay Lal, learned counsel appearing for department opposed the aforesaid contentions and submitted that as per provisions of Section 132(B)(4)(a)(b) of the Act, petitioner was entitled for interest immediately after 120 days till date of assessment order and not thereafter which amount has been calculated and paid to the petitioner. That after payment of Rs.6,300/-, the department is not liable to make any further amount to the petitioner. This contention is opposed by the petitioner who has submitted that not only aforesaid amount but also interest till 31.7.2008 and thereafter interest on the amount of interest, petitioner is entitled as per aforesaid provisions.

4. To appreciate aforesaid contentions, we have perused the relevant provisions. For ready reference, sub-section 4 of section 132B of the Income Tax Act, 1961 is referred which reads thus:-

**Section 132B. APPLICATION OF SEIZED OR REQUISITIONED ASSETS:**

...

(4)(a) The Central Government shall pay simple interest at the rate of one-half per cent for every month or part of a month on

the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first provision to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which last of the authorisations for search under section 132 or requisition under Section 132A was executed to the date of completion of the assessment under section 153A or under Chapter XIV-B.

5. From the perusal of the aforesaid provisions, it is apparent that after the assessment order is passed, the assessee is entitled not only for the refund but also simple interest on the amount as has been provided under sub-section 4(a) and (b) of the Act. Subsection 4(b) provides that such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 was executed to the date of completion of the assessment. The assessment proceedings were completed by an order passed by the CIT(A) in Appeal on 15.12.2005, the petitioner was entitled for refund of aforesaid amount alongwith interest forthwith, but it appears that aforesaid amount was not paid and the petitioner was compelled to file a writ petition before this Court and during pendency of the petition, the amount was paid on 31.7.2008 and the interest has been directed to be paid to the petitioner. But when the amount was due to be refunded on 15.12.2005 and it was not refunded to the petitioner within a reasonable period, petitioner was entitled for interest on the aforesaid amount. As per provisions as are contained in sub-section (4) of Section 132 of the Act, it was liability of the authority to give effect to the order and to make payment of aforesaid amount forthwith. There is no provision in the Act requiring the petitioner to move an application to the authority for giving effect to the order. When the order was passed in appeal and in absence of any challenge to the order, the competent authority was under an obligation to give effect to the order. A citizen cannot be deprived of his money when he is not liable to pay the revenue and if the money of a

citizen/assessee has been retained by the department, the department/Central Government is liable to make payment of interest as is provided under sub-section (4) of Section 132B of the Act.

6. In view of aforesaid, this petition is finally disposed of with following directions:-

(1) Respondents are directed to calculate the statutory interest on the amount of Rs.60,000/- immediately after 120 days from the date of seizure i.e. 13.12.2002 till its refund to the petitioner and the aforesaid amount be paid to the petitioner within a period of 60 days from today. In case any amount towards interest has been refunded to the petitioner, that amount shall be deducted from the aforesaid amount. In case, aforesaid amount is not paid within a period of 60 days, petitioner thereafter shall be entitled for interest on the aforesaid amount also at the rate of 6% per annum till its actual payment to the petitioner.

(2) Considering the fact that inspite of request by the petitioner to the respondent authorities, neither the petitioner was refunded the amount nor interest was paid, and during pendency of the this petition, aforesaid amount has been paid, we direct the respondents to pay costs of this petition, which we quantify to Rs.10,000/- payable by the respondents to the petitioner.

C.C. as per rules.

*Order accordingly.*

**I.L.R. [2012] M.P, 2983**
**WRIT PETITION**
***Before Mr. Justice Sanjay Yadav***
W.P.No. 2670/2008 (S) (Jabalpur) decided on 7 November, 2012

O.P. PATEL ...Petitioner.
Vs.
STATE OF M.P. & ors. ...Respondents

***Service Law - Recoveries - Natural Justice*** **- Show cause notice was issued and after considering the reply amount of Rs. 1,54,950 was directed to be recovered - Appellate Authority remitted the case for reconsideration of the amount to be recovered after fixing the liabilities**

**of other erring employees - Disciplinary authority directed for recovery of Rs. 34,679 - Before arriving at the amount to be recovered, no opportunity was required to be given as the appellate authority had not exonerated the petitioner - Order directing for recovery upheld. (Para 11)**

*सेवा विधि – वसूलियां – नैसर्गिक न्याय* – कारण बताओ नोटिस जारी किया गया और जवाब पर विचार करने के पश्चात् रू. 1,54,950 की रकम की वसूली के लिए निदेशित किया गया – अपीली प्राधिकारी ने अन्य दोषी कर्मचारियों का दायित्व निश्चित करने के बाद वसूल किये जाने वाली रकम का पुनर्विचार करने हेतु प्रकरण प्रतिप्रेषित किया – अनुशासनिक प्राधिकारी ने रू. 34,679 की वसूली हेतु निदेशित किया – वसूल की जाने वाली रकम तय होने से पूर्व, कोई अवसर दिया जाना आवश्यक नही था क्योंकि अपीली प्राधिकारी ने याची को दोषमुक्त नहीं किया था – वसूली के लिए निदेशित करने के आदेश की पुष्टि की गई।

*R.C. Tiwari,* for the petitioner.
*Vivek Agrawal,* G.A. for the respondents.

**ORDER**

**SANJAY YADAV, J.** - Heard.

2. Though multiple reliefs have been sought in the petition, however, reserving his right to challenge order dated 30.6.05 (Annexure P/2) and order dated 15.03.07 (Annexure P/6) passed by Managing Director, Jila Vanopaj Sangh Maryadit, Narsinghpur, before appropriate Forum under the M. P. Cooperative Societies Act, 1960, petitioner confines the challenge to orders dated 27.01.06 (Annexure P/3), 28.01.06 (Annexure P/4) and 14.02.07 (Annexure P/5). Vide these orders certain recoveries have been effected from the petitioner in lieu of loss to revenue allegedly caused by the petitioner by not recovering the amount of penalties from offenders.

3. Petitioner is a retired Deputy Ranger, Department of Forest, Government of Madhya Pradesh, w.e.f. 28.2.05. On his retirement provisional pension of Rs.2945/- and an amount of Rs.1,47,972/- was sanctioned vide Pension Payment Order dated 28.7.07, of which an amount of Rs.92,594/- was paid.

4. Grievance of the petitioner is that subsequent to his retirement, he has been subjected to certain recoveries by the department by order dated 27.01.06, 28.01.06 and 14.02.07. It is contended that, these recoveries are effected without affording any opportunity of hearing at a stage when no

relationship as master and servant exists.

5. So far as order dated 27.01.06 is concerned it is seen that recovery of Rs.1997/- in lieu of 17 teak poles found short in Nistar Depot Bachai on a physical verification as on 03.06.05 when the petitioner was posted as Range Assistant. The recovery order as apparent therefrom is on the basis of verification which is not shown to have been carried out in presence of the petitioner. There is thus, denial of reasonable opportunity of hearing to the petitioner, in absence whereof, the order is not tenable and is liable to be quashed.

6. In respect of order dated 28.01.06 it is observed therefrom that recovery of Rs.1160/- in lieu of cases pertaining to forest offences of the year 2002 and 2003 while the petitioner was posted as Deputy Ranger at Forest Range Bachai has been effected on the ground that recoveries from respective offences were not effected within limitation period resulting in loss to Government revenue. This order also seems to have been passed without affording any opportunity of hearing as the return filed by respondents does not reflect any proceedings being drawn before ariving at a decision to effect recovery.

7. In view whereof, this order also deserves to be quashed.

8. In respect of order dated 14-2-2007, the same is in consequence to the appellate order. Facts on record reveals that the petitioner was subjected to proceedings for recovery of loss occasioned to the government exchequer because of expiry of limitation for recovery of penalties in 109 forest offence cases registered in Forest Range Mungwani between August 1995 to August 2001 when the petitioner was posted in said range as Forest Ranger. Show cause notice was issued on 9-11-2001. The reply filed by the petitioner since was found unsatisfactory an amount of Rs. 1,54,950/- was directed to be recovered with stoppage of two increment with non-cumulative effect. In an appeal decided on 26-12-2006, the punishment order was set aside and the matter was remitted to the disciplinary authority with a direction to reconsider as to the extent of accountability of the petitioner and other employees.

9. Petitioner challenges the order on the ground that, no opportunity of hearing was afforded by the disciplinary authority before arriving at a decision of petitioner's accountability to the tune of Rs. 34,679/-. It is urged that on remand obligatory it was for the disciplinary authority to have given the notice

and an opportunity to the petitioner to prove his innocence. It is further contended that the amount which is being recovered from the petitioner are recoverable from the offenders; therefore, the respondents are not justified in effecting said recovery from the petitioner. It is further contended that the State Govt. later on took a decision in April, 2003 to drop proceedings pending prior to 30-6-2002 under the Forest Act, 1927 and Madhya Pradesh Vanopaj Vyapar Viniyamana Adhiniyam, 1969, with that the entire guilt, if any, gets washed of.

10. The contentions put forth on behalf of the petitioner are though attractive but have no substance.

11. In respect of plea regarding opportunity of hearing. It is not that the petitioner was not afforded an opportunity of hearing before holding him guilty of charges of dereliction in a duty of not taking timely action for recovery of penalty from the offenders resulting in loss to public exchequer. The petitioner alone was held responsible and accountable to the amount of Rs.1,54,950/-. The appellate authority while not exonerating the petitioner of his misconduct, remitted the matter to fix accountability on the other government servants who were also found derelict in their duties resulting in loss to public exchequer. The petitioner did not challenge the finding of guilt and thus allowed the appellate order to attain finality. It was only for fixing the individual accountability that the matter has been remitted whereon the petitioner was found accountable for much less amount than he was held liable for by the disciplinary authority initially. It were only those employees against whom no proceedings were drawn and found liable were entitled for opportunity of hearing and not the petitioner. The order therefore, does not get invalidated because of non issuing second show cause notice to the petitioner. Similarly, merely because the amount which lapsed to be recovered were recoverable from the offenders and that the State Government later on dropped all the cases under Forest Act, 1927 and the Adhiniyam 1969 prior to 30.06.02 (though no final order to said effect has been brought on record) will not exonerate the petitioner of his guilt found to be proved.

12. In view whereof, no interference is caused with the order dated 14.02.07.

13. The petition is partly allowed to the extent above. No costs.

*Petition partly allowed.*

**I.L.R. [2012] M.P, 2987**
**WRIT PETITION**
***Before Mr. Justice Sujoy Paul***
W.P.No. 5675/2012 (Gwalior) decided on 9 November, 2012

RAM SINGH ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

*A.* ***Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Sections 14 & 17 - Appeal - By whom*** **- Appeal under Section 17 can be filed by any affected person and not only by bank or financial institution.**

**(Para 6)**

*क. वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धाराएं 14 व 17 – अपील – किसके द्वारा* – धारा 17 के अंतर्गत अपील किसी भी प्रभावित व्यक्ति द्वारा प्रस्तुत की जा सकती है और न कि केवल बैंक द्वारा या वित्तीय संस्था द्वारा।

*B.* ***Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002) - Sections 14 & 17 - Appeal*** **- Appeal under Section 17 of the Act, lies against the order passed by Collector under Section 14. (Para 8)**

*ख. वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धाराएं 14 व 17 – अपील* – अधिनियम की धारा 17 के अंतर्गत अपील, कलेक्टर द्वारा धारा 14 के अंतर्गत पारित आदेश के विरूद्ध होगी।

**Cases referred :**

AIR 1969 SC 297, AIR 2006 SCW 4925, (2011) 2 SCC 782, (2010) 8 SCC 110, L.P.A. No. 814/2010 (Delhi), W.P. No. 26837/2003, 2007(5) ALT 494, 1988 RN 61, 1999(1) MPLJ 455, AIR 2009 ALL 125.

*Balwant Singh*, for the petitioner.
*R.P. Rathi*, G.A. for the respondent No.1/State.
*Praveen N. Surange*, for the respondents No. 2 & 3.

**ORDER**

**SUJOY PAUL, J.** - By invoking the jurisdiction of this Court under Article 226 of the Constitution, the petitioner has challenged the order Annexure P-1 dated 18.07.2012, whereby the Additional Collector by exercising powers under section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to "SARFAESI Act") passed the order against the petitioner directing him to hand over the possession to the bank, failing which the Sub Divisional Officer (SDO) is directed to take possession from the petitioner and provide it to the bank.

(2) Shri Balwant Singh, learned counsel for the petitioner, submits that the provisions of the SARFAESI Act were not applicable in the present case, and therefore, petitioner cannot be relegated to avail the alternative remedy under Section 17 of the SARFAESI Act. It is relevant to mention the following points raised by the petitioner in his petition:-

(I) Residential house of the petitioner was exempted from attachment and sale and, therefore, as per Section 31(g) of the SARFAESI Act, the proceedings are *void ab-initio.*

(II) Under Section 17 of the SARFAESI Act, the appeal can be preferred only by financial institutions and bank and such appeal cannot be filed by "any other person" (para 6.3 of writ petition).

(III) Respondent-bank is barred by law of limitation as the proceedings for initiation recovery was filed beyond 3 years.

(IV) The bank has not followed the procedure prescribed under the Security Interest (Enforcement) Rules, 2002 and hence entire proceedings are bad in law.

(V) Respondent-bank has no power and authority to directly attach and sale the property of guarantor. It is prohibited by section 146 and 147 of Mahdya Pradesh Land Revenue Code (MPLRC).

(VI) No notice of auction is served on the petitioner under the SARFAESI Act.

(VII) No efforts are made for making recovery of dues from principal borrower M/s Prakash Oil Mills Limited and, therefore, as per AIR 1969 SC 297 (*The Bank of Bihar Ltd. Vs. Dr. Damodar Prasad and another*), the

recovery is impermissible. AIR 2006 SCW 4925 (*Ashok Mahajan Vs. State of U.P. And Ors.*) is also relied upon for this purpose.

(VIII) The property in question is agriculture land and hence SARFAESI Act is not applicable.

(IX) The Additional Collector/Additional District Magistrate is not competent under section 14 of the SARFAESI Act.

(3) Per Contra, Shri Praveen N. Surange, learned counsel for the Bank and Shri R.P. Rathi, Government Advocate for the State, supported the crder passed by the court below.

(4) In the return of the bank, it is stated that the petitioner had given his personal guarantee to repay the loan amount together with interest and other charges jointly and severally with the borrower. The petitioner had signed deed of guarantee in favour of respondent-bank and taken the liability to repay the entire loan amount together with interest with borrower. The loan account was turned bad and notice was duly served on the borrower and the petitioner/guarantor. One, such notice is filed as Annexure R-3 dated 13.03.2006, it is stated that the petitioner had received the said notice on 20.01.2009 (AnnexureR-4). Another notice dated 23.04.2010 (Annexure R-5) was returned with endorsement "लेने से इन्कार" refused. The notices were also duly published in two news papers "Raj Express and Nai Duniya". Thus, it is stated that action is well within limitation. Shri Surange relied on various judgments in support of his submissions.

(5) I have heard the learned counsel for the parties and perused the record.

(6) The basic question is whether SARFAESI Act is applicable on the petitioner or not. However, I deem it proper to deal with the contentions of the petitioner point wise:-

**Point No. (I)** The petitioner has heavily relied on Section 31(g) of the SARFAESI Act. However, the burden was on the petitioner to show that the property in question was not liable to attachment or sale. There is no material on record to support the aforesaid contention. On the contrary, being guarantor it is a liability of the petitioner to repay the loan, and therefore, Section 31(g) of SARFAESI Act has no application in the present case.

**Point No. (II)** The contention that the petitioner under section 17 of the SARFAESI Act can be preferred only by the bank or financial institution

and it cannot be entertained on behalf of any other person is misconceived and runs contrary to settled legal position. It is relevant to add here that appeal is entertainable even against the proceedings under section 14 of the SARFAESI Act by the Debts Recovery Tribunal (DRT). It is held by the Supreme Court in (2011) 2 SCC 782 (*Kanhaiya Lalchand Sachdev and others* Vs. *State of Maharashtra and others*) in para 22 as under:-

> "22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

In (2010) 8 SCC 110 (*United Bank of India Vs. Satyawati Tondon and Ors.*), the Apex Court held as under in para 17:-

> "17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expressive 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14."

The same view is taken by the Division Bench of Delhi High Court in Letters Patent Appeal No. 814/2010 (*Triton Corporation Limited Vs. Karanataka Bank Limited*). It is opined as under:-

> "42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the

action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

The Division Bench of Bombay High Court in the case of *Trade Well Vs. Indian Bank*, held as under:-

"82. Sub-section (3) is proceeded by Subsection (2) under which for securing compliance of Sub-section (1), that is for taking possession, the CMM/DM can take such steps and use or cause to be used, such force, as may in his opinion, be necessary. Sub-section 3 grants immunity to the the CMM/ DM as regards steps taken by him or force allowed to be used by him for providing assistance for taking possession. Since as stated by us adjudication of rival claims is absent at that stage, there is no question of his dealing with rival claims and giving a reasoned judgment as regards the merits of the case and obviously there is no question of such a reasoning assuming finality. In any event, if a party has any grievance as regards contents of that order, his remedy would be to voice them in the application under Section 17 before the DRT after measures under Section 13(4) are taken."

"90. Following conclusions emerge from the above discussion:

1. xxxxx

2. CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not an whether the secured assets fall within his jurisdiction. There is no adjudication of.

4. xxxxx

5. Remedy provided under Section 17 of the NPA Act is available to the borrower as well as well as the third party.

6. Remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.

7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party, ordinarily, writ petition under Article 226 and 227 of the Constitution of India should not be entertained."

The Andhra Pradesh High Court took the same view in *W.P. No. 26837/2003 (Ashok Sharda Vs. Small Industries Development Bank of India and others)* reported in 2007 (5) ALT 494. Thus, the contention of the petitioner that appeal is not tenable on behalf of any other person runs contrary to settled legal position.

The aforesaid reproduction of judgments further shows that appeal is also available against the order passed under Section 14 of the SARFAESI Act.

**Point No. (III)** The contention of the petitioner is that the matter was barred by limitation. Although petitioner can raise this issue also before the DRT, prima facie it appears that this contention is also misconceived. The notices were served on the petitioner within the period of limitation and, therefore, this contention also cannot be accepted.

**Point No. (IV)** The aforesaid judgments further show that even in cases of alleged violation of the rules, the proper remedy is to file an appeal.

**Point No. (V)** The SARFAESI Act is a special Act and it is not in derogation of any other existing provision of law. Thus, this contention is also misconceived and is rejected. Section 34 of SARFAESI Act makes it clear that it has over riding effect on other laws.

**Point No. (VI)** The petitioner can raise this point in appeal being a question of fact.

**Point No. (VII)** The petitioner is at liberty to raise this point before the appellate authority and this cannot be gone into in the present proceedings.

**Point No. (VIII)** *Prima facie* the contention of the petitioner that the land in question is agriculture land appears to be incorrect as per his own revision (Annexure P-18), wherein the petitioner himself stated as under:-

"3. यह कि, आपत्तिकर्ता/आवेदक की ओर से अधीनस्थ न्यायालय के समक्ष

जरिये अभिभाषक उपस्थित होकर जो अपील प्रस्तुत की गई, उसका सारांश यह है कि जिन सर्वे नम्बरान की कृषि भूमि पर आवेदक का भवन बना है, वह वर्तमान में कृषि भूमि नही है और अब वहॉ आवासीय अर्थात परिवर्तित भूमि है।"

Thus, this contention is also without any basis and contrary to petitioner's own documents.

**Point No. (IX)** Section 17 of the MPLRC reads as under:-

17. Power to appoint Additional Collectors.--

(1) The State Government may appoint one or more Additional Collector in a district.

(2) An Additional Collector shall exercise such powers and discharge such duties conferred and imposed on a Collector by or under this Code or by or under any other enactment for the time being in force, in such cases or class of cases as the State Government may, by a general order, notify or as the Collector of the district may, subject to any general or special restrictions imposed by the State Government, by an order in writing direct.

(3) This Code and every other enactment for the time being in force and any rule made under this Code or any such other enactment shall, except where expressly directed otherwise, apply to the Additional Collector, when exercising any powers or discharging any duties under sub-section (2), as if the were the Collector of the district.

A Division Bench of this Court in 1988 RN 61 (*Shanti Lal Jain Vs. M.L. Patel*) held that under Section 17 of the MPLRC, the appellate powers of the Collector can be exercised by the Additional Collector. The same is followed in 1999(1) M.P.L.J. 455 (*Kaushal Prasad Kashyap Vs. State of M.P. and others*). It is opined as under:-

"The collector is an holder of an office under the M.P. Land Revenue Code and, therefore, recourse can be taken to the provisions of the Code. Section 16 of the M.P. Land Revenue Code contains powers to appoint Collector. Section 17 of the Code provides appointment of 'Additional Collectors' and sub-section (2) thereof provides that 'Additional Collectors' shall

exercise such powers and discharge such duties conferred and imposed on a 'Collector' by or under this Code or under any other enactment for the time being in force. Sub-section (3) provides that while so exercising powers under the Code or any other enactment the 'Additional Collector' shall be deemed to be 'Collector'. In the notification of delegation the State Government has delegated the power to the 'Collector' and the word 'Collector' has to be understood from the provisions of the Code. In relation to provision of the Code and also in relation of any other enactment 'Collector' would include 'Additional Collector' as provided in section 17(2), (3) of the Code. It cannot, therefore, be said that under the notification of delegation the Collector has made any further delegation itself, the word 'Collector' would include 'Additional Collector', in accordance with the work distribution memo, issued under section 17 of the Code."

(7) Apart from this, since the SARFAESI Act is a special Act, the judgments cited by Shri Balwant Singh, learned counsel for the petitioner, have no application, which are judgments dealing with different statutory provision.

(8) As per the aforesaid analysis, it is clear that the contention of the petitioner that the SARFAESI Act is not applicable is without any foundation and basis. Accordingly, it cannot be held that the remedy available under Section 17 of SARFAESI Act cannot be availed by the petitioner. The Allahabad High Court while considering the analogous provision like Section 17 of MPLRC in their statute of U.P. Land Revenue Act, 1901 held that Additional Collector has the same power of Collector to proceed under Section 14 of the SARFAESI Act. This is held in AIR 2009 ALL 125 (*Irshad Husain Vs. District Magistrate and Ors.*). In this view of the matter, I am unable to hold that the SARFAESI Act is not applicable in the facts and circumstances of the present case. Accordingly, petitioner has statutory and efficacious remedy to prefer an appeal under section 17 of the Act. Because of availability of said remedy, this petition is not entertained. It is made clear that if petitioner prefers an appeal within 15 days from today, the appellate authority/tribunal shall consider the appeal of the petitioner on merits and impediment of delay will not come in the way of the petitioner. Ad-interim order granted by this Court stands vacated.

Petition stands disposed of. No costs.

*Petition disposed of.*

**I.L.R. [2012] M.P, 2995**
**WRIT PETITION**
***Before Mr. Justice R.S. Jha***
W.P.No. 11954/2010 (Jabalpur) decided on 27 November, 2012

VARSHA SANGHI (Dr.) & anr. ...Petitioners
Vs.
STATE OF M.P. & anr. ...Respondents

***Contract - Sale of Flat by Housing Board - Escalation of price*** **- If Housing Board wishes to increase the price of the flats of the plots sold by them, it can be done only if the increase can be justified and is based on actual escalation calculated on the basis of the data disclosed and available with them - Petitioners directed to make representation and the Board shall decide the matter in accordance with dictums of Hon'ble Supreme Court after hearing the parties - Petition disposed off. (Paras 11 to 13)**

*संविदा – गृहनिर्माण मंडल द्वारा फ्लैट का विक्रय – कीमत में बढ़ोत्तरी –* यदि गृहनिर्माण मंडल, उनके द्वारा विक्रय किये गये भूखण्डों के फ्लैट की कीमतों में बढ़ोत्तरी करने का इच्छुक है, ऐसा केवल तभी किया जा सकता है यदि बढ़ोत्तरी को न्यायोचित ठहराया जा सकता है और उनके पास प्रकट एवं उपलब्ध डेटा के आधार पर परिगणित की गई वास्तविक बढ़ोत्तरी पर आधारित है – याचीगण को प्रत्यावेदन करने के लिए निदेशित किया गया और मंडल, मामले का विनिश्चय, माननीय सर्वोच्च न्यायालय के आदेशानुसार, पक्षकारों को सुने जाने के पश्चात् करेगा – याचिका निराकृत।

**Cases referred :**

1996 MPLJ 469, (2011) 11 SCC 13, (2011) 6 SCC 714.

*R.K. Sanghi,* for the petitioner.
*R.K. Samaiya & Shailendra Samaiya,* for the respondent/Housing Board.

**ORDER**

**R.S. JHA, J.** - The petitioners have filed this petition being aggrieved by the unprecedented and unreasonable increase in the price of the flat allotted to the petitioners in Satyamev Jayate Parisar, Tahsil Compound, Jabalpur, by the respondents.

2. It is submitted by the learned counsel for the petitioners that the Housing Board floated a scheme in the name of "Satyamev Jayate Parisar" proposing to construct and sell three bed room, hall, kitchen and two bedroom, hall, kitchen flats by notice published in the newspaper, dated 24-4-2004. The price of the flats were ranging from Rs. 6.3 lac to 7.90 lac depending upon their size and floor. It is submitted that pursuant to the advertisement the petitioners had applied and were allotted a 3 BHK flat in the third floor for which they had deposited a total sum of Rs. 16.80 lacs till 2004.

3. It is submitted that subsequent to the allotment of the flats in the year 2004 the respondent/Housing Board issued a letter to the petitioners on 18-8-2006 (Annexure P-8) informing them that the price of the flat has been increased from Rs. 7.90 lacs to Rs. 9.90 lacs and thereafter by letter dated 13-7-2009 to Rs. 16.80 lacs. The petitioners being aggrieved by the aforesaid notice have filed the present petition.

4. It is submitted by the learned counsel for the petitioners that one flat has been purchased by them for a cost of Rs. 8 lacs as stated by the respondent/ Board in their advertisement/notice and they had taken a loan in respect of the aforesaid purchase from various financial institutions. It is stated that the respondents for a long period of five years did not commence construction of the flats and in fact recovered the amount towards price of the flats from the petitioner even prior to obtaining possession of the land for construction of the flats. It is submitted that after asking the petitioners to deposit the entire price the respondents have now arbitrarily and unreasonably increased the price of the flats, construction of which was commenced by them sometimes in the year 2009, and while doing so they have included the escalated price of the cost land which was given to the State Government; not disclosed the actual escalation in the value of the raw material and the cost of construction; have added service tax and supervision charges etc. and have also charged 14% interest on the outstanding amount while calculating the price of the flat.

5. It is submitted that the aforesaid increase in the price of the flats by the respondents is arbitrary and unreasonable and, therefore, deserves to be quashed as the Housing Board has no right to enhance the price of the flats without their being any justified reason for the same. In view of the aforesaid submissions it is prayed that the enhanced demands be quashed and the respondents be directed to handover possession of the flats to the petitioners at the price that was originally notified by them.

6. The respondent/Board, per contra, has filed a return and submitted that the price that was notified in the initial stage was tentative and was subject to subsequent escalation in price and, therefore, the claim of the petitioners that they should be sold the flats and the plots at the initial price that was notified in the notice itself is patently unjustified. It is further submitted that the land in question was given to the Housing Board by the State pursuant to the MOU that was entered into between the Housing Board and the State on 7-10-2002, however, actual physical possession of the land was given in the year 2009 and, therefore, they could not commence construction prior to the said date. It is submitted that the State has subsequently issued notifications to the effect that the Housing Board should recover service tax, supervision charges and other charges and should include the same in the price of the flat and it is on account of the direction of the State Government that the Housing Board had included the said amount in the estimated price for which impugned notices were issued to the petitioners.

7. The respondent/Housing Board also brought on record the fact that certain other purchasers in the same Satyamev Jayate Parisar had filed writ petitions before this Court which were registered as W.P.Nos. 9126/2010, 138/2009, 8583/2010 and 3068/2010 and were disposed of by order dated 9-3-2011 in the following terms after holding that the petitioners had no right to claim sale of the flats on the notified price :-

> "7. The foundation stone in the case is the advertisement and the conditions embodied in it which are also reproduced in Annexure- P/4. On bare perusal of it, this Court finds that the approximate cost of the flats has been given with a further condition that it can be enhanced. Hence, according to me, nowhere the Housing Board has assured the petitioner that at a particular price only the flat will be allotted to her. Much emphasis has been put-forth by learned counsel for petitioner that at the time of booking the flat, a particular amount was deposited and lateron some more amount was also deposited but according to me merely because petitioner submitted an application for allotment of a flat and also made certain deposits in terms of advertisement and the Scheme (Annexure-P/4) it would not confer any right in her to ask respondent-Board to allot the flat at a particular price only. On going through final allotment letter this Court finds that details are mentioned and

accordingly enhanced demand has been made from the petitioner. If the petitioner is not willing to accept the flat at that cost, certainly she is free to withdraw the amount which she has deposited alongwith the permissible interest. Apart from this, on bare perusal of this document, this Court finds that in condition No.8 specifically it has been mentioned that if any dispute would arise it will be subject to decision of Commissioner Housing Board, Bhopal, which shall be final.

8. For the reasons stated above, I am of the view that since no right is conferred in petitioner and right from very beginning the Housing Board is stating that cost of the flat which is shown only as approximate subject to final allotment, I am of the view that if petitioner agrees to get the flat in question allotted in her name, the demand so made by the Board be paid. However, if petitioner so advised may submit necessary dispute before the Commissioner demonstrating each and every minor details to settle the amount to be paid at a lesser price and same may be adjusted. If such a dispute is submitted by the petitioner, the same may be decided by the Commissioner, M.P. Housing Board, Bhopal sympathetically by paying heed that proposed allottee belongs to middle class society and they have to take loan from financial institutions etc. and further taking into account in the year 2004 (7 years ago) petitioner applied for allotment of house and they also deposited some amount. This Court hopes and trusts that if such a dispute is raised, certainly it would be considered by the authority in order to reduce the cost of the flat so that the petitioner being a member of middle class, may afford it. In that situation, the findings given by this Court may be ignored by the Commissioner."

8. It is further stated that the writ appeals (W.A.No. 448/2011 and others, decided by this Court on 26-3-2012) filed against the orders of the learned single Judge were subsequently withdrawn with liberty to approach the consumer forum. On the basis of the aforesaid submissions it is submitted that the petition filed by the petitioners be dismissed.

9. The learned counsel for the petitioners in reply submits that the facts

of the present petition are distinguishable from the facts of the cases that were dismissed by the learned single Judge inasmuch as the petitioners in the instant cases had deposited the entire amount of Rs. 8 lacs and that the decision of the Division Bench in the case of *Nisha Singhai Vs. MP Housing Board, Bhopal and others,* 1996 MPLJ 469 and subsequent decision rendered in the cases of *T.N.Housing Board Vs. Service Authority,* (2011) 11 SCC 13 and *Karnataka Industrial Areas Development Board Vs. Prakash Dal Mill,* (2011) 6 SCC 714 were not available before the learned single Judge wherein the Supreme Court has held that the Housing Board does not have the power to arbitrarily enhance the price of the flats or plots which have been sold by them without giving any specific data and justified reason for the increase.

10. I have heard the learned counsel for the parties at length and perused the record.

11. From a perusal of the facts that have been brought on record, the decisions rendered by the Supreme Court in the cases of *T.N.Housing Board Vs. Service Authority,* (2011) 11 SCC 13 (supra) and *Karnataka Industrial Areas Development Board Vs. Prakash Dal Mill,* (2011) 6 SCC 714 (supra) and the decision rendered by the Division Bench of this Court the case of *Nisha Singhai Vs. MP Housing Board, Bhopal and others,* 1996 MPLJ 469 (supra), it is evident that if the Housing Board wishes to increase the price of the flats or the plots sold by them it can do so only if the increase can be justified and is based on actual escalation calculated on the basis of the data disclosed and available with them. It is further clear that the Supreme Court in the cases of *T.N.Housing Board* (supra) *and Prakash Dal Mill* (supra) has laid down guidelines on the basis of which escalation of price may be undertaken by the Housing Board.

12. From a perusal of the documents filed by the respondents it is clear that the respondent/Board has not undertaken any such exercise and has arbitrarily increased the value of the flats.

13. In view of the aforesaid facts and circumstances the petition filed by the petitioners is disposed of with a direction to the effect that the petitioners shall file a representation before the respondent/authorities raising all issues before them against the impugned enhancement and on the petitioners' doing so the respondent/Housing Board shall thereafter examine the matter, hear all concerned and thereafter decide the matter in accordance with the decisions

of the Supreme Court rendered in the cases of *T.N.Housing Board* (supra) and *Prakash Dal Mill* (supra) and other decisions of the Supreme Court keeping in view the guidelines given therein.

14. It is further held that in case the petitioners are unable to pay the enhanced price of the flat or are not willing to do so, the Housing Board would be obliged to return the amount deposited by the petitioners alongwith interest on the same rate they were charging from the petitioners. The aforesaid exercise be completed by the Housing Board as expeditiously as possible preferably within a period of three months from the date of filing of the representation which may be filed by the petitioners alongwith a copy of the order passed today and a copy of the petition within three weeks of obtaining the same. Till decision of the respondent/authorities in the matter no coercive steps shall be taken by the respondents and status quo, as it exists today in respect of allotment of the flats, shall be maintained by the respondents.

15. Before parting with the case, I am constrained to observe that the Housing Board is a body created by the State for the purposes of providing infrastructure facility and housing accommodation at a reasonable price and therefore the Housing Board must act reasonably and fairly. It is, however, observed that unfortunately the Housing Board, in the present case as well as other cases, takes 6 to 10 years to handover possession of the flats or plots sold by them and while doing so the price notified by them on the initial date is usually increased by the Board several fold while making the final allotment by relying upon the clause regarding tentative valuation of the price as has been done in the present one. It is observed that the delay in construction and handing over of the flats usually occurs on account of the fact that the Housing Board floats the scheme and recovers the price or part thereof from the purchaser without even having obtaining possession of the land on which the houses or flats have to be constructed as in the present case or on account of delay in creating the necessary infrastructure and civic facilities as well as unnecessary and unavoidable administrative procedures and various other factors. The aforesaid and other reasons for delay can easily be foreseen and anticipated and can, therefore, be conveniently avoided by Housing Board by exercise of due diligence thereby avoiding unnecessary complications like escalation etc. and litigation. In fact, the Housing Board having entered into this field is bound to undertake the aforesaid exercise and ensure that such delay is not caused and bona fide purchasers are not unnecessarily harassed. It is further observed that the Housing Board must float the scheme after

having obtained possession of the land on which the construction has to be made or plots have to be sold and all formalities in that respect are completed and the infrastructure and other facilities which are required to be provided are adequately taken care of. It must also ensure that the complex exercise of determining the price of the plot, house or the flat, as the case may be, is undertaken prior to floating of the scheme and that the flats/houses are handed over to the purchasers within two to three years of the floating of the scheme so that there is very little or no escalation in price and that the purchaser is not kept in the dark as to the actual price of the flat which he is required to pay so as to avoid such situations as the present one where the price is increased two or three times the original price notified and the parties are dragged into unnecessary litigation.

16. With the aforesaid directions/observations the petition filed by the petitioners stands disposed of.

*Petition disposed of.*

**I.L.R. [2012] M.P, 3001**
**WRIT PETITION**
***Before Mr. Justice R.S. Jha***
W.P.No. 2091/2008 (Jabalpur) decided on 29 November, 2012

HANSRAJ SINGH & ors. ...Petitioners
Vs.
STATE OF M.P. & ors. ...Respondents

***Constitution - Articles 341 & 342 - Caste Certificate - Migration of persons*** **- Father of petitioners belongs to Chamar caste and was resident of U.P. - Petitioners were born and brought up in Madhya Pradesh - Chamar caste is notified as S.C. in U.P. as well as in M.P. - Petitioners not entitled to enjoy same privilege and benefits of State of Uttar Pradesh - Cancellation of their caste certificate by High Power State Level Committee proper - However, a limited relief of protection of their professional degrees is granted - Petition disposed off. (Paras 11 to 14)**

*संविधान – अनुच्छेद 341 व 342 – जाति प्रमाणपत्र – व्यक्तियों का प्रवास* – याचीगण का पिता चमार जाति का है और उ.प्र. का निवासी था – याचीगण का जन्म व पालन पोषण मध्य प्रदेश में हुआ – चमार जाति को एस.सी. के रूप में उ.प्र. तथा म.प्र. में भी अधिसूचित किया गया है – याचीगण उत्तर प्रदेश में दिये जाने वाले विशेषाधिकार एवं लाभों के समान उपभोग लेने के हकदार नही – राज्य

स्तरीय उच्चाधिकार समिति द्वारा उनके जाति प्रमाणपत्र का निरस्तीकरण उचित – किन्तु उनके व्यवसायिक डिग्रियों के संरक्षण का सीमित अनुतोष प्रदान किया गया – याचिका निराकृत।

**Cases referred :**

AIR 1995 SC 94, (1994) 5 SCC 244, (1990) 3 SCC 130, 2007(3) MPLJ 1.

*Devendra Gangrade,* for the petitioners.
*Puneet Shroti,* P.L. for the respondent/State.

**ORDER**

**R.S. Jha, J.** - The petitioners have filed this petition being aggrieved by order dated 3.7.2006 passed by the High Power State Level Committee for screening of caste certificates wherein it has directed to initiate proceedings against the petitioners for cancellation of their caste certificates.

2. The brief facts, leading to the filing of the present petition, are that the petitioners are the children of Late Shri Ram Singh, who undisputedly was a resident of Uttar Pradesh. It is also undisputed that he belonged to the Chamar Caste which was notified as a Scheduled Caste in the Presidential notification issued under Article 341 of the Constitution of India for the State of Uttar Pradesh.

It is stated that the petitioners' father was working as a Train Examiner with the railways and was posted at Jabalpur wherein the petitioner no.1 was born on 11.4.1961 and the petitioner no.2 was born on 16.2.1973 while the petitioner no.3 was born on 27.6.1975 at Katni. On the basis of the entries in the service record of the petitioners' father the petitioners obtained caste certificates from the authority in the State of M.P.

On the basis of the caste certificates, the petitioner no.1 got admission in the Medical College as a Scheduled Caste candidate and has obtained M.B.B.S Degree from Rani Durgavati Vishwa Vidyalaya, Jabalpur; the petitioner no.2 has obtained a Bachelor of Engineering Degree as a Scheduled Caste candidate from Awdhesh Pratap Singh Vishwa Vidyalaya, Rewa; and the petitioner no.3 has obtained a Bachelor of Engineering Degree as a Scheduled Caste candidate from Vikram University, Ujjain.

3. It is submitted by the learned counsel for the petitioners that as the petitioners were born and brought up in the State of M.P and as their father belonged to the Chamar, Scheduled Caste category, which was notified as

such in the State of U.P. and as the same is also notified as a Scheduled Caste in the State of M.P., therefore, the petitioners are entitled to enjoy all rights, benefits and privileges available to Chamar, Scheduled Caste, notified in the State of M.P. It is stated that some persons made a complaint against the caste certificate issued to the petitioners before the Director General of Police, Madhya Pradesh, who referred the complaint on 17.2.2003 to the competent authority for enquiry and at the same time an offence was also registered against the petitioners at Bhopal.

4. It is stated that as the petitioners' father was alive at the relevant point of time, a show cause notice was issued to him and he had filed a detailed reply specifically stating therein that the petitioners' father belonged to the Chamar caste which was notified as Scheduled Caste in the State of U.P.; that he had migrated thereafter to the State of M.P.; that all the three children were born to him in the State of M.P and as the Chamar caste was also notified as a Scheduled Caste in the State of M.P., therefore, there was no illegality or fraud committed by the petitioners in obtaining the caste certificate.

5. It is stated that the matter was ultimately taken up by the High Power State Level Committee constituted for making enquiries into such complaints, pursuant to the decision of the Supreme Court rendered in the case of *Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others,* AIR 1995 SC 94, which issued notices to the petitioners who appeared before the Committee and also got their statements recorded before it again reiterating the stand that they had taken before the authorities and supported the same with documents. The petitioners also brought to the notice of the authorities the old circulars of the State of M.P dated 4.5.1987 and the circular dated 1 4.1998 issued by the Government of India wherein benefit to migrated Scheduled Caste persons was given by the State as well as the Union.

6. The petitioners have also brought on record and has relied upon the circular issued by the Union of India dated 16.3.2000 whereby the previous circular dated 1.4.1998 has been withdrawn prospectively and another circular issued on 30.8.2006 specifying the definition of domicile resident of the State of M.P. and has contended that no fraud or illegality was committed by the petitioners and that the caste certificates issued to the petitioners were in accordance with law.

7. It is submitted that the High Power State Level Committee, after

considering the submissions of the petitioners, passed the impugned order on the basis of the undisputed fact that the petitioners' father was a Scheduled Caste of the State of U.P.; that he migrated to the State of M.P.; and that as the petitioners were not persons belonging to the Chamar, Scheduled Caste, notified in the State of M.P. but were persons belonging to the Chamar, Scheduled Caste, notified in the State of U.P, therefore, they were not entitled to the benefit of reservation in the State of M.P. On the basis of the aforesaid conclusion, the High Power State Level Committee cancelled the caste certificates dated 12.2.1994, 8.4.1994 and 12.5.2000 issued to the petitioners by the Collector and Tehsildar, Jabalpur.

8. On the basis of the aforesaid submission, it is submitted by the learned counsel for the petitioners that the impugned order passed by the High Power State Level Committee deserves to be set aside as the petitioners undisputedly belong to the Scheduled Caste Category and were born in the State of M.P and are therefore, entitled to all the benefits available to Chamar, Scheduled Caste, in the State of M.P.

9. The learned Govt. Advocate appearing for the respondent/State, has submitted that no fault can be found nor is any infirmity discernable in the impugned order passed by the High Power State Level Committee, cancelling the caste certificate of the petitioners, as it is an admitted fact that the petitioners' father was an original resident of the State of U.P and has migrated to the State of M.P.

10. The only issue raised by the petitioner before this Court is as to whether a person who belongs to a Scheduled Caste category notified in one State is entitled to the same status and privileges on his migration to another State where the same caste has been separately notified.

11. The aforesaid issue raised by the petitioners stands conclusively decided by the Constitution Bench of the Supreme Court in the case of *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another vs. Union of India and Another*, (1994) 5 SCC 244, wherein the same issue, as raised by the petitioners, was considered and decided against the petitioners and it was held as follows in para-16:-

> "16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a

given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

> "He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges

that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

12. It is also apparent from a perusal of the order passed by the High Power State Level Committee that the aforesaid committee has also taken into consideration the aforesaid decision of the Supreme Court as well as the decision in the case of *Marri Chandra Shekhar Rao vs. Dean, Seth G. S. Medical College & Ors.*, (1990) 3 SCC 130 and the subsequent circulars and clarifications issued by the Union of India and the State of M.P.

13. In view of the aforesaid, I find no illegality or infirmity in the impugned order passed by the High Power State Level Committee which is in consonance with the law laid down by the Constitutional Bench of the Supreme Court in the case of *Action Committee on Issue of Caste Certificate* (supra) and the same is hereby affirmed.

14. It is, however, observed that the petitioners, on the basis of the certificates issued to them have completed their studies and have been granted M.B.B.S and Engineering Degrees and, therefore, while upholding the order passed by the High Power State Level Committee cancelling the caste certificates issued to the petitioners, a limited relief of protection of their professional degrees is granted to them in view of the decision of the Supreme Court in the case of *Additional General Manager, Human Resource, BHEL Ltd. vs. Suresh Ramkrishna Burde*, 2007 (3) MPLJ 1, with a rider and clarification that henceforth in future the petitioners shall not claim any benefit on the basis of their caste by projecting themselves to be persons belonging to the Scheduled Caste Category.

15. With the aforesaid observation, the petition filed by the petitioners stands disposed of. In the facts of the case there shall be no orders as to costs.

*Petition disposed of.*

**I.L.R. [2012] M.P, 3007**
**WRIT PETITION**
***Before Mr. S.A. Bobde, Chief Justice & Mr. Justice Alok Aradhe***
W.P.No. 6858/2012 (Cri.) (Jabalpur) decided on 3 December, 2012

MOHAMMAD SARTAJ ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

***National Security Act (65 of 1980), Section 3(2) - Preventive Detention - Delay in execution of order of detention*** **- Residential address given by petitioner not controverted by Police - Delay of four years and seven months in executing the order of detention not explained - Order of detention liable to be quashed as respondents have failed to offer any satisfactory explanation for non-execution of order of detention - Petition allowed. (Para 8)**

*राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निवारक निरोध – निरोध के आदेश के निष्पादन मे विलम्ब* – याची द्वारा दिया गया निवासी पता पुलिस द्वारा विवादित नहीं – निरोध के आदेश के निष्पादन में चार वर्ष और सात माह का विलम्ब स्पष्ट नहीं किया गया – निरोध का आदेश अभिखण्डित किये जाने योग्य क्योंकि प्रत्यर्थीगण, निरोध के आदेश का निष्पादन नही किये जाने का कोई संतोषजनक स्पष्टिकरण पेश करने में विफल रहे – याचिका मंजूर।

**Cases referred :**

1987(2) Crimes 892, (2007) 2 SCC 777, 2003(3) MPHT 528, AIR 1990 SC 220, (2012) 7 SCC 499, (2012) 8 SCC 233, (2007) 9 SCC 28.

*Ahadulla Usmani,* for the petitioner.
*Prashant Singh,* Addl.A.G. for the respondents.

**ORDER**

The Order of the Court was delivered by :
**ALOK ARADHE, J.** - In this writ petition, the petitioner has challenged the validity of the order dated 16.8.2007 passed by the District Magistrate, Jabalpur by which the petitioner has been detained under Section 3(2) of the National Security Act (hereinafter referred to as 'the Act') as well as the order dated 3.5.2012 by which the representation preferred by him against the order of detention has been rejected by the State Government.

2. Facts leading to filing of the writ petition briefly stated are that the Superintendent of Police, Jabalpur vide memo dated 10.8.2007 informed the District Magistrate, Jabalpur about the criminal activities and involvement of the petitioner in several criminal cases which according to the Superintendent of Police were prejudicial to the public order. It was mentioned in the aforesaid memorandum that the petitioner is a habitual offender and has become member of communal organisation namely "SIMI". It was further stated that on account of activities of the petitioner, there is an atmosphere of fear in the locality and the petitioner being the habitual offender, commits the offences publicly which has affected the public order. It was also stated that petitioner is involved in criminal activities since 2002 and various offences have been registered against him which were mentioned in the memorandum. The District Magistrate on being satisfied with the material produced before him, came to the conclusion that the activities of the petitioner were prejudicial to the public order. Accordingly, an order of detention dated 16.8.2007 was passed. It is the case of the petitioner that he learnt about the order of detention some time in the month of November, 2011. He therefore approached this Court by filing a writ petition namely W.P. No.21227/2011 for quashing the order of detention at the pre-execution stage. This Court vide order dated 23.1.2012 inter-alia held that since the petitioner has not surrendered and therefore the grounds of detention have not been served upon him. In the absence of grounds of detention, it is not possible to adjudicate the validity of the order of detention. Accordingly, the writ petition was dismissed with liberty to the petitioner to file a fresh writ petition after obtaining the grounds of detention. Thereafter, the petitioner was arrested on 17.3.2012. Being aggrieved by the order of detention, the petitioner submitted a representation on 29.3.2012, which was rejected by the State Government vide order dated 3.5.2012. In the aforesaid factual background, the petitioner has approached this Court.

3. Learned counsel for the petitioner submitted that the petitioner resides in front of police station, Badi Omti and was not absconding. Even assuming that the petitioner was absconding, the procedure prescribed under Section 7 of the Act in relation to absconding persons ought to have been resorted to by the respondents. It was further submitted that the order of detention has lost its significance due to efflux of time, as the object of the preventive detention is to prevent a person in anticipation in doing an illegal activity prejudicial to public order. It was further urged that the petitioner was arrested after a period of four years and seven months from the date of passing of the order of

detention under the Act. It was further submitted that grounds of detention were not supplied to the petitioner and therefore, the petitioner was deprived of an opportunity to make an effective representation against the order of detention which constitutes violation of Article 22(5) of the Constitution of India as well as Section 8 of the Act. In support of his submissions, learned counsel for the petitioner has placed reliance on decisions of the Supreme Court in *Fazal Ghosi Vs. State of U.P. and others,* 1987(2) Crimes 892, *Alpesh Navinchandra Shah Vs. State of Maharashtra and others,* (2007) 2 SCC 777 as well as a decision of this Court in *Ravi Tiwari and another Vs. Union of India and others,* 2003(3) MPHT 528 (DB).

4. On the other hand, learned Additional Advocate General for the respondents while opposing the submissions made by learned counsel for the petitioner submitted that the grounds of detention were supplied to the petitioner on 21.3.2012. While inviting the attention of this Court to para 9 of the return as well as para 7 of the additional return, it was submitted that though warrant of arrest was issued against the petitioner on 16.8.2007, but the same could not be executed upon him as he was given unlawful protection by his father namely Haji Abdul Rajjak. The Police authorities made all possible efforts to arrest the petitioner but since the petitioner was given protection by his father, therefore, the warrant of arrest could not be executed on the petitioner. It was further submitted that the order of detention dated 17.3.2012 was passed against the father of the petitioner and he was arrested on 17.3.2012 and immediately thereafter, on 18.3.2012, the petitioner was also arrested. While inviting the attention of this Court to the ground No.6 mentioned in the grounds of attention, it was pointed out that the petitioner along with several other persons belonging to a particular community entered into the premises of Central Jail, Jabalpur on 7.8.2007 at 9:30 a.m. and aired the rumour that holy book, namely, 'Kuran-a-Sharif' was torn by persons belonging to other community. It was also submitted that the petitioner and his other associates raised provoking slogans as a result of which huge mob gathered at the spot and the mob forcibly attempted to enter into the premises of Collectorate, Jabalpur.

5. Thereafter again on the same day, between 5:45 p.m. to 6 p.m. the petitioner and other accused persons proceeded with the mob of a particular community to the office of the Superintendent of Police, Jabalpur and raised provoking slogans against the other community and pelted stones on the government vehicles and the government employees and passersby. Such

criminal acts of the petitioner seriously disturbed the even tempo of life. It was further submitted that the petitioner and his associates provoked the communal feelings and caused loss to government property in broad day light at public places and, therefore, the activities of the petitioner were prejudice to public order and the order of detention has rightly been passed against him. In support of his submissions, learned Additional Advocate General has placed reliance on decision of Supreme Court in *Shafiq Ahmad Vs. District Magistrate, Meerut and others,* AIR 1990 SC 220.

6. We have considered the submissions made on both sides. We have carefully perused the grounds of detention. The ground numbers 6 and 7 mentioned in the grounds of detention clearly show that the activities of the petitioner were prejudicial to public order. However, the concept of preventive detention is to prevent a person concerned in anticipation of doing an illegal activity prejudicial to public order. [See: *Dropati Devi and another v. Union of India and Others,* (2012) 7 SCC 499] In *Saeed Zakir Hussain Malik v. State of Maharashtra and Others*, (2012) 8 SCC 233 the Supreme Court has held that if the detenu is absconding there has to be material on record to show that sincere effort was made to apprehend him. It has also been held that if no satisfactory explanation is furnished for inordinate delay in execution of order of detention, the order of detention stands vitiated by reason of non-execution thereof within the reasonable time. In *Shafiq Ahmad supra*, also the Supreme Court has held that if there is delay in arresting the detenu pursuant to an order of detention, the delay has to be satisfactorily explained. In the absence of any satisfactory and cogent explanation for delay in arresting the detenu, the detention would be vitiated in law. Similarly, in *Mukesh Tikaji Bora Vs. Union of India and others,* (2007) 9 SCC 28, it has been held that if there is a delay in execution, the material has to be placed on record to show that all possible efforts were made to take the detenu into custody, but he successfully managed to evade.

7. In the backdrop of aforesaid well settled legal position, we may examine the explanation which has been furnished on behalf of the respondents for the delay in executing the order of detention. The relevant extract of paragraph 9 of the return reads as under:-

> "That the order although passed in the year 2007 but could not be served upon the petitioner as he was absconding and was not traceable. The Police authorities despite their sincere

endeavour failed to locate him so as to execute the order of the District Magistrate but not executing the order at that time when it was passed and it could be executed only after arrest of petitioner in the year 2012, the delay in execution cannot be a ground for declaring the order vitiated or invalid."

Paragraph 7 of the additional return reads as under:-

"That the warrant of arrest was issued against the petitioner on 16.8.2007 but the same could not be executed against the petitioner as he was given unlawful protection by his father namely Haji Abdul Rajjak. The police authorities have initiated all possible efforts to arrest the petitioner but he was harbored by his father. On various occasions, the police conducted search and various effective steps were taken by the warrant of arrest issued on 16.8.2007 could not be executed. It is respectfully submitted that Crime No.490/2011 relating to offences punishable under Section 212 and 216 of Indian Penal Code was registered against father of petitioner namely Haji Abdul Rajjak at Police Station Omti, Jabalpur. It is humbly submitted that even father of petitioner has been detained under Act, 1980 in pursuance to the order of detention dated 17.3.2012. When father of petitioner was arrested on 17.3.2012 immediately thereafter within 24 hourse on 18.3.2012 petitioner was also arrested by Police Station, Kareli, District Narsinghpur and long awaited warrant of arrest could be executed against the petitioner."

8. Apparently, the activities of the petitioner were prejudicial to public order. The petitioner in the writ petition has disclosed his address as resident of in front of Badi Omti Police Station, Jabalpur which has not been controverted on behalf of the respondents. We are rather shocked and surprised to note that no effective steps were taken by the respondents for executing the order of detention for a long period of four years and seven months. The inordinate delay in execution of the order of detention is obviously for extraneous reasons which are easy to infer but difficult to understand. The conduct of the police authorities compels us to infer that in fact the police officers were acting in hand and glaves with the petitioner and were protecting him rather than his father. The inordinate delay of four years and seven months

in executing the order of detention has not been explained inasmuch as, no details of the attempts made by the Police authorities to arrest the petitioner have been disclosed either in the return or in the additional return. The return as well as additional return is conspicuously silent as to why the procedure prescribed under Section 7 of the Act was not resorted to. We are conscious of the fact that the Division Bench of this Court has upheld the order of detention which was passed against the father of the petitioner in W.P. No.4551/2012. However, in the case of the father of the petitioner, there was no delay in executing the order of detention. The order of detention against the father of the petitioner was passed on 17.3.2012 and the same day the father of the petitioner was arrested whereas in the case of the petitioner, as stated supra, there is inordinate delay. We are, therefore, left with no option but to hold that the order of detention is vitiated in law only on the ground of delay in executing the order of detention as the respondents have failed to offer any satisfactory explanation for non-execution of the order of detention for a long period of four years and seven months. In the facts of the case, if the order of detention is upheld, it would be against the object of preventive detention.

9. In the result, the writ petition is allowed. The order of detention dated 16.8.2007 and the order dated 3.5.2012 are hereby quashed. If the petitioner's detention is not required in any other case, he be set at liberty forthwith. The rule is made absolute in terms of paragraph 7.1 of the writ petition.

*Petition allowed.*

**I.L.R. [2012] M.P, 3012**

**WRIT PETITION**

***Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav***

W.P.No. 10259/2009(S) (Jabalpur) decided on 5 December, 2012

UNION OF INDIA & ors. ...Petitioners

Vs.

SHRI BABA SINGH ...Respondent

***Central Civil Services (Pension) Rules, 1972, Rule 54(6)(iv) - Major son suffering from disability - Family Pension*** **- Respondent claimed family pension being 40% disabled - Held - Merely because a person may earn his livelihood even with physical limitation cannot be construed in the given case rendering the respondent ineligible for family pension. (Para 15)**

*केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972, नियम 54 (6)(iv) – वयस्क पुत्र निशक्तता से ग्रसित – परिवार पेंशन* – प्रत्यर्थी ने 40% निशक्तताः के चलते परिवार पेन्शन का दावा किया – अभिनिर्धारित – मात्र इसलिए कि कोई व्यक्ति शारीरिक मर्यादा के साथ भी अपनी अजीविका अर्जित कर सकता है, इस प्रकरण में प्रत्यर्थी, परिवार पेन्शन हेतु अपात्र होने का अर्थान्वयन नहीं किया जा सकता।

**Cases referred :**

(1990) 2 SCC 48, (1980) 2 SCC 752, (1984) 3 SCC 161, (2004) 6 SC 440, (2002) 1 SCC 633, (2001) 4 SCC 9: 2001 SCC (CRI) 652.

*S.A. Dharmadhikari,* for the petitioners.

*R.Gupta,* for the respondent.

**ORDER**

The Order of the court was delivered by : SANJAY, YADAV J. - Order dated 8.9.2009 passed by the Central Administrative Tribunal, Jabalpur, Bench Jabalpur in O.A. No.186/2009 is being assailed vide this petition under Article 227 of the Constitution of India. By impugned order the Tribunal while allowing Original Application has directed the petitioners herein to issue appropriate orders in favour of respondent/applicant, granting him Family Pension in terms of Rule 54(6) (iv) of Central Civil Services (Pension) Rules, 1972 (hereinafter to be referred to as Rules of 1972).

2. The original application in turn was directed against the communication dated 9.1.2009, whereby, General Manager (Administration) Ordnance Factory, Khamaria, informed respondent applicant the decision rendered by the Board constituted to assess the earning capacity of his livelihood in furtherance to an order passed in O.A. No.123/2008 and as contemplated under Rule 54(6) (iv) of 1972 Rules. The Board assessed him having capacity to earn his livelihood. Accordingly, his claim for grant of family pension was declined.

3. The Family Pension was claimed by the petitioner, in lieu of death of his father, Dashrath Singh, who retired as Charge man II, Ordnance Factory Khamaria on attaining the age of Superannuation on 31.5.1980 died on 1.2.2004, on the strength of Rule 54 (6) (iv) of 1972 Rules, he being 40 % disabled and a bachelor.

4. Respondent preferred two original applications: O.A. No.228/2007 and O.A. No.123/2008 besides a contempt petition No.35/2007, before filing O.A. No.186/2009.

5. Original Application No.228/2007 was disposed of on 10.4.2007 with the direction to respondents to consider the claim and pass a reasoned and speaking order. In course of its implementation petitioner, employer, by order dated 18.12.2007 rejected the claim on the ground that the respondent applicant failed to produce certificate from the Civil Surgeon in relation to his capacity to earn livelihood. This order was questioned in O.A. No.123/2008 wherein by order dated 7.11.2008 the Tribunal quashed the order dated 18.12.2007, with a direction to employer Petitioner to consider respondent applicant's medical certificate issued by the District Medical Board, Victoria (S.G.D) Hospital, Jabalpur. In compliance to said direction, General Manager Ordnance Factory Khamaria referred the matter to a Board comprising of Principal Medical Officer of the Factory Hospital and a Senior Class I Officer to asses and find out for his own satisfaction as to whether the handicap of the respondent applicant is of such nature so as to prevent him from earning his livelihood. This direction was despite of the fact that a duly constituted District Medical Board has assessed him 40% disabled suffering from PPRP (Rt) LLR [paraplagia of Right Lower Limb which as per Mosbys' Medical Dictionary,1999 means"An abnormal condition characterized by motor or sensory loss in lower limbs. This condition may or may not involve the back and abdominal muscles and may cause either complete or incomplete paralysis].

6. Be that as it may. The Competent Authority after considering the report from the said Board declined to grant Family Pension to respondent/ Applicant holding that he does not suffer from any disorder or disability of mind or physically crippled or disabled which would prevent him from earning his livelihood. Upon challenge the Tribunal on the basis of rival submission and taking into consideration the fact that the Board constituted by General Manager, Ordnance Factory Khamaria comprising of Principal Medical Officer cannot be treated to be the Medical Officer "Medical Officer not below the rank of a Civil Surgeon" and placing reliance on Section 2(p) of Person with Disability (Equal Opportunity Protection of Right and Full Participation) Act, 1995; wherein, the medical authority has been defined to be a hospital or institution specified for the purpose of Act by notification by appropriate authority set aside the order passed by the

Competent Authority; whereby, respondent applicant was declined the benefit of Family Pension with a direction to the authorities to grant the family pension.

7. Tribunal observed:

> "9. It is undisputed fact that applicant had produced medical certificate issued by the District Medical Board comprising of three senior specialists of their respective field including Orthopedic specialist, MHO, RMO acting as Member & President of District Invaliding & Medical Board, Jabalpur, M.P., certifying that as per 1995 Act his physical disability is 40% and he suffers from "PPRP ® LL.R stands for right leg "LL" stands for lower limb. Ex facie said certificate, issued by competent authority under the 1995 Act can not be either ignored or circumvented by constituting the so called medical board of factory hospital. Further more, the Board constituted by respondent no.2 consisting of only one person from medical field and other belonging to administrative side. Could such board's recommendation over-ride, nullify and erase the effect, findings & importance of three top most senior medical officers constituting the Board formed under the Act of Parliament, namely 1995 Act. As noticed hereinabove, repeatedly it has been urged by the respondents that said medical board was constituted to assess: **"his capacity or otherwise of earning livelihood".** In our considered view bare perusal of Rule 54(6)(iv) ibid extracted hereinabove, would reveal that the mandate of said rules in that the appointing authority should satisfy that the handicap is of such a nature so as to prevent from his earning or livelihood. Further requirement of the rule is that a certificate has to be obtained from a medical officer not below the rank of "Civil Surgeon". It is not the case of the respondents that Principal Medical Officer of the factory hospital has been declared & notified as "Civil Surgeon" under the aforesaid rules or 1995 Act. Similarly mandate of said rule is what has to be satisfied is that the person is handicap. The conclusion derived by respondent no.2 that "he is capable of earning his livelihood if he takes normal initiative" is based on hypothesis, mere surmises and

conjectures. Whether respondent no.2 examined applicant's educational qualification, physical strength, age and other relevant factors to conclude that he had earning capacity "if he takes normal initiative". Apart from conveying that he is capable of earning livelihood, what were the basis & factors which led to this decision has not been slightly indicated & revealed. If he was able to walk without support few yards, for a short duration, could it be construed that he is physically able to bear the strain and stress of a regular job even of mean nature. As far as capacity to earn livelihood is concerned, does it mean he should adopt means of begging in streets? The family pension being a welfare scheme has to be construed liberally and not in pedantic manner. The welfare State is required to adopt an approach which advances the welfare of the people and not otherwise, which is ex-facie retrograde.

10. Respondent no. 2 while arriving aforesaid conclusion had been influenced by the so called medical board constituted by it which is a nullity in the eyes of low. Aforesaid rule 54(6)(iv) did not empower & authorize it to constitute such a medical board and to be guided by its recommendations. Rather the mandate of the rule is to decide further course of action based upon medical certificate issued by the medical officer not below the rank of Civil Surgeon.

12. Further more it is not the specific stand of the respondent that the Principal Medical Officer of Factory hospital is either Civil Surgeon or "medical authority" within the meaning of Section 2(p) of the 1995 Act specified for the purposes of said Act. The stand of the respondents noticed hereinabove would bring it out, without any vagueness that respondent no.2 who was to act independently, acted at the behest and recommendations of so called board and therefore such a decision following aforesaid judgment can not be approved in law.

14. The 1995 Act, was formulated as the India was a signatory to Proclamation adopted on the Full Participation & Equality of People with Disability in the Asian & Pacific Region,

to remove any discrimination against persons with disability in the sharing of development benefits, to counteract any situation of the abuse & the exploitation of persons with disabilities as well as to make special provision for the integration of such persons into the social main stream. It is admitted fact the applicant, by a competent medical board under the aforesaid Act has been declared physically disabled to the extent of 40%. Therefore, respondent no.2 being a functionary of the welfare state was expected to act in furtherance of the object of the Act and not to create a situation where he could have been abused & exploited because of disability. Respondent no.2 was expected to deal the applicant with sympathy & humane consideration but it acted in otherwise in complete derogation & negation of the mandate of aforesaid Act. In *Management of M/s Nally Bharat Engineering Co. Ltd Vs. State of Bihar* & Ors, (1990) 2 SCC 48 Hon'ble Supreme Court has emphasized and explained as under:

"20. .....Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern state is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant consideration. **Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons.** To use the time hallowed phrase **"that justice should not only be done but be seen to be done"** is the essence of fairness equally applicable to administrative authorities. **Fairness is thus a prime test for proper and good administration."**

(emphasis supplied)

We may also note that in (1980) 2 SCC 752 *Charles K.Skaria and others Vs. Dr. C.Mathew and others*, (vide para 23) it was observed that "we are aware that when a statute vests a public power and **conditions** the manner of exerciese of that power then the law insists on that mode of

exercise alone". To similar effect observations were made in (1984) 3 SCC 161 (vide para 58) *Bandhua Mukti Morcha Vs. Union of India and others*, which read thus: "If there is a statute prescribing a judicial procedure governing the particular case the Court must follow such procedure. It is not open to the Court to bypass the statute and evolve a different procedure at variance with it". Further more in (2004) 6 SC 440 (vide para 29) *Captain Sube Singh and others Vs. Lt. Governor of Delhi and others*, observed as follows:

"29. In *CIT Vs. Anjum M.H. Ghaswala,* (2002) 1 SCC 633 a Constitution Bench of this Court reaffirmed the general rule that **when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself** {See also in this connection *Dhanajaya Reddy v. State of Karanataka,* (2001) 4 SCC 9: 2001 SCC (Cri) 652}. The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (I) thereof".

(emphasis supplied)

15. Aforesaid law, in the present case has been violated with impunity. The respondent no.2 has neither acted fairly nor promoted the interest of the applicant; rather respondent no.2 was misguided by extraneous & irrelevant consideration. No fairness was shown at any stage. Instead of acting with sympathetic consideration and promoting interest of physically disabled person, it acted in a total superficial manner and circumvented mandate of rule by adopting an approach as if he was competent to change & amend the rule and implicitly laid down a new procedure simply to oust a disabled of some legally due benefits duly recognized by the statute. Instead of acting justly, it adopted defiant approach. The respondent's action is not wedded to the rule of law and is totally allergic to

fairness in action. The duty cast upon respondent no.2 was to act fairly, impartially and reasonably and not unfairly or unjustly. Following such a course of in effect amounts to amending the statutory rules by an executive order and ignoring the mandate of valid statutory rules."

8. Question is whether the Tribunal is justified in giving wide and expanded meaning to the provision contained in Rule 54 (6) (iv) of 1972 and whether the certificate issued by the District Invaliding and Medical Board satisfy the condition precedent for grant of family pension.

9. Rule 54 of 1972 Rules, relates to provision regarding Family Pension, brought in vogue since 1.1.1964.

10. Sub-Rule (6) provides for the period for which Family Pension is payable. In case of widow or widower, upto the date of death or remarriage, whichever is earlier [54) (6) (i)]. In the case of son, until he attains the age of twenty five years, [54) (6) (ii)]. In the case of an unmarried daughter, until she attains the age of 25 years or until she gets married, whichever is earlier [54) (6) (iii)].

11. Exception however, has been carved out by way of proviso, which stipulates that if the son or daughter of a Government Servant is suffering from any disorder or disability of mind including mental retarded or is physically crippled, or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years the family pension shall be payable to such son or daughter for life. The proviso has been subjected to certain conditions.

12. In the present case Clause (iv) is relevant, which stipulates:

"(iv) before allowing the family pension for life to any such son or daughter, the Appointing Authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child."

13. Rule 54 of 1972 Rules since deals with Family Pension, it aims to achieve the benefit to the categories of person mention therein. The exception

carved out by virtue of proviso aims at expanding the applicability of Rule 54. In other words, subject to conditions being fulfilled, the proviso brings, within the ambit of Family Pension even the sons and daughters having crossed 25 years of age. The provision being beneficial in nature its operation cannot be curtailed by construing it narrowly. If narrowly construed the purpose for which it is introduced will reduce to futility. (Please See: *The Chairman Board of Mining Examination and Chief Inspector of Mines and another V. Ramjee*: AIR 1977 SC 965 page 968; Principles of Statutory Interpretation: Justice G.D.Singh : 13th Edn: Chapter I Synopsis 2 page 18).The expression"the handicap is of such a nature so as to prevent him or her from earning his or her livelihood", is therefore not to be construed strictly to mean that since any one can earn his livelihood and therefore even a handicap person can also earn his livelihood. But it is to be seen from the angle of such handicapped person who has been dependant as his capacity to earn by himself has depleted because of being handicapped.

14. True it is that, the disability must be such that substantially limits a major life activity such as carrying for oneself, working or having sensory functions. In the case at hand, as apparent from clause (iv) of proviso to sub Rule (6) of Rule 54 of Rules 1972 it is not sufficient alone that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood , it is imperative that such a nature shall be "evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled."

15. Apparent it is from the material on record that the General Manager Ordnance Factory Khamaria, despite the petitioner being in possession of the Certificate issued by District Invaliding and Medical Board, comprising of Orthopedics Specialist determining the petitioner suffering from PPRP (Rt) L.L (which certified "Bharat Sarkar , Samaj Kalyan Mantralaya Ke Adesh Krammank 4-2/83 HW.3 Dinank 6 August, 1986 Ke Anusar Avam Ka Aaa-908(Aa) Kendriya Sarkar Nishakt Vyakti Saman, Adhikaron Ka Sanrakshan Aur Purna Bhagidari Adhiniyam, 1995 (1996 Kal) Ke Anusar Viklangtha Ka Pratishat 40% Shabdon Mein Fourty Percentage Tatha Yah Moderate Viklang Ki Shreni Mein Ata Hai) constituted a Board consisting of the Principal Medical Officer. It is not clear, from the record as to whether he is an orthopedic expert. The Board tendered the certificate that the nature of petitioners handicap is not such as would not prevent him from

earning.This becomes the foundation for rejecting petitioners claim. The Tribunal has dwelt upon this aspect of the matter eloquently as would warrant any further analysis thereon. Suffice it to say that merely because a person may earn his livelihood even with physical limitation cannot be construed in the given case rendering the respondent appellant ineligible for family pension under Rule 54(6) (iv) of 1972 Rules.

16. In view whereof we are not inclined to interfere with the order passed by the Tribunal.

*Order accordingly*

**I.L.R. [2012] M.P, 3021**

**WRIT PETITION**

***Before Mr. S.A. Bobde, Chief Justice & Mr. Justice M.C. Garg***

W.P.No. 1205/2012 (Jabalpur) decided on 13 December, 2012

MAHENDRA BHATT ...Petitioner

Vs.

STATE OF M.P. ...Respondent

***Arms Rules, 1962, Rule 54, Constitution, Article 162, Seventh Schedule List I Entry V - License Fee for renewal of arms license* - Only Parliament is empowered to legislate on the subject of Arms - Parliament has enacted Arms Act, 1959 and Rules - State Govt. has no power either to legislate or take executive action in respect of arms in general in respect of imposing or enhancing licence fee either for the initial grants or the renewals - Notification/Circular dated 10.06.2011 enhancing the renewal fee quashed. (Paras 14 & 15)**

*आयुध नियम, 1962, नियम 54, संविधान, अनुच्छेद 162, सातवीं अनुसूची, सूची I प्रविष्टि V – आयुध अनुज्ञप्ति के नवीनीकरण हेतु अनुज्ञप्ति शुल्क* – केवल संसद आयुध के विषय पर कानून बनाने के लिए सशक्त है – संसद ने आयुध अधिनियम 1959 व नियम अधिनियमित किये हैं – सामान्यतः आयुध के संबंध में तथा अनुज्ञप्ति शुल्क अधिरोपित करने या बढ़ाने के संबंध में, या तो प्रारंभिक प्रदान हेतु अथवा नवीनीकरण हेतु राज्य सरकार को, ना तो कानून बनाने की और न ही कार्यपालिक कार्यवाही करने की शक्ति है – नवीनीकरण शुल्क की बढोत्तरी की अधिसूचना/परिपत्र दिनांकित 10.06.2011 अभिखण्डित।

**Case referred :**

2001(1) MPHT 445.

*Rajendra Mishra & Sanjay Agrawal with Jeetendra Dixit,* for the petitioner.

*Kumaresh Pathak,* Dy. A.G. for the respondent/State.

**ORDER**

The Order of the court was delivered by : **S.A. Bobde,C. J.** - The issue involved in all the three matters is identical one, hence they are being disposed of by the common judgment.

2. Heard.

Rule returnable forthwith.

Heard finally by the consent of the parties.

3. The petitioners have questioned the authority of State Government to issue the impugned Notification No.F-12-29/2011/B-1/II dated 10.6.2011 purporting to levy renewal fees for renewal of arms licenses for the following category of weapons:

Weapons

1. Prohibited and Non-prohibited weapon
2. Non-prohibited Rifle
3. Barrel Loading Gun
4. Magazine Loading Gun.

4. The petitioners are holders of gun licenses for self protection in respect of their weapons which include revolvers and rifles. At the time of renewal, they applied to the respondent/Collector.

5. The respondent/Collector, who is a licensing authority, demanded renewal fees according to the rates mentioned in the notification:

| S.No. | Weapon | New Licence | Renewal |
|---|---|---|---|
| 1. | Prohibited & non-prohibited weapon | Rs. 5,000/- | Rs. 5,000/- |
| 2. | Non-prohibited Rifle | Rs. 2,000/- | Rs. 2,000/- |

| | | | |
|---|---|---|---|
| 3. | Barrel Loading Gun | Rs. 500/- | Rs. 500/- |
| 4. | Magazine Loading Gun | Rs. 200/ | Rs. 200/- |

6. The petitioners have filed this petition challenging the said notification under which the renewal has been demanded.

7. Learned counsel for the petitioners submitted that the subject of the arms is covered by Entry-V of the Union List in the Seventh Schedule of the Constitution of India which reads as follows:

Seventh Schedule
[Article 246]
List I – Union List

| | | | |
|---|---|---|---|
| 1. | ***** | **** | ***** |
| 2. | ***** | **** | ***** |
| 3. | ***** | **** | ***** |
| 4. | ***** | **** | ***** |

5. Arms, firearms, ammunition and explosives.

8. Further, by reason of Article 162 of the Constitution of India, according to the petitioners, the Executive Powers of a State can only be coextensive with the powers of the Legislature of the State. The State could not have issued any notification for charging renewal fees since the Legislature of the State itself does not have power to make laws in this regard.

9. Learned counsel for the petitioners relies on Section 44 of the Arms Act enacted by the Parliament which authorizes the Central Government to make rules of the Arms Act. Section 44(2)(e) of the Arms Act, 1959 reads as follows:

"44 Power to make rules:-

(1) **** ****

(2) (a) **** ****

(b) **** ****

(c) **** ****

(d) **** ****

(e) the fees payable in respect of any

application for the grant or renewal of a licence and in respect of any licence granted or renewed and the manner of paying the same."

10. The Central Government has enacted the rules in exercise of the said powers known as the Arms Rules, 1962. Rule 54 of the Arms Rules deals with renewal of licenses, which reads thus:

Rules 54 provides for renewal of licenses.

54. Renewal of licenses.-

(1) Every licence may, at its expiration and subject to the same condition (if any) as to the grant thereof, be renewed by the authority mentioned in Schedule II as renewing authority."

11. Rule 57 of the Arms Rules, provides for payment of fees in respect of grant and renewal of arms licenses as specified in Schedule IV. The relevant part of Schedule IV and Rule 57 of the Arms Rules reads thus:

[SCHEDULE IV

FEES PAYABLE FOR LICENCES

| S.No. | Form No. | Licence fee for initial year of grant (in Rs.) | Renewal fee for each subsequent year in (Rs.) | |
|---|---|---|---|---|
| 1. | I | | ****** | ***** |
| 2. | II | | ****** | ***** |
| 3. | III | | | |
| | (a) | Pistols, revolvers and repeating rifle | 100 | 50 |
| | (b) | Rifles other than those mentioned in (a) and (c) | 60 | 30 |
| | (c) | .22 bore rifle (low velocity) firing rimmed cartridges, BL gun and air rifle | 40 | 20 |
| | (d) | ML gun, air gun, sword, | 10 | 05 |

| | | | | |
|---|---|---|---|---|
| | | bayonet, dagger and spearlance | | |
| | (e) | Weapons or Category V other than those mentioned in (d) | - | - |
| 4. | III-A | | ***** | ***** |
| 5. | III-B | | ***** | ***** |
| 6. | IV | | ***** | ***** |
| 7. | V | | ***** | ***** |
| 8. | VI | (a) Pistol or Revolver | - | - |
| | | (b) Rifle other than those mentioned in © | 100 | 50 |
| | | (c ) .22 bore rule (low velocity) firing rimmed cartridges, BL gun or rifle. | 60 | 30 |
| | | (d) ML gun or air-gun. | 40 | 20 |
| 9. | VII | | ***** | **** |
| 10. | VIII | | ***** | **** |
| 11. | IX | | ***** | **** |
| 12. | X | | ***** | **** |
| 13. | XIII | | **** | **** |
| 14. | XII | | **** | **** |
| 15. | XIII | | **** | **** |
| 16. | XIV | | **** | **** |
| 17. | XV | | **** | **** |
| 18. | XVI | | **** | **** |
| 19. | XVII | | **** | **** |
| 20. | XVII | | **** | **** |
| 21. | XIX | | **** | **** |
| 22. | XX | | **** | **** |
| 23. | XXI | | **** | **** |
| 24. | XXII | | **** | **** |

"57. Fee payable for licence.- (1) {(a) Every licence granted or renewed under these rules shall, save as herein otherwise expressly provided, be chargeable with the fee (if any) specified in Schedule IV.}

(b) In any case where fee is prescribed for a year, free for a fraction of a year shall be the same as for a whole year.

(2) Where a licensee submits his application for renewal of his licence after the expiry of the period for which the licence was granted, the licensing authority may, if he decides to renew the licence, at his discretion levy--

(a) full fee as for initial grant of the licence, and

(b) if he is satisfied that the delay is not justifiable, or excusable, nor serious enough to warrant revocation of the licence or prosecution of the licensee, a late fee not exceeding the amount of the licence fee is charged, or (Rs. 100) in other cases.

(3) The Central Government may, be general or special order and for reasons to be recorded in writing and subject to such conditions, if any, as it may specify in the order, grant exemption from, or reduction of, the fee payable in respect of any licence:

Provided that it shall be a condition of every exemption from payment of the fee chargeable in respect of the grant or renewal of any licence, in Form III that if application for renewal of such licence is not made within one month of the date on which the licence expires, the licensing authority may, unless the applicant satisfies the licensing authority that he had sufficient cause for not making the application within that period, levy renewal fee at the rate specified in the Form.

(4) No separate fee shall be chargeable from retainers.

(5) No fee shall be chargeable in respect of the grant or renewal of a licence in Form XV by a State

Government or the Board of Revenue (in the State of Andhra Pradesh, Kerala or [Tamil Nadu] for the import of sulphur in reasonable quantities, if the State Government or the Board of Revenue is satisfied that the sulphur is required in good faith for medicinal, industrial or agricultural purposes (other than for manufacturing arms, ammunition or explosives).

(6) Any political representative authorised to grant licenses in Form XVIII may remit the fee payable in respect of the grant or renewal of any such licence in the case of arms or ammunition exported for personal use, or in the case of ammunition exported for use for blasting purposes (whether on a public works or not) of the Government of any territory or place outside India.

(7) (i)No fee shall be chargeable for the grant of a licence for export and re-import of any arms or ammunition in a case or package legibly addressed to a person lawfully entitled to possess such articles, in compliance with a requisition made by a such person for the supply of such articles in reasonable quantities for his own use or after carrying out necessary repairs thereto.

(ii) Where any arms or ammunition are imported under a licence into any customs port in India and re-exported thence for re-import in to any other customs port in India under rule 35 the necessary licence for such re-export and re-import under the said rule shall be chargeable with a fee of rupee one only.

(8) No fee shall be chargeable in respect of:
(i) a change of description of the weapon entered in a licence granted for its acquisition under proviso to rule 52(2) but if the licence fee in respect of the weapon so changed is higher than that for the original weapon, the difference of such fee may be charged;

(ii) an endorsement under rule 12 of a licence granted in the State of Pondicherry or endorsement to extend or change the area of validity of a licence under sub-rule (1) of rule 53;

(iii) a change of name, under rule 53(2), or member, agent or other representative of the company or retainer; or

(iv) a grant of consent or permit/certificate or endorsement or any other document under these rules, except as otherwise expressly provided."

12. In the submission of the learned counsel for the petitioners, the matters relating to the charge of renewal fees for arms licenses having been legislated upon by the aforesaid provisions, the State has no power to make any legislation much less to take executive action and charge renewal fees in respect of arms licenses.

13. Shri Kumaresh Pathak, learned Deputy Advocate General submitted that the impugned circular was issued in exercise of the executive powers of the State since law and order is a State subject and it was found so having regard to the general increase in fees.

14. We find substance in contentions on behalf of the petitioners. Only Parliament is empowered to legislate on the subject of the arms. Parliament has, therefore, enacted the Arms Act 1959. The Central Government has enacted Rules in exercise of its powers to make rules. There is no doubt that the Central Government alone could have enacted such rules having regard to the power conferred by Section 44 of the Arms Act. Specifically, the Central Government has provided for fees on both, the initial grant and the renewal of licence.

15. The State Government has, in the circumstances, no power whatsoever either to legislature or to take executive action in respect of arms in general and, in any case, in respect of imposing or enhancing licence fees either for the initial grants or the renewals.

16. Shri Sanjay Agrawal, learned counsel for the petitioner, in Writ Petition No.11209/2011, submitted that the State Government could not have exercised any executive powers since the Legislature of the State does not have any

authority to make laws in respect of the subject and the authority for which is conferred exclusively on Parliament and the Central Government.

17. Learned counsel of the petitioner has relied on a judgment of a Single Judge of this Court reported in 2001(1) M.P.H.T. 445, *Smt. Sakinabai and others Vs.State of M.P. and another* where the learned Single Judge has held that the power of the State extends only to matters in respect of which State Legislature has powers to make laws and that there is no such power in the State Government in the legislative scheme.

18. We find no reason to doubt the correctness of the finding of the learned Single Judge.

19. In the circumstances, the impugned notification/circular No. F-12-29/2011/C-1/II dated 10.6.2011 is hereby quashed and is set aside.

20. Rule made absolute.

There shall be no order as to costs.

*Order accordingly.*

**I.L.R. [2012] M.P, 3029**
**COMPANY PETITION**
***Before Mr. Justice Rajendra Menon***
Comp. Petition No. 2/2012 (Jabalpur) decided on 7 September, 2012

ILLUME-TECH SOLUTIONS & SERVICES ...Petitioner
Vs.
NETLINK SOFTWARE GROUP PRIVATE LIMITED ...Respondent

*A.* ***Companies Act (1 of 1956), Section 433(e) - Winding up of a Company*** **- A procedure for winding up cannot be used as a substitute for proceeding with recovery of a debt in accordance to the common law - Winding up petition is not a legally approved means for recovery of certain dues nor is it be used to pressurize, coerce or enforce payment of a debt, which is bondafidely disputed by the respondent company - A winding up petition cannot be used as a substitute for a civil suit - If the company petition for winding up is filed with oblique motive and only to put pressure on the respondent company, the same should be dismissed. (Paras 13 & 18 )**

*क. कम्पनी अधिनियम (1956 का 1), धारा 433(इ) – कम्पनी का*

*परिसमापन* – परिसमापन की प्रक्रिया का प्रयोग, सामान्य विधि के अनुसरण में ऋण वसूली की कार्यवाही के अनुकल्प के रुप में नहीं किया जा सकता – परिसमापन याचिका, कतिपय देयकों की वसूली हेतु विधिक रुप से अनुमोदित साधन नहीं है और न ही उसका उपयोग दबाव बनाने, प्रपीड़ित करने या ऋण के भुगतान को प्रवर्तित करने के लिए किया जा सकता है जिसे सद्भाविक रुप से प्रत्यर्थी कम्पनी द्वारा विवादित किया गया है – परिसमापन याचिका को सिविल वाद के अनुकल्प के रुप में प्रयुक्त नहीं किया जा सकता – यदि परिसमापन हेतु कम्पनी याचिका को अस्पष्ट हेतु से और प्रत्यर्थी कम्पनी पर दबाव बनाने हेतु प्रस्तुत किया जाता है, उसे खारिज कर दिया जाना चाहिए।

***B. Companies Act (1 of 1956), Sections 433(e) & 434 - Winding up under - Initiating an action for winding up is a discretionary power*** **-- Before exercising the said power, it is required to be proved from the material available on record that - (a) there is a debt; and, (b) that the respondent company is unable to pay the said debt - Even if these two conditions are satisfied, still the Court should be satisfied that a winding up order has to be passed - The company against whom the proceeding is prayed to be initiated should be shown to be commercially insolvent, its assets and liabilities are to be such that a reasonable apprehension can be made that it is insufficient to meet the existing liabilities.**

**Bonafide dispute regarding payment of debt is made out by the respondent company and the material available does not show that the company is financially insolvent or not in a position to pay the debt, the winding up petition should be dismissed. (Para 16)**

*ख कम्पनी अधिनियम (1956 का 1), धाराऐं 433(इ) व 434 – के अंतर्गत परिसमापन – परिसमापन के लिए कार्यवाही आरंभ करना वैवेकिक शक्ति है* – उक्त शक्ति का प्रयोग करने से पहले अभिलेख पर उपलब्ध सामग्री से यह साबित किया जाना अपेक्षित है कि (अ) ऋण है और (ब) यह कि प्रत्यर्थी कम्पनी उक्त ऋण का भुगतान करने में अक्षम है – यदि इन दो शर्तों की पूर्ति होती है, तब भी, न्यायालय की संतुष्टि होनी चाहिए कि परिसमापन का आदेश पारित किया जाना चाहिए – कम्पनी, जिसके विरुद्ध कार्यवाही आरंभ करने की प्रार्थना की गई है, उसे वाणिज्यिक रुप से दिवालिया दर्शाया जाना चाहिए, जिसकी आस्तियां व दायित्व ऐसे हैं कि युक्तियुक्त आशंका निकाली जा सकती है कि वह वर्तमान दायित्वों को पूरा करने के लिए अपर्याप्त है।

**Cases referred :**

(2005) 13 SCC 86, AIR 2009 SC 1695, Company Cases Vol. 42 136, (2009) Company Cases 457, (2008) 141 Company Cases 721, (2009) 148 Company Cases 146, (2009) 148 Company Cases 167, (1983) 4 SCC 625, (1965) 35 Company Cases 456, (1971) 3 SCC 632, (1972) 42 Company Cases 125, (1994) 2 Company LJ 50 (SC), (2005) 124 Company Cases 314, (1968) 1 SCR 430, AIR 1968 SC 279.

*N.S. Ruprah & S. Chaturvedi,* for the petitioner.

**ORDER**

**RAJENDRA MENON, J.** - Seeking winding up of the respondent Company, this Company Petition is filed by the petitioner company.

2- Petitioner Company claims to be registered under the Companies Act having its principal place of business at Bangalore, carrying on the business of identifying opportunities for parties to establish Information Technology in various countries particularly in Thailand and elsewhere.

3- Respondent Company M/s Netlink Software Group Private Limited is also a Company incorporated under the provisions of the Company Act and has its registered office in Bhopal, within the territorial jurisdiction of this Court. The respondent/Company is carrying on its business primarily by providing professional service in information technology and business process solutions.

4- Interalia contending that the respondent Company is in debt to the petitioner company to the tune of ₹61,85,951=90, made up of principle and interest component as detailed in paragraph 5 of the company petition, this application has been filed by contending that both the petitioner and the respondent company entered into an agreement on 7.4.2009, for the purpose of identifying potential opportunities for the respondent Company's services to various designated customers, particularly in Thailand. Various procedures were contemplated in the agreement and the terms and conditions were incorporated with regard to payment.

5- It is the grievance of the petitioner company that the respondent company did not come forward and make payment of the third installment of 60% and the balance 40%, as agreed upon, with the result the statutory notice as required under section 433 was sent and when they have neglected to

make payment, this petition has been filed. Interalia contending that inspite of statutory notice being sent under section 433(1)(a) of the Companies Act, 1956, respondent company has failed and neglected to clear the debts, therefore, steps for proceeding in the matter for winding up be initiated, this petition is filed.

6- Shri N.S. Ruprah and Shri Chaturvedi, learned counsel for the petitioner, took me through the correspondence between the parties, the notice sent under section 433(1)(a), the reply to the same by the respondent company and tried to emphasize that as a case is made out indicating negligence on the part of the respondent to make payment of the amount, which is admitted, statutory notice have been issued and in view of the neglect on the part of respondent company to pay the debt, steps be taken for winding up of the company.

7- Placing reliance on a judgment rendered by the Supreme Court in the case of *Electron Industries Limited, Mumbai Vs. Soham Polymers (P) Limited, Mumbai,* (2005) 13 SCC 86; and, another judgment in the case of *M/s Vijay Industries Vs M/s NATL Technologies Limited,* AIR 2009 SC 1695, and inviting my attention to certain other judgments of the Bombay High Court, Madras High Court, Allahabad High Court, Gujrat High Court and Calcutta High Court, as detailed hereinunder: *GulamHussein Ahmedalli and Company Vs. Canhag Private Limited, Company Cases Vol.* 42 136; *Tata Iron and Steel Company Limited Vs. Omega Cables Limited,* (2009) Company Cases 457; *Petrocarbon and Chemical Company Vs. Hindustan Ferro and Industries Limited,* (2008) 141 *Company Cases 721; Geeta Prints Limited Vs. Falcon Industries,* (2009) 148 *Company Cases 146; and, Jagdev Prasad Bajaj and others Vs. Tirrihannah Company Limited* (No.2), (2009) 148 Company Cases 167, learned counsel argued that a case for initiating winding up proceedings is made out and, therefore, notice and advertisement in accordance to section 433/434 of the Companies Act read with Rules 95 and 96 of the Company Court Rules be initiated.

8- Having heard learned counsel for the petitioner, the question as to whether such a process should be initiated or not is taken up for consideration. It is an admitted proposition of law that once a debt is established in accordance to the provisions of section 434(1)(a) of the Companies Act and after a statutory notice is issued and when the company neglects to pay the same within a period of three weeks, it can be deemed that the Company is unable to pay

the debt. However, the question in this case is as to whether the facts and circumstances of the case do establish a ground for drawing such an assumption that the respondent company is unable to pay the debt.

9- When a winding up proceedings are filed under section 434, this Court is required to follow the statutory provisions contemplated in Part III of the Company Court Rules 1959 and if Rules 95, 96 and 97 are taken note of and the discretion available to this Court in accordance to the aforesaid rule is read alongwith the law laid down by the Supreme Court in the case of *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and others,* (1983) 4 SCC 625, it would be seen that the purpose of incorporating the statutory rules, particularly Rule 96, is to give adequate safeguard to the company against whom the process is to be initiated and this Court cannot for the mere asking issue notice or direct for advertisement. The purpose of scrutiny of the records in the chamber before admission and thereafter the procedure to be followed as is laid down in the statutory rules clearly contemplates that a wide discretion is conferred on the Company Court to initiate the process and if the Company Court comes to the conclusion that the material available are not sufficient enough to initiate action and it is found that the company petition has been filed malafidely, this Court can refuse to exercise jurisdiction in the matter.

10- Even though Shri Chaturvedi, learned counsel, indicated that the financial and commercial viability of the respondent company to pay the debt is not necessary and once it is found that the company is neglecting to pay the amount, proceedings can be initiated. The law contemplates in terms of section 433 of the Companies Act that a Court would order winding up of a company only after the company is unable to pay its debts. In the event of a claim being doubtful, requiring adjudicating, it would not be a debt as contemplated under section 433(e). It is also well settled principle of law that a Company Court cannot adjudicate disputed questions and pass orders on winding up.

11- The principle of law is that a petition for winding up should not be allowed until and unless it is proved to the satisfaction of the Company Court that the grounds for winding up, particularly with regard to inability of a Company, to pay the debt is made out. In this regard, the legal principle is crystallized in the case of *Amalgamated Commercial Traders Private Limited Vs. A.C.K. Krishnaswami*, (1965) 35 Company Case 456, and the Supreme Court has laid down the following principle:

"8. Before we consider further, we may refer to the proposition of law as enunciated by the Apex Court in *Amalgamated Commercial Traders Limited Vs. A.C.K. Krishnaswami,* (1965) 35 Company Case 456. The Apex Court has held as follows (page 463):

> ' It is well-settled that a winding up petitioner is not a legitimate means of seeking to enforce payment of the debt which is bonafide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the Court. At one time petitions founded on disputed debt were directed to stand over till the debt was established by action. If, however, there was no reason to believe that the debt, if established, would not be paid, the petition was dismissed. The modern practice has been to dismiss such petitions. But, of course, if the debt is not disputed on some substantial ground, the court may decide it on the petition and make the order.'

Thereafter, in the case of *Madhusudan Gordhandas and Company Vs. Madhu Woollen Industries Private Limited,* (1971) 3 SCC 632: (1972) 42 Company Cases 125, again the Apex Court, upon considering the judgment in the case of *Amalgamated Commercial Traders Private Limited* (supra), had opined as under (page 131):

> 'Two rules are well-settled. First, if the debt is bona fide disputed and the defence is a substantial one, the court will not wind up the company. The Court has dismissed a petition for winding up where the creditor claimed a sum for goods sold to the company and (notice) in the name of the appellant-company was issued on May 6, 2005. The said notice was returned with the postal endorsement 'company closed'. Invoking section 433(e) and (f) read with sections 434(1)(a) and 439(11)(g) of the Act, the appellant-

company approached this court for winding up of the respondent company on the ground that the respondent-company failed and is unable to pay the debts."

12- If the case in hand and the facts as available on record are evaluated in the backdrop of the aforesaid principle, it would be seen that after the statutory notice was sent by the petitioner company to the respondent vide Annexure H, on 17.5.2011, and when a demand was made for payment of the aforesaid amount of ₹ 61,85,951=90, the respondent company submitted its objection vide Annexure I on 14.6.2011 and disputed its liability to pay the amount and raised various objections. It was pointed out that the petitioner company wrongly represented about its business, made false claim and the respondent company has raised various grounds with regard to breach of agreement by the petitioner company as a result it is stated that no amount is to be paid and it has denied its liability to pay the debt and have disputed the claim.

13- If the claim made by the petitioner and the reply submitted by the respondent in response to the statutory notice is meticulously scrutinized, it would be seen that there is serious disputed questions of fact between the parties and by giving various justifiable reasons, respondent company has stated that they are not liable to make payment and even breach of agreement on the part of the petitioner company is raised as a ground for denying the payment. It is, therefore, a case where the debt in question is disputed and it is not a case where debt is admitted or acknowledged by the respondent. On the contrary, it is a case where the debt is bonafidely disputed by the respondent company and they have substantively made out a defence. Even when once both the conditions as contemplated under section 433(e) are available, then also in view of the law laid down by the Supreme Court as indicated hereinabove, this Court cannot direct that winding up of the company in question as held by the Supreme Court. A procedure for winding up cannot be used as a substitute for proceeding with recovery of a debt in accordance to the common law.

14- The judgments relied upon by Shri Ruprah and Shri Chaturvedi are clearly distinguishable on facts. In all the cases, relied upon by learned counsel for the petitioner, it is seen that after the statutory notices were issued, there was total silence on the part of the company concerned in making payment or

to take steps for clearing the debt. It was under those circumstances that finding the response to the statutory notice being not available, the cases were classified in the category of negligence to clear the debt by the respondent company, therefore, proceedings were initiated for winding up.

15- In the present case, immediately after the statutory notice was issued under section 434(1)(a), the respondent company has given its say, defence and objection and has prima facie demonstrated in the notice that the debt is disputed, they are not liable to pay the same and there is breach of contract. Under such circumstances, the law laid down in the cases relied upon by the learned counsel for the petitioner, which pertains to negligence on the part of a company to pay the debt after the statutory notice, will not be applicable. On the contrary, the law laid down by the Supreme Court in the case of *Amalgamated Commercial Traders Limited* (supra) and *Madhusudan Gordhandas and Company* (supra), will apply and, therefore, I am of the considered view that it is not a fit case where action should be initiated for winding up of the Company. Instead, the petitioner company should take recourse to the remedy available in accordance to the common law and resorting to the procedure contemplated under section 434 of the Companies Act, is not warranted.

16- The power conferred on this Court for initiating an action for winding up under section 433(e) of the Companies Act is a discretionary power. Before exercising the said power, it is required to be proved from the material available on record that – (a) there is a debt; and, (b) that the respondent company is unable to pay the said debt. Even if these two conditions are satisfied, still the Court should be satisfied that a winding up order has to be passed. The company against whom the proceeding is prayed to be initiated should be shown to be commercially insolvent, its assets and liabilities are to be such that a reasonable apprehension can be made that it is insufficient to meet the existing liabilities. On the other hand, if a bonafide dispute regarding payment of debt is made out by the respondent company and the material available does not show that the company is financially insolvent or not in a position to pay the debt, the winding up petition should be dismissed.

17- In this regard, the principle laid down by the Supreme Court in the case of *Pradeshiya Industrial and Investment Corporation of UP Vs. North India Petro Chemical Limited,* (1994) 2 Company LJ 50 (SC), and the judgment of Delhi High Court in the case of *Hansa Industries Private Limited*

*Vs. MMTC Limited,* (2005) 124 Company Cases 314, may be taken note of.

18- The legal principles laid down in all these cases show that a winding up petition is not a legally approved means for recovery of certain dues nor is it be used to pressurize, coerce or enforce payment of a debt, which is bonafidely disputed by the respondent company. A winding up petition cannot be used as a substitute for a civil suit. If the company petition for winding up is filed with oblique motive and only to put pressure on the respondent company, the same should be dismissed. This is the principle of law laid down as it emerges on a complete reading of various judgments on the question. It is only when a legitimate claim is made out and the material available shows that the company is unable to pay the debts and its financial position is so precarious that it would not be able to meet the demand that action should be taken in a company petition else it is liable to be dismissed.

19- In the present case, except for contending that the debts are due, no material is adduced to show prima facie that the financial condition of the respondent company is such that it is unable to meet the demands of the petitioner company. The balance-sheet, financial status and other records are not produced to show the financial standing of the respondent company. That apart, when the statutory notice under section 434(1)(a) was issued, the respondent company had given its defence in detail as is evident from Annexure I, and they have raised a bonafide dispute in the said reply to the statutory notice. In the company petition and in the pleadings made, nothing is available to show as to how and on what basis the contention of the respondents in the said document i.e... Annexure I is incorrect or should be ignored. In the absence of material to show that the bonafide defence put up by the respondent is not prima facie tenable, it has to be held that a bonafide dispute with regard to payment arises, which cannot be adjudicated in a Company Petition.

20- The import of the statutory rule as laid down by the Supreme Court in the case of *Cotton Corporation of India Limited* (supra) and the earlier judgment of the Supreme Court in the case of *National Conduits (P) Limited Vs. S.S. Arora,* (1968) 1 SCR 430: AIR 1968 SC 279, hold that the Company Court rules provide sufficient inbuilt safeguard with regard to issuing notice and admitting a company petition and it ensures that harassment and blackmailing through such a petition is not resorted to. That being so, keeping in view the power conferred upon this Court in accordance to the statutory

rule, I am of the considered view that in the facts and circumstances of the case, it is not a fit case where notice should be issued to the respondent company and process initiated in accordance to the statutory provision. Prima facie the material available having not made out any case for winding up, it is a fit case where even without notice to the respondent company at the pre-admission stage itself, this Court can dismiss the application as the powers conferred on this Court under the rules framed under Part III of the Company Court Rules gives such a discretion.

21- Accordingly, finding no ground to interfere into the matter, the company petition stands dismissed.

*Petition dismissed.*

**I.L.R. [2012] M.P, 3038**
**APPELLATE CIVIL**
***Before Mr. Justice G.S. Solanki***
F.A.No. 221/1991 (Jabalpur) decided on 31 March, 2011

RADHESHYAM ...Appellant
Vs.
OMKARDAS & ors. ...Respondents

***Civil Procedure Code (5 of 1908), Section 96* - Suit for possession of the agricultural lands and houses for damages and permanent injunction - One Mahant was the guru of plaintiff and selected the plaintiff as 'Patt' disciple and successor of him and after selection plaintiff started managing the property - Mahant relinquished all his rights, interests and titles in favour of the plaintiff - Order of registration of Public Trust was not challenged within six months therefore, registration become final - Suit filed after 22 years, is barred by limitation - Held - Plaintiff is Sarvarakaar of the temple - Plaintiff managing the property - Property of the village Timarni ( lands and houses) which are not entered in the register of Trust, this property can be said to be the personal property of Mahant - Plaintiff is only Sarvarakaar & Vyavasthapak, hence, managing the property - Trial Court committed illegality is not appreciating the evidence on record in its proper perspective and declaring the plaintiff owner of disputed property - Appeal allowed. (Paras 30 & 31)**

*सिविल प्रक्रिया संहिता (1908 का 5), धारा 96* – कृषि भूमि व मकानों का

कब्जा नुकसानी तथा स्थाई व्यादेश हेतु वाद – एक महंत वादी का गुरू था और वादी का पट्ट शिष्य तथा अपना उत्तराधिकारी के रूप में चयन किया और चयन पश्चात् वादी सम्पत्ति का प्रबंधन करने लगा – महंत ने अपने सारे अधिकार, हित व हक वादी के पक्ष में त्याग दिये – लोक न्यास के पंजीयन के आदेश को छः माह के भीतर चुनौती नही दी गई इसलिए, पंजीयन अंतिम हो जाता है – वाद 22 वर्ष पश्चात् प्रस्तुत, परिसीमा द्वारा वर्जित – अभिनिर्धारित – वादी मंदिर का सर्वराकार है – वादी सम्पत्ति का प्रबंधन कर रहा है – तीमरनी गांव की सम्पत्ति (भूमि व मकान) जो न्यास के रजिस्टर में दर्ज नही है, उस सम्पत्ति को महंत की व्यक्तिगत सम्पत्ति कहा जा सकता है – वादी केवल सर्वराकार व व्यवस्थापक है, अतः सम्पत्ति का प्रबंधन कर रहा है – विचारण न्यायालय ने अभिलेख पर उपलब्ध साक्ष्य का उसके उचित परिप्रेक्ष्य में मूल्यांकन नहीं करके और वादी को विवादित सम्पत्ति का स्वामी घोषित करके, अवैधता कारित की – अपील मंजूर।

**Cases referred :**

2009 SAR (Civil) 1066, AIR 1995 SC 1768, (2005) 13 SCC 89, (2008) 4 SCC 102,

*Umesh Trivedi*, for the appellant/defendant.
*Avinash Zargar,* for the respondent No.1/plaintiff.
*P.C. Paliwal*, for the respondent No.2.
*Kamlesh Tamarkar*, P.L.for the State.

**JUDGMENT**

**G.S. Solanki, J.** - Being aggrieved by the judgment and decree dated 12/9/1991 passed by Additional District Judge to the Court of District Judge, Hoshangabad, sitting at Harda, in Civil Suit No. 26A/1977, appellant/defendant has preferred this appeal under Section 96 of the Code of Civil Procedure.

2. Plaintiff/Respondent No.1 filed a suit for possession of disputed agricultural lands and houses, for damages and permanent injunction. It is pleaded that late Mahant Shaligramdas was his Guru and was having agricultural lands and houses as mentioned in the schedule of the plaint. It is undisputed that Mahant Shaligramdas was died on 5.2.1977. It is also pleaded that on 10.6.1973 at Bhadugaon late Mahant Shaligramdas orally selected the plaintiff as 'Patt' disciple and successor of him and after selection plaintiff started managing the property. It is further pleaded that late Mahant Shaligramdas by an application dated 26.4.1976 relinquished all his rights, interests and titles in favour of the plaintiff, thereby he was declared successor of late Mahant Shaligramdas. This document was executed before the

witnesses. It is further pleaded that the application dated 26.4.1976 was filed before the Naib Tahsildar, Harda for recording the name of plaintiff as jointly in the Revenue Records and in this way during the life time of Mahant Shaligramdas, plaintiff started managing the properties as owner but after the death of Mahant Shaligramdas, defendant started interference and dispossessed him on 9.3.1977 and taken illegal possession of the property, therefore he filed the suit.

3. Case of appellant/defendant before the trial Court was that Mahant Shaligramdas did not have any personal property like agricultural lands or houses as pleaded by the respondent no.1/plaintiff. According to the defendant, all properties were the Trust property and belonging to the Trust, named as Ram Janki Mandir Public Trust, which was registered on 7.2.1955. It is further pleaded that Mahant Shaligramdas was a trustee and party to the proceedings for registration of the Public Trust. It is further pleaded that the order of registration of Trust was not challenged within six months, therefore, entries of registration become final. The suit filed after 22 years, is barred by limitation. It is denied that plaintiff was selected as disciple of Mahant Shaligramdas and pleaded that on 17.2.1977 all saints, Mahants, disciples and decided that till the Kumbh fare of Nashik, the Trust property will be managed jointly by Ayodhyadas, Padumdas, Omkardas, Radheshyam and Narsinghji. Ayodhyadas was made working Mahant. An agreement dated 17.2.1977 was written and signed by all concerned including respondent No.1/plaintiff Omkardas. It is also pleaded that respondent No.1/ plaintiff Omkardas was having a family, therefore, he was not entitled to be selected as Mahant. On the basis of aforesaid pleading, they pray for dismissal of the suit.

4. On the basis of pleadings of the parties, the Trial Court framed as many as nine issues and after appraisal of evidence on record, plaintiff's suit was decreed, and he was declared title holder of the property, mentioned in the schedule, appendix of the plaint and appellant/defendant is restrained from interfering in the property. Being aggrieved appellant filed this appeal.

5. During pendency of this appeal, respondent No.1/plaintiff filed IA No.3279/2005, an application under Order 6 Rule 17 of the Code of Civil Procedure, for amendment of the plaint. It was directed that the same shall be considered at the time of final hearing of the appeal. Therefore, first of all I have to consider IA No. 3279/2005, an application under Order 6 Rule 17 of CPC.

6. Respondent No.1/plaintiff pleaded that during the course of argument it is found that there are certain discrepancies in regard to particulars of properties mentioned in Schedule-A appended with the plaint and documents which have been produced and proved by the plaintiff during trial, therefore, in order to avoid controversy, application for proposed amendment is filed with pleading that proposed amendment is necessary for a fair and complete adjudication of the controversy between the parties. It is further pleaded that no prejudice would be caused to the appellant/defendant.

7. In reply, appellant/defendant denied the averment of application and pleaded that proposed amendment is not permissible after twenty two years. It is also pleaded that due to proposed amendment subject matter of the suit will be changed, therefore, he prays for dismissal of the application.

8. During the course of final argument, it was contended by the learned counsel for the appellant/defendant that if the subject matter of the suit be changed, such amendment cannot be allowed. He relied on (*M/s Revajeetu Builders & Developers Vs. M/s Narayanaswamy & Sons & others*), 2009 SAR (Civil) 1066 and (*K.Raheja Constructions Ltd. Vs. Alliance Ministries and others*), AIR 1995 SC 1768.

9. On the contrary, learned counsel for the respondent/plaintiff submitted that proposed amendment is only to correct the description of suit property which was written incorrectly/wrongly by typing mistake. He further submitted that proposed amendment is necessary to bring real question in controversy between the parties. He relied on (*Sajjan Kumar Vs. Ram Kishan*), (2005) 13 SCC 89 and (*Puran Ram Vs. Bhaguram and another*), (2008) 4 SCC 102.

10. I have perused the pleadings of the plaint, written statements and Schedule appended to the plaint.

11. The identity of the properties was well known to both the parties except areas mentioned in the schedule appended with the plaint. Respondent / plaintiff seeking permission to amend the areas and some numbers which were incorrectly/wrongly typed by mistake.

12. It is well settled principle of law that the description of the land if incorrectly pleaded in the plaint and both parties were aware about the area and identity of the properties then such amendment should be allowed because

same is necessary to bring the real question in controversy between the parties and if such amendment will refuse, it will create complications at the stage of execution in the event of success of plaintiff in the suit. In these circumstances, I am of the considered view that by proposed amendment nature of suit will not be changed and new cause of action is not substituted, therefore, principle laid down in the case of *M/s Revajeetu Builders & Developers Vs.M/s Narayanaswamy & Sons & others* (supra) is not applicable to the facts of instant case. Therefore, amendment application is allowed and respondent/ plaintiff is permitted to amend schedule appended with the plaint and this appeal is considered, assuming the amended schedule.

13. Now, I have to consider main controversy between the parties. Learned counsel for the appellant submitted that the trial Court committed illegality, in holding that plaintiff will be the successor of Mahant Shaligramdas on the basis of so called Will dated 26.4.1976. He further submitted that the document dated 26.4.1976 is merely application filed for mutation and it cannot be said to be a Will, therefore, he prays for setting aside the judgment and decree passed by the trial Court.

14. On the other hand, learned counsel appearing on behalf of respondent No.1/plaintiff submitted that Mahant Shaligramdas was holding private property which was other than the Trust property. He further submitted that respondent No.1/plaintiff was declared successor of Mahant Shaligramdas by executing the Will dated 26.4.1976, therefore, there is no illegality committed by the trial Court in passing the impugned judgment.

15. I have perused the impugned judgment, evidence and other material on record.

16. Respondent No.1/plaintiff Omkardas (PW1) deposed that Mahant Shaligramdas was his Guru. He further deposed that on 10.6.1973 Mahant Shaligramdas made him his pupil by performing Panch-Sanskar including janeu Sanskar which was performed by Pandit Narmada Prasad Shukl (PW7). Pt. Narmada Prasad Shukl (PW7) corroborated this fact. Other plaintiff's witness Kunjilal (PW8) fairly deposed in para-1 that at the time of ceremony Mahant Shaligramdas told them that he become old aged, therefore, he is making the respondent No.1/plaintiff Omkardas as Sarvarakaar of the temple (mandir). He further deposed that consequently a document Ex.P/5 was executed by Mahant Shaligramdas.

17. Plaintiff Omkardas further claimed that Mahant Shaligramdas after declaring him his successor, filed an application on 26.4.1976 before Tahsildar Harda and Seoni-Malwa for mutation of the plaintiff's name in the Revenue Records. He further claimed that there was one more statement of Shaligramdas deposed in the Court of Naib Tahsildar regarding transfer of license of a gun (Ex.P/4). He further claimed that he was authorised to plead and contest the cases on behalf of Shaligramdas, therefore, he filed an affidavit Ex.P/1 before competent authority (Sub Divisional Magistrate).

18. On the basis of aforesaid documents, he deposed that he was managing the property of Mahant Shaligramdas as owner thereof. He admitted in para-24 of his statement that an agreement Ex.P/5 was executed in his favour but he denied his previous statement Ex.D/6, which was in relation to declaration of successor.

19. According to plaintiff Omkardas, (Ex.P/25) was an application as well as Will executed by Shaligramdas. He admitted in his cross-examination in para-76 that this was typed by Rajendra Khale and Khasra number was written by him on the instructions of Mahant Shaligramdas. He further admitted that the original of this application was filed in the suit, pending before the Civil Judge, Class-II Harda. He further admitted that there is overwriting on the word *'Sarvarakaar & Vyavasthapak'*.

20. Plaintiff Omkardas was recalled on 20.6.1991 and had deposed that he was declared as "Mahant" in place of 'Mahant Shaligramdas' in September, 1979 on the eve of occasion of Kumbh at Nashik and defendant handed over the possession of the disputed property in the year 1983 and since then he managing the disputed property and enjoying the fruits of the same.

21. Narayanrao Choure (PW5) and Radhakrishn (PW6) are the witnesses of the document Ex.P/25. Both of them deposed that Mahant Shaligramdas was in a sound condition and executed this disputed document Ex.P/25 and signed before them. They admitted in their cross-examinations that Mahant Shaligramdas was aged about 100 years. Narayanrao Choure admitted in his cross-examination in para-6 that at the time when something was written by ink he was not present there. Both witnesses admitted that 4-5 copies of Ex.P/25 were prepared and there were difference in regard to Khasra numbers written in two documents.

22. On careful examination of Ex.P/25, it reveals that it is mere an

application of mutation prepared for filing before Tahsildar, Harda/Seoni-Malwa, for adding the name of plaintiff Omkardas alongwith Mahant Shaligramdas, as manager/holder and Sarvarakaar of the lands mentioned in the application. It is very unnatural that such type of application bears two attesting witnesses. There was no need of attesting witnesses for application of mutation. This fact goes against the plaintiff who is propounder of so called Will of Saligramdas. When we considered Ex.P/6, previous statement of plaintiff and other circumstances alongwith the statements of attesting witnesses Narayanrao Choure (PW5) and Radhakrishn (PW6), both of them appear to be unreliable. Their statements are self-contradictory in regard to the document Ex.P/25.

23. When I examined the contents of this application in the light of facts admitted by the plaintiff in his cross-examination, it reveals that 4-5 copies of same document were prepared and plaintiff himself entered the khasra numbers in blank places. He admitted that the application which was filed before the Civil Judge, Class-II in Civil Suit No. 54A/1977, Omkardas Vs. Ashok Kumar, has cutting and over writing/manipulations on the words of *'Sarvarakaar & Vyavasthapak'*. Therefore, it shows that plaintiff manipulated the said document according to his Will.

24. On careful scanning of Ex.P/25, it also reveals that on the same application at 'D to D' written word as: "was given to Patwari on 4.10.1976", shows that this document was given to Halka Patwari. In these circumstances, concerned Patwari was an important witness, who could explain the circumstances that when he received this application, same was bearing the attesting witnesses or not. Firstly it cannot be said that this document was written as a Will, by Mahant Shaligramdas. Secondly, on the basis of this document it appears only that Shaligramdas was intended to make Sarvarakaar by adding plaintiff's in the Revenue Records for managing the whole properties as Sarvarakaar/manager/holder, in these circumstances, the trial Court committed illegality in recording the finding in regard to the fact that Mahant Shaligramdas executed a Will in favour of plaintiff Omkardas. Same thing is reflected in Ex.P/4, which is a statement of Shaligramdas before Naib Tahsildar in regard to transfer of license of gun and Ex.P/5, an agreement, in the name of plaintiff Omkardas. From all above mentioned documents, only one inference can be drawn that the intention of Mahant Shaligramdas was to make plaintiff only Sarvarakaar alongwith him, to look after the properties.

25. In the impugned judgment in para-47, the trial Court observed on the basis of additional evidence of plaintiff himself that plaintiff was made a Mahant of the Trust Ram Janki Mandir by order dated 24.7.1985 and this fact was entered in the register of the Trust, but I am of the considered view that to become a Mahant, of a Trust in place of Mahant Shaligramdas is a different matter, then to become a successor of Shaligramdas. In these circumstances, plaintiff may be a Mahant of a Trust and he has right to manage the disputed property alongwith the property of the Trust but at the same time it cannot be said that he is the owner of the disputed property.

26. No doubt from the evidence on record, it is proved that the property of Timarni was gifted by one Ramdas to Mahant Shaligramdas by executing the gift deed Ex.P/6 and same is not included in the list of Trust property Ex.D/10. In this way, the property of Timarni including lands and houses and Temple of God Laxmi Narayan was personal property of Mahant Shaligramdas.

27. In regard to property of village Gangia measuring 26-24 acres out of Khasra Nos. 2 and 17, plaintiff pleaded that this property was wrongly entered in the register of Public Trust Ram Janki Mandir. It was the personal property of Mahant Shaligramdas which he purchased by Kol Patta Ex.P/26. But this property was entered in the register of Trust during the life time of Shaligramdas. He had not objected against the same during his life time. This fact find further supported by the statement of Radheshyam/defendant No.3, who filed Ex.D/10, certified copy of Ram Janki Public Trust and deposed that property of Gangia is registered in the name of Ram Janki Temple. He also filed the receipts of Revenue Books Ex.D/13 and Ex.D/14.

28. On perusal of aforesaid revenue record clubbed with the fact that if Saligramdas was interested in maintaining the property of village Gangia, as his personal property, then he could have been objected this fact and the register of public property could have been amended.

29. On the contrary, from the conduct of late Saligramdas reveals that he was of the view that property which he earned or received during his life time will also be remained with the property of Trust of Ram Janki Temple and same would be used for the purpose of welfare of temple and for expenditure of pilgrims and disciples of deity. In these circumstances, the property of Gangia cannot be said to be the personal property of Mahant Shaligramdas.

30. Only property of the village Timarni, (lands and houses) which are not entered in the register of Trust, this property can be said to be the personal property of Mahant Shaligramdas but as discussed hereinabove plaintiff is not the owner thereof. He is only a *Sarvarakaar & Vyavasthapak,* In this way, the plaintiff is entitled to manage the land, house and properties of village Timarni alongwith the property of trust:

31. In these circumstances, the Trial Court committed illegality in not appreciating the evidence on record in its proper perspective and declaring the plaintiff Onkardas, owner of disputed property.

32. Thus, the appeal is allowed. Judgment and decree passed by the trial Court is hereby set aside.

33. The respondents shall bear their own costs and cost of the appellant.

34. Counsel fees as per schedule or as per certificate (whichever is less).

35. Decree be drawn accordingly.

*Appeal allowed.*

**I.L.R. [2012] M.P, 3046**
**APPELLATE CIVIL**
***Before Mr. Justice A.K. Shrivastava & Mr. Justice J.K. Maheshwari***
F.A.No. 597/2006 (Indore) decided on 17 April, 2012

SANTOSHDEVI (SMT.) & ors. ...Appellants
Vs.
STATE OF M.P. & ors. ...Respondents

*A. Torts - Actionable Negligence* - **Well situated in the Mandi premises was covered with slab - Meeting was convened by Mandi Samiti upon the said covered well - Stone slabs fell down resulting in death of several persons on account of drowning - Mandi Samiti was having domain, control as well as possession over the entire area of Mandi Samiti - No notice was displayed nearby the area that covered area of well should not be used for access or to sit or to convene any meeting - Action of Mandi Samiti comes within the definition of actionable negligence - Principle of strict liability applies to Municipality also - Matter remanded back for deciding the suits and for assessing the compensation. (Paras 18 to 25)**

*क. अपकृत्य – अनुयोज्य उपेक्षा* – मंडी परिसर में स्थित कुंआ स्लैब से ढका था – उक्त ढके हुए कुंए पर मंडी समिति द्वारा मीटिंग बुलाई गई – पत्थर के स्लैब गिर गये जिसके परिणामस्वरूप डूबने से कई लोगों की जाने गई – मंडी समिति के संपूर्ण क्षेत्र पर मंडी समिति का अधिकार, नियंत्रण तथा कब्जा था – क्षेत्र के आसपास कोई सूचना प्रदर्शित नहीं की गई थी कि कुंए के ढके हुए क्षेत्र का उपयोग प्रवेश हेतु या बैठने के लिए या कोई मीटिंग करने के लिए नहीं किया जाए – मंडी समिति की कार्यवाही, अनुयोज्य उपेक्षा की परिभाषा के अंतर्गत आती है – सम्यक् दायित्व का सिद्धांत, नगरपालिका को भी लागू होता है – वाद का विनिश्चय करने हेतु तथा प्रतिकर का निर्धारण करने हेतु मामला प्रतिप्रेषित।

***B. Torts - Negligence* - Defined.** **(Para 20)**

*ख. अपकृत्य – उपेक्षा* – परिभाषित।

**Cases referred :**

(2008) 9 SCC 527, AIR 1987 SC 1086, 1994 ACJ 902, AIR 1967 SC 1750, AIR 1964 SC 1425, 1997(1) MPLJ 565, 1991 MPJR 361, 1991 MPJR 157.

*Sameer Athawale*, for the appellants.
*C.S. Ujjainia*, P.L. for the respondent No.1.
*Pranav Mandhaniya*, for the respondent No.2.
*V.K. Jain & Vaibhav Jain*, for the respondent No.3.

**ORDER**

The Order of the court was delivered by :

**A.K. Shrivastava, J.** - The judgment passed in this appeal shall also govern the disposal of connected First Appeal No.598/2006 (*Smt. Anita and others Vs. State of M.P. And others*); F.A. No.596/2006 (*Kamal Saxena Vs. State of M.P. and others*); F.A. No.600/2006 (*Ushadevi Vs. Krishi Upaj Mandi Samiti, Neemuch and others.*); F.A. No.601/2006 (*Ritadevi and another Vs. State of M.P. and others*) since all these appeals have arisen out of common judgment passed by the Trial Court.

2. Feeling aggrieved by the judgment and decree dated 11.5.2004 passed by the learned District Judge, Neemuch in Civil Suit No.45-B/2002 dismissing the suit, the plaintiffs have filed the present appeal.

3. First Appeal No.598/2006 has been filed against the judgment and decree dated 11.5.2004 passed by the learned District Judge, Neemuch in

Civil Suit No.39-B/2002 (Smt. *Anita and others Vs. State of M.P. and others*) dismissing the suit of plaintiffs. First Appeal No.596/2006 has been filed against the judgment and decree dated 11.5.2004 passed by the learned District Judge, Neemuch in Civil Suit No.40-B/2002 (*Smt. Kamal Saxena Vs. State of M.P. and others*) dismissing the suit of plaintiffs. First Appeal No.600/2006 has been filed against the judgment and decree dated 11.5.2004 passed by the learned District Judge, Neemuch in Civil Suit No.57-B/2002 (*Smt. Usha Devi Vs. Krishi Upaj Mandi Samiti and others*) dismissing the suit of plaintiffs. First Appeal No.601/2006 has been filed against the judgment and decree dated 11.5.2004 passed by the learned District Judge, Neemuch in Civil Suit No.41-B/2002 (*Smt. Rita Devi and another Vs. State of M.P. and others*) dismissing the suit of plaintiffs.

4. In the aforesaid civil suits the plaintiffs are different but the defendants are the same and point in dispute is also the same, hence the learned Trial Court decided all the aforesaid civil suits by a common judgment by dismissing all the suits. By this common judgment all the aforesaid appeals as well as civil suits are being decided.

5. A suit for compensation has been filed by the plaintiffs arraying the State of Madhya Pradesh, Krishi Upaj Mandi Samiti, Neemuch (hereinafter referred to as 'the Mandi Samiti') and Municipal Council, Neemuch as defendants. According to the plaintiffs there is a Well in the premises of the defendant Mandi Samiti having 50 feet depth. The said Well was acquisitioned by the defendant Municipal Council, Neemuch and under control of these two defendants for last 4-5 years from the date of filing of the suit which was filed on 11.10.2001. In order to prevent the water from pollution, by inserting the Gardars upon it and by laying stone slabs the Well was covered. On 6/9/2000 at 3.00 p.m. a meeting was convened by the defendant Mandi Samiti upon the impugned covered Well. According to the plaintiffs, the material used to cover up the Well was of inferior quality as a result of which when several persons assembled there to hold the meeting, all of a sudden the stone slabs were fallen down resulting into the death of several persons on account of drowning. The injured persons were taken out from the Well with the assistance of local administration but anyhow seven persons could not be saved and they died on account of drowning. The husband of the first plaintiff and the father of second, third and fourth plaintiffs Om Prakash had died in the said accident on account of drowning. The age of the deceased Om Prakash was 38 years and he was the sole bread earner of the plaintiffs. The deceased was serving

on the post of Accountant in Firm M/s Jai Mata Dee Traders, Neemuch and was drawing salary of Rs. 3000/-per month. Hence a suit for compensation to the tune of Rs.5.00 lacs has been filed by the plaintiffs. Similarly other suits were also filed.

6. Further it has been specifically pleaded by the plaintiffs that the covered place covering the Well was not to be used to hold any meeting and there was no indication nearby it that the said place should not be used for sitting purposes and, therefore the defendant Mandi Samiti and Municipality, Neemuch were negligent and hence decree of compensation be passed against them. According to the plaintiffs, the State of Madhya Pradesh is also vicariously liable to pay the compensation and hence it has been prayed that by passing a joint and several decree the suit of plaintiffs be decreed.

7. Each of the defendants filed their separate written statement. According to the defendant Mandi Samiti, the Well in question was under the control and was being looked after by the Municipality. The Well in question was also covered by the Municipality and it was not at all related to the Mandi Samiti and therefore the defendant Mandi Samiti is not liable to pay any compensation. It has also been pleaded by the Mandi Samiti in the written statement that construction of covering the Well was carried out by the defendant Municipality and therefore for this additional reason also no liability can be fastened upon the Mandi Samiti. In special plea, a plea of limitation has also been raised.

8. In the written statement filed by defendant No.3 Municipality it has been specifically pleaded that the Well in question was never acquisitioned by the Municipality nor it was in the control of the said Municipality. The defendant - Mandi Samiti is the owner of the impugned Well and they are also having possession over the same. The factum of construction to cover the well by the defendant Municipality has been denied. Hence it has been prayed that no liability can be fastened upon the Municipality and the suit be dismissed against it.

9. The learned Trial Court framed necessary issues and after recording the evidence dismissed all the suits. In this manner this appeal and connected first appeals have been filed by the plaintiffs.

10. The contention of Mr. Sameer Athawale, learned counsel for the appellants is that according to the pleadings, oral and documentary evidence placed on record it is proved that the construction to cover up the impugned

Well was carried out by the defendant Municipality. But, despite it was covered, the said place was not required to be used for sitting or access or convening a meeting of Mandi Samiti and the people ought not to have assembled at that place because on account of huge gathering the cover part could not bear the weight of several persons and, therefore, if it had fallen down resulting into the death of the sole bread earner of the plaintiffs, certainly the defendants are jointly and severally liable to pay the compensation.

11. The second submission of learned counsel for the appellants is that there was no indication mark that beneath the covered place there is a Well and it should not be used for access or to sit or to hold any meeting etc. and, therefore the action of Mandi Samiti holding a meeting at the impugned place i.e. the covered place of the Well was hazardous and hence, the defendants are liable to pay the compensation. In support of the contention, learned counsel for the appellants has placed reliance on *Union of India Vs Prabhakaran Vijay Kumar and others* (2008) 9 SCC 527 and the Constitution Bench decision of Supreme Court in the case of *M.C. Mehta and another vs. Union of India and others*, AIR 1987 SC 1086. Two more decisions of the Supreme Court *Jai Laxmi Salt Works (P) Ltd. Vs. State of Gujarat,* 1994 ACJ 902 and *Municipal Corporation of Delhi Vs. Subhagwanti and others,* AIR 1967 SC 1750 have been placed reliance by the learned counsel for the appellant.

12. On the other hand Shri Pranav Mandhaniya, learned counsel appearing on behalf of the respondent No.2 Mandi Samiti submits that although the Well in question was in the Mandi premises but the control is of defendant Municipality and it was for the Municipality not to allow to hold any meeting and further it was the duty of the Municipality to put necessary notice that the impugned Well should not be used for access or to sit or to convene any meeting etc. It has also been put forth by learned counsel that since the material to cover up the Well was of inferior quality hence the Municipality is responsible to pay the compensation.

13. Mr. V.K.Jain and Mr. Vaibhav Jain, Learned counsel appearing for the Municipality submitted that the construction work was not carried out by the Municipality, in fact, on account of supersession of the Mandi Samiti and the Municipality, the administrator of the Municipality was one is the same who took over the charge of the Mandi Samiti and a decision was taken to cover up the Well in order to protect the water from pollution and dust and

other hazardous substance which may fall in the Well and simply the Municipality carried out the work to cover up the Well and nothing more. Indeed the meeting was convened by the Mandi Samiti and, therefore the defendant Municipality is not at all liable to pay any compensation.

14. Learned counsel for the defendant-Municipality further contended that although the statutory notice was sent and served upon the Municipality, but the suit was not filed within eight months from the date of the accrual of alleged cause of action and, therefore, the suit is barred by time as envisaged under Section 319 of the Municipalities Act, 1961.

15. It has further been propounded by learned counsel for the Municipality that although certain issues were decided against the defendant Municipality but since the suit was dismissed in its entirety, those findings can be challenged by the respondent Municipality and in this context the learned counsel has placed reliance on the decision of Supreme Court in the case of *Virdhachalam Pillai Vs. Chaldean Syrian Bank Ltd., Trichur and another*, AIR 1964 SC 1425 which has been relied by the Single Bench of this Court in the case of *Ram Charan Singh Vs. Brij Bhushan Pandey and others,* 1997 (1) MPLJ 565. Learned counsel has also placed reliance on another decisions of this Court in the case of *Bhagwandas Pawaiya Vs. Regd. Firm Kailash Narain & Bros.,* 1991 MPJR (1) 361 and *Fatimabai Vs. Jenuddin* 1991 MPJR 157 in this regard. Hence it has been prayed that the suit be dismissed against the defendant Municipality.

16. Learned Panel Lawyer for the State has argued in support of the impugned judgment and submitted that no liability can be fastened upon the State of Madhya Pradesh because the State has not done anything and hence the suit has rightly been dismissed against the State.

17. Having heard learned counsel for the parties, we are of the considered view that this appeal deserves to be allowed but only against defendant Mandi Samiti.

18. Admittedly the Well in question is situated in an area which is part of Mandi Samiti and thus for all practical purposes the defendant Mandi Samiti was having domain over that area and was also in possession over the entire land including the area upon which the impugned Well was constructed and was covered up. However, we are not at all impressed by the submission of learned counsel for the defendants Municipality that the construction work to

cover up the impugned well was not carried out by the Municipality. A bare perusal of Ex.D-2 which is the note-sheet dated 14.6.1994 of the Municipality Neemuch, it is gathered that in order to protect the Well situated in the Mandi premises from the garbage, dust etc. so that the water of the Well does not get polluted, it was decided to raise a boundary well having 1½ ft. around the well. Thereafter there is a further note sheet that the said Well should be covered also and on going through the document Ex.D/2 in its entirety, it is gathered that necessary construction work to cover up the impugned Well situated in the premises of Mandi Samiti was carried out by Municipality only, therefore according to us although the stand of defendant Municipality is that the work to cover up the Well was not carried out by it but it has been proved from their own document Ex. D/2 and therefore we have no scintilla of doubt to hold that the entire work to cover up the Well situated in the Mandi Samiti was carried out by the Municipality.

19. However, we find some substance in the submission of learned counsel for the Municipality that the Municipality only constructed necessary construction to cover up the Well to protect from pollution and dust and nothing more. According to us, merely because the necessary construction to cover up the impugned Well was carried out by the Municipality would not mean that any liability to pay the compensation can be fastened on them. The impugned Well and the land upon which the Well has been construction is within the Mandi Samiti premises and, therefore according to us the Mandi Samiti was having domain, control as well as possession over the entire area of the Mandi Samiti including the land on which the impugned Well is situated. Merely because the Well was covered up by the Municipality would not mean that the Mandi Samiti was permitted to use that place for access or to allow the persons to sit on that place. Indeed, the Mandi Samiti should not have convened a meeting on the covered area of the Well because they were fully aware that beneath the covered area 50' ft. depth Well is there and, therefore, according to us the act of the Mandi Samiti convening a meeting over the place of covered Well was hazardous and amounts to negligence.

20. According to us negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. [*See Ratanlal & Dhirajlal, The Law of Torts,* 26th Edition 2010, page 474].

21. It is proved from the pleadings and the evidence placed on record rather it is an admitted fact that the meeting was convened by the Mandi Samiti over the covered Well which was not at all permissible. The Mandi Samiti and its office bearers were fully aware that the Well is only covered so as to protect the water from the pollution. It has been proved from the evidence and learned counsel for the defendant Mandi Samiti could not point out that any notice was displayed nearby the area that the covered area of the Well should not be used for access or to sit or to convene any meeting. Surprisingly knowing this fact that beneath the covered portion the Well is in existence, the Mandi Samiti has convened a meeting and that too at that particular hazardous place only and therefore the action of Mandi Samiti comes within the definition of "actionable negligence". According to us the actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. [*See Ratanlal & Dhirajlal, The Law of Torts,* 26th Edition 2010, page 474].

22. According to Winfield, "negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff'. The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty (2) Breach of the said duty; and (3) consequential damage. [See Ratanlal & Dhirajlal, The Law of Torts, 26th Edition 2010, Page 474].

23. According to us, the negligent act of Mandi Samiti by convening a meeting at the hazardous place where several persons assembled there and they were not knowing that it is not a place to sit or to hold any meeting because no notice etc. in that regard was displayed at that place, therefore the deceased persons cannot in any manner be said to be negligent. The office bearers of Mandi Samiti were fully aware that if a meeting is convened at the hazardous place covering the Well there are possibilities to harm the others and if that would be the position the law has to treat them as liable on the term of injuring the public against injury irrespective of who was at fault. The principle of strict liability applies in the present case against the defendant Municipality and therefore according to the decision of the Supreme Court *Prabhakaran Vijaya Kumar* (supra) placed reliance by the learned counsel for the appellant is fully applicable and paras 20 to 23, 27, 31, 37 and 38 of the said decision are fully applicable in the present case. We may also profitably

place reliance on the decision of Constitution Bench of Apex Court in the case of *M.C. Mehta* (Supra) which has also been relied upon in the case of *Prabhakaran Vijaya Kumar* (supra). The other two decisions of Supreme Court in the case of *Jai Laxmi Salt Works* (P) Ltd. (supra) and Subhagwanti (supra) are also squarely applicable in the present case.

24. For the reasons stated herein above, we are unable to uphold the impugned judgment passed by the learned Trial Court dismissing the suit of plaintiffs. The impugned judgment and decree passed by the Trial Court is hereby set aside and the case is sent back to the Trial Court to decide the amount of compensation in each suit and pass a decree accordingly, since this exercise has not at all been done while dismissing the suit.

25. Since the suit is quite old, the parties are hereby directed to appear before the learned Trial Court on 14th May 2012 and no separate notice shall be issued to either parties for the date of hearing. The Trial Court is directed to decide the suits and to assess the compensation on or before 1St October 2012. The Principal Registrar of this Bench is directed to send the record posthaste so as to reach the Trial Court much prior to 14th May, 2012.

26. Resultantly, this appeal is hereby allowed with cost. Counsel fee according to the schedule if pre-certified.

*Appeal allowed.*

**I.L.R. [2012] M.P, 3054**
**APPELLATE CIVIL**
***Before Mr. Justice A.K. Shrivastava***
M.A.No. 504/2009 (Jabalpur) decided on 21 August, 2012

RAMESH CHANDRA ...Appellant
Vs.
MAHENDRA KUMAR SAHU & anr. ...Respondents

***Succession Act (39 of 1925), Sections 281 & 276 - Verification of petition of probate* - Provisions of Section 281 are Directory and not Mandatory - It is not necessary on the part of the applicant who files application to get probate to get the application verified by the attesting witness to the Will. (Paras 8 to 11)**

*उत्तराधिकार अधिनियम (1925 का 39), धाराएं 281 व 276 – प्रोबेट याचिका का सत्यापन* – धारा 281 के उपबंध निदेशात्मक है न कि आज्ञापक – प्रोबेट प्राप्त

करने हेतु आवेदन प्रस्तुत करने वाले आवेदक की ओर से यह आवश्यक नहीं कि आवेदन को वसीयत के, अनुप्रमाणक साक्षी द्वारा सत्यापन करवाये।

**Cases referred :**

1923 Nagpur 41, 1996 MPLJ 113, 1997(2) MPWN 230.

*Adil Usmani,* for the appellant.
None for the respondents.

**ORDER**

**A.K. Shrivastava, J.** - This appeal under Section 384 of Indian Succession Act, 1925 (for short the Succession Act) has been filed by the appellant assailing the impugned order dated 31.10.2008 whereby his application under Section 276 for grant of probate of the Will has been rejected by the Court below.

2. The facts leading for the disposal of this appeal lie in a narrow compass. Suffice it to say that an application under Section 276 of the Succession Act was submitted by the applicant/appellant stating therein that Ramdayal who was his maternal uncle had died on 14.4.1994 and before his death a Will was executed by him in favour of the appellant namely Ramesh Chandra but the respondents are denying the execution of the Will and hence he filed an application under Section 276 of the Succession Act for grant of probate to him.

3. The first respondent namely Mahendra Kumar Sahu did not appear in the court below despite he was served. However, respondent no.2 Balchand Sahu by filing written reply refuted the averements made in the application of the grant of probate and prayed that the Will is forged, fabricated and concocted document and hence the appellant is not entitled for any probate.

4. The learned Court below framed necessary issues and after recording the evidence of the parties gave a categorical finding in para 30 that the Will (Ex. A/1) is a forged document, has not been proved by the respondents. On the other hand it is proved that a valid Will was executed by the testator in favour of the appellant and issue 3(A) was decided in affirmative in favour of the appellant while issues 3(B) and (C) were decided in negative against the respondents. However, the learned Court below dismissed the application of the appellant simply on the ground that verification was not made by the witness to the Will in terms of Section 281 of the Succession Act.

5. In this manner, this appeal has been filed by the appellant. The contention of Shri Adil Usmani, learned counsel for the appellant is that the aforesaid clause made in Section 281 is only directory and not mandatory and if that would be the position, merely on this technical ground the application of the grant of probate which has been otherwise found to be proved by the Court below ought not to have been dismissed.

6. No one appeared on behalf of the respondents despite they were served. Indeed, respondent no.1 did not appear even in the Court below.

7. Having heard learned counsel for the appellant and after perusing the record, I am of the view that this appeal deserves to be allowed.

8. Undisputedly, an application under Section 276 of the Succession Act was submitted by the appellant to obtain a probate . While adjudicating the said application, learned Court below decided Issue no.3(A) in affirmative in favour of the appellant holding that a valid Will has been executed by the testator in his favour and issues 3(B) and (C) have been decided against the respondents holding that the Will is fabricated is not at all proved. The Court below further held that because the testator had died issueless, the property would vest in Ramesh Chandra on account of a Will (Ex. A1) executed in his favour. Thus, the execution and attestation of the Will in favour of the appellant has been duly proved and despite Balchand has been served in this appeal he has not challenged the issues decided against him by filing any cross objection and in this manner, the findings arrived at by the Court below against him has attained finality.

9. On bare perusal of Section 281 of the Succession Act, this Court finds that a verification has to be made atleast by one of the attesting witness to the Will (when procurable) in the manner or to the effect as prescribed in the Section. It would be profitable to quote the entire Section 281 of the Succession Act which reads thus:-

> "281. Verification of petition for probate, by one witness to the Will.- Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable) in the manner or to the effect following, namely:
>
> "I (C.D.), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I

was present and saw the said testator affix his signature (or mark) thereto (or that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."

By putting emphasis upon the words "when procurable", this Court is of the view that the word "shall" which has been used in this Section would not mean that the provision contained in this Section is mandatory and it was mandatory on the part of the applicant who files application to obtain probate to get the application verified in terms of Section 281 by the attesting witness to the Will. According to me, it is only directory for the simple reason that if it would have been mandatory certainly the witness would not have verified the application of probate if he had died before filing the application by the applicant to obtain probate under Section 276 of the Succession Act. Thus, I have no scintilla of doubt in holding that the term "shall" which is used in this Section is only directory, otherwise within bracket the term "when procurable" would not have been enacted. Near about ninety years ago, the Judicial Commissioner of Nagpur in *Ramasinha Rajput Vs. Murtibai* 1923 Nagpur 41 has taken this view which still holds the field since this decision has been relied twice by this Court, firstly in *Jamunabai and others Vs. Surendrakumar and another* 1996 M.P.L.J. 113 and secondly in *Chhedilal Vs. Chukkho Bai* 1997 (2) M.P.W.N. 230.

10. According to me, if the Court while deciding the application was of the view that the application for the grant of probate should have been verified by the attesting witness, the Court should have directed the applicant to get the verification made upon the application. But by adopting a hyper-technical view particularly when Section 281 is not mandatory and is only directory, the application of probate which was otherwise found to be proved by the Court below should not have been dismissed.

11. For the reasons stated hereinabove, this appeal is allowed. The impugned order so far as it relates to dismissal of the application on account of non verification of the application of probate filed under Section 276 of the Succession Act is hereby set aside. Rest part of the order is hereby affirmed. The learned Court below shall now issue probate to the appellant. Since nobody has come to oppose the appeal, the appellant is hereby directed to bear his own costs.

*Appeal allowed.*

**I.L.R. [2012] M.P, 3058**
**APPELLATE CIVIL**
***Before Mr. Justice Brij Kishore Dube***
M.A.No. 407/2011 (Gwalior) decided on 16 October, 2012

POP SINGH & ors. ...Appellants
Vs.
RAM SINGH & ors. ...Respondents

*A. Limitation Act (36 of 1963), Section 5, Civil Procedure Code (5 of 1908), Order 41 Rule 3-A - Application for condonation of delay* - **The Appellate Court in view of peculiar facts, decided to decide the application for condonation of delay along with appeal - However, application for condonation of delay was decided first before passing judgment - No interference called for. (Paras 9 & 10)**

*क. परिसीमा अधिनियम (1963 का 36), धारा 5, सिविल प्रक्रिया संहिता (1908 का 5) आदेश 41 नियम 3–ए – विलम्ब की माफी के लिए आवेदन* – अपीली न्यायालय ने विशिष्ट तथ्यों को दृष्टिगत रखते हुए विलम्ब के लिए माफी के आवेदन का विनिश्चय अपील के साथ करने का निर्णय लिया – किन्तु विलम्ब के लिए माफी के आवेदन का विनिश्चय, निर्णय पारित करने से पहले किया गया – किसी हस्तक्षेप की आवश्यकता नहीं।

*B. Limitation Act (36 of 1963), Section 5 - Sufficient Cause* - **Sufficient cause should receive a liberal construction - Decree was passed on 06.12.1985 - Application for mutation was filed in the year 2009 - After receipt of notice for mutation, appellants applied for certified copy of judgment and decree - Period of limitation would start from the date of knowledge and not from the date of judgment and decree. (Para 11)**

*ख. परिसीमा अधिनियम (1963 का 36), धारा 5 – पर्याप्त कारण* – पर्याप्त कारण का उदार अर्थान्वयन किया जाना चाहिए – डिक्री 06.12.1985 को पारित – नामांतरण हेतु आवेदन वर्ष 2009 में प्रस्तुत किया गया – नामांतरण हेतु नोटिस प्राप्ति के पश्चात्, अपीलार्थीगण ने निर्णय व डिक्री की प्रमाणित प्रतिलिपी के लिए आवेदन किया – परिसीमा की अवधि, ज्ञात होने की तिथि से आरंभ होगी और न कि निर्णय व डिक्री की तिथि से।

*C. Civil Procedure Code (5 of 1908), Section 96 - Remand of Case* - **Appellants alleged that no notice of suit was served and they never appeared nor filed any written statement - Written Statement was not verified - Defendant no. 3 was minor but no guardian was**

**appointed on his behalf by the Court - Remand of case proper.**

**(Para 17)**

*ग. सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – प्रकरण का प्रतिप्रेषण* – अपीलार्थीगण का अभिकथन है कि वाद का कोई नोटिस तामील नही किया गया और वे कभी उपस्थित नही हुए और न ही कोई लिखित कथन प्रस्तुत किया – लिखित कथन को सत्यापित नहीं किया गया – प्रतिवादी क्र. 3 अप्राप्तवय था परंतु न्यायालय द्वारा उसकी ओर से किसी संरक्षक को नियुक्त नहीं किया गया – प्रकरण का प्रतिप्रेषण उचित।

***D. Civil Procedure Code (5 of 1908), Order 43 Rule 1(u) - Appeal* - Appeal under order 43 Rule 1(u) can only be heard on the grounds a second appeal is to be heard under Section 100 of C.P.C.**

**(Para 19)**

*ङ. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(यू) – अपील* – आदेश 43 नियम 1(यू) के अंतर्गत अपील को केवल उन आधारों पर सुना जा सकता है जिन पर द्वितीय अपील को सि.प्र.सं. की धारा 100 के अंतर्गत सुना जाता है।

**Cases referred :**

2012 (3) MPLJ 158, 1980-II WN 53, 1980-II WN 199, 2012(3) MPLJ 502 (SC), AIR 1972 SC 749, 2000(1) MPLJ 102.

*D.D.Bansal,* for the appellants.

*S.K.Shrivastava,* for the respondents.

**ORDER**

**Brij Kishore Dube, J.** - This Misc. Appeal has been filed under Order 43 Rule 1 (u) of Code of Civil Procedure against the judgment and decree of remand dated 07.02.11 passed by the Additional Judge to the Court of Additional District Judge, Sironj, District Vidisha in Civil Appeal No.47-A/10, whereby, reversed the judgment and decree dated 06.12.85 passed by Civil Judge Class II, Lateri, District Vidisha in Civil Suit No.8-A/85 and the matter has been remanded back to the Trial Court for fresh adjudication.

2. Short facts of the case are that the father of the appellants, namely; Sardar Singh (since deceased) had filed a suit for declaration of title against the respondents No.1 to 3/defendants No.2, 3 & 4 and father of the respondents No.4 & 5, namely; Bheem Singh (since deceased) which was

numbered as Civil Suit No.8-A/1985 in which defendants filed written statement admitting the plaint allegations and prayed that the decree sought by the plaintiff may be passed in his favour. The Trial Court vide its judgment and decree dated 06.12.1985 passed the decree in favour of the plaintiff. An appeal was filed by the respondents No.1 to 3 herein against the legal representatives of the deceased, plaintiff (Sardar Singh) and also legal representatives of the defendant, Bheem Singh on 06.08.2009 alleging that no notice was served on the defendants and they neither appeared nor filed written statement before the Trial Court. The plaintiff got judgment and decree by submitting fake and fabricated written statement. The written statement was not verified. It is further alleged that at the relevant time defendant No.3, Bhupendra Singh was minor and no proceedings were made under Order 32 of the CPC. Since, the appeal was not filed in time and was barred by limitation, therefore, an application under Section 5 of the Limitation Act was filed by the respondents No.1 to 3 herein along with the appeal memo praying that the delay in filing the appeal be condoned. The application was opposed by the appellants herein.

3. The First Appellate Court after hearing the parties on the application for condonation of delay in filing the appeal as well as on merits of the appeal, vide the impugned judgment and decree dated 07.02.2011 condoned the delay in filing the appeal and set-aside the judgment and decree passed by the Trial Court and remanded the suit for fresh adjudication. While remanding the suit to the Trial Court, the First Appellate Court directed the Trial Court to permit the defendants to file written statement and, thereafter, decide the suit in accordance with law. Aggrieved by the aforesaid remand order, the appellants have filed this appeal.

4. Learned counsel for the appellants, Shri D.D. Bansal argued at length and submitted that the remand order passed by the Court below is illegal, incorrect and deserves to be set-aside. It is submitted that the First Appellate Court did not care to decide the application for condonation of delay of more than 24 years before passing the final order and passed order on the application along with the final judgment in the appeal. It is well settled that unless the delay is condoned, no judgment on merit can be passed in appeal. In this context, learned counsel has placed reliance upon the decision of this Court in the case of *Manoramabai Vs. State of M.P.*, 2012 (3) MPLJ 158. It is further submitted that the First Appellate Court has also erred in condoning the delay of more than 24 years on the wrong interpretation of law of limitation.

Since, there is no reasonable explanation put-forth by the respondents No.1, 2 & 3 herein, therefore delay cannot be condoned liberally. In this regard, learned counsel has cited the decision in the case of *Zabiar v. State of M.P.*, 1980-II WN 53 and *State of M.P. Vs. Fakirchand,* 1980-II WN 199. It is further submitted that the ground on the basis of which the regular civil appeal was filed before the First Appellate Court needs enquiry and without holding any enquiry into the allegations levelled against the appellants and Trial Court, the judgment and decree passed by the Trial Court cannot be set-aside.

5. In response, Shri S.K. Shrivastava, learned counsel for the respondents argued in support of the impugned judgment and decree and submitted that cogent reasons have been assigned by the Appellate Court for condoning the delay as well as remanding the case to the Trial Court. He further submits that there is no specific bar which restrain the Appellate Court to hear and decide the appeal along with the application for condonation of delay. The defendants neither appeared before the Trial Court nor filed any written statement. After 24 years of the alleged judgment and decree of the Trial Court, the appellants filed an application before the Tahsildar, Lateri for mutation. On receiving the notice from the Tahsil Court, they (respondents No.1, 2 & 3 herein) came to know on 10.07.2009 about the judgment and decree, thereafter, they received the certified copy and filed the appeal on 06.08.2009, therefore, there was sufficient cause for condonation of delay in filing the appeal. It is further submitted that the grounds on which the judgment and decree of the Trial Court was set-aside does not requires any enquiry. The learned counsel has further submitted that the appeal filed against the remand order can be heard only on the ground enumerated in Section 100 of the CPC. In this context, he has cited the recent judgment of the Apex Court in the case of *Jegannathan Vs. Raju Sigamani and another*, 2012 (3) MPLJ 502 (SC).

6. I have considered the submissions made on both sides and perused the record of the First Appellate Court as well as of the Trial Court.

7. Admittedly, respondents No.1 to 3 herein/defendants filed appeal on 06.08.2009 before the First Appellate Court. Along with the appeal, an application under Section 5 of the Limitation Act was filed for condonation of delay in filing the appeal.

8. In *Manoramabai* (supra), along with the appeal, an application under Section 5 of the Limitation Act alleging that the delay be condoned was filed.

A specific application was made by the respondent to the effect that before proceeding further in the appeal, the application for condonation of delay has to be decided. After hearing the parties, learned Appellate Court dismissed the aforesaid application. In such factual matrix of the case, this Court held that unless the application for condonation of delay is decided in favour of the appellants, the appeal cannot be heard and decided finally.

9. In the present case, the First Appellate Court was of the opinion that in view of Order 41 Rule 3-A of CPC, the application for condonation of delay is to be decided first, but on the request and consent of the learned counsel for the parties and looking to the peculiar facts of the appeal, the First Appellate Court heard and decided the appeal along with the application for condonation of the delay, however, the First Appellate Court has firstly decided and allowed the application for condonation of the delay, thereafter considered the merits of the appeal. The para 7 of the judgment of the First Appellate Court is relevant and reads as under:-

> "7. यद्यपि आदेश 41 नियम 3(ए) सी.पी.सी के अतंर्गत अपील की ग्राह्यता के पूर्व इस प्रावधान के अंतर्गत प्रस्तुत किये गये आवदेन पत्र का निराकरण किया जाना चाहिये था, परंतु उभय पक्ष की इस बावत् सहमति थी कि अपील के गुण दोषो के साथ ही इस आवदेन को भी निराकृत किया जावे क्योकि इस आवेदन पत्र के निराकरण से तथ्यो के वे भाग भी निर्णीत होगे जो अपील के गुण दोषो पर गंभीर प्रभाव रखते है इसलिये कोई पक्ष विपरीत रूप से प्रभावित न हो इसलिये अतंरिम आवेदन क.1 तथा अपील के गुणदोषो पर सक साथ सुना गया है परंतु अपील का निराकरण करते समय पहले, धारा 5 अवधि विधान अधिनियम सपठित आदेश 41 नियम 3(ए) सी.पी.सी. को निराकृत किया जा रहा है।"

10. Therefore, looking to the peculiar facts of the case in hand, the aforesaid judgment cited by learned counsel for the appellants does not provide any help to him.

11. It transpires from the record of the Court below that appellants have filed mutation application before the Tahsildar, Lateri on the basis of judgment and decree dated 06.12.1985 which was numbered as Namantran Prakran No. 35/A-6/08-09. The notice was issued to the defendants. On receiving the notice, they appeared before the Court on 10.07.2009, then they got knowledge of the judgment and decree dated 06.12.1985 passed by the Trial Court, thereafter, they obtained certified copy of the aforesaid judgment and decree on 16.07.2009 and then, filed the appeal. The First Appellate Court

after considering the submissions of the learned counsel for the parties, averments made in the application and documents on record has arrived at a conclusion that the limitation shall start from the date of knowledge of judgment and decree i.e. 10.07.2009 and not from the date of passing of the judgment and decree dated 06.12.1985.

12. Ordinarily ignorance about the existence of a right is not a ground for postponing the starting point of limitation for enforcement of the right but where the ignorance or want of knowledge is occasioned by fraud on the part of the person against whom the right is enforced that there is postponement of running of the period of limitation. In such cases, the limitation begins to run from the time when the applicant has discovered the fraud or the mistake. Therefore, the First Appellate Court has not committed any error in holding that limitation shall starts from the date of knowledge of judgment and decree i.e., 10.07.2009 and not from the date of passing the judgment and decree i.e. 06.12.1985.

13. In *Zabiar* (supra), this Court held that it is true that, as has been laid down by their Lordships in *The State of West Bengal v. The Administrator, Howrah Municipality and others,* (AIR 1972 SC 749), the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. However, the burden of placing the necessary material on the basis of which the Court could decide as to whether no negligence or inaction or want of bona fide was imputable to the party was always on the said party. In *State of M.P.* (supra), this Court has reiterated that if the appellants have failed to make out sufficient cause for the delay in filing the application under Section 5 of the Limitation Act, then the application cannot be allowed, but in the case in hand, there is reasonable and plausible explanation putforth by the defendants for condonation of delay in filing the appeal.

14. In view of the aforesaid, the First Appellate Court did not commit any error in condoning the delay in filing the appeal.

15. So far as, other contentions of the appellants is concerned, on going through the impugned judgment and decree of the Appellate Court, it is apparent that the judgment and decree of the Trial Court has been set-aside and remanded the case on the grounds that in the alleged written statement, there was no verification of the pleadings, therefore, the written statement cannot be said to be written statement in the eye of law and the pleadings

without verification cannot be termed as pleadings and the guardian in the suit for minor defendant No.3, Bhupendra Singh was not appointed under Order 32 Rule 3 of the CPC. In this regard, para 19 of the impugned judgment of the learned Appellate Court is relevant and reads as under:-

> "19. उपरोक्त विवेचना के आधार पर स्पष्ट है कि, विचारण न्यायालय ने जिस कथित वादोत्तर के आधार पर जयपत्र पारित किया है, वह आदेश (6) नियम 2, 15 तथा आदेश (8) नियम 2 लगायत 5 के अंतर्गत, कोई अभिवचन नही है इसी आधार पर आक्षेपित जयपत्र अवैधानिक है। इसके अलावा यह भी कि वाद पत्र मे वर्णित प्रति.क.3 भूपेन्द्रसिह अवयस्क था जिसके संबंध मे आदेश 32 नियम 3 के अतर्गत, कार्यवाही नही की गई ओर यह भी कि संरक्षक की ओर से प्रस्तुत जबाव दावा, अवयस्क के हितों के विपरीत था। इस कारण से आदेश 32 नियम 7(2) सी.पी.सी. के अनुसार भी, उक्त जयपत्र दूषित था। इस कारण से विचारण न्यायालय द्वारा पारित निर्णय व जयपत्र दिनांक 6.12.1985, स्थिर रखे जाने योग्य नही है। परिणामतः अपील स्वीकार करते हुये निर्णय एवं जयपत्र दिनांक 6.12.1985 अपास्त किया जाता है।"

16. A Division Bench of this Court in the case of *Babulal Agrawal v. Jyoti Shrivastava and others,* 2000 (1) MPLJ 102 observed that without verification of the pleadings in the written statement, it is not a written statement in the eye of law.

17. Admittedly, Bhupendra Singh, respondent No.3 herein was the defendant No.3 in the suit and his age was mentioned as seven years, but no guardian was appointed on his behalf by the Court and also the fact that the written statement was not verified.

18. In view of the aforesaid, other contentions of the learned counsel for the appellants is also without any substance.

19. While considering the scope of an appeal under Order 43 Rule 1(u) of CPC, the Supreme Court in the case of *Jegannathan* (supra) held that the appeal under Order 43 Rule 1(u) of CPC can only be heard on the grounds a second appeal is to be heard under Section 100 of CPC.

20. For the reasons stated above, the appeal fails and is hereby dismissed, however, it is observed that the findings and reasonings arrived at by this Court are only for the purpose of disposal of this appeal and, therefore, the Trial Court while deciding the matter shall not be influenced by the order passed by this Court. No order as to costs.

*Appeal dismissed.*

**I.L.R. [2012] M.P, 3065**
**APPELLATE CIVIL**
***Before Mr. Justice Ajit Singh & Mr. Justice Sanjay Yadav***
F.A.No. 747/2008 (Jabalpur) decided on 4 December, 2012

SUBHASH KUMAR TIWARI ...Appellant
Vs.
SHANKERLAL ...Respondent

***Succession Act (39 of 1925), Section 63 - Succession - Will - Execution - Burden of proof - Will an unregistered and hand written*** **- Plaintiff has admitted that testator was old and unable to speak and sign - Scriber of will admitted that will was not dictated by testator - No recital in will that it was read over and explained to testator - Attesting witness has also stated that he does not know that who wrote the will - A closer look of will shows that thumb impression of testator was obtained on a plan paper before it was actually written - Defendant was living with testator for the last more than 12 years and the plaintiff was residing separately - Last rites of testator were performed by defendant - It can be safely held that love and affection of testator lay with defendant - Will is encircled by suspicious circumstances - Judgment and decree passed by Trial Court set aside - Appeal allowed. (Paras 8 to 13)**

*उत्तराधिकार अधिनियम (1925 का 39), धारा 63 – उत्तराधिकार – वसीयत – निष्पादन – सबूत का भार – वसीयत अपंजीकृत व हस्तलिखित* – वादी ने स्वीकार किया कि वसीयतकर्ता वृद्ध था और बोलने एवं हस्ताक्षर करने में असमर्थ था – वसीयत के लेखक ने स्वीकार किया कि वसीयत को वसीयतकर्ता द्वारा श्रुतिलेख नही कराया गया था – वसीयत में कोई उपकथन नही कि उसे वसीयतकर्ता को पढ़कर सुनाया एवं समझाया गया था – अनुप्रमाणक साक्षी का भी कथन है कि उसे नही पता कि वसीयत किसने लिखी – वसीयत को बारीकी से देखने पर दर्शित होता है कि वसीयतकर्ता की अंगूठा निशानी, कोरे कागज पर, उस पर वास्तविक रूप से लिखे जाने से पूर्व अभिप्राप्त की गई थी – प्रतिवादी वसीयतकर्ता के साथ पिछले 12 वर्षों से अधिक समय से रह रहा था और वादी अलग निवासरत था – वसीयतकर्ता का अंतिम संस्कार प्रतिवादी द्वारा निष्पादित किया गया था – सुरक्षित रूप से यह धारणा की जा सकती है कि वसीयतकर्ता का स्नेह व अनुराग प्रतिवादी की ओर था – वसीयत संदेहास्पद परिस्थितियों से घिरी हुई है – विचारण न्यायालय द्वारा पारित निर्णय व डिक्री अपास्त – अपील मंजूर।

**Case referred :**

(2010) 5 SCC 770.

*Abhishek Gulatee,* for the appellant.
*Ravish Agrawal* with *K.S. Jha,* for the respondent.

**JUDGMENT**

The Judgment of the court was delivered by: AJIT SINGH, J. - This is an appeal by the defendant in a suit for declaration and possession. The property in suit is a house situated at Balaghat bearing Nazul Sheet no.25-A, plot no.34, area 112 square meters. Gopilal had purchased this property from Sunder Bai by a registered sale deed dated 8.8.1958. Gopilal died issueless in 1992 as a result of which his wife Birji Bai became the legal heir of the suit property. Narayan was elder brother of Gopilal. He had two wives, Pusi Bai and Ramkawri Bai. Respondent-plaintiff and appellant-defendant are step-brothers having been born from wives Pusi Bai and Ramkawri Bai respectively of Narayan. Gopilal and Birji Bai were thus uncle and aunt of the plaintiff and defendant.

2. The case of plaintiff was that Birji Bai executed a will dated 25.12.2002, Ex.P1, in his favour regarding the suit property and after her death on 2.9.2003 he became its owner. The plaintiff alleged that when he filed an application for mutation of his name before the Tahsildar he came to know that vide order dated 2.7.1993, Ex.P7, passed in Revenue Case No.154-A/92-93 the suit property had already been mutated in the name of defendant on the strength of a registered will dated 2.7.1993, Ex.P5. In the suit the plaintiff therefore prayed that the order, Ex.P7, of the Tahsildar as well as the will, Ex.P5, be declared null and void and he be given possession of the suit property. The plaintiff filed the certified copy of will, Ex.P5.

3. The defendant in his written statement denied the claim of plaintiff and stated that he has been living with Gopilal and Birji Bai since he was five years old and they had, in fact, adopted him as their son. The defendant also pleaded that Gopilal and Birji Bai even performed his marriage and when Gopilal died, the last rites were performed by him. According to the defendant, Birji Bai had made an application on 1.5.1993 for mutation of the suit property in his name which was duly allowed by the Tahsildar

vide order, Ex.P5, and ever since then he is the owner and in possession of the suit property. The defendant further averred that Birji Bai had executed her first and last will, Ex.P5, in his favour which was also duly registered before the Sub-Registrar, Balaghat, in the presence of witnesses.

4. The trial court, by the impugned judgment dated 8.8.2008, decreed the suit of plaintiff by holding that since the defendant did not produce the original will of which Ex.P5 is a certified copy in the court nor did he examine its attesting witnesses, the same was not trustworthy. The trial court has also held that Birji Bai being an illiterate woman always used to put thumb impression on the documents whereas, Ex.P5, contains her signature and, therefore, it was forged. As regards the order, Ex.P7, passed by the Tahsildar mutating the name of defendant in the revenue record, the trial court has held that the order is an outcome of illegal proceedings without the knowledge of Birji Bai. The trial court has also held that, if Birji Bai had executed a will in favour of defendant there was no need for mutation of his name in the revenue record and likewise if the name of defendant had been mutated by the revenue court on the application of Birji Bai there was no need for her to execute a will in his favour. The trial court found the evidence adduced by the plaintiff regarding will, Ex.P1, executed in his favour more reliable and trustworthy and, therefore, held it to be valid.

5. The learned counsel for the defendant has argued that the will, Ex.P1, was surrounded by suspicious circumstances which the respondent failed to remove and, therefore, the trial court committed an illegality in decreeing the suit. In support of his submission, the learned counsel has cited a decision of the Supreme Court in *Balathandayutham v. Ezhilarasan* (2010) 5 SCC 770. The learned counsel for plaintiff, in reply, has defended the findings arrived at by the trial court. He has even taken us through the evidence and documents brought on record. The learned counsel has also argued that the plaintiff has proved the will, Ex.P1, in accordance with law and, therefore, the finding of the trial court regarding its validity is well founded and does not call for any interference.

6. In *Balathandayutham* (supra) the Supreme Court has held that when a will is surrounded by suspicious circumstances, the person propounding the will has a very heavy burden to discharge and unless it

is satisfactorily discharged, courts will be reluctant to treat the document as the last will of the testator.

7. The plaintiff has claimed his title over the suit property solely on the basis of will, Ex.P1. We, therefore, have to examine whether the will is surrounded by suspicious circumstances and the plaintiff has discharged his burden in removing them. Because if he has failed to do so, his suit will fail.

8. The will, Ex.P1, is hand written and unregistered. The plaintiff in para 10 of his cross-examination has clearly admitted that Birji Bai due to old age was unable to speak and sign. Rekhlal Soni (P.W.3) states that Birji Bai was aged 90 years and he had written the will as told by her in the presence of Dr. Dayanand Joshi, Dalchand and Laxmi Prasad. He, however, says that Birji Bai did not dictate the will. But there is no recital in the will that it was read over and explained to her. Also Dr. Dayanand Joshi (P.W.2), the only attesting witness examined by the plaintiff, says that he does not know who wrote the will. Birji Bai was illiterate. It, therefore, cannot be held with certainty that Rekhlal Soni wrote what was actually told by Birji Bai more particularly when the plaintiff himself says that she was unable to speak. The statement of Dr. Dayanand Joshi about his not knowing who wrote the will also creates a suspicion that it was written in the presence of Birji Bai.

9. There is yet another reason which creates a suspicion that the plaintiff and his witnesses Dr. Dayanand Joshi and Rekhlal Soni are not speaking truth in respect of the execution of will, Ex.P1. A closer look of the will shows that the thumb impression of Birji Bai was obtained on a plain paper before it was actually written. We say so because we find that gaps between the lines of will become smaller and smaller towards the end so as to adjust with the already obtained thumb impression despite there being sufficient space left in the paper. This mode of writing with no explanation by the plaintiff regarding narrowing of the gaps between the lines creates a very strong suspicious circumstance against the genuineness of the will. In fact, it leads to an inference that the will has been prepared fraudulently.

10. There is one more circumstance which creates a suspicion about execution of will, Ex.P1, by Birji Bai in favour of the plaintiff. The plaintiff has admitted in his evidence that the defendant had been living with Birji

Bai ever since he was 12 years of age. The plaintiff has also admitted that he lived separately from them at a place called Sarekha. The plaintiff even says that although his wife and children did not visit him, they visited the defendant who is in occupation of the suit property. The plaintiff then says that the cremation of Pooranlal was performed by the defendant. Dr. Dayanand Joshi has also deposed that the last rites of Birji Bai were performed by the defendant. From this evidence it can safely be held that the love and affection of Birji Bai lay with the defendant. It is, therefore, difficult to believe that Birji Bai would execute her will in favour of the plaintiff who has been living separately from her at a different place.

11. It is also to be noted that vide order 2.7.1993, Ex.P4, the Tahsildar in a revenue case has mutated the suit property in the name of defendant and the plaintiff's appeal against that order has been dismissed. There is a presumption of correctness of the proceedings before a quasi-judicial authority. The defendant being in possession has a title over the suit property against all except the one who has a better title.

12. The plaintiff solely relied on the will, Ex.P1, to prove his title. But as earlier discussed the will, Ex.P1, is not reliable and encircled by suspicious circumstances. The plaintiff has thus failed to prove any title over the suit property and his suit must fail.

13. The appeal is allowed. The judgment and decree passed by the trial court are set aside and the plaintiff's suit is dismissed with costs throughout.

*Appeal allowed.*

**I.L.R. [2012] M.P, 3069**
**APPELLATE CIVIL**
***Before Mr. Justice J.K. Maheshwari***
M.A.No. 2343/2006 (Jabalpur) decided on 7 December, 2012

HARISH KORI ...Appellant
Vs.
RAJU K. RAJVARDHAN & ors. ...Respondents

***A. Motor Vehicles Act (59 of 1988), Sections 3(a) & 66 -*** **Transport Vehicle owned by Central or State Government - Permit - No pleading to the effect that the offending vehicle which was owned**

**by Union of India was being used for government purposes unconnected with commercial purposes - Benefit of Section 66 cannot be extended. (Para 11)**

*क. मोटर यान अधिनियम (1988 का 59), धाराएं 3(ए) व 66* – केन्द्र या राज्य सरकार के स्वामित्व का परिवहन वाहन – अनुज्ञापत्र – इस आशय का कोई अभिवाक् नहीं कि उल्लंघन करने वाला वाहन जो भारतीय गणराज्य के स्वामित्व का था, उसे वाणिज्यिक प्रयोजनों से असंबद्ध शासकीय प्रयोजन हेतु उपयोग किया जा रहा था – धारा 66 का लाभ नहीं दिया जा सकता।

***B. Motor Vehicles Act (59 of 1988), Section 166 - Compensation* - Appellant a student doing the work of distribution of news paper - Notional income can be accepted Rs. 15,000 - Multiplier of 15 would apply - In view of 35% disability future loss of earning comes to Rs. 5250 - Amount of Rs. 1 lacs deserves to be awarded in the head of causing impotency for the injuries - Appellant entitled to Rs. 2,84,865 after adding medical expenses etc. (Para 12)**

*ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – प्रतिकर* – अपीलार्थी, एक विद्यार्थी है जो समाचार पत्र बांटने का काम करता था – काल्पनिक आय रू. 15,000/– स्वीकार की जा सकती है – 15 का गुणक लागू होगा – 35% निशक्तता को दृष्टिगत रखते हुए भविष्य के उपार्जन की हानि रू. 5250 होती है – रू. 1 लाख की रकम, नपुंसकता कारित करने के शीर्ष में, क्षतियों के लिए अवार्ड करने योग्य है – अपीलार्थी, चिकित्सीय खर्चे इत्यादि जोड़ने के पश्चात् रू. 2,84,865 का हकदार है।

*Uttam Maheshwari,* for the appellant.
None for the respondents No. 1 & 4.
*Ajay Mishra,* for the respondent No.2
*Dinesh Koushal,* for the respondent No.3.

**ORDER**

**J.K. MAHESHWARI, J.** - This order shall govern the disposal of MA No.2343/06 filed by the claimant seeking enhancement and also M.A No.2534/06 filed by the a Central Govt. through Commandant MRC, Sagar assailing the award of compensation. Being aggrieved by the Award dated 29.3.06 passed by the Ist AMACT, Sagar in Case No.32/04, aforesaid both the appeals have been preferred.

2. The facts in brief are that on 29.10.03 at about 7 AM, the injured was going to distribute the newspaper on the bicycle but near the Rest house No.2

Cant Sagar, the bus of MRC School bearing No.CPV-0544 driven rashly and negligently by the driver came from behind and dashed the bicycle thereby the injured fell down and received injuries over the head, back, hand, leg and shoulder. The intimation was given to P.S Cant by the auto-driver Sanju alias Satyendra, on which, at crime No.678/03 offence punishable under section 279,337 of the IPC was registered. The injured remained hospitalized in the district hospital, Sagar from 29.10.03 to 14.4.04. The operation of disruption of Pelvic and rupture of Urethra was performed. With the aforesaid averments, being student of Class 8th, while performing the work of distribution of newspaper, the claim petition under section 166 of the Motor Vehicle Act,1988 ( in short the Act) seeking compensation for an amount of Rs.9 lacs on account of permanent disability received to the injured, was filed.

3. The Respondent No.2 filed his written statement and admitted the ownership of the vehicle. It was denied that respondent No.1 was the driver of the offending vehicle. It is further stated that the vehicle was insured with respondent No.3 Insurance company, however, the owner is not liable to pay the amount of compensation. It is further stated that the claimant is not entitled to claim any compensation against the owner.

4. The Respondent No.3 insurance company filed its written statement and admitted insurance of said vehicle but inter alia contended that the said insurance was on fulfilling the terms and conditions of the policy. It is said, the vehicle was used for commercial purpose and insured also as commercial vehicle for transportation of the students of the school. However, the said bus was not having the valid permit on the date of accident, therefore, insurance company is not liable to pay the compensation. The respondent No.4 also filed his written statement contending that he was driving the vehicle being driver of respondent No.2 and it was not driven by respondent No.1.

5. The tribunal while passing the impugned award recorded a finding that the accident had taken place on account of rash and negligence driving of the said vehicle. It has further been held that in the said accident the injured has suffered grievous injuries and also received permanent disability. It is further held that the insurance company is not liable to pay the compensation because the vehicle was driven in violation of the terms and conditions of the policy without having any permit, therefore, the insurance company is not liable to pay the compensation. In view of the foregoing facts, the tribunal awarded the compensation of Rs.1,38,245/- with a direction to pay and

recover. From the said amount Rs.65,835 awarded in medical expenses, Rs.32,130/- for future loss of earning on account of disability, Rs.15,290/- for transport expenses and Rs.25000/- for mental pain and future suffering.

6. Shri Ajay Mishra, counsel for Union of India referring the provision of section 66 of the Act contends that as per sub section 3(a) if any transport vehicle is owned by the Central or the State Government and used for the purpose unconnected with any commercial enterprise, the permit to ply such vehicle is not required. However, the findings recorded by the tribunal exonerating the insurance company on account of not having the valid permit is unsustainable in law, therefore, the award passed by the claims tribunal may be modified and the insurance company may be held responsible to pay the amount of compensation indemnifying the liability of appellant by setting aside the findings of pay and recover.

7. Shri Uttam Maheshwari, counsel for the claimant by referring the document Ex.P/9 and P/10 submits that the injured, on account of fracture of Pelvic bone and rupture of Urethra, received the disability to the extent of 35%. Under the direction of this court the report from the Medical college, Jabalpur was called wherein it was found that the said injury found in urethra of the injured may cause impotency in future. However, under such circumstance it is urged that the compensation so awarded by the claims tribunal for future loss of earning is inadequate which may be reasonably enhanced by allowing the MA No.2343/06.

8. Shri Dinesh Koushal, counsel of respondent No.3 Insurance company has strenuously urged that the appellant has not taken any defence in their written statement indicating that the vehicle is owned by the central government and used for government purpose unconnected with the commercial activity, therefore, the insurance company is not liable to pay the compensation. He further submits that the appellant has not brought any evidence either oral or documentary to establish the aforesaid pleading. However in the absence of the aforesaid, appeal on the said contention, is not maintainable and such question cannot be adjudicated which is not raised in the written statement, however, appeal filed by the Union of India is liable to be dismissed. On the question of enhancement raised in the appeal filed by the claimant, it is urged that the insurance company is not liable to pay the compensation therefore it is the owner who has to defend on the said question.

9. On being asked by the Court from Shri Mishra on the point of

inadequacy of the amount in the appeal filed by the claimant, it is urged that the injured being unemployed minor person, however, looking to the injuries the compensation has rightly been awarded by the claims tribunal which do not warrant any interference.

10. Having heard the parties, first of all the arguments advanced by Mr Mishra in the light of sub section (3) of section 66 of the Act by which it is urged that Union of India is not responsible to pay the compensation, is required to be considered. In this regard the provision of Chapter V section 66 is relevant, however reproduced as thus :

> 66. Necessity for permits. – (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used :
>
> Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:
>
> Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good carriage either when carrying passengers or not :
>
> Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.
>
> (2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:
>
> 38[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b)....."

11. A bare reading of the aforesaid it is apparent that the necessity of the permit to the owner of the motor vehicle has been enumerated under the Act but under sub section 3(a) it has been clarified that if any transport vehicle owned by the Central Government or the State Government and used for Government purposes unconnected with any commercial activity then the provision of section 66(3) to fulfill the necessity of the valid permit would not be attracted. However, to take the advantage of sub section 3(a) of section 66 of the Act it is sine quo non on the part of the Union of India to plead and prove that the offending vehicle was owned by them and it was being used for government purposes unconnected with commercial activities. In the written statement no whisper of said pleading is made and no evidence has been brought on the said issue. In such circumstance the point raised in the appeal without having any pleading and evidence is not required to be adjudicated. In addition thereto it has to be observed that even before this court after filing this appeal no evidence has been brought on record to establish that the offending vehicle was being used for the purposes unconnected with any commercial activity. In this connection, statement of Vivek Madhav Rahalkar (NA.W-1) who is the officer of the Insurance Company is relevant who had stated that the policy of the vehicle was issued for passenger carrying commercial vehicle by the Insurance Company. N.A.W-2, namely, Mahendra Kumar Shrivastav has come from the RTO office to prove the document Ex.D-2 to establish the fact that for the offending vehicle no permit was issued from the Sagar office. In view of the foregoing facts when the appellant has not putforth any defence in the context of the provision of section 66 (3)(a) of the Act. As the contrary evidence of the Insurance company discharging its burden established that the vehicle in question was not possessing a valid permit legally insured as commercial vehicle for carrying the passenger. In that view of the matter, in the considered opinion of this court, the arguments advanced by Shri Mishra counsel of Union of India is not having any substance hence repelled. No other point has been raised , hence MA No.2534/06 filed by the Union of India is hereby dismissed.

12. Now coming on the point of enhancement in MA No.2343/06 filed by the claimant, the certificate of permanent disability Annex.P/9 and Anex.P/10 has been produced which is proved by the doctor. The findings regarding grievous injury and permanent disability has also been recorded by the claims tribunal. However there is no reason to disbelieve the aforesaid certificate. As per the injuries received to the injured it is apparent that there is disruption of pelvic bone and rupture of urethra. As per the order of this court, the opinion from the Medical College Jabalpur has been sought for, whereby the fact regarding disability was found correct and it is further opined that such injury may cause impotency to the injured for whole life. In the aforesaid context it is required to be seen that the amount of compensation as allowed by the claims tribunal in the head of future loss of earning may be enhanced. In view of the foregoing and looking to the nature of disability i.e 35% which in the present case is acceptable and also looking to the fact that the injured is a student doing the work of distribution of newspaper his notional earning can be accepted Rs. 15000/- per annum. As per disability, the future loss of earning per annum comes to Rs.5250/-. As per age of the injured i.e 15, the multiplier of 15 is applied, then amount comes to Rs.78750/-. On adding Rs.65825/- towards medical expenses, Rs.15290/- towards transport expenses and Rs.25000/- for pain and suffering, the amount comes to Rs.1,84,865/-. In addition to it the certificate issued by the medical college Jabalpur was called as per direction of this court in the head of causing impotency for the injuries, Rs.1,00,000/- further deserves to be awarded. Thus, the total sum of compensation comes to Rs.2,84,865/-. On reducing the sum awarded by the Tribunal Rs.1,38,245/-, the net enhanced sum comes to Rs.1,46,620/-.

13. Accordingly, the appeal M.A.No.2534/06 filed by the Union of India is hereby dismissed while the appeal M.A.No.2343/06 filed by the claimant is allowed in part. The enhanced sum Rs.1,46,620/- is directed in view of the foregoing discussion. The finding recorded by the claims tribunal directing the Insurance company to pay and recover is hereby maintained with an observation that the Insurance company may recover the amount from the Union of India, the appellant in M.A.No.2534/06. It is further directed that the claimant would also be entitled to get the interest on the enhanced amount at the rate of 7.5% per annum. In the facts and circumstances of the case, the parties to bear their own costs.

*Appeal partly allowed.*

**I.L.R. [2012] M.P, 3076**
**ARBITRATION CASE**
***Before Mr. Justice Rajendra Menon***
Arbitration Case No. 34/2012 (Jabalpur) decided on 12 September, 2012

NATIONAL COUNCIL OF Y.M.C. OF INDIA & anr. ...Appellants
Vs.
SUDHIR CHANDRA DATT ...Respondent

*A. Arbitration and Conciliation Act (26 of 1996), Sections 10(1), (2) & 11 - Appointment of Arbitrators* - **Merely because the arbitration agreement contemplates appointment of two arbitrators i.e. even number of arbitrators, the arbitration agreement will not become invalid - The arbitration clause can still be given effect to. (Para 8)**

*क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 10(1), (2) व 11 – मध्यस्थों की नियुक्ति* – मात्र इसलिए कि माध्यस्थम अनुबंध दो मध्यस्थों की नियुक्ति अनुध्यात करता है, अर्थात, मध्यस्थों की सम संख्या, माध्यस्थम अनुबंध अवैध नहीं हो जायेगा – माध्यस्थम खंड को तब भी कार्यान्वित किया जा सकता है।

*B. Arbitration and Conciliation Act (26 of 1996), Sections 11, 14 & 15* - **Where an arbitration agreement contemplates for appointment of named arbitrators and the arbitrators so appointed are unable to discharge their function then the power u/s 11(6) has to be invoked and it is the Chief Justice or the Judge designated by the Chief Justice, who is required to be taken action in the matter. (Para 9)**

*ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 11, 14 व 15* – जहां माध्यस्थम अनुबंध नामित मध्यस्थों की नियुक्ति अनुध्यात करता है और इस प्रकार नियुक्त मध्यस्थ, अपने कर्तव्यों का निर्वहन करने में अक्षम है, तब धारा 11 (6) के अंतर्गत शक्ति का अवलंब लेना चाहिए और यह मुख्य न्यायाधिपति होंगे या मुख्य न्यायाधिपति द्वारा नामोद्दिष्ट न्यायाधिपति होंगे जिन्हें मामले में कार्यवाही करना अपेक्षित है।

*C. Arbitration and Conciliation Act (26 of 1996), Sections 10 & 11* - **When an arbitration agreement makes a provision for appointment of named persons as arbitrator and when arbitration in accordance to the said provision is not possible due to any reason, the arbitration clause is not rendered redundant - In such cases, the matter has to be proceeded in accordance to the requirement of Section 11(6) and the arbitrator has to be appointed in accordance to the procedure**

**contemplated therein.** **(Para 9)**

*ग. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 10 व 11* – जब माध्यस्थम अनुबंध, नामित व्यक्तियों की मध्यस्थ के रुप में नियुक्ति के लिए उपबंध करता है और जब उक्त उपबंध के अनुसरण में माध्यस्थम किसी कारण संभव नहीं है, तब माध्यस्थम खंड अनावश्यक नहीं हो जायेगा – ऐसे प्रकरणों में धारा 11(6) की अपेक्षानुसार कार्यवाही करनी चाहिए और उसमें अनुध्यात प्रक्रिया के अनुरुप मध्यस्थ को नियुक्त करना चाहिए।

**Cases referred :**

(2009) 10 SCC 293, (2010) 1 SCC 72, AIR 1997 SC 605, AIR 2002 SC 1139, AIR 2001 A.P. 284, AIR 1998 Bombay 210.

*R.N. Singh* with *Abhishek Arjaria*, for the appellants.
*A.K. Jain*, for the respondent.

**O R D E R**

**Rajendra Menon, J.** - Seeking constitution of an Arbitral Tribunal by invoking the jurisdiction of this court under Section 11(6) of the Arbitration & Conciliation Act, this application has been filed.

2. Facts in a nutshell necessary for deciding of the controversy indicates that the applicant/ association are the exclusive owners of Nazul Plot No.7/1, Block No.2, Civil Line, Jabalpur admeasuring 78,600 sq. ft. Parties in question entered into an agreement on 23-04-1996 vide Annexure A-1 and a supplementary agreement Annexure A-2 on 26-06-2005. In accordance to the aforesaid agreements, the applicant issued a power of attorney in favour of the non-applicant, who was given right to develop and make construction on the area in question in accordance to the terms and conditions of the agreement, even though in the original agreement Annexure A-1, there was no arbitration clause but in the supplementary agreement Annexure A-2 dated 26-06-2005, there is arbitration clause 15 which reads as under :

> "15. In case of any dispute between the parties with regard to the quality of construction, fixtures, accessories etc, the option and suggestion of the technical representative of the Party No.2 and 3 shall be binding on the Party No.1 if, it is not according to the specification provided by Party No.1. However, in case of any dispute both the parties will appoint one arbitrator each & their decision is final & binding on both the parties. If the

President of the National Council of YMCA's of India fails to appoint an Arbitrator, then the parties to this supplementary agreement will be free to invoke the remedy under Arbitration and Conciliation Act, 1996."

According to the applicant the power of attorney was executed by the applicant in favour of non-applicant and by misusing the power of attorney, non-applicant had played fraud with the applicant, in as much as 34 flats constructed have been alienated to various individuals contrary to the agreement. Accordingly, contending that the non-applicant has breached the condition of the agreement, a dispute arose between the parties and therefore, a legal notice was sent by the applicant to the non-applicant on 24-05-2010 vide Annexure A-3. In the legal notice sent, the applicant had pointed out various irregularities committed in the matter of making construction, allotment of flats and office space to various individuals contrary to the agreement. When the aforesaid legal notice was sent, the non-applicant invoked the arbitration clause and sent a letter Annexure A-4 on 04-06-2010 and appointed one Anind Choudhary as his arbitrator and requested the applicant to nominate their arbitrator as per the agreement. It is therefore, clear that the non-applicant invoked the arbitration clause on the ground that a dispute has arisen between the parties. When the applicant did not appoint arbitrator in accordance with the arbitration agreement i.e. as per clause 15, the non-applicant approached this court in a proceedings under Section 11 of the Arbitration & Conciliation Act, filed Arbitration Case No.47/2010 (*Sudhir Chand Datt Vs. National Council of Y.M.C.A.'s and another*) and sought a direction for appointment of an arbitrator. When the said proceedings was pending, the applicant appointed one Shri K.S.Bhati, resident of New Delhi as their arbitrator and accordingly finding both the parties to have appointed their arbitrators as per Clause-15 the case was disposed of by this court on 03-05-2011 vide Annexure A-6.

3. Thereafter correspondences took place between the arbitrators namely *Shri K.S.Bhatia and Shri Anind Choudhary. Initially Shri K.S.Bhatia*, Arbitrator of the applicant sent a letter dated 27-04-2011 to Shri Anind Choudhary vide Annexure A-7 proposing the name of Justice D.M.Dharmadhikari, Former Judge of Supreme Court as the third Arbitrator. In reference to this Shri Anind Choudhary submitted a reply and communicated to Shri K.S.Bhatia vide letter dated 10-05-2011 indicating a contrary opinion

stating that he did not agree with the proposal for appointment of Hon'ble Justice Shri D.M.Dharmadhikari as the 3rd Arbitrator. Thereafter, certain correspondence took place and when the parties did not agree to appointment of a third arbitrator, the matter again came up before this court at the instance of the applicant in a proceeding under section 11(6) of Arbitration and Conciliation Act, 1996, this was registered as A.C.No.598/2011 and this court vide order dated 05-03-2012 Annexure A-12 appointed Hon;ble Justice Shri D.M.Dharmadhikar, a retired judge of the Supreme Court as the third arbitrator. Records indicate that when the proceedings were held before Hon;ble Justice Shri D.M.Dharmadhikari on 07-04-2012 vide Annexure A-14, Shri K.S.Bhatia appeared but the second arbitrator Shri Anind Choudhary did not appear instead the representative of non-applicant Shri Sudhir Chandra Datt appeared and nominated one Shri Siddharth Datt, Advocate as his arbitrator on the ground that Shri Anind Choudhary has declined to act as an Arbitrator due to his ill health. Thereafter learned arbitrator Shri D.M.Dharmadhikari found that there was some objections with regard to his appointment by the non-applicant and after taking note of the stipulation contained in clause-15 of the supplementary agreement and the provisions of Section 10(1) of the Arbitration & Conciliation Act, 1996 which does not provide for appointment of two arbitrator i.e. even number of arbitrator, referred the matter back to this court, as a result this application has now been filed by the applicant to resolve the dispute.

4. Shri R.N.Singh, learned Senior Counsel assisted by Shri Abhishek Arjaria, submitted that now as the non-applicant has nominated another arbitrator in place of their original arbitrator Shri Anind Choudhary, which is not permissible, and by placing reliance on a judgment of the Supreme Court in the case of *S.B.P. And Company Vs. Patel Engineering Limited and another* (2009)10 SCC 293 and Section 15 of the Arbitration and Conciliation Act, 1996 argued that once the arbitrator is appointed by one of the party and when the said arbitrator refuses to discharge the duties of arbitration, then the party does not have any right to substitute the arbitrator, accordingly, it was emphasized that as Shri Anind Choudhary has refused to discharge the duties of an arbitrator, now the non-applicant cannot substitute him by appointing Shri Siddharth Datt as their arbitrator and therefore, the arbitration proceedings shall now proceed with the sole arbitrator i.e. Shri K.S.Bhatia. Accordingly Shri R.N. Singh, learned Senior Counsel has emphasized by taking me through the principles of law laid down in the case of *S.B.P. And*

*Company*(supra) to contend that Shri K.S.Bhatia be permitted to discharge the duties of a sole arbitrator in view of the legal position. That apart inviting my attention to the objections raised by the non-applicant in their reply to the effect that there are serious dispute between the parties and therefore, these disputed questions can not be resolved in the arbitration proceedings, Shri Singh, relied on the provisions of Section 16 of the Arbitration and Conciliation Act,1996 and submitted that all these questions can be adjudicated upon by the arbitrator and for the said purpose invoking the jurisdiction of the Civil Court is not necessary. Emphasizing that the arbitration agreement has been entered into between the parties and therefore, the dispute can only be resolved only through arbitration. The first prayer made by Shri R.N.Singh was that Shri K.S.Bhatia be appointed as the sole arbitrator and he be permitted to proceed in the matter, in the alternate it was argued by him that if this court for any reason concludes that Shri K.S.Bhatia cannot discharge the duties of arbitrator, then a retired High Court Judge be appointed as Arbitrator and in this regard indicated certain suggestions .

5. Shri A.K.Jain, learned counsel for the respondent refuted the aforesaid contentions and took me through the averments made by the applicant vide a application filed in a proceedings held before the District Judge, Jabalpur under section 9 of the Arbitration and Conciliation Act, 1996 i.e. Annexure R-1 and emphasized that it was the case of the applicant in the said proceeding that the non-applicant has committed fraud in executing 34 sale deeds in favour of different purchasers, the sale deeds were obtained by use of fraudulently means, accordingly he emphasized that as there are serious dispute between the parties which are complicated in nature and it involved questions of law and technicalities the same cannot be adjudicated by the Arbitrator and in view of the law laid down by the Supreme Court in the case of *N.Radhakrishnan Vs. Maestro Engineers and others* (2010) 1 SCC 72, the parties should now resort to the remedy available of filing civil suit as the Arbitrator will not be in a position to resolve such a dispute . That apart Shri Jain tried to justify the action of the applicant in nominating Shri Siddharth Datt and tried to emphasize that earlier arbitrator Shri Anind Choudhary has withdrawn from the proceedings, therefore, substitution of the arbitrator is permissible, accordingly emphasizing that the dispute between the parties are required to be adjudicated by recording of evidence and a inquiry into complicated questions of law and fraud are to be looked into, the dispute cannot be adjudicated upon by the Arbitrator, Shri Jain submitted that a suit is

the only remedy for resolution of the dispute. In the alternate he submitted that if a arbitrator is to be appointed, he suggested the name of one retired High Court Judge.

6. Having heard the learned counsel for the parties and on consideration of the rival contentions and the grounds raised, I am of the considered view that the following questions arise for consideration in this application.

(i) Whether the non applicant is entitled to substitute the original arbitrator by appointing Shri Siddharth Datt as the new Arbitrator and whether the same is permissible in view of provisions of section 15 and the objections raised by Shri R.N.Singh, learned Senior Counsel on the basis of the law laid down in the case of *Patel Engineering* (supra).

(ii) The second ground to be considered is as to whether the appointment of arbitrators 'even in number' which is prohibited by Section 10(1) of the Arbitration and Conciliation Act, 1996 makes the entire arbitration clause invalid and unenforceable.

(iii) The third question is as to what would be the effect of an arbitration agreement, which contemplates appointment of Arbitrators, even in number and the consequence thereof.

(iv) The next question would be as to in facts and circumstances of the present case what direction should be issued in the matter.

(v) The last question is with regard to the objection raised by Shri A.K.Jain, learned counsel for the respondent with regard to resorting to the remedy of filing civil suit on the ground that the dispute in question cannot be adjudicated upon by arbitration.

7. In view of the legal questions involved, before taking up for consideration, question no.1, it is thought appropriate to take up question nos. 2, 3 and 4 for consideration together.

8. If the arbitration clause as reproduced herein above it taken note of, it would be seen that the arbitration clause contemplates a provision for appointing one Arbitrator by each of the parties, meaning thereby that only

two arbitrators are to be appointed. Under Section 10(1) of the Arbitration and Conciliation Act, 1996, appointment of arbitrator, even in number is prohibited and the consequence of such appointment is contemplated in sub section (2) thereof. The question as to whether the arbitration agreement becomes invalid only because arbitrations, even in number are appointed is already considered and decided by the Supreme Court in the case of *M.M. T.C.Ltd. Vs. Sterlite Industries(India) Ltd.* AIR 1997 SC 605. In the aforesaid case this question has been considered and it has been held that a arbitration agreement between the parties even if it contemplates appointment of arbitrators even in number, the same will not become invalid. It has been held that the arbitration agreement can still be given effect to in accordance to the provisions of section 11 of the Arbitration and Conciliation Act, 1996 and in view of the provisions of sub section 2 of section 10, the matter can be proceeded with. Similar view have been taken again by the Supreme Court in the case of *Narayan Prasad Lohia Vs. Nikunj Kumar Lohia and others,* AIR 2002 SC 1139 and in para 17 it has been held that an arbitration agreement, merely because it contemplates for appointment of arbitrators, even in number, will not become illegal or invalid. In view of the above, it is held that merely because the arbitration agreement contemplates appointment of two arbitrators i.e. even number of arbitrators, the arbitration agreement will not become invalid. In this regard the principles laid down in the case of *Sri Venkateshwara Construction Co. V. Union of India and others*, AIR 2001 Andhra Pradesh 284 may also be taken note of where in it has been held by the Andhra Pradesh High Court that in the event, when even number of arbitrations are appointed, the arbitration in such cases would be by a sole arbitrator in view of sub section 2 of Section 10 and for taking further action in the matter, the procedure contemplated under section 11 will have to be followed. It is, therefore, clear that the arbitration agreement in the present case which contemplate appointment of even in number arbitrators cannot be termed as an invalid agreement, the arbitration clause can still be given effect to.

9. Having held so, the next question would be as to what steps should be taken for proceeding in the matter. Once it is held that the arbitration agreement is valid, to answer the next question it is necessary to take note of the provisions of sections, 11, 14 and 15 of the Arbitration and Conciliation Act, 1996. If the provisions of section 11 is read alongwith section 15, it would be clear that if an arbitration agreement contemplates for appointment of named arbitrators and if the arbitrators so appointed are unable to discharge their function then

the power under section 11(6) has to be invoked and it is the Chief Justice or the Judge designated by the Chief Justice , who is required to be taken action in the matter. In the present case, the arbitration agreement i.e. clause-15 meets the requirement of being a agreement as contemplated under section 9 of the Act, read alongwith requirement of section 2(1) (a). If the appointment procedure contemplated in the arbitration agreement fails then in view of Section-11 it is the Chief Justice or his nominee who is to take necessary action in the matter. Accordingly, I am of the considered view that merely because the parties have entered into an by agreement for appointing two arbitrators and when the appointment of such arbitrator is prohibited under sub clause -1 of section 10, the dispute has to be adjudicated by a sole arbitrator in accordance to the provisions of section 10(2) and the power to appoint such an arbitrator has to be undertaken in accordance to the procedure contemplated under section 11(6). The contention of Shri R.N.Singh to the effect that sole arbitrator in such case would be arbitrator appointed by one of the parties is not correct, if in view of the prohibition contained in sub section 1 of section 10 the arbitration agreement entered into between the parites cannot be given effect to then the Arbitral Tribunal will have to be constituted in accordance to the procedure contemplated under section 11(6). When an arbitration agreement makes a provision for appointment of named persons as arbitrator and when arbitration in accordance to the said provision is not possible due to any reason , the arbitration clause is not rendered redundant. In such cases, the matter has to be proceeded in accordance to the requirement of Section 11(6) and the arbitrator has to be appointed in accordance to the procedure contemplated therein because appointment in accordance to the procedure agreed to between the parties is not permissible. In this regard principles laid down by the Bombay High Court in the case of *Smt. Satya Kailashchandra Sahu and others V. M/s Vidarbha Distillers, Nagpur and others*, AIR 1998 Bombay 210 may be taken note of

10. Having so held so, I may now consider question no.1 as formulated herein above. Once it is found by this court that the appointment of even number arbitrators as done in this case is not permissible and when the arbitrators as are appointed by the parties cannot discharge the function, when an arbitrator is required to be appointed by this court exercising power under section 11(6) I am of the considered view that question no.1 as framed for the present is not at all relevant, it is only of a academic interest now and need not be gone into in the present case.

11. Shri A.K.Jain has made submission with regard to nature of dispute and has raised contentions that the dispute can not be adjudicated by arbitration. The agreement between the parties is with regard to development of the property and it is the case of the applicant that as the property has not been developed in accordance to the agreement, certain flats have been sold on the basis of power of attorney contrary to the agreement and certain development has been done contrary to the agreement. If the dispute between the parties as is made out from the record is taken note of, it would be seen the dispute is not so complicated in nature that it can be adjudicated upon only by the Civil Court, the nature of the inquiry contemplated in the case of *N.Radhakrishnan*(supra) as relied by Shri A.K.Jain is not existing in the present case. The dispute between the parties in the present case is not so complicated or technical in nature that it cannot be resolved by the arbitrator, that also when a High Court Judge (Retd.) is to be appointed as a arbitrator. That being so I am of the considered view that it is not necessary to take recourse to the remedy of filing civil suit instead arbitrator can be appointed in the matter. Certain other objections have been raised by Shri A.K.Jain with regard to the limitation in the matter of raising the dispute i.e. with regard to the right of the Arbitrator only to adjudicate certain disputes in view of the agreement between the parties and claim of the non-applicant travelling beyond the said agreement. It is seen that the agreement between the parties contemplates various disputes pertaining to quality of construction, fixtures, accessories etc. which can be adjudicated by appointing an arbitrator and as the objections in this regard can be raised before the Arbitrator and it would be for the Arbitrator to consider and decide all these questions.

12. Keeping in view the totality of the circumstances and the different opinion with regard to a person to be appointed as arbitrator, I am of the considered view that in the facts and circumstances of the case, interest of justice requires that a person other than the one suggested by the parties should be appointed to adjudicate the dispute between the parties. In view of the above Hon'ble Justice S.K.Pandey, Former Judge of this court stationed at Jabalpur is appointed as Arbitrator to adjudicate the dispute between the parties.

13. The application is accordingly disposed of.

*Application disposed of.*

**I.L.R. [2012] M.P, 3085**
**CIVIL REVISION**
*Before Mr. Justice J.K.Maheshwari*
C.R.No. 188/2011 (Jabalpur) decided on 3 November, 2011

KAMAL KUMAR TALREJA & anr. ...Applicants
Vs.
SMT. ASHA BHATNAGAR ...Non-applicant

*A. Accommodation Control Act, M.P. (41 of 1961), Section 23-E - Legality, Propriety and Correctness* - **Power of the Court is larger than the revisional jurisdiction under Section 115 of C.P.C. but may not be ascertainable at par to appellate jurisdiction - It is not permissible to High Court to come to a different finding unless such finding is unreasonable. (Para 9)**

*क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–ई – वैधता, औचित्य व शुद्धता* – न्यायालय की शक्ति, सि.प्र.सं. की धारा 115 के अंतर्गत पुनरीक्षण अधिकारिता से अधिक है, परंतु अपीली अधिकारिता के समानांतर सुनिश्चित नहीं की जा सकती – उच्च न्यायालय के लिए भिन्न निष्कर्ष पर पहुंचना अनुज्ञेय नही है जब तक कि ऐसा निष्कर्ष अयुक्तियुक्त न हो।

*B. Accommodation Control Act, M.P. (41 of 1961), Section 23 - Eviction - Bonafide Requirement* - **Landlady had sold one shop in the year 2006 - Application for eviction in respect of another shop filed in the year 2010 - Held - Landlady may explore the possibility for remaining life keeping herself busy - If after retirement she had sold one shop and after some time if she wants to get the other shop vacated for keeping her remaining life busy, her ocular evidence cannot be disbelieved - Finding of bonafide requirement appears to be just and reasonable and do not warrant interference. (Para 11)**

*ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23 – बेदखली – वास्तविक आवश्यकता* – भूमिस्वामिनी ने वर्ष 2006 में एक दुकान का विक्रय किया – अन्य दुकान के संबंध में बेदखली हेतु आवेदन वर्ष 2010 में प्रस्तुत किया गया – अभिनिर्धारित – भूमिस्वामिनी, शेष जीवन स्वयं को व्यस्त रखने में बिताने की संभावना को खोज सकती है – यदि निवृत्ति पश्चात् उसने एक दुकान बेच दी और कुछ समय पश्चात् अपना शेष जीवन व्यस्त रखने के लिए दूसरी दुकान को खाली कराना चाहती है, तब उसके चाक्षुष साक्ष्य पर अविश्वास नहीं किया जा सकता – वास्तविक आवश्यकता का निष्कर्ष उचित एवं युक्तियुक्त प्रतीत होता है और

हस्तक्षेप की आवश्यकता नहीं।

**Cases referred :**

2004(4) MPLJ 354, 2002(1) MPLJ 40, AIR 1986 MP 72, (1998) 8 SCC 119, (1999) 1 SCC 133, AIR 2000 SC 2080

*Dinesh Upadhyay*, for the applicants.
*Hemant Kumar & Anand Kumar Jain,* for the non-applicant.

**ORDER**

**J.K. MAHESHWARI, J.** - The applicants/tenants have filed this revision under section 23-E of the M.P. Accommodation Control Act, 1961 (hereinafter to be referred to as **'the Act'**) assailing the legality, propriety and correctness of the order passed by the Rent Controlling Authority (RCA), Bhopal allowing the application filed under section 23-A of the Act directing ejectment of the tenant from the suit accommodation.

2. The facts which are not in dispute that the non-applicant is a widow and also a retired employee. Her husband died on 13.3.2004 and she attained the age of superannuation on 31.3.2006. The applicant No. 1 was the tenant of a shop ad- measuring 200 sq. ft. on ground floor situated in House No.172, Green Park Colony, Berasiya Road, Bhopal. At the time of filing of the application seeking eviction the rate of rent was Rs.1500/- per month as per the Gregorian calender.

3. It is stated in the application by the non-applicant herein that she wants to start her own business of the "ready made garments" in the said shop to which no other alternative reasonably suitable accommodation within the township of Bhopal is available. It is also stated that the applicant No. 1 has allowed applicant No.2 as subtenant and parted with the possession to him illegally on rent. After giving a notice by filing this application prayer was made seeking eviction from the suit accommodation.

4. The defendants on receiving the notice of the case and after granting leave filed written statement stating that the tenancy in the suit shop is w.e.f. 1981 since the life-time of the husband of the non-applicant. After retirement of the non-applicant the tenancy was renewed. At present he is paying rent at the rate of Rs.1500/- per month. It is said that the suit shop is not required bona fide as she is getting sufficient pension on attaining the age of superannuation, therefore, the requirement is not bona fide and the suit has

been filed only to enhance the rent. It is further said that one of the shop has been sold by her after attaining the age of superannuation, therefore, also the requirement cannot be said to be genuine.

5. The RCA considering the evidence of the non-applicant and her son Umendra Bhatnagar arrived at a conclusion that they are not having any other alternative reasonably suitable accommodation in the township of Bhopal. The need of the plaintiff is bona fide to start the business of ready made garments, therefore, eviction from the suit premises has been directed.

6. Shri Dinesh Upadhyay, learned counsel appearing on behalf of the applicants contends that as per the statement of the plaintiff and her son it is apparent that one of the shop has been sold after attaining the age of superannuation by the non-applicant, therefore, the finding as recorded regarding bona fide need of the suit shop is perverse and is liable to be set aside. In support of such contention reliance has been placed on a judgment of this Court in the case of *Chainmal Vs. Rani Bai* reported in 2004 (4)M.P.L.J. 354 and it is urged that in the facts of the present case the requirement of the plaintiff is not genuine, consequently, the finding of bona fide need and direction for ejectment from the suit shop is liable to be set aside.

7. On the other hand, Shri Hemant Kumar, learned counsel appearing on behalf of the non-applicant contends that after appraisal of the evidence of the plaintiff and her son the finding regarding bona fide need as recorded by the RCA do not warrant interference by this Court as the scope of interference in revision on the finding of fact is meager and until and unless findings are perverse interference is not warranted. It is further contended that if the argument of the applicants is accepted even then mere sale of one of the shops does not show lack of bona fide requirement of the landlady. Such requirement is required to be seen on the date on which it accrues. Reliance has been placed on a judgment of this Court in the case of *M.P. Dongre Vs. Kusumlata Shukla* reported in 2002 (1) M.P.L.J. 40. In view of the foregoing it is urged that the finding of fact as recorded by the RCA may be affirmed and the revision filed by the applicants may be dismissed.

8. After having heard learned counsel appearing on behalf of the parties the only question remains for consideration is whether selling of one shop to someone in the year 2006 would mitigate the bona fide requirement of the landlady who filed application under Section 23-A of the Act being special

category of the landlord and in such circumstances, the decree of eviction may be refused as her need is not bona fide?

9. As per the statement of plaintiff Smt. Asha Bhatnagar it is apparent that she is a retired employee and wants to start her own business of ready made garments in the suit shop. To start such business she is not having any other alternative reasonably suitable accommodation in the township of Bhopal. On being asked by the non-applicant it is fairly admitted that one of the shop was sold by her about a year back. In the statement of her son Umendra Bhatnagar aforesaid averment has been reiterated. In the statement of the defendant it is merely contended that because she has sold one shop some time. back, therefore, the need is not genuine.

10. In the said fact the appreciation of the evidence is required to be made. While exercising revisional jurisdiction under settion 23-E of the Act the power of the Court is larger than the revisional jurisdiction conferred under section 115 of the Code of Civil Procedure, but such power may not be exercisable at par to the appellate jurisdiction. In the judgment of *B. Johnson Vs. C.S. Naidu* reported in AIR 1986 M.P. 72 this Court dealing with the words "legality, propriety or correctness" observed that the revisional power under section 23-E of the Act is not restricted to the narrow limits of section 115 of the Code of Civil Procedure, but it is not as wide alike to an appeal. Thus the possible limits of power of revision is required to be kept in the mind and it can be exercised to prevent miscarriage of justice. In the case of *Sarla Ahuja Vs. United India Insurance Company,* (1998) 8 SCC 119 it has been observed by the Apex Court while interpreting section 25-B (8) of the Delhi Rent Control Act, 1958 and observed that it is not permissible for the High Court while exercising revisional power to come to a different fact finding unless the finding arrived at by the RCA on the facts is so unreasonable that no other Rent Controller might have reached on such a finding on the basis of the material available on record. It has been observed that in exercise of the revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion so arrived at by fact finding Court is wholly unreasonable. Again in the judgment of *Rafat Ali Vs. Sugnibai* reported in (1999) 1 5CC 133 the words "legality, regularity or propriety" used in section 22 of the A.P. Building (Lease, Rent and Eviction) Control Act, 1960 have been interpreted wherein it has been held that revisional powers are not so restricted as in other enactments where the words are not so widely framed, nonetheless, they remain in the realm of supervisory

jurisdiction. In the case of V*aneet Jain Vs. Jagjit Singh,* AIR 2000 SC 2080 it has been reiterated by Hon'ble Supreme Court that the High Court while exercising the revisional jurisdiction can reappraise the evidence only for a limited purpose for ascertaining as to whether the conclusion arrived at by the fact finding Court is reasonable or not. In view of the above discussion the legal position as crystallized by Hon'ble Apex Court, thus it is to be seen by this Court whether the finding recorded by the RCA on the issue of bona fide need is reasonable or it is liable to be interfered with on the basis of the material so available being so unreasonable warrants interference.

11. After perusal of the statement of Smt. Asha Bhatnagar and Umendra Bhatnagar and also the defendant it is clear that no effective cross-examination on the issue of bona fide need has been made by the tenant. Simultaneously it is true that the landlady admitted regarding sale of a shop, but merely admission of sale of shop would not negative bona fide need of the landlady. It is seen from the record that since 2010 the litigation was started with the tenant. One shop was sold as appears from the pleadings somewhere in the year 2006 immediately after retirement. Thus what has transpired in the mind of the landlady after sale of one shop to start the business for the remaining life is a matter of concern to determine the issue of bona fide need in the facts of the present case when the notice was issued to vacate the suit accommodation, in the year 2010. It cannot be ignored that a landlady under special category may explore the possibility for remaining life keeping herself busy. In the said facts if after retirement she sold one of the shop and after sometime to carry on her remaining life she wants to get vacated other suit shop to start the business expecting better life such testimony which remained in ocular cannot be disbelieved. Thus the finding recorded by the Rent Controlling Authority is based on appreciation of the evidence. In the opinion of this Court, no different conclusion can be arrived at as reached by the RCA. Mere admission of selling of shop would not negate the bona fide need of the landlady. The judgment so relied upon by the applicants in the case of *Chainmal* (supra) having no application in the facts of the present case. It is to be observed that in the said case landlady has entered into agreement to sell with the tenant himself and thereafter showing the bona fide need the suit was filed. However, considering the said material piece of evidence this Court has negatived the bona fide need of the landlady while in the present case facts are entirely different. In such circumstances I am of the considered opinion that the finding as recorded by the RCA regarding bona fide need of the landlady and eviction

of the tenant appears to be just and reasonable and do not warrant interference in exercise of the revisional jurisdiction by this Court. Consequently, the revision filed by the applicants/tenants is hereby dismissed.

12. At this stage, learned counsel appearing on behalf of the applicants made a request that because he is in occupation of the suit shop since 1981 some time to vacate the shop for restarting his business at other place may be allowed. Considering the facts and circumstances of the present case and giving a reasonable thought on the said contention and also looking to the fact that landlady falls under special category, this Court is of the view that time up-to 31st March, 2012 would be sufficient to deliver vacant peaceful possession to the landlady by paying regular rent in this regard. It is made clear here that the tenants shall furnish an undertaking within one month from today before the RCA, Bhopal to the said effect. In the undertaking it be also specified that the said shop shall not be parted with the possession to any other person till delivery of the possession to the landlady. In the facts and circumstances of the case parties are directed to bear their own costs.

*Revision dismissed.*

**I.L.R. [2012] M.P, 3090**
**CIVIL REVISION**
***Before Mr. Justice K.K. Trivedi***
C.R.No. 409/2011 (Jabalpur) decided on 26 April, 2012

ANAND KUMAR & anr. ...Applicants

Vs.

VIJAY KUMAR & ors. ...Non-applicants

***Benami Transactions (Prohibition) Act, (45 of 1988), Section 4 (1), Civil Procedure Code (5 of 1908), Order 7 Rule 11*** **- Suit for declaration that as the property was purchased by him benami in the name of his mother therefore, he be declared as owner - If a suit is filed after coming into force of the act, claiming any right, title or interest on the basis of any benami transaction, whether it was done prior to coming into force of the act or after coming into force of the act, would be barred u/s 4(1) - Revision allowed - Application under order 7 rule 11 is allowed. (Paras 7 & 9)**

*बेनामी संव्यवहार (प्रतिषेध) अधिनियम (1988 का 45), धारा 4 (1), सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11* – घोषणा के लिए वाद कि चूंकि सम्पत्ति को उसके द्वारा बेनामी, अपनी माता के नाम से क्रय किया गया था इसलिए उसे स्वामी घोषित किया जाए – यदि वाद को अधिनियम प्रवर्तित होने के पश्चात् किसी बेनामी संव्यवहार के आधार पर किसी अधिकार, हक या हित का दावा करते हुए प्रस्तुत किया जाता है, वह धारा 4(1) के अंतर्गत वर्जित होगा, भले ही अधिनियम के प्रभावी होने से पूर्व या अधिनियम के प्रभावी होने के पश्चात् ऐसा किया गया हो – पुनरीक्षण मंजूर – आदेश 7 नियम 11 के अंतर्गत आवेदन मंजूर।

**Cases referred :**

AIR 1994 SC 1647, AIR 2000 SC 2534.

*Pranay Verma,* for the applicants.
*Sourabh Bhushan Shrivastava*, for the non-applicants.

**ORDER**

**K.K. Trivedi, J.** - This revision is directed against the order dated 09.09.2010 passed in Civil Suit No. 76-A/2010, by which the Second Civil Judge Class-II, Gadarwara, District Narsingpur rejected the application of the petitioners/defendants No. 1 and 2 under Order 7 Rule 11 of the Code of Civil Procedure.

2. Brief facts giving rise to filing of this revision are that the respondent No. 1 filed the suit against the petitioners and respondent No. 2 seeking declaration of title and permanent injunction alleging that way back the respondent No.1 has purchased the land in suit *benami* in the name of his mother. It is contended that the said sale deed was executed on 18.07.1979. It is further contended that the said land was never purchased from the property of joint Hindu family. Though in the plaint description of the genealogy of family was given but the claim was made that on payment of amount of consideration by the respondent No.1 sale deed was got executed. It is contended that since the respondent No.1/plaintiff was honestly believing the defendants-petitioners herein and the respondent No.2 but fraudulently they got the Will executed from the mother and got their names recorded over the disputed land. Since such an action was taken by petitioners and respondents No. 2, when respondent No.1 came to know about such a fact, the suit was required to be filed. The reliefs claimed in the suit were that, it be declared that the land in dispute was purchased by the registered sale deed dated 18.07.1979 by the

respondent No.1 *benami* in the name of his mother and in fact he was the original owner of the land in suit. The other relief claimed was grant of permanent injunction against the petitioners and respondent No.2 restraining them to interfere in peaceful possession of respondent No.1-plaintiff on the suit land.

3. The written statement was filed by the petitioner No.2 categorically denying such allegations and stating that the respondent No.1 was not entitled to any such decree as claimed. After filing of the written statement an application under Order 7 Rule 11 (d) of CPC was filed by the petitioners saying that the suit as framed by the respondent No.1 was not maintainable and the plaint was liable to be rejected as the same is barred under the provisions of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'Act'). The trial Court heard the arguments of learned counsel for the parties and rejected the application of the petitioners therefore, this revision is required to be filed.

4. It is vehemently contended by learned counsel for the petitioners that a bare perusal of provisions of Section 4 of the Act makes it clear that the suit as filed by respondent No.1, for the relief aforesaid, was prohibited under the law made by the Parliament. It is contended that if it was mentioned in the plaint that the *benami* transaction had taken place even prior to coming into force of the Act, the same would be hit by provisions of Section 4 of the Act. It is thus, contended that the suit as filed by the respondent No.1 was hit by Sub-section (1) of Section 4 of the Act and the same was not maintainable. The plaint was liable to be rejected. However, this particular aspect has not been considered by the Court below and the application filed by the petitioners has wrongly been rejected. It is contended that in such circumstances, the order impugned is bad in law and is liable to be set aside. It is contended that the suit as filed by the respondent No.1 is liable to be dismissed.

5. Per *contra,* it is contended by learned counsel appearing for the respondent No.1 that the entire plaint is required to be seen. The conduct of the parties are also to be seen. Since the written statement was filed, such an objection was taken in the written statement, only after framing of an issue, recording of evidence, the suit could have been decided. This being the situation, it can not have been said that the suit as framed by respondent No.1 was not maintainable and thus the application of the petitioners was rightly rejected. It is also

contended that the Act was made in the year 1988, transaction had taken place in the year 1979 and since the transaction was prior to coming into force of the Act, it cannot be said that the bar as prescribed under Sub section (1) of Section 4 of the Act would be applicable. It is contended that the Act itself is not made with retrospective effect. Thus, it is contended that there is no force in the revision petition and the same deserves to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. Undisputedly, the Act was enacted in the year 1988 but the bar was created under Sub section (1) of Section 4 of the Act that no claim would be made on the basis of any *benami* transaction. The bar is to file a suit or to make a claim and not that a particular transaction is *benami* or not. If a suit is filed after coming into force of the Act, claiming any right, title or interest on the basis of any *benami* transaction, whether it was done prior to coming into force of the Act or after coming into force of the Act, would be barred under Sub section (1) of Section 4 of the Act. For proper appreciation, the provision of Sub section (1) of Section 4 of the Act is reproduced :-

> " (1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property."

8. This particular aspect has been considered by the Courts on various occasions. This particular aspect that the bar would be applicable in the suits which were required to be filed after coming into force of the Act has been considered by the Apex Court in the case of *Duvuru Jaya Mohana Reddy Vs. Alluru Nagi Reddy,* AIR 1994 SC 1647. Further it is considered by the Apex Court that if a claim was pending prior to coming into force of the Act, the same would not be barred under the provisions of Section 4 of the Act. Please refer *Prabodh Chandra Ghosh vs. Urmila Dassi*, AIR 2000 SC 2534. In view of the pronunciation of these laws by the Apex Court, it is clear that the bar is only with respect to filing of suit or making of a claim in defence only after coming into force of the Act and not in respect of the claim which are made prior to coming into force of the Act. It is also abundantly clear from this that, if a transaction is said to be done prior to

coming into force of the Act but the claim is made after coming into force of the Act, based on such a transaction, the bar prescribed under the Act would be applicable.

9. In light of this, if it is considered whether the suit as framed by respondent No.1 was hit by Sub section (1) of Section 4 of the Act or not, it is to be seen as to how the claim was made by respondent No.1. As far as the averments made in para 1 to 4 of the plaint are concerned they are with respect to the family of the respondents. In para 6, the respondent No.1 has categorically contended that he being less literate was not in a position to obtain an employment and, therefore, he started taking the lands on *Shikmi* for the purposes of making livelihood. It is contended by him that he raised the money by such agricultural work. In para 7, 8 and 9 he categorically contended that out of funds raised by him he purchased the land *benami* in the name of his mother on 18.07.1979. Thus, it was the claim set forth by the respondent No.1 that the land was *benami* purchased by him in the name of his mother and, therefore, his mother was having no title over the land in dispute and was not competent to execute the Will in favour of any body. The prayer made in para 17 of the plaint is simple that such disputed land has been purchased benami by the respondent No.1 plaintiff on 18.07.1979 and therefore, he be declared owner of the said land and it be declared that his mother was having no right to execute the Will in favour of any body. If these pleading and the reliefs are compared, it will be squarely clear that the respondent No.1 plaintiff was claiming title on the basis of *benami* transaction said to have taken place on 18.07.1979. This being so, the prohibition under the Act is squarely applicable and such a plaint was hit by order 7 Rule 11 (d) of CPC. This being so, the Court below was not right in rejecting the application of the petitioners.

10. Resultantly, the revision is allowed. The order impugned is set aside. The application filed by the petitioners under Order 7 Rule 11 (d) of CPC is allowed. The suit filed by the respondent No.1 plaintiff is dismissed as barred under Section 4 (1) of the Benami Transactions (Prohibition) Act, 1988.

11. In the facts and circumstances of the case, there shall be no order as to costs.

*Revision allowed.*

**I.L.R. [2012] M.P, 3095**

**CIVIL REVISION**

***Before Mr. Justice K.K.Trivedi***

C.R.No. 216/2011 (Jabalpur) decided on 8 May, 2012

DEEPAK KUMAR CHOUKSEY ...Applicant

Vs.

SUPERINTENDENT, OFFICE OF DISTT. AYURVEDIC OFFICER, SAGAR & ors. ...Non-applicants

***Succession Act (39 of 1925), Section 372 - Succession certificate*** **- Second marriage was void as it was performed without obtaining decree of divorce - Subsequent grant of decree of divorce would not validate the second marriage - Order granting succession certificate set aside - Revision allowed. (Para 8)**

*उत्तराधिकार अधिनियम (1925 का 39), धारा 372 – उत्तराधिकार प्रमाणपत्र* – द्वितीय विवाह शून्य था क्योंकि उसे विवाह विच्छेद की डिक्री अभिप्राप्त किये बिना संपन्न किया गया था – विवाह विच्छेद की डिक्री को पश्चात्वर्ती प्रदान करना द्वितीय विवाह को विधिसम्मत नही बनाएगा – उत्तराधिकार प्रमाणपत्र प्रदान करने का आदेश अपास्त – पुनरीक्षण मंजूर।

**Cases referred :**

(2005) 3 SCC 636, AIR 2005 SC 422, AIR 2006 SC 80

*Sanjay K. Agrawal,* for the applicant.

*Rajendra Kumar Pardey,* for the non-applicant No.2.

None for the other non-applicants.

**ORDER**

**K.K. Trivedi, J.** - This revision is directed against the order dated 31.03.2011 passed in Civil Appeal No.13/2010, by which the appeal filed by the petitioner against the order dated 24.11.2010 passed in Succession Case No.14/2009 by the III Civil Judge, Class-I, Sagar, has been dismissed.

2. Facts giving rise to filing of this revision in brief are that one late Smt. Pushpa Chouksey was employed as Staff Nurse in District Ayurved Hospital, Sagar. She died intestate on 26.04.2008. The petitioner being the younger

brother of said Smt. Pushpa Chouksey, filed an application under Section 372 of the Indian Succession Act, 1925 (herein after referred to as 'Act') for grant of succession certificate so as to claim the service benefits of late Smt. Pushpa Chouksey. It was contended in the application that the marriage of Smt. Pushpa Chouksey was solemnized with one Omkar Rai on 08.02.1981 but the same was not a successful marriage. Said Smt. Pushpa Chouksey was deserted by her husband and she was living with her father and mother. Ultimately a civil suit was filed by Smt. Pushpa Chouksey for grant of divorce against Omkar Rai in the Court of IV Additional District Judge, Sagar, being Civil Suit No.123-A/2000. The said suit was decreed on 21.12.2000. The petitioner was living with said Smt. Pushpa Chouksey and the petitioner was nominated in all the service records of said Smt. Pushpa Chouksey as the nominee to receive the service benefits of said Smt. Pushpa Chouksey. Before even the dissolution of marriage of said Smt. Pushpa Chouksey with Omkar Rai, she started living with respondent No.2 but no marriage was performed. Said Smt. Pushpa Chouksey died on 26.04.2008 in Medical College, Jabalpur on account of gas leakage and, therefore, he was entitled to grant of succession certificate.

3. The official respondent in the said case filed the reply to the effect that said Smt. Pushpa Chouksey has not nominated anyone in the service records, therefore, it is incorrect to say that the petitioner was nominated by said Smt. Pushpa Chouksey as her nominee. It was contended that many applications were made by said Smt. Pushpa Chouksey for recording the names of various persons and even in one of the applications, she has said that she wanted to give some share in the said service benefit to her mother. Respondent No.2 filed a reply to the said application categorically contending that marriage of respondent No.2 was performed with Smt. Pushpa Chouksey on 15.01.2000 and out of the wedlock, a daughter was born on 16.04.2001. Said daughter had died on 21.04.2008. It was claimed that the petitioner was not entitled to grant of a succession certificate, since accepting the contention of the respondent No.2, the Additional Collector, Sagar has already granted a succession certificate in favour of respondent No.2 and some payments have been made to him. It was claimed that a succession certificate was to be granted in favour of respondent No.2. Respondent No.4 supported the claim of the petitioner. Issues were framed by the learned Succession Court and thereafter recording the evidence, rejecting the application of the petitioner, the succession certificate was granted in favour of respondent No.2. Being

aggrieved by this order, the petitioner preferred an appeal under Section 384 of the Act before the lower Appellate Court but since the said appeal has been dismissed by the impugned order, this revision is filed.

4. It is vehemently contended by learned Counsel for the petitioner that the order passed by the lower Appellate Court as also by the Succession Court are bad in law as the material evidence, the proof of marriage produced by respondent No.2 have wrongly been accepted. It is contended that since undisputedly the parties are Hindu, they are governed by the Hindu Law and the Hindu Succession Act, 1956 (herein after referred to as 'Succession Act') as also the Hindu Marriage Act, 1955 (herein after referred to as 'Marriage Act'), are applicable. It is contended that the marriage as alleged by the respondent No.2 with Smt. Pushpa Chouksey is *void ab initio* as the marriage was said to be performed on 15.01.2000, though no proof of the same was produced by respondent No.2 whereas the earlier marriage of said Smt. Pushpa Chouksey was dissolved only on 21.12.2000 by grant of decree of divorce. It is contended that as per the law and the specific provisions made under Section 11 of the Marriage Act, the marriage said to be performed during the lifetime of the previous husband and without the dissolution of previous marriage, was *void ab initio*. Reading Section 5 of the Marriage Act, it is said that admittedly there was no divorce in between Smt. Pushpa Chouksey and Omkar Rai prior to 21.12.2000 and second marriage performed on 15.01.2000 was null and void. It is also contended by learned Counsel for the petitioner with vehemence that apart from the fact that marriage of Smt. Pushpa Chouksey with respondent No.2 was *void ab initio*, in fact there was no proof of such a marriage as is required under the law. It is contended that the condition of Hindu marriage as prescribed in Section 5 of the Marriage Act and the ceremonies for Hindu marriage as prescribed in Section 7 of the aforesaid Act were neither stated nor proved. A form of marriage with the blessings of the religious Guru is not recognized under the Marriage Act and, therefore, such marriage could not be treated as a valid marriage. On this count also, the succession certificate was not to be granted to respondent No.2. Taking this Court to the provisions of Succession Act, it is contended that the petitioner was in fact entitled to the succession certificate, being the legal heir of Smt. Pushpa Chouksey as per the general rules of succession in case of female Hindu prescribed under Section 15 of the Succession Act but this was completely ignored by the Courts below and as such the order passed by the Succession Court as also by the lower Appellate

Court are bad in law and are liable to be set aside.

5. Per *contra* it is contended by the learned Counsel appearing for respondent No.2 that factum of marriage was found proved and findings in this respect have been categorically recorded in paragraph 15 of the lower Appellate Court's order. The proof with respect to marriage was produced by the respondent No.2, such as the birth certificate of the daughter containing the name of respondent No.2 as father and the name of Smt. Pushpa Chouksey as mother. Various documents such as the identity card issued by the Government Department indicates that respondent No.2 was the husband of said Smt. Pushpa Chouksey. The family card issued by the department contains the name of Smt. Pushpa Chouksey after the change of surname after second marriage as 'Sekri' which was duly recorded and, therefore, it was duly proved by such documents that said Smt. Pushpa Chouksey was in fact the wife of respondent No.2. The affidavits have been filed to indicate that the daughter was born out of the said wedlock and, therefore, only the respondent No.2 being the husband of said Smt. Pushpa Chouksey, was the person to inherit all the properties of said Smt. Pushpa Chouksey as per the Succession Act. Thus, it is contended that if the Courts below have considered the said evidence and have given the definite findings with respect to grant of succession certificate to the respondent No.2, no wrong was committed. It is submitted that the revision has no force and is liable to be dismissed.

6. Heard learned Counsel for the parties at length and perused the record.

7. Undisputedly the first thing is required to be examined whether there was any valid marriage of said Smt. Pushpa Chouksey with respondent No.2 as per the Marriage Act. The provisions of Marriage Act specifically contemplates the condition for a Hindu marriage in Section 5 of the Marriage Act, which contains the condition that neither party has a spouse living at the time of the marriage and emphasis has been put to such a condition. It is to be seen that the burden of proving such a marriage always lies on such a person, who claims the performance of such marriage. It is also to be seen as to how a Hindu marriage is required to be proved. The necessary ceremonies, which are to be performed, are mentioned in Section 7 of the Marriage Act. Though it is said that a Hindu marriage may be solemnized in accordance with the customary rites or ceremonies of either party, where such rites and ceremonies include the *Saptpadi*, that is taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage

would become complete and binding when the seventh step is taken. It is not disputed by either party that they are governed by Hindu law and, therefore, first of all marriage was required to be performed in the manner prescribed under the said law. The entire evidence of respondent No.2, if scrutinized, where he has examined himself as DW-1, neither a certificate of registration of marriage has been produced nor a single word of performing such Saptpadi has been uttered before the Succession Court. The respondent No.2 has put great emphasis in placing on record the evidence that the respondent No.2 was living as husband with Smt. Pushpa Chouksey but he has completely failed to demonstrate that a legal and valid marriage was performed with said Smt. Pushpa Chouksey. He categorically contended that he met with said lady while he was attending his religious Guru and he started to visit said Smt. Pushpa Chouksey. It is said that on 15.01.2000, the religious Guru blessed the couple, i.e. respondent No.2 and Smt. Pushpa Chouksey as husband and wife and since thereafter they started living as husband and wife. Such a form of marriage is neither recognized in Hindu custom nor is prescribed in the Hindu Law. The Marriage Act nowhere admits such type of marriage in the society. In the cross-examination, he has categorically admitted that the previous marriage of Smt. Pushpa Chouksey with Omkar Rai was dissolved on 21.12.2000 and that the marriage of the said lady performed with respondent No.2 was not by performing *Saptpadi*. Even this much he has admitted that after the marriage, surname of Smt. Pushpa Chouksey was not changed in every such Government documents. The other witnesses examined by him, namely Rajkumar Mishra, DW-1, Chaturbhuj Singh Rajput, DW-3 and Ritesh Sharma, DW-4, nowhere indicate that any marriage as per Hindu custom was solemnized between respondent No.2 and Smt. Pushpa Chouksey.

8. Another facet is that undisputedly Smt. Pushpa Chouksey was married to Omkar Rai and she has applied for grant of a decree of divorce and dissolution of such a marriage in the Court of IV Additional District Judge, Sagar, by filing Civil Suit No.123-A/2000. It is not that the said suit was ex parte decided. The suit was contested by said Omkar Rai. After recording of the evidence, the Court granted a decree of divorce only on 21.12.2000. Before the said date there was a valid marriage of said Smt. Pushpa Chouksey with Omkar Rai. It is not the case of anybody that said Omkar Rai had died prior to passing of judgment and decree in the aforesaid suit. He was very much living. As per the condition specifically mentioned in Section 5 of the

Marriage Act, there cannot be any valid marriage if a party to the marriage has a spouse living at the time of marriage. Undisputedly, on 15.01.2000 marriage of Smt. Pushpa Chouksey with Omkar Rai was in existence. The consequence of such a second marriage is specifically prescribed in Section 11 of the Marriage Act, which according to law is a void marriage. If the marriage is void on its inception itself, it would not become a valid marriage after the grant of decree of divorce in favour of said Smt. Pushpa Chouksey on 21.12.2000. So called marriage of Smt. Pushpa Chouksey with respondent No.2 was in fact *void ab initio.*

9. The effect of such a marriage has been considered by the Apex Court in the case of *Savitaben Somabhai Bhatiya vs. State of Gujarat* and others, (2005) 3 SCC 636. Though with respect to grant of maintenance, the entire consideration was done but the provisions of Section 5(i) and 11 of the Marriage Act were duly considered by the Apex Court. It has been categorically held by the Apex Court that if a relationship is contacted during the subsistence of a marriage, the said relationship cannot be recognized as a valid marriage under the law. The Apex Court in the case of *Ramesh Chandra Rampratapji Daga vs. Rameshwari Ramesh Chandra Daga,* AIR 2005 SC 422 has duly considered the null and void marriage under the Hindu Law. It is categorically held by the Apex Court that in absence of any decree of dissolution of first marriage from the Court, the said marriage is said to be subsisting when the second marriage was performed and, therefore, the second marriage of the wife was null and void. In the considered opinion of the Apex Court if the marriage is *void ab initio*, it would not become a valid marriage even if the decree of dissolution of the first marriage is subsequently passed. The Apex Court in the case of *M.M. Malhotra vs. Union of India* and others, AIR 2006 SC 80 has further considered the simple meaning of void marriage and has categorically said that there cannot be any escape of such a consequence of declaration of marriage as null and void if the same has been performed in violation of the specific condition laid-down under the Marriage Act.

10. In the light of the enunciation of law by the Apex Court if factual aspect is considered, it is abundantly clear that both the Courts below have completely failed to appreciate such a legal position in appropriate manner. The Succession Court while passing the order has not taken note of such a fact and has completely whisked by the submission made by official respondent No.1 that there were certain applications made by the said Smt.

Pushpa Chouksey for change of nomination or names of certain persons. Though the Courts below have held that by producing the nomination the petitioner has established that he was nominated by Smt. Pushpa Chouksey to receive the service benefits accrued to her but only because of a bald statement made without any documentary evidence by the official respondent, such a document was ignored. It was not considered proper by the Succession Court that the claim of marriage of respondent No.2 with Smt. Pushpa Chouksey be decided in appropriate manner, after appreciation of evidence and applying the law. Had it been done, the Succession Court would have seen that though claimed but respondent No.2 has completely failed to prove the valid marriage with Smt. Pushpa Chouksey in accordance to Hindu Law. Rather it would have been held that the so called marriage of respondent No.2 with Smt. Pushpa Chouksey was *void ab initio* as per the provisions of the Marriage Act. If this would have been done by the Courts below, the orders would not have been passed granting succession certificate in favour of respondent No.2. On the other hand, the application of the petitioner would have been allowed. Unfortunately, these aspects have not been considered by the lower Appellate Court also and the appeal of the petitioner has been erroneously decided by the impugned order. The appellate authority has also not seen that whatever documents produced by the respondent No.2 were not the proof of marriage, rather a valid marriage of respondent No.2 with Smt. Pushpa Chouksey, as per the Hindu Law nor there was evidence of such a marriage, even oral. Before affirming the order of the Succession Court, the lower Appellate Court has not applied its mind in appropriate manner in appreciating the law, vis-à-vis the evidence available on record.

11. Consequently, the revision succeeds and is hereby allowed. The order dated 31.03.2011 passed in Civil Appeal No.13/2010 by the VI Additional District Judge, Sagar, as also the order dated 24.11.2010 passed in Succession Case No.14/2009 by the III Civil Judge, Class-I, Sagar, are hereby set aside. The application made by the petitioner for grant of succession certificate is hereby allowed. The Court below is directed to issue a succession certificate in favour of the petitioner as per law. In the facts and circumstances of the case, the parties to the revision will bear their own cost.

*Revision allowed.*

**I.L.R. [2012] M.P, 3102**

**CIVIL REVISION**

***Before Mr. Justice K.K. Trivedi***

C.R.No. 2/2012 (Jabalpur) decided on 9 May, 2012

KESH KUMAR ...Applicant

Vs.

RAJU @ RAJKUMAR & ors. ...Non-applicants

***Specific Relief Act (47 of 1963), Section 6 - Suit for possession -*** **Applicant failed to prove that he was ever inducted as tenant in suit shop or was ever dispossessed as claimed by him - In absence of any proof that he was dispossessed within six months from the date of filing the suit, the suit is not maintainable - Revision dismissed. (Paras 5 & 7)**

*विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6 – कब्जे के लिए वाद* – आवेदक यह साबित करने में असफल रहा कि उसे कभी वाद दुकान में किरायेदार के रूप में रखा गया था या उसे कभी बेकब्जा किया गया था जैसा कि उसके द्वारा दावा किया गया है – किसी प्रमाण के अभाव में कि उसे वाद प्रस्तुति की तिथि से छः माह के भीतर बेकब्जा किया गया था, वाद पोषणीय नही – पुनरीक्षण खारिज।

*D.N. Shukla,* for the applicant.

*Ankur Shrivastava,* for the non-applicants.

**ORDER**

**K.K. Trivedi, J.** - This revision is directed against the judgment and decree dated 19.10.2011 passed in Civil Suit No.3-A/2011 by the II Civil Judge, Class-II, Kotma, District Anuppur.

2. Facts in brief giving rise to filing of this revision are that the petitioner claiming himself to be a tenant in the demise premises, filed a suit under Section 6 of the Specific Relief Act before the Court below for grant of a decree of possession. It was contended by the petitioner that he was inducted as a tenant by the respondent No.2 on the disputed shop, owned by the respondent No.2 where he was running a furniture shop in the name of 'Vishwakarma Furniture Mart'. It is contended that the petitioner was in possession of the said shop for a period of about 25 years. It is contended that the petitioner was paying Rs.25/- per month as rent of the said shop. He was granted various

orders for imparting training in wood crafts to the trainees selected by the local authorities and he imparted the training to said persons. In the intervening night of 2.6.2001 and 3.6.2001, the respondent No.1 unauthorisedly put a lock on the shop and forcefully had taken possession of the shop. When he went on the shop, the respondent No.1 threatened him and asked him to run away or to face the consequences. It is contended that the petitioner tried to pacify respondent No.1 with the help of the reputed citizen of the locality, but when nothing was done, he lodged a complaint in the police also. No action was taken by the police authorities, though the matter was referred to the higher authorities also. Thereafter, an application under Section 145 of Cr.P.C., for delivery of possession was filed. However, no expeditious action was taken in the said proceedings. Since it was stated that in fact the owner of the shop is respondent No.3, ultimately, the petitioner was required to file the suit for possession.

3. The claim made by the petitioner was resisted by respondents and they categorically contended that the petitioner was never inducted as a tenant in the shop. In fact, the shop belongs to respondent No.3, who has purchased the said shop by a registered sale deed from the respondent No.2 way back in the year 1989. The name of respondent No.3 was recorded in the records of right maintained by the municipalities with respect to the said shop. The petitioner was having no place to sit anywhere and in fact, he was making earning by doing the carpentry work from door to door. Thus, in fact to harass the respondents and to grab the shop, such a suit was filed. It was further contended that the suit as framed was not maintainable and was liable to be dismissed.

4. The Court below framed the issues and recorded the evidence of parties. In the evidence of the petitioner, he examined himself as PW/1 and few persons as Mohd. Qayyum, Amarlal, Rajkumar Teerath Ram, Vaidhnath Pandey, Jitendra and R.K. Soni. All these persons including the petitioner have contended that the petitioner was running the shop, but exact location of the shop could not be proved. The petitioner himself has admitted in the Court's statement that he came to know that Jai Narayan, the respondent No.2, has sold the shop to respondent No.3. The exact date on which the shop was let out to petitioner was not mentioned. The fact relating to specific dispossession was not proved. He was not in a position to explain as to where the signboard of the shop of the petitioner was fixed. He could not explain as to how he was making the payment of rent. On one hand, he admitted that he could know

about the fact of transfer of the suit shop in favour of Ravikant, the respondent No.3 by Jai Narayan, on the other hand, he said that he could know about this fact when he examined the record of the Court below. When a question was asked by the Court whether at any time Ravikant has let out the shop to the petitioner, he categorically replied that the shop was let out by Jai Narayan and not by Ravikant. Upon his own showing, by deed of transfer Ex.P/26, it is clear that the shop was purchased by Ravikant on 17.3.1989 and if the shop was taken on rent after that, in fact Jai Narayan, the respondent No.2, was not the person who could have inducted the petitioner as tenant in the said shop.

5. The other witnesses examined by the petitioner could simply stated that they have taken training in the shop, but where that particular shop is situated and whether any certificate is issued in their favour, could not be stated by them. In rebuttal to this, the respondent No.1 himself was examined and in support of his statement, one Sudhir Tiwari was also examined. The respondent No.2 was also examined as a witness and he categorically contended that he never put the petitioner as tenant in the said shop. The respondent No.3 was examined as a witness and he categorically contended that he never put the petitioner as a tenant in the shop.

6. After marshalling the evidence, the Court below has reached to the conclusion that the petitioner has completely failed to prove that he was ever inducted as tenant in the said shop nor he was ever dispossessed on 2.6.2001 or 3.6.2001 as claimed. The Court below has given a definite finding that the effective date of dispossession could not be proved by the petitioner as he could not prove that he was ever since in lawful possession of the suit shop. The findings have been recorded by the Court below that if the respondent No.3 had purchased the suit shop on 17.3.1989, how could it be let out to the petitioner on any date after this by Jai Narayan, the respondent No.2. Thus, it was held that the petitioner has completely failed to prove his case and, as such, the suit was dismissed.

7. Further, if the petitioner could not establish the alleged dispossession from the shop in suit within six months from the date of filing of the suit, the provisions of Section 6 of the Act aforesaid would not be attracted at all nor such a suit would be maintainable. From the entire evidence, only this much could be proved by the petitioner that a complaint was made in the police with respect to the alleged dispossession from the suit premises in the intervening night of 2.6.2001 and 3.6.2001, but the said complaint was closed as after investigation, no offence was

found to be committed. It is contended that since such order of closure of the case was challenged and the Sessions Court has directed investigation on the said complaint, it cannot be said that in fact the petitioner was not dispossessed on the date as alleged. It is to be seen that specially when the petitioner has failed to prove the fact that he was put in lawful possession of the suit shop by the real owner of the shop, alleged dispossession was of no consequence and as such, the suit itself was not maintainable under Section 6 of the Specific Relief Act. If from this particular aspect, the findings recorded by the Court below are examined, no perversity is found.

8. Learned counsel for the petitioner has put great emphasis on the evidence and has contended that various documents were produced by the petitioner, which were not looked into by the Court below and erroneous finding was recorded. However, after going through the evidence and the documents produced by the petitioner, duly exhibited, it is clear that from none of the documents, the petitioner could demonstrated that shop was let out to the petitioner by the real owner of the shop. Such a claim of the petitioner could not have been accepted at all as has rightly been done by the Court below. In view of the aforesaid, there is no case made out to interfere in the findings recorded by the Court below. No jurisdictional error committed by the Court below is found and, as such, the revision is devoid of any substance.

9. The revision being bereft of any merit, is dismissed. However, there shall be no order as to costs.

*Revision dismissed.*

**I.L.R. [2012] M.P, 3105**

**MISCELLANEOUS CRIMINAL CASE**

***Before Mr. Justice R.C. Mishra***

M.Cr.C.No. 9076/2011 (Jabalpur) decided on 10 July, 2012

RAKESH AGRAWAL & ors. ...Applicants

Vs.

B.S. JAGGI ...Non-applicant

***Penal Code (45 of 1860), Section 500, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Defamatory article - Quashment of proceedings*** **- News item published in news paper that the**

**respondent is behaving in an erratic and uncivilized manner in his bid to project himself as a police wala gunda - Trial of Editor is yet to commence - Inquiry preceding issuance of process did not reflect any prima facie involvement of anyone of the applicants - Order issuing process is set aside - However, nothing shall preclude the Magistrate from proceeding against the applicants under Section 319 of Cr.P.C. if from the evidence adduced during trial of Editor, their complicity in selection and publication of defamatory news item is established.**

**(Paras 13 to 15)**

*दण्ड संहिता (1860 का 45), धारा 500, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – मानहानिकारक लेख – कार्यवाहियां अभिखण्डित की जाना* – समाचार पत्र में प्रकाशित समाचार कि प्रत्यर्थी स्वयं को पुलिस वाला गुंडा दिखाने के उसके प्रयास में सनकी और असभ्य ढंग से व्यवहार कर रहा है – संपादक का विचारण अभी आरंभ नही हुआ है – आदेशिका जारी करने से पूर्व जांच में आवेदकगण में से किसी का अंतर्ग्रस्त होना प्रथम दृष्ट्या परिलक्षित नहीं होता – आदेशिका जारी करने का आदेश अपास्त – किन्तु मजिस्ट्रेट को आवेदकगण के विरूद्ध द.प्र.सं. की धारा 319 के अंतर्गत कार्यवाही करने से कुछ भी प्रवारित नहीं करेगा, यदि संपादक के विचारण के दौरान प्रस्तुत किसी साक्ष्य से मानहानिकारक समाचार के चयन व प्रकाशन में उनकी सह–अपराधिता स्थापित की जाती है।

**Cases referred :**

(1992) 1 SCC 217, 2003 Cr.L.J. 4058, AIR 2002 SC 2989, AIR 1992 SC 1815.

*Ajay Mishra with Sanjeev Mishra,* for the applicants.

*H.S. Ruprah with Harpreet Ruprah,* for the non-applicant.

**ORDER**

**R.C. Mishra, J.** - This is a petition, under Section 482 of the Code of Criminal Procedure (for short 'the Code') for quashing of the proceedings pending as R.T.No.3553/08 before CJM, Satna. In that case, cognizance of the offence punishable under Section 500 of the IPC has been taken against the petitioners and co-accused Bharat Saxena, upon a complaint made by the respondent in respect of an allegedly defamatory news item published in Dainik Bhaskar, Satna on 12.4.2008.

2. The news item in question contained imputation to the effect that the respondent, who was posted as Town Inspector at City Kotwali, Satna, had been behaving in an erratic and uncivilized manner in his bid to project himself as a *Police Wala Gunda.*

3. The corresponding declaration printed in the Newspaper reflects that at the relevant point of time, the petitioners were working respectively as Managing Editor, Chief Editor of the Newspaper and Managing Director of the Dainik Bhaskar Prakashan Private Limited.

4. Learned Senior Counsel for the petitioners has strenuously contended that their prosecution is an abuse of the process of theCourt in view of the well settled position of law as applicable to the facts of the case. Placing implicit reliance on the decision of the Supreme Court in *K.M. Mathew v. State of Kerala* (1992) 1 SCC 217, he has further submitted that no presumption, under Section 7 of Press and Registration of Books Act, 1867 (for brevity 'the Act'), can be drawn against petitioner nos.1 and 2 as none of them had any concern with the functions of the Editor, as defined in Section 1(1) of the Act. Reference has also been made to the decision of the Bombay High Court in *Vivek Goenka v. State of Maharashtra* 2003 CrLJ 4058, to buttress the contention that Petitioner No.3, being the Managing Director of the Publication Company, was supposed to have the control over the management of the office of the newspaper and its financial aspects only.

5. Learned Senior Counsel appearing on behalf of the respondent has contended that the expression "sufficient ground" used in Sections 203 and 204 means satisfaction that a *prima facie* case is made out against the person accused of committing an offence and does not mean sufficient ground for the purpose of conviction. According to him, the complaint against the petitioners is also maintainable as the presumption contained in Section 7 is a rebuttable one.

6. In response, learned Senior Counsel for the petitioners has submitted that no specific allegation against anyone of the petitioners suggesting that he had any role to play in publication of the offending news item, has been made by the respondent in his examination, under Section 200 of the Code, or by anyone of his witnesses namely Sudama Prasad, Shiv Kumar Gupta and Arvind Shukla, in his examination, under Section 202 thereof.

7. Before proceeding to enter into the merits of the rival contentions, it would be necessary to first advert to Section 7 and other relevant provisions of the Act –

> **Section 7. Office copy of declaration to be prima-facie evidence.**
>
> *In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, for the editor of every portion of that issue of the newspaper of which a copy is produced.*

8. Definitions of 'Editor' and 'Newspaper' have been given in Section 1(1) of the Act as under :-

> ***"Editor"** means the person who controls the selection of the matter that is published in a newspaper.*
>
> .....
>
> *"Newspaper" means any printed periodical work containing public news or comments on public news.*

9. **Section 5** prescribes **rules as to publication of newspapers** in the following terms -

> *No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:*
>
> *(1) Without prejudice to the provisions of section 3, every*

*copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.*

.....

10. **Section 8-A** enables **a person whose name has been incorrectly published as editor may make a declaration before a Magistrate.** It reads -

*"If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of Section 7 shall not apply to that person in respect of that issue of the newspaper.*

*The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period."*

11. As explained by the Apex Court in *K.M. Mathew vs. K.A. Abraham* AIR 2002 SC 2989 -

*"A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication*

*and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. ..... .....*

*There is no statutory immunity against Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control.*

*.....there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Maraging Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than Editor can also be held responsible for selecting the matter for publication in a newspaper."*

(Emphasis supplied)

12. Neither in *K.A. Abraham's* case (supra) nor in anyone of the connected

cases, the 'Editor' had come forward to admit that he was the person responsible for selecting the allegedly defamatory matter published. It was against this backdrop that the Apex Court declined to quash the proceedings against the Chief Editor, Resident Editor or Managing Editor, while observing that -

> *"If the complaint is allowed to proceed only against the 'Editor' whose name is printed in the newspaper against whom there is a statutory presumption under Section 7 of the Act, and in case such 'Editor' succeeds in proving that he was not the 'Editor' having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit."*

13. However, in the instant case, there is no occasion to make such a finding in view of the fact that the trial of the Editor is yet to be commenced. Further, the inquiry preceding issuance of process did not reflect any *prima facie* involvement of anyone of the petitioners in the offence and this is the most significant aspect of matter. It is well-settled that before proceeding to issue process, the Magistrate has to take all relevant facts and circumstances into consideration lest it should be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly *(See. Punjab National Bank v. Surendra Prasad Sinha* AIR 1992 SC 1815).

14. For these reasons, even though, the complaint as against the petitioners, that ought to have been dismissed under Section 203 of the Code, can not be quashed under the inherent powers simply because none of them was the 'Editor' of the Newspaper yet, corresponding part of the order directing issuance of process for the offence is liable to be set aside.

15. Accordingly, the order dated 18.9.2008, so far it concerns the petitioners, is hereby set aside with the observation that nothing contained herein shall preclude the Magistrate from proceeding against anyone of the petitioners, under Section 319 of the Code, if, from the evidence adduced during trial of the Editor namely Bharat Saxena, his complicity in selection and publication of the defamatory news item is established.

16. The petition stands allowed to the extent indicated above.

*Petition allowed.*

**I.L.R. [2012] M.P, 3112**

**MISCELLANEOUS CRIMINAL CASE**

***Before Mr. Justice R.C. Mishra***

M.Cr.C.No. 7489/2012 (Jabalpur) decided on 1 August, 2012

RAGHUNATH SINGH PATEL ...Applicant

Vs.

CHANDRA PAL SINGH PARIHAR ...Non-applicant

***Negotiable Instruments Act (26 of 1881), Section 138 - Withdrawal of Complaint*** **- Prayer for withdrawal of complaint at defence stage on the ground of compromise cannot be allowed without following the guideline of depositing 10% of the cheque amount, as laid down by Apex Court in the case of Damodar S. Prabhu Vs. Sayed Babalal. (Para 4)**

*परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – शिकायत को वापिस लेना* – बचाव के प्रक्रम पर समझौते के आधार पर शिकायत वापिस लेने के लिए निवेदन को चेक राशि का 10 % जमा करने के दिशानिर्देश का पालन किये बिना मंजूरी नहीं दी जा सकती जैसा कि उच्चतम न्यायालय द्वारा दामोदर एस. प्रभु वि. सैयद बाबालाल के प्रकरण में प्रतिपादित किया गया है।

**Cases referred :**

AIR 2010 SC 1907.

*Premendra Sen*, for the applicant.

**ORDER**

**R.C. Mishra, J.** - Heard on admission.

2. This is a petition, under Section 482 of the Code of Criminal Procedure (for short 'the Code') for quashing of the order-dated 22.5.2012 passed by Shri R.S. Kanojia, JMFC, Narsinghpur, rejecting respondent's application, under Section 257 of the Code, for withdrawal of his complaint, whereupon cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was taken against the petitioner.

3. A bare perusal of the order-dated 22.5.2012 would reveal that the prayer for withdrawal was rejected for the reason that the petitioner had failed to deposit 10% of the cheque amount with the Legal Services Authority as per the guidelines laid down by the Apex Court in *Damodar S. Prabhu v.*

*Sayed Babalal H.* AIR 2010 SC 1907.

4. Learned counsel for the petitioner has contended that the decision has no application to the prayer for withdrawal. However, fact of the matter is that the guidelines have been issued to curb the tendency of parties to go for compounding at late stage of proceedings and in the instant case, the withdrawal was sought for, at the stage of defence, on the ground of compromise only. In such a situation, the application for withdrawal, that was moved instead of an application for compromise, under Section 147 of the Act, with a view to circumventing the guidelines, was rightly rejected.

The petition, therefore, stands dismissed in *limine* with liberty to file an appropriate application for compromise before the trial Court.

C.C. as per rules.

*Petition dismissed*

**I.L.R. [2012] M.P, 3113**

**MISCELLANEOUS CRIMINAL CASE**

***Before Mr. Justice R.C. Mishra***

M.Cr.C.No. 14707/2011 (Jabalpur) decided on 30 August, 2012

ALAKH KUMAR @ ALAKH DAS GUPTA ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 177 - Territorial Jurisdiction*** **- Explosives were despatched from Dholpur under the license of M/s Ganesh Explosives, Sagar - Magazine was transferred to Rajgarh under the deed of partnership - Charge sheet filed at Sagar - Held - The present case is one of conspiracies to commit offences including punishable under Explosives Act - One of the passes are said to have been issued by the applicant within the territorial jurisdiction of Sagar Court - Merely because the consignment did not reach the destination was of no consequence - Sagar Court has territorial jurisdiction. (Paras 7 to 11)**

*क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 – क्षेत्रीय अधिकारिता* – विस्फोटकों को मे. गणेश एक्सप्लोसिवस्, सागर की अनुज्ञप्ति के अंतर्गत धौलपुर से प्रेषित किया गया – बारूदखाने को भागीदारी विलेख के अंतर्गत

राजगढ़ स्थानांतरित किया गया – आरोप पत्र सागर में प्रस्तुत किया गया – अभिनिर्धारित – वर्तमान प्रकरण, उन अपराधों को कारित करने के षड्यंत्र का प्रकरण है, जिनमें विस्फोटक अधिनियम के अंर्तगत दण्डनीय अपराध का भी समावेश है – वादपत्रों में से एक को कथित रूप से आवेदक द्वारा सागर न्यायालय की क्षेत्रीय अधिकारिता के भीतर जारी किया गया – मात्र इसलिए कि परेषण गंतव्य स्थान पर नहीं पहुंचा, यह कोई महत्व नहीं रखता–सागर न्यायालय को क्षेत्रीय अधिकारिता है।

***B.*** ***Double Jeopardy*** **- Two charge sheets pending before two different courts on altogether different set of allegations - Question of double jeopardy does not arise. (Paras 12 to 14)**

*ख.* *दोहरा संकट* – दो भिन्न न्यायालयों के समक्ष पूर्णतः भिन्न आरोपों पर दो आरोपपत्र लंबित है – दोहरे संकट का प्रश्न उत्पन्न नहीं होता।

**Cases referred :**

1984 CRI.L.J.1065, AIR 1956 ALL 619, AIR 1984 SC 1492, AIR 1954 SC 375, AIR 1961 SC 578, AIR 1971 SC 885, 1986 (2) SCC 716, AIR 1979 SC 366, (2000) 1 SCC 722, (2011) 9 SCC 272, AIR 1956 SC 116.

*Abhishek Singh,* for the applicant.

*Rahul Jain,* G.A. for the non-applicant.

**ORDER**

**R.C. Mishra, J.** - This is a petition, under Section 482 of the Code of Criminal Procedure (for short 'the Code'), for quashing of the

(i) order-dated 23.7.2011, passed by First Additional Sessions Judge, Sagar in Sessions Trial No.714/10, rejecting his application under Section 177 of the Code.

(ii) order-dated 3.11.2011, charging him with the offences punishable under Sections 420, 467, 468, 471 read with 120B and 201 read with 34 of the IPC and 9-B and 9-C of the Explosives Act, 1884 and under Sections 4 and 6 of the Explosive Substances Act, 1908.

(iii) entire proceedings ending in the trial, so far as they relate to him.

2. In that case, cognizance of the aforesaid offences was taken by JMFC,

Sagar upon a charge-sheet presented against as many as 11 persons including the petitioner. The Magistrate, after observing the procedure prescribed, committed the case to the Court of Session for trial.

3. The charge-sheet was filed after due investigation into the FIR, leading to registration of Crime No.161/10 at P.S. Baheria Distt. Sagar for the offence punishable under Section 9-B of the Explosives Act, 1884 and the FIR was scribed on 13.7.2010 by ASI Sanjay Singh in the light of the fact-finding report submitted by SDO(P), Rahatgarh to Superintendent of Police, Sagar after due inquiry into the complaint relating to involvement of M/s Ganesh Explosives, a proprietary firm owned by Devendra Singh Thakur and having its Magazine, as defined in Rule 31 of the Explosives Rules, 2008, at Village Pipra Distt. Sagar, in an illicit trade of explosives.

4. Relevant recitals of the charge-sheet may be summarized as under -

> On verification of the information relating to despatch of consignments of explosives by Rajasthan Explosives and Chemical Limited, Dholpur in trucks bearing registration nos.RJ-09-G-4343, RJ-06-G-0373, RJ-06-G-4976, RJ-06-G-1535, RJ-06-G--4053, for being delivered at Magazine of M/s Ganesh Explosives, Pipra Distt. Sagar, B.M. Dwivedi, Officer-in-charge of the police station, found that -
>
> (a) the Magazine, that was transferred to Jai Kishan Ashwani, a resident of Biaora Distt. Rajgarh and the proprietor of M/s B.M. Traders under a deed of partnership executed on 22.7.2009, had remained closed for the last two years.
>
> (b) The explosive licences issued by the Chief Controller of Explosives in favour of -
>
> (i) M/s B.M. Traders and bearing nos. E/HQ/MP/21/245 (E-35786) and E/HQ/MP/21/244 (E-35774) were valid upto 31.3.2015.
>
> (ii) M/s Ganesh Explosives and bearing nos. E/HQ/MP/21/166 (E-6254) and E/HQ/MP/21/167 (E-6255) had expired on 31.3.2010.

Accordingly, the case under Section 9-B of the Explosives Act, 1884 was registered against Jai Kishan. The investigation revealed -

**(a)** A criminal conspiracy was hatched to obtain explosives on the basis of the licences issued in favour of M/s Ganesh Explosives (since expired) and to secure illegal gains by selling the explosives to persons apparently indulged in unlawful activities.

**(b)** In pursuance of the conspiracy, Jai Kishan, by way of letter dated 1.5.2010, while misrepresenting that Ganesh Explosives, being the sister concern of B.M. Traders, was having a valid licence in force, requested the General Manager, Gulf Oil Corporation Limited (GOCL), Udaipur to supply the explosives for Ganesh Explosives also despite the fact that the application for renewal of the licences granted to Ganesh Explosives, filed by him only, had already been rejected on 27.4.2010. Thereafter, he was able to obtain 60 truck loads of explosives in the name of M/s Ganesh Explosives [58 from Rajasthan Explosives and Chemical Ltd (RBCL), Dholpur Rajasthan and 2 from Bharat Explosives Ltd. (BEL), Lalitpur] and transport the same to various destinations during the period from 17.4.2010 to the date of registration of the case.

**(c)** At the relevant point of time, the petitioner, basically a Deputy Manager of Gulf Oil Corporation Limited (GOCL), was posted as Factory Manager of Bharat Explosives Ltd., Lalitpur (U.P.). Before him, on 4.5.2010 and 7.5.2010, Jai Kishan had submitted two forms of indents (R.E.11 under Rules 50 and 77 of the Rules), one in the name of Ganesh Explosives and other in the name of B.M. Traders for supply of the quantities of explosives. He had rendered necessary assistance in furtherance of the object of the conspiracy by issuing passes in the Form R.E.12 (under Rules 47 and 50 of the Rules) whereunder Jai Kishan was able to get the explosives supplied to both the firms, transported in the trucks, bearing registration nos.RJ-06-G-5346 and UP-93-T-1167, for being delivered at Pipra and Biaora respectively even without -

**(i)** informing the Superintendent of Police, Sagar as well as Rajgarh, as required by Sub-Rule 3(b) of Rule 47 and

**(ii)** observing the procedure prescribed in Rule 77 of the Rules strictly

and

overlooking that -

(a) the licences granted to M/s Ganesh Explosives had already expired and

(b) in the corresponding documents, Jai Kishan had described himself to be the occupier of the Ganesh explosives whereas the original licence was individual in nature.

5. While reiterating the grounds projected in the petition, learned counsel for the petitioner has contended that continuance of proceedings against him is an abuse of process of the Court whereas learned Govt. Advocate has submitted that none of the grounds raised necessitates any interference with a legitimate prosecution of the petitioner.

6. For the sake of convenience, rival contentions may be dealt with under the following heads -

**TERRITORIAL JURISDICTION**

7. Admittedly, the proceedings were first commenced in the Court at Sagar where the charge sheet for the above-mentioned offences was presented on 18.11.2010 and thereafter, on 5.5.2011, the another charge sheet, bearing number 138, was filed before CJM, Lalitpur (U.P.) against the petitioner and co-accused Jai Kishan & Devendra Singh for the offences punishable under Sections 420, 406, 467, 468, 471 and 120-B of the IPC, 3 and 5 of the Explosives Substances Act, 1908 and Section 9-B of the Explosives Act, 1884. In such a situation, as explained in *State of M. P. v. Bahadursingh* 1984 CRI L.J. 1065, this Court has jurisdiction to decide the question as regards place of trial in view of clause (b) of Section 186 of the Code.

8. Learned counsel for the petitioner is of the view that the Court at Sagar had no jurisdiction to try this case as all the offending acts, described in the charge sheet, were allegedly committed by him at Lalitpur (U.P.). Placing reliance on decision of single Judge of Allahabad High Court in *Hira Lal v. State* AIR 1956 All 619, he has urged that the case against the petitioner deserves interference under the inherent powers as there would be want of jurisdiction of the Court of trial. In that case, criminal proceedings initiated under Sections 406, 408 and 409 read with Ss. 34 and 109 and 420 of the IPC in the Court of Judicial Magistrate, Bareilly were quashed while holding that on one hand, the Bareilly Court had no jurisdiction to entertain the

complaint in respect of the offence of criminal breach of trust and on the other, it would not be in the public interest to allow a prolonged trial in respect of the charge of cheating for a purely civil claim.

9. However, the present case is one of conspiracy to commit offences including those punishable under the Explosives Act, 1884 and the other charges are based on and have reference to, the several illegal acts committed by one or more of the conspirators in pursuance of the conspiracy. Further, one of the passes said to have been issued by the petitioner related to the consignment of explosives to be delivered at the Magazine of M/s Ganesh Explosives at Pipra (owned by Devendra Singh, one of the main conspirators) within the territorial jurisdiction of the Court at Sagar and therefore, the fact that the consignment did not reach the destination was of no consequence. The Apex Court in *State of Punjab v. Nohar Chand* AIR 1984 SC 1492, though in a different context, has observed -

> *"Section 179 (of the Code) provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. Section 180 provides that where an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done"*

10. This apart, by virtue of clause (d) of Section 223 of the Code, the persons arraigned in the charge sheet as accused of different offences committed in the course of same transaction may be charged together and clause (b) of Section 184 of the Code provides that such offences may be tried by any Court competent to try any of the offences.

11. Thus, viewed from any angle, the order overruling objection as to territorial jurisdiction does not require interference.

**PLEA OF DOUBLE JEOPARDY**

12. As explained by the Constitution Benches in -

(i) *S.A. Venkatraman vs. Union of India* and Anr. AIR

1954 SC 375, in order to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence.

(ii) *The State of Bombay vs. S.L. Apte* and another AIR 1961 SC 578, the rule of double jeopardy applies only when both complaints relate to same offence.

13. Adverting to the facts of the case, it may be observed that the charge sheet filed against the petitioner in the Court at Lalitpur is based on an altogether different set of allegations suggesting that the petitioner, while managing the affairs of M/s BEL, that had already been closed in the year 2006 and whose licence had already expired on March, 2009, as an officer of M/s GOCL, had been involved in an illegal manufacture and transportation of the explosives. This apart, the bail order passed by Shri S.S. Gupta, In-charge Sessions Judge, Lalitpur reflects that although consent of the District Magistrate, as contemplated in Section 7 of the Explosive Substances Act, 1908 for prosecution of the applicant in respect of the offences punishable under Sections 3 & 5 of the Act, was accorded yet, the investigating officer had not preferred to arraign him as an accused of the offences in the charge sheet and the case was committed to the Court of Session for trial in view of the fact that co-accused stood charge sheeted for these offences.

14. In the light of the factual scenario, as highlighted above, learned ASJ did not commit any error in rejecting the plea of double of jeopardy.

**FRAMING OF CHARGES**

15. Learned counsel for the petitioner has urged that the order framing charges reflects complete non-application of mind in view of the following facts -

(i) In the letter dated 6.8.2010 displayed on the official website of PESO, the licences issued in favour of M/s Ganesh Explosives were shown as valid and operational.

(ii) Even assuming for the sake of arguments that on 4.5.2010 and 7.5.2010, M/s Ganesh Explosives did not have a valid licence, no offence would be made out as the quantity of explosives covered by the passes issued by the petitioner were much less than the quantity permissible under the licences granted to M/s B.M. Traders.

(iii) There was no material even to infer or suspect that the

petitioner was involved in the conspiracy to commit the offences relating to 60 truck-loads of explosives.

(iv) The petitioner has been charged with entering into criminal conspiracy with himself also.

16. However, direct evidence, being extremely rare, criminal conspiracy can be proved by the circumstantial evidence. In-fact because of the difficulties in having direct evidence of criminal conspiracy once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then, anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to Section 10 of the Evidence Act, relevant for proving both conspiracy and the offences committed pursuant thereto (*Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra* AIR 1971 SC 885 referred to).

17. The Court at the stage of framing charge exercises a limited jurisdiction. In *R.S. Nayak v. A.R. Antulay* (1986 (2) SCC 716), the Supreme Court, after analyzing the terminology used in Sections 227 and 228, relatable to sessions trial, Sections 239 and 240 concerning trial of warrant cases and 245(1) and (2) relatable to summons cases, proceeded to hold that despite the differences, there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a prima facie case is to be applied. As explained in *Union of India v. Prafulla Kumar Samal* AIR 1979 SC 366, the test of determining a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. Accordingly, at that stage, the Court need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects of the matter. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

18. Thus, it requires no restatement that even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge. The trial Judge is required to record reasons only if he decides to discharge the accused (*Kanti Bhadra Shah v. State of W.B.* (2000) 1 5CC 722, relied on). This apart, the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of

accusation that the accused is called upon to meet in the course of a trial (*Mohan Singh v. State of Bihar,* (2011) 9 SCC 272, referred to).

19. Obviously, the error in charge resulting in inclusion of name of the petitioner in the array of his co-conspirators has not, in any way, misled him. Needless to say that the anomaly may be removed by the trial Judge himself at any subsequent stage of the case. Moreover, as observed by the Constitution Bench in *Willie (William) Slaney v. State of M.P.* AIR 1956 SC 116-

> *"In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand;"*

and further that...

> *"where the charge is rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable, in such a situation, the absence of a charge under one or other or the various heads of criminal liability for the offence cannot be said to be fatal by itself"*

20. For these reasons, the order framing charges deserves to be affirmed as well merited.

21. Inherent powers, under Section 482 of the Code, are to be exercised *ex debito justitiae* to prevent abuse of the process of Court but not to stifle a legitimate prosecution, when the issue involved, whether factual or legal, can not be decided without sufficient material. Accordingly, no interference under the inherent powers is called for.

22. The petition, therefore, stands, dismissed. However, nothing contained herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the petitioner to raise all such pleas as are available under law.

*Petition dismissed.*

**I.L.R. [2012] M.P, 3122**

**MISCELLANEOUS CRIMINAL CASE**

***Before Mr. Justice R.C. Mishra***

M.Cr.C.No. 407/2011 (Jabalpur) decided on 3 September, 2012

GOPAL JI SINGH ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

*A. Criminal Procedure Code, 1973 (2 of 1974), Section 190 - Special Court* - **Charge sheet before the Special Court - Special Court must be held to be a Court of Original Criminal Jurisdiction and for all purposes, the Special Judge should be treated as Magistrate entitled to take cognizance of an offence if the police report is to the effect that no case is made out against the accused - Since the cognizance of the offence is taken by the Special Court under Section 190 of Cr.P.C., therefore, it can proceed against the persons who were not arraigned as accused in the Charge sheet.** **(Para 11)**

*क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190 – विशेष न्यायालय – विशेष न्यायालय के समक्ष आरोप पत्र* – विशेष न्यायालय को आरंभिक आपराधिक अधिकारिता वाला न्यायालय माना जाना चाहिए और सभी प्रयोजनों हेतु विशेष न्यायाधीश को मजिस्ट्रेट समझा जाना चाहिए जो अपराध का संज्ञान लेने के लिए सशक्त है यदि पुलिस रिपोर्ट इस आशय की है कि अभियुक्त के विरूद्ध प्रकरण नही बनता – चूंकि, अपराध का संज्ञान विशेष न्यायालय द्वारा धारा 190 द.प्र.सं. के अंतर्गत लिया गया इसलिए वह उन व्यक्तियों के विरूद्ध कार्यवाही कर सकता है जिन्हें आरोप पत्र में अभियुक्त के रूप में दोषारोपित नहीं किया गया है।

*B. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20(b) - Joint Possession* - **10 plants of ganja standing in the aangan which is in joint possession of three brothers - Special Judge did not commit any illegality in taking cognizance of the offence against the non-charge sheeted brothers - Even a strong suspicion leading to presumption as to possibility as against certainly makes out a case for framing of charge and the trial judge is required to record reasons only if he decides to discharge the accused.** **(Paras 15 to 19)**

*ख. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 20 (बी) – संयुक्त कब्जा* – गांजे के 10 पौधे आंगन में लगे थे जो तीन भाईयों के संयुक्त कब्जे में है – विशेष न्यायाधीश ने दोषारोपित नहीं किये गये भाईयों के विरूद्ध अपराध का संज्ञान लेने में कोई अवैधता कारित नही की – निश्चितता के विरूद्ध संभावना की उपधारणा की ओर ले जाने वाला प्रबल संदेह भी आरोप विरचित करने हेतु प्रकरण गठित करता है और विचारण न्यायाधीश को कारण अभिलिखित करना केवल तब अपेक्षित है यदि वह अभियुक्त को आरोपमुक्त करने का निश्चय करता है।

**Cases referred :**

(1993) 2 SCC 16, (1996) 4 SCC 495, (1998) 7 SCC 149, (2004) 13 SCC 9, AIR 1984 SC 718, AIR 1989 SC 885, AIR 1985 SC 1285, AIR 2004 SC 4753, (1986) 2 SCC 716, (2000) 1 SCC 722.

*Anil Khare with Shubha Agrawal,* for the applicant.

*Rahul Jain,* G.A. for the non-applicant/State.

**ORDER**

**R.C. MISHRA, J.** - This common order shall govern disposal of all the four cases, as, arising out of the same proceedings, pending as Special Case No.22/2010 before the Special Judge (under the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short, the Act]) at Satna, they are interlinked.

2. MCrC Nos.407/11 and 1296/11 are the petitions, under Section 482 of the Code of Criminal Procedure (for brevity 'the Code'), for quashing of the order dated 23.11.2010, taking cognizance of the offence punishable under Section 20(b) of the Act against the petitioners namely Gopal Ji Singh and Narendra Singh, who are also the revisionists in Criminal Revisions Nos.65/11 and 194/11 and the consequent proceedings whereas the revisions are directed against the order dated 6.12.2010, framing charge of the offence punishable under Section 20(a)(i) of the Act against them as well as Shyam Ji Singh, who is none other than the elder brother of Narendra Singh and younger brother of Gopal Ji Singh.

3. As per the prosecution version -

In the early morning of 21.10.2010, upon a credible information to the effect that all the three brothers viz. Shyam Ji Singh, Narendra Singh and Gopal Ji Singh, residing jointly in the house located in Chhota Tola, Hiloundha, had grown some *Ganja* plants in the *Aangan (Kolia)* thereof, M.A. Khan, posted as Sub-Inspector at Police Station Nagod after observing the statutory formalities, proceeded to the house along with members of the Police Force and Panch

witnesses Dinesh and Rajju. After obtaining consent of all the three, he entered into the house and found as many as 10 plants of *Ganja* 5-10 ft. in length and 1-8 inches in breadth standing in the Aangan located in the backside of the house. The plants were duly seized and the sample thereof was forwarded to FSL, Sagar. Corresponding report indicated that the article referred to for examination was Ganja.

4. However, the SHO R.S. Upadhyay, while explaining that the complicity of Gopal Ji Singh and Narendra Singh could not be established from the evidence collected during investigation, submitted a charge-sheet before the Special Court on 22.11.2010 as against co-accused Shyam Ji Singh.

5. Learned Special Judge, instead of taking cognizance of the offence against Shyam Ji Singh, decided to grant opportunity of being heard to the first informant viz. M.A. Khan before acting upon the police report to the effect that no case was made out against Narendra Singh or Gopal Ji Singh and, accordingly, examined him on the same day. On the following day i.e. 23.11.2010, learned Special Judge, for the reasons assigned in the order forming subject matter of the petitions, disagreed with the police report, so far as it related to Narendra Singh or Gopal Ji Singh, who were produced before him in custody and took cognizance of the offence against them also. Thereafter, as indicated already, by way of the order dated 6.12.2010, all the three accused named in the FIR were charged with the offence punishable under Section 20(a)(i) of the Act.

6. Learned counsel for the petitioners have strenuously contended that continuation of the proceedings against them for the offence, is an abuse of the process of the Court in view of the following considerations -

(i) In taking cognizance of the offence against the petitioners, learned Special Judge acted without jurisdiction as well as contrary to law.

(ii) The conclusions suggesting that none of them was involved in cultivation of the prohibited plants and that part of Aangan, where the plants were found, was in an exclusive cultivating possession of their brother Shyam Ji Singh, were based on an intensive investigation conducted by the S.H.O..

(iii) There was absolutely no justification for framing of the charge against any one of them in absence of any additional material on record to indicate his concern with cultivation of the cannabis plants.

7. In reply, learned Government Advocate, while supporting the orders in question, has submitted that learned Special Judge was competent to proceed against the petitioners, though not sent up for trial by the police.

8. Elaborating argument on aspect (i) [above], learned counsel for the petitioners have stated that the Special Court, being a Court of Session, could not straightway take cognizance of the offence directly by circumventing the interdict imposed by S.193 of the Code. Even otherwise, according to them, the power, under Section 319(1) of the Code, could be exercised against persons other than one arraigned in the charge-sheet in the light of the fresh evidence brought on record during trial.

9. As rightly pointed out by learned Senior Counsel, the view taken by a two-Judge Bench of the Apex Court in *Kishun Singh v. State of Bihar* (1993) 2 SCC 16 that on committal of a case to the Sessions Court, the bar created by Section 193 is lifted and therefore, it can summon any person whose complicity in the commission of the crime can *prima facie* be gathered from the material on record was not followed by a co-equal Bench in *Raj Kishore Prasad v. State of Bihar* (1996) 4 SCC 495 and a three Judge Bench in *Ranjit Singh vs. State of Punjab* (1998) 7 SCC 149 and correctness of the opinion expressed in *Ranjit Singh's* case (supra) was doubted in *Dharam Pal v. State of Haryana* (2004) 13 SCC 9 and, accordingly, the matter was referred to a larger Bench.

10. Section 193, however, is of no relevance here because the offence under the Act is triable by Special Court constituted by the State Government, under Section 36 of the Act and by virtue of sub-clause (d) of Section 36A, a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial. The following observations made by the Supreme Court in *A.R. Antulay v. Ramdas Sriniwas Nayak* AIR 1984 SC 718 apply *mutatis mutandis* yet with full force to the Special Court created under the Act.

> *"The Court of a Special Judge is a Court of original Criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied.*
>
> *The Court of a Special Judge, once created by an*

*independent statute, has been brought as a Court of original criminal jurisdiction under the High Court because Section 9 confers on the High Court all the powers conferred by Chapters XXXI and XXXIII of the Criminal P. C., 1898 on a High Court as if the Court of Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that a new Criminal Court with a name, designation and qualification of the officer, eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the .....Act. The Court has to be treated as a Court of original criminal jurisdiction and shall have all the powers as any Court of original criminal jurisdiction has under the Criminal P. C., except those specifically excluded."*

11. On the same analogy, the Special Court, under the Act, must be held to be a Court of original criminal jurisdiction and for all purposes, the Special Judge should be treated in law as the Magistrate entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. For this, he can take into account the statements of the witnesses examined by the police during investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused (*India Carat Pvt. Ltd., M/s. v. State of Karnataka* AIR 1989 SC 885 relied on).

12. Since the cognizance of the offence has been taken under Section 190(1)(b) and not under Section 319(1) of the Code, the contention that the power to proceed against the petitioners, who were not arraigned as accused in the charge-sheet, could be exercised only on the basis of evidence recorded in the course of the trial of the co-accused Shyam Ji Singh is also apparently misconceived.

13. Further, as laid down by the Supreme Court in *Bhagwant Singh v. Commissioner of Police* AIR 1985 SC 1285 and re-affirmed in *Gangadhar*

*Janardan Mhatre v. State of Maharashtra* AIR 2004 SC 4753 -

> *".....where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory."*

14. Evidently, the procedure adopted by learned Special Judge deferring the consideration on the question of cognizance of the offence as against the petitioners was perfectly in conformity with the guideline quoted above.

15. Coming to the factual aspects of the matter, learned counsel have invited attention to the fact that vide order-dated 20.2.2006 passed by the Tahsildar, lands left by Bhupendra Singh, father of the petitioners, were partitioned and shares of the brothers were defined accordingly. It has also been highlighted that in his examination on 22.10.2010 Sub Inspector M.A. Khan made no protest against non- inclusion of the petitioners' names as accused in the charge-sheet. However, fact of the matter is that it was Sub-Inspector M.A. Khan only who, after conclusion of the proceedings relating to search and seizure, had registered the case against all the three brothers by scribing the FIR in detail. The order taking cognizance of the offence is based not only on this fact but also on all other facts appearing on the record. As indicated therein -

(a) Sub Inspector M.A. Khan clearly admitted that the information received by him had disclosed that the *Aangan,* wherein the prohibited plants were grown, was located in the back side of the house in joint possession of all the three brothers.

(b) in all the documents relating to search and seizure, the petitioners had also put their signatures without raising demur whatsoever and

(c) in the spot map, the *Aangan* that was shown surrounded by boundary wall was meant for joint use of all the three bothers.

(d) the conclusion recorded in the police report that Shyam Ji Singh had grown the plants of Ganja along with the plants of lemon and mangoes also did not gather support from the recitals of the spot map and Panchnama.

16. There is yet another aspect of the matter. Section 46 of the Act casts a duty upon land holder to give information of illegal cultivation. It reads -

*"Every holder of land shall give immediate information to any officer of the Police or of any of the departments mentioned in Section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment."*

17. It requires no restatement that the investigation is the exclusive domain of the police whereas taking of cognizance of the offence is an area exclusively within the domain of the Special Judge, who has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. In the light of the aforesaid facts and circumstances, learned Special Judge did not commit any illegality in taking cognizance of the offence against the petitioners.

18. In *R.S. Nayak v. A.R. Antulay* (1986 (2) SCC 716), the Supreme Court, after analyzing the terminology used in Sections 227 and 228, relatable to sessions trial, Sections 239 and 240 concerning trial of warrant cases and 245(1) and (2) relatable to summons cases, proceeded to hold that despite the differences, there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a *prima facie* case is to be applied.

19. As such, even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge and the trial Judge is required to record reasons only if he decides to discharge the accused (*Kanti Bhadra Shah v. State of W.B.* (2000) 1 SCC 722 referred to).

20. It is also well settled that the inherent powers, under Section 482 of the Code, are to be exercised *ex debito justitiae* to prevent abuse of the process of Court but not to stifle a legitimate prosecution, when the issue involved, whether factual or legal, can not be decided without sufficient material.

21. For these reasons, neither the order taking cognizance nor the order framing charge deserves any interference.

22. The petitions as well as the revisions, therefore, stand dismissed. However, nothing contained herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the petitioners to raise all such pleas as are available under law.

23. A copy of this order be placed on records of the connected petitions.

Record of the Court below be returned forthwith.

*Petition dismissed.*