THE INDIAN LAW REPORTS

M.P. SERIES

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Year-6
Vol.4

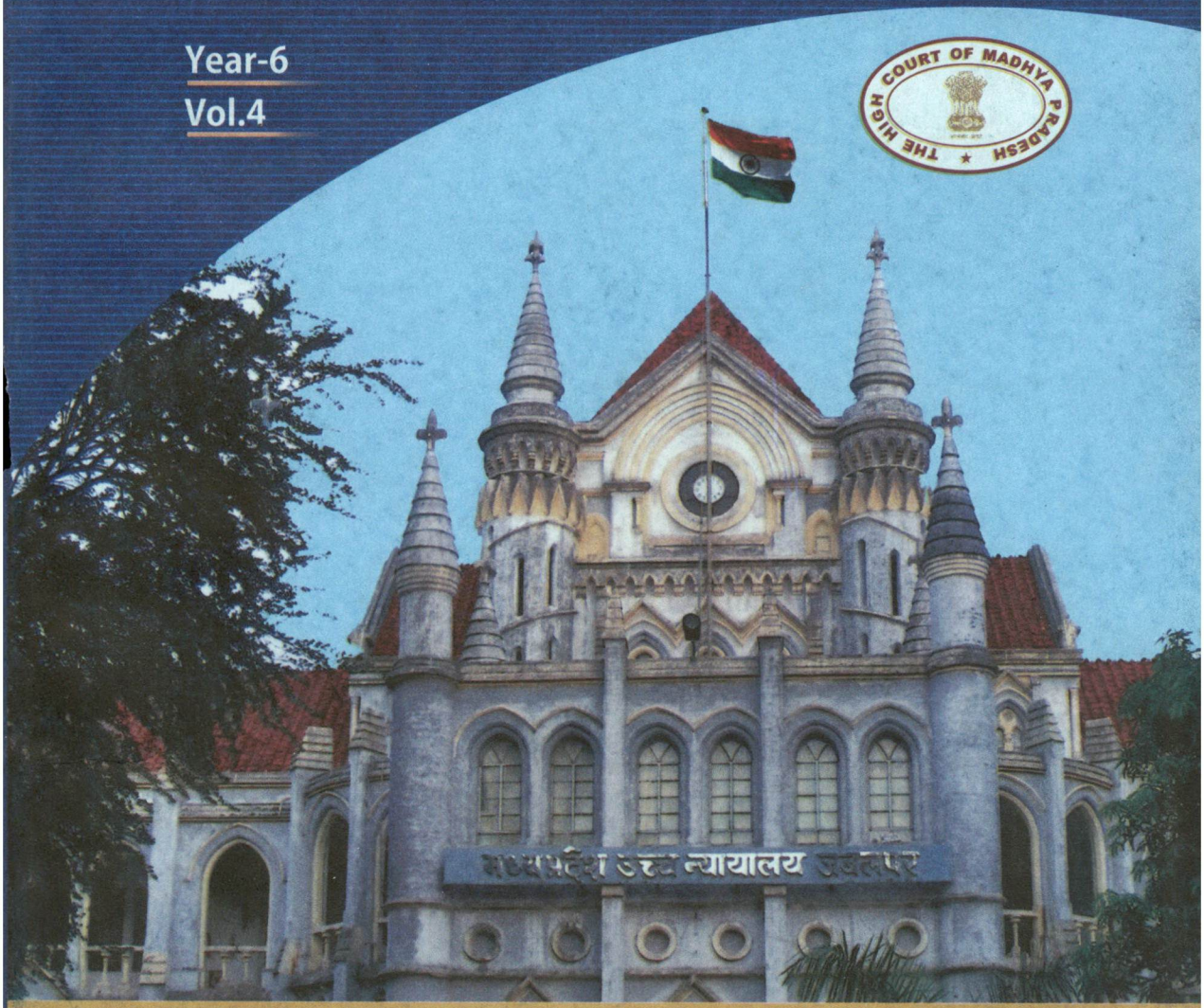

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TABLE OF CASES REPORTED

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

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THE INDIAN LAW REPORTS M.P. SERIES, 2014
(VOL-4)
JOURNAL SECTION

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Ms. Justice Vandana Kasrekar on her appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Ms. Justice Vandana Kasrekar took oath of the High Office on 25.10.2014.

HON'BLE Ms. JUSTICE VANDANA KASREKAR

Born on July 10, 1960 at Indore, Madhya Pradesh. Obtained LL.B. degree in the year 1984 and LL.M. degree in the year 1986. Enrolled as an advocate in the year 1988. Practiced in Civil, Constitutional Law, Labour Law, Service and Company Laws.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 25.10.2014.

We wish Hon'ble Ms. Justice Vandana Kasrekar, a successful tenure on the Bench.

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Rajendra Mahajan on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Rajendra Mahajan took oath of the High Office on 25.10.2014.

HON'BLE MR. JUSTICE RAJENDRA MAHAJAN

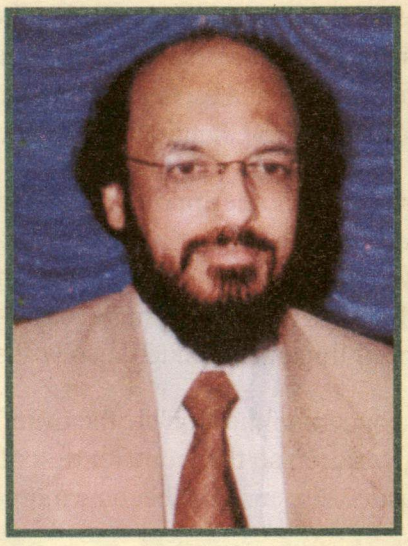
Born on March 7, 1956. Did M.Sc. (Chemistry) and LL.B. Entered into Judicial services on October 21, 1981 as Civil Judge Class-II. Promoted to the post of Additional District Judge in the year 1995. Was granted Selection Grade and Super Time Scale in the years 2001 and 2008 respectively. Served as Law Officer to M.P. State Bureau of Economic Offence Wing, Principal Judge Family Court, Bhopal, District Judge, Neemuch, Katni and Mandsaur. Promoted to the post of District Judge in the year 2007.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 25.10.2014.

We wish Hon'ble Mr. Justice Rajendra Mahajan, a successful tenure on the Bench.

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Chandrahas Sirpurkar on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Chandrahas Sirpurkar took oath of the High Office on 25.10.2014.



HON'BLE MR. JUSTICE CHANDRAHAS SIRPURKAR

Born on March 4, 1957 in Chhindwara, Madhya Pradesh. Did B.Sc. and LL.B. Enrolled as an Advocate in the year 1980. Appointed as Civil Judge in the year 1983. Was associated with computerization of High Court and Rule Making as Registrar (Judicial) in High Court of Madhya Pradesh. Held Position of Director M.P. State Judicial Academy and Principal Secretary to the Department of Law and Legislative Affairs, Government of Madhya Pradesh before elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh and took oath on 25.10.2014.

We wish Hon'ble Mr. Justice Chandrahas Sirpurkar, a successful tenure on the Bench.

OVATION TO HON'BLE MS. JUSTICE VANDANA KASREKAR, MR. JUSTICE RAJENDRA MAHAJAN AND MR. JUSTICE CHANDRAHAS SIRPURKAR GIVEN ON 25.10.2014, IN THE CONFERENCE HALL OF THE HIGH COURT OF M.P. AT JABALPUR

Shri Purushaindra Kaurav, Addl. Advocate General, while felicitating the new Judges, said:-

Today we have an opportunity to extend Your Lordships a very hearty welcome and it gives me immense pleasure that we are getting three new judges, Hon'ble Justice Ms. Vandana Kasrekar, Hon'ble Justice Shri Rajendra Mahajan and Hon'ble Justice Shri Chandrahas Sirpurkar.

It is indeed fortunate that the appointment of the Hon'ble Judges has come during such an auspicious and festive season. We were in the midst of celebrating the festival of lights i.e. Diwali when the news of My Lords appointments came which has made this pious occasion much brighter which will illuminate the hope of litigants for much speedy Justice.

It shows great concern of the Hon'ble the Chief Justice while holding this ceremony during vacation so that contribution of Hon'ble Judges with enhance strength in Justice dispensation become more productive.

Hon'ble Justice Shri Rajendra Mahajan and Hon'ble Justice Shri Chandrahas Sirpurkar are adorning the office today hail from the subordinate judiciary and Hon'ble Justice Ms. Vandana Kasrekar in form of the Bar. They all have a well formed sense of administration and delivery of Justice.

Hon'ble Justice Ms. Vandana Kasrekar was born on 10th July. 1960 and completed her LLB in the year 1984 and thereafter she has also done LLM in 1986 from Govt. Arts and Commerce College Indore. She enrolled as an Advocate on 13th October 1988 with the State Bar Council of M.P. She has started her practice in the Hon'ble High Court of Madhya Pradesh Bench at Indore since 1988. She had the distinct privilege of working as a junior to Hon'ble justice Shri V.S. Kokje when he was practicing and who Later on adorned the High Office of Governor of the State of Himachal Pradesh. During her practice as an Advocate, she also had the privileged opportunity to assist Hon'ble Shri Justice Subhash Samvatsar, Hon'ble Judge of this High Court

when he was practicing as an Advocate.

She had a distinguished practice in Civil, Constitutional Law, Labour Law, Service and Company law and has over the course of her practice gained an impeccable reputation of being an extremely competent advocate. She was the founder member of Indore Law Institute & has appeared for several renowned Educational Institutions in various important cases in the High Court of M.P.. I am sure that the appointment of Hon'ble Justice Ms. Vandana Kasrekar will greatly add to the glory and eminence of this Hon'ble Court.

My Lord Hon'ble Shri Justice Rajendra Mahajan was born on 7th March 1956 and joined the Judicial Services as Civil Judge, Class II in the year 1981. My Lord was promoted as Civil Judge Class I in the year 1988. Thereafter with effect from 27th July 1992, My Lord was promoted as CJM/ ACJM and was given the responsibility of officiating as a District Judge in Higher Judicial Service with effect from 11th August 1995.

My Lord has gained vast experience and has the distinction of working in different capacities at various places such as Ujjain, Khandwa, Rajgarh, Indore, Gwalior, Neemuch, Katni and Bhopal. My Lord was serving on the post of District and Sessions Judge at Mandsaur prior to My Lord's appointment as an Additional Judge of this Hon'ble Court.

My Lord Hon'ble Justice Shri Chandrahas Sirpurkar was born on 4th March 1957 and joined the judicial service as Civil Judge, Class II in the year 1983. My Lord was promoted as Civil Judge Class I in the year 1989. Thereafter with effect from 1994, My Lord was promoted as CJM/ ACJM and was promoted as officiating District Judge in Higher Judicial Service with effect from 5th June 1996. My Lord has vast experience on judicial side and has throughout his career in the judicial service garnered immence knowledge from his various postings at Dewas, Shahdol, Kotma, Bhopal, Dabra and Jabalpur and till recently he was holding the post of Principal Secretary, Law and Legislative Affairs Department, Government of MP, Bhopal. My Lord's vast experience in the legal field as well as administrative approach will definitely enhance the richness of this Hon'ble High Court.

During Your Lordship's tenure as Principal Secretary, Law and Legislative Affairs Department, Govt. of MP, I had the privilege of interacting with My Lord relating to various issues at Govt. level. Upon hearing of some

of the difficulties faced by the Advocate General's office, My Lord decided to visit the office of Advocate General at Jabalpur and examined the situation. Despite having a very short tenure and facing difficulties of shortage of staff in Law Department, My Lord was very proactive and tried to address the issues raised during various interactions. I am confident that the beginning initiated by My Lord will be brought to its conclusion by My Lord's successors.

Your Lordships appointments comes at a time when there is a grave need to tackle the problem of pendency of cases. While this great institution is rapidly evolving and many steps are being taken to address the problem of pendency head on, one of the most important steps might be appointment of more Hon'ble Judges as only 32 out of the 53 sanctioned posts are occupied presently. I am sure that My Lords will discharge their duties in a just and able manner. We have great expectations from My Lords and believe that your wealth of experience and vast reservoirs of knowledge of law will greatly benefit the citizens of Madhya Pradesh.

Now, the new Hon'ble judges are holding the responsibilities of deciding the fate and fortunes of litigants, I feel that they will be successful in their onerous task of dispensation of justice. With their deep sense and commitment towards the judiciary as also with the sense of realization of problems and sufferings of common man they will certainly give due justice to the needy persons without any fear and favour.

I, once again, on behalf of the State of MP and on my own behalf, welcome My Lord to this Hon,ble Court and wish My Lords a very meaningful and successful tenure as Judges of this great institution and I wish everyone present a happy and prosperous Deepawali.

Shri Adarsh Muni Trivedi, President, M.P. High Court Bar Association, said :-

I, at first extend to all of you the hearty greetings of Deepawali festival, which has heralded joy and cheer in all around the atmosphere. Your Lordships have today joined the rostrum in the row of self-illuminated earthen lamps of Judiciary at this eve of Deepawali. Lord Buddha says :-

'अप्प दीपो भव': become your own lamp'.

Martin Luther King, Jr. had said :-

"Darkness cannot drive out darkness; only light can do that."

Let the light within illumine your life in order to drive out darkness in the lives of most of the people of this country standing far away from Mile-stones of milky-ways. Deepawali is the festival of rekindling the hopes of people. It is a reminder to slay all that is negative to these hopes.

I first felicitate Your Lordship Justice Vandana Kasrekar, you really being worthy of 'VANDANA'. In Sanskrit the name 'Vandana', signifies a morning-prayer out of the depths of the heart. Each day with rising of Sun, the world is born anew with 'Vandana'. Your Lordship were born on 10th July Nineteen Sixty. It is a matter of pride for all of us that you are the daughter of an agriculturist. Your Lordship were enrolled as an Advocate on 13th October 1988 with M.P. State Bar Council. Today is 25th October. So the October, which is a month of Festivals, has always been fortunate to you. Your Lordship have started practice in the High Court of M.P. at Indore. Your Lordship have been nurtured in the art of advocacy being junior to Hon'ble Shri Justice V.S. Kokje, who later on adorned the high office of Governor of Himachal Pradesh. Your Lordship have assisted Hon'ble Shri Justice Subhash Samvatsar, who was then practicing as an advocate in High Court of M.P., Indore Bench. Your Lordship have gain varied experience practicing in Civil, Constitutional, Labour, Service and Company matters. Your such wide experience and keen intellect would now be tested as a Hon'ble Judge of this High Court and we can expect that both the Bar and common litigants will be benefitted by elevation of Your Lordship.

"या देवि सर्वभूतेषु न्याय रूपेण संस्थिता।

नमस्तस्यै नमस्तस्यै नमस्तस्यै नमो नमः।।"

[We repeatedly bow before Goddess Durga, who exists in all creatures in the shape of Justice]

I now felicitate Your Lordship Shri Justice Rajendra Mahajan. In Sanskrit the word 'Rajendra' means King of the Kings. Your Lordship were born on 7th March, 1956. Your Lordship started your Judicial Voyage in the year 1981 as a Civil Judge, class-II. Your efforts and attempts paved the paths to higher credentials. You were promoted as Civil Judge Class-I in the

year 1988 and as C.J.M. w.e.f. 27th July 1992 and further promoted as officiating District Judge in Higher Judicial Service w.e.f. 11th August 1995. Your Lordship were granted Selection Grade on 3rd November 2001 and Super Time Scale on 30th September 2008. Your success to achieve the perfection is the sum of hard efforts repeated day in and day out. You earned vivid experience serving in different capacities at Ujjain, Khandwa, Thandla, Shujalpur, Sarangpur, Rajgarh, Indore, Gwalior, Bhopal, Ashoknagar, Neemuch, Katni and Bhopal. Just Prior to elevation Your Lordship were posted as District and Sessions Judge, Mandsaur. Now Your Lordship have today adorned the high wreathy pedestal of Justice like a fresh breeze of winter to the portals of this High Court.

Your Lordship are not only the 'Rajendra', the 'King of Kings', but apart you are also a 'Mahajan'. The word 'Mahajan' is an epithet of 'Lord Shiva', who always gives what one needs. It is why 'Lord Shiva' as 'Mahajan' is also called 'Avadhar-dani'. In Sanskrit too, the word 'Mahajan' signifies 'a distinguished person' 'an eminent person'. There is a popular saying in Sanskrit; cited from 'Van-Parva' of Maha-Bharat' :-

" तर्कोप्रतिष्ठः श्रुतयो विभिन्ना,

नैको ऋषिर्यस्य मतं प्रमाण।

धर्मस्य तत्वं निहितं गुहायां,

महाजनो येन गताः स पंथाः ।।"

[Mahabharat/Van Parva 313]

[Logic is devoid of conclusions and not fool-proof, the Scriptures have many deviative meanings. There is no one wise person whose opinion can be termed as authentic or complete. In reality the essence of Dharma is mysterious and hidden. Only this can be said that the path on which a 'Mahajan' traverses is the path to be followed.]

So we promise Your Lordship that we shall follow the path on which you shall traverse.

"यशस्विनं च राजेन्द्र". You earn the fame in world, we wish so, with the core of our hearts.

Now at last I felicitate Your Lordship Shri Justice Chandrahas Sirpurkar, who is today shining in the galaxy of Justice, brighter than the moon. Your Lordship were born on 4th March 1957. Your Lordship joined the Judicial Services of the State in year 1983 as a Civil Judge, Class-II and promoted as Civil Judge Class-I in year 1989. You were further promoted as C.J.M. in year 1994 and promoted as officiating District Judge in Higher Judicial Service w.e.f. 5th June 1996. You were granted Selection Grade on 20th May 2002 and Super time Scale on 1st February 2011. Your Lordship have shown your calibre and knowledge working in different capacities at Dewas, Shahdol, Kotma, Bhopal, Dabra, Gwalior and Jabalpur. We have been well acquinted with your administrative capacity while your posting in the registry of High Court at Jabalpur. Before your elevation as a Judge of this High Court Your Lordship have successfully worked as Principal Secretary, Law & Legislative Affairs department of Government of Madhya Pradesh at Bhopal.

Your Lordship have been a good Judge possessing variegated experience and knowledge with wisdom and keen intellect. Your good name 'Chandrahas' also encompasses qualities in your great personality and your outer appearance as a philosopher. In Sanskrit the word 'Chandrahas' means the 'shining brighter than the moon'. The word 'Chandrahas' is also synonymous to "an innocent smile on the face of a child." But on other hand 'Chandrahas' also means a glittering sword. In poetry the word 'Chandrahas' is used for the smile of child Srikrishna:-

"निष्पंक बाल मुख पर श्रीनिवास।

सदैव शोभित रखते निज चन्द्रहास।।"

Your Lordship always bear an innocent lovely smile on your face, but when at work your wit is sharper than the glittering sword. We hope that Your Lordship will secure and serve the larger cause of humanity and shall keep your resolutions, on the wings of administration of Justice.

The obligation of the Judiciary is not only to perform the duties mechanically but to mitigate the sufferings of people. This is the time of reinventing the qualities of Justice. Your Lordship Hon'ble the Chief Justice have resurrected the Judicial-System by your hard and keen efforts. But this resurgence and improved parameters could be short-lived unless underpinned by deeper structural reforms and consistent moves. The initiative of Your

Lordship to reduce the lumbago of burden of cases is definitely laudable. However, there is a need to take the bull by the horns, to initiate key-changes in qualitative judgment process, not only in dispensing with the backlog by fast disposal of the cases, but to benchmark it to need of the people. It would however be naïve to believe that the challenges before the Judicial system have been decisively over come. A credible time frame for implementing the changes is inescapable and to visualize that it would not take shape of an 'over-regulated structure'.

So far as consensus of Bar is concerned, it is always with the tremendous changes in the system but the exception is the practical difficulties which sometime the Advocates feel as tremulous. The former British Prime Minister Margaret Thatcher once said :-

"Consensus is something in which no one believes and to which no one objects."

The secret of life is to see every-thing with a non-serious eye, but be absolutely involved and dedicated. Your Lordship, the Chief Justice have really won the mind's battle, but we cannot ignore the aspirations of people who want disposal of cases faster but by according substantial-Justice. The litigants can even wait for disposal of their cases, but they want that whenever their cases are disposed of, there ought to be a Substantial Justice, not mere a disposal in haste. There is a popular saying -'Justice hurried is Justice buried.'

The desperation, depression and frustration is causing more damage to one's life than the mythological demons like Ravan, Mahishasur and Narkasur etc. We all at Bench and Bar have to bring back the festive colours to the common-people. Deepawali is a message for all that if you approach everything in a celebratory way, you learn to work without tension in life and remain absolutely involved. If the work and system would be burden-some; the people become dead-serious and lax about it and there will be no necessary involvement and dedication in work. So let us enjoy the festival and holidays in their full bloom, so we get fully prepared for work with our absolute involvement and shall give the results. Let the shackles be broken.

I again congratulate Your Lordships on behalf of all the Members of M.P. High Court Bar Association and on my own behalf. I welcome the trio and wish you all a successful and happy tenure as Judges of this High Court

and assure fullest co-operation of the Members of Bar.

In the words of Harivansh Rai Bachchan :-

"अपनी ज्वाला प्रभा परीक्षित

सब दीपक दिखलायेंगे,

सब अपनी प्रतिभा पर पुलकित

लौ को उच्च उठायेंगे। "

Shri R.P. Agrawal, President, High Court Advocates' Bar Association, Jabalpur, said :-

I, on behalf of High Court Advocates' Bar Association and on my own behalf, welcome and congratulate Hon'ble Miss Justice Vandana Kasrekar on her being appointed as an Additional Judge of this High Court. Hon'ble Ms.Justice Vandana Kasrekar started her practice at Indore in the year 1988, practically in all branches of law. She, thus, carries about 26 years of experience as an Advocate, practicing on all sides. My Lord has been associated with Hon'ble Shri Justice V.S.Kokje for a long time and had also assisted Hon'ble Shri Justice Subhash Samvatsar who was a Judge of this High Court. My Lord has, thus, acquired great judicial experience while practicing as an advocate. My Lord had the privilege of appearing before outstanding judges of this High Court. My Lord's elevation to this High Court is, thus, well merited and we have very high hopes from her. I wish her a very successful tenure.

I also welcome and congratulate Hon'ble Shri Justice Rajendra Mahajan on his being appointed as an Additional Judge of this Court. My Lord also has a long judicial experience of about 26 years. My Lord had worked in different capacities and immediately before his elevation he was posted as District and Sessions Judge, Mandsaur. Although I did not have the privilege of having appeared before him, yet I have heard about My Lord's qualities of head and heart. The relationship with the members of the Bar was excellent. He gave very patient hearing and My Lord's judgments delivered as District and Sessions Judge do reflect deep knowledge of law. Although My Lord's tenure as a Judge would be short, yet I hope that My Lord would

also prove to be an asset to this High Court.

I also welcome and congratulate Hon'ble Shri Justice Chandrahas Sirpurkar on his being appointed as an Additional Judge of this High Court. My Lord has judicial experience of about 31 years. He worked in different capacities starting from Civil Judge Class-II to the post of District & Sessions Judge. My Lord was posted before his elevation to this Court as a Principal Secretary, Law & Legislative Affairs Department, Government of Madhya Pradesh, Bhopal. My Lord's ability and knowledge were recognized by almost all the members of the Rule Making Committee. They greatly admired the great services rendered by My Lord in the drafting of the Rules in the present form. The members of the Bar have high hopes from Justice Sirpurkar and we have no doubt that My Lord would make valuable contribution in the making of law. I wish very happy and successful tenure to My Lord.

I once again, on behalf of High Court Advocates' Bar Association and on my own behalf, wish a very successful tenure to all the newly appointed judges.

Shri Rameshwar Neekhra, Chairman, M.P. State Bar Council, said :-

प्रदेश के विधि जगत के लिए आज के ये क्षण अत्यंत महत्व एवं गौरव के हैं, जब हमारे इस प्रदेश के सर्वोच्च न्याय मंदिर में 3 नये माननीय न्यायाधिपतिगण अपना पदभार ग्रहण कर रहे हैं।

माननीय जस्टिस वंदना कासरेकर, माननीय जस्टिस श्री राजेन्द्र महाजन एवं माननीय जस्टिस श्री चन्द्रहास सिरपुरकर अपने दीर्घ अनुभवों के बाद इस गरिमामय पद को आलोकित कर रहे हैं। निश्चित ही मध्य प्रदेश उच्च न्यायालय में इन नये न्यायाधिपतियों द्वारा पदभार ग्रहण किये जाने से न्यायदान की प्रक्रिया में और अधिक गतिशीलता आएगी, लंबित प्रकरणों के निराकरण में सुविधा होगी और आम लोगों की न्याय के प्रति आस्था और विश्वास में वृद्धि होगी। मैं सर्वप्रथम इस अवसर पर आप सभी न्यायाधिपतिगणों का मध्य प्रदेश राज्य अधिवक्ता परिषद तथा प्रदेश के अधिवक्ताओं की ओर से एवं स्वयं अपनी ओर से हार्दिक अभिनंदन करता हूं एवं आप सभी के कार्यकाल की मंगल कामना करता हूं।

माननीय न्यायाधिपति वंदना कासरेकर :–

आपका जन्म 10.7.1960 को हुआ। विधि की उपाधि वर्ष 1988 में प्राप्त होने के बाद 13 अक्टूबर 1988 को मध्य प्रदेश राज्य अधिवक्ता परिषद में अधिवक्ता के रूप में नामांकित हुई एवं निरंतर मध्य प्रदेश उच्च न्यायालय खंडपीठ इंदौर में अधिवक्ता व्यवसाय में संलग्न रहीं। आपके पिताजी कृषि व्यवसाय में संलग्न रहे। आपने माननीय जस्टिस श्री व्ही.एस. कोकजे के मार्गदर्शन में अपना विधि व्यवसाय प्रारंभ किया। आपने माननीय जस्टिस श्री सुभाष समवत्सर के मार्गदर्शन में भी विधि व्यवसाय किया। आपको व्यवहारिक, संवैधानिक एवं लेबर, सर्विस कंपनी मामलों से संबंधित प्रकरणों में दक्षता एवं गहरा अनुभव रहा है। आपके इस उच्च न्यायालय में न्यायाधिपति के पद को सुशोभित करने पर मैं आपका हार्दिक अभिनंदन करता हूं एवं राज्य अधिवक्ता परिषद की ओर से एवं स्वयं अपनी ओर से आपके सफल कार्यकाल की मंगलकामना करता हूं।

माननीय न्यायाधिपति श्री राजेन्द्र महाजन :–

आपका जन्म 7.3.1956 में हुआ। आप वर्ष 1981 में न्यायिक सेवाओं में आये एवं सिविल जज वर्ग–2 के पद पर पदस्थ हुए उसके बाद आप 1988 में सिविल जज वर्ग–1 के पद पर पदोन्नत हुए। उसके बाद सी.जे.एम./ए.सी.जे.एम. के पद पर 1992 में पदोन्नत हुए। उसके पश्चात वर्ष 1995 में उच्च न्यायिक सेवाओं में पदोन्नति प्राप्त करते हुए आफिसिएटिंग डिस्ट्रिक्ट जज का पदभार संभाला। आपने विभिन्न न्यायिक पदों पर रहते हुए प्रदेश के उज्जैन, खंडवा, थांदला, शुजालपुर, सारंगपुर, राजगढ, इंदौर, ग्वालियर, भोपाल, अशोकनगर, नीमच, कटनी एवं भोपाल में अपनी न्यायिक सेवाएं दी। वर्तमान में आप जिला एवं सत्र न्यायाधीश मंदसौर के पद पर कार्यरत रहे हैं। आप अपने न्याय के गहरे अनुभव के चलते आज इस प्रदेश के न्यायाधिपति के रूप में अपनी सेवायें देंगे। मैं इस हेतु भी आशांवित हूं कि आप अपने इस कार्यकाल में दायित्वों का निर्वाह पूरी कुशलता और प्रवीणता से करने के साथ ही उन नई उंचाइयों को भी स्पर्श करेंगे, जो हम सभी के गौरव और अभिमान को और अधिक उंचा करेगी। इन शब्दों के साथ मैं पुनः आपका हार्दिक अभिनंदन करता हूं और आपके सफल कार्यकाल की मंगलकामना करता हूं।

माननीय न्यायाधिपति श्री चन्द्रहास सिरपुरकर :–

आपका जन्म 4.3.1957 में हुआ। आपका न्यायिक सेवा काल वर्ष 1983 में सिविल जज वर्ग–2 से शुरू हुआ। वर्ष 1989 में सिविल जज वर्ग–1 के पद पर पदोन्नत हुए। उसके बाद आप 1994 में सीजेएम/ए.सी.जे.एम. के पद पर पदोन्नत हुए एवं वर्ष 1996 में उच्च न्यायिक सेवाओं में पदोन्नत हुए। आपने अपने विभिन्न न्यायिक पदों पर रहते हुए देवास, शहडोल, कोतमा, भोपाल, डबरा, ग्वालियर एवं जबलपुर में अपनी न्यायिक सेवाएं दी। वर्तमान में आप मध्य प्रदेश शासन के विधि एवं विधायी कार्य विभाग में प्रमुख सचिव विधि के पद को सुशोभित कर रहे थे। विधि के क्षेत्र में आपकी पारंगतता और आपका अनुभव निश्चित ही इस प्रदेश के विधि जगत के लिए बहुत ही लाभकारी एवं उपयोगी होगा। उच्च न्यायालय में न्यायाधिपति के पद पर आपकी नियुक्ति पर मैं आपका हार्दिक अभिनंदन करता हूं एवं आपके सफल कार्यकाल की मंगलकामना करता हूं।

इन्हीं अपेक्षाओं के साथ ही मैं आशांवित हूं कि हमारे नये न्यायाधिपतिगणों के कार्यकाल में सहजता और सुलभता के वातावरण के निर्माण में उनका योगदान प्रदेश के विधि जगत को प्राप्त होगा। मैं पुनः मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से, प्रदेश के अधिवक्ताओं की ओर से एवं स्वयं अपनी ओर से आप सभी को बधाई देते हुए आपके सफल कार्यकाल की मंगलकामना करता हूं।

Shri O.P. Namdeo, Central Govt. Counsel, said :-

My Lords, it is my proud privilege and pleasure to felicitate and welcome the newly sworn Justice Ms. Vandana Kasrekar, Shri Rajendra Mahajan and Shri C. V. Sirpurkar on behalf of Union of India, Assistant Solicitor General, My colleagues Central Government Counsels and my own behalf, on your Lordships elevation as Judges of this High Court of repute.

Your Lordships are joining the galaxy of judges at the time when the High Court is facing the burden of high pendancy of cases.

My Lords all judges decide cases to the best of their ability. But the nobility of Judge springs from the manner he hears the cases impartially and with an open mind. The best Judge is one who can keep at arms length his own predilections and prejudices and then approach the matter and try the case before him with stern judicial frame of mind and without bias of any kind. To this he is compelled by his oath, upbringing and training. In this sense your Lordships will, we hope, make a mark as distinguished Judges of this Court.

You're Lordships rich and varied experiences in the field of judiciary and the depth of insight and breadth possessed by you all have fully qualified to grace this High office. Your Lordships have achieved this distinction by shear dint of your merits which has brought your goodself to this high office.

Your Lordships achievements virtues and values have been elaborately mentioned by my previous speakers to which I entirely agree by saying in two words "I agree" and I need not repeat the same. With this I once again welcome and congratulate your Lordships on your elevation to the Bench and wish you all a very successful and illustrious tenure as Judge, coupled with good health.

Reply to Ovation, by Hon'ble Ms. Justice Vandana Kasrekar-

I am extremely grateful for the kind words spoken on this occasion for me.

At the outset, I express my gratitude to the almighty God for his benevolence bestowed on me for discharging the duties of this High Office. I am thankful to the Hon'ble Chief Justice and the members of the Collegium who have recommended my name for appointment to this August post.

I am thankful to Hon'ble Justice Shri V. S. Kokje with whom I have started my profession as a lawyer. I have learnt the basics of law from him. After the elevation of Shri V. S. Kokje as a Judge of this Court I have joined the office of Hon'ble Shri Justice S. S. Samvatsar, I am thankful to Justice Shri.S.S. Samvatsar who has reposed the confidence in me after his elevation as a Judge of this Court.

I am also thankful to Senior Advocate Shri G.M.Chaphekar who has guided me in the profession & has always stood behind me as a fatherly person.

I am also thankful to Hon'ble Shri Justice S. S. Kemkar who has always helped and guided me.

I am thankful to Hon'ble Justice Smt. Shubhada Waghmare who has always treated me like a younger sister and stood with me whenever I needed her help.

I express my gratitude to the Senior as well as the Junior members of the High Court Bar Association, Indore who reposed confidence on me and gave encouragement, love and affection.

I am thankful to the members of my family who have always supported me and without their help it would not have been possible for me to reach this position.

I am thankful to all my friends, colleagus and members of my office who have always co-operated me in the profession.

Last but not the least I am grateful to my parents who have introduced me to this world and have made what I am today.

I will try to maintain cordial relations between the Bench & the Bar. During the term of my tenure as a Judge of this Court, My endeavour would be to encourage the junior members of the Bar to whome I can only say that there is no other way to success except hard work.

With this little words of advice I once again reiterate my thanks to all of you.

Thank You.

Reply to Ovation, by Hon'ble Mr. Justice Rajendra Kumar Mahajan -

First of all, I pay my sincere obeisance to the dignitaries present here for giving their blessings and extending their good wishes to me and my brother Chandrahas Sirpurkar (चन्द्रहास सिरपुरकर) and sister Vandana Kasrekar (वंदना कसरेकर).

I am beholden to the speakers for their kind, encouraging and motivating words. I would not be doing justice to myself if I were to accept their words at face value. I take these words as proof of their goodness and nobility and the readiness of the Bar to extent full cooperation to me in the fulfillment of my hard task ahead.

I pay my deep sense of gratitude to my Lord Hon'ble the Chief Justice, Shri Justice A.M. Khanwilkar (ए.एम. खानवीलकर), a dynamic personality in his own right and a great visionary in the domain of law, members of the collegium Hon'ble Shri Justice Ajit Singh and Hon'ble Shri Justice Rajendra Menon, who are great legal luminaries, for reposing their trust, high hopes and confidence in me while recommending my name for elevation to the Bench of this august High Court. I assure them that I would live up to their expectations.

I also pay my sincere thanks to my Lord Chief Justice Shri Justice A.M. Khanwilkar for administering me the oath of office.

When I look back of my past life, I may say that it is sheer destiny that made me judge otherwise I would have been either a doctor or professor of Chemistry.

As a trainee civil judge class-II, I was posted at Ujjain. At that time, Late Shri L.J. Mandlik (एल.जे. माण्डलिक) was district judge, Ujjain. Before joining my duty, I met him at his residence and explained to him my predicament that I had got no standing at the Bar and was very nervous. Having heard me, he gave me following three tips for being a good judge:

(1) Before deciding a lis, read the relevant law and rulings thereon carefully;

(2) When you decide a lis bonafidely and objectively, your reasoning may be wrong but your conclusion will be correct;

(3) Exercise the power of post like an accelerator of a vehicle, meaning thereby the power should not be into the head on the other hand it must be beneath the feet.

I always follow meticulously the above tips while discharging my duties.

I got the training of civil judge class-II under Shri Justice A.P. Shrivastava, as he was then senior civil judge class-II. His Lordship inculcated in me a sense of responsibilities, integrity of highest degree and devotion and dedication towards the job.

I owe a debt of gratitude to Shri Justice S.L. Jain, Smt. Justice Manjusa Namjoshi, Miss. Justice Sheela Khanna, Shri Justice G.D. Saxena, Shri Justice G.S. Solanki, and Shri Justice N.K. Gupta and my district judges Shri B.K. Shrivastava, Shri B.M. Gupta, Late Shri Ganesh Singh, Shri M.V. Apte. They played a great role in enrichment of my judicial career. I am also grateful to my senior Shri Justice M.K. Mudgal, who is always a beacon light to me.

My Late father Shri M.L. Mahajan was a Principal of Higher Secondary School. He was known for being stickler for rules and a very strict disciplinarian. I learned from him the importance of disciplined life.

My father-in-law Late Shri Daulal Sakhi was a reputed journalist of M.P. State. His weekly article under the title of Political Diary of M.P. was very popular with politicians, bureaucrates and political readers as he used to write with great courage of convictions. He was honored with many prestigious awards in the field of journalism. I learned from him institutional integrity, fearlessness and outspokenness.

My mother is a deeply religious lady. She always inspire me by saying "Vaishnav Ki Prabhu Jo Kare So Bhali Kare" वैष्णव की प्रभु जो करे सो भली करे (meaning thereby God always does well to a righteous man.)

My wife Smt. Anita Mahajan has always stood by me through thick and thin. She cannot attend the function owing to ill health of my mother.

I am a proud father of two sons. My both sons got degrees in engineering stream from the prestigious institution namely ITT, Kanpur and DAICT, Gandhi Nagar Ahmedabad. My elder son Varun is the vice president in the investment branch of German Bank of Commerce, London. On this occasion, I badly miss them. They could not get flights to reach Jabalpur.

I pledge that my theme of work will be "Justice first and Justice last".

Thanks a lot for giving me patient hearing.

Reply to Ovation, by Hon'ble Mr. Justice Chandrahas Sirpurkar -

I am truly overwhelmed by lavish praise showered upon me today by distinguished representatives of the Bar. It made me acutely conscious of my limitations both as a Judge and as a person. I express my heartfelt gratitude nevertheless and solemnly promise that I shall do my utmost to live up to the constitutional oath that I have taken today, in letter and spirit. If I fail, it shall not be for want of trying.

I am here today due to the grace of countless human beings with whom I have interacted and from whom I have learnt what little I know. The list includes such disparate individuals as Judges of Supreme and High Courts, my first District Judge, my last trainee Judge, a cause list clerk and even a peon. I shall not venture to name any of them here lest I might belittle the contribution of others in shaping my judicial persona. This has been so because I genuinely believe that every interaction is an opportunity of improving rather than proving. I express my gratitude for being considered worthy of this high office.

Sir, I am no stranger to this exalted High Court, with its glorious traditions and magnificent architecture. I have served it for twelve odd years

in one humble capacity or the other. Now that I am called upon to shoulder this onerous yet welcome responsibility, I shall look forward to the guidance of my hon'ble seniors on the bench and cooperation from learned members of bar and industrious members of the registry, in discharge of my duties. I am certain that I shall receive all that in full measure and without reservations.

I do not propose to tax the patience of this august assembly any more.

Thank you sir. Thank you very much for being here today.

Jai Hind

FAREWELL

HON'BLE MR. JUSTICE ANIL KUMAR SHARMA

Born on October 1, 1952 at Gwalior (M.P.). Did B.Sc., M.A., LL.B. Enrolled as an Advocate in 1974. Practiced as Advocate at Mandsaur, Khandwa and Indore. Joined as Civil Judge Class-II on 03.09.1979 for training at Indore. Posted as Civil Judge, Dharampuri, Kannod, Ashoknagar, Ambah, Tarana, Bilaspur, Katni and as C.J.M. at Jabalpur. Posted as Additional District Judge, Jabalpur, Khargon and Khandwa. Posted as Special Judge (Prevention of Atrocities), Rajgarh. Posted as President, Consumer Forum, Guna. Posted as Family Court Judge, Sagar and Bhopal. Posted as District Judge, Seoni and Ujjain. Worked as Principal Registrar (Judicial), High Court of M.P. Jabalpur from 18.06.2007 till elevation.

Elevated as Additional Judge of the High Court of Madhya Pradesh on May 3, 2010. Appointed as permanent Judge on April 3, 2012 and demitted office on September 30, 2014.

We wish His Lordship a healthy, happy and prosperous life.

FAREWELL OVATION TO HON'BLE MR. JUSTICE ANIL KUMAR SHARMA GIVEN ON 30.09.2014, IN THE CONFERENCE HALL OF THE HIGH COURT OF M.P. AT JABALPUR

Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice, bids farewell to the demitting Judge -

We have assembled here to bid an endearing farewell to Hon'ble Shri Justice Anil Kumar Sharma, who is demitting office today (30.09.2014) on attaining the age of superannuation after successful judicial tenure of over 35 years.

His Lordship was born in a well known family at Gwalior on 1st October 1952. His grand father Late Shri Shiv Charan Sharma had the distinction of serving as Colonel in Scindia Army at Gwalior. His father Shri Keshvanand Sharma was a member in the Indian Administrative Service.

Justice Sharma, after obtaining degree of Law, got himself enrolled in 1974 as an Advocate with M.P. State Bar Council. Thereafter he practiced for some time at Mandsaur and then at Indore. His Lordship started his judicial career by joining as a Civil Judge Class-II in M.P. Judicial Service in September, 1979. He served the District Judiciary in various capacities including District Judge at Seoni and Ujjain. Prior to his elevation, he was working as Principal Registrar (Judicial) in the High Court of M.P.

Considering the vast experience gained by His Lordship in the District Judiciary, he was elevated to the Bench on 03.05.2010 as Additional Judge of this High Court and then as a Permanent Judge on 03.04.2012. Justice Sharma's contribution on Judicial and Administrative side has been very illustrative. Justice Sharma is known for his soft and polite behavior and pleasant mannerism.

Retirement from service is the unfolding of a new chapter in one's life. In the words of John Sharp Williams - a well known American thinker and politician, retirement brings repose; and repose allows a kindly judgment of all things.

Those who are close to Justice Sharma would certainly vouch for his multifaceted personality. During my association with him for last 10 months I

have realized that besides having a career in Judiciary, he has an abiding interest in the field of naturopathy and homeopathy. I believe that henceforth he is contemplating to utilize his knowledge and experience in the field of law as well as other areas of interest for the well being of marginalized and needy people. That is his passion.

Justice Sharma, at this juncture of life, is endowed with a sense of fulfillment and satisfaction because his son, Shri Rohan Sharma, a senior Executive in Sabarmati Gas Limited in Gandhi Nagar Gujarat and his Son-in-Law, Shri Gaurav Gandhi, Chief Executive Officer in Navyug I.T. Company at Delhi, both are well settled in their life.

George Washington in his farewell address said, and I quote -

"everyday the increasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome."

With these words, I on behalf of my Brother Judges and on my own behalf, wish Justice Anil Kumar Sharma best of health, happiness and prosperity in life.

"Jai Hind"

Shri R.D. Jain, Advocate General, bids farewell : -

We have assembled here to bid farewell to Mr. Justice Anil Kumar Sharma who is demitting the office on 30th of September 2014 after his career as a judge of the MP High Court.

Your Lordship assumed the office as a judge of the High Court on 3rd May 2010. Your Lordship's elevation as a judge of the MP High Court brought an era of devotion to work with cool temperament. Today is a parting moment as far as the office as a judge is concerned, and we wish that My Lord will be blessed with health and happiness in days to come.

Born on 1.10.1952 and after having obtained the degree of Law, your Lordship enrolled as an Advocate in the year 1974. Your Lordship joined the judicial services on 3.9.1979 as Civil Judge Class II. Your Lordship was

promoted as Civil Judge, Class I on 30th of September 1986, as CJM on 5th of October, 1989 and as officiating District Judge on 17.2.1992. Your Lordship was granted selection grade on 8.5.1999 and super time scale on 26.2.2006.

Your Lordship was appointed as President, District Consumer Forum, Guna w.e.f. 7.8.2000 and also worked on the post of Presiding Judge, Family Court, Sagar and Bhopal. Before his election as Judge of M.P. High Court Your Lordship had also held the post of Principal Registrar (Judicial) in the High Court of MP at Jabalpur.

On account of the vast experience possessed by Your Lordship as a judge and having worked in different capacities Your Lordship had privilege to assess the pulse of the system and the decisions rendered by Your Lordship reflected this quality very eloquently. Though My Lord's period as a judge was very short but during this short period My Lord delivered hundreds of judgments which are published in various journals and these judgments will surely throw light on various aspects of law which will guide the newcomers in the field in future.

I personally feel that Your Lordship's tenure as a judge will always be remembered. I also think that a person in legal profession never retires. He only changes the vocation and Your Lordship will also continue to provide guidance to the legal fraternity which may result in bringing up a perfect judicial system.

Your lordship was quick in understanding and in my estimation the atmosphere of your Court has always been smiling.

I am sure that you will be enjoying very best of health throughout your rest of life. Though My Lord is retiring today from the Office of High Court Judge but Your Lordship has still to serve the legal world and I hope that you will provide services in this direction in the years to come and by the great treasure of knowledge My Lord will be a guide and philosopher for newcomers.

On behalf of the Government of Madhya Pradesh and Law officers of the State and on my own behalf I wish My Lord illustrious, healthy and long life.

Shri Adarsh Muni Trivedi, President, M.P. High Court Bar Association, bids farewell : -

We all have assembled here to bid a heart-felt farewell to Your Lordship Hon'ble Shri Justice Anil Kumar Sharma on your demitting the high office of a Judge of this High Court. At this moment even the sky is dreary.

Your Lordship were born on 01st October, 1952 at Gwalior and did your B.Sc., M.A. and LL.B. and got yourself enrolled as an Advocate in year 1974. Your Lordship joined the ecliptic orbit of Judiciary, when appointed as a Civil Judge, Class-II in the Judicial Services of the State on 3rd September, 1979. Thereafter, you were promoted as Civil Judge, class-I on 30th September, 1986, as Chief Judicial Magistrate on 5th October, 1989 and as officiating District Judge on 17th February1992. Your Lordship were granted Selection-grade on 8th May, 1999 and Super-Time Scale on 26th February, 2006. During this first phase of your Judicial-tenure, Your Lordship earned vivid experience serving at different places like Indore, Dharmpuri, Kannod, Ashok Nagar, Ambah, Tarana, Bilaspur, Katni, Jabalpur, Khargone, Khandwa, Rajgarh, Guna, Sagar, Bhopal, Seoni and Ujjain. Your Lordship had also worked as Presiding Judge, Family Court at Sagar and Bhopal. Prior to your elevation Your Lordship also graced the office of Principal Registrar (Judicial) in the High Court of M.P. at Jabalpur.

Your Lordship were elevated as Additional Judge of this Hon'ble Court on 3rd May 2010 and took oath as a Permanent Judge on 3rd April, 2012. With your demission from the high-office of a Judge of this Hon'ble Court, this weather for us, the Members of this Bar is weaved today with searing waves.

The Sanskrit word 'Anil' originates from the word 'Anilah', which is compounded of two meanings, the first is 'Brihma' and the second is 'Nilyam' or abode; and therefore, the meaning of 'Anilam' is 'Pran-Vayu' which is the abode of 'Brihma', the Almighty. In 'Ishopnishad', the 'Rishi' says :-

'वायुरनिलममृत मथे दं भस्मान्तं शरीरम्।

ॐ कृतो स्मर कृतं स्मर कृतं स्मर ।।'

[The person dwelling within you, that I am. Let my 'Pran Vayu', the 'Anilam' merge into cosmic energy.]

Thus, the 'Anil' is symbolic to the the gentle cosmic air, which dwells in each individual and is cause of our living, Your Lordship as 'Anilam' adorned the high wreathy pedestal of Justice like the fresh cosmic breeze to the portals of this High Court and gave life to the people by your Judgments, and have completed your voyage with strange sharp turns and stormy high waves of this Judicial System.

Maharshi Patanjali says :-

" प्रातिभाद्वा सर्वम्।।"

[The illumined mind always attains knowledge.]

Your Lordship have been a great Judge and a humanitarian who touched everyone with your soft-spoken words and amiable smile. I always found that Your Lordship have been a Judge of firm conviction and always anxious to do justice in every case that came before you. Your Lordship were always eager to the challenging needs of the occasion. You pursued the concept of fairness and fair play in action and extended it to the situations. Your Lordship have been an illustrious Judge with remarkable characteristic of being a charioteer of wide range of law covered by your Judgments. Your Lordship have been equally at home in Constitutional law, election law, civil law and criminal law with clarity of thought and expression. Your Lordship have adjudicated upon vexed questions of law and laid down the rule with a just, balanced and humane approach and did not subscribe to the philosophy of pragmatism if that entailed sacrifice of principles at the altar of expediency and short-term results. Your Lordship had great regard for tradition, which in Carlyle's words is an enormous magnifeer.

'Rigved says :-

" स्वस्ति पन्थामनु चरेम सूर्याचन्द्रमसाविव।
पुनर्ददताघ्नता जानता सं गमेमहि।।

[Rigved : 5/51/15]

[As the Sun and Moon regularly move on their respective orbit, in the same manner one should not leave the course of Justice.]

It is high-time to say that Your Lordship the Chief Justice have just

commenced the delicate and difficult task of streamlining the Administration of Justice by opening wide the gates for subtle reforms and subsuming timely changes in the system stunningly, which was stumbling since long. We can only visualize the new horizons of hopes, which would have been opened up. Your Lordship have revived the frequent meetings with the Members of Bar to discuss matter of mutual concern to the Bar and the Bench, with open mind. As President of M.P. High Court Bar Association I am afraid, I have been rather selfish to place demands and demands time and again before Your Lordship, the Chief Justice and it is a measure of your magnanimity that you have always grasped the reason in each one of our request and never said 'No' to any one of such demands relating to the problems faced by the Bar. So I, on behalf of Bar, can only express gratitude towards Your Lordship, in the words as 'Kathopnishad' exhorts :-

" उत्तिष्ठत् जाग्रत प्राप्य वरान्निबोधत।
क्षुरस्य धारा निश्चिता दुरत्यया
दुर्ग पथस्तत्कदयो वदन्ति।।

[Kathopnishad :- I/iii/14]

[Arise, awake and approaching great souls, receive instructions from them. The wise says that the road is difficult to tread; it is like treading on the sharp edge of a razor.]

Your Lordship have treaded successfully on the sharp edge of the razor by elevating yourself to the heights of your dreams. We hope, one day Your dream- scheme will be the 'model-scheme' for all other High-Courts nation-wide. But, here the same would flourish in full bloom, when the strength of Judges would become complete.

At last, we all the Members of M.P. High Court Bar Association, wish Your Lordship Shri Justice Anil Kumar Sharma a great success in your future life and pray Almighty to shower His all blessings upon you and at this holy 'Nav-Ratri' festival days also pray Goddess Durga, who is source of 'power' in all beings, to give you the power to tread on air in your future days. We wish you - ' जीवेद् शरदः शतम् ।'

[Long live encompassing on hundred years.]

" देखो मेरी मुट्ठी में एक कागज है,
उसमें किसका नाम लिखा है बोलो तो।
हमारी आंखें क्यों आज भीगी भीगी हैं,
तुमसे इनका कुछ रिश्ता है बोलो तो।।"

Now, it is high time to rejuvenate your high services to the Society.

Shri R.P. Agrawal, President, High Court Advocates' Bar Association, Jabalpur, bids farewell :-

We have assembled here today to bid farewell to Hon'ble Shri Justice Anil Kumar Sharma, who is demitting his Office today i.e. 30th September, 2014.

My Lord Hon'ble Shri Justice Sharma joined Judicial Services as a Civil Judge Class-II on 3rd September, 1979 and rose to higher judicial posts one after the other. He worked as Principal Registrar (Judicial), High Court of Madhya Pradesh and thereafter stood elevated as Additional Judge of High Court of Madhya Pradesh on May 3rd, 2010 and, later on, made permanent.

My Lord served the judiciary for about 35 years and he had about 31 years of judicial experience when My Lord was elevated as a Judge of this Court.

My Lord's behaviour with the members of the Bar was extremely good. He gave very patient hearing to each and every member of the Bar, without any interruption. My Lord possesses enviable memory. He never took notes while hearing the arguments. But, whatever was said and whatever decisions were cited, they did find place in the judgment. No lawyer ever left dissatisfied while leaving My Lord's Court room.

We have learnt that My Lord is going to settle at Indore. His son and daughter are very well placed. We have also learnt that My Lord would engage himself in social services after the retirement.

I, on behalf of High Court Advocates' Bar Association and on my own behalf, wish My Lord a very happy and healthy life after retirement.

Shri Rameshwar Neekhra, Chairman, M.P. State Bar Council, bids farewell :-

आज हम न्यायाधिपति माननीय श्री जस्टिस ए.के. शर्मा जी के विदाई के उपलक्ष्य में आयोजित समारोह में उपस्थित हुए हैं। आपका जन्म 1 अक्टूबर 1952 को ग्वालियर में हुआ आपने विधि स्नातक की उपाधि प्राप्त करने के पश्चात् वर्ष 1974 में विधि व्यवसाय मंदसौर एवं इंदौर से प्रारंभ किया।

आप दिनांक 3.9.1979 को सिविल जज वर्ग–2 के पद पर पदस्थ हुए। उसके बाद सिविल जज वर्ग–1,चीफ ज्यूडिशियल मजिस्ट्रेट बने एवं दिनांक 5.10.1989 को आप आफिसिएटिंग डिस्ट्रिक्ट जज बने। आपने इंदौर, धरमपुरी, कन्नौद, अशोकनगर, अम्बाह, तराना, बिलासपुर, कटनी, जबलपुर, खरगोन, खंडवा, राजगढ़, गुना, सागर, भोपाल, सिवनी, उज्जैन आदि में अपनी न्यायिक सेवाएं दी। आपको प्रिन्सिपल रजिस्ट्रार (ज्यूडिशियल) हाईकोर्ट जबलपुर के पद पर पदोन्नत किया गया। आपके न्यायिक अनुभव एवं विधि के गहरे ज्ञान के चलते आपको दिनांक 3 मई 2010 से मध्य प्रदेश उच्च न्यायालय का न्यायाधिपति नियुक्त किया गया।

उच्च न्यायालय के न्यायाधिपति के कार्यकाल में आपने अपने गहरे अनुभव एवं विधि के ज्ञान से अनेक जटिल प्रकरणों का निराकरण कर विधि के नये सिद्धांत को प्रतिपादित किया। वहीं दूसरी ओर न्यायिक–प्रशासन के सुगम संचालन में भी आने वाली समस्याओं के समाधान में भी अपना अथक योगदान दिया।

आज की बदलती हुई परिस्थिति में न्याय के इस मंदिर की गरिमा को गंभीरता के साथ आम लोगों के लिये विश्वसनीय बनाये रखा जाना संभवतः सबसे प्रमुख आवश्यकता है। आपका न्यायिक सेवाओं में दिया गया योगदान इन संदर्भों में सदैव स्मरणीय रहेगा।

न्यायाधिपति के पद से सेवा निवृत्त होने पर अब आप और अधिक सक्रियता से समाज का मार्गदर्शन करते रहेंगे, इस हेतु मैं आशान्वित हूँ।

मैं मध्य प्रदेश राज्य अधिवक्ता परिषद की ओर से, प्रदेश के अधिवक्ताओं की ओर से एवं स्वयं अपनी ओर से आपके उज्ज्वल भविष्य एवं दीर्घ आयु की कामना करता हूँ।

जय हिंद,

Shri O.P. Namdeo, Central Govt. Counsel, Jabalpur bids farewell :-

We have assembled here today to bid farewell to one of our eminent Judge Justice Anil Kumar Sharma on his last working day at Jabalpur High Court. His Lordship was born on 1st October 1952 and after completing his

education he joined M.P. State Judicial Service at Civil Judge Class II on 03.09.1979. Thereafter his Lordship was promoted as Civil Judge, Class I and Chief Judicial Magistrate.

That his Lordship was promoted as Additional District and Session Judge and was also Officiating District Judge and has served at different places in the earthwhile State of Madhya Pradesh. His Lordship has also functioned as President District Consumer Forum, Guna and Presiding Judge of Family Court at Sagar and Bhopal. His Lordship thereafter became Principal Registrar (Judicial) in the High Court Registry at Jabalpur and thereafter was elevated as Additional Judge of the High Court on 03.05.2010.

His Lordships achievement has been source of inspiration to the members of subordinate judiciary. His Lordship's successful and illustrious carrier in judiciary has been par -excellence.

His Lordship has been courteous judge and known for his intelligence, hard work and punctuality. His Lordship's relation with the members of the Bar has been very cordial and noncontroversial whether junior or senior.

His Lordship became an ideal in his own way, several controversial issues were solved by his Lordship's judgement. On every subject his Lordship interpreted the law in such manner that the purpose and object of law makers was not frustrated.

My previous speakers have already spoken about the achievement, quality and virtues of your Lordship. So instead of repeating the same while agreeing with them I wish all the best for his Lordship post retirement life.

I on behalf of Government of India, all the Law Officers of Central Government and on my own behalf, express our best wishes for good health, happiness and peace for the days ahead.

Shri T.S. Ruprah, General Secretary, Senior Advocates' Council, Jabalpur, bids farewell :-

My Lords this assembly of lawyers of Jabalpur bids farewell to Hon. Shri Justice Anil Sharma who is demitting the office of the Judge of the High

Court of Madhya Pradesh today.

My Lords we the members of the legal fraternity of Madhya Pradesh have witnessed Mr. Justice Sharma dispensing justice very effectively from various assignment since 1979. I had the occasion to meet Mr. Justice Sharma to closely appreciate his working as a Principal Registrar (Judicial) at Jabalpur while I was the President of the High Court Advocates Bar Association. I found him to be extremely painstaking, courteous and prompt.

Your Lordship's short span as a Judge of this Court has depicted qualities of balanced Judge realizing the difficulties and miseries of the poor persons. Your Lordship has always given patient hearing to the lawyers and maintained a very congenial atmosphere in the Court.

Mr. Justice Sharma had been a very soft spoken, courteous and a benevolent gentleman. A philanthropist with a mission in mind to eradicate the pains and lessen the difficulties of the litigants. It is because of this quality of Your Lordship that every lawyer who argued before Your Lordship came out of the Court smiling. Your Lordship would be remembered with fond memories for the warmth and responsiveness displayed by Your Lordship.

I,.on behalf of the Senior Advocates Council and on my own behalf extend best wishes to Your Lordship and hope that you will be engaging yourself in other activities, which will be beneficial to the society. We are sure that Your Lordship's legal knowledge, experience gained during all these years and a brilliant academic career shall be utilized for the betterment of the poor and the needy. I extend my good wishes to you for a healthy, peaceful and happy active long life.

Farewell speech delivered by Hon'ble Mr. Justice Anil Kumar Sharma :-

I am extremely thankful for the sentiments and the words expressed by you showing affection towards me.

Retirement from a Government or a Constitutional Post is a Pre-fixed fate. I have completed long tenure of more than 35 years of judicial service beginning from civil judge, class-II which I joined on 3.9.1979 During

this long tenure, I have served at about 20 places in the lower judiciary and I have worked as High Court Judge, at Gwalior and Jabalpur and several times I have gone to Indore on Roster Sittings and my experience at all these places where I have spent more than half the period of my age till now was very good. I have enjoyed confidence and good feelings of Bar and local officers in all these places and my memories regarding all these places are assets for me.

I am very much thankful to the members of Collegium who gave me the opportunity to serve this noble institution. I am also thankful to my brother Judges with whom I have spent 4 1/2 years for their kind co-operation.

I have enjoyed full support of the staff in all these places and the co-operation of Bar, local officers and court staff have played important role in my success and therefore, I am thankful to all of the Bar members, Staff members and officials who have contributed to my success at all these places.

I am particularly thankful to the staff of judicial branch of Registry of this High Court who have co-operated me by devoting their valuable time in addition to their official time. I cannot forget the labour of Registry Staff in sorting the cases for Lok Adalats and Mega Lok Adalats. It was the combined effect of co-operation of Registry Staff with the Registry Officers that resulted in success of Lok Adalats and Mega Lok Adalats.

I am also thankful to all the Judges who have worked with me and with whom I enjoyed the period of about more than 30 years serving as civil Judge, Class II to District Judge.

Now, I am very happy as I will spend my time to come in the company of my mother, father my children grandchildren and my brothers and their family members who have missed my company on several occasions due to performance of my duty as a Judge. I am proud of my son Rohan and daughter Eka who have achieved success inspite of some failure in my part in giving expected time to them.

I am also thankful to my other relatives and above all friends who were always with me at the time of any need. Apart from my friends, I am very much thankful to my opposers also who were my inspiration to maintain high standard of work and to keep me protected from their raised fingers.

I am also thankful to all those doctors and persons who were kind enough to extend their service during long period of 18 years of ailment of

my late wife.

I am also thankful to my senior advocates Late Shri Basantilal Ghatia who was eminent civil lawyer at Mandsaur and Senior Advocate Shri Anand Mohan Mathur whose guidance has always been helpful to me in handling the cases of every nature.

I am very much satisfied with my career of 35 years spent as a Judge and I will be now devoting my time in social work relating to Handicapped Persons.

This is not the end, my niece Ms.Harshita will be soon joining as Civil Judge to continue the show.

Before departing, I would like to give special thanks to my personal staff Paritosh Kumar, Jitendra Parouha, Sheeba Biju, Manoj Nair, Dinesh Kumar Roy. Kashi Prasad Mishra, Bhola Prasad, Prakash Verma and the Protocol Section for their wholehearted moral support and helping attitude enhancing my skill and efficiency.

In the end, I am expressing my feelings by reading following lines in Hindi :-

हर किसी को खुश रख सकूं
वो तरीका मुझे नहीं आता
जो मैं नहीं हूं वैसा दिखने का
सलीका मुझे नहीं आता
दिल में कुछ और जुबां पे कुछ
ये बाजीगरी का कमाल मुझे नहीं आता
ऐ प्रभु बस इतनी शोहरत बख्शना तू मेरे नाम को
कि जिसके भी लबों पे आऐ मुस्कराहट के साथ आए

Wish all of you all the best.

Thank you.

I.L.R. [2014] M.P., 2491
WRIT APPEAL

Before Mr. Justice Rajendra Menon & Mr. Justice Alok Verma
W.A. No. 663/2014 (Jabalpur) decided on 25 August, 2014

KAMAL KANT BHARDWAJ ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

Municipalities Act, M.P. (37 of 1961), Section 47 – No confidence motion – Recording of satisfaction – **It is not necessary that the Collector should conduct a enquiry with regard to identity of persons as submitted on behalf of the appellant – The affidavits filed by the 12 Councillors and their photo identity card alongwith the report of the C.E.O. are sufficient enough to record the satisfaction about their identity and if the list and other documents submitted by the C.E.O. also supports the same, the Collector can proceed in the matter by recording the satisfaction and in doing so as is done in this case Collector has not committed any error – Appeal dismissed. (Paras 8 to 10)**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47 – अविश्वास प्रस्ताव – संतुष्टि अभिलिखित की जाना – यह आवश्यक नहीं कि कलेक्टर, उन व्यक्तियों की पहचान के संबंध में जांच संचालित करे जैसा कि अपीलार्थी की ओर से प्रस्तुत किया गया – 12 पार्षदों द्वारा प्रस्तुत शपथ पत्र और सी.ई.ओ. की रिपोर्ट के साथ उनके फोटो पहचान पत्र, उनकी पहचान के बारे में संतुष्टि अभिलिखित किये जाने के लिये पर्याप्त है और यदि सी.ई.ओ. द्वारा प्रस्तुत सूची एवं अन्य दस्तावेज भी उक्त का समर्थन करते हैं, कलेक्टर संतुष्टि अभिलिखित कर मामले में कार्यवाही कर सकता है और ऐसा करने में, जैसा कि इस प्रकरण में किया गया है, कलेक्टर ने कोई भूल नहीं कारित की है – अपील खारिज।

Cases referred :

2005(3) MPLJ 578, 2005(2) MPLJ 323, 2008(4) MPLJ 316.

T.S. Ruprah with *Harpreet Ruprah,* for the appellant.
Rahul Jain, Dy. A.G. for the respondents No. 1, 2 & 3.
Rohit Jain, for the intervenors namely *Smt. Nosar Bai & ors.*

ORDER

The Order of the Court was delivered by :
RAJENDRA MENON, J. :- This appeal has been filed by the appellant under

Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005. The appellant feels aggrieved by an order dated 7.8.2014 passed by the Writ Court in W.P. No.11989/2014 by which the writ petition filed by the petitioner in the matter of proposing to proceed with certain action for recall of a President of a duly elected Municipal Council under Section 47 of the M.P. Municipalities Act, 1961, is decided by the Writ Court.

2. The facts in nut-shell goes to show that appellant is the elected President of Municipal Council, Chhanera (New Harsud), District Khandwa and after he had worked as such for a period of two years four months and 46 days, 12 elected Councillors of Municipal Council (namely the intervenors herein) submitted a No Confidence Motion for recall of the President before the Collector. The Collector having recorded his satisfaction under Section 47(2) of the Municipalities Act, 1961, matter was challenged in the Writ Court and the same having been dismissed, this appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005.

3. Shri T. S. Ruprah, learned Senior Counsel invited our attention to the provisions of Section 47(2) of the Act of 1961 and argued that before forwarding the proposal for recall to the State Government, the Collector has to record his satisfaction with regard to the fact that 3/4th of the Councillors have signed the proposal for recall and further that they are the elected Councillors. It is said that in this case, recording of satisfaction by the Collector is not in accordance with law. Shri Ruprah invited our attention to the note sheets available on record and maintained in the office of the Collector dated 23.7.2012 Annexure P/2 and the subsequent order sheet Annexure P/3 dated 24.7.2014 to say that without properly verifying the identity and correctness of the 12 Councillors who are said to have appeared before the Collector and submitted the proposal, the Collector has proceeded in the matter which according to Shri Ruprah, learned Senior Counsel, is not a proper way of recording the satisfaction. It was submitted by him that the District Head Quarter, Khandwa, where the Collector sits and the Municipal Council in question is at a distance of 82 kms and the Collector within one day has conducted the verification which is not correct. He tried to emphasize that merely showing the presence of Councillors before him and by accepting the affidavit submitted by them and getting their signatures on the order sheet, the Collector seems to have recorded his satisfaction as required under Section

47(2) which is not proper. It is emphasized that for the purpose of verifying the identity, signatures and various aspects of the matter for recording satisfaction, the Collector should have caused an enquiry into the matter and this having not done, it is stated that the entire statutory requirement as contemplated under Section 47(2) for the purpose of recording the satisfaction of Collector is not done in accordance with law. Shri Ruprah submitted that while dealing with the matter, learned Writ Court has placed reliance on the judgment of Full Bench of this Court in the case of *State of M.P. and others Vs. Mahendra Kumar Saraf and others* - 2005(3) MPLJ 578 but in this judgment the question considered was with regard to presence of the Councillors at the time of presentation of the motion for No Confidence before the Collector and requirement of their personal presence for the verification and signatures. It is emphasized by Shri Ruprah that in this case, the appellant is not challenging the fact with regard to presence of Councillors but is only challenging the manner in which enquiry required for identification of the Councillors and enquiry as to whether they are elected Councillors or not is undertaken. It is stated that judgment in the case of *Mahendra Kumar Saraf* (Supra) was wrongly applied by the learned Writ Court and therefore, referring to the meaning of the word "satisfaction" and emphasizing that in the facts and circumstances of the case, recording of satisfaction of the Collector in the manner done, is not in accordance with law, Shri Ruprah sought for interference into the matter.

4. Shri Rahul Jain, learned Dy. Advocate General and Shri Rohit Jain, learned counsel who appears for the intervenors, took us through the proceedintgs held before the Collector on 23.7.2014 and again on 24.7.2014, the manner in which the satisfaction has been recorded by the Collector, as is evident from the Note sheets prepared, the requirement of sub section (2) of Section 47 of the Act of 1962 and also referred to the affidavits and the identity card submitted by each of the 12 Councillors to say that the Collector has recorded the satisfaction correctly and in doing so, no procedural irregularity has been committed warranting reconsideration. Shri Rohit Jain, learned counsel placed reliance on the Full Bench judgment of this Court in the case of *Mahendra Kumar Saraf* (supra) and in the case of *State of M.P. and another Vs. Manorama Gour* - 2005(2) MPLJ 323, the affidavits available on record and other aspects of the matter to say that the proceedings have been correctly held and therefore, there is no cause of concern or interference.

5. We have considered the rival contentions and from the record we find that the Municipal Council in question consisted of total 15 elected Members and it is seen that on 23.7.2014, 12 of the Councillors appeared before the Collector and submitted a written requisition for recall of the President. The order sheet of the Collector dated 23.7.2014 indicates that all the 12 Members appeared before the Collector, the Collector recorded their names and other particulars, took the proposal submitted by them along with the affidavits and photo identity cards given by them which is available on record as Annexure AS/2 to AS/13 filed by the intervenors and after obtaining the signatures of all the 12 Councillors in the right hand side of the order sheet, directed the Chief Executive Officer of Municipal Council, Chhanera (New Harsud) to submit a report with regard to the following matters :-

(1) The total number of elected Councillors of the Municipal Council along with their names and other details ;

(2) The date on which the President of Municipal Council was elected, the date on which he took charge and other particulars with reference to the period of working of the President;

(3) The period for which the President has discharged the duties and the total period for which the President has discharged the functions of the Council till the date in question.

Thereafter, it was indicated that on receipt of the report, the question of considering the proposal shall be decided. Based on the communication sent, the Chief Executive Officer seems to have submitted a report on 24.7.2014 and the order sheet dated 24.7.2014 recorded by the Collector himself goes to show that on going through the report of the Chief Executive Officer, it is seen that the President was elected on 17.3.2012, he assumed charge of his office on 30th March, 2012 and as on date, he has completed a tenure of 2 years 4 months and 6 days. He has a tenure of 2 years 7 months and 24 days remaining. It was also found that prior to this proposal, no other proposal or proceeding for recall of the President was undertaken. It was also found that there were 15 elected Councillors of Nagar Parishad Chhanera (New Harsud). Taking note of the same, the order sheet further indicates that the proposal was directed to be registered and thereafter, the Collector goes on to record his satisfaction as contemplated under the provisions of sub section (2) of Section 47 by saying :-

(1) that the President has completed 2 years of tenure;

(2) against President of the Nagar Parishad in question a proposal has been received for his recall which is signed and presented by 3/4th of the elected Councillors.

As the President has completed the tenure of two years and as the Collector finds that the proposal seems to be in order as required under Section 47(2), he records his satisfaction with regard to the proposal and directed for forwarding the same to the State Government for further action.

6. From the documents and material available on record, it is clear that the 12 Councillors appeared before the Collector on 23.7.2014, submitted their proposals along with affidavits and photo identity card and their signatures are available in the note sheet Annexure P/2. The Collector call for a report from the Chief Executive Officer and after being satisfied with regard to the proposal, the signatures of Councillors and other aspects of the matter, he sent the proposal. This is as per the requirement of sub section (2) of Section 47. In the case of *Madan Lal Narvariya Vs. Smt. Satya Prakashi Parsedia* - 2008(4) MPLJ 316 a Division Bench of this Court has taken note of the meaning of word 'satisfaction' as is contained in sub section (2) of Section 47 and the learned Court goes to say that 'satisfaction' would mean the act of satisfying or the state of feeling being satisfied with regard to certain things that are present. In fact, the learned Division Bench in para 20 deals with the matter in the following manner :-

> "20. .... the word 'satisfaction' means the act of satisfying or the state of feeling being satisfied and the action of satisfaction contemplates adequate deliberation for acceptability of the conclusions. In other words, it means that before recording satisfaction, the concerned Authority must be convinced or persuaded to come to the conclusion."

7. Recording of the satisfaction by a person is a positive physical and mental act and when a question arises as to whether the person concerned has recorded the satisfaction properly or not, the Court of law exercising powers in a judicial proceeding is required to apply its mind on the procedure followed and from the material available on record has to record a conclusion as to whether subjective satisfaction arrived at by the authority fulfills the requirement as contemplated under law. It cannot be said as a matter of rule

in all cases that until and unless a particular procedure is followed by conducting enquiry, recording of satisfaction is not proper. Recording of subjective satisfaction and procedure followed would depend upon facts and circumstances of each case and there cannot be a straight jacket formulae, if we examine the procedure followed in this case,it would be seen that on 23.7.2014, 12 elected Councillors appeared before the Collector, they submitted a proposal along with their affidavits and photo identity card and the Collector on receiving the proposal, notes down the name of persons concerned and thereafter, gets a list of elected representative from the Chief Executive Officer, does certain verification based on the material available and records a satisfaction that 12 elected Councillors out of 15 have submitted a proposal. Now the appellant wants this Court to hold that this procedure was inadequate, the Collector should have conducted a detailed enquiry with regard to the identity of each of 12 Councillors who submitted the proposal. Except for saying so, the appellant or his counsel are not in a position to demonstrate before us that any of the Councillor has raised any objection or has come out with a case that the proposal has not been filed by him or that there is misrepresentation, forgery etc. On the contrary, proceedings of the Collector goes to show that 12 Councillors were present before him, their photo identity card were before the Collector and after verifying that they are the elected representatives from the Chief Executive Officer, the Collector has recorded his satisfaction. The Collector is a responsible officer and while discharging the duties in accordance to the statute, an assumption has to be drawn that the Collector has done the proceeding in accordance with law, until and unless material is adduced to show otherwise. If the procedure followed by the Collector is analyzed, we are of the considered view that the recording of satisfaction done by the Collector based on the proceeding as is reflected from the note sheet dated 23.7.2014 and 24.7.2014 seems to be just, fair and reasonable and we hold that the subjective satisfaction arrived at is in accordance to the requirement of law. Merely because the Collector has not conducted any enquiry, it is not appropriate to hold that the satisfaction recorded by the Collector is not proper unless a prima facie case to hold so is made out from the material available on record. Record do show that on 23.7.2014 and again on 24.7.2014, it is the Collector himself who has gone through the papers for recording his satisfaction and merely because particular procedure as is canvassed by the appellant is not followed, we are unable to hold that the recording of satisfaction does not meet the requirement of law.

8. In the facts and circumstances of the case, we are of the considered view that a reasonable procedure has been followed, which does show that procedure adopted by the Collector is in accordance with the requirement of law and on the basis of material adduced, we are unable to hold that record of satisfaction is not proper or does not meet the requirement of law. It is not necessary that the Collector should conduct a enquiry with regard to identity of persons as submitted on behalf of the appellant. The affidavits filed by the 12 Councillors and their photo identity card along with the report of the Chief Executive Officer are sufficient enough to record the satisfaction about their identity and if the list and other documents submitted by the Chief Executive Officer also supports the same, the Collector can proceed in the matter by recording the satisfaction and in doing so as is done in this case, we are of the considered view that the Collector has not committed any error.

9. The Writ Court while dealing with the matter has gone into all aspects of the matter and found recording of satisfaction meets the requirement of Section 47(2) and has rejected the petition on due consideration.

10. We see no error in the same warranting any further reconsideration. Appeal being devoid of merits and substance is hereby dismissed.

Appeal dismissed.

I.L.R. [2014] M.P., 2497
WRIT PETITION
Before Mr. Justice K.K. Trivedi
W.P. No. 4780/2011(S) (Jabalpur) decided on 25 February, 2013

S.K. GUPTA & anr. ...Petitioners
Vs.
STATE OF M.P. & ors. ...Respondents

A. ***Municipal Corporation (Appointment and Conditions of Service of Officers and Servants), M. P. Rules, 2000, Rule 10(3) - Promotion*** **- Rules are statutory in nature - Promotion granted to the Petitioners after approval of the State Govt. - Petitioners also joined on promoted posts - Approval was subsequently withdrawn without affording any opportunity of hearing to the Petitioners - Even otherwise objectors were not eligible to promotion - Petition allowed. (Paras 11 & 12)**

क. नगरपालिक निगम (अधिकारियों एवं कर्मचारियों की नियुक्ति तथा

सेवा शर्तें) म.प्र., नियम, 2000, नियम 10(3) – पदोन्नति – नियम, कानूनी स्वरुप के हैं – याचीगण को पदोन्नति, राज्य सरकार के अनुमोदन के पश्चात दी गयी – याचीगण ने पदोन्नति के पदों पर कार्यग्रहण भी किया – याचीगण को सुनवाई का कोई अवसर दिये बिना अनुमोदन को तत्पश्चात वापस लिया गया – अन्यथा भी आक्षेपकर्ता पदोन्नति के लिये अर्ह नहीं थे – याचिका मंजूर।

B. ***Interpretation of Statute*** **- Nothing is to be inserted or substituted in the words used in the statute - If the clear meaning of the provisions of Rules is available, addition or omission of words is not permissible.** **(Para 11)**

ख. कानून का निर्वचन – कानून में प्रयुक्त शब्दों में कुछ भी निविष्ट या प्रतिस्थापित नहीं किया जाना चाहिए – यदि नियमों के उपबंधों का स्पष्ट अर्थ उपलब्ध है, तब शब्दों को जोड़ना या लोप करना अननुज्ञेय।

Case referred :

1993 (Suppl) 2 SCC 419.

Manoj Sharma & Pushpendra Singh Yadav, for the petitioners.
Sheetal Dubey, G.A. for the respondent Nos. 1 & 2.
Amit Seth, for the respondents No. 3 & 4.
Ashok Agrawal, for the interveners *Anil Tatwade & Anil Sahni.*

ORDER

K.K. Trivedi, J. :- This writ petition under Article 226 of the Constitution of India has been filed seeking to challenge the order dated 7.8.2011 passed by the respondent-State, by which approval of promotion of the petitioners on the post of Assistant Engineer, as was granted on 23.9.2008 has been withdrawn with immediate effect, contending that the petitioners who were appointed initially as Sub Engineer in the Municipal Corporation, Bhopal, were considered for promotion on the post of Assistant Engineer in the Departmental Promotion Committee meeting held in the year 2008. In terms of the provisions of Section 58 of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as the Act for brevity), the approval from the State Government was sought, which was accorded on 23.9.2008. Accordingly, the order of promotion was issued on 24.9.2008. However, because of the withdrawal of the order of approval now the consequential effect would be reversion of the petitioners on the post of Sub Engineer, therefore, they are required to approach this Court.

2. Briefly stated facts giving rise to filing of this writ petition are that the petitioners two in number were appointed on different dates on the post of Sub Engineer vide orders dated 20.4.1990 and 27.10.1986. These orders of appointment were issued only after selection of the petitioners by the Selection Board as prescribed. There were two posts of Assistant Engineer available which according to the M.P. Municipal Corporation (Appointment and Conditions of Service of Officers and Servants) Rules, 2000 (hereinafter referred to as 2000 Rules for brevity) were to be filled in by promotion. A Departmental Promotion Committee meeting was held on 7.7.2008. The petitioners were found to be eligible having obtained the degree of Bachelor of Engineering in the year 2001 and 2004 respectively and the select panel was sent for approval before the State Government. Since the approval was granted on 23.9.2008, the order of promotion was issued on 24.9.2008 and pursuance to said order of promotion, the petitioners took over the charge and started working on the promotional post. However, some complaint was made stating that the petitioners were illegally promoted as in terms of the Rules, they were ineligible to be considered for promotion being diploma holders at the time of initial appointment as Sub Engineers, therefore, the promotion of the petitioners was bad. Without granting any opportunity of hearing, the order impugned was issued, therefore, the petitioners are required to approach this Court.

3. The writ petition was entertained, the notices were issued to the respondents in response to which the respondents No. 1 and 2 have filed their return categorically contending that in terms of the provisions of Rules, the procedure as laid down under the M.P. Public Works Department Engineering (Gazetted) Recruitment Rules, 1969, the petitioner could not be promoted on the post of Assistant Engineer treating them as degree holder Sub Engineers, on completion of 8 years of service, inasmuch as, the petitioners have not completed the requisite 8 years of service as degree holder Sub Engineer from the date of obtaining the degree. An amendment was made in the Rules of Public Works Department and according to that amendment if the seniority of the petitioners are fixed, the petitioners would not be entitled to be considered for promotion as degree holder Sub Engineer. This being the error committed in consideration of the case of petitioners, the order was rightly issued withdrawing the earlier approval granted in respect of promotion of petitioners. It is, thus, contended that the order impugned has rightly been

issued and no interference in the order is called for. As far as the respondents No. 3 and 4 are concerned, a common return has been filed by the Municipal Corporation contending that the Departmental Promotion Committee considered the cases of persons like petitioners for promotion only because none of the reserved category candidates were available for promotion fulfilling the criteria. In terms of the Recruitment Rules, the petitioners were considered and since the recommendations were duly approved by the State Government, the order of promotion was issued in respect of petitioners. It is contended that since the order impugned has been issued, the order of promotion of the petitioners has been cancelled, but since the interim relief is granted by this Court to the petitioners in the writ petition, the status-quo with respect to the posting of petitioners is being maintained. Two other Sub Engineers working in the Corporation have moved I.A.No.5531/2001 seeking intervention in the writ petition to oppose the same. The said I.A., has been allowed by this Court and interveners were heard.

4. Though a rejoinder has been filed by the petitioners to the return filed by the State Government, but almost the same contentions have been reiterated with respect to the claim of promotion. It is contended that the seniority of the petitioners is to be fixed from the date of initial appointment as Sub Engineer and not from the date of acquiring the degree of Bachelor of Engineering. Referring to the law laid down by the Apex Court in that respect, it is contended that consideration of the petitioners was rightly done for grant of promotion on the post of Assistant Engineer and, therefore, the petitioners would be entitled to the relief claimed in the writ petition.

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

6. The short question which is required to be answered in this writ petition is whether as a whole the procedure of promotion prescribed in the Public Works Department, including the quota fixed for promotion on the post of Assistant Engineer has to be adopted by the Municipal Corporation in terms of the 2000 Rules or not. Undisputedly, the provisions for promotion in the Municipal Corporation services have been prescribed in Rule 10 of the 2000 Rules which is relevant for the purposes of interpretation and, therefore, the same is reproduced in full :-

"10. Promotion.-(1) Subject to the provisions of rule 4, the

Committee specified in Schedule IV shall select candidates for departmental promotion on the posts as shown in column (2) of Schedule-III.

(2) When a post to be filled by promotion fall vacant and in the opinion of the appointing authority the filling up vacant post is necessary in the interest of the Corporation, then the Commissioner, shall prepare the seniority list of officers/ employees shown in column (3) of Schedule-III, their character rolls, the details of award/punishment given to such Officers/ Employees and submit before the Committee specified in Schedule-IV.

(3) Subject to the provisions of sub-rule(4), the Committee shall consider the cases of all persons, who on the 1st January of that year has completed such number of years of service (whether officiating or substantive) as specified in column (4) of Schedule-III on the posts specified in column (3) of Schedule-III from which promotion is to be made and are within the zone of consideration in accordance with the provisions of sub-rule (4):

Provided that no junior person shall be given preference over his senior merely on the ground of having completed the prescribed number of years service.

(4)(a) The selection of candidates eligible for promotion shall be made on the basis of merit-cum-seniority in respect of Class I officers and seniority subject to fitness in respect of Class II, III and IV Officers/Employees.

(b) The reservation for the posts of Scheduled Castes, Scheduled Tribes and Other Backward Classes and zone of consideration shall in accordance with the provisions of rules made or instructions issued in this behalf by the State Government from time to time for the Government Servants.

(5) The Committee shall prepare a list of such persons who fulfil the conditions prescribed in subrule (3) and to whom the Committee considers to be suitable for promotion to the

service. The list shall be sufficient to cover the anticipated vacancies on account of retirement and promotion during the course of one year from the date of preparation of select list.

(6) The names of persons included in the list shall be arranged in order of seniority on the post as specified in column (3) of Schedule-III.

(7) The Committee shall submit the select list to the appointing authority within one week from the date of meeting of the Committee.

(8) Appointment by promotion shall be made by the appointing authority in the order in which the names appear in the select list:

Provided that if the appointing authority is not agree with any name in the list then such name may be removed from the list after giving sufficient and clear reasons in writing."

7. Sub-rule (1) of Rule 10 of 2000 Rules prescribed Constitution of the Committee as specified in Schedule-IV for the purposes of making a select list of candidates for promotion on the post shown in column (2) of Schedule-III of the Rules. Sub-rule (2) of the Rule 10 of the 2000 Rules prescribed that when a post to be filled in by promotion falls vacant and in the opinion of the appointing authority the filling up vacant post is necessary **in the interest of Corporation,** then the Commissioner shall prepare the seniority list of officers/ employees shown in column (3) of Schedule-III, their character roles, details of award/punishment given to such officers/employees and submit before the Committee specified in Schedule-IV. Sub-rule (3) of Rule 10 of 2000 Rules prescribed that subject to the provisions of sub-rule (4), the Committee shall consider the cases of all persons, who on the 1st January of that year have completed **such number of years of service** (whether officiating or substantive) **as specified in column (4) of sub-rule (3)** on the post specified in column (3) of Schedule-III from which promotion is to be made and are within the zone of consideration in accordance with the provisions of sub-rule (4).

8. The posts are sanctioned in the Municipal Corporation service for which the method of recruitment is shown in Schedule-I of the 2000 Rules.

The Assistant Engineer is a post mentioned in the said Schedule at Serial No.19 and it is categorically said that 50% posts are to be filled in by direct recruitment and 50% by promotion. The remark column made in the said Schedule with respect to the post of Assistant Engineer is blank. Schedule-II of the 2000 Rule is irrelevant for the purposes of deciding this controversy involved in this matter, therefore, the same is not being referred. Schedule-III of the 2000 Rules is most important which contains eligibility for promotion and which is required to be looked into and interpreted, therefore, the entry with respect to the post of Assistant Engineer shown in Serial No.9 is reproduced as a whole for consideration :-

SCHEDULE-III

[See Rule 10(I)]

Eligibility for Promotion

S.No.	Name of the post to which promotion is to be made	Name of the post from which promotion is to be made	Minimum years service required on the post shown in column (3) for promotion To the post Shown in column (2)
1.	2.	3.	4.
9.	Assistant Engineer	Sub-Engineer' Draftsman	according to the criterion of Govt. (PWD).

As would be clear from the prescription of subject in column (4) of the Schedule-III, only the minimum years service required on the post shown in column (3) for promotion to the post shown in column (2) is to be taken from the Public Works Department Service Rules of the State of Madhya Pradesh and nothing more. As has been described herein above, Schedule-I prescribed a quota for

promotion, but there is no further sub-quota prescribed on the post to be filled in by promotion as is prescribed in the Public Works Department, therefore, it is clear that the Rule Making Authority was not intending to make prescription of the same quota in the 2000 Rules as is given in the Service Rules governing the Engineering Services in the Public Works Department. Had it been so, the Rule Making Authority would have categorically prescribed quota for promotion of diploma holder Sub Engineers and degree holder Sub Engineers separately as has been prescribed by bifurcating promotion quota in the Rules of Engineering Services of the Public Works Department. For the said purposes, the Rule governing the services of the Public Works Department are looked into. The M.P. Public Works Engineering (Gazetted) Service Recruitment Rules, 1969 (hereinafter referred to as Gazetted Rules for short) have been referred in the proceedings conducted by the respondent- State and, therefore, it would be appropriate to see how the promotion quota is prescribed in the said Rules of Public Works Department. Under the said Rules the post of Assistant Engineer is required to be filled in 60% by direct recruitment and 40% by promotion. In Schedule-II of the Gazetted Rules, a further sub quota is prescribed by saying that 33% posts are to be filled in by promotion of diploma holder Sub Engineers, 4 % posts are to be filled in by promotion of Graduate Sub Engineers and Draftsman and 3% posts are to be filled in by promotion of Draftsman and Head Draftsman. This particular Schedule or Scheme of promotion has not been adopted by the Rule Making Authority while making prescription of promotion in the 2000 Rules referred to herein above. Of course, a minimum years of service is prescribed in the Gazetted Rules, where it is said that a Graduate Sub Engineer on completion of 8 years of service is to be considered for promotion on the post of Assistant Engineer. Yet, another minimum years of service is prescribed, but that is made applicable for diploma holder Sub Engineers who are to be considered for promotion in their quota as prescribed. Precisely, the Scheme made in the Gazetted Rules was not adopted as a whole by the Rule Making Authority while making 2000 Rules because there is no prescription of a quota for promotion of diploma holder Sub Engineers and degree holder Sub Engineers separately made in the 2000 Rules. Schedule of 2000 Rules as referred to herein above nowhere make such distinction between the two Sub Engineers, one a diploma holder and another a degree holder. For this simple reason, it has to be held that in terms of the 2000 Rules and specifically in terms of the provisions made in Schedule-III of the 2000 Rules, only 8 years minimum service was to be treated as the eligibility condition prescribed for consideration of the claim of persons who have obtained a degree of Bachelor of Engineering, for promotion

on the post of Assistant Engineer.

9. This being so, when the posts became available in the Municipal Corporation Bhopal, the decision was taken by the competent appointing authority to make recruitment on the post of Assistant Engineer by promotion. It is not that the post on which any of the petitioner was promoted does not fall in the quota of promotion, therefore, treating that the petitioners were Graduate Sub Engineers, who have completed more than 8 years of service in the department, their claims were rightly considered and they were rightly promoted. In fact, persons like interveners were inducted in service sometime in the year 2003. Vacancies became available in the year 2008. None of the interveners have completed the requisite 8 years of service for promotion on the post of Assistant Engineers and, therefore, they were not to be considered at all for promotion. The interveners were appointed after the appointment of petitioners and at any rate, they could not have been treated senior to the petitioners in any manner, having been appointed on 16.4.2003 and 22.4.2003 respectively. If the criteria was only requisite years of service, which according to the analysis made herein above was 8 years, none of the interveners have completed the requisite years of service to be considered for promotion and were thus not in the zone of consideration. If any complaint was made by them as has been categorically averred by the official respondents in their return, it was not to be looked into nor any heed was to be paid to such a complaint as the interveners have no locus to challenge the promotion of the petitioners. This being so, making application of the Gazetted Rules or any amendment made in the Non- Gazetted Rules, the petitioners were not to be denied the benefit of promotion which they have earned on account of consideration of their claim. Such a consideration as has been reflected in the return of the respondents is totally unjustified and not acceptable.

10. It has been contended by the official respondents that in fact on the complaint made by the interveners, matter was referred, the provisions of the 2000 Rules were seen and as it was found that there was an amendment made in the Gazetted Rules on 17.5.1985, the petitioners were not found to be eligible for promotion. Of course, the Gazetted Rules were amended, but that amendment was with respect to prescription of quota for promotion on the post of Assistant Engineer and that particular Scheme of promotion or prescription of quota was not adopted by the Rule Making Authority in terms of the provisions of the 2000 Rules referred to herein above and, therefore,

withdrawal of the approval of promotion of petitioners could not be said to be justified. It is further contended that there was an amendment made in the Non-Gazetted Service Rules of the Public Works Department and such a prescription was again made. However, this amendment would also not help the respondents as the Scheme which was made under the said amended provision of the Non-Gazetted Rules was again not adopted nor was again made applicable in the 2000 Rules as a whole. Only a limited part of the said Scheme was adopted, in specific words saying **"the minimum years of service required on the post.**

11. The law on the question of interpretation of statute or the statutory provision is very clear. Nothing is to be inserted or substituted in the words used in the statute. If the clear meaning of the provisions of Rules is available, addition or omission of word is not permissible. As has been pointed out herein above, in Sub-rule (3) of Rule 10 of the 2000 Rules, specific provision as to what is to be taken into consideration from the adopted Gazetted Rules has been made and, therefore, neither any meaning can be attributed nor any other criteria could be treated to be adopted for the purposes of consideration of claim for promotion of a Sub Engineer of Municipal Corporation, on the post of Assistant Engineer. It is to be seen that similar provisions of the Rules were examined by the Apex Court in the case of *M.B. Joshi and others Vs. Satish Kumar Pandey* [1993 (Suppl) 2 SCC 419] and the Apex Court has categorically held that even when the specific quota for promotion of diploma holder Sub Engineers and Graduate Sub Engineers on the post of Assistant Engineer is made, the seniority is to be counted from the initial date of appointment and not from the date of acquiring the degree of Bachelor of Engineering. In view of the law laid down by the Apex Court also, the findings recorded by the respondent- State cannot be sustained.

12. This being so, the order impugned issued by the respondents is unsustainable in the eye of law. Resultantly, the writ petition is allowed. The order dated 7.3.2011 Annx.P/ 6 is hereby quashed and the order dated 23.9.2008 is restored.

13. The writ petition is allowed to the extent indicated herein above. There shall be no order as to costs.

Petition allowed.

I.L.R. [2014] M.P., 2507
WRIT PETITION

Before Mr. Justice U.C. Maheshwari & Mrs. Justice Vimla Jain
W.P. No. 8262/2013 (Jabalpur) decided on 16 July, 2013

AVINASH DUBEY ...Petitioner
Vs.
STATE OF M.P. ...Respondent

Constitution - Article 226, Penal Code (45 of 1860), Sections 420, 467, 468, 471, 120-B, 34 & Prevention of Corruption Act (49 of 1988), Sections 13(1)(d) r/w Section 13(2) - Grant of sanction for prosecution **- Recommendation of the department is not binding against the sanctioning authority - The sanctioning authority can consider the matter after taking into consideration the entire available record including the recommendation given by the department - Recommendation given by the department cannot be the ground to quash the impugned sanction order. (Para 5)**

संविधान – अनुच्छेद 226, दण्ड संहिता (1860 का 45), धाराऐं 420, 467, 468, 471, 120बी, 34 व भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 13(1)(d) सहपठित धारा 13(2) – अभियोजन हेतु मंजूरी प्रदान की जाना – विभाग की अनुशंसा, मंजूरी प्रदान करने वाले प्राधिकारी के विरुद्ध बंधनकारक नहीं – मंजूरी प्रदान करने वाला प्राधिकारी, संपूर्ण उपलब्ध अभिलेख, जिसमें विभाग द्वारा दी गई अनुशंसा समाविष्ट है, को विचार में लेने के पश्चात मामले का विचार कर सकता है – विभाग द्वारा की गई अनुशंसा, आक्षेपित मंजूरी आदेश को अभिखंडित करने का आधार नहीं हो सकता।

Sudhir Kumar Shrivastava & Vipul Saraswat, for the petitioner.
Umesh Pandey, G.A. for the respondents No.1 & 2.
Satish Chaturvedi, for the respondent No. 3/Lokayukta.

ORDER

The Order of the Court was delivered by : **U.C. MAHESHWARI, J. :-** Heard on the question of admission.

2. The petitioner has filed this petition under Article 226 of the Constitution of India, being aggrieved by the sanction order dated 23.2.2013 Annex.A/1 passed by the Law and Legislative Department of Madhya Pradesh granting sanction for prosecution of the petitioner for the offence of section

420,467,468,471,120-B and 34 of the IPC and section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (in short 'the Act'). Such sanction has been given by such department in connection of crime No.43/10 registered by Lokayukta, Bhopal.

3. Petitioner's counsel after taking us through the averments of the petition as well as the aforesaid sanction order and the other papers placed on the record argued that in the available facts and circumstances of the matter before passing the aforesaid order granting sanction for prosecution of the petitioner some opinion was requisitioned from the department of the petitioner and such department has not recommended the matter to grant such sanction for prosecution, in spite that, contrary to such recommendation, without considering the question involved in the matter the aforesaid sanction has been given by the authorities of respondent No.2. In continuation, he said that in view of the recommendation of the department not giving sanction for prosecution of the petitioner, the impugned sanction was not sustainable and prayed for quashment of the same by admitting and allowing this petition.

4. Having heard the counsel, keeping in view his arguments, we have carefully gone through the averments of the petition as well as the papers placed on the record along with the aforesaid order of sanction Anenx.A-1. True it is that the department of the petitioner has not recommended the matter for grant of sanction. On the contrary, the department has said that the ingredients of the alleged offence are not made out against the petitioner but taking into consideration the factual matrix in the matter along with the aforesaid recommendation of the department, the sanctioning authority has come to this conclusion that there are prima facie circumstance against the petitioner for his prosecution under the above mentioned offence and, pursuant to it, the sanction was granted for prosecution of the petitioner.

5. It is undisputed position that the petitioner who at present was working on deputation on the post of Asstt. Engineer in Municipality of Chhindwara, at the time of the alleged offence was working as Executive Engineer in the Urban Administrative Department of Madhya Pradesh and his services, being under the State of M.P, could be terminated or he could be removed by the State of M.P and, in such premises, the Law and Legislative Department of the State was the authority to give the sanction and not the department in which he was working. It is settled proposition of the law that the recommendation of the department is not binding against the sanctioning authority. The sanctioning

authority can consider the matter after taking into consideration the entire available record including the recommendation given by the department. In such premises, mere on account of such recommendation given by the department cannot be the ground to quash the impugned sanction order Annex.A-1. Even otherwise, we are of the considered view that at the initial stage, the sanction order for prosecution of the petitioner could not be the subject matter of judicial review. Its validity could be examined by the concerning court after filing the charge sheet because all the questions relating to the validity of the sanction, could be decided by the trial court after filing the charge-sheet, after holding the full-fledge trial. At the stage of considering the matter for grant of sanction, the sanctioning authority is not required to record the entire evidence or to extend any opportunity to adduce the evidence in rebuttal to the accused like the petitioner. So, in such premises also, the impugned sanction does not require any interference at this stage. Consequently, we have not found any merits in this petition. The same deserve to be and is hereby dismissed at the stage of motion hearing.

Petition dismissed.

I.L.R. [2014] M.P., 2509
WRIT PETITION

Before Mr. Justice Shantanu Kemkar & Mr. Justice M.C. Garg

W.P. No. 2510/2011 (Indore) decided on 30 October, 2013

BHAGWAN MOTORS PVT. LTD. (M/S) ... Petitioner
Vs.
MADHYA PRADESH TRADE & INVESTMENT FACILITATION CORPORATION LTD. ...Respondent

Constitution - Article 226 - Recovery of the arrears of commercial tax **- Petitioner's application for registration for grant of benefits under the scheme was rejected on the grounds (a) that it is not a new industry; and (b) that there are dues of commercial tax on the earlier unit which has been purchased by the petitioner - Held - The intention of the scheme is not to deny the benefits to the genuine new industrial undertakings - That the literal construction of the clauses of negative list as has been tried to make by the respondents would result in defeating the very purpose of the scheme - The respondents in place of taking into consideration that the petitioner is a bonafide**

auction purchaser of the erstwhile unit and had nothing to do with the earlier unit or its dues have attempted to bring the petitioner in the negative list merely because the petitioner has established its unit by purchasing the earlier unit - Such an approach of the respondents is contrary to the spirit of the scheme and as such cannot be allowed to sustain. (Paras 6 & 11)

संविधान – अनुच्छेद 226 – वाणिज्यिक कर के बकाया की वसूली – योजना के अंतर्गत लाभ प्रदान किये जाने हेतु पंजियन के लिए याची का आवेदन इन आधारों पर अस्वीकार किया गया (ए) कि वह नया उद्योग नहीं, और (बी) पूर्ववर्ती संयंत्र, जिसे याची द्वारा क्रय किया गया था, पर वाणिज्यिक कर देय है – अभिनिर्धारित – योजना का उद्देश्य, वास्तविक नये औद्योगिक प्रतिष्ठान को लाभ से वंचित करना नहीं है – नकारात्मक सूची के खंडो का शाब्दिक अर्थान्वयन जैसा कि प्रत्यर्थी द्वारा लगाने का प्रयास किया गया है, के परिणामस्वरुप योजना के प्रयोजन को ही विफल बनायेगा – प्रत्यर्थीगण ने इसको विचार में लेने की बजाए कि याची, तत्कालीन संयत्र का वास्तविक नीलामी क्रेता है और पूर्वतर संयत्र या उसके देयकों से कोई लेना देना नहीं, याची को नकारात्मक सूची में लाने का प्रयास किया है, मात्र इसलिए कि याची ने पूर्वतर संयत्र को क्रय करके अपना संयत्र स्थापित किया है – प्रत्यर्थीगण का उक्त दृष्टिकोण योजना के आशय के विपरीत है और इस कारण उसे कायम रखने की अनुमति नहीं दी जा सकती।

P.M. Choudhari, for the petitioner.
Vivek Patwa, for the respondent No.1.
Mini Ravindran, Dy. G.A. for the respondent Nos. 2 & 3.

ORDER

The Order of the Court was delivered by :
SHANTANU KEMKAR, J. :- Petitioner a Private Limited Company claims to be engaged in the business of manufacture and sale of Sheet Metal Automobile components which in turn constitute raw material for the purpose of manufacture of motor vehicles had submitted an application before the Facilitation Corporation seeking its registration under the Madhya Pradesh Udyog Nivesh Samvardhan Sahayata Scheme, 2004 (for short "the Scheme"). The application was rejected by the Facilitation Corporation vide order dated 24.11.2009 (Annexure P-18) on the grounds that the petitioner's unit will be covered under the negative list dated 17.08.2006 (Annexure P-9) and the amended negative list dated 05.02.2008 (Annexure P-10) mentioning the units which are ineligible for their registration under the Scheme. While rejecting

the petitioner's claim, the Facilitation Corporation recorded a finding that the petitioner is manufacturing products distinct from the products manufactured by the earlier unit. However, it held that since there are dues of the commercial tax on the erstwhile unit it will cover under the negative list disentitling it from registration under the Scheme.

2. Aggrieved by the aforesaid order dated 24.11.2009 (Annexure P-18), the petitioner had filed an appeal before the second respondent, which has been dismissed vide order dated 01.06.2010 (Annexure P-1). Feeling aggrieved, the petitioner has filed this petition under Ar ticle 226/227 of the Constitution of India.

3. Shri P.M. Choudhari, learned counsel for the petitioner has argued that in exercise of its powers under Section 29 of The State Financial Corporation Act, the MP Financial Corporation had conducted an open auction of a unit viz. M/s. Saurabh Spinners Pvt. Ltd in order to realise its dues against the loan advanced to the said unit. The petitioner company being interested to purchase the said unit which was put to auction had participated in the auction proceedings and had purchased the said unit M/s. Saurabh Spinners Pvt. Ltd. After its purchase the petitioner had started its own independent unit for manufacturing entirely a different product from the product of the erstwhile unit. He, therefore, argued that when the petitioner had nothing to do with the earlier unit, the petitioner cannot be made to suffer if there are any dues of Commercial Tax by treating it to be falling in the negative list of the earlier unit. He also argued that the question as to whether, for the recovery of dues of Commercial Tax Department from the earlier company M/s Saurabh Spinners Pvt. Ltd., the petitioner's property could be put to auction by the M.P. Commerce & Employment Department or not, has already been decided by this Court vide order dated 17.02.2009 passed in W.P. No.2107/2007 holding therein that the arrears of the commercial tax on the erstwhile unit could not be recovered from the petitioner. In the circumstances, according to him, the rejection of the petitioner's application for registration by raising the same issue of dues of erstwhile unit is wholly unjustified. He further argued that the petitioner was nowhere connected with any of the acts and activities of the earlier company, but had purchased the property in an open auction from the Madhya Pradesh Financial Corporation and has set up its entirely new unit manufacturing a distinct product, the impugned orders passed by the respondents treating the petitioner to be covered under the clauses of negative list are ex-facie illegal and are not sustainable.

4. Shri Vivek Patwa and Ms. Mini Ravindran, learned counsel for the respondents, on the other hand, supported the impugned orders and argued that in view of the arrears of the tax on the unit, which the petitioner had purchased, the petitioner has rightly been denied the registration in the scheme in view of the provision contained in the negative lists. According to them, the petitioner having purchased the earlier unit it will not be a new unit.

5. We have considered the submissions made by the learned counsel for the parties and perused the impugned orders and the record.

6. The State Government had framed an Industrial Promotion Policy, 2004 vide notification dated 21.06.2004, with an object to encourage industrialization, which in turn would generate employment in the State. A Scheme to that effect was framed giving various incentives to industries falling within the eligible one's. It appears from the impugned orders and the reply of the respondents that the petitioner's application for registration for grant of benefits under the Scheme was rejected on the grounds (a) that it is not a new industry; and, (b) that there are dues of commercial tax on the earlier unit which has been purchased by the petitioner.

7. Before dealing with the questions involved in the petition, it would be appropriate to extract relevant entries of the list dated 17.08.2006 (P-9) and the list dated 05.02.2008 (Annexure P-10) relating to industries which are ineligible for registration under the Scheme.

> " Entry 46 – मध्यप्रदेश राज्य के भीतर विद्य मान किसी इकाई का अंतरण, स्थानांतरण या उद्ध्वंसन करके या बंद करके स्थापित की गई नई औद्योगिक इकाई ।"

> "Entry 43 – मध्यप्रदेश राज्य के भीतर विद्य मान किसी इकाई का अंतरण, स्थानांतरण या उद्ध्वंसन करके या बंद करके स्थापित की गई एसी नई औद्योगिक इकाई, यदि इकाई पर कोई टैक्स बकाया नहीं हो एवं नवीन इकाई के उत्पादन पूर्व इकाई के उत्पाद से भिन्न हो, तो एसी इकाई अपात्र नहीं होगी ।"

8. We have carefully gone through both the entries extracted above describing industries which are ineligible for registration and for availing the benefits of the scheme. In the present case, it is not the case of the respondents that earlier unit was of the petitioner's itself which the petitioner has closed and established a new unit. It is also not the case of the respondents that the petitioner was any way connected with the earlier unit. From the averments it

is clear that the petitioner had purchased the land and old building of the erstwhile company in an open auction conducted by the Madhya Pradesh Financial Corporation for recovery of the dues of the loan advanced by it to M/s. Saurabh Spinners Pvt. Ltd. It is also not in dispute that after purchasing the unit in question in an auction, the petitioner had raised additional construction and started manufacture of entirely different products from the products manufactured by the earlier unit. Thus, when the petitioner has nothing to do with the earlier unit, it neither can be said to be the old unit or can be said that it has established a new unit by closing the earlier unit as undisputedly it has no connection whatsoever with the earlier unit.

9. We also find that in the petitioner's case itself earlier this Court had given a clear finding in W.P. No.2107/07 filed by the petitioner challenging the action of recovery of commercial tax dues of the earlier unit M/s. Saurabh Spinners Pvt. Ltd from it. The relevant portion of the order dated 17.02.2009 passed in W.P. No.2107/2007 reads thus:

> **"For the reason given in *Mahaveer's* case (supra) and as per the law laid down by the Apex Court in *SICOM Ltd.'s case*, the present writ petition is also allowed and it is declared that the property purchased by the petitioner-Company from the Corporation cannot be put to auction by the Commercial Tax Department of the State Government for recovery of the arrears of commercial tax from the erstwhile owners."**

10. In view of the aforesaid, in our considered view, the interpretation put forth by the Facilitation Corporation and in appeal by the Deputy Secretary, Commerce Industry & Employment Department holding the petitioner to be not a new unit and also holding that as there are dues of Commercial Tax against the erstwhile unit for which it is the petitioner who is liable to pay the same, in the circumstances, the petitioner would be covered under the clauses of the negative list is wholly misconceived.

11. On going through the scheme, we are of the view that the intention of the scheme is not to deny the benefits to the genuine new industrial undertakings. We also feel that the literal construction of the clauses of negative list as has been tried to make by the respondents would result in defeating the very purpose of the scheme. The respondents in place of taking into consideration that the petitioner is a bona fide auction purchaser of the erstwhile unit and

had nothing to do with the earlier unit or its dues have attempted to bring the petitioner in the negative list merely because the petitioner has established its unit by purchasing the earlier unit. Such an approach of the respondents is contrary to the spirit of the scheme and as such cannot be allowed to sustain.

12. Thus, for the reasons stated above, the petition is allowed. The impugned orders dated 24.11.2009 (Annexure P18) and 01.06.2010 (Annexure P1) are hereby quashed. The respondents are directed to register the petitioner as new Industrial Unit for the purposes of the scheme so as to enable it to apply for grant of assistance in the nature of refund/reimbursement of Commercial Tax and Central Sales Tax deposited by it. A certificate to that effect be issued in favour of the petitioner by the respondents immediately.

No orders as to the costs.

Petition allowed.

I.L.R. [2014] M.P., 2514
WRIT PETITION

Before Mr. A.M. Khanwilkar, Chief Justice & Mr. Justice K.K. Trivedi
W.P. No. 20342/2013 (Jabalpur) decided on 11 April, 2014

PRATIBHA SINGH (MINOR)(KU.) ...Petitioner
Vs.
STATE OF MADHYA PRADESH & ors. ...Respondents

(and W.P. Nos. 18708/2013, 18728/2013, 18738/2013, 18750/2013, 19100/2013, 19465/2013, 20050/2013, 20318/2013, 20908/2013, 21297/2013, 21502/2013, 21503/2013, 21504/2013, 21505/2013, 21506/2013, 21507/2013, 21508/2013, 21510/2013, 21511/2013, 21513/2013, 21514/2013, 21515/2013, 21516/2013, 21517/2013, 21518/2013, 21519/2013, 21520/2013, 21522/2013, 21523/2013, 21525/2013, 21526/2013, 21529/2013, 21530/2013, 21531/2013, 21533/2013, 21534/2013, 21536/2013, 21537/2013, 21545/2013, 21562/2013, 21566/2013,21827/2013, 21828/2013, 21830/2013, 21831/2013, 203/2014, 286/2014, 321/2014, 334/2014, 367/2014, 494/2014, 1067/2014, 1069/2014, 1668/2014, 1673/2014, 1771/2014, 1842/2014, 1843/2014, 1929/2014, 2345/2014, 2381/2014, 2382/2014, 2618/2014, 2820/2014, 21554/2013)

*A. **Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Establishment of Professional Examination Board -***

Notification **- State Govt. has not issued notification to establish Board in exercise of powers under Section 3(1) of Act, 2007 - Earlier Board was constituted vide notification dated 22.01.2004 - Existing Board must continue to function in terms of those Govt. orders/notifications until establishment of new Board upon issuance of notification under Section 3(1) of Act, 2007 - Upon issuance of notification, existing Board would merge in newly established Board and cease to exist. (Para 33)**

क. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल की स्थापना – अधिसूचना – अधिनियम, 2007 की धारा 3(1) के अंतर्गत शक्तियों का प्रयोग करते हुए राज्य सरकार ने अधिसूचना जारी नहीं की है – पूर्ववर्ती मंडल, का गठन अधिसूचना दिनांक 22.01.2004 द्वारा किया गया था – वर्तमान मंडल को सरकारी आदेश/अधिसूचनाओं की उन शर्तों के अधीन कार्य जारी रखना चाहिए जब तक कि अधिनियम, 2007 की धारा 3(1) के अंतर्गत अधिसूचना जारी किये जाने पर, नया मंडल स्थापित न हो – अधिसूचना जारी करने पर, वर्तमान मंडल, नव स्थापित मंडल में विलीन होगा और उसका अस्तित्व समाप्त होगा।

B. Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Professional Examination Board **- Whether Board becomes *functus officio* by declaration of result - No executive instruction issued by State Govt. to limit the powers of Board - Argument that after declaration of result, the Board ceases to have any authority liable to be negative as obligation to conduct free and fair pre-admission professional examination is fully vested in State Govt. which has been entrusted to Board. (Paras 39 & 40)**

ख. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल – क्या परिणाम की घोषणा द्वारा मंडल, पदकार्य–निवृत्त होता है – मंडल की शक्तियों को सीमित करने के लिए राज्य सरकार द्वारा कार्यपालिक अनुदेश जारी नहीं – तर्क कि परिणाम की घोषणा के पश्चात मंडल के पास कोई प्राधिकार नहीं बचता, नकारे जाने योग्य है, जैसा कि स्वतंत्र और निष्पक्ष प्रवेश पूर्व व्यावसायिक परीक्षा के संचालन का दायित्व पूर्णतः राज्य सरकार में निहित है, जिसे मंडल को सुपुर्द किया गया है।

C. Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Professional Examination Board - Orders **- Orders cancelling the examination were issued under the signatures of Director - However, office notings establishes that Chairperson had approved the proposal and had directed the Director to take follow-up action - No illegality in**

issuing order under the signature of Director. (Paras 43 & 44)

ग. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल – आदेश – परीक्षा निरस्त करने के आदेश निदेशक के हस्ताक्षरों से जारी किये गये – किन्तु कार्यालयीन टिप्पणी से स्थापित होता है कि अध्यक्ष ने प्रस्ताव को अनुमोदित किया और निदेशक को आगे कार्यवाही करने के लिए निदेशित किया था – निदेशक के हस्ताक्षर के अंतर्गत आदेश जारी करने में कोई अवैधता नहीं।

D. Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Professional Examination Board - Action against selected students **- Computer Experts Committee was constituted - After submission of its opinion further enquiry by Committee of Controllers was constituted which submitted its report - No fault can be found with the decision of Board to proceed only against identified candidates. (Para 63)**

घ. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल – चयनित विद्यार्थियों के विरुद्ध कार्यवाही – कम्पयूटर विशेषज्ञ समिति गठित की गई – उसका अभिमत प्राप्त करने के पश्चात, नियंत्रको की समिति द्वारा अतिरिक्त जांच संस्थित की गयी जिसने अपना प्रतिवेदन प्रस्तुत किया – केवल दर्शित अभ्यर्थियों के विरुद्ध कार्यवाही करने के मंडल के निर्णय में कोई त्रुटि नहीं पायी जा सकती।

E. Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Professional Examination Board - Natural Justice **- Where identical pattern of commission of organized unfair means emerges, it would be nothing short of mass copying and therefore, could be dealt with together by a common order and without issuing notice to respective candidate. (Paras 87 & 91)**

ङ. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल – नैसर्गिक न्याय – जब संगठित अनुचित साधन कारित करने का एक सा तरीका उभरकर आता है, यह सामूहिक नकल करने से कम नहीं और इसलिए क्रमशः अभ्यर्थी को नोटिस जारी किये बिना और समान आदेश द्वारा एक साथ निपटारा किया जा सकता है।

F. Vyavasayik Pariksha Mandal Adhiniyam, M.P. (21 of 2007), Section 3 - Professional Examination Board - Cancellation of Result - Criminal Prosecution **- Opinion of Board officials and reasons recorded in impugned decisions should not prejudice the petitioners in criminal action pending against them in any manner. (Para 123)**

च. व्यावसायिक परीक्षा मंडल अधिनियम, म.प्र. (2007 का 21), धारा 3 – व्यावसायिक परीक्षा मंडल – परिणाम निरस्त किया जाना – दाण्डिक अभियोजन – मंडल अधिकारियों का अभिमत और आक्षेपित निर्णयों में अभिलिखित किये गये कारण, किसी ढंग से याचीगण को उनके विरुद्ध लंबित दाण्डिक कार्यवाही में प्रतिकूल प्रभाव नहीं डाल सकते।

Cases referred :

(1976) 3 SCC 344, (2013) 10 SCC 95, (1996) 7 SCC 81, 1988 (Supp) SCC 562, (2007) 1 SCC 331, AIR 1982 SC 33, AIR 1969 Patna 11, AIR 1998 SC 1227, AIR 1998 SC 2423, (1979) 1 SCC 572, (2005) AIR SCW 471 = (2005) 2 SCC 65, AIR 1986 SC 180, (2012) 7 SCC 433, 1978 MPLJ 9 = AIR 1978 (MP) 65, (1993) Supp. 3 SCC 745, (1970) 1 SCC 121, (1970) 1 SCC 648, AIR 1962 SC 1110, AIR 1975 Rajasthan 116, (1998) 4 SCC 351, (1994) 2 SCC 266, AIR 1967 SC 1170, (2012) 7 SCC 389, (2003) 3 SCC 437, AIR 2011 SC 2903, AIR 1991 Calcutta 310, AIR 1997 Kerala 188, AIR 1966 SC 875, AIR 1998 SC 1406, 1970 MPLJ 983, (1990) 1 SCC 613, (2007) 10 SCC 662, (2009) 1 SCC 599, (1991) 2 SCC 716, 2004 (1) MPLJ 455, (2003) 8 SCC 311, AIR 2000 SC 2783, (2003) 9 SCC 731, (1999) 6 SCC 237, (2007) 13 SCC 352, 2012 (1) SLJ 73, (1994) 5 SCC 663, (2002) 5 SCC 533, (1998) 9 SCC 236, (1996) 5 SCC 365, (2000) 3 SCC 59, (2010) 6 SCC 614, 1986 (Supp) SCC 543, (1971) 1 SCC 607, AIR 1955 SC 549, (2003) 4 MPHT 95, (1991) 4 SCC 243, (2006) 5 SCC 96, (2002) 5 SCC 533, (1978) 1 SCC 405, AIR 1981 SC 136, (2003) 6 SCC 545, (1971) 3 SCC 20, (2003) 4 SCC 44, (1999) 8 SCC 16, AIR 1966 SC 828, (2009) 7 SCC 751, (2005) 6 SCC 537.

K.K. Gautam, for the petitioner.
Samdarshi Tiwari, G.A. for the respondents/State.
P.K. Kaurav, for the respondent/Professional Examination Board.

ORDER

The Order of the Court was delivered by :
A.M. KHANWILKAR, J. :- By this common judgment, we propose to dispose of all the abovenoted writ petitions together as the same involve similar points for consideration and challenge the common orders passed by the Madhya Pradesh Professional Examination Board (hereinafter referred to as 'the Board').

2. Each of these petitions, essentially, challenge the decision of the Board

vide orders dated 9th October, 2013 and 6th December, 2013 respectively. By the said orders, the Board cancelled the entrance examination results of 415 candidates of Dental and Medical Admission Test (hereafter referred to as the 'entrance test' for the sake of brevity) in two lots of 345 and 70 candidates vide order dated 9th October, 2013 and 6th December, 2013 respectively, for the reasons recorded in the said orders.

3. As a consequence, the admissions granted to the concerned candidates in the Medical Colleges on the basis of the said examination results, which stood annulled, came to be cancelled by the respective Medical Colleges. As a result, even these consequential orders are subject matter of challenge. We may mention that in some of the writ petitions, the reliefs claimed are loosely worded. In the interest of justice, however, we hold that the intention of each of the petitioners is not only to challenge the action and decision of the Board, but, also the consequential order passed by the concerned Medical College cancelling their admission to medical course.

4. The background in which the impugned orders were passed by the Board can be briefly stated as under:-

(i) The Board initiated steps to conduct Pre-Medical Test (PMT) examination pursuant to the request made by the Medical Education Department, Government of Madhya Pradesh, in that behalf vide letter dated 10th May, 2013. An Activity Chart, Rule Book, Examination Programme was then approved by the Chairman of the Board on 20th May, 2013. Thereafter, an advertisement was issued in newspapers having wide circulation on 22nd May, 2013. The Online Forms were invited between 22nd May, 2013 to 21st June, 2013 and the date of examination was scheduled on 7th July, 2013. The Board then appointed Coordinating Centers in 14 cities on 27th May, 2013. Other logistical arrangements were made by the Board for conduct of free and fair entrance examination for admission to professional courses. The candidates were to be allocated roll numbers and examination centers on 30th June, 2013. As per the Activity Chart, finalized by the Chairman of the Board, the Test Admit Cards, which were to be generated contemporaneously with computerised allocation of roll numbers and examination centers to the students and uploaded on 30th June, 2013 itself. However, that was done on 3rd July, 2013 by the concerned officials of the Board.

(ii) The complaint regarding gross irregularities and unfair means in

the conduct of examination was received by the Director General of Police on 6th July, 2013. Acting upon the said complaint and the reports appearing in the local newspapers about the conspiracy hatched for resorting to unfair means by large number of the candidates with the assistance of candidates coming from other States, the Indore Crime Branch moved into action and arrested about 20 suspects. However, the Board continued with the process of conducting entrance examinations on 7th July, 2013. On the same day, FIR was registered at Police Station, Rajendra Nagar, Indore, bearing Crime No.539/2013 mentioning about the involvement of large number of candidates having indulged in unfair means during the entrance examination. After registration of the FIR, the Crime Branch made inquiries with the officials of the Board and sought certain information. A written communication in that behalf was also received by the officials of the Board dated 8th July, 2013 from the Crime Branch. The information, as sought by the Crime Branch, was provided by the officials of the Board on 12th July, 2013.

(iii) Notwithstanding these developments, the Board proceeded to declare result on 13th July, 2013. Two officials of the Board, namely, Nitin Mohindra, Principal System Analyst and Ajay Kumar Sen were interrogated by the Investigating Team of police. The said officials of the Board were formally arrested on 16th July, 2013. As a result of their arrest, the Board suspended these officers on 17th July, 2013. Following the arrest of the abovesaid two officers, during investigation, the complicity of one C.K. Mishra, Assistant Programmer of the Board was also unravelled. He was arrested on 18th July, 2013. Consequent to his arrest, the Board suspended the said official on 19th July, 2013.

(iv) The Board received a list of 317 candidates, from the Superintendent of Police, Indore dated 20th July, 2013, who were named as beneficiaries of the conspiracy. It came to light that one Jagdish Sagar was party to the conspiracy.

(v) The list of 317 suspected candidates was also given to the Director of Medical Education, Government of Madhya Pradesh on 20th July, 2013. The Board made over the entrance examination result to the Director of Medical Education, Government of Madhya Pradesh, on 24th July, 2013, for counselling before admission of the concerned candidate.

(vi) A communication dated 13th August, 2013 was received by the Board

from the Crime Branch regarding roll number allotment Logic Formula. Another communication dated 17th August, 2013 was received for the same information.

(vii) As regards the criminal case, considering the gravity and seriousness of the offence and involvement of resourceful persons in the commission of crime, the State Government entrusted the investigation of the said case to the Special Task Force (STF) on 26th August, 2013.

(viii) The Board vide letter dated 27th August, 2013 furnished information to the Crime Branch in response to its letter dated 17th August, 2013. Besides providing that information, the Director of the Board realizing the seriousness of the situation, which came to his knowledge, moved into action and, thus, submitted proposal to the Chairman on 30th August, 2013 to permit constitution of Computer Experts Committee to examine the records and submit its opinion and recommendation. The Chairman accorded approval to the said proposal on 5th September, 2013. The Director then submitted proposal to the Chairman for nominating experts on the Computer Experts Committee on 5th September, 2013. That note was approved by the Chairman on 6th September, 2013. As a result of which, the Computer Experts Committee – of six experts - was constituted. The said Committee convened its first meeting on 7th September, 2013 and after due inquiry formed opinion which was reduced into writing. The same reads thus:-

"विषयः मण्डल में उपलब्ध व्यवस्थित डेटा के लाजिक के संबध में।

पृष्ठ कमांक 233

नस्ती कमांक 27–12/2013/08

विषयः PMT 2013 नस्ती के अंर्तगत थाना राजेन्द्र नगर इंदौर के अपराध क्र. 539/2013 की विवेचना बाबत।

संचालक एवं नियंत्रक द्वारा आमंत्रित कम्प्यूटर एक्सपर्ट्स कमेटी की बैठक कम्प्यूटर शाखा में दिनांक 07.09.2013 को दोपहर 12.00 बजे आयोजित की गई, जिन्हें संचालक द्वारा पीएमटी–2013 परीक्षा में रोल नंबर आवंटन से संबंधित लॉजिक ज्ञात करने, ज्ञात लॉजिक अनुसार रोल नंबर आवंटित करने, ज्ञात लॉजिक से तैयार डाटा का पीएमटी–2013 से संबंधित टी.ए.सी. डाटा से तुलना कर शहरवार मिलान न होने वाले रोल नंबर की जानकारी ज्ञात करने एवं इस कार्य हेतु उपयोग में लाए गए प्रोग्राम कर विवरण उपलब्ध करवाने हेतु निर्देशित किया गया।

2. बैठक में निम्नलिखित कम्प्यूटर एक्सपर्ट्स उपस्थित हुए :–

1	Dr. Samar Upadhyay	Asso. Professor & Head,Compurter Applications	Govt. Engineering College, Jabalpur, Mob.09425862726
2	Mrs.Juhi Jain	Lecturer & I/c HOD, IT	Govt. SV Polytechnic College,Bhopal, Mob. 09425009697
3	Mr. D.K. Chourishi	Lecturer,Computer Science & Engineering	Govt. Women's Polytechnic College, Bhopal Mob. 09826816730
4	Mr. Kuldeep Singh Chouhan	Sr. Software Engineer	CRISP, Bhopal Mob.09893318230
5	Mr. Ashish Jain	Server Administrator	CRISP, Bhopal Mob.08085856465
6	Mrs. Ajita Satheesh	Asstt. Professor	UIT, RGPV, Bhopal Mob.09826632257

3. सभी कम्प्यूटर एक्सपर्टस द्वारा नस्ती एवं संलग्नकों का अवलोकन किया गया व पाया गया कि मध्यप्रदेश व्यावसायिक परीक्षा मण्डल के आदेश क्रं VP/COMPUTER/11-80/2012/08/42-76, Dated 22-06-2012 (P-955 to 980) के पृष्ठ कं 04 पर उल्लेखित विवरण अनुसार तत्कालीन कम्प्यूटर शाखा के अधिकारियों यथा श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं कर्मचारी, श्री सी.के. मिश्रा द्वारा रेण्डम रोल नंबर जनरेट किया जाना नहीं पाया गया, अपितु फाईल को इण्डेक्सिंग के माध्यम से जनरेट करना पाया गया, जो कि रेण्डम जनरेशन की श्रेणी में नहीं आता है।

4. श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं श्री सी.के. मिश्रा द्वारा जेल अधीक्षक, जिला जेल इन्दौर के माध्यम से प्रेषित उत्तरों (पी.945/सी से पी–954/सी) का कम्प्यूटर विशेषज्ञों द्वारा अवलोकन किया गया एवं पाया गया कि इनके द्वारा प्रस्तुत लॉजिक संबंधी जानकारी अस्पष्ट व अपूर्ण है।

5. कम्प्यूटर विशेषज्ञों द्वारा विभिन्न जिलों की रोल नंबर से संबंधित फाईलों को क्रमबद्व कर लॉजिक ज्ञात करने का प्रयास किया एवं पाया कि

उपयुक्त लॉजिक, जिसका उपयोग सम्भवतः रोल नंबर जनरेट करने के लिए श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं श्री सी.के.मिश्रा द्वारा किया गया होगा, वह इस प्रकार है :–

(अ) शहरवार अभ्यर्थियों की पृथक–पृथक फाईल तैयार की गई एवं फाईल को जन्म दिनांक, ट्राजेंक्शन आईडी के 7 से 13 तक के भाग एवं सी–एल नेम (उपनाम) के आधार पर इण्डेक्सिंग की गई।

(ब) इण्डेक्स फाईल पर पृथमतः सम रिकार्ड हेतु रोल नंबर आवंटित किए गए, उसके पश्चात् विषम रिकार्ड हेतु रोल नंबर आवंटित किए गए।

6. उपरोक्त लॉजिक के आधार पर पीएमटी –2013 से संबंधित सभी 14 शहरों के डाटा के रोल नंबर विषय विशेषज्ञों द्वारा जनरेट किए गए, जिन्हें संलग्न सी.डी.के Experts Generated Roll Nos PMT-2013 फोल्डर में शहरवार रखा गया है। पीएमटी–2013 से संबंधित उपयोग में लाए गए रोल नंबर को सी.डी.के used Roll Nos for PMT-2013 फोल्डर में शहरवार रखा गया है। विषय विशेषज्ञों द्वारा जनरेट किए गए एवं पीएमटी–2013 हेतु उपयोग में लाए गए नंबरो में मिसमैच भी विषय विशेषज्ञों द्वारा ज्ञात किया गया है, जिससे संबंधित रिकार्ड भी Mismatch Roll Nos PMT -2013 फोल्डर में शहरवार रखे गए हैं। विषय विशेषज्ञों द्वारा उपयोग में लाए गए प्रोगाम को भी सी.डी. में Experts Program PMT-2013 फोल्डर में रखा गया है। इस जानकारी के दो सेट सी.डी. में समिति द्वारा सील्ड कर नस्ती के साथ संलग्न है। शहरवार विवरण तालिका रूप में निम्नानुसार है :–

स.क्र.	परीक्षा शहर	कुल अभ्यर्थी	मैच हुए अभ्यर्थी	मिसमैच	मिसमैच का प्रतिशत
1	बालाघाट	819	819	0	0%
2	बैतूल	719	719	0	0%
3	भोपाल	6372	337	6035	94.71%
4	छतरपुर	937	937	0	0%
5	छिंदवाडा	991	991	0	0%
6	गुना	622	622	0	0%
7	ग्वालियर	6368	125	6243	98.03%
8	इन्दौर	10464	286	10178	97.26%
9	जबलपुर	4332	670	3662	84.53%
10	रतलाम	1175	234	941	80.08%

11	रीवा	3308	248	3060	92.50%
12	सागर	1285	1265	20	1.55%
13	शहडोल	1324	1296	28	2.11%
14	उज्जैन	1370	1342	28	2.04%
	योग	40086	9891	30195	75.32%

7. उपरोक्तानुसार जानकारी आवश्यक एवं अग्रिम कार्यावाही हेतु प्रस्तुत हैं।

(आशीष जैन) (कुलदीप सिंह चौहान) (डी.के. चौऋषी)
सर्वर एडमिनिस्ट्रेटर सीनियर साफ्टवेयर इंजीनियर लैक्चरर
क्रिस्प,भोपाल किस्प, भोपाल शास. महिला पोली.
भोपाल

(जूही जैन) (अजीता सतीष) (डॉ. समर उपाध्याय)
लेक्चरर व एचओडी असिस्टेंड प्रोफेसर एसो. प्रोफेसर एण्ड हेड
एस.व्ही. पोली. यूआईटी. आरजीपीवी, शास. इंजी.महा.
भोपाल भोपाल जबलपुर

(emphasis supplied)

(ix) In the meantime, the Director called upon Nitin Mohindra and Ajay Kumar Sen who were in District Jail, Indore, by written communication dated 31st August, 2013, to furnish the logic of allotment of roll numbers for facilitating scrutiny by the Computer Experts Committee. The said officials, however, by written communication dated 3rd September, 2013 expressed their inability to disclose the logic in allocation of roll numbers to the candidates. In absence of information divulged by the officials under suspension and in jail, the Computer Experts Committee had to evolve their own mechanism to find out the methodology that must have been adopted in allocation of roll numbers to concerned candidates – by method other than stipulated or specified of randomisation process. The Committee thus submitted its report in that behalf on 7th September, 2013, which has been extracted in the preceding paragraph. The Computer Experts Committee thus in the initial scrutiny, found mismatch of 30195 out of 40086 candidates in the allocation of roll numbers, including of allocation of roll numbers to 49 rejected candidates.

(x) The Board then received communication dated 9th September, 2013 from STF demanding information on various aspects such as Roll Numbers, Application Form etc. The Board also received communication

from STF dated 18th September, 2013 to supply Test Admit Cards and online forms issued to 369 students; to furnish two coloured true copies of the Test Admit Card and online form in hard as well as soft format. On 21st September, 2013, the Board supplied list of mismatch of 30195 candidates identified by the Computer Experts Committee. The STF then, vide letter dated 27th September, 2013, posed certain queries to the Board in connection with the list of roll numbers and mismatch. In response, the Board vide letter dated 27th September, 2013 informed that the mismatch is limited to 876 candidates.

(xi) On the same day, i.e. 27th September, 2013, Dr. Pankaj Trivedi, Controller/ Director of the Board was arrested by the Investigating Agency.

(xii) The Computer Experts Committee convened its emergent meeting on 30th September, 2013, for consideration of the matter in the light of new information. This meeting was attended by five members of the Committee. The sixth member being outstation member, could not attend that meeting. After due deliberations, the Committee recorded its opinion in the form of Minutes, which reads thus:

"पृष्ठ कमांक

नस्ती कमांक .व्यापम 5–प–1/02/2013.

विषयः मण्ड़ल में उपलब्ध व्यवस्थित डेटा के लाजिक के संबध में।

जावक कमांक 6121/13 दिनांक 30/09/13
6122/13

संचालक एवं नियंत्रक द्वारा आमंत्रित कम्प्यूटर एक्सपर्ट्स कमेटी की बैठक कम्प्यूटर शाखा में दिनांक 30.09.2013 को अपरान्ह 04.00 बजे आयोजित की गई, जिन्हें संचालक द्वारा पीएमटी–2013 परीक्षा में रोल नंबर आवंटन से संबंधित 40,135 के डेटा के आधार पर लॉजिक ज्ञात करने, ज्ञात लॉजिक अनुसार रोल नंबर आवंटित करने, ज्ञात लॉजिक से तैयार डाटा का पीएमटी–2013 से संबंधित टी.ए.सी. डाटा से तुलना कर शहरवार मिलान न होने वाले रोल नंबर की जानकारी ज्ञात करने एवं इस कार्य हेतु उपयोग में लाए गए प्रोग्राम कर विवरण उपलब्ध करवाने हेतु निर्देशित किया गया।

2. बैठक में निम्नलिखित कम्प्यूटर एक्सपर्ट्स उपस्थित हुए :–

1 Mrs.Juhi Jain	Lecturer & I/c HOD, IT	Govt. SV Polytechnic College,Bhopal, Mob. 09425009697
2 Mr. D.K. Chourishi	Lecturer,Computer Science & Engineering	Govt. Women's Polytechnic College, Bhopal Mob. 09826816730
3 Mr. Kuldeep Singh Chouhan	Sr. Software Engineer	CRISP, Bhopal Mob.09893318230
4 Mr. Ashish Jain	Server Administrator	CRISP, Bhopal Mob.08085856465
5 Mrs. Ajita Satheesh	Asstt. Professor	UIT, RGPV, Bhopal Mob.09826632257

3. सभी कम्प्यूटर एक्सपर्टस द्वारा नस्ती एवं संलग्नकों का अवलोकन किया गया व पाया गया कि मध्यप्रदेश व्यावसायिक परीक्षा मण्डल के आदेश क्रं VP/COMPUTER/11-80/2012/08/42-76, Dated 22-06-2012 के पृष्ठ कं 04 पर उल्लेखित विवरण अनुसार तत्कालीन कम्प्यूटर शाखा के अधिकारियों यथा श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं कर्मचारी, श्री सीके. मिश्रा द्वारा रेण्डम रोल नंबर जनरेट किया जाना नहीं पाया गया, अपितु फाईल को इण्डेक्सिंग के माध्यम से जनरेट करना पाया गया, जो कि रेण्डम जनरेशन की श्रेणी में नहीं आता है।

4. श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं श्री सी.के. मिश्रा द्वारा जेल अधीक्षक, जिला जेल इन्दौर के माध्यम से प्रेषित उत्तरों का कम्प्यूटर विशेषज्ञों द्वारा पुनः अवलोकन किया गया एवं पाया गया कि इनके द्वारा प्रस्तुत लॉजिक संबंधी जानकारी अस्पष्ट व अपूर्ण है।

5. कम्प्यूटर विशेषज्ञों द्वारा विभिन्न जिलों की रोल नंबर से संबंधित फाईलों को क्रमबद्व कर लॉजिक ज्ञात करने का प्रयास किया एवं पाया कि उपयुक्त लॉजिक, जिसका उपयोग रोल नंबर जनरेट करने के लिए श्री नितिन मोहिन्द्रा, श्री अजय कुमार एवं श्री सी.के.मिश्रा द्वारा किया गया होगा, वह इस प्रकार है क्योंकि इस पर प्राप्त होने वाले मिसमेच समस्त ट्राजेंक्शन आईडी के संभावित विकल्पो में न्यूनतम 876 है :–

(अ) शहरवार अभ्यर्थियों की पृथक–पृथक फाईल तैयार की गई एवं

फाईल को जन्म दिनांक, ट्राजेंक्शन आईडी के 7 से 11 तक के भाग एवं सी–एल नेम (उपनाम) के आधार पर इण्डेक्सिंग की गई।

(ब) इण्डेक्स फाईल पर पृथमतः सम रिकार्ड हेतु रोल नंबर आवंटित किए गए, उसके पश्चात् विषम रिकार्ड हेतु रोल नंबर आवंटित किए गए।

6. उपरोक्त लॉजिक के आधार पर पीएमटी –2013 से संबंधित सभी 14 शहरों के डाटा के रोल नंबर विषय विशेषज्ञों द्वारा जनरेट किए गए,। विषय विशेषज्ञों द्वारा जनरेट किए गए एवं पीएमटी –2013 हेतु उपयोग में लाए गए नंबरों में मिसमैच भी 40,135 के आधार पर विषय विशेषज्ञों द्वारा ज्ञात किया गया है, जिससे संबंधित रिकार्ड की न्यूनतम मिसमैच 876 रिकाड को MIS876.docx--- फाईल में ट्राजेंक्शन आईडी के विभिन्न संभावित विकल्पो के चार्ट को Digits_2013_Revised.docx फाईल में तथा विषय विशेषज्ञों द्वारा उपयोग में लाए गये प्रोग्राम को भी Rol_GEN.docx फाईल में रखते हुए सी. डी. में रखा गया है। इस जानकारी के दो सेट सी.डी. में समिति द्वारा सील्ड कर नस्ती के साथ संलग्न है। शहरवार विवरण तालिका में निम्नानुसार है :–

स.क्र.	परीक्षा शहर	कुल अभ्यर्थी	मैच हुए अभ्यर्थी	मिसमैच	मिसमैच का प्रतिशत
1	बालाघाट	819	819	0	0%
2	बैतूल	719	719	0	0%
3	भोपाल	6384	6198	186	2.91 %
4	छतरपुर	937	937	0	0%
5	छिंदवाडा	991	991	0	0%
6	गुना	622	622	0	0%
7	ग्वालियर	6377	6377	0	0%
8	इन्दौर	10475	9885	590	5.63%
9	जबलपुर	4334	4334	0	0%
10	रतलाम	1176	1152	24	2.04%
11	रीवा	3322	3322	0	0%
12	सागर	1285	1265	20	1.56%
13	शहडोल	1324	1296	28	2.11%
14	उज्जैन	1370	1342	28	2.04%
	योग	40135	39259	876	2.18%

7. उक्त के अतिरिक्त ट्रांजेक्शन आईडी के सभी संभावित विकल्पो का उपयोग करते हुए मिसमैच चार्ट तैयार कर समिति द्वारा हस्ताक्षरित किया गया।

8. उपरोक्तानुसार जानकारी आवश्यक एवं अग्रिम कार्यावाही हेतु प्रस्तुत हैं।

(आशीष जैन) सर्वर एडमिनिस्ट्रेटर क्रिस्प,भोपाल

(कुलदीप सिंह चौहान) सीनियर साफ्टवेयर इंजीनियर किस्प, भोपाल

(डी.के. चौऋषी) लैक्चरर शास. महिला पोली. भोपाल

(जूही जैन) लेक्चरर व एचओडी एस.व्ही. पोली. भोपाल

(अजीता सतीष) असिस्टेंड प्रोफेसर यूआईटी. आरजीपीवी, भोपाल

(emphasis supplied)

(xiii) After the second report of the Computer Experts Committee was made available, the Director of the Board submitted proposal to the Chairman to constitute Committee of Controllers to submit its report for necessary action. The said proposal was approved by the Chairman. As a result of which, the Committee of Joint Controllers of following persons was constituted:

1. Dr. Sanjay Kumar Jain - Acting Controller
2. Dr. Santosh Kumar Gandhi- Jt. Controller (Computer)
3. Dr. Alok Kumar Nigam – Jt. Controller (Exam)
4. Shri R.S. Mujalda – Finance Officer
5. Shri K.K. Soni – Dy. Controller (Estt.)

(xiv) The meeting of the said Committee was convened on 4th October, 2013 which concluded with the following Minutes:

"पृष्ठ कमांक

नस्ती कमांक व्यापम /5प–1/02/2013.

विषयः PMT – 2013 के संबंध में ।

आज दिनांक 04.10.2013 को सायं 6.00 बजे पी–242/एन पर गठित समिति की बैठक प्रभारी नियंत्रक के, कक्ष में आयोजित की गई जिसमें

समिति की सभी 5 नामांकित सदस्य उपस्थित हुए। समिति द्वारा प्रकरण के परीक्षण के दौरान यह पाया गया है कि पुलिस अधीक्षक (पश्चिम), जिला–इंदौर के पत्र कं पुअ/पश्चिम / पीए/ 412/2013, दि. 19.07.2013 द्वारा 317 अभ्यर्थियों की सूची मंण्डल को प्राप्त हुई है, परन्तु शेष 52 अभ्यर्थियों की सूची अधिकृत पत्र के माध्यम से मण्डल को अप्राप्त है।

यहां यह उल्लेखनीय है कि वर्तमान में थाना राजेन्द्र नगर, जिला–इंदौर में पंजीबद्व अपराध प्रकरण कमांक 539/2013 म0प्र0 एस.टी. एफ. भोपाल को स्थानान्तरित किया जा चुका है। अतः वर्तमान परिप्रेक्ष्य में म0प्र0 एस.टी.एफ. भोपाल से स्पष्ट जानकारी प्राप्त किया जाना उचित होगा।

हस्ता/–4.10.13 (के. के. सोनी) उप नियंत्रक	हस्ता/–4.10.13 (आर.एस. मुजाल्दा) वित्त अधिकारी	हस्ता/–4.10.13 (डॉ.आलोक निगम) संयुक्त नियंत्रक
	हस्ता/–4.10.13 (डॉ. एस.के. गांधी) संयुक्त नियंत्रक	हस्ता/–4.10.13 (डॉ. एस.के. जैन) प्रभारी नियंत्रक

नियंत्रक

मण्डल द्वारा दिनांक 07.07.2013 को पी.एम.टी. परीक्षा का आयोजन किया गया था। इस परीक्षा के आपराधिक प्रकरण कमांक 539/13 की विवेचना एस.टी.एफ. द्वारा की जा रही है। परीक्षा की विवेचना के अन्तर्गत जिन–जिन अभ्यर्थियों से संबंधित साक्ष्य एस.टी.एफ. को प्राप्त हुए है, उन सभी अभ्यर्थियों की सूची एवं साक्ष्यों की सत्यापित प्रतिलिपि मण्डल को उपलब्ध कराने हेतु एस.टी.एफ. के ए.आई.जी. श्री आशीष खरे को प्रभारी नियंत्रक स्तर से पत्र लिखा जा रहा है।

हस्ता/–7.10.13
(डां.संजय कुमार जैन)
प्रभारी नियंत्रक

पत्र जावक कमांक म.प्र. व्यापम/6262/2013 दिनांक 07.10.2013 जारी किया गया।

O.C. नस्ती में संलग्न ।

(emphasis supplied)

(xv) The Acting Controller, Dr. Sanjay Kumar Jain, in his noting made in the note-sheet dated 7th October, 2013 referred to the information sought from STF. After exchange of inter departmental office notes, the Committee of Joint Controllers was again convened on 8th October, 2013, which concluded with the following opinion:-

"पृष्ठ कमांक

नस्ती कमांक व्यापम /5प–1/02/2013.

विषयः PMT – 2013 के संबंध में ।

पी–242/एन पर उल्लेखित समिति की बैठक आज दि. 08.10.2013 को अपरान्ह 01.00 बजे डॉ. संजय कुमार जैन, प्रभारी नियंत्रक के कक्ष में आयोजित की गई जिसमें समिति के सभी सदस्य उपस्थित हुये।

समिति द्वारा परीक्षण, विश्लेषण एवं समग्र विचार उपरांन्त पाया गया कि एस.टी.एफ., भोपाल एवं काईम ब्रांच, इंदोर द्वारा मण्डल को उपलब्ध करवाई गंई, अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई अनुशंसाओं अनुसार 345 अभ्यर्थी ऐसे है जो कि दोनों सूचियों में उपलब्ध है जिससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल हैं, इनके द्वारा इस प्रकरण के आरोपियों से सम्पर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन उपरान्त परिवर्तित किये गये हैं इस प्रकार 345 अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि वर्तमान में उपलब्ध दस्तावेजों से होती है।

उपरोक्त बिन्दुओं पर की गई विवेचना के आधार पर समिति इस निष्कर्ष पर पहुंचती है कि 345 अभ्यर्थियों की सूची में उल्लेखित अभ्यर्थियों द्वारा परीक्षा नियमों का उल्लंघन स्पष्टतः दृष्टिगोचर होता है। अतः समिति समस्त 345 अभ्यर्थियों की अभ्यर्थिता तथा परिणाम निरस्त किये जाने की अनुशंसा करती है।

समिति का विस्तृत परीक्षण प्रतिवेदन पी–1711/सी से पी–1716/सी पर संलग्न है।

परीक्षण प्रतिवेदन अवलोकनार्थ एवं आदेशार्थ प्रस्तुत है।

हस्ता/–8.10.13	हस्ता/–8.10.13	हस्ता/–8.10.13
(के. के. सोनी)	(आर.एस. मुजाल्दा)	(डॉ.आलोक निगम)
उप नियंत्रक	वित्त अधिकारी	संयुक्त नियंत्रक
	हस्ता/–8.10.13	हस्ता/–8.10.13

(डॉ. एस.के. गांधी) (डॉ. एस.के. जैन)
संयुक्त नियंत्रक प्रभारी नियंत्रक

नियंत्रक

Sd/-8.10.13
Dr. S.K. Jain
Controller
M.P.Professional
Examination Board
Bhopal (M.P.)

संचालक"

(emphasis supplied)

(xvi) The report prepared by the Committee on the basis of which the conclusion noted in the above quoted Minutes evinces the yardstick adopted by the Committee in identifying 345 candidates against whom immediate action was warranted. The said evaluation report reads thus:

"म.प्र. व्यावसायिक परीक्षा मण्डल, भोपाल

//परीक्षण प्रतिवेदन//

मण्डल द्वारा दिनांक 07.07.2013 को आयोजित पी.एम.टी परीक्षा 2013 के उपलब्ध व्यवस्थित डेटा के लॉजिक के संबंध में कम्प्यूटर विषय–विशेषज्ञों के द्वारा प्रदान की गई मिसमैच रिपोर्ट तथा एस.टी.एफ. से प्राप्त रिपोर्ट की समग्र गहन छानबीन एवं निष्कर्ष हेतु संचालक, म.प्र. व्यावसायिक परीक्षा मण्डल द्वारा समिति गठित की गई, जिसमें मण्डल के 5 अधिकारियों यथा डॉ. संजय जैन, प्रभारी नियंत्रक, डॉ. एस. के. गॉधी, संयुक्त नियंत्रक, डॉ. आलोक कुमार निगम, संयुक्त नियंत्रक, श्री आर.एस.मुजाल्दा, वित्त अधिकारी एवं श्री के. के. सोनी, उपनियंत्रक को मनोनीत किया गया। गठित समिति की बैठक प्रभारी नियंत्रक के कक्ष में दि. 04.10.2013, 07.10. 2013 तथा 08.10.2013 को आयोजित की गई। समिति द्वारा पी.एम.टी. परीक्षा 2013 से संबंधित सम्पूर्ण घटनाकम पर विस्तृत चर्चा, संबंधित मूल नस्ती, पत्राचार एवं संलग्नकों का गहन अवलोकन किया गया, तदोपरांत समिति का परीक्षण प्रतिवेदन बिन्दुवार निम्नानुसार है :–

1. म.प्र. व्यावसायिक परीक्षा मण्डल द्वारा विभिन्न प्रवेश तथा प्रतियोगी परीक्षाओं का आयोजन प्रतिवर्ष सुनिश्चित किया जाता है। मण्डल द्वारा दिनांक 07.07.2013 को प्री–मेडीकल टेस्ट (पी.एम.टी.) परीक्षा–2013 का आयोजन चिकित्सा शिक्षा विभाग, मध्यप्रदेश शासन के अनुरोध पर उनके द्वारा उपलब्ध करवाये गये विभागीय नियमों के अनुसार प्रदेश के 14 शहरों में एक पाली में

अपरान्ह 12.00 से 3.30 बजे तक सुनिश्चित किया गया था। मण्डल को पी. एम.टी. परीक्षा–2013 के लिए एम.पी. ऑनलाईन के माध्यम से कुल 40,165 आवेदन पत्र ऑनलाईन प्राप्त हुए थे, जिनमें से 40086 अभ्यर्थियों को टेस्ट एडमिट कार्ड मण्डल द्वारा वेबसाईट पर अपलोड करते हुए जारी किए गए थे। परीक्षा के सुचारू, सफल संचालन तथा किसी भी प्रकार के अनुचित साधन को रोकने के मद्देनजर संचालक, म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पुलिस महानिदेशक, मध्यप्रदेश, भोपाल को पत्र क. म.प्र. व्यापम/प–1/5/ 4338/2013, दिनांक 05.07.2013 (परिशिष्ट–1) द्वारा अवगत कराया गया था।

2. मण्डल की प्रचलित प्रकिया अनुसार, परीक्षा सम्पादन के उपरांत ओ. एम.आर. उत्तरशीट्स की स्केनिंग, प्रोसेसिंग संबंधी कार्य पूर्ण किया गया तथा मण्डल द्वारा दिनांक 13.07.2013 को पी.एम.टी. परीक्षा–2013 का परिणाम घोषित कर मण्डल की वेबसाईट पर अपलोड किया गया।

3. जिला अपराध शाखा, इंदौर द्वारा पी.एम.टी. परीक्षा–2013 में तथाकथित गिरोह के पकड़े गये फर्जी व्यक्तियों से प्राप्त सूचना के आधार पर मण्डल की कम्प्यूटर शाखा में पदस्थ अधिकारीद्वय नितिन मोहिन्द्रा, तत्कालीन पी.एस.ए. तथा अजय कुमार तत्कालीन एस.एस.ए. को अभिरक्षा में लेते हुए दिनांक 16.07.13 को गिरफ्तार किया गया जिसकी सूचना कार्यालय पुलिस थाना राजेन्द्र नगर, जिला इंदौर के पत्र क. 2438/13, दिनांक 17.07.2013 के द्वारा मण्डल को प्राप्त हुई जिसके प्रकाश में दोनों अधिकारियों को मण्डल के पृष्ठांकित आदेश क. व्यापम/02/स्था/4655/2013,दिनांक 18.07.2013 एवं पृष्ठांकित आदेश क. व्यापम/02/स्था/4657/2013, दिनांक 18.07. 2013 द्वारा निलंबित किया गया। इसी तारतम्य में कम्प्यूटर शाखा में ही पदस्थ एक अन्य कर्मचारी सी.के. मिश्रा, तत्कालीन सहायक प्रोग्रामर को दिनांक 18. 07.2013 को गिरफ्तार किया गया। जिसकी सूचना कार्यालय पुलिस थाना राजेन्द्र नगर, जिला इंदौर के पत्र दिनांक 19.07.2013 के द्वारा मण्डल को प्राप्त हुई जिसके प्रकाश में सी. के. मिश्रा को मण्डल के पृष्ठांकित आदेश क. व्यापम/02/स्था/4677/2013, दिनांक 20.07.2013 द्वारा निलंबित किया गया।

4. तत्कालीन नियंत्रक, म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पुलिस महानिरीक्षक इंदौर जोन को मण्डल के पत्र क. व्यापम/4661/2013, दिनांक 19.07.2013 द्वारा पी.एम.टी. परीक्षा–2013 के अन्तर्गत फर्जी अभ्यर्थियों के नाम व अनुक्रमांक संबंधी जानकारी चाही गई थी, जिसके प्रतिउत्तर में पुलिस अधीक्षक (पश्चिम), जिला इंदौर के पत्र क्र पुअ/ पश्चिम/पीए/412/2013, दिनांक 19.07.2013 द्वारा पी.एम.टीपरीक्षा 2013 (परिशिष्ट–2) के संबंध में आरोपियों से प्राप्त 317 अभ्यर्थियों की सूची मण्डल को उपलब्ध करवाई थी।

5. चूंकि मण्डल द्वारा पी.एम.टी. परीक्षा 2013 का परिणाम दिनांक 13.07.2013 को ही घोषित किया जा चुका था। अतएव तत्कालीन नियंत्रक, म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा प्रमुख सचिव, म. प्र. शासन, चिकित्सा शिक्षा विभाग, मंत्रालय, भोपाल को पत्र क. व्यापम/4674/2013, दिनांक 20.07.2013 (परिशिष्ट–3) के द्वारा 317 अभ्यर्थियों की पुलिस अधीक्षक (पश्चिम) जिला इंदौर से प्राप्त सूची संलग्न करते हुए प्रेषित किया गया था जिसमें यह उल्लेखित किया गया था कि मेरिट सूची में स्थान प्राप्त फर्जी/संदिग्ध अभ्यर्थियों को काउंसलिंग के दौरान प्रावधिक रूप से सीट का आवंटन इस शर्त के साथ किया जाये कि यदि उपरोक्त अभ्यर्थियों की अपराध प्रकरण क. 539/13 में पुलिस की जांच/विवेचना के दौरान संलिप्तता प्रमाणित होती है तो इनकी अभ्यर्थिता स्वतः निरस्त समझी जायेगी।

6. पी.एम.टी. परीक्षा 2013 की व्यापम द्वारा उपलब्ध कराई गई मेरिट सूची के आधार पर काउंसलिंग का कार्य शासकीय एवं निजी महाविद्यालयों हेतु संचालक, चिकित्सा शिक्षा द्वारा दि. 28.09.2013 तक सम्पन्न करवाया गया। जिसकी पुष्टि संचालक, चिकित्सा शिक्षा विभाग, म0 प्र0 शासन के उनकी वेबसाईट पर उपलब्ध पत्र क. 2285/यू.जी./4/डी.एम.ई./13, दि. 16.07.2013 (परिशिष्ट–4) के द्वारा होती है।

7. पी.एम.टी. परीक्षा 2013 में अभ्यर्थियों को रोलनंबर आवंटन संबंधित प्रकिया मण्डल के किसी भी अभिलेखों में उपलब्ध नहीं पाई जाने के कारण मण्डल से संबंधित आरोपियों श्री नितिन मोहिन्द्रा, श्री अजय कुमार सेन तथा श्री सी. के. मिश्रा से उक्त प्रकिया ज्ञात करने हेतु अधीक्षक, जिला जेल, इंदौर के माध्यम से पत्र भेजे गये, परन्तु तीनों आरोपियों द्वारा रोल नंबर आवंटन से संबंधित स्पष्ट लॉजिक संबंधी जानकारी मण्डल को प्रदान नहीं की गई।

8. संचालक, म0प्र0 व्यावसायिक परीक्षा मण्डल, भोपाल द्वारा पी.एम.टी परीक्षा 2013 के रोल नंबर आवंटन के लिये नितिन मोहिन्द्रा, अजय कुमार सेन एवं सी. के. मिश्रा द्वारा उपयोग में लाया गया लॉजिक मण्डल में उपलब्ध डेटा से ज्ञात करने हेतु छह सदस्यीय कम्प्यूटर विशेषज्ञ समिति का गठन किया गया, जिसमें भोपाल से राजीव गांधी प्रोद्योगिकी विश्वविद्यालय, स.व. पॉलीटेकनिक महाविद्यालय, शास. महिला पॉलीटेकनिक महाविद्यालय तथा जबलपुर से शास. इंजीनियरिंग महाविद्यालय से एक–एक सदस्य एवं भोपाल किस्प से दो सदस्य शामिल थे। यहां यह उल्लेखनीय है कि यह लॉजिक मण्डल में उपलब्ध दस्तावेजों तथा कम्पयूटरों में अनुपलब्ध है। समिति की बैठक दिनांक 07.09.2013 को आयोजित की गई जिसमें मण्डल की वेबसाईट पर उपलब्ध 40086 रोल नंबर के डेटा के आधार पर रोल नंबर आवंटन के लिये उपयोग में लाये गये लॉजिक को ज्ञात करने का प्रयास किया गया। जिसके लिये डेटा में उपलब्ध विभिन्न फील्डों पर इंडेक्सिंग करते हुए प्राप्त डेटा तथा वेबसाईट पर

उपलब्ध 40086 रोल नंबर के डेटा को मिलान किया गया, तत्समय समिति द्वारा जो लॉजिक प्रस्तुत किया गया उसमें न्यूनतम 30195 रिकार्ड पर मिसमैच प्राप्त होना पाया गया जिसका उल्लेख समिति के बैठक कार्यवृत्त (परिशिष्ट–5) में किया गया है।

9. कम्प्यूटर विशेषज्ञ समिति की दिनांक 07.09.2013 को आयोजित बैठक में प्राप्त जानकारी से एस.टी.एफ.भोपाल को मण्डल के पत्र क. व्यापम/5957/2013, दिनांक 21.09.2013 (परिशिष्ट–6) के द्वारा अवगत कराया गया।

10. एस.टी.एफ. भोपाल ने मण्डल द्वारा प्रेषित जानकारी का परीक्षण किया एवं मण्डल को अपने पत्र क. एस.टी.एफ. /मुख्यालय/2013/एम–74, दिनांक 27.09.2013 (परिशिष्ट–7) द्वारा यह अवगत करवाया कि पी.एम.टी. परीक्षा 2013 के लिये मण्डल द्वारा दिनांक 30.06.2013 को जारी परीक्षा केन्द्र सूची में कुछ अभ्यर्थियों की संख्या 40135 उल्लेखित है, जबकि मण्डल द्वारा गठित तकनीकी समितिं द्वारा 30195 रोल नंबर की जो मिसमैच संबंधी जानकारी उपलब्ध करवाई गई है वह 40086 अभ्यर्थियों से संबंधित है। जिसके आधार पर शेष 49 को समाहित करते हुये परीक्षण उपरांत संशोधित जानकारी उपलब्ध करवाने हेतु लिखा गया।

11. एस.टी.एफ. भोपाल से प्राप्त पत्र के प्रकाश में परीक्षण करने पर पाया गया कि 49 अमान्य आवेदकों को नितिन मोहिन्द्रा, अजय कुमार सेन एवं सी. के. मिश्रा द्वारा नियम विरूद्ध तरीके से रोल नंबर आवंटित कर दिये गये हैं, जिन्हें अमान्य प्रकरणों से संबंधित फाईल में रखा गया था। 49 अमान्य प्रकरणों के डेटा को वेबसाईट पर उपलब्ध 40086 के डेटा में शामिल कर 40135 अभ्यर्थियों की डेटा फाईल तैयार की गई तथा इसके आधार पर चाही गई आवश्यक जानकारी एस.टी.एफ. भोपाल को मण्डल के पत्र क. व्यापम/6071/2013, दिनांक 27.09.2013 (परिशिष्ट–8) के माध्यम से प्रेषित की गई।

12. तत्कालीन संचालक, म0प्र0 व्यावसायिक परीक्षा मण्डल के निर्देशानुसार पी.एम.टी. परीक्षा 2013 के रोल नंबर से संबंधित डेटा फाईल के रिकार्ड 40086 में 49 अतिरिक्त रिकार्ड शामिल करते हुये कुल संख्या 40135 हो जाने के फलस्वरूप पूर्व में गठित तकनीकी समिति के स्थानीय सदस्यों की बैठक कर प्रतिवेदन प्राप्त करने हेतु निर्देशित किया गया। जिसके प्रकाश में तकनीकी विशेषज्ञों की बैठक दिनांक 30.09.2013 को आयोजित की गई जिसमें तकनीकी विशेषज्ञ समिति के सभी स्थानीय 5 सदस्य उपस्थित हुये। समिति द्वारा पुनः 40135 की डेटा फाईल के आधार पर पी.एम.टी. परीक्षा 2013 के रोल नंबर आवंटन के लिये नितिन मोहिन्द्रा, अजय कुमार सेन तथा सी. के. मिश्रा द्वारा तत्समय उपयोग में लाये गये लॉजिक ज्ञात करने का प्रयास किया गया।

जिसमें पाया गया कि मण्डल में उपलब्ध 40135 की डेटा फाईल तथा तकनीकी समिति द्वारा तैयार की गई डेटा फाईल में न्यूनतम मिसमैच 867 (परिशिष्ट–9)प्राप्त हो रहा है जिसे तकनीकी समिति द्वारा पी.एम.टी. परीक्षा 2013 के रोल नंबर आवंटन हेतु उपयोग में लाया गया लॉजिक माना गया है। तकनीकी समिति द्वारा यह भी अवगत करवाया गया कि पी.एम.टी. 2013 परीक्षा में अभ्यर्थियों के रोल नंबर का आवंटन लॉजिक (जन्मतिथि + ट्रांजेक्शन आई.डी. के 7–11 भाग + सरनेम) के आधार पर इंडेक्सिंग करते हुये पहले सम एवं तत्पश्चात विषम रिकार्ड लेते हुए रोल नंबर आवंटित किये गये थे। जिसका उल्लेख समिति के बैठक कार्यवृत्त (परिशिष्ट–10) में किया गया है।

13. एस.टी.एफ. भोपाल के पत्र क्र अमनि/एसटीएफ/पीए/2013–(एम–45) भोपाल दिनांक 18.09.2013 (परिशिष्ट–11) द्वारा एक आरोपी से जप्त सूची कमांक–1 की कापी (टायपिंग शुदा) जिसमें 317 अभ्यर्थी तथा एक अन्य दूसरे आरोपी से जप्त सूची कमांक 2 जिसमें 52 अभ्यर्थी (कुल 369 अभ्यर्थी) सम्मिलित है, प्रेषित करते हुए मण्डल से इनके भरे हेतु फार्म एवं एडमिट कार्ड की कलर्ड 2–2 हार्ड एवं साफ्ट कापी प्रदान करने का अनुरोध किया गया। मण्डल द्वारा यह जानकारी एस.टी.एफ. भोपाल को उपलब्ध करवाई गई है।

14. एस.टी.एफ. भोपाल द्वारा प्रेषित 369 अभ्यर्थियों की सूची का मण्डल में उपलब्ध पी.एम.टी. परीक्षा 2013 के डाटा से मिलान करने पर ज्ञात हुआ कि आवेदन क. 80016247, 80034595, 80005183, 80002064 एवं 80034884 (कुल 05) डाटा में उपलब्ध नहीं है तथा आवेदन नं. 80029699 (कुल 01) स. क. 157 एवं 271 पर दो जगह पर है। इस प्रकार कुल 6 आवेदन कमांक को पृथक करने पर शेष 363 अभ्यर्थी पी.एम.टी. परीक्षा 2013 से संबंधित डेटा में उपलब्ध हैं, जिसकी सूचना मण्डल द्वारा पत्र कमांक–व्यापम/5979/2013 दिनांक 24.09.2013 (परिशिष्ट–12) द्वारा एस.टी.एफ. भोपाल को उपलब्ध करवाई गई है।

15. मण्डल द्वारा संस्थित तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई 876 अभ्यर्थियों की सूची जिनमें रोल नंबर परिवर्तित होने की पुष्टि उनके द्वारा की गई है, का मिलान एस.टी.एफ. भोपाल एवं काईम ब्रांच, इंदौर द्वारा उपलब्ध करवाई गई कुल 363 अभ्यर्थियों की सूची से करने पर पाया गया कि 363 अभ्यर्थियों में से 345 अभ्यर्थी (परिशिष्ट–13), 876 अभ्यर्थियों की परिवर्तित रोल नंबर सूची में उपलब्ध है। यह 345 अभ्यर्थियों की सूची मण्डल के पत्र क. व्यापम/6071/2013, दिनांक 27.09.2013 के द्वारा एस.टी.एफ. भोपाल को भी उपलब्ध करवाई गई है।

16. कार्यालय सहायक पुलिस महानिरीक्षक (एस.टी.एफ.) मुख्यालय भोपाल के पत्र कमांक–समनि/एसटीएफ/मुख्यालय/2013–(एम–119) भोपाल दिनांक

07.10.2013 (परिशिष्ट–14) के द्वारा भी पूर्व में उल्लेखित 363 अभ्यर्थियों की सूची की पुष्टि निम्नानुसार की गई है :–

(i) आरोपी डॉ0 जगदीश सागर ने श्री नितिन मोहिन्द्रा को 317 परीक्षार्थियों के रोल नंबर सेट करवाने हेतु दिये थे। श्री नितिन मोहिन्द्रा द्वारा 317 में से 298 परीक्षार्थियों के रोल नंबर सेट करना बताया गया है।

(ii) आरोपी सुधीर राय तथा संतोष गुप्ता ने श्री नितिन मोहिन्द्रा को 52 अभ्यर्थियों के रोल नंबर सेट करवाने हेतु दिये थे। श्री नितिन मोहिन्द्रा द्वारा 52 में से 48 परीक्षार्थियों के रोल नंबर सेट करना बताया गया है।

(iii) आरोपी डॉ0 जगदीश सागर, श्री सुधीर राय तथा संतोष गुप्ता आदि के द्वारा श्री नितिन मोहिन्द्रा को पी.एम.टी. परीक्षा 2013 में जिन परीक्षार्थियों के रोल नंबर जिस प्रकार सेट करने हेतु दिये गये थे। व्यावसायिक परीक्षा मण्डल द्वारा उसी अनुसार रोल नंबर परीक्षार्थियों को आवंटित किए गए है, जिससे स्पष्ट है कि उक्त परीक्षार्थियों द्वारा आरोपियों के माध्यम से अनुचित तरीके से परीक्षा में लाभ प्राप्त किया गया है।

17. इस संबंध में मण्डल के द्वारा बनाये गये नियमों का भी अवलोकन एवं परीक्षण किया गया।

18. रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल होने, आरोपियों से सम्पर्क करने तथा रोल नंबर जनरेशन उपरांत परिवर्तित किये जाने के कारण म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पी.एम.टी. परीक्षा 2013 के आयोजन की नियम पुस्तिका के नियमों (परिशिष्ट–15) का उल्लंघन 345 अभ्यर्थियों द्वारा होना पाया गया है।

(i) अध्याय–4, निर्देश एवं परीक्षा संचालन नियम के, 'महत्वपूर्ण' दिशा–निर्देश अनुसार :–

> "ऑनलाईन आवेदन पत्र में भरी गई जानकारी का सत्यापन काउंसलिंग/प्रवेश के समय मूल दस्तावेजों के आधार पर संबंधित विभाग/संस्था द्वारा किया जायेगा। अतः बाद में यह पता चलता है कि सफल आवेदक द्वारा ऑनलाईन आवेदन पत्र भरते समय गलत अथवा असत्य जानकारी अथवा किसी जानकारी का छुपाया है, ऐसी स्थिति में यदि यह पाया गया कि कोई उम्मीदवार झूठी/गलत जानकारी देकर या सुसंगत तथ्यों को छुपा कर प्रवेश पाने में सफल हो गया है या प्रवेश के पश्चात किसी भी समय यह पाया गया कि आवेदक को किसी गलती या चूकवश प्रवेश मिल गया है, तो आवेदक को दिया गया प्रवेश संस्था प्रमुख/प्रवेश प्राधिकरण/मध्यप्रदेश व्यावसायिक परीक्षा

मण्डल द्वारा उसके अध्ययन काल के दौरान तुरंत बिना किसी सूचना के रद्द किया जा सकेगा।"

(ii) इसी प्रकार बिन्दु क. 4.12 "अनुचित साधन" अनुसार :–

(क) परीक्षा कक्ष में अन्य परीक्षार्थी से किसी भी प्रकार का सम्पर्क।

(ख) अपने स्थान पर किसी अन्य व्यक्ति से परीक्षा दिलाना या परीक्षार्थी के स्थान पर अन्य कोई व्यक्ति उपस्थित होना।

(ग) परीक्षा कक्ष में अपने पास किसी भी प्रकार की प्रतिबंधित सामग्री रखना।

(घ) परीक्षा के दौरान चिल्लाना, बोलना, कानाफूसी करना, ईशारे करना व अन्य प्रकार से सम्पर्क साधना।

(ड.) अन्य परीक्षार्थी की उत्तरशीट या प्रश्न पुस्तिका से अन्य किसी प्रकार से नकल करना।

(च) अन्य परीक्षार्थी के साथ उत्तरशीट या प्रश्न पुस्तिका की अदला–बदली करना।

(छ) प्रतिबंधित सामग्री पाये जाने पर परीक्षार्थी द्वारा उसे सौंपने से इंकार करना या उसे स्वयं नष्ट करना।

(ज) नकल प्रकरण से संबंधित दस्तावेजों/प्रपत्रों पर हस्ताक्षर करने से मना करना।

(झ) समक्ष अधिकारी के निर्देशों की अवहेलना/अवज्ञा करना या उनके निर्देशों का पालन न करना।

(ञ) सक्षम अधिकारी के निर्देशानुसार उत्तरशीट या अन्य दस्तावेज वापस नहीं करना या वापस करने से मना करना।

(ट) परीक्षा कार्य में लगे कर्मचारियों/अधिकारियों को परेशान करना, धमकाना या शारीरिक चोट पहुंचाना।

19. उपरोक्त तथ्यों पर समिति द्वारा परीक्षण, विश्लेषण एवं समग्र विचार उपरान्त पाया गया कि एस.टी.एफ. भोपाल एवं काईम ब्रांच, इंदौर द्वारा मण्डल को उपलब्ध करवाई गई अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई अनुशंसाओं अनुसार 345 अभ्यर्थी ऐसे हैं जो कि दोनों सूचियों में उपलब्ध है जिससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल है, इनके द्वारा इस प्रकरण के आरोपियों से सम्पर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन

उपरांत परिवर्तित किये गये है। इस प्रकार 345 अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि वर्तमान में उपलब्ध दस्तावेजों से होती है।

उपरोक्त बिन्दुओं पर की गई विवेचना के आधार पर समिति इस निष्कर्ष पर पहुंचती है कि 345 अभ्यर्थियों की सूची में उल्लेखित अभ्यर्थियों द्वारा परीक्षा नियमों का उल्लंघन स्पष्टतः दृष्टिगोचर होता है। अतः समिति समस्त 345 अभ्यर्थियों की अभ्यर्थिता तथा परिणाम निरस्त किये जाने की अनुशंसा करती है।

हस्ता/–8.10.13	हस्ता/–8.10.13	हस्ता/–8.10.13
(के. के. सोनी)	(आर.एस. मुजाल्दा)	(डॉ.आलोक निगम)
उप नियंत्रक	वित्त अधिकारी	संयुक्त नियंत्रक
	हस्ता/–8.10.13	हस्ता/–8.10.13
	(डॉ. एस.के. गांधी)	(डॉ. एस.के. जैन)
	संयुक्त नियंत्रक	प्रभारी नियंत्रक

(emphasis supplied)

(xvii) These reports and opinion were placed before the Chairman of the Board with recommendation to initiate action against 345 identified candidates. The Chairperson concurred with the said proposal submitted by the Director and issued directions to proceed in the matter accordingly. This noting was made on 8th October, 2013, as can be discerned from the Office File, which reads thus:

"पृष्ठ कमांक 60

नस्ती कमांक व्यापम

/5–प–1/02/2013.

विषयः PMT – 2013 के संबंध में ।

समिति द्वारा प्रस्तुत प्रतिवेदन का परीक्षण किया गया। प्रतिवेदन में उल्लेखित रोल नंबर के लॉजिक संबंधी प्रतिवेदन, पुलिस के द्वारा प्राप्त दस्तावेज, समिति का प्रतिवेदन एवं मण्डल द्वारा बनाये गये नियमों से यह स्पष्ट हो जाता है कि 876 अभ्यर्थियों के रोल नंबर बिना किसी कारण अनुचित ढंग से परिवर्तित कर दिये गये हैं यह बात भी स्पष्ट होती है कि यह परिवर्तन 438 अभ्यर्थियों को लाभ पहुँचाने के लिये किया गया है।

यहाँ यह भी उल्लेखनीय है कि इन 345 रोल नंबरों में एक पैटर्न उभरकर आता है जिसमें मध्यप्रदेश के अभ्यर्थी को अन्य प्रदेश के अभ्यर्थी के

साथ सुनियोजित ढंग से कम में रोल नंबर आवंटित किया गया है। किसी भी रेण्डम प्रकिया के पालन करने से ऐसा पैटर्न उभरना संभव नहीं है। इस बात की पुष्टि पुलिस विभाग द्वारा उपलब्ध कराये गये दस्तावेजों से भी होती है।

अतः समिति के प्रतिवेदन से सहमत होते हुये प्रतिवेदन में वर्णित 345 अभ्यर्थियों की अभ्यर्थिता नियमों के उललंघन होने के कारण निरस्त किया जाना प्रस्तावित है।

अवलोकनार्थ एवं अनुमोदनार्थ।

Sd/-08.10.2013

(Tarun Kumar Pithode)

DIRECTOR

मान. अध्यक्ष महो.

समिति के प्रतिवेदन का अवलोकन किया। समिति के प्रतिवेदन के निष्कर्षो से सहमत होते हुए संचालक ने 345 अभ्यर्थियों की अभ्यर्थिता निरस्त करने के अनुसार समिति के प्रस्ताव अनुसार की है। में उपरोक्त से सहमत हूँ। तदानुसार अनुमोदित। संचालक आगामी कार्यवाही सुनिश्चित करें ।

सही/08.10.2013

संचालक

आदेश का प्रारूप प्रस्तुत करें। एवं शासन को Do letter का प्रारूप प्रस्तुत करें।

सही/08.10.2013

Steno

अनुमोदन की प्रत्याशा में आदेश की स्वच्छ प्रतिया प्रस्तुत है। कृपया हस्ताक्षर करना चाहें ।

सही/08.10.2013

संचालक महोदय

सही/09.10.2011

Controller"

(emphasis supplied)

(xviii) As a consequence of directions issued by the Chairman, the Director processed the matter further and finally issued the impugned order dated 9th October, 2013 cancelling the entrance examination results of 345 identified candidates and held them ineligible for having indulged in unfair practices. The impugned order dated 9th October, 2013 reads thus:

"म.प्र. व्यावसायिक परीक्षा मण्डल, भोपाल

"चयन भवन" चिनार पार्क (ईस्ट) मेन रोड़ नं. 1, भोपाल–462011

क.म. प्र. व्यापम/6297/2013 भोपाल, दिनांक 09.10.2013

//आदेश//

मण्डल द्वारा दिनांक 07.07.2013 को आयोजित पी.एम.टी. परीक्षा 2013 के उपलब्ध व्यवस्थित डेटा के लॉजिक के संबंध में कम्प्यूटर विषय–विशेषज्ञों के द्वारा प्रदान की गई मिसमैच रिपोर्ट तथा एस.टी.एफ. से प्राप्त रिपोर्ट के परिप्रेक्ष्य में पी.एम.टी. 2013 की समग्र गहन छानबीन एवं निष्कर्ष हेतु एक 5 सदस्यीय समिति गठित की गई।

समिति द्वारा संबंधित नस्तियों, अभिलेखों एवं नियमों का परीक्षण करने के उपरांत अपना विस्तृत प्रतिवेदन प्रस्तुत किया गया। प्रस्तुत प्रतिवेदन का अवलोकन किया गया। इस प्रतिवेदन में समिति ने रोल नंबर में हेराफेरी, रोल नंबर का अभ्यर्थियों को अनुचित रूप से आवंटन, बिना सक्षम अधिकारी के आदेश के निरस्त आवेदनों के आधार पर रोल नंबर जारी किया जाना पाया गया एवं मण्डल द्वारा बनाये गये परीक्षा नियमों का भी उल्लंघन होने का भी उल्लेख किया गया है।

समिति ने पी.एम.टी. परीक्षा 2013 के आयोजन की नियम पुस्तिका के अध्याय–4, निर्देश एवं परीक्षा संचालन नियम के "महत्वपूर्ण" दिशा–निर्देश का उल्लेख किया है, जिसके अनुसार–

"ऑनलाईन आवेदन पत्र में भरी गई जानकारी का सत्यापन काउसं लिंग/प्रवेश के समय मूल दस्तावेजों के आधार पर संबंधित विभाग/संस्था द्वारा किया जायेगा। अतः बाद में यह पता चलता है कि सफल आवेदक द्वारा ऑनलाईन आवेदन पत्र भरते समय गलत अथवा असत्य जानकारी अथवा किसी जानकारी का छुपाया है, ऐसी स्थिति में यदि यह पाया गया कि कोई उम्मीदवार झूठी/गलत जानकारी देकर या सुसंगत तथ्यों को छुपा कर प्रवेश पाने में सफल हो गया है या प्रवेश के पश्चात किसी भी समय यह पाया गया कि आवेदक को किसी गलती या चूकवश प्रवेश मिल गया है, तो आवेदक को दिया गया प्रवेश संस्था प्रमुख/प्रवेश प्राधिकरण/मध्यप्रदेश व्यावसायिक परीक्षा मण्डल द्वारा

उसके अध्ययन काल के दौरान तुरंत बिना किसी सूचना के रद्द किया जा सकेगा।"

इसी प्रकार नियम के बिन्दु क. 4.12 के अन्तर्गत परीक्षा कक्ष में अन्य परीक्षार्थी से किसी भी प्रकार का सम्पर्क, अपने स्थान पर किसी अन्य व्यक्ति से परीक्षा दिलाना या परीक्षार्थी के स्थान पर अन्य कोई व्यक्ति उपस्थित होना, परीक्षा के दौरान चिल्लाना, बोलना, कानाफूसी करना, ईशारे करना व अन्य प्रकार से सम्पर्क साधना,अन्य परीक्षार्थी की उत्तरशीट या प्रश्न पुस्तिका से अन्य किसी प्रकार से नकल करना, अन्य परीक्षार्थी के साथ उत्तरशीट या प्रश्न पुस्तिका की अदला–बदली करने का उल्लेख किया गया है।

उपरोक्त तथ्यों पर समिति द्वारा परीक्षण, विश्लेषण एवं समग्र विचार उपरांत पाया गया कि एस.टी.एफ. भोपाल एवं काईम ब्रांच, इंदौर द्वारा मण्डल को उपलब्ध करवाई गई अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई अनुशंसाओं अनुसार 345 अभ्यर्थी ऐसे हैं जो कि दोनों सूचियों में उपलब्ध हैं जिससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवतित करवाने संबंधी षडयंत्र में शामिल हैं, इनके द्वारा इस प्रकरण के आरोपियों से सम्पर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन उपरान्त परिवर्तित किये गये है। इस प्रकार 345 अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि की गई है।

प्रतिवेदन में उल्लेखित रोल नंबर के लॉजिक संबंधी प्रतिवेदन, पुलिस के द्वारा प्राप्त दस्तावेज, समिति का प्रतिवेदन एवं मण्डल द्वारा बनाये गये नियमों से यह स्पष्ट हो जाता है कि 876 अभ्यर्थियों के रोल नंबर बिना किसी कारण अनुचित ढंग से परिवर्तित कर दिये गये हैं, जिनमें से 345 अन्य अभ्यर्थियों के नामों की पुष्टि समिति द्वारा की गई है।

यहां यह भी उल्लेखनीय है कि इन 345 रोल नंबरों में एक पैटर्न उभरकर आता है जिसमें मध्यप्रदेश के अभ्यर्थी को अन्य प्रदेश के अभ्यर्थी के साथ सुनियोजित ढंग से क्रम में रोल नंबर आवंटित किया गया है। किसी भी रेण्डम प्रकिया के पालन करने से ऐसा पैटर्न उभरना संभव नहीं है।

समिति के प्रतिवेदन के परिप्रेक्ष्य में अभिलेखों का परीक्षण करने के उपरान्त यह समाधान हो गया है कि 345 अभ्यर्थियों को अनुचित तरीके से रोल नंबर आवंटित कर परीक्षा नियमों का उल्लंघन करते हुए लाभ पहुंचाया गया है। अतः इन 345 अभ्यर्थियों (परिशिष्ट–1) की अभ्यर्थिता तत्काल प्रभाव से निरस्त की जाती है।

संलग्न : उपरोक्तानुसार परिशिष्ट–1

हस्ता./–

संचालक
म.प्र. व्यावसायिक परीक्षा मण्डल
भोपाल"

(emphasis supplied)

(xix) On the basis of information gathered during the inquiry undertaken by the Board which unravelled the involvement of large number of candidates in resorting to unfair means during the entrance examination, the Board caused to register FIR in the local Police Station on 11th October, 2013.

(xx) Notably, the decision taken by the Chairman of the Board on the recommendation of the Director and as a result of which the impugned order dated 9th October, 2013 came to be issued, this entire matter was placed before the Executive Committee of the Board on 19th November, 2013. The Executive Committee not only approved the entire action but also ratified the same, thus, upholding the cancellation of entrance examination results of 345 candidates identified by the Committee.

(xxi) Thereafter, on 22nd November, 2013 the Board received list of another 92 candidates from the STF, who were allegedly involved in the commission of the crime registered against them. On receipt of this information, a meeting of Joint Controllers was convened on 30th November, 2013. In the said meeting, after due analysis of the material available and applying the same logic as was applied for identifying 345 candidates, the Committee of Joint Controllers opined that action must be taken against additional 70 candidates. The evaluation report of the said Committee reads, thus:

"म.प्र. व्यावसायिक परीक्षा मण्डल, भोपाल

//परीक्षण प्रतिवेदन//

मण्डल द्वारा दिनांक 07.07.2013 को आयोजित पी.एम.टी. परीक्षा 2013 के उपलब्ध व्यवस्थित डेटा के लॉजिक के संबंध में कम्प्यूटर विषय–विशेषज्ञों के द्वारा प्रदान की गई मिसमैच रिपोर्ट तथा एस.टी.एफ. से प्राप्त रिपोर्ट की समग्र गहन छानबीन एवं निष्कर्ष हेतु संचालक, म.प्र. व्यावसायिक परीक्षा मण्डल द्वारा समिति गठित की गई, जिसमें मण्डल के 5 अधिकारियों यथा डॉ. संजय जैन, प्रभारी नियंत्रक, डॉ. एस. के. गॉधी, संयुक्त नियंत्रक, डॉ. आलोक कुमार निगम, संयुक्त नियंत्रक, श्री आर.एसमुजाल्दा, वित्त अधिकारी एवं श्री के. के. सोनी, उपनियंत्रक को मनोनीत किया गया। गठित समिति की बैठक प्रभारी नियंत्रक के कक्ष में दिनांक 30.11.2013 को दोपहर 12.00 बजे आयोजित की गई। समिति द्वारा पी. एम.टी.

परीक्षा 2013 से संबंधित सम्पूर्ण घटनाक्रम पर विस्तृत चर्चा, संबंधित मूल नस्ती, पत्राचार एवं संलग्नकों का गहन अवलोकन किया गया, तदोपरांत समिति का परीक्षण प्रतिवेदन बिन्दुवार निम्नानुसार है :–

1. मण्डल द्वारा दिनांक 07.07.2013 को प्री–मेडीकल टेस्ट (पी.एम.टी.) परीक्षा–2013 का आयोजन चिकित्सा शिक्षा विभाग, मध्यप्रदेश शासन के अनुरोध पर उनके द्वारा उपलब्ध करवाये गये विभागीय नियमों के अनुसार प्रदेश के 14 शहरों में एक पाली में अपरान्ह 12.00 से 3.30 बजे तक सुनिश्चित किया गया था। मण्डल को पी.एम.टी. परीक्षा–2013 के लिए एम.पी. ऑनलाईन के माध्यम से कुल 40,165 आवेदन पत्र ऑनलाईन प्राप्त हुए थे, जिनमें से 40086 अभ्यर्थियों को टेस्ट एडमिट कार्ड मण्डल द्वारा वेबसाईट पर अपलोड करते हुए जारी किए गए थे। परीक्षा के सुचारू, सफल संचालन तथा किसी भी प्रकार के अनुचित साधन को रोकने के मद्देनजर संचालक, म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पुलिस महानिदेशक, मध्यप्रदेश, भोपाल को पत्र क. म.प्र. व्यापम/प–1/5/ 4338/2013, दिनांक 05.07.2013 (परिशिष्ट–1) द्वारा अवगत कराया गया था।

2. मण्डल की प्रचलित प्रकिया अनुसार, परीक्षा सम्पादन के उपरांत ओ.एम. आर. उत्तरशीट्स की स्केनिंग, प्रोसेसिंग संबंधी कार्य पूर्ण किया गया तथा मण्डल द्वारा दिनांक 13.07.2013 को पी.एम.टी. परीक्षा–2013 का परिणाम घोषित कर मण्डल की वेबसाईट पर अपलोड किया गया।

3. जिला अपराध शाखा, इंदौर द्वारा पी.एम.टी. परीक्षा–2013 में तथाकथित गिरोह के पकड़े गये फर्जी व्यक्तियों से प्राप्त सूचना के आधार पर मण्डल की कम्प्यूटर शाखा में पदस्थ अधिकारीद्वय नितिन मोहिन्द्रा, तत्कालीन पी.एस.ए. तथा अजय कुमार तत्कालीन एस.एस.ए. को अभिरक्षा में लेते हुए दिनांक 16.07.13 को गिरफ्तार किया गया जिसकी सूचना कार्यालय पुलिस थाना राजेन्द्र नगर, जिला इंदौर के पत्र क. 2438/13, दिनांक 17.07.2013 के द्वारा मण्डल को प्राप्त हुई जिसके प्रकाश में दोनों अधिकारियों को मण्डल के पृष्ठांकित आदेश क. व्यापम/02/स्था/4655/2013,दिनांक 18.07.2013 एवं पृष्ठांकित आदेश क. व्यापम/02/स्था/4657/2013, दिनांक 18.07.2013 द्वारा निलंबित किया गया। इसी तारतम्य में कम्प्यूटर शाखा में ही पदस्थ एक अन्य कर्मचारी सी.के. मिश्रा, तत्कालीन सहायक प्रोग्रामर को दिनांक 18.07.2013 को गिरफ्तार किया गया। जिसकी सूचना कार्यालय पुलिस थाना राजेन्द्र नगर, जिला इंदौर के पत्र दिनांक 19.07.2013 के द्वारा मण्डल को प्राप्त हुई जिसके प्रकाश में सी. के. मिश्रा को मण्डल के पृष्ठांकित आदेश क. व्यापम/02/स्था/4677/2013, दिनांक 20.07. 2013 द्वारा निलंबित किया गया।

4. तत्कालीन नियंत्रक, म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पुलिस महानिरीक्षक इंदौर जोन को मण्डल के पत्र कमांक– व्यापम/4661/2013, दिनांक 19.07.2013 द्वारा पी.एम टी. परीक्षा 2013 के अन्तर्गत फर्जी अभ्यर्थियों के

नाम व अनुक्रमांक संबंधी जानकारी चाही गई थी, जिसके प्रतिउत्तर में पुलिस अधीक्षक (पश्चिम), जिला इंदौर के पत्र क्र. पुअ/पश्चिम/पीए/412/2013, दिनांक 19.07.2013 द्वारा पी.एम.टीपरीक्षा 2013 (परिशिष्ट–2) के संबंध में आरोपियों से प्राप्त 317 अभ्यर्थियों की सूची मण्डल को उपलब्ध करवाई थी।

5. चूंकि मण्डल द्वारा पी.एम.टी. परीक्षा 2013 का परिणाम दिनांक 13. 07.2013 को ही घोषित किया जा चुका था। अतएव तत्कालीन नियंत्रक, डॉ0 पंकज त्रिवेदी द्वारा म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा प्रमुख सचिव, म. प्र. शासन, चिकित्सा शिक्षा विभाग, मंत्रालय, भोपाल को पत्र कं. म. प्र. व्यापम/4674/2013, दिनांक 20.07.2013 (परिशिष्ट–3) के द्वारा 317 अभ्यर्थियों की पुलिस अधीक्षक (पश्चिम),जिला इंदौर से प्राप्त सूची संलग्न करते हुए प्रेषित किया गया था जिसमें यह उल्लेखित किया गया था कि मेरिट सूची में स्थान प्राप्त फर्जी/संदिग्ध अभ्यर्थियों को काउंसलिंग के दौरान प्रावधिक रूप से सीट का आवंटन इस शर्त के साथ किया जाये कि यदि उपरोक्त अभ्यर्थियों की अपराध प्रकरण क्र. 539/13 में पुलिस की जांच/विवेचना के दौरान संलिप्तता प्रमाणित होती है तो इनकी अभ्यर्थिता स्वतः निरस्त समझी जायेगी।

6. पी.एम.टी. परीक्षा 2013 की व्यापम द्वारा उपलब्ध कराई गई मेरिट सूची के आधार पर काउंसलिंग का कार्य शासकीय एवं निजी महाविद्यालयों हेतु संचालक, चिकित्सा शिक्षा द्वारा दि. 28.09.2013 तक सम्पन्न करवाया गया। जिसकी पुष्टि संचालक, चिकित्सा शिक्षा विभाग, म0 प्र0 शासन के उनकी वेबसाईट पर उपलब्ध पत्र क्र. 2285/यू.जी./4/डी.एम.ई./13, दि. 16.07.2013 (परिशिष्ट–4) के द्वारा होती है।

7. पी.एम.टी. परीक्षा 2013 में अभ्यर्थियों को रोलनंबर आवंटन संबंधित प्रक्रिया मण्डल के उपलब्ध अभिलेखों में नहीं पाई जाने के कारण मण्डल से सबंधित आरोपियों श्री नितिन मोहिन्द्रा, श्री अजय कुमार सेन तथा श्री सी. के. मिश्रा से उक्त प्रक्रिया ज्ञात करने हेतु अधीक्षक, जिला जेल, इंदौर के माध्यम से पत्र भेजे गये, परन्तु तीनों आरोपियों द्वारा रोल नंबर आवंटन से संबंधित स्पष्ट लॉजिक सबंधी जानकारी मण्डल को प्रदान नहीं की गई।

8. संचालक, म0प्र0 व्यावसायिक परीक्षा मण्डल, भोपाल द्वारा पी.एम.टी परीक्षा 2013 के रोल नंबर आवंटन के लिये नितिन मोहिन्द्रा, अजय कुमार सेन एवं सी. के. मिश्रा द्वारा उपयोग में लाया गया लॉजिक मण्डल में उपलब्ध डेटा से ज्ञात करने हेतु छह सदस्यीय कम्प्यूटर विशेषज्ञ समिति का गठन किया गया, जिसमें भोपाल से राजीव गांधी प्रोद्योगिकी विश्वविद्यालय, स.व. पॉलीटेकनिक महाविद्यालय, शास. महिला पॉलीटेकनिक महाविद्यालय तथा जबलपुर से शास. इंजीनियरिंग महाविद्यालय से एक–एक सदस्य एवं भोपाल किस्प से दो सदस्य शामिल थे। यहां यह उल्लेखनीय है कि यह लॉजिक मण्डल में उपलब्ध दस्तावेजों तथा कम्पयूटरों में अनुपलब्ध है। समिति की बैठक दिनांक 07.09.2013 को आयोजित की गई

जिसमें मण्डल की वेबसाईट पर उपलब्ध 40086 रोल नंबर के डेटा के आधार पर रोल नंबर आवंटन के लिये उपयोग में लाये गये लॉजिक को ज्ञात करने का प्रयास किया गया। जिसके लिये डेटा में उपलब्ध विभिन्न फील्डों पर इंडेक्सिंग करते हुए प्राप्त डेटा तथा वेबसाईट पर उपलब्ध 40086 रोल नंबर के डेटा को मिलान किया गया, तत्समय समिति द्वारा जो लॉजिक प्रस्तुत किया गया उसमें न्यूनतम 30195 रिकार्ड पर मिसमैच प्राप्त होना पाया गया जिसका उल्लेख समिति के बैठक कार्यवृत्त (परिशिष्ट–5) में किया गया है।

9. कम्प्यूटर विशेषज्ञ समिति की दिनांक 07.09.2013 को आयोजित बैठक में प्राप्त जानकारी से एस.टी.एफ.भोपाल को मण्डल के पत्र क. व्यापम/5957/2013, दिनांक 21.09.2013 (परिशिष्ट–6) के द्वारा अवगत करवाया गया।

10. एस.टी.एफ. भोपाल ने मण्डल द्वारा प्रेषित जानकारी का परीक्षण किया एवं मण्डल को अपने पत्र क. एस.टी.एफ. /मुख्यालय/2013/एम–74, दिनांक 27.09.2013 (परिशिष्ट–7) द्वारा यह अवगत करवाया कि पी.एम.टी. परीक्षा 2013 के लिये मण्डल द्वारा दिनांक 30.06.2013 को जारी परीक्षा केन्द्र सूची में कुल अभ्यर्थियों की संख्या 40135 उल्लेखित है, जबकि मण्डल द्वारा गठित तकनीकी समिति द्वारा 30195 रोल नंबर की जो मिसमैच संबंधी जानकारी उपलब्ध करवाई गई है वह 40086 अभ्यर्थियों से संबंधित है। जिसके आंधार पर शेष 49 को समाहित करते हुये परीक्षण उपरांत संशोधित जानकारी उपलब्ध करवाने हेतु लिखा गया।

11. एस.टी.एफ. भोपाल से प्राप्त पत्र के प्रकाश में परीक्षण करने पर पाया गया कि 49 अमान्य आवेदकों को नितिन मोहिन्द्रा, अजय कुमार सेन एवं सी. के. मिश्रा द्वारा नियम विरूद्ध रोल नंबर आवंटित कर दिये गये हैं, जिन्हें अमान्य प्रकरणों से संबंधित फाईल में रखा गया था। 49 अमान्य प्रकरणों के डेटा को वेबसाईट पर उपलब्ध 40086 के डेटा में शामिल कर 40135 अभ्यर्थियों की डेटा फाईल तैयार की गई तथा इसके आधार पर चाही गई आवश्यक जानकारी एस.टी.एफ. भोपाल को मण्डल के पत्र क. व्यापम/6071/2013, दिनांक 27.09.2013 (परिशिष्ट–8)के माध्यम से प्रेषित की गई।

12. तत्कालीन संचालक, श्री जॉन किंग्सली, ए.आर. म0प्र0 व्यावसायिक परीक्षा मण्डल के निर्देशानुसार पी.एम.टी. परीक्षा 2013 के रोल नंबर से संबंधित डेटा फाईल के रिकार्ड 40086 में 49 अतिरिक्त रिकार्ड शामिल करते हुये कुल संख्या 40135 हो जाने के फलस्वरूप पूर्व में गठित तकनीकी समिति के स्थानीय सदस्यों की बैठक कर प्रतिवेदन प्राप्त करने हेतु निर्देशित किया गया। जिसके प्रकाश में तकनीकी विशेषज्ञों की बैठक दिनांक 30.09.2013 को आयोजित की गई जिसमें तकनीकी विशेषज्ञ समिति के सभी स्थानीय 5 सदस्य उपस्थित हुये। समिति द्वारा पुनः 40135 की डेटा फाईल के आधार पर पी.एम.टी. परीक्षा 2013 के रोल नंबर आवंटन के लिये नितिन मोहिन्द्रा, अजय कुमार सेन तथा सी. के. मिश्रा द्वारा तत्समय उपयोग में लाये गये लॉजिक ज्ञात करने का प्रयास किया गया। जिसमें

पाया गया कि मण्डल में उपलब्ध 40135 की डेटा फाईल तथा तकनीकी समिति द्वारा तैयार की गई डेटा फाईल में न्यूनतम मिसमैच 876 (परिशिष्ट–9) प्राप्त हो रहा है जिसे तकनीकी समिति द्वारा पी.एम.टी. परीक्षा 2013 के रोल नंबर आवंटन हेतु उपयोग में लाया गया लॉजिक माना गया है। तकनीकी समिति द्वारा यह भी अवगत करवाया गया कि पी.एम.टी. 2013 परीक्षा में अभ्यर्थियों के रोल नंबर का आवंटर लॉजिक (जन्मतिथि + ट्रांजेक्शन आई.डी. के 7–11 भाग + सरनेम) के आधार पर इंडेक्सिंग करते हुये पहले सम एवं तत्पश्चात विषम रिकार्ड लेते हुए रोल नंबर आवंटित किये गये थे। जिसका उल्लेख समिति के बैठक कार्यवृत्त दिनांक 30.09.2013 (परिशिष्ट–10) में किया गया है।

13. एस.टी.एफ. भोपाल के पत्र क अमनि/एसटीएफ/पीए/2013–(एम–45) भोपाल दिनांक 18.09.2013 (परिशिष्ट–11) द्वारा एक आरोपी से जप्त सूची कमांक–1 की कापी (टायपिंग युक्त) जिसमें 317 अभ्यर्थी तथा एक अन्य दूसरे आरोपी से जप्त सूची कमांक 2 जिसमें 52 अभ्यर्थी (कुल 369 अभ्यर्थी) सम्मिलित है, प्रेषित करते हुए मण्डल से इनके भरे हेतु फार्म एवं एडमिट कार्ड की कलर्ड 2–2 हार्ड एवं साफ्ट कापी प्रदान करने का अनुरोध किया गया। मण्डल द्वारा यह जानकारी एस.टी.एफ. भोपाल को उपलब्ध करवाई गई है।

14. एस.टी.एफ. भोपाल द्वारा प्रेषित 369 अभ्यर्थियों की सूची का मण्डल में उपलब्ध पी.एम.टी. परीक्षा 2013 के डाटा से मिलान करने पर ज्ञात हुआ कि आवेदन क. 80016247, 80034595, 80005183, 80002064 एवं 80034884 (कुल 05) डाटा में उपलब्ध नहीं है तथा आवेदन नं. 80029699 (कुल 01) स. क. 157 एवं 271 पर दो जगह पर है। इस प्रकार कुल 6 आवेदनों को पृथक करने पर शेष 363 अभ्यर्थी पी.एम.टी. परीक्षा 2013 से संबंधित डेटा में उपलब्ध हैं, जिसकी सूचना मण्डल द्वारा पत्र कमांक–व्यापम/5979/2013 दिनांक 24.09.2013 (परिशिष्ट–12) द्वारा एस.टी.एफ. भोपाल को उपलब्ध करवाई गई है।

15. मण्डल द्वारा संस्थित तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई 876 अभ्यर्थियों की सूची जिनके रोल नंबर परिवर्तित होने की पुष्टि उनके द्वारा की गई है, का मिलान एस.टी.एफ. भोपाल एवं काईम ब्रांच, इंदौर द्वारा उपलब्ध करवाई गई कुल 363 अभ्यर्थियों की सूची से करने पर पाया गया कि 363 अभ्यर्थियों में से 345 अभ्यर्थी (परिशिष्ट–13), 876 अभ्यर्थियों की परिवर्तित रोल नंबर सूची में उपलब्ध है। यह 345 अभ्यर्थियों की सूची मण्डल के पत्र क. व्यापम/6071/2013, दिनांक 27.09.2013 के द्वारा एस.टी.एफ. भोपाल को भी उपलब्ध करवाई गई है।

16. कार्यालय सहायक पुलिस महानिरीक्षक(एस.टी.एफ.) मुख्यालय भोपाल के पत्र कमांक–समनि/एसटीएफ/मुख्यालय/2013–(एम–119) भोपाल दिनांक 07.10.2013 (परिशिष्ट–14) के द्वारा भी पूर्व में उल्लेखित 363 अभ्यर्थियों की सूची की पुष्टि निम्नानुसार की गई है :–

(i) आरोपी डॉ0 जगदीश सागर ने श्री नितिन मोहिन्द्रा को 317 परीक्षार्थियों के रोल नंबर सेट करवाने हेतु दिये थे। श्री नितिन मोहिन्द्रा द्वारा 317 में से 298 परीक्षार्थियों के रोल नंबर सेट करना बताया गया है।

(ii) आरोपी सुधीर राय तथा संतोष गुप्ता ने श्री नितिन मोहिन्द्रा को 52 अभ्यर्थियों के रोल नंबर सेट करवाने हेतु दिये थे। श्री नितिन मोहिन्द्रा द्वारा 52 में से 48 परीक्षार्थियों के रोल नंबर सेट करना बताया गया है।

(iii) आरोपी डॉ0 जगदीश सागर, श्री सुधीर राय तथा संतोष गुप्ता आदि के द्वारा श्री नितिन मोहिन्द्रा को पी.एम.टी. परीक्षा 2013 में जिन परीक्षार्थियों के रोल नंबर जिस प्रकार सेट करने हेतु दिये गये थे। व्यावसायिक परीक्षा मण्डल द्वारा उसी अनुसार रोल नंबर परीक्षार्थियों को आवंटित किए गए है, जिससे स्पष्ट है कि उक्त परीक्षार्थियों द्वारा आरोपियों के माध्यम से अनुचित तरीके से परीक्षा में लाभ प्राप्त किया गया है।

17. इस संबंध में मण्डल के द्वारा बनाये गये नियमों का भी अवलोकन एवं परीक्षण किया गया।

18. रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल होने, आरोपियों से सम्पर्क करने तथा रोल नंबर जनरेशन उपरांत परिवर्तित किये जाने के कारण म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पी.एम.टी. परीक्षा 2013 के आयोजन की नियम पुस्तिका के नियमों (परिशिष्ट–15) का उल्लंघन 345 अभ्यर्थियों द्वारा होना पाया गया है।

19. उपरोक्त तथ्यों पर समिति द्वारा परीक्षण, विश्लेषण एवं समग्र विचार उपरान्त पाया गया कि एस.टी.एफ. भोपाल एवं काईम ब्रांच, इंदौर द्वारा मण्डल को उपलब्ध करवाई गई अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई अनुशंसाओं अनुसार 345 अभ्यर्थी ऐसे हैं जो कि दोनों सूचियों में उपलब्ध है जिससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल है, इनके द्वारा इस प्रकरण के आरोपियों से सम्पर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन उपरांत परिवर्तित किये गये है। इस प्रकार 345 अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि वर्तमान में उपलब्ध दस्तावेजों से होती है। फलस्वरूप 345 अभ्यर्थियों की अभ्यर्थिता म0प्र0 व्यावसायिक परीक्षा मण्डल के आदेश कमांक–म0प्र0 व्यापम/6297/2013 दिनांक 09.10.2013 के द्वारा तत्काल प्रभाव से निरस्त की गई (परिशिष्ट–16)।

20. कार्यालय सहायक महानिरीक्षक, एस.टी.एफ. म.प्र. भोपाल के पत्र क. स. म.नि./एस.टी.एफ./मुख्यालय/2013/(एम–213), भोपाल दिनांक 22.11.2013 (परिशिष्ट–17) द्वारा डॉ0 संजीव शिल्पकार के कब्जे से प्राप्त पी.एम.टी. परीक्षा 2013 के 92 अभ्यर्थियों की सूची उपलब्ध करवाई गई है। इस सूची का मिलान बिन्दु कमांक–9 में उल्लेखित 876 अभ्यर्थियों की सूची जो कि परिशिष्ट–9 में संलग्न है,

से किया गया एवं पाया गया कि समस्त 92 अभ्यर्थी 876 अभ्यर्थियों की मिसमैच सूची में उपलब्ध है। इन 92 अभ्यर्थियों की सूची का मिलान बिन्दु कमांक–13 में उल्लेखित परिशिष्ट–13 में संलग्न 345 उन अभ्यर्थियों की सूची से किया गया, जिनकी अभ्यर्थिता म.प्र. व्यावसायिक परीक्षा मण्डल द्वारा आदेश क. म.प्र. व्यापम/6297/2013 दिनांक 09.10.2013 द्वारा निरस्त की जा चुकी है एवं पाया गया है कि 92 अभ्यर्थियों में से 22 अभ्यर्थी (परिशिष्ट–18) ऐसे है जिनकी अभ्यर्थिता पूर्व में ही निरस्त की जा चुकी है।

21. 92 अभ्यर्थियों की सूची में से शेष 70 अभ्यर्थी (परिशिष्ट–19) ऐसे पाये गये है जो कि पूर्व में अभ्यर्थिता निरस्त किये गये 345 अभ्यर्थियों की सूची में उपलब्ध नहीं है। उपरोक्त तथ्यों पर समिति द्वारा परीक्षण, विश्लेषण,एवं समग्र विचार उपरांत पाया गया कि एस.टी.एफ. भोपाल द्वारा मण्डल को वर्तमान में उपलब्ध करवाई गई 92 अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई, अनुशंसाओं अनुसार 70 अभ्यर्थी ऐसे है जो कि दोनों सूचियों में उपलब्ध है तथा इनकी अभ्यर्थिता पूर्व में निरस्त नहीं की है। इससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल है, इनके द्वारा इस प्रकरण के आरोपियों से संपर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन उपरांत परिवर्तित किये गये है। इस प्रकार 70 अतिरिक्त अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि वर्तमान में उपलब्ध दस्तावेजों से होती है।

22. समिति द्वारा रोल नंबर परिवर्तित करवाने संबंधी षडयंत्र में शामिल होने, आरोपियों से संपर्क करने तथा रोल नंबर जनरेशन उपरांत परिवर्तित किये जाने के कारण म. प्र. व्यावसायिक परीक्षा मण्डल द्वारा पी.एम.टी. परीक्षा 2013 के आयोजन की नियम पुस्तिका के नियमों (परिशिष्ट–15) का उल्लंघन 70 अभ्यर्थियों द्वारा होना पाया गया है।

(i) अध्याय–4, निर्देश एवं परीक्षा संचालन नियम के, 'महत्वपूर्ण' दिशा–निर्देश अनुसार :–

> *"ऑनलाईन आवेदन पत्र में भरी गई जानकारी का सत्यापन काउंसलिंग/प्रवेश के समय मूल दस्तावेजों के आधार पर संबंधित विभाग/संस्था द्वारा किया जायेगा। अतः बाद में यह पता चलता है कि सफल आवेदक द्वारा ऑनलाईन आवेदन पत्र भरते समय गलत अथवा असत्य जानकारी अथवा किसी जानकारी का छुपाया है, ऐसी स्थिति में यदि यह पाया गया कि कोई उम्मीदवार झूठी/गलत जानकारी देकर या सुसंगत तथ्यों को छुपा कर प्रवेश पाने में सफल हो गया है या प्रवेश के पश्चात किसी भी समय यह पाया गया कि आवेदक को किसी गलती या चूकवश प्रवेश मिल गया है, तो आवेदक को दिया गया प्रवेश संस्था प्रमुख/प्रवेश प्राधिकरण/मध्यप्रदेश व्यावसायिक परीक्षा मण्डल द्वारा*

उसके अध्ययन काल के दौरान तुरंत बिना किसी सूचना के रद्द किया जा सकेगा।"

(ii) इसी प्रकार बिन्दु क्र. 4.12 "अनुचित साधन" अनुसार :–

(क) परीक्षा कक्ष में अन्य परीक्षार्थी से किसी भी प्रकार का सम्पर्क।

(ख) अपने स्थान पर किसी अन्य व्यक्ति से परीक्षा दिलाना या परीक्षार्थी के स्थान पर अन्य कोई व्यक्ति उपस्थित होना।

(ग) परीक्षा कक्ष में अपने पास किसी भी प्रकार की प्रतिबंधित सामग्री रखना।

(घ) परीक्षा के दौरान चिल्लाना, बोलना, कानाफूसी करना, ईशारे करना व अन्य प्रकार से सम्पर्क साधना।

(ड.) अन्य परीक्षार्थी की उत्तरशीट या प्रश्न पुस्तिका से अन्य किसी प्रकार से नकल करना।

(च) अन्य परीक्षार्थी के साथ उत्तरशीट या प्रश्न पुस्तिका की अदला–बदली करना।

(छ) प्रतिबंधित सामग्री पाये जाने पर परीक्षार्थी द्वारा उसे सौंपने से इंकार करना या उसे स्वयं नष्ट करना।

(ज) नकल प्रकरण से संबंधित दस्तावेजों/प्रपत्रों पर हस्ताक्षर करने से मना करना।

(झ) समक्ष अधिकारी के निर्देशों की अवहेलना/अवज्ञा करना या उनके निर्देशों का पालन न करना।

(ञ) सक्षम अधिकारी के निर्देशानुसार उत्तरशीट या अन्य दस्तावेज वापस नहीं करना या वापस करने से मना करना।

(ट) परीक्षा कार्य में लगे कर्मचारियों/अधिकारियों को परेशान करना, धमकाना या शारीरिक चोट पहुंचाना।

उपरोक्त बिन्दुओं पर की गई विवेचना के आधार पर समिति इस निष्कर्ष पर पहुंचती है कि 70 अभ्यर्थियों की सूची में उल्लेखित अभ्यर्थियों द्वारा परीक्षा नियमों का उल्लंघन स्पष्टतः दृष्टिगोचर होता है। अतः समिति समस्त 70 अभ्यर्थियों की अभ्यर्थिता तथा परिणाम निरस्त किये जाने की अनुशंसा करती है।

हस्ता/–30.11.13	हस्ता/–30.11.13	हस्ता/–30.11.13
(के. के. सोनी)	(आर.एस. मुजाल्दा)	(डॉ. आलोक निगम)
उप नियंत्रक	वित्त अधिकारी	संयुक्त नियंत्रक

हस्ता/–30.11.2013 हस्ता/–30.11.13
(डॉ. एस.के. गांधी) (डॉ. संजय कुमार जैन)
संयुक्त नियंत्रक प्रभारी नियंत्रक"

(emphasis supplied)

(xxii) After receipt of this report, the Director placed the matter before the Chairman with recommendation to take action against 70 additional candidates identified by the Joint Controllers Committee. The Chairman approved the said proposal and issued directions to initiate action against the said 70 candidates. As a result, the Director processed the matter further and finally issued the order on 06th December, 2013, which reads thus:

"म.प्र. व्यावसायिक परीक्षा मण्डल, भोपाल

"चयन भवन" चिनार पार्क (ईस्ट) मेन रोड नं. 1, भोपाल–462011

क.म. प्र. व्यापम/7254/2013 भोपाल, दिनांक 06.12.2013

//आदेश//

मण्डल द्वारा दिनांक 07.07.2013 को आयोजित पी.एम.टी. परीक्षा 2013 के उपलब्ध व्यवस्थित डेटा के लॉजिक के संबंध में कम्प्यूटर विषय–विशेषज्ञों के द्वारा प्रदान की गई मिसमैच रिपोर्ट तथा एस.टी.एफ. से प्राप्त रिपोर्ट के परिप्रेक्ष्य में पी.एम.टी. 2013 की समग्र गहन छानबीन एवं निष्कर्ष हेतु एक 5 सदस्यीय समिति गठित की गई।

समिति द्वारा संबंधित नस्तियों, अभिलेखों एवं नियमों का परीक्षण करने के उपरांत अपना विस्तृत प्रतिवेदन प्रस्तुत किया गया। प्रस्तुत प्रतिवेदन का अवलोकन किया गया। इस प्रतिवेदन में समिति ने रोल नंबर में हेराफेरी, रोल नंबर का अभ्यर्थियों को अनुचित रूप से आवंटन, बिना सक्षम अधिकारी के आदेश के निरस्त आवेदनों के आधार पर रोल नंबर जारी किया जाना पाया गया एवं मण्डल द्वारा बनाये गये परीक्षा नियमों का भी उल्लंघन होने का भी उल्लेख किया गया है।

समिति ने पी.एम.टी. परीक्षा 2013 के आयोजन की नियम पुस्तिका के अध्याय–4, निर्देश एवं परीक्षा संचालन नियम के "महत्वपूर्ण" दिशा–निर्देश का उल्लेख किया है, जिसके अनुसार

"ऑनलाईन आवेदन पत्र में भरी गई जानकारी का सत्यापन काउसंलिंग/प्रवेश के समय मूल दस्तावेजों के आधार पर संबंधित विभाग/संस्था द्वारा किया जायेगा। अतः बाद में यह पता चलता है कि सफल आवेदक द्वारा ऑनलाईन आवेदन पत्र भरते समय गलत अथवा असत्य जानकारी अथवा किसी जानकारी का छुपाया है, ऐसी स्थिति में

यदि यह पाया गया कि कोई उम्मीदवार झूठी/गलत जानकारी देकर या सुसंगत तथ्यों को छुपा कर प्रवेश पाने में सफल हो गया है या प्रवेश के पश्चात किसी भी समय यह पाया गया कि आवेदक को किसी गलती या चूकवश प्रवेश मिल गया है, तो आवेदक को दिया गया प्रवेश संस्था प्रमुख/प्रवेश प्राधिकरण/मध्यप्रदेश व्यावसायिक परीक्षा मण्डल द्वारा उसके अध्ययन काल के दौरान तुरंत बिना किसी सूचना के रद्द किया जा सकेगा।"

इसी प्रकार नियम के बिन्दु क्र. 4.12 के अन्तर्गत परीक्षा कक्ष में अन्य परीक्षार्थी से किसी भी प्रकार का सम्पर्क, अपने स्थान पर किसी अन्य व्यक्ति से परीक्षा दिलाना या परीक्षार्थी के स्थान पर अन्य कोई व्यक्ति उपस्थित होना, परीक्षा के दौरान चिल्लाना, बोलना, कानाफूसी करना, ईशारे करना व अन्य प्रकार से सम्पर्क साधना,अन्य परीक्षार्थी की उत्तरशीट या प्रश्न पुस्तिका से अन्य किसी प्रकार से नकल करना, अन्य परीक्षार्थी के साथ उत्तरशीट या प्रश्न पुस्तिका की अदला–बदली करने का उल्लेख किया गया है।

उपरोक्त तथ्यों पर समिति द्वारा परीक्षण, विश्लेषण एवं समग्र विचार उपरांत पाया गया कि एस.टी.एफ. भोपाल द्वारा मण्डल को उपलब्ध करवाई गई अभ्यर्थियों की सूची एवं तकनीकी विशेषज्ञ समिति द्वारा उपलब्ध करवाई गई अनुशंसाओं अनुसार 70 अभ्यर्थी ऐसे हैं जो कि दोनों सूचियों में उपलब्ध हैं जिससे यह स्पष्ट होता है कि यह अभ्यर्थी रोल नंबर परिवतित करवाने संबंधी षडयंत्र में शामिल हैं, इनके द्वारा इस प्रकरण के आरोपियों से सम्पर्क किया गया है तथा अभ्यर्थियों के रोल नंबर जनरेशन उपरान्त परिवर्तित किये गये है। इस प्रकार 70 अभ्यर्थियों को अनुचित लाभ पहुंचाये जाने की पुष्टि की गई है।

प्रतिवेदन में उल्लेखित रोल नंबर के लॉजिक संबंधी प्रतिवेदन, पुलिस के द्वारा प्राप्त दस्तावेज समिति का प्रतिवेदन एवं मण्डल द्वारा बनाये गये नियमों से यह स्पष्ट हो जाता है कि 876 अभ्यर्थियों के रोल नंबर बिना किसी कारण अनुचित ढंग से परिवर्तित कर दिये गये हैं, जिनमें से 70 अन्य अभ्यर्थियों के नामों की पुष्टि समिति द्वारा की गई है। यह अभ्यर्थी मण्डल द्वारा पूर्व में जारी आदेश क्रमांक–म0प्र0व्यापम/6297/2013 दिनांक 09.10.2013 के द्वारा निरस्त किये गये 345 अभ्यर्थियों के अतिरिक्त है।

यहां यह भी उल्लेखनीय है कि इन 70 रोल नंबरों में एक पैटर्न उभरकर आता है जिसमें मध्यप्रदेश के अभ्यर्थी को अन्य प्रदेश के अभ्यर्थी के साथ सुनियोजित ढंग से क्रम में रोल नंबर आवंटित किया गया है। किसी भी रेण्डम प्रकिया के पालन करने से ऐसा पैटर्न उभरना संभव नहीं है।

समिति के प्रतिवेदन के परिप्रेक्ष्य में अभिलेखों का परीक्षण करने के उपरान्त करने के उपरान्त यह समाधान हो गया है कि 70 अभ्यर्थियों को अनुचित

तरीके से रोल नंबर आवंटित कर परीक्षा नियमों का उल्लंघन करते हुए लाभ पहुंचाया गया है। अतः इन 70 अभ्यर्थियों (परिशिष्ट–1) की अभ्यर्थिता तत्काल प्रभाव से निरस्त की जाती है।

संलग्न : उपरोक्तानुसार परिशिष्ट–1

हस्ता./–
संचालक
म.प्र. व्यावसायिक परीक्षा मण्डल
भोपाल

(emphasis supplied)

(xxiii) Indeed, this decision has still not been placed before the Executive Committee as it is stated that no meeting of the Executive Committee could be convened since then. It is, however, stated across the Bar by the counsel for the Board that as and when the next Executive Committee meeting will be convened, the proposal and the said matter will be placed for consideration of the Executive Committee and for ratification.

(xxiv) The Joint Controller (Exam.) moved a proposal on 28th December, 2013 to blacklist the examination centers where the unfair means were resorted to by the candidates and presumably in connivance with the officials thereat. After processing the said proposal, the Controller (Exam) issued order on 1st February, 2014 to blacklist the named examination centers. The said order reads thus:

"म0प्र0 व्यावसायिक परीक्षा मण्डल, भोपाल

क्रमांक/म0प्र0/व्यापम/5–प–1/751/2014 भोपाल,दिनांक 1/2/14

आदेश

प्रदेश के शासकीय, स्वशासी एवं निजी चिकित्सा महाविद्यालयों में शैक्षणिक सत्र 2012–13 एवं (अपठित) अंतर्गत चिकित्सा, दंत चिकित्सा, पशुचिकित्सा एवं मत्स्य विज्ञान से संबंधित पाठ्यक्रमों में प्रवेश हेतु मण्डल द्वारा आयोजित प्री0 मेडिकल टेस्ट 2012 एवं प्री0 मेडिकल टेस्ट 2013 के अंतर्गत परीक्षण उपरांत यह पाया गया की निम्नलिखित परीक्षा केन्द्रों पर संदिग्ध अभ्यर्थी लगातार दो वर्षो से सम्मिलित हुए:–

(1) शासकीय कमला नेहरू गर्ल्स हायर सेकेण्डरी स्कूल टी0टी0 नगर, भोपाल

(2) शासकीय कस्तूरबा हायर सेकेण्डरी स्कूल नार्थ टी0टी0 नगर, भोपाल

(3) शासकीय अहिल्या आश्रम एण्ड चन्द्रवती गर्ल्स हायर सेकेण्डरी स्कूल–1, पोलो ग्राउन्ड,इन्दौर

(4) शासकीय मल्टीपर्पस मल्हार आश्रम, हायर सेकेण्डरी स्कूल–24 तिलक पथ, रामबाग, इन्दौर

(5) शासकीय शारदा गर्ल्स हायर सेकेण्डरी स्कूल बड़ा गणपति इन्दौर

(6) शासकीय नूतन हायर सेकेण्डरी स्कूल, चिमनबाग, इन्दौर

प्री0 मेडिकल टेस्ट 2012 एवं प्री0 मेडिकल टेस्ट 2013 के अंर्तगत उक्त केन्द्रों पर परीक्षा के सुचारू एवं व्यवस्थित संपादन में परिलक्षित हुई अनियमितताओं के कारण मण्डल की छवि आम जनमानस में धूमिल हुई अतः मंडल द्वारा भविष्य में आयोजित की जाने वाली परीक्षाओं में उपरोक्त केन्द्रों को काली सूची में शामिल किया जाता है। साथ ही इन परीक्षा शहरों के समन्वयकों को निर्देशित किया जाता है कि उक्त केन्द्रों में कार्यरत् वीक्षकों एवं पर्यवेक्षकों को भविष्य में मण्डल की किसी भी परीक्षा में कार्य पर न लगाया जाये।

नियंत्रक
म.प्र. व्यावसायिक परीक्षा मण्डल
भोपाल"

5. Suffice it to note that on the basis of the above said orders dated 9th October, 2013 and 6th December, 2013, the colleges in which the concerned candidates had taken admissions on the basis of entrance examination results declared on 13th July, 2013 came to be cancelled. As aforesaid, all these petitions essentially not only challenge the orders passed by the Board, but, also the action of the concerned college in cancelling their admissions.

6. (i) Let us now turn to the grounds of challenge as canvassed by the respective counsel for the petitioners. Mr. Amitabh Gupta, learned counsel appearing in W.P. Nos. 20908/2013 & 21518/2013 argued that the impugned decision taken by the Director to cancel the examination results is without authority of law. The Board alone could have taken such a drastic decision. Further, the ex *post facto* ratification of such a decision is impermissible. The impugned order is based on the report of committees whose constitution is not in consonance with the provisions of the Madhya Pradesh Vyavsayik Pariksha Mandal Adhiniyam, 2007 (I) [hereinafter referred to as "the Act of 2007 (I)]". The Board could not have entrusted the inquiry to any Committee. It is then submitted that, at any rate, after the declaration of results by the

Board on 13th July, 2013, it had become *functus officio*. In that, the Board could not have enquired into the issue of eligibility of the students who have already been declared as passed in the subject examination. That Authority vests in the Board only when the examination process is on going and not after the declaration of the results.To buttress this submission, reliance has been placed on the provisions of the Act of 2007 (I) and terms specified in the Brochure issued by the Board in relation to the examination in question. It is then contended that the irregularities referred to in the impugned orders of the Board are purely founded on the report of STF and not the opinion of the Experts Committee appointed under the orders of the Chairman. Further, the opinion of the Experts Committee was false and concocted on the basis of communication received from STF dated 27.9.2013. Before the Experts Committee could meet and form its opinion the Board wrote to STF about involvement of only 876 candidates vide letter dated 27.9.2013. That figure corresponds with the figure mentioned in the charge-sheet. At any rate, the opinion of the Experts Committee was entirely different and limited to the acts of commission and omission of swapping of roll numbers. It is then contended that the Board has acted as per the dictation of the STF for taking action against 345 students by one fiat, vide order dated 9th October, 2013. The constitution of the Committee and including the Computer Experts Committee was only a farce of inquiry. It is also contended that from the notings made in the file, which were made available to the petitioners under the Right to Information Act, it leads to an inevitable conclusion that the impugned decision taken by the Board is vitiated. Notably, the Minutes of the Executive Committee dated 19.11.2013 are not even signed. It necessarily follows that there is no ratification by the Executive Committee. He further contends that the opinion of the Committee as well as the decision of the Board proceeds on suspicion deduced from circumstances and not actual fact of candidate having indulged in unfair means. No such conclusion could be reached keeping in mind the Law relating to circumstantial evidence. It is then contended that the impugned decision is on the face of it in violation of the principles of natural justice. In that, no opportunity whatsoever was given to any student, whose examination results came to be cancelled vide impugned decision dated 9th October, 2013. It is also submitted that out of total 415 candidates against whom action has been taken; only 115 candidates had taken admission in the concerned Medical Colleges and out of them, only 65 candidates have approached this Court by way of writ petitions. Rest of the candidates have reconciled with the impugned order passed by the Board for

the reasons best known to them.

(ii) In anticipation of the argument to be canvassed on behalf of the Board, Shri Amitabh Gupta submitted that post decisional hearing to be given to the affected candidates, in the fact situation of the present case, will be impermissible. In other words, the impugned order will have to be set aside as a whole and not conditionally.

(iii) To buttress the above submissions, Shri Gupta has relied on the following Supreme Court decisions in the case of *The Punjab University, Chandigarh Vs. Vijay Singh Lamba and others* [1] (Para 7), *Rashmi Metaliks Limited and another Vs. Kolkata Metropolitan Development Authority and others*[2] (Para 10), *State of M.P. and others Vs. Hukum Chand Mills Karmchari*[3], *State of Andhra Pradesh and another Vs. Dr. Mohanjit Singh and another*[4], *Shekhar Ghosh Vs. Union of India and another*[5] and *M/s Bishamber Dayal Chandra Mohan etc. etc. v. State of U.P. and others*[6] etc. etc.(para 27).

7. Shri Sanjay K. Agrawal, learned counsel appearing in W.P. No.21297/2013 argued that the academic record of the petitioner has been exemplary from school level. It is unfathomable that student with such academic record would indulge in unfair means by engaging scorer. He further submitted that even on a fair and close reading of the report of the Computer Experts Committee, it is not possible to decipher as to what logic was applied by the Committee to reach at the conclusion as recorded in its report dated 7.7.2013. Further, there is nothing to indicate that all the members were present in the meeting. Rather, the said meeting was hastened in absence of the outstation member. He submits that to do substantial justice to the students, the Board ought to have and therefore, be directed to conduct fresh examination of all students, at least for 415 candidates against whom action has been taken by the Board. He submitted that Clause 4.6 of the Brochure permits the candidate to opt for change of roll number within five days. Thus understood, it is preposterous to proceed against the candidates on the allegation of swapping

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1. (1976) 3 SCC 344
2. (2013) 10 SCC 95
3. 1996 (7) SCC 81
4. 1988 (Supp.) SCC 562
5. 2007 (1) SCC 331
6. AIR 1982 SC 33

of roll numbers. He further submitted that there is no legal evidence to even remotely suggest that the roll number of petitioner for whom he was appearing has ever been changed after it was generated.

8. Ms. Durgesh Thapa, learned counsel appearing for the petitioners in Writ Petition Nos.21562/2013 & 21566/2013 submits that the petitioners were not involved in copying, cheating or impersonation. No such contemporaneous report was submitted by any invigilator. On the other hand, the petitioners were allowed to participate during the counselling which was prelude to granting admission to the concerned petitioners. She submits that nine candidates against whom action has been taken vide impugned decisions are on death bed and one student has died. All this has happened because of the high handed action of the STF. She submits that the petitioners for whom she is appearing, have already been admitted to medical course. Therefore, the impugned decision of the Board should be set aside and their admission be kept intact. She submits that the Board could have been constituted only with the approval of the Medical Council of India. Further, the examination results were required to be submitted to Council under the control of Central Government. That has not been done. She has relied on the decision in the case of *Rama Shankar Singh and others vs. the Principal, Darbhanga Medical College and others,*[7] to buttress the above submissions. Learned counsel also adopted the arguments of the previous Advocates and relied on the decision of the Supreme Court in the case of *Ravindra Kumar Rai vs. State of Maharashtra and others*[8], *Medical Council of India vs. State of Karnataka*[9], *State of Kerala vs. Kumari T.P. Roshana and another*[10], and *Mriduldhar (Minor) and another Vs. Union of India and others*[11].

9. Shri Aditya Sanghi, learned counsel appearing in four writ petitions (W.P. Nos.20050/2013, 21506/2013, 21534/2013 & 203/2014) broadly adopted the submissions made by Shri Gupta in the leading writ petition. In addition, he submits that from the reply affidavit filed by the Board, the allegation against the petitioners for whom he is appearing was that they employed scorers for improving their examination performance; and secondly, being involved in interpolation of roll numbers. According to him, each of the

7. AIR 1969 Patna 11
8. AIR 1998 SC 1227
9. AIR 1998 SC 2423
10. 1979 (1) SCC 572
11. (2005) AIR SCW 471 = (2005) 2 SCC 65

petitioners for whom he is appearing had scored distinction in the previous examinations including in entrance test examination conducted in the year 2012. It is, therefore, unfathomable that such a student would engage in employing scorer. According to him, the impugned decisions are founded on mere suspicion against the concerned candidates. There is no legal evidence to substantiate their involvement in the alleged unfair means. The petitioners for whom he is appearing are meritorious candidates and should not be made to suffer for the wrong committed by some one else. He also submitted the petitioners for whom he is appearing are released on bail by the criminal court. According to him, the entire action is vitiated being in breach of principles of natural justice. He submitted that it is not open to the Board to argue that no useful purpose would be served by giving opportunity to the affected candidates. To buttress the above submissions, he has relied on the decision of the Supreme Court in the case of *Olga Tellis and others Vs. Bombay Municipal Corporation and others*[12] and *Priya Gupta Vs. State of Chhattisgarh and others*[13] (paragraphs 48 to 50) and quotation from the Principles of Administrative Law by Justice G.P. Singh, 5th Edition Page 274 to 275. He submitted that the petitioners be allowed to continue with the course for which they were already admitted. Their admissions could at best be made subject to the outcome of the criminal case pending against them, to do substantial justice.

10. Shri D.C. Gupta, learned counsel appearing in four writ petitions (W.P. Nos. 21505/2013, 21514/2013, 21533/2013 and 21536/2013) besides adopting the arguments of Shri Aditya Sanghi, additionally contended that each of the petitioners for whom he is appearing were meritorious candidates and have excellent academic records. Because of the impugned action taken by the Board, the candidates were shell shocked and even attempted to commit suicide. Further, in the charge-sheet filed against the petitioners for whom he is appearing, the allegations are that they indulged in copying from the students sitting on the front seat. There is no other allegation against them. Moreover, no legal evidence was placed before the Experts Committee or the Director/ Chairman of the Board suggestive of petitioner, in any manner, being responsible for swapping of the roll numbers. He submitted that it is relevant to note that twenty petitioners scored less marks than the scorers. Moreover, two scorers were absent. This goes to show that the genuine candidates have been

12. AIR 1986 SC 180
13. (2012) 7 SCC 433

erroneously found having indulged in unfair means. He submits that the petitioners for whom he was appearing had participated in the other pre-entrance professional courses examination and secured 89 percent. He vehemently submitted that the impugned decision of the Board in cancelling the examination process of the petitioners be set aside and the admission given to the concerned petitioners in professional course be kept in tact.

11. Shri Manoj Kumar Sharma, learned counsel appearing in five writ petitions (W.P. Nos. 1067/2014, 1069/2014, 1842/2014, 1843/2014 and 1929/2014), in addition, argued that the petitioners finally took admission against payment seats in private Medical College. In that case, cancellation of entrance examination results by the Board cannot obliterate the right accrued to those petitioners consequent to admission against payment seats in a private College. Moreover, the students sitting in front and behind the petitioners in the same examination did not even qualify. In that eventuality, the logic that the petitioners engaged in unfair means is faulty and no reasonable man would come to that conclusion. He further submitted that no opportunity was given to the petitioners before cancellation of examination results and as a consequence of which admission has also been cancelled resulting in civil consequences. He has reiterated the arguments canvassed by earlier Advocates that the only basis on which the Board has proceeded is the information received from the STF and no independent inquiry has been conducted.

12. Shri Manikant Sharma, learned counsel appearing in four matters (W.P. Nos. 21827/2013, 21828/2013, 21830/2013 and 21831/2013) submitted that in three matters, the facts are identical. Each of the petitioners obtained marks below cut off marks. They were not admitted in Government Colleges. Thus, no benefit accrued to the said petitioners from the entrance examination conducted by the Board. Moreover, the petitioner in Writ Petition No.21827/2013 had cleared the National Examination. Each petitioner was meritorious student with excellent academic record. They have secured distinction. Hence, it is unfathomable that such student would employ scorer for improving his performance in the examination. He further submitted that the Board has not mentioned separate grounds qua the respective candidates. A blanket order has been passed applying the same brush to all the candidates without specifically indicating the acts of commission and omission of respective candidates whose examination results have been cancelled. He submits that identical ground for cancellation of entrance examination results of such large

number of candidates cannot be countenanced and more so when there is neither legal evidence nor any contemporaneous report of Supervisor or Invigilator suggestive of involvement of the concerned candidate in the commission of unfair means. It is argued that act of copying is an overt act. It is not covert act. In absence of complaint from any examination center about copying, no action could be taken by the Board. He then argued that although the STF list contains names of 92 candidates, vide impugned order dated 6th December, 2013, action is taken only against 70 candidates. The Board has resorted to pick and choose and has selectively proceeded against only some of the candidates. No explanation is forthcoming as to why 22 candidates from the STF list were left out. He further argued that the petitioners had submitted on-line applications and had received roll number as well as admit card. The allocation of that roll number remained unchanged. The petitioners did not apply for cancellation of roll numbers as was allotted to them. Thus, it is preposterous to assume that those candidates indulged in swapping of roll numbers. He further submitted that the Board has asserted that the candidates were involved in copying; whereas the respondent No.5 asserts that candidates were party to the conspiracy of change of roll numbers. Relying on the Brochure issued by the Board inviting on line application, it is argued that the action could be taken only when the examination is on going. After declaration of results, the Board ceases to have any authority to proceed against the candidates who had appeared in that examination. He submitted that the Examination Halls were fitted with CCTV Cameras. That evidence has been completely overlooked which would go to show that the petitioners were not involved in copying. He further submitted that mass scale irregularities came to light on 6th July, 2013. The arrest of 20 boys who had come from other States was made on 6th July, 2013. The Board remained a silent spectator and did not postpone the examination. Instead, it proceeded to conduct the examination as per schedule. Further, the Board proceeded to declare the results of all the candidates. No action was taken by the Board till December, 2013. It is only after political personalities were called for interrogation by the Investigating Officer, the Board moved into action and made a farce of inquiry to justify cancellation of examination results of the candidates who were meritorious. Those candidates have been made scapegoat. He further submitted that the constitution of the Computer Experts Committee was a farce of inquiry. He submitted that the petitioner in Writ Petition No.21380/2013 was a meritorious candidate and has been admitted in Government College having

secured 71.8% marks in Class 12th and distinction in three subjects. It is further argued that the Board has failed to adhere to procedure prescribed in Clause 4.12 of the Brochure, assuming that, that procedure applied to the present case. No material is forthcoming suggestive of the fact that the petitioner was connected with any accused persons. Further, there is nothing in the impugned decision to substantiate that the petitioner got his roll number changed from old roll number to re-allocated roll number.

13. (i) Shri Rajendra Tiwari, learned Senior Advocate appearing in two writ petitions (W.P. Nos.21525/2013 and 321/2014) invited our attention to the scheme of Act of 2007 (I). He submitted that as per that scheme, the examination ends with declaration of results. After declaration of results, the Board becomes *functus officio*. As a result, finality must be attached to the results declared on 13th July, 2013. He submitted that unlike the State Government, the Board does not have perpetual existence. It has assigned objectives as provided by the statute. By virtue of Section 3 of the Act of 2007 (I), the Board is incorporated. No Regulations have been framed by the Board in exercise of power conferred on it by the Act of 2007 (I). For that reason, reference can be made only to Clause 4.12 of the Brochure which requires report of Supervisor, Invigilator etc. to ignite the process by the Board to declare the candidate having incurred disqualification because of indulging in unfair means. That is the quintessence for initiating action. The same is lacking in the present case. The Board in the present case had very limited option. It could only refer the matter to local Police for initiating criminal action. No other civil action, much less of cancellation of examination result of the candidates, was permissible. Relying on Clause 4.22 of the Brochure, he submitted that the role of Board is limited to conducting examination and declaration of results. Having declared the results, it could not have *suo motu* started any action on the basis of subsequent information gathered regarding commission of unfair means during the examination. In all fairness, he disagreed with the submission made by the previous Advocates that the Chairman/Board could not have constituted Computer Experts Committee to aid and advice and to facilitate the Board/Chairman to take decision. He submitted that the Board has intrinsic authority vested in it to discharge its executive duties. He then submitted that there were apparent discrepancies in the approach adopted by the Experts Committee. Having found that, the mismatch was over 75%, the Board/Chairman ought to have cancelled the entire examination and not limited to 415 candidates. He submits that if the Board after cancellation of examination could not complete fresh process before the cut off date specified by the Supreme Court, could have applied to the Supreme Court for extension of

time. In other words, the Board was selectively proceeding against 415 candidates out of mismatch of 30195 candidates. He further submitted that some of the petitioners have taken admission in Private Colleges against the management quota. The admission so granted to them cannot be undone nor inquired into. At best, that could be possible only under the provisions of Madhya Pradesh Niji Vyavsayik Shikshan Sanstha Pravesh Ka Viniyaman Evam Shulk Ka Nirdharan Adhiniyam, 2007 [hereinafter referred to "the Act of 2007(II)"].

(ii) He submitted that assuming without admitting that the Board/Chairman had authority to cancel the admission process after declaration of results even then the decision taken by the said authority cannot affect the admission given to the petitioners in Private Colleges against the management quota. For that reason, the decision of the College in cancelling the admission of such students cannot be sustained.

(iii) He has invited our attention to the provisions of the Admission Rules, 2008 framed in exercise of powers conferred under Section 12 of the Act of 2007 (II). He submits that since no Rules have been framed under the Act of 2007 (I) to govern the situation under consideration, the Board was duty bound to act reasonably. He submitted that the impugned decision of the Board does not separately disclose the acts of commission or omission of the concerned petitioner for taking action against them. In that, whether it is a case of copying or of employing scorer to enhance the marks in the examination and if so, the manner in which it has been done by the concerned candidate. Further, no explanation is forthcoming about the role of Supervisors, Invigilators and of any action taken against them. He submitted that the final decision was based on the finding of some Committee (Samiti). It is not clear whether reference is to Computer Experts Committee or some other Committee. There is no material to indicate about the manner in which analysis was done and by whom for arriving at the conclusion of involvement of the named candidates. The conclusion is based on fact which has not been inquired into. He submits that commission of unfair means must be detected in the examination hall. That fact cannot be assumed. More so, when the sitting plan on record mentions the safe distance between two candidates. Besides, the question papers distributed to the candidates were not identical. The question of copying by the student from scorer is completely ruled out. He submits that mentioning of name of the candidate in some material recovered during the investigation by the police cannot be the basis to take such a drastic action against the candidate.

(iv) He further submitted that one of the petitioners for whom he is appearing, secured 141 marks whereas the so called scorer secured 143 marks. This presupposes that the petitioner did not engage any scorer. He submitted that the order of cancelling the examination and more so, of admission to professional courses already granted to any student is a drastic order to be passed. That cannot be done on the basis of suspicion, but only on clear proof of concerned student having engaged in unfair means during the examination. Further, the allegations must be substantiated with legal evidence. He submitted that before taking final decision, it was necessary to find out as to who indulged in change of roll numbers to benefit selective candidates and whether the candidate was himself responsible for the same.

(v) He submitted that the Board had enough time to cancel the entire examination having realized that mass scale unfair practice was resorted to. The Board, in the first place, should have deferred the examination and in any case, should not have declared the results till the entire inquiry was over. It had sufficient time on hand as the admission process was required to be completed only before 30th September, 2013, in view of the decision of the Apex Court in *Mriduldhar's* case.

(vi) He submitted that it is not open to the Board to contend that post decisional hearing can be given to the candidates to overcome the untenable decision making process of not giving opportunity to the candidates against whom action has been taken which entails in civil consequences. He submitted that adhering to the principles of natural justice is a *sine qua non* of fair and reasonable approach to be adopted by the Board and especially when its decision entails in civil consequences. The Board has not resorted to even inquisitorial dispensation before taking final decision. He submitted that in the fact situation of the present case, the whole examination ought to have been cancelled and not limited to cancelling the candidature of only 415 candidates. Further, the impugned decision of the Board is in the nature of quasi judicial decision. While discharging quasi judicial function, the Board was obliged to adhere to the principles of natural justice. He has also placed reliance on Section 10 of the Evidence Act to contend that assuming that actionable wrong was committed, that act could not be made the basis of taking decision after declaration of results, not being a relevant fact sans legal evidence. He further submitted that in the event of setting aside of the impugned decision of the Board dated 9th October, 2013 or 6th December, 2013 as the case may be, in order to do complete justice to the petitioners the Court must hold that status *quo ante* is restored to the date of admission in the Medical Colleges and, the

concerned petitioner be permitted to pursue the medical courses. To buttress the above submissions, reliance has been placed on *Mriduldhar (Minor)* (supra), *Sudhir Kumar Mishra and other Vs. Municipal Corporation, Jabalpur and another*[14], *Varkey Joseph Vs. State of Kerala*[15] (Para 12), *Shekhar Ghosh Vs. Union of India and another* (supra) (Para 14, 17, 20 & 22), *The Board of High School and Intermediate Education, U.P. and others Vs. Kumari Chitra Srivastava and others*[16] (Para 8), *The Bihar School Examination Board Vs. Subhas Chandra Sinha and others*[17] (para 13), *Board of High School and Intermediate Education, UP Allahabad Vs. Ghanshyam Das Gupta and others*[18] (Para 2, 11 & 12), *Indra Methi and others Vs. Board of Secondary Education Rajasthan, Ajmer and others*[19], *State of Gujarat Vs. Mohammed Atik and others*[20] (Para 14), *Satyabrata Biswas and others Kalyan Kumar Kisku and others*[21] (Para 19 & 20), *State of M.P. vs. Thakur Bharat Singh*[22], *Asha vs. Pt. B.D.Sharma University of Health Sciences and others*[23], *Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav*[24], *Ram Kumar v. State of U.P. & others*[25], *West Bengal Council of Higher Secondary Education & others v. Roupshanara Momtaz & another*[26], *Reshmi George vs. State of Kerala and another*[27], *Board of High School and Intermediate Education, U.P. Allahabad and another Vs. Bagleshwar Prasad and another*[28], *Bihar School Examination Board vs. Subhas Chandra Sinha* (supra), and *Central Bureau of Investigation vs. V.C. Shukla and others*[29]. In the rejoinder-reply, learned counsel reiterated that a PIL was filed challenging the constitution of the existing Board. In that proceeding statement was made that the Act of 2007 (I) has been enacted and on that basis the said petition was disposed of. The State, however, has till date not issued notification under Section 3 of the Act of 2007 (I) to establish the statutory Board. Therefore, the existing Board cannot function and all actions of the present Board are non-est. He also submitted that the State has enacted Universities Act of 1973 and, therefore, the subject of admission including pre-admission examination can be controlled only by the provisions of

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14. 1978 MPLJ 9 (FB-MP) = AIR 1978 (M.P.) 65 (F.B.)
15. (1993) Supp. 3 SCC 745
16. (1970) 1 SCC 121
17. (1970) 1 SCC 648
18. AIR 1962 SC 1110
19. AIR 1975 Rajasthan 116
20. (1998) 4 SCC 351
21. (1994) 2 SCC 266
22. AIR 1967 SC 1170
23. (2012) 7 SCC 389
24. (2003) 3 SCC 437
25. AIR 2011 SC 2903
26. AIR 1991 Calcutta 310
27. AIR 1997 Kerala 188
28. AIR 1966 SC 875
29. AIR 1998 SC 1406

that Act and the Ordinance issued thereunder. The question of exercising executive powers under Article 162 of the Constitution qua subject of admission cannot be sustained. He relied on the decision of the Apex Court in *Prabhakar Ramkrishna Jodh vs. A.L. Pande*[30] wherein it is held that Ordinance has the force of Law. He alternatively submitted that the action, if at all, could be taken by the Director of Medical Education who had conducted the counselling or by the University where the candidate is admitted. He submitted that the impugned orders passed by the Director of the Board cannot be the sole basis to cancel the admission of the candidate.

14. In W.P. No.20342/2013 and W.P. No. 18738/ 2013, Shri K.K. Goutam, Advocate; in W.P. No.18728/2013 and 2345/2014 Shri Ramji Mishra, Advocate; in W.P. No.19465/2013 Shri Prabhakar Singh, Advocate; in W.P. No.21297/2013 Shri Sanjay K. Agrawal, Advocate; in W.P.No.21530/2013 Shri Ishan Soni, Advocate; in W.P. No.21554/2013 Shri R.N. Dwivedi, Advocate have adopted the arguments of Shri Rajendra Tiwari, Senior Advocate.

15. Mr. Vijay Tulsiyan, learned counsel appearing for the petitioners in three matters (W.P. Nos.21522/2013, 21516/2013 and 2618/2014) in addition submitted that the said petitioners had taken admission in private colleges against the management quota. He adopted the arguments of the previous Advocates and contented that post decisional hearing is not permissible in the fact situation of the present case. The order must go as a whole for infraction of principles of natural justice. In the alternative, he submitted that if the Court were to accept the stand of the Board that the deficiency of violation of principles of natural justice could be cured by providing post decisional hearing by the Board, in that case the petitioners be allowed to continue with the studies until the final decision is taken by the Board. He has placed reliance on the decision of the Supreme Court in *Charanlal Sahu vs. Union of India* [31] (Para 109).

16. Shri Shashank Shekhar, learned counsel appearing for the petitioner in W.P. No.18750/2013 submitted that the petitioner in the said petition is one amongst the 70 candidates against whom order was passed on 6th December, 2013. According to this petitioner, no benefit has been derived by this petitioner. He was at Sr. No.122 and, therefore, did not get admission in

30. 1970 MPLJ 983
31. (1990) 1 SCC 613

Government College. He took admission in Private College. The allegation that this petitioner used scorer is without any basis. The name of the scorer has not been disclosed in the impugned decision or in the reply filed by the Board.

17. Shri Pushpendra Yadav, learned counsel appearing for the petitioners in W.P. Nos.21545/2013 and 19100/2013 contended that the Examination results could be cancelled only on the ground of impersonation as is stipulated in Clause 4.12 of the Brochure. The counsel has further adopted the arguments advanced by Shri Rajendra Tiwari, Senior Advocate in the respective matter.

18. Shri Amit Khatri, learned counsel appearing for the petitioner in W.P. No. 18708/2013 adopted the arguments of previous counsel but pointed out that the petitioner in this case has taken admission in Private College.

19. In Writ Petition Nos. 18738/2013, 20318/2013, 21502/2013, 21503/2013, 21504/2013, 21507/2013, 21508/2013, 21510/2013, 21511/2013, 21513/2013, 21515/2013, 21517/2013, 21519/2013, 21520/2013, 21523/2013, 21526/2013, 21529/2013, 21531/2013, 21537/2013, 334/2014, 367/2014, 494/2014, 1668/2014, 1673/2014, 177/2014, 2381/2014, 2382/2014 and 2820/2014, no counsel addressed us separately, Therefore, we assume that they have adopted the arguments already made on behalf of the petitioners in other matters.

20. Shri P.K. Kaurav, learned counsel appearing for the Board refuted the arguments canvassed on behalf of the petitioners as under:-

(i) Initially, he supported the impugned orders on the basis of provisions of the Act of 2007 (I). He submitted that the legislative scheme left no manner of doubt that the Director was competent to take the final decision. He further submitted that the impugned action, in fact, was taken by the Chairman of the Board. The Chairman has been invested with wide executive powers. Out of abandon caution, the decision of the Chairman, manifested in the impugned order dated 9th October, 2013, was placed before the Executive Committee for its approval and ratification. He had submitted that the Executive Committee could take decisions on matters, as Section 19(4) of the Act of 2007 (I) authorizes it to exercise such powers that can be exercised by the Board. He submitted that the decision dated 6th December, 2013 could not be placed before the Executive Committee as it has not met since the passing of that order. He assured the Court that even that decision will be placed before the

Executive Committee for its approval and ratification in due course. He submitted that there was no lack of authority in the Director to pass the impugned orders. He then submitted that the matter could not be placed before the Board as the Board was yet to be constituted by the State Government, which submission was made on the basis of written instructions received by him during the course of his arguments from the Principal Secretary, Department of Technical Education, Government of Madhya Pradesh.

(ii) As aforesaid, when it was revealed that the Board is yet to be established by issuance of Notification under Section 3 of the Act of 2007 (I), on further instructions taken from the Department, he modified his stand and instead contended that the reply-affidavit, filed on behalf of the Board to oppose these writ petitions, was not complete and does not refer to the correct factual position.

(iii) He then submitted that the entire argument of petitioners founded on the Act of 2007 (I) is incorrect and ill-advised. Inasmuch as, unless notification under Section 3 of the Act of 2007 (I) is issued, it is not open to contend that the Board has been established in terms of the Act of 2007 (I). He relied on the provisions of Section 3 and Section 25 of the Act of 2007 (I) to buttress this submission. Section 3 of the Act postulates that the Board would come into existence with effect from such date as may be specified in the notification issued under sub-section (1) and only thereafter it would have perpetual succession and a common seal with power to acquire and hold property and do all other things necessary for the purposes of its constitution and may sue or be sued in its corporate name. That is evident from sub-section (2) of Section 3 of the Act of 2007 (I). Thus, it is only after issuance of notification under Section 3(1) of the Act of 2007 (I), the existing Madhya Pradesh Professional Examination Board constituted by the State in exercise of its executive powers, would get merged in the new Board by virtue of Section 25 of the Act. In other words, until notification under Section 3(1) of the Act of 2007 (I) is issued, the existing Professional Examination Board, established by the State Government in exercise of its executive powers, would continue to function. He submits that, in the present case, the action has been initiated by the officials of the existing Professional Examination Board, constituted by executive order issued in the name of Governor on 22.01.2004. He submitted that it is indisputable that the primary

responsibility of conducting pre-admission professional courses examinations, is that of the State Government. In discharge of that obligation, the State Government constituted Professional Examination Board, vide Notification dated 17.04.1982 issued in the name of Governor, as per the decision of the Chief Minister approved by the Cabinet of Ministers. The said Notification was published in the Official Gazette on 19th April, 1982. The same reads, thus:

"मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

[कमांक 133] भोपाल, सोमवार, दिनांक 19 अप्रैल 1982 –चेत्र 29 शके 1904

जनशक्ति नियोजन विभाग,

भोपाल, दिनांक 17 अप्रैल, 1982

क. 1325–1717–बयालीस–82–राज्य शासन चिकित्सा, इंजीनियरिंग तथा कृषि महाविद्यालयों में तथा पोलीटेक्निक्स में प्रवेश पूर्व परीक्षाओं के आयोजन एवं तत्संबंधी आवश्यक कार्यवाही एवं व्यवस्था के लिये "व्यावसायिक पाठ्यकम प्रवेश परीक्षा मण्डल" का गठन करता है :–

2. उपर्युक्त मण्डल में निम्नानुसार अध्यक्ष एवं सदस्य होंगे :–

(1). श्री के. के. चकवर्ती, संचालक, लोक शिक्षण	अध्यक्ष
(2). संचालक, चिकित्सा शिक्षा	सदस्य
(3). संचालक, तकनीकी शिक्षा	सदस्य
(4). संचालक, कृषि	सदस्य
(5). डॉ. बी. पी. तिवारी, डीन कृषि महाविद्यालय, जबलपुर	सदस्य
(6). डॉ. एस. के. एस. गौर, डीन, कृषि महाविद्यालय, इंदौर	सदस्य
(7). डॉ. एल. के जोशी, डीन, कृषि महाविद्यालय,सीहोर	सदस्य
(8). डॉ. आर. पी. भार्गव, डीन, मेडिकल, कालेज, भोपाल	सदस्य
(9). डा. पी. एल. टण्डन, डीन, मेडिकल कालेज, इन्दौर	सदस्य
(10). डॉ. के. पी. मेहरा, डीन, मेडीकल कालेज, रायपुर	सदस्य
(11). डा. एस. के. दासगुप्ता, संचालक, जी. एस. आई. टी.एस. इन्दौर	सदस्य
(12). श्री एल. एल. जैन, प्राचार्य, इंजीनियरिंग महाविद्यालय,	सदस्य

जबलपुर

(13). डा. बी. एल. मेहरोत्रा, प्राचार्य, एम.ए.सी.टी., भोपाल सदस्य

अध्यक्ष की नियुक्ति राज्य शासन द्वारा की जाने तक श्री के. के. चक्रवर्ती कार्यकारी अध्यक्ष रहेंगे.

3. व्यावसायिक पाठ्यक्रम प्रवेश परीक्षा मण्डल के गठन आदेश के राजपत्र में प्रकाशित होने पर वर्तमान प्री–मेडीकल टेस्ट बोर्ड तथा इंजीनियरिंग टेस्ट बोर्ड समाप्त हो जावेंगे. उनकी समस्त शक्तियां तथा उनके कर्तव्यों का निर्वहन व्यावसायिक पाठ्यक्रम प्रवेश परीक्षा मण्डल द्वारा किया जायगा. मण्डल द्वारा ली जाने वाली परीक्षा इस प्रकार आयोजित की जावे कि वर्ष 1982 का परीक्षाफल जुलाई 1982 के मध्य तक निश्चित रूप से घोषित किया जा सके.

4. व्यावसायिक पाठ्यक्रम प्रवेश परीक्षा मण्डल राज्य शासन के जनशक्ति नियोजन विभाग के अधीन कार्य करेगा. राज्य शासन को यह अधिकार होगा कि वह मण्डल को अपने कार्य संचालन के संबंध में समय–समय पर आवश्यक निर्देश जारी कर सके. राज्य शासन का यह अधिकार भी होगा कि वह मण्डल के कार्य संचालन के लिये नियम बना सके.

5. मण्डल स्वतः एक इकाई होगा और उसे जंगम तथा स्थावर दोनों प्रकार की सम्पत्ति अर्जित करने तथा धारण करने का अधिकार प्राप्त होगा. मण्डल अपने नाम से वाद प्रस्तुत कर सकेगा और इसी नाम से उसके विरूद्ध वाद प्रस्तुत किये जावेंगे.

6. मण्डल द्वारा किये गये अथवा करने से छोड़ दिये गये किसी कार्य के लिये राज्य शासन उत्तरदायी नहीं होगा.

7. जनशक्ति नियोजन विभाग संबंधित विभागों से परामर्श के पश्चात मण्डल के अध्यक्ष तथा सदस्यों में परिवर्तन कर सकेगा.

8. मण्डल अपने नाम का खाता खोलेगा, वर्तमान में कार्यरत पी.एम. टी. बोर्ड तथा पी.ई.टी. बोर्ड में उपलब्ध सम्पदा एवं दायित्व मण्डल को हस्तांतरित हो जावेंगे.

9. मण्डल के कार्य संचालन हेतु अनावर्ती व्यय के लिये रूपये 3 लाख तथा रिवोल्विंग फण्ड के बतौर ब्याज रहित ऋण दिया जावेगा

मध्य प्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
ए.व्ही. कवीश्वर,
विशेष सचिव"

Later on, the said Board was reconstituted by an executive order issued in the name of Governor vide notification dated 30th July, 1983, which was later on published in the Official Gazette. The said Notification reads, thus:

"मध्यप्रदेश शासन

जनशक्ति नियोजन विभाग

अधिसूचना

भोपाल दिनांक 30/07/83

कमांक/6805/5724/82/42—इस विभाग की अधिसूचना कमांक 1325/1717/42/22, दिनांक 17—4—82 में आंशिक संशोधन करते हुये, राज्य शासन चिकित्सा, इन्जीनियरिंग, कृषि महाविद्यालयों तथा पोलीटेक्निक संस्थाओं में प्रवेश पूर्व परीक्षाओं के आयोजन एवं तत्संबंधी समस्त आवश्यक कार्यवाही एवं व्यवस्था करने के लिये "व्यावसायिक पाठ्यकम प्रवेश परीक्षा मण्डल" का पुनर्गठन करता है।

उपर्युक्त मण्डल में अध्यक्ष सहित निम्नानुसार सदस्यों का समावेश किया जाता है :—

(1). अध्यक्ष.....शासन द्वारा मनोनीत

सदस्य

(1). सचिव, म.प्र. शासन, जनशक्ति नियोजन विभाग या उनका प्रतिनिधि जो उप सचिव से नीचे स्तर का न हो।

(2). सचिव, म. प्र. शासन, वित्त विभाग या उनका प्रतिनिधि।

(3). चिकित्सीय शिक्षा संचालक, म. प्र. भोपाल।

(4). तकनीकी शिक्षा संचालक, म. प्र. भोपाल।

(5). कृषि संचालक, मध्यप्रदेश भोपाल।

(6). कृषि महाविद्यालयों में से एक डीन।

(7). चिकित्सा महाविद्यालयों में से एक डीन।

(8). इंजीनियरिंग महाविद्यालयों में से एक प्राचार्य।

(9). पोलीटेक्निक्स में से एक प्राचार्य।

मण्डल के नियंत्रक मण्डल की बैठकों आदि में मण्डल के सचिव का कार्य करेंगे।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार,
हस्ता
दिनकर केदारनाथ,
उप सचिव
मध्यप्रदेश शासन, जनशक्ति नियोजन विभाग"

The reconstitution of the Board was as per the decision of the Chief Minister which was ratified by the Cabinet of Ministers. In supersession of this notification, the said Board was reconstituted and named as "Professional Examination Board" in terms of executive order issued in the name of the Governor. The said Notification reads, thus:

"मध्यप्रदेश शासन

जनशक्ति नियोजन विभाग

::आदेश::

भोपाल, दिनांक– 30/07/97

कमांक एफ–40–2/83/42–1 इस विभाग की अधिसूचना कमांक 6805/5724/82/42–1, दिनांक 30–7–83 में संशोधन करते हुये, राज्य शासन व्यावसायिक परीक्षा मण्डल का पुनर्गठन करता है।

उपर्युक्त मण्डल में अध्यक्ष सहित निम्नानुसार सदस्यों का समावेश किया जाता है :–

1. अध्यक्ष, व्यावसायिक परीक्षा मंडल	अध्यक्ष
2. प्रमुख सचिव/सचिव, जनशक्ति नियोजन	सदस्य
3. अध्यक्ष, माध्यमिक शिक्षा मंडल	सदस्य
4. सचिव, वित्त विभाग	सदस्य
5. आयुक्त, लोक शिक्षण	सदस्य
6. आयुक्त, आदिम जाति कल्याण विभाग	सदस्य
7. आयुक्त उच्च शिक्षा	सदस्य
8. संचालक, रोजगार एवं प्रशिक्षण, जबलपुर	सदस्य

9. संचालक, राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण परिषद	सदस्य
10. संचालक, तकनीकी शिक्षा	सदस्य
11. संचालक, चिकित्सा शिक्षा	सदस्य
12. डीन, कृषि संकाय, कृषि विश्वविद्यालय, जबलपुर (शासन द्वारा नामांकित)	सदस्य
13. डीन, पशु चिकित्सा संकाय कृषि विश्वविद्यालय, जबलपुर (शासन द्वारा नामांकित)	सदस्य
14. विभागाध्यक्ष, मैनेजमेंट संकाय विश्वविद्यालय (शासन द्वारा नामांकित)	सदस्य

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

हस्ता.
(डॉ0 आर0 के0 दुबे)
उप सचिव,
मध्यप्रदेश शासन, जनशक्ति नियोजन विभाग

(emphasis supplied)

Once again the Board was reconstituted after the approval by the Cabinet of Ministers by issuing executive order dated 22nd January, 2004 issued in the name of Governor. This order was issued after approval by the Chief Minister and the Cabinet of Ministers. The said order reads, thus:

"मध्यप्रदेश शासन

तकनीकी शिक्षा एवं प्रशिक्षण विभाग

::मंत्रालय ::

आदेश

भोपाल दिनांक

कमांक एफ–40–2/83/42–1 इस विभाग के समसंख्यक आदेश दिनांक 30–7–97 में संशोधन करते हुये, राज्य शासन द्वारा व्यावसायिक परीक्षा मण्डल के पुनर्गठन का निम्नानुसार निर्णय लिया गया है:–

1. अध्यक्ष, व्यावसायिक परीक्षा मंडल	अध्यक्ष
2. प्रमुख सचिव/सचिव, तकनीकी शिक्षा एवं प्रशिक्षण	सदस्य
3. अध्यक्ष, माध्यमिक शिक्षा मंडल	सदस्य

4. प्रमुख सचिव/सचिव, स्कूल शिक्षा	सदस्य
5. प्रमुख सचिव/सचिव, वित्त	सदस्य
6. प्रमुख सचिव/सचिव, उच्च शिक्षा	सदस्य
7. प्रमुख सचिव/सचिव, चिकित्सा शिक्षा	सदस्य
8. आयुक्त आदिम जाति कल्याण	सदस्य
9. संचालक, तकनीकी शिक्षा	सदस्य
10. डीन, कृषि संकाय, कृषि विश्वविद्यालय, जबलपुर (शासन द्वारा नामांकित)	सदस्य
11. रेक्टर, राजीव गांधी प्रौद्योगिकी विश्वविद्यालय, भोपाल	सदस्य
12. म0 प्र0 के विश्वविद्यालयों में से एक के मैनेजमेंट संकाय का विभागाध्यक्ष (शासन द्वारा नामांकित)	सदस्य
13. संचालक, म0 प्र0 व्यावसायिक परीक्षा मंडल, भोपाल	सदस्य–सचिव

2/– व्यावसायिक परीक्षा मंडल के भावी स्वरूप के निर्धारण के लिए परीक्षण कर प्रस्ताव मंत्रिमंडल के समक्ष प्रस्तुत किया जाये।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
सही/–
(डॉ0 आर0 के0 दुबे)
अपर सचिव
मध्यप्रदेश शासन, तकनीकी शिक्षा विभाग

(iv) It is submitted that all the above orders, constituting the Professional Examination Board, have been published in the Official Gazette. The Board reconstituted, in terms of order dated 22nd January, 2004, was still functional and was made responsible to conduct pre-entrance examinations for admissions to professional courses. Even the subject examination, in respect of which the impugned orders have been passed on 9th October, 2013 6th December, 2013, has been conducted by this Professional Examination Board. In other words, the impugned orders have been passed by the officials of "Professional Examination Board" constituted by the State Government in exercise of its executive powers for discharging its obligation of conducting pre-entrance examination for admission to professional courses. Notably,

besides producing the above said Notifications, the compilation tendered during the course of arguments also contain the true copies (photostat) of proposal for constitution of above noted Board and all official notings, including the noting of approval by the Chief Minister and Cabinet of Ministers.

(v) He has further invited our attention to the Chart mentioning the names of Chairman appointed from time to time since the constitution of the Board by the State in exercise of executive powers since 1982. Similarly, the Chart mentioning the names of persons appointed as Directors from time to time is also made part of the additional compilation. As regards the appointment of the incumbent Chairperson, reliance is placed on the order, issued in the name of Governor appointing the then Chairperson – Dr. Devraj Virdi, dated 31st July, 2013, at page 213 of the compilation. The same reads, thus:

"मध्यप्रदेश शासन

सामान्य प्रशासन विभाग

मंत्रालय

:: आदेश ::

कमांक ई 1/330/2012/5/1 भोपाल, दिनांक 31 जुलाई, 2013

श्री डी. के. सामन्तराय, भाप्रसे (1982) अध्यक्ष, व्यवसायिक परीक्षा मंडल, म0 प्र0 भोपाल की सेवायें भारत सरकार में प्रतिनियुक्ति पर सौंपे जाने के फलस्वरूप अध्यक्ष व्यवसायिक परीक्षा मंडल के पद का प्रभार डॉ0 देवराज बिरदी, भाप्रसे (1982) वि.क.अ. सह अध्यक्ष, म0 प्र0 माध्यमिक शिक्षा मण्डल, भोपाल को, अतिरिक्त रूप से, अपने वर्तमान कर्तव्यों के साथ–साथ, आगामी आदेश तक सौंपा जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

आर. परशुराम
मुख्य सचिव
मध्यप्रदेश शासन

The said Dr. Devraj Virdi was later on replaced by the incumbent Chairperson Shri A.P. Shrivastava vide order dated 17th February, 2014. The same reads thus:

"मध्यप्रदेश शासन

सामान्य प्रशासन विभाग

मंत्रालय

// आदेश //

कमांक ई–1/71/2014/5/एक भोपाल, दिनांक 17 फरवरी, 2014

नीचे तालिका के खाना–2 में दर्शाए भा.प्र.से. अधिकारियों को उनके नाम के समक्ष खाना–3 में दर्शाए गए पद पर अस्थायी रूप से आगामी आदेश तक, स्थानापन्न रूप से पदस्थ किया जाता है :–

क्र.	अधिकारी का नाम तथा वर्तमान पदस्थापना	नवीन पदस्थापना	खाना 3 में अंकित पद असंवर्गीय होने की दशा में संवर्गीय पद जिसके समकक्ष घोषित किया गया।
1	2	3	4
1	श्री ए.पी. श्रीवास्तव (1984) प्रमुख सचिव, मध्यप्रदेश शासन, वाणिज्यिक कर विभाग	अध्यक्ष, व्यावसायिक परीक्षा मंडल	प्रमुख सचिव म.प्र. शासन
2	श्रीमती शिखा दुबे (1987) प्रमुख सचिव, मध्य प्रदेश शासन, कुटीर एवं ग्रामोद्योग विभाग तथा प्रबंध संचालक, मध्य प्रदेश खादी एवं ग्रामो–द्योग बोर्ड (अतिरिक्त प्रभार)	संचालक, आर.सी.व्ही.पी. नरोन्हा प्रशासन अकादमी, भोपाल	प्रमुख सचिव म. प्र. शासन
3	श्रीमती सुधा चौधरी (1991) प्रबंध संचालक, मध्य प्रदेश स्टेट को–ऑपरेटिव डेयरी फेडरेशन लिमिटेड	प्रबंध संचालक मध्यप्रदेश खादी एवं ग्रामोद्योग बोर्ड तथा वि.क.अ.–सह–आयुक्त, रेशम (अतिरिक्त प्रभार)	प्रमुख सचिव म.प्र. शासन
4	श्रीमती मधु खरे (1997) वि.क.अ.–सह–सचिव, लोक सेवा आयोग, इंदौर	प्रबंध संचालक, मध्य प्रदेश राज्य वित्त निगम, इंदौर (इस विभाग के आदेश कमांक ई–1/24/2014/5/एक, दिनांक 31 जनवरी, 2014, जिसके द्वारा श्रीमती मधु खरे की पदस्थापना सचिव, राजस्व विभाग तथा प्रमुख राजस्व आयुक्त के पद पर की गई है, को संशोधित करते हुए)	संभागीय कमिश्नर

5	श्री बी. चन्द्रशेखर (2002) कलेक्टर, बालाघाट	प्रबंध संचालक, मध्य प्रदेश, स्टेट को–ऑपरेटिव डेयरी फेडरेशन लिमिटेड	उप सचिव म.प्र. शासन
6.	श्री व्ही. किरण गोपाल(2008) अतिरिक्त प्रबंध संचालक, मध्य प्रदेश ट्रेड एण्ड इन्वेस्टमेंट फेसिलिटेशन कॉर्पोरेशन लिमिटेड (ट्रायफेक)	क्लेक्टर, बालाघाट	–

2. उपरोक्तानुसार श्री ए. पी. श्रीवास्तव द्वारा अध्यक्ष, व्यावसायिक परीक्षा मंडल का कार्यभार ग्रहण करने पर डॉ. देवराज बिरदी, भाप्रसे (1982), अध्यक्ष, मध्य प्रदेश माध्यमिक शिक्षा मंडल तथा अध्यक्ष, व्यावसायिक परीक्षा मंडल केवल अध्यक्ष, व्यावसायिक परीक्षा मंडल के अतिरिक्त प्रभार से मुक्त होंगे।

3. श्री मोहम्मद सुलेमान, भाप्रसे (1989), प्रमुख सचिव, मध्य प्रदेश शासन, उर्जा विभाग को अपने वर्तमान कर्तव्यों के साथ साथ आगामी आदेश तक प्रमुख सचिव, मध्यप्रदेश शासन, वाणिज्य, उद्योग एवं रोजगार विभाग का प्रभार अतिरिक्त रूप से सौंपा जाता है।

4. श्री अश्विनी कुमार राय, भाप्रसे (1990), प्रमुख सचिव, "कार्मिक" मध्य प्रदेश शासन, सामान्य प्रशासन विभाग को अपने वर्तमान कर्तव्यों के साथ–साथ आगामी आदेश तक प्रमुख सचिव, मध्य प्रदेश शासन, वाणिज्यिक कर विभाग का प्रभार अतिरिक्त रूप से सौंपा जाता है।

5. उपरोक्तानुसार श्रीमती मधु खरे द्वारा प्रबंध संचालक, मध्य प्रदेश राज्य वित्त निगम, इंदौर का कार्यभार ग्रहण करने पर श्री के. सी. गुप्ता, भाप्रसे (1992), श्रम आयुक्त, मध्य प्रदेश इंदौर तथा प्रबंध संचालक, मध्य प्रदेश राज्य वित्त निगम, इंदौर केवल प्रबंध संचालक, मध्य प्रदेश राज्य वित्त निगम, इंदौर के अतिरिक्त प्रभार से मुक्त होंगे।

6. श्री तरूण कुमार पिथौड़े, भाप्रसे (2009) अतिरिक्त प्रबंध संचालक, मध्य प्रदेश उर्जा विकास निगम तथा संचालक, व्यावसायिक परीक्षा मंडल (अतिरिक्त प्रभार) को केवल अतिरिक्त प्रबंध संचालक, मध्य प्रदेश उर्जा विकास निगम के प्रभार से मुक्त किया जाता है। श्री पिथौड़े की मूल पदस्थापना अब संचालक, व्यावसायिक परीक्षा मंडल के पद पर मानी जाएगी।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
ॲन्टोनी जे.सी. डिसा
मुख्य सचिव
मध्य प्रदेश शासन"

(vi) In the same manner, our attention has been invited to the order dated 30th July, 2013, issued in the name of the Governor, appointing Shri John Kingsley as Director of the existing Board. The same reads, thus:

"मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय
:: आदेश ::

कमाक ई–1/223/2013/5/एक अ भोपाल, दिनांक 30 जुलाई, 2013

श्री जॉन किंग्सली ए.आर., भाप्रसे (2004), मिशन संचालक, समग्र सामाजिक सुरक्षा–सह–संचालक, पंचायती राज को उनके वर्तमान कर्तव्यों के साथ–साथ आगामी आदेश तक संचालक व्यवसायिक परीक्षा मंडल, म0 प्र0 का प्रभार अतिरिक्त रूप से सौंपा जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर. परशुराम
मुख्य सचिव
मध्यप्रदेश शासन"

The said Director was replaced by the incumbent Director Shri Tarun Kumar Pithode on 1st October, 2013 by an order issued in the name of the Governor. The same reads thus:

"मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय
:: आदेश ::

कमांक ई–1/302/2013/5/एक भोपाल, दिनांक 01 अक्टूबर, 2013

श्री तरूण कुमार पिथौड़े, भाप्रसे (2009) अतिरिक्त प्रबंध संचालक, उर्जा विकास निगम को अपने वर्तमान कर्तव्यों के साथ–साथ आगामी आदेश तक संचालक, मध्यप्रदेश व्यावसायिक परीक्षा मंडल का प्रभार अतिरिक्त रूप से सौंपा जाता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
ऍन्टोनी जे.सी. डिसा
मुख्य सचिव
मध्यप्रदेश शासन"

(vii) It is also pointed out that when the appointment of any IAS officer was made as Director or Chairperson of the Board, that order was issued by the General Administration Department of the Government of Madhya Pradesh and in other cases by the Technical Education Department of the State.

(viii) Suffice it to note that until the stage of arguments and, in particular, the reply given by the Board, all concerned proceeded on the erroneous premise that the examination in question was conducted by the Board established under the Act of 2007 (I).

(ix) Reverting to the submissions of the Board on other issues on merits, it is submitted that the Chairman had full powers to deal with matters under consideration including inherent powers to constitute Experts Committee to provide assistance for taking final decision in the matter in view of the technical issues involved. The final decision, however, is that of the Chairman, on whose directions the impugned orders have been issued by the Director. He further submits that the declaration of results would not divest the existing Board constituted by the State Government in exercise of its executive powers, to take action against the candidates who had appeared in the concerned examination conducted by that Board. For, the action is in relation to the examination process conducted by that Board, which had exclusive power to conduct those examinations and deal with matters connected therewith and incidental thereto. The fact that the results have been declared does not whittle down the powers of the Board or divest the Board of its obligation to decide issues in respect of matters connected with the examination conducted by it. The declaration of result would make no difference. He submits that action taken by the said Board is in connection with the unfair means within the meaning of the stipulation provided in the Brochure issued by it, *inter alia,* Sub-Clauses (Ka), (Gha), (Da), (Cha) of Clause 4.12 of Chapter IV. He submits that receipt of the report from the Supervisor or Centre Superintendent or Invigilator is not a prerequisite to invoke that power. The said Board could

independently take action with regard to unfair means referred to in Clause 4.12.

(x) He submits that it is amply clear from the office files that the Director made recommendation to the Chairman of the said Board on the basis of reports of the Computer Experts Committee and the Committee of Controllers and other material. That recommendation was approved by the Chairman after considering all aspects of the matter, who could legitimately take the final decision thereon.

(xi) Refuting the ground of breach of natural justice, he submits that the Supreme Court has consistently held that when it is a case of mass copying, which in the present case it is, the question of giving personal notice or opportunity to each candidate involved therein, does not arise. Even though, large number of candidates are likely to be affected by such action.

(xii) He elaborated on the mechanism adopted by the Computer Experts Committee in identifying the candidates on the basis of mismatch of roll numbers and also the mechanism adopted by the Committee of Controllers in finally identifying the candidates against whom action was required to be taken. To explain the process adopted by the Computer Experts Committee, the learned counsel for the Board produced the list of 1370 candidates to whom roll number was assigned by resorting to randomization process. However, the second list containing the generated roll numbers of the said candidates was also created and the third list was that of the uploaded roll numbers of those candidates. He also explained the methodology of allotment of slots for creating roll numbers which is followed by the Board. In addition, he has presented a chart giving graphic description as to how conspiracy was hatched to benefit the identified candidates. We deem it apposite to reproduce the said Chart and note appended thereto. The same reads, thus:-

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.,	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matchin g Answer	Mismatc h Answers	Blank Answe rs	Right Match Answers	Wrong Match Answer s	Match Answer Percentag e	Agent/List Sr. No.	College Alotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
1	21502/13	Anjali Wasikala/Chandra Singh (Student)	26, Sant Kripa Nagar Nr. DRP Line Khandwa Road Khargon M.P.	80011260	525610	528039	117							Jagdish Sagar (100)	M.G.M. Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Tauseef Ahmed/Yasin Ahmed (Scorer)	Village Hanuwatpur Maunath Bhanjan Mau UP 275101	80016525	525609	527717	122	177	23	0	104	73	88.5	Jagdish Sagar (99)	Eligible but not participated in counseling	
2	21503/13	Suman Kumawat/Hanuman Pr. Kumawat (Student)	421, Sai Kripa Colony Bombay Hospital Ring Road Indore	80012984	503424	503028	148							Sanjeev Shirpkar (08) and Sudhir Rai (02)	Ahimsa Inst. Med. Sc. Indore	Rs 10 lakhs paid as per entry in Sudhir Rai's diary/ Scorer has not taken admission and has not filed a case
		Ravindra Ku. Yadav /Nanhkau Yadav (Scorer)	2 T 2 Talwandi Kota Rajasthan	80022059	503423	503087	143	185	15	0	131	54	92.5	Sanjeev Shirpkar (07) and Sudhir Rai (01)	People's College Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
3	21504/13	Seema Dabi/Bherulal Dabi (Student)	Village Ubwas Pandoma dist. Ujjain	80012403	525710	521211	114							Jagdish Sagar (96)	M.G.M. Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ramesh Kumar/Mani Shankar (Scorer)	Shakti Nagar Lucknow U.P.	80035390	525709	527260	125	167	31	2	102	65	83.5	Jagdish Sagar (95)	Eligible but not participated in counselling	
4	21505/13	Kelki Pandit/ C.S. Pandit (Student)	2/1 A.B. Road Indore	80015811	524420	530649	146							Jagdish Sagar (26)	G.R. Med. College Gwalior	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Yogesh Ku. Pal/Dudh Nathpal (Scorer)	385, Daraganj Allahabad U.P.	80034746	524419	524339	150	175	25	0	130	45	87.5	Jagdish Sagar (25)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
5	21515/13	Abhishek Saxena/M.K. Saxena (Student)	28, Nirman Nagar Ujjain	80010272	526500	525461	148	184	16	0	131	53	92	Jagdish Sagar (168)	G.R. Med. College Gwalior	Settled in 22 Lakhs and has paid advance of Rs 6.50 lakhs to accused Gangaram Prajapati. Call details also available Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Bhishm Pitamah/Rajkumar (Scorer)	Village Jagsar Lakhimpur, Khaire, UP	80015891	526499	527980	149							Jagdish Sagar (167)	Alloted Chirayu Medical College but not reported for admission	
6	21516/13	Krutika Hada/Jaswant Singh (Student)	8, Janakpuri Society Dahod Gujrat	80023507	526580	525701	146	196	4	0	132	64	98	Jagdish Sagar (181)	Arvindo Inst. Med. Sc. Indore	Call details with Jagdish Sagar and Gangaram Prajapati available Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Saleem Ahmed/ Gulam Mustafa (Scorer)	Naya Gaon Chitrakut Satna M.P.	80022783	526579	523588	146							Jagdish Sagar (180)	Alloted Chirayu Medical College but not reported for admission	
7	21517/13	Arpit Sisodiya/ Narpat Singh Sisodiya (Student)	32, Jeet Nagar Alkapuri Ratlam	80004711	525880	856416	119	ABSENT					ABS	Jagdish Sagar (109)	Peoples Medical College	Scorer allotted seat in MP in 2012 but has not taken admission and was arrested hence absent Arrested in two cases/ involved in 2012 also Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Akshya Ku. Yadav/Laxman Singh Yadav (Scorer)	117, K/21/Sect-1 R.S. Puram Sarvodaya Nagar Kanpur U.P.	80012809	525879	526579	Akshya Ku. Yadav/ Laxman Singh Yadav (Scorer)							Jagdish Sagar (108)	Absent, arrested a day before the exam	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
8	21518/13	Ritu Bala Patel/Mukut Singh Patel (Student)	14-A Shriyantra Nagar Indore	80005303	527560	530598	131	169	31	0	117	52	84.5	Jagdish Sagar (232)	M.G.M. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Govind Ku. Pandey/Shyamdhar Pandey (Scorer)	117 K-Block Geeta Nagar Kanpur U.P.	80023699	527559	524761	145							Jagdish Sagar (231)	Eligible but not participated in counseling	
9	21519/13	Elisha Demor/Markus Demor (Student)	104, Manavta Nagar Indore	80005898	525700	529614	93	154	46	0	83	71	77	Jagdish Sagar (94)	Arvindo Inst. Med. Sc. Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Vivek Ku. Tiwari/Awdesh Narayan Tiwari (Scorer)	117, Shivpuri Kanpur U.P.	80030183	525699	523838	108							Jagdish Sagar (93)	Eligible but not participated in counseling	
10	21508/13	Pradeep Kamaliya/T.S. Kamaliya (Student)	52, Gopal Colony Jhabua M.P.	80009498	526424	524530	127	169	31	0	110	59	84.5	Jagdish Sagar (162)	M.G.M. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Deswakar Yadav/Ramesh yadav (Scorer)	24, Mithurapur Jaunpur U.P.	80026360	526423	528727	138							Jagdish Sagar (161)	Eligible but not participated	
11	21507/13	Ankit Patidar/Narayan Partidar (Student)	Gram Pura, Teh. Kukshi dist. Dhar M.P.	80002105	527460	528560	143	199	1	0	131	68	99.5	Jagdish Sagar (222)	B.K.M.C. Sagar	Settled in 15 lakhs and 4.5 lakhs paid as advance Arrested/ On Bail Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Muneesh Kumar/Naresh Chandra (Scorer)	Sharda Nagar Kanpur U.P.	80024688	527459	528358	144							Jagdish Sagar (221)	Eligible but not participated in counseling	
12	21508/13-18738/13	Saloni Badole/ R.C. Badole (FIST/Student)	108, Mandwada Barwani	80015661	527488	521077	115	148	52	0	103	45	74	Jagdish Sagar (238)	M.G.M. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Brijesh Mishra/Dwarka Mishra (Scorer)	851, Mitra Vihar Katni	80026136	527487	530909	150							Jagdish Sagar (237)	Gandhi Med. College Bhopal	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Alloted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
13	21510/13	Rajumar Yogi/Ganesh Yogi (Student)	2, Arjun Nagar Radhaganj Devas	80033327	526105	526957	142	169	31	0	122	47	84.5	Jagdish Sagar (133)	B.K.M.C. Sagar	Settled in Rs 16 lakhs and 8 lakhs paid in advance. Call details with Jagdish Sagar available Form No. in Agent's List. Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Amit Ku. Gupta/Guru pr. Gupta (Scorer)	Shahzadpur Ambedkar Nagar, UP	80024997	526104	522676	141							Jagdish Sagar (132)	Eligible but not participated in counseling	
14	21511/13	Neha Jamaniklane Singh Jamaan (Student)	Shiksha Colony Dhar	80008596	526924	530232	140	190	10	0	125	65	85	Jagdish Sagar (199)	M.G.M. College Indore	Form No. in Agent's List Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ashutosh Morya/Laimanj Morya (Scorer)	New Palsia Indore	80014699	526923	522389	138							Jagdish Sagar (197)	Eligible but not participated in counseling	
15	21513/13	Ayaam Syed/ Mubarik Ali (Student)	65, A.B. Road Devas	80006577	526030	521474	128	185	15	0	116	69	92.5	Jagdish Sagar (127)	C.D.S. Indore (Dentist)	Form No. in Agent's List Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ehsan Ahmed/Rose Ali (Scorer)	58, Rajendra Nagar Indore	80014968	526029	529704	131							Jagdish Sagar (126)	Eligible but not participated in counseling	
16	21514/13	Akanksha Patel/Puran Lal Patel (Student)	585, Patel Complex Bus Stand pali Dist. Barwani	80005618	525670	527920	115	182	18	0	105	77	91	Jagdish Sagar (92)	M.G.M. College Indore	Form No. in Agent's List Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Vinod Ku./ Sangram Yadav (Scorer)	117 Sharda Nagar, Kanpur, Up	80010437	526563	528129	121							Jagdish Sagar (91)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
17	21522/13 19465/13	Munmun Jain/Vikas Jain (Student)	19, Sewa Sadan Khandawa	80012548	537440	538032	141	168	12	0	129	69	64	Sudir Rai (30)	Arvindo Inst. Med. Sc. Indore	Settled in Rs 25 lakhs to be paid by accused's father Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Alul Ku. / Akhilesh Kumar (Scorer)	W.No. 03 Chandauli U.P.	80033521	537439	537515	146							Sudir Rai (29)	Admitted in Chirayu Med. Bhopal	
18	20050/13	Priyanka Dawda/Mangu Singh Dawda (Student)	Bedi Chhaupati Badnawar Dhar	80017826	525155	529901	150	195	5	0	136	59	97.5	Jagdish Sagar (54)	N.S.C.B. Jabalpur	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Mustaq Ahmad/Nizamuddin (Scorer)	Village Makka purba Bahraiach, UP 271830	80027367	525154	527830	150							Jagdish Sagar (53)	Eligible but not participated in counseling	
19	21827/13	Shivani Shrivastava/ Rajendra Ku. Shrivastava (Student)	Sect-c BHEL Bhopal	80039894	503544	502828	127	159	41	0	108	51	79.5	Sanjeev Shilpkar (49)	People Med. College	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Shahnawaz Ahmed/ Majid Ali (Scorer)	MIG-26,Meenal Residency Bhopal	80030249	503543	505295	142							Sanjeev Shilpkar (47)	Admitted in Index College Indore	
20	21828/13	Harsha Yadav/Tara Singh yadav (Student)	Durga Colony Ashok Nagar M.P.	80028535	503448	508050	128	75	113	12	56	19	37.5	Sanjeev Shilpkar (16)	Peoples Medical College Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students. Main intention to help student
		Javed Akhtar/Shamshuh aq (Scorer)	Meenal Residency Bhopal	80021082	503447	502102	68							Sanjeev Shilpkar (15)	Not Eligible	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
21	21831/13	Samishta Sharma/Anil Sharma (Student)	W.No. 16 Ashok Nagar M.P.	80027320	503472	507925	114	147	52	1	102	45	73.5	Sanjeev Shilpkar (24)	People Med. College	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Manvendra Pradhan/Ram Pradhan (Scorer)	Village Meranpur Ghazipur, UP 233303	80024261	503471	504284	144							Sanjeev Shilpkar (23)	Eligible but not participated in counseling	
22	203/14	Dharmendra Prajapati/R.K. Prajapati (Student)	Teh. Kotma Dist. Anuppur	80019296	503418	506982	133	182	15	3	122	60	91	Sanjeev Shilpkar (06)	M.G.M. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Yogesh Ku. Yadav/ Mukhram yadav (Scorer)	Teh. Bansoor Alwar Rajasthan	80000822	503417	504648	138							Sanjeev Shilpkar (05)	Eligible but not participated in counseling	
23	367/14	Shrikant Pandey/Yogesh Chandra Pandey (Student)	45-B Mishra Nagar Indore	80017997	503430	508169	141	185	15	0	126	59	92.5	Sanjeev Shilpkar (10)	R.D. Gardi College Ujjain	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Amit Singh/Shri dutta Singh (Scorer)	C-173 Kohe Fiza Bhopal	80022807	503429	504218	142							Sanjeev Shilpkar (9)	Allotted Chirayu Med. Col. Bhopal but did not join	
24	494/14	Priya yadav/S.B. Yadav (Student)	Adikshak Banglow Bhopal	80020983	526430	531051	126	183	17	0	107	76	91.5	Jagdish Sagar (160)	N.S.C.B. Med. College Jabalpur	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Vivek Yadav/Sandev Singh (Scorer)	Tulsi Nagar Indore	80032330	526429	526073	123							Jagdish Sagar (159)	Eligible but did not participate in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Experts R.No.	Marks PMT	Matchin g Answer	Mismatc h Answers	Blank Answe rs	Right Match Answers	Wrong Match Answer s	Match Answer Percentag e	Agent/List Sr. No.	College Alloted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
25	21562/13	Chandrashekhar Hindaliya/Balwa nt (Student)	Teh. Ater Distt. Bhind	80001985	525270	529051	131	154	44	2	99	55	77	Jagdish Sagar (70)	G.R. Medi. Gwalior	Form No. in Agent's List Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Paritosh Awasthi/Kamles h Awasthi (Scorer)	Doordash Nagar Raibareli U.P.	80026836	525269	528415	113							Jagdish Sagar (69)	Eligible but did not participate in counseling	
26	21630/13	Sanjeev yadav/Ramkisha n Yadav (Student)	MIG 36 Meenal Residency Bhopal	80034501	504202	508210	145	187	13	0	133	54	93.5	Sanjeev Shipkar (84)	B.K.M.C. Sagar	Form No. in Agent's List Visible in Mismatched R. No. List of 878 Candidates. Both in the list of 345 Students
		Ashish Singh/Hariram Singh (Scorer)	Nehru Nagar Bhopal	80022024	504201	507380	150							Sanjeev Shipkar (83)	Eligible but did not participate in counseling	
27	21534/13	Sugam Alawe/Summer Singh (Student)	Teh. Dahi Distt. Dhar	80002009	527960	527764	107	199	1	0	98	101	99.5	Jagdish Sagar (248)	Gandhi Med. College Bhopal	Form No. in Agents List. Visible in Mismatched R. No. List of 878 Candidates. Both in the list of 345 Students. Assisted Sugam
		Vikas Sharma/Ramkri shna Sharma (Scorer)	Nai Saradak Gwalior	80021914	527959	530197	108							Jagdish Sagar (247)	Eligible but did not participate in counseling	
28	20318/13	Mayur Masani/Santosh Ku. Masani (Student)	Garden No. 106 Mahu M.P.	80001563	525310	525185	119	188	12	0	108	80	94	Jagdish Sagar (74)	S.S. Med. College Rewa	Settled in Rs 12 lakhs, paid 2 lakhs advance, Call details available Arrested but on bail Form No. in Agents List Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ashish Ku. Upadhyay/Dhar mendra Upadhyay (Scorer)	Hikari Colony Kanpur M.P.	80022160	525309	522476	125							Jagdish Sagar (73)	Eligible but did not participate in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Alloted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
29	20342/13	Pratibha Singh/Devaram (Student)	Nandan Nagar Dhar Road Indore	80000618	527500	525281	123	159	41	0	112	47	79.5	Jagdish Sagar (224)	N.S.C.B. Med. College Jabalpur	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Vishnu Prabhakar/Jagdish Prasad (Scorer)	Sharda Nagar Kanpur U.P.	80011129	527489	524112	133							Jagdish Sagar (223)	Eligible but did not participate in counseling	
30	18750/13	Shrasti Raghuwanshi/Pradeep Raghuwanshi (Student)	Shastri Ward karoli Dist. Narsinghpur	80016913	524880	526030	122	193	7	0	107	86	96.5	Jagdish Sagar (30)	People's College Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Keshri Gupta/Keshav Gupta (Scorer)	Sharda Nagar Kanpur U.P.	80030281	524879	526390	118							Jagdish Sagar (29)	Eligible but not participated in counseling	
31	21566/13	Vikash Singh/ Suresh Singh (Student)	Awani Gram Khargon	80003280	525330	522764	133	197	3	0	121	76	98.5	Jagdish Sagar (76)	Gandhi Med. College Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Rakesh Singh/Mrignendra Singh (Scorer)	Geeta Nagar Kanpur U.P.	80028340	525329	526302	133							Jagdish Sagar (75)	Eligible but not taken admission	
32	18728/13	Mansi Kabishwar/Mukesh Kabishwar (Student)	Old Meenal Residency Bhopal	80017488	547600	547712	149	188	12	0	134	54	94	Sudhir Rai (46)	G.R. Medical College Gwalior	Settled in Rs 26 lakhs call details available Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Anil Kumar/ Laxman Sah (Scorer)	Raipur Chouraha Sasaram, Bihar	80045466	547599	548135	152							Sudhir Rai (45)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Experts R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agenda/List Sr. No.	College Alloted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
33	1843/14	Akash Singh/Mahendra Singh (Student)	Kuhari Colony Churu	80037919	504172	507899	130	133	50	17	94	39	66.5	Sanjeev Shilpkar(74)	People's Coll. Med. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Bajrang Kumawat/ Shrawan Kumawat (Scorer)	b/O Vivekanand Sr.Sec. School Dania Sikar Rajasthan	80030284	504171	507705	115							Sanjeev Shilpkar(73)	Eligible but not participated in counseling	
34	21545/13	Priyal Awasthi/ O.P. Awasthi (Student)	Rachana Nagar Bhopal	80000357	503550	506785	110	ABSENT					ABS	Sanjeev Shilpkar(50)	People's Coll. Med. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ravi Shankar Choubey/Vinend ra Ku. Choubey (Scorer)	H.No. 21, Bhanpur Bhopal	80030217	503549	506097	ABS							Sanjeev Shilpkar(49)	Absent	
35	21537/13	Aditi Rawat/ M.S. Rawat (Student)	Sun City Mahalaxmi Nagar Indore	80006083	525460	530824	137	173	27	0	117	56	88.5	Jagdish Sagar (164)	M.G.M. Med. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Arvind Ku/Tikaram (Scorer)	Lakhanpur Kanpur U.P.	80019014	526459	521216	136							Jagdish Sagar (163)	Eligible but not participated in counseling	
36	21538/13	Pulkit Patel/Punnalal Patel (Student)	595, Patel Complex Badwani	80005598	525574	527679	98	155	45	0	86	69	77.5	Jagdish Sagar (82)	G.R.Med. College Gwalior	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Hari Shanker Mishra/Ramlakh an Mishra (Scorer)	Shipuri Kanpur U.P.	80024405	525573	527900	111							Jagdish Sagar (81)	Eligible but did not participate in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
37	21533/13	Kshitij Kanerial/ Ghanshyam (Student)	Kundan Nagar Badwani	80005932	528500	522542	145	193	7	0	132	61	96.5	Jagdish Sagar (276)	G.R.Med. College Gwalior	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Kaushal Ku./Deep Chandra (Scorer)	75-A Tilak Nagar Indore 452001	80026394	528499	529932	148							Jagdish Sagar (275)	Eligible but did not participate in counseling	
38	20908/13	Saksham Rai/ Anil Rai (Student)	W.No. 24, Maharajpur Dist. Mandla M.P.	80016717	524468	529818	146	179	21	0	120	59	84.5	Jagdish Sagar (18)	N.S.C.B Med. College Jabalpur	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students. Cell phone number in diary
		Hamant Ku. Rai/Shailendra Ku. Rai (Scorer)	Sharda Nagar Kanpur U.P.	80028868	524467	524249	132							Jagdish Sagar (17)	M.G.M. Med. College Indore	
39	21526/13	Shubhangini Kushwaha/Ravindra Kushwaha (Student)	Kashraward Khargon M.P.	80007945	526960	526521	158	197	3	0	144	53	98.5	Jagdish Sagar (194)	M.G.M. Med. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Jagmohan Singh Yadav/Ran Chouhan Singh (Scorer)	Banarsi Market Majpuri, UP 205265	80027131	526959	524871	158							Jagdish Sagar (193)	Eligible but did not participate in counseling	
40	21526/13	Priyanka Bua a/Manoharla l Bua a (Student)	374/64 Block Chambal Sagar Colony Nagda dist. Ujjain	80007821	527050	523032	139	193	7	0	124	69	96.5	Jagdish Sagar (204)	M.G.M. Med. College Indore	Call details available Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Suraj Pandey/P.K. Pandey (Scorer)	Sharda Nagar Kanpur U.P.	80030238	527049	530096	139							Jagdish Sagar (203)	Eligible but did not participate in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answer	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
41	21530/13	Jagrat Biloniya/Ganpat Singh Biloniya (Student)	Kaiju Nagar Ratlam M.P.	80012312	525300	530902	144	196	4	0	129	67	98	Jagdish Sagar (72)	M.G.M. Med. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Uvaish Ahmed/Basir Ahmed (Scorer)	Hitkari Nagar Kanpur U.P.	80013422	525299	523230	142							Jagdish Sagar (71)	Eligible but did not participate in counseling	
42	21531/13	Mahesh Ahirwar Gulli Ahirwar (Student)	Badamalehar Chhatarpur M.P.	80032654	527018	522765	145	194	6	0	131	63	97	Jagdish Sagar (200)	M.G.M. Med. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Mohd. Hasib/Abdul Rahman (Scorer)	Geetanjali Apartment Indore	80013853	527017	523123	144							Jagdish Sagar (199)	Eligible but not participated in counseling	
43	1067/14	Pooja Yadav/G.S. Yadav (Student)	TB PCMS Hostel Bhanpur Bhopal 462001	80032357	503538	507553	104	145	49	6	91	54	72.5	Sanjeev Shilpkar (46)	People's Coll. Med. Science Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Sadab Alam/Khurshid Alam (Scorer)	Village Lakhmapur Azamgarh U.P.	80016972	503537	507457	129							Sanjeev Shilpkar (45)	Eligible but not participated in counseling	
44	21297/13	Pragyashree Baghel/Shriram Baghel (Student)	Mungwani Naka Seoni M.P.	80045880	503556	502191	157	198	2	0	144	54	99	Sanjeev Shilpkar (52)	Gandhi Med. College Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ashok Ku./Shrikrishna Kumar (Scorer)	Meenal Residency Bhopal	80035616	503555	505763	158							Sanjeev Shilpkar (51)	People's Coll. Med. Science Bhopal	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
45	21520/13	Sumit sinha/A.K. Sinha (Student)	Sankat Mochan Road Chattarpur	80004069	504130	508311	156	191	9	0	139	52	95.6	Sudhir Rai (10) and Sanjeev Shilpkar (62)	M.G.M. Med. College Indore	Settled in Rs 15 lakhs and paid Rs 2 lakhs as advance Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Alok Ku. Yadav/ K.K. Yadav (Scorer)	Bhanpur Bhopal	80033509	504129	506044	153							Sudhir Rai (09) and Sanjeev Shilpkar (61)	People's Coll. Med. Science Bhopal	
46	21523/13	Nidhi Sulya/Ritesh Sulya (Student)	Jyoti Nagar Khargon	80006109	526440	521770	136	178	22	0	124	54	89	Jagdish Sagar (166)	M.G.M. Med. College Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Pradeep Ku./RamSwroop (Scorer)	Senthara Morenna M.P.	80010773	526439	526721	144							Jagdish Sagar (165)	Eligible but not participated in counseling	
47	21525/13	Vandana Prajapati/Mohan Lal Prajapati (Student)	Chandrawatiganj Indore	80005808	529020	530379	141	180	10	0	127	63	95	Jagdish Sagar (305)	Arvindo Inst. Med. Sci. Indore	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Shamsheer Alam/ Mahmood Alam (Scorer)	Kanungo Bakhal Indore 452007	80008761	529019	529160	143							Jagdish Sagar (304)	Eligible but not participated in counseling	
48	18708/13	Siddharth Iaim/ Jitendra Kem (Student)	137, Ramkumar Mandhare Mishrilal Nagar Dewas	80016735	526188	529525	154	196	4	0	140	56	98	Jagdish Sagar (156)	G.R. Med. Coll. Gwalior	Rs 2 lakhs paid as per Jagdish Sagar's daily Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Mohd. Ajaz/Mumtaj Ahmed (Scorer)	Tolla Nagar Indore	80006016	526187	524340	156							Jagdish Sagar (155)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
49	19100/13	Aditya Singh Rajpoot (Student)	MS Road Morena, MP	60006283	547620	547025	120	135	59	6	100	35	67.5	Sudhir Rai (48)	People's Col. Med. Sec. Indore	Settled in Rs 25 lakhs and Rs 5 lakh paid in advance on bail Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Amardeep Kumar (Scorer)	58 Sandalpura Mahavir Colony Patna	60044685	547619	547510	138							Sudhir Rai (47)	Eligible but not participated in couseling	
50	334/14	Mandira Sindh/ Gajendra sindhe (Student)	119., Mahakal Road Ujjain	60020723	504166	504083	145	56	139	5	36	20	28	Sudhir Rai (14) and Sanjeev Shilpkar (72)	G.R. Med. Coll. Gwalior	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Akash Bhardwaj (Scorer)	Sharda Nagar Kanpur	60036066	504165	507414	39							Sudhir Rai (13) and Sanjeev Shilpkar (71)	Not Eligible	
51	1069/14	Surbhi Dalal/Suresh Ku. Dalal (Student)	Meenal Residency Bhopal	600032342	504160	506660	129	181	19	0	112	69	90.5	Sanjeev Shilpkar (70)	People's Col. Med. Sec. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Pushpendra Ku. / Scorer)	Rachana Nagar Bhopal	60033558	504159	505721	131							Sanjeev Shilpkar (69)	Eligible but not participated in couseling	
52	1673/14	Palak Kukreja/ Arvind Kukreja (Student)	Abhinav Homes Ayodhya By Pass Bhopal	60032300	503532	507739	148	188	12	0	135	53	94	Sanjeev Shilpkar (44)	People's Col. Med. Sec. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Anshuman Mishra/ Satya dev Mishra (Scorer)	Gandhi Nagar Bhopal	60030374	503531	506107	154							Sanjeev Shilpkar (43)	People's Col. Med. Sec. Bhopal	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matching Answer	Mismatch Answers	Blank Answers	Right Match Answers	Wrong Match Answers	Match Answer Percentage	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
53	1668/14	Neha Bee/Shakeel Beg (Student)	Miranpur Katra Shahjanhour, UP 242301	80035526	504220	504585	144	199	1	0	132	67	99.5	Sanjeev Shilpkar (90)	People's Coll. Med. Sec. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Arvind Yadav/ Ramji Yadav (Scorer)	Kamla Nagar Bhopal	80021937	504219	503767	144							Sanjeev Shilpkar (89)	Eligible but not participated in counseling	
54	1928/14	Sukhveer Singh/S.S. Kawaiy (Student)	Post Dhod Sikar Rajashtan	80024845	504190	504225	136	168	23	9	121	47	84	Sanjeev Shilpkar (80)	People's Coll. Med. Sec. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Suresh Ku./ Thakar Ram (Scorer)	Samdari Bamar, Rajashthan	80014694	504189	502351	142							Sanjeev Shilpkar (79)	Chiyau Med. Coll. Bhopal	
55	1842/14	Abhishek chouhan/Dinesh Chouhan (Student)	Kalandri Vihar Agra U.P.	80039957	528928	524733	139	75	125	0	60	15	37.5	Jadish Sagar (301)	R.D. Gardi Med. Ujjain	It is alleged that 5 Lac paid to Sudhir Rai FormNo. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Jitendra yadav (Scorer)	JC Bose Hostel, YN Road Indore	80039325	528929	526412	78							Jadish Sagar (302)	R.D. Gardi Med. Ujjain	
56	2345/14	Jharan Dewekar/Ravi Diwekar (Student)	Civil Hospital Campus Ratlam M.P.	80017075	504124	505975	151	172	28	0	120	52	86	Sudhir Rai(8) and Sanjeev Shilpkar (50)	Gandhi Med. Coll. Bhopal	Form No. in Agent's List. Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Nitesh Verma (Scorer)	Old Haidarnani, Lucknow	80022013	504123	507920	133							Sudhir Rai (07) and Sanjeev Shilpkar (59)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matchin g Answer	Mismatc h Answers	Blank Answe rs	Right Match Answer s	Wrong Match Answers	Match Answer Percentag e	Agent/List Sr. No.	College Allotted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
57	2381/14	Manish Yadav/Y.S. Yadav (Student)	Gurgaon Haryana	80032467	504208	503049	128							Sanjeev Shipkar (86)	People's Coll. Med. Sec. Bhopal	Form No. in Agent's List Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Sheesharan Yadav/ Madanlal Yadav (Scorer)	Kota, Rajasthan	80022023	504207	539862	117							Sanjeev Shipkar (85)	Eligible but not participated in counseling	
58	290/14	Arvind Singh/Kushwah a Singh (Student)	Kalarash Murrena	80005962	504196	502853	138	175	24	1	121	54	87.5	Sudhir Rai (20) and Sanjeev Shipkar (92)	LN. Med. College Bhopal	Form No. in Agent's List Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Mahesh Kumar/Anokhela l (Scorer)	People's College Bhopal	80033597	504195	504238	142							Sudhir Rai (19) and Sanjeev Shipkar (81)	People's Coll. Med. Sec. Bhopal	
59	2382/14	Paras yadav/Jahan Singh yadav (Student)	H/G 61 New Meenal Residency Bhopal	80032429	504226	504487	137	193	7	0	124	69	96.5	Sanjeev Shipkar (92)	People,s Med. College Bhopal	Form No. in Agent's List Visible in Missmatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Pankaj Ku. Singh/Chanda Prasad Singh (Scorer)	Narayana Hargarh Sadar Mirzapur U.P.	80024304	504225	504748	140							Sanjeev Shipkar (91)	Eligible but not participated in counseling	

S.No.	W.P. No.	Student-Scorer /Father's Name	Student-Scorer Address	Student-Scorer Form No.	Student-Scorer Roll No.	Student-Scorer Expert's R.No.	Marks PMT	Matchin g Answer	Mismatc h Answers	Blank Answe rs	Right Match Answer s	Wrong Match Answers	Match Answer Pending e	Agent/List Sr. No.	College Alloted	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
60	1622/14	Rahul Jain/ Hajarilal Jain (Student)	Ghosara P.S. Bhagwa Chattarpur	80009986	537660	537892	156	36	164	0	27	8	18	Sudhir Pal (34)	M.G.M Med. Coll. Indore	It is alleged that 5 Last paid to Sudhir Pal Form No. in Agent's List. Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		Ranjeet Kumar/CHHOTE PRASAD (Scorer)	VILL-WENA POST-WENA PS-WENA NALANDA BIHAR 803110	80026995	537549	537284	34							Sudhir Pal (33)	M.G.M Med. Coll. Indore	
61	206/14	Rohit Jaiswal/Rajkumar Jaiswal (Student)	Panchil Colony Indore	80000652	524938	522897	153	196	4	0	139	57	98	J.Sagar (42)	M.G.M Med. Coll. Indore	Form No. in Agent's List. Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		ANIL SINGH/AMAR NATH SINGH (Scorer)	117/636 O BLOCK SHARDA NAGAR KAKADEO KANPUR 208025	80024439	524937	526666	154							J.Sagar (41)	Eligible but not participated in counseling	
62	321/14	Rahul Raghuvanshi/Sant am Singh (Student)	Soni Colony Ashok Nagar M.P.	80008097	503460	504103	152	197	3	0	139	53	98.5	Sanjeev Shilpkar (20)	Gandhi Medical college, Bhopal	Form No. in Agent's List. Visible in Mismatched R. No. List of 876 Candidates. Both in the list of 345 Students
		ABHISHEK YADAV /RAMNARAYAN SINGH (Scorer)	184 ZONE 1 M.P.NAGAR BHOPAL BHOPAL 462023.	80029003	503459	506441	153							Sanjeev Shilpkar (19)	Peoples's College of Medical Sciences & RC,Bhanpur, Bhopal	

NOTE

1. 62 Students have filed writ petitions before this Hon'ble Court. All these students have secured admission in either government or private medical colleges. They appeared in the PMT Exam 2013 with the help of a scorer/solver. Out of the 62 scorers who were to assist the students, one was arrested just before the exam i.e. on 6.7.13. Out of the remaining 61 scorers/solvers, one was absent and the corresponding student of such scorer/solver received 119 marks and could not get admission in a government medical college. Out of the remaining 60 scorers, 53 were eligible for participating in the counselling process but there are only 2 scorers/solvers who have taken admission and filed writ petitions before this Hon'ble Court. The remaining 5 scorers have scored less than 100 marks but their corresponding students have received very high marks which goes to show that they were mainly involved in assisting the students.

2. Out of 62 student and scorer/solver pairs, 6 student and scorer/solver pairs have the same marks, 27 student and scorer/solver pairs have a difference of less than 5 marks and in case of 4 students and scorer/solver pairs the difference in marks is less than 10 marks.

3. All the students and scorer/solvers have been allotted tampered roll numbers and included in the list of 876 mismatched candidates.

4. All the 124 candidates (students+ scorers/solvers) have been mentioned in crime number 539/13.

5. All the students and scorers/solvers are mentioned in either Sudhir Rai, Jagdish Sagar or Sanjeev Shilpkar's list and are also mentioned in the list of mismatched roll numbers of 876 candidates prepared by the expert committee constituted by MP Professional Examination Board.

6. Out of the 62 students, 5 students are from outside

MP while the remaining 57 are from within MP. Out of the 62 scorers, 38 scorers/solvers are from outside MP and 24 scorers/solvers are from within MP.

7. That out of the 62 students that have filed writ petitions, in only 5 cases, the percentage of matching answers between the answers selected by the student and the answer selected by the scorer/solver is less than 50%. In 29 cases the percentage of matching answers is greater than 90% and the highest being 99.5%. In 13 cases, the percentage of matching answers between the student and the scorer is greater than 80%. Thus there are 42 out of 60 cases where the percentage of matching answers exceeds 80%. In another 7 cases the percentage is greater than 70%.

8. Therefore it is evident from the above-mentioned data that the more than half the scorers/solver were eligible to participate in the counselling process and subsequently take admission in the MBBS course. However except in two cases, the scorers have opted to not take part in the counselling process and if they have taken admission, they have not reported at the college for taking admission. Further in 49 cases, the student and scorers have attempted the same answers and these two facts together clearly shows that the scorers/solvers have taken part in the PMT examination 2013, only with an intention to aid and assist the students to take admission and all the students whose admission has been cancelled have managed to get admission into some or the other college and were pursuing the MBBS course until their candidature was cancelled. It is also clear that all these students were in contact with the three persons involved in the Vyapam MBBS scam and in 12 cases, the STF has already found that money was paid by the students/parents of the students or were in constant communication with the three key persons engaged in the scam. As the matter is still under investigation and the criminal trial is ongoing, details of

payment by other students would also emerge and the facts would become clearer. Therefore on the basis of the aforesaid, the action of the answering respondent in cancelling the candidature of the petitioners is correct and there is a strong case against them."

(xiii) He has invited our attention to the Activity Chart to bring home the point that Nitin Mohindra, Senior System Analyst, who is now facing criminal action, had breached the time-line specified; and including the norms regarding allocation of roll-numbers. Instead of following the scheme of randomised numbers generated by the computer, the erring officials of the Board resorted to other manual method to generate roll numbers in relation to the identified candidates, which was impermissible. Why that deviation was made for those selective candidates, no explanation is forthcoming. Further, the roll numbers were so allocated so that the sitting arrangement matches with the plan given by conspirators and kingpin such as Jagdish Sagar and others. Inasmuch as, the pattern emerging from the record conclusively indicates that the scorer was allotted roll number to occupy the front seat and the genuine candidate was allotted roll number to ensure that he would occupy rear seat behind the scorer. This was done to facilitate copying and assist the genuine candidates to score high marks.

(xiv) He further submits, that the fact that some material has not been referred to in the report or the impugned decision, it would not render the same illegal or bad in law. He submits that it is well settled that all material need not be referred to in the impugned order and, more so, it was open to the Board to rely on further and even subsequent material to support its decision in public interest, being case of mass-copying. He submits that the Authority acted on the basis of information received from different sources and including the reports of the Committees. The totality of the circumstances was at the back of the mind of the Chairman who took the final decision.

(xv) Our attention has been invited to the provisions of Madhya Pradesh Recognised Examination Act, 1937 to contend that the decision taken by the Chairman on which basis the impugned orders have been issued under the signature of Director, cannot be termed as without authority or illegal especially when the decision is not based on some material but substantial material to indicate the complicity of the candidates against whom action has been taken. He pointed out the following indisputable and incriminating facts emerging from the material available with the Board, which leads to an inevitable

conclusion that the identified candidates had indulged in unfair means;

(a) firstly, there was mismatch in the roll-numbers of the concerned candidates. The roll-numbers given to them were not as per the norm of randomised numbers generated by the computer as specified by the Board;

(b) secondly, Nitin Mohindra, Senior System Analyst took away all the record in the system (computer data) on a pendrive and rearranged the same on the Computer at his residence to realign the roll-numbers of the concerned candidates and the scorers as per the plan given by the conspirators. He did not upload the roll-numbers within the time-frame prescribed in the Activity Chart. There was delay of three days in that behalf. The hard disk from the residence of Nitin Mohindra has been recovered by the police during the investigation, which reinforces the above position;

(c) thirdly, names of students, mentioned in the diary of racketeers recovered by the police corresponds with the names of candidates against whom action has been taken on account of mismatch of their roll-numbers;

(d) fourthly, the sitting arrangement of the candidate and the scorer was identical to the plan suggested by the racketeers/conspirators, which is evidenced from the diary recovered from them;

(e) fifthly, high percentage of matching of correct as well as wrong answers given by the scorer and the concerned candidate has been noticed from their respective answer-sheets;

(f) sixthly, names of all the 415 candidates have been found in the STF list as involved in the commission of offence;

(g) seventhly, over 90% of the scorers, though eligible, did not take admission nor participated in the counselling despite securing higher marks than the

genuine candidates;

(h) eighthly, the forms of scorers were filled through common web portal obviously controlled by the conspirators; and

(i) ninthly, substantial number of scorers were from outside the State of Madhya Pradesh.

(xvi) These indisputable facts, submits learned counsel, were sufficient to justify the decision of the Authorities and to conclude that the identified candidates, against whom action has been finally taken by the Board, were involved in organised mass-copying and resorted to unfair means during the examination. He relied on the provisions of the Information Technology Act 2000 and the meaning of expression 'decryption' to justify the mechanism adopted by the Computer Experts Committee in identifying the candidates who indulged in unfair means. He relied on the allegations against Nitin Mohindra in the pending criminal case, which, according to him, discloses the conspiracy hatched on a very large scale and involving huge money transactions. From the totality of circumstances, according to him, no other conclusion could be reached by any reasonable person, but, that the identified candidates had engaged in organised mass-copying. That fact is reinforced from the material collected during the investigation and shared with the Board; and corresponds with the mismatch list of candidates prepared by the Computer Experts Committee by applying allotment logic formula referred to in their report.

(xvii) He further submits that the argument of some of the petitioners that those petitioners who have taken admissions in private medical colleges cannot be disturbed as a consequence of cancellation of Entrance Examination Results by the Board, is also devoid of merits. Inasmuch as, as per the official record the said candidates have taken admissions in the respective private colleges against the Government seats, which were allotted on the basis of merits determined in the Common Entrance Test conducted by the Board. In other words, if the candidate is found to be ineligible to appear in the said examination or having incurred disqualification as a result of which his entrance examination results are cancelled, as a necessary consequence, even the admission in the private medical college obtained on the basis of results of that examination cannot be continued. He submits that 50% Management seats are filled up on the basis of merits from amongst the candidates who have appeared in the Common Entrance Test conducted by the college or institution through single

window arrangement by the State Government or by Agency authorised by the Government. Only admissions taken on the basis of the said examination will be governed by the Act of 2007 (II) and the Rules of 2008 framed thereunder.

(xviii) To buttress the above submissions, learned counsel has placed reliance on *Sudhir Kumar Mishra and others v. Municipal Corporation, Jabalpur and another* (supra); *The Bihar School Examination Board vs Subhas Chandra Sinha* (supra) (para 10, 12 to 14); *Goa Shipyard Ltd. vs. Babu Thomas*[32] (para 13); *Sahiti and others vs. Chancellor, Dr. N.T.R. University of Health Sciences and others*[33] (para 30 and 32); *Board of High School and Intermediate Education, U.P. Allahabad and another Vs. Bagleshwar Prasad and another* (supra) (para 5, 6, 11 & 12); *Bihar School Examination Board vs. Subhash Chandra Sinha* (supra) (para 2, 3, 6, 10 to 14); *Maharashtra State Board of Secondary and Higher Secondary Education vs K.S.Gandhi and others*[34] (para 10, 16, 17, 23 to 26, 28, 30, 37, 38, 40); Division Bench of this Court in the case of *M.P. Board of Secondary Education, Bhopal vs. Ku. Shashi Tomer and others*[35] (para 5 to 7); *Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and others*[36] para (2 and 13), *Aligarh Muslim University and others v. Mansoor Ali Khan*[37] (para 8, 22, 23); *State of Maharashtra and others vs Jalgaon Municipal Council and others*[38] (para 32); *M.C. Mehta vs Union of India and others Re: Inder Mohan Besiwal Re: Bharat Petroleum Corporation Ltd*[39] (para 21), *Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar and others*[40] (para 7); *Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited and others vs Surendra Nath Pandey and others* [41] (para 12 and 16); *Union of India and others Vs. Anand Kumar Pandey and others*[42] (para 9); *B. Ramanjii and others Vs. State of A.P. and others* [43] (para 2, 7 and 8); *Madhyamic Shiksha Mandal, M.P. vs Abhilash Shiksha*

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32. (2007) 10 SCC 662
33. (2009) 1 SCC 599
34. (1991) 2 SCC 716
35. 2004 (1) MPLJ 455 (DB)
36. (2003) 8 SCC 311
37. AIR 2000 SC 2783
38. (2003) 9 SCC 731
39. (1999) 6 SCC 237
40. (2007) 13 SCC 352
41. 2012 (1) SLJ 73
42. (1994) 5 SCC 663
43. (2002) 5 SCC 533

Prasar Samiti and others[44] (para 2); *Biswa Ranjan Sahoo and others vs Sushanta Kumar Dinda and others* [45] (para 3); *Chairman, J&K State Board of Education vs. Feyaz Ahmed Malik and others*[46] (para 18 and 20); *Chairman, All India Railway Recruitment Board and another vs. K. Shyam Kumar and others* [47] (para 11, 12, 16, 18, 20, 36 to 48).

21. After having considered the rival submissions, the moot question that arises for consideration is: whether the existing Board has been lawfully constituted and was competent to enquire into matters pertaining to pre-admission professional examination conducted by it? No doubt, the thrust of challenge of the petitioners was founded on the provisions of the Act of 2007 (I). Even the respondents, including the Board, while opposing the said grounds responded as if the existing Board was functioning and exercising powers under the Act of 2007(I). That stand, obviously, was taken in the written response filed by the Board without proper research and, in fact, contrary to the factual situation emerging from the official record. It is only during the course of arguments, while responding to the queries posed by the Court, effort was made to dig out the relevant official records to justify the existence of the present Board and its authority. Indeed, the extracts of the office notings and the original record have not been expressly adverted to in the reply-affidavit filed by the Board, which, as aforesaid, was prepared without proper research and perhaps in haste on instructions of the uninformed officials. The draftsman of the affidavit did not think it necessary to enquire into all the relevant facts before filing the return of the Board. That omission or lapse, however, cannot be the basis to answer the issue under consideration disregarding the factual position emanating from the office notings and the original official record maintained in the ordinary course of business. To do substantial justice and expound the correct factual and legal position on the issue under consideration, in our opinion, is the bounden duty of the Court. For that, the Court can look into the office notings in the original official record and not answer the issue merely on the basis of incorrect stand taken in the reply affidavit filed on behalf of the Board. We, therefore, hold that in larger public interest the Board must be allowed to modify its stand consistent with the official record and to place the same on record before the Court.

22. We may note that the petitioners in W.P. Nos. 20908/2013 & 21518/

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44. (1998) 9 SCC 236
45. (1996) 5 SCC 365
46. (2000) 3 SCC 59
47. (2010) 6 SCC 614

2013 have taken out I.A. Nos. 4154/2014 and 4155/2014. However, these applications have been filed on 24/03/2014, during the course of rejoinder-reply - at the fag end (last day) of the long drawn hearing - praying for permission to file rejoinder. In that rejoinder, objection has been raised about taking on record compilation of documents submitted on behalf of the Board during the course of hearing. In the first place, it needs to be noted that the compilation of documents, is none other than the true copies (Photostat) of the relevant extracts of office notings in the original official record maintained in the ordinary course of business of the existing Board. Indubitably, for ascertaining the truth, the Court has enough authority to summon the official record and examine the same. If so, when the Board wanted to rely on such original official record to buttress its modified submission and to reassure the Court about the correctness thereof, then, certainly, the Court can and must take that into account to do substantial justice and in larger public interest, to expound the correct factual and legal position. That record will facilitate the Court to ascertain the question of legitimacy of the existing Board and its authority. Further, when the compilation of the relevant extract of the official notings in the official record was produced before the Court, with the leave of the Court, copy thereof was simultaneously made over to the counsel appearing for the petitioners. In fact, the counsel for the petitioners relied on the same documents to further their submissions. Hence, no prejudice has been caused to the petitioners whatsoever. For all these reasons, we, unhesitatingly, reject the hypertechnical objection of Mr. Amitabh Gupta regarding taking on record the compilation of relevant extracts of the office notings in the original official record and the public Notifications issued from time to time.

23. Reverting to the question of status of the existing Board, it becomes clear from the official record that the State Government, in exercise of powers under Section 3(1) of the Act of 2007 (I), has so far not issued public Notification to establish the Board within the meaning of that Act. Indeed, the Act of 2007 (I) received assent of the Governor on 31st August, 2007. But it was brought into force by issuance of Notification under Section 1(3) of that Act on 11th October, 2007 with effect from 15th October, 2007. The fact that the Act has come into force, it does not necessarily follow that the Board referred to in Section 4 of the Act of 2007 (I) has been established. That could happen "only" on issuance of a formal Notification under Section 3(1) of the Act of 2007 (I) by the State Government, for establishing the Board

with effect from such date, as may be specified in the Notification. As long as this Notification is not issued, it would be preposterous and impermissible to assume that the existing Board has been merged in the Board under the Act of 2007 (I) or has become nonexistent, in fact or in law.

24. Notably, by virtue of Section 25 of the Act of 2007 (I) all assets and liabilities of the existing Professional Examination Board of the State Government would vest in the Board so established under Section 3 of the Act of 2007 (I) and thence all the employees belonging to or under the control of the existing Board would be deemed to be the employees of the Board so established.

25. A priori, the employees/officials of the existing Board could function and exercise all powers as already vested in them. At the same time, the employees/officials of the existing Board could not exercise powers with reference to the provisions of the Act of 2007 (I) and for the same reason their action cannot be tested on the touchstone of provisions of the Act of 2007 (I). In other words, the fact that the Board within the meaning of the Act of 2007 (I) has not been established even after lapse of seven years from coming into force of the Act of 2007 (I), that does not mean that the existing Board was illegitimate and has had no authority to conduct the pre-admission professional examinations. That authority vests in the existing Board by virtue of the public Notification issued in the name of Governor dated 22nd January, 2004. Extracts of the office notings in the original files produced in the form of compilation reinforces that the said public Notification was issued after approval by the Chief Minister and Cabinet of Ministers.

26. The history of the existing Board, can be traced to public Notification dated 30th July, 1983 issued in the name of Governor after the approval of the Chief Minister and which decision was ratified by the Cabinet of Ministers. The Manpower Planning Department, Government of Madhya Pradesh issued order dated 30th July, 1997 in the name of the Governor to change the name of the Board constituted vide Notification dated 30th July, 1983 to "Professional Examination Board" and reconstituted the Board as indicated therein. In due course, on 21st August, 1997, the post of Director of the Professional Examination Board was created. By issuance of order dated 22nd January, 2004 in the name of the Governor, the Professional examination Board was reconstituted and the Director of the Madhya Pradesh Professional Examination Board was nominated as Member Secretary of the said Board.

Indeed, individual members have changed from time to time. In terms of the order dated 22nd January, 2004, the Chairmanship and the Membership of the Board was made *ex officio*. In other words, officials holding designated posts would automatically become *ex-officio* members of the existing Board. This Board has not been constituted by the State with reference to any enactment; but, in exercise of its executive powers under Article 162 of the Constitution. In the case of *Thakur Bharat Singh* (supra), the Court examined the sweep of Article 162 and 73 of the Constitution. It held that the Articles are concerned primarily with distribution of executive power between Union on one hand and the States on the other, and not with validity of its exercise. The State or its officers in exercise of executive authority cannot infringe rights of citizens merely because Legislature of the State has power to legislate in regard to subject on which executive order is passed. For the view we have taken that the constitution of the existing Board is justly made in exercise of executive power under Article 162 of the Constitution and further that the said Board could deal with all matters connected with and incidental to the examination to be conducted by it; and that authority has been justly exercised in the present case, this decision will be of no avail to the petitioners.

27. The Apex Court in the case of *Dr. Amberesh Kumar vs. Principal, I.L.R.M. Medical College and others* [48], has held that the executive powers of the State Government under Article 162 of the Constitution are very wide. In paragraph 19, the Court observed that the State Government in exercise of its executive power can make an order relating to matter referred to in entry 25 of the Concurrent List in absence of the law made by the State Legislature. The exercise of such power cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in respect of any entry in List 1.

28. In the case of *State of Andhra Pradesh and another vs. Lavu Narendranath and others* etc.[49], the Court restated the legal position that the Executive has power to make any regulation having the effect of a law so long as it does not contravene any legislation already covering the field and the Government order issued in exercise of such powers in no way would affect the rights of the candidates.

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48. 1986 (Supp.) SCC 543 49. 1971 (1) SCC 607

29. In the case of *M/s Bishamber Dayal Chandra Mohan* (supra), the Apex Court has relied on its earlier decision in the case of *Rai Sahib Ram Jawaya Kapur and others vs. The State of Punjab*[50]. In that case, the Apex Court held that the executive power of a modern State is not capable of any precise definition. The Court noted that the provisions in the Constitution do not contain definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed that "Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away". The Court then went on to observe in paragraph 20 as under:

> "20. Even assuming that the impugned teleprinter message is not relatable to the two Control Orders, the State Government undoubtedly could, in exercise of the executive power of the State, introduce a system of verification on movement of wheat from the State of Uttar Pradesh to various other States at the check-posts on the border and place restrictions on inter-district movement of wheat by traders on private account within the State. The executive power of a modern State is not capable of any precise definition. In *Ram Jawaya Kapur v. State of Punjab, Mukherjea, C.J.*, dealt with the scope of Arts. 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed: "Ordinarily the executive power con-notes the residue of governmental functions that remain after legislative and judicial functions are taken away". It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive

50. AIR 1955 SC 549

power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill."

In paragraph 22, the Court reiterated the following position:

"22. The Essential Commodities Act, 1955 was enacted by Parliament in exercise of concurrent jurisdiction under Entry 33 List III of the Seventh Schedule to the Constitution as amended by the Constitution (Third Amendment) Act, 1954. The exercise of such concurrent jurisdiction would not deprive the State legislature of its jurisdiction thereunder. The State legislature, therefore, could still make a law on the subject regulating trade and commerce in, and the production, supply and distribution of 'foodstuffs' and the only question that would arise is one of repugnancy dealt with in Art. 254 of the Constitution. The executive power of the State being co-extensive with its legislative power under Entry 33, List III, it relates to all matters covered by the subject 'foodstuffs', trade and commerce in, and the production, supply and distribution thereof. This is, of course, subject to the limitation contained in Proviso to Art. 162 which directs that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof."

30. Notably, no enactment has been brought to our notice to even remotely suggest that the constitution of the Board by the State Government in exercise of its executive powers was repugnant to any express provision of law made by the Parliament or by the State Legislature. The fact that the Act of 2007 (I) envisages establishment of the Board does not mean that the constitution of the existing Board is repugnant to the provisions of the said Act. It is a different matter that the State ought to have established the Board under the Act of 2007 (I), soon after coming into force of that Act. However, from the office

notings in the original office record relied by the counsel for the Board, it is noticed that the matter has been examined at different levels in the State Government and the State is actively considering amendment of Section 4 of the Act, as, in its opinion, inclusion of large number of persons as members of the Board would make the working of the Board unwieldy and nonconducive to efficient and effective dispensation.

31. Be that as it may, the primary obligation to conduct pre-admission professional examinations for ensuring free and fair admission process, is, undoubtedly, that of the State Government. This examination is not held under any of the existing Legislation such as the Universities Act or any Central Legislation. That responsibility has been vested in the existing Board by the State, by constituting 'Professional Courses Examination Board', vide public Notification dated 22nd January, 2004. The examination conducted by the existing Board is also not governed by the stipulations in the Act of 1937, which, after the amendment of 1984, intends to regulate the recognized examinations by making provisions for prevention of leakage of questions set and for penal action for adoption of unfair means at such examinations and for certain matters connected therewith.

32. The Act of 1937 was enacted to provide for the prevention of leakage of questions set at recognized examinations and to provide for actions for adoption of unfair means at such examinations and for matters connected therewith. The preamble of the Act mentions that it had become expedient to enact the said Act dealing with the matters referred thereto. It was enacted with the previous sanction of the Governor General as required by sub-section (3) of Section 80-A of the Government of India Act. The term "recognized examination" is found in Section 2 of the said Act. Clause (b) thereof reads thus:

> "[(2) It extends to and shall be in force in the whole of Madhya Pradesh.]
>
> [2. In this Act, unless the context otherwise requires, –
>
> (a) xxx xxx xxx
>
> (b) "recognised examination" means any of the examinations enumerated in the Schedule and includes an examination held under the authority of any Government or by any body

constituted under any enactment;"

It may be useful to refer to the expression "unfair means" found in clause (c) of sub-section (2) of the Act, which reads thus:

> "(c) "unfair means" in relation to any recognised examination, means taking or giving or attempting to take or give any help other than one permissible, if any, under the rules applicable thereto from any material, written recorded or printed or from any person in any from whatsoever."

Section 3 of the Act stipulates restriction on copies of question paper and offer of information. Section 3-A, which was introduced by way of amendment vide M.P. Act No.20 of 1966, provides for prevention of leakage by persons entrusted with examination work. By the same amendment, Section 3-B was introduced stipulating restriction on fake papers at the recognized examination. Section 3-C to 3-E came to be introduced in the said Act by M.P. Act No.7 of 1984, in the said Act. Section 3-C provides for prohibition of loitering etc. near examination centre. Section 3-D provides for prohibition of use of unfair means at recognized examinations and Section 3-E stipulates that any person indulging in the acts specified therein shall be guilty of an offence of criminal intimidation in relation to recognized examination. Section 3-C to Section 3-E of the said Act reads thus:

> "3-C. No person save where he is permitted by virtue of his duties so to do or where he is authorised by an officer not below the rank of a Centre Superintendent, shall, during the hours when a recognised examination is conducted at any examination centre and two hours preceding the commencement of such examination on any date or dates on which such examination is conducted, commit any of the following acts within the premises of the examination centre or any public or private place within a distance of one hundred yards of the examination centre :-
>
> (a) loiter;
>
> (b) distribute or cause to be distributed or otherwise publicise or clause to be publicised any paper or any other matter relating to the examination;

(c) indulge in such other activity as is likely to be prejudicial to the conduct of examination or is likely to affect the secrecy thereof:

Provided that nothing contained in this section shall apply in respect of bona-fide activities of examinees appearing at the examination which is conducted at such examination centre.

3-D. (1) No person shall adopt or take recourse to unfair means at any recognised examination.

(2) No person shall aid, abet or conspire in the use of unfair means at any recognised examination.

3-E. Whoever being an examinee, within the premises of an examination centre, by words or by gesture or by use of any weapon or an object which if used as a weapon of attack is likely to cause injury to any human being, criminally intimidates an officer in charge of an examination centre, by whatever name called, or any invigilator or any member of staff assisting such officer-in-charge in the conduct of any recognised examination or whoever in the like manner criminally intimidates any person otherwise concerned with the conduct of examination as paper setter or in any other capacity whatsoever shall be guilty of an offence of criminal intimidation in relation to recognised examination."

Section 4 of the same Act provides for penalty for contravention of Sections 3-A, 3-B, 3-C, 3-D or for commission of offence of criminal intimidation under Section 3-E. Section 5 stipulates that conviction of any person will be treated as an act of moral turpitude disqualifying him for service or employment under the State. Section 6 provides that the offence under the said Act shall be tried summarily by any judicial magistrate of the first class specially empowered in that behalf by the State Government and the provision of section 262 to 275 (both inclusive) of the Code of Criminal Procedure, shall, as for as may be, apply to such trial. Section 7 provides for power of the State Government to amend schedule appended to the Act. The schedule to the Act

is in relation to the examinations treated as recognized examinations conducted by specified Authorities. The said Schedule reads thus:

"THE SCHEDULE
(See Section 2)

1. High School and Intermediate Examination of the Mahakoshal, Madhya Bharat and Ajmer Boards of Secondary Education.
2. A University Examination.
3. Cambridge Examination conducted by the Cambridge University Syndicate.
4. Short-hand and Type-writing Examination
5. Vernacular Middle Examinations.
6. Normal School Certificate Examination.
7. National Cadet Corps And Auxiliary Cadet Corps Examination.
8. Industrial Schools Test Trade Course Certificate Examination.
9. Physical Training Certificate Examination.
10. Examination conducted by the Prayag Mahila Vidyalaya or Hindi Sahitya Sammelan, Prayag.
11. Examinations conducted by the Registrar of Departmental Examinations, Education Department."

Indeed, the examination conducted by the existing Board of pre-admission to professional courses is not part of the abovenoted Schedule.

33. Suffice it to hold that the existing Board has been legitimately constituted by the State Government vide notification dated 22nd January, 2004 – with some changes in the membership by subsequent orders/ notifications. The existing Board must continue to function in terms of those State Government orders/notifications until establishment of the new Board upon issuance of notification under Section 3(1) of the Act of 2007(I). Only

upon issuance of that notification the existing Board would merge in the newly established Board and cease to exist. Until then, the existing Board is obliged to function and discharge the obligation of the State Government of conducting free and fair pre-admission examination for admission to professional courses and deal with all matters connected therewith and incidental thereto. No other Authority can discharge those functions.

34. As noted earlier, the present Board is not constituted under any enactment, but, in exercise of executive powers of the State under Article 162 of the Constitution. It is not an autonomous body. It has the status of being one of the wing of Government Department under the Ministry of Technical Education Department or Department of Manpower Planning, as the case may be.

35. The learned Single Judge of this Court in the case of *Professional Examination Board vs. Bhopal Municipal Corporation*[51], while considering the issue of imposition of property tax dealt with the question as to whether the existing Board is a part of the State. In paragraphs 6 and 7 of its decision the Court observed thus:

> "6. After considering the rival contentions of both the sides this Court is of the opinion that the Board is a part of the State Government. It is a limb, agency, projection, wing or extended arm of the State. It is not separate from the body and soul of the State. It is well known how the corporate personalities come into existence whether as a 'corporation sole' or a 'corporation aggregate'. The well recognised modes of bringing into existence the Public Corporations are "by or under a statute". These are created by Acts of Parliament or State Legislatures. These are formed as Government Companies under the Companies Act, 1956 or Societies under the Societies Registration Act or even Co-operative Societies under the Co-operative Societies Act. Thus the veil of incorporation is woven around such Public Corporations and that makes them separate and distinct legal entities. It is through

51. (2003) 4 MPHT 95

the act of 'incorporation' by or under a statute that a separate juridical person is born and it is endowed with a corporate personality. For example Reserve Bank of India, Oil and Natural Gas Commission, Damodar Valley Corporation, Life Insurance Corporation, Road Transport Corporations and Food Corporation of India have been formed by Acts of Parliament. Similar Corporations have been created by the Acts of State Legislature, e.g., Board of Secondary Education. The examples of Government Companies are State Trading Corporation and Hindustan Shipyard Limited. The Societies are formed under the Societies Registration Act, e.g.y Council of Scientific and Industrial Research.

7. Not a single instance could be pointed where a distinct corporate personality has been conferred on a body by an executive order of the Government. The Union or the State in exercise of their executive power under Articles 73 and 162 of the Constitution can form the Boards or Bodies for carrying on the Governmental or public functions but these would only be extended arms or wings of the Government and would not be clothed with separate 'corporate shell' or legal entities. Such Boards or Bodies or by whatever name they are called would continue to be a part of the Government or its Department. The Telecommunication Department is the latest example. It was working as a Department of the Central Government but now it has been corporatised by forming 'Bharat Sanchar Nigam Limited'. A posterior approach in this respect demonstrates that it could not have been done by just issuing an executive order. That is why the need arises for creating the corporate bodies "by or under a statute" and not through an executive fiat. Creation of these bodies other than through an act of incorporation would continue to keep them within the fold of the Government."

(emphasis supplied)

We approve of this view.

36. In the case of *State of Sikkim vs. Dorjee Tshering Bhutia and others*[52], the Sikkim Government by notification decided to make special recruitment to the service on the basis of written examination-cum-viva voce test. The notification mentioned 'exigency of service' as a ground for holding the special recruitment. That notification was challenged before the High Court which quashed the same. In this case, the Public Service Commission could not be made functional and was not constituted, as is the position in the present case. The Court found that there were justifiable reasons for delay in constituting the Commission. In that backdrop, the Court examined the validity of the notification issued by the State Government. The stand of the State Government was that the concerned Rules being inoperative and non-availability of Public Service Commission, the State Government was within its executive power to issue notification and proceed in the matter on that basis. While examining this stand, the Apex Court in Paragraph 14, 15 & 16 observed as thus:

> "14. The executive power of the State under Article 162 of the Constitution of India extends to the matters with respect to which the legislature of the State has power to make laws. The Government business is conducted under Article 166(3) of the Constitution in accordance with the Rules of Business made by the Governor. Under the said Rules the Government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business.
>
> 15. The executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature. It is settled law that any order, instruction, direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions, is without jurisdiction and is a nullity. But in this case we are faced with a peculiar situation. The Rules, though enforced, remained unworkable for about five years. The Public Service Commission, which was the authority to implement the Rules,

52. (1991) 4 SCC 243

was not in existence during the said period. There is nothing on the record to show as to why the Public Service Commission was not constituted during all those five years. In the absence of any material to the contrary we assume that there were justifiable reasons for the delay in constituting the Commission. The executive power of the State being divided amongst various functionaries under Article 166(3) of the Constitution of India there is possibility of lack of co-ordination amongst various limbs of the Government working within their respective spheres of allocation. The object of regulating the recruitment and conditions of service by statutory provisions is to rule out arbitrariness, provide consistency and crystallise the rights of employees concerned. The statutory provisions which are unworkable and inoperative cannot achieve these objectives. Such provisions are non-est till made operational. It is the operative statutory provisions which have the effect of ousting executive power of the State from the same field. When in a peculiar situation, as in the present ease, the statutory provisions could not be operated there was no bar for the State Government to act in exercise of its executive power. The impugned notification to hold special selection was issued almost four years after the enforcement of the Rules. It was done to remove stagnation and to afford an opportunity to the eligible persons to enter the service. In our view the State Government was justified in issuing the impugned notification in exercise of its executive power and the High Court fell into error in quashing the same.

16. The fact that the State Government purported to act under Rule 4(3) of the Rules in issuing the impugned notification is of no consequence. When the source of power can be validly traced then the State action in the exercise of such power cannot be struck down on the ground that it was labelled under a different provision."

(emphasis supplied)

37. A priori, the existing Board could exercise all powers as could be

exercised by the State Government in discharging its obligation to conduct free and fair pre-admission examination to professional courses. That would encompass all matters connected with the examination conducted by it or incidental thereto. No other Authority can deal with these matters.

38. The next question is: even though the existence of the present Board may be traced to exercise of executive powers of the State Government, does it have the authority to enquire into matters pertaining to examination conducted by it after declaration of results? In other words, does the Board become *functus officio* by declaration of results of the examination conducted by it?

39. The Notification, under which the present Board has been constituted, does not prescribe any procedure or limit the powers of the Board. Intrinsically, it posits complete authority in the Board to conduct examinations in professional courses and deal with all matters connected therewith and incidental thereto. No executive instructions have been issued by the State Government to limit the powers of the present Board in respect of matters concerning the conduct of pre-admission examinations in professional courses. Further, no express Regulation, instructions or practice directions have been issued by the existing Board, nor brought to our notice, which limits the authority of the said Board to enquire into matters connected with the examinations conducted by it after declaration of results. In absence of any express executive instructions much less legislation or enactment, Regulation or Rule having the force of law, limiting the existing Board of its authority to enquire into matters concerning the examinations conducted by it only till the declaration of results and not thereafter, the argument under consideration cannot be countenanced. Thus, the argument of the petitioners that the Board became *functus officio* after declaration of results and ceased to have authority to deal with matters connected with the examination conducted by it, will have to be negatived. As a matter of fact the petitioners are resting their claim of admission to the professional courses on the basis of their performance in the examination conducted by this very Board.

40. Indisputably, the obligation to conduct free and fair preadmission professional examinations is fully vested in the State Government and which has been entrusted to the existing Board. That power not only encompasses authority to conduct the examination but also enquire into all matters concerning

therewith or incidental thereto. That authority does not cease with the declaration of results of such examination. Any other view would not only be a pedantic view but also against public policy. For, that may result in perpetrating injustice caused to the better deserving and meritorious candidates, but, also perpetrating fraud played on the public examination process. In Law, any act of fraud vitiates the entire action. The product of fraud must be visited with the finding that it is *non-est* in the eyes of Law and viewed seriously. That issue can be considered even in collateral proceedings. In the case of *Ram Preeti Yadav* (supra) the Apex Court observed that once fraud is proved it will deprive the persons of all advantages or benefits obtained thereby and further delay in detection or in taking action so as to invoke argument of equity would be completely misplaced. The Court also restated the legal position that in the case of mass copying, principles of natural justice need not be strictly complied with. In that case the appellant had taken employment as a teacher on the basis of results in B.A. examination as well as M.A. examination. Result of the concerned examination was cancelled on 16th October, 1996, though the examination was conducted in the year 1984. Notwithstanding this fact, the Court opined that since the result of the examination was founded on commission of fraud that would deprive the appellant of all advantages or benefits obtained thereby.

41. Suffice it to observe that a candidate who indulges in unfair and fraudulent means during the "public examination" cannot be allowed to reap benefit of his own wrong merely because of the fortuitous situation of that fraud has been unravelled by the concerned Authority after declaration of result of the examination or for that matter inaction of the officials of the Board in acting with dispatch. Since the authority of the present Board is to conduct examinations and deal with all matters connected therewith and incidental thereto, it pre-supposes that it is only the Board, being an extended wing of the State, competent to enquire into the question regarding unfair and fraudulent means adopted during the examinations conducted by it – be it before declaration of results or, for that matter, after declaration of results. The fact that the candidate has already taken admission in some professional course on the basis of those results cannot be the basis to hold that the Board has become *functus officio* or it has ceased to have authority to pronounce on the matters connected with the examination conducted by it and, in particular, regarding unfair and fraudulent means adopted thereat, by an individual

candidate or large number of candidates, as the case may be.

42. Let us now test the argument of the petitioners that the provisions of the Act of 2007 (I) limits the power of the Board. In the first place, although the said Act has come into force, on account of non-establishment of the Board by issuance of Notification under Section 3(1) of the Act of 2007 (I), the provisions contained in that Act regarding functions and duties of the Board will be of no avail. That are not applicable to the existing Board. In any case, there is no "express provision" in the Act of 2007 (I) to limit the power of the Board to enquire into allegations of commission of unfair means during the examination only till declaration of results of the examination. Even for that reason, reliance on the provisions of the Act of 2007 (I) will be of no avail to the petitioners. We make it clear that we may not be understood to have interpretated any provision of the Act of 2007 (I). For, in our view, the provisions in the Act of 2007 (I) are inapplicable to the matter on hand. A priori, it is unfathomable to countenance the argument of the petitioners that the existing Board has had no authority to initiate enquiry after declaration of examination result.

43. The next question is: whether the impugned orders passed by the Director of the existing Board are without any authority? The State Government, as aforesaid, constituted the present Board to be headed by the Chairperson and other members. The Chairperson, obviously is the Administrative Head of the Board. No doubt, the impugned orders are issued under the signature of the Director of the Board. However, the relevant official notings in the original official files as produced by the respondents during the hearing, clearly indicate that initially the Director prepared the proposal and placed it before the Chairperson for his approval. The Chairperson, in turn, on both the occasions not only approved the proposal, as was placed before him by the office but also directed the Director to take follow-up action. Thus understood, the impugned orders though issued under the signature of the Director are in furtherance of the final decision of the Chairperson. As the Chairperson is the Administrative Head of the existing Board, he occupies a pivotal position and carries with him implied powers to deal with all matters connected with and incidental to the examinations conducted by the Board. In the case of *Sahiti* (supra) the Apex Court while considering the provisions of the relevant enactment held that, the Vice Chancellor had pivotal position as the Principal Executive Officer and carried with him certain implied powers.

The argument that there was no specific provision enabling the Vice Chancellor to order re-evaluation of the answer-scripts was rejected. It is further observed that the Court should consider whether the decision of the educational Authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding Rules or Ordinance and in doing so the Court should show due regard to the opinion expressed by the Authority.

44. In the present case, from the office notings in the official record as produced, it is also evident that by an office order dated 17th March, 1997, the scope of work of the officials was delineated. The said order reads, thus:-

"कमांक व्यापम/लेखा/900/97 भोपाल, दिनांक 17 मार्च 1997

<u>आदेश</u>

वित्तीय और प्रशासकीय स्वीकृति दिये जाने के लिए शासन ने "बुक आफ फायनेन्सियल पावर्स–1995" में सभी विभागों के लिए अधिकार दिये हैं। व्यापम में भी साधारणतः शासकीय नियमों के अनुसार ही कार्य किया जाता है और उपरोक्त अधिकार यहां भी लगभग हमारे पदनामों को देखते हुए उसी स्तर पर लागू होना उपयुक्त है, जैसा कि शासन के विभागों के लिए किया गया है। इसी भावना को ध्यान में रखते हुए मण्डल की 46 बीं बैठक दिनांक 04.03.97 के एजेन्डा कमांक–5 में लिये गये निर्णयानुसार प्रशासकीय तथा वित्तीय अधिकारों का प्रत्यायोजन करने की दृष्टि से शासन से अन्य विभागों में प्रचलित प्रथा के अनुसार, व्यापम के निम्नानुसार अधिकारियों को उनके नाम के समक्ष दर्शाये अनुसार पद की शक्तियॉ प्रत्यायोजित की जाती हैं:–

स0कं0	नाम अधिकारी	जिस स्तर की शक्तियां दी गई उसका विवरण
1.	अध्यक्ष	प्रशासकीय विभाग
2.	वरिष्ठ नियंत्रक	विभागाध्यक्ष
3.	संयुक्त नियंत्रक	क्षेत्रीय/संभागीय प्रमुख
4.	उप नियंत्रक(स्था)	कार्यालय प्रमुख

2/ परीक्षा संबंधी गोपनीय प्रकार के कार्य के लिए नियंत्रक को समस्त अधिकार रहेंगे। इसके लिए नियंत्रक द्वारा अध्यक्ष से अनुमोदन प्राप्त किया

जाकर आगामी कार्यवाही की जायेगी।

3/ कार्यालय प्रमुख को तृतीय एवं चतुर्थ श्रेणी के सभी कर्मचारियों के अवकाश प्रकरण, वार्षिक वेतनवृद्धि, त्यौहार अग्रिम, अनाज अग्रिम आदि स्वीकृत करने के अधिकार होंगे, लेकिन तृतीय एवं चतुर्थ श्रेणी के पदों पर नियुक्तियां विभागाध्यक्ष के अनुमोदन पश्चात् की जा सकेंगी।

4/ विभागाध्यक्ष को अधिकारी स्तर के सभी प्रकरणों के निराकरण के अधिकार रहेंगे, लेकिन अधिकारी स्तर पर नियुक्तियां/पदोन्नति आदि अध्यक्ष के अनुमोदन के बाद की जा सकेंगी।

5/ विभागध्यक्ष को नस्तियां डिवीजनल हेड के माध्यम से प्रस्तुत की जायेंगी।

6/ परीक्षा संबंधी कार्यो में अंशकालीन रखे जाने वाले वालिन्टियर का चयन नियंत्रक के सुझावानुसार अध्यक्ष के अनुमोदन उपरान्त किया जा सकेगा। इसके पश्चात् क्योंकि ये पार्ट– टाईम एम्प्लाई हैं, अन्य व्यवस्था स्थापना शाखा करेगी।

7/ नस्तियों पर प्रशासकीय स्वीकृति लिये जाने के बाद वित्तीय स्वीकृति हेतु प्रकरण में लेखा शाखा का मत प्राप्त कर सक्षम स्तर की स्वीकृति मिल जाने पर, भुगतान के लिए नस्ती लेखा शाखा को भेजी जायेगी और लेखा शाखा चेक तैयार कर संयुक्त नियंत्रक (लेखा) से हस्ताक्षर करवाकर कार्यालय प्रमुख या विभागाध्यक्ष (जैसी भी स्थिति हो) को चेक हस्ताक्षर हेतु भेजेगी। संयुक्त नियंत्रक (लेखा) की अनुपस्थिति में लेखा शाखा के प्रतिनिधि के रूप में लेखा अधिकारी हस्ताक्षर करेंगे। चेक हमेशा दो अधिकारियों के संयुक्त हस्ताक्षरों से ही जारी किया जायेगा।

8/ कितने चेक काटे गये और कितने प्रकरण लंबित हैं, इसकी जानकारी प्रत्येक सप्ताह लेखा शाखा विभागाध्यक्ष एवं अध्यक्ष को प्रस्तुत करेगी, ताकि प्रशासकीय नियंत्रण बना रहे।

9/ गोपनीय भुगतान के चेकों, पर संयुक्त नियंत्रक (लेखा) एवं नियंत्रक द्वारा हस्ताक्षर किये जा सकेंगे।

10/ संयुक्त नियंत्रक (लेखा) को आहरण एवं संवितरण अधिकारी का उत्तरदायित्व रहेगा। वे अध्यक्ष की अनुमति से कुछ कार्य लेखाधिकारी को प्रत्यायोजित कर सकेंगे।

11/ स्वीकृति प्राप्त होने के बाद नस्ती लेखा शाखा में प्राप्त होने पर भुगतान एक सप्ताह में हो जाना आवश्यक है।

12/ उक्त व्यवस्था के लागू होने पर नियंत्रक सिर्फ परीक्षा कार्य देखेंगे और वरिष्ठ नियंत्रक द्वारा प्रशासकीय कार्य देखे जायेंगे। ये आदेश तत्काल प्रभाव से लागू होंगे।

(एच0जी0 ओभराय)

अध्यक्ष"

From this arrangement, it is obvious that the Chairperson being the Administrative Head was overall incharge of all the affairs of the Board and was, thus, obliged to ensure that free and fair examinations are conducted by the Board and in the process, could take final decision on all matters connected therewith. No doubt in Clause 12 of the aforesaid order dated 17th March, 1997 it is mentioned that on coming into force of the abovesaid arrangement, the Controller will be incharge of the conduct of the examination and the Senior Controller will be incharge of administrative functions. That would not whittle down the overarching powers of the Chairperson to take final decision in relation to matters connected with the pre-admission professional courses examination to be conducted by the Board. The impugned decisions, in substance, declare that the concerned candidates indulged in organised unfair means during the subject examination thereby rendered themselves ineligible and for which reason their examination results have been cancelled. Suffice it to observe that the final decision has been taken at the highest level by the Chairperson and merely articulated in the form of impugned orders under the signature of the Director. We, therefore, conclude that there is nothing wrong if the impugned orders are issued under the signature of the Director of the Board. That would not render the impugned orders invalid.

45. Relying on the fact that one PIL filed against the respondents challenging the constitution of the existing Board was disposed of on the basis of statement made by the respondents to the Court that the Act of 2007 (I) has come into force, it was submitted that, however, till date requisite notification under Section 3 of that Act to establish the statutory Board has not been issued. For that reason, all the actions of the existing Board will have to be considered as *non-est* as it could not function any more thereafter. Further, the actions of the existing Board can be tested only on the basis of the provisions of the Act of 2007 (I). We have already dealt with the question about the legality of the Board. The fact that statement was made before the Court which was the basis for disposal of PIL challenging the constitution of the existing Board

does not result in automatic dissolution of the existing Board. On the other hand, Section 25 of the Act of 2007 (I) itself expressly provides that the existing Board would merge in the statutory Board only upon issuance of notification under Section 3 to establish the statutory Board. The fact that such notification has not been issued does not mean that the existing Board would cease to exist. It is the creature of an executive order of the State Government, issued in exercise of its expansive executive powers. The Board is one of the wing of the State Government under the Department of the Ministry of Technical Education Department or Department of Manpower Planning. For the same reason the argument under consideration deserves to be rejected.

46. The next question that arises for our consideration is: whether the decision making process, in the fact situation of the present case, is just and reasonable? Indeed, in absence of any Regulations or executive instructions the Authority is expected to act reasonably [see Full Bench decision of this Court in *Sudhir Kumar Mishra* (supra)].

47. In the case of *Feyaz Ahmed Malik* (supra) the Apex Court restated the consistent view on the approach to be adopted qua the decision of the expert body such as Universities/Boards. In paragraphs 18 to 20, the Court observed thus:

> "18. While judging the authority or otherwise all steps taken by authorities of the Board to take action against candidates taking resort to mass malpractice it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. *The decision of such an expert body should be given due weightage by courts. This Court in the case of Bihar School Examination Board v. Subhash Chandra Sinha,* (1970) 1 SCC 648 observed: (SCC pp. 652-53, para 14)
>
> > "The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside

source. If at a centre the whole body of students receive assistance and manage to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc. before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury."

19. The Allahabad High Court in *Rajiv Ratna Shukla v. University of Allahabad,* AIR 1987 All 208, made the following observations:

"Even otherwise the statute and ordinances provide for an authority known as Examination Committee to look into and decide such matter. As the Examination Committee after looking into the report was satisfied that the examinations were not conducted fairly it would be unfair for this Court to interfere in writ jurisdiction. It need not be mentioned that a finding recorded by a tribunal, administrative or quasi-judicial body, is a finding of fact if it is based on consideration of evidence howsoever meagre and insufficient it may be. The report of the Flying Squad coupled with the statement of Centre Superintendent was available with the Examination Committees. Even if another committee or this Court on the same material could have come to a different conclusion it could not furnish

ground for interference. This Court cannot substitute its opinion for the opinion of committee. It could quash the order only if it finds that it was based on no material or the Committee ignored some material which if considered could have resulted in a different conclusion. Since the decision of the Examination Committee does not suffer from any such error it is difficult to grant relief to petitioners.

We are not unconscious or oblivious of grave injustice which might be done to some of the students, maybe even majority, because of refusal by this Court to interfere but we cannot ignore the deterioration in the standard of discipline of academic institutions. How this should be regulated or controlled should best be left to the discretion of those who are entrusted with this responsibility. If this Court starts substituting its own opinion in place of opinion expressed by authorities it shall result in chaos. It is well known that due to conduct of others even innocent persons suffer but the sufferings of few has to be tolerated in the larger interest of the society. As is usual in such matters it is only the few who are responsible but to protect the bona fide or the genuine if a decision is given which erodes the discipline and vitiates the atmosphere of the academic institutions then it is better to restrain and refuse.

* * *

As regards demands for inquiry and violation of principle of natural justice, suffice it to say, that on academic disciplinary proceedings exception is made where proceedings are substantially fair or it is impossible to hold inquiry. Cases of mass copying resulting in cancellation of the examination fall in this exception. By its very nature no inquiry could have been made. Decision in *Madhulika Mathur* case (1984 All LJ 618) (FB) has absolutely no relevance. Concept of reasonable opportunity assumes primacy where

penal action is proposed to individual. Direction to hold re-examination cannot be put in that category. It was not like what had happened in Gorakhpur University where examination was not treated as ineffective or vitiated. Ratio of that decision is that what was invalid could not be treated as valid for punishment without affording opportunity."

20. Coming to the case on hand, as noted earlier, the High Court has quashed the notification issued by the Board as ultra vires Article 14 of the Constitution and ultra vires the Act. Further the High Court has discussed at length how the Board should proceed in the matter and has issued directions regarding the principles to be followed and matters to be borne in mind by the Board while framing Rules and has even issued directions as to what some of the provisions of the Rules should be. From the discussions in the impugned judgment it is clear that the High Court has taken upon itself the task of finding out a scheme to tackle the problem of mass malpractice in examination. In our considered view the approach of the High Court in the matter is erroneous and this has vitiated the judgment. In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in charge of the institutions. In such matters the court should not try to substitute its own views in place of the authorities concerned nor thrust its views on them. That is not to say that the court cannot at all interfere with the decisions of the authorities in such matters. The court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates. In judging the validity a notification containing provisions regarding steps to be taken when a report of mass- malpractice is received it is to be kept in mind whether the provisions contained in the notification are relevant for achieving the purpose for which the notification is issued and if it is found that the notification is relevant for and has a nexus with the purpose to be achieved then the

notification cannot be said to be arbitrary and discriminatory. The High Court has failed to keep this principle in view while considering the validity of the notification in question. A notification cannot be struck down as discriminatory merely because in implementing the same injustice is likely to be suffered by some candidates. The impugned judgment does not show that the decision to strike down the two notifications is based on grounds sound in law and justified on facts. It is our considered view that the judgment of the High Court is unsustainable and has to be quashed."

(emphasis supplied)

48. Keeping in mind the principle expounded in the abovesaid decision, we may now analyse the process adopted by the existing Board to find out whether the same is just and reasonable. From the office notings in the original files it is seen that the Board received communication from the Crime Branch in connection with the FIR registered after arrest of 20 suspects, who were to appear in the examination to be conducted by the Board on 7th July, 2013 and having indulged in unfair means during the said examination. The Crime Branch demanded certain information. In that context, the Director eventually prepared proposal on 30th August, 2013 for constituting Computer Experts Committee to find out the logic behind allocation of roll numbers to the concerned candidate, as demanded by the Crime Branch. The proposal was considered by the Chairperson on 5th September, 2013, who accorded approval thereto. The office notings in the original file reads thus:-

"पृष्ठ कमांक

नस्ती कमांक व्यापम/5–प–1/

विषय: मण्डल में उपलब्ध व्यवस्थित डेटा के लाजिक के संबध में।

कृपया अतिरिक्त पुलिस महानिदेशक एस0टी0एफ0 म0प्र0 भोपाल के पत्र कमांक अ.म.नि./एस.टी.एफ./मुख्या.0/2013 (D-184) दिनांक 29.8.2013 का अवलोकन करना चाहें।

अतिरिक्त पुलिस महानिदेशक, एस0टी0एफ0 म0प्र0, भोपाल के उपर उल्लेखित पत्र में जिला अपराध शाखा इन्दौर द्वारा मण्डल को प्रेषित पत्र कमांक निरी/अप/ई/539/1140/13 दिनांक 13.08.2013 एवं पत्र कमांक अप0/ई/1169/13 दिनांक 17.08.2013 का संदर्भ देते द्वारा वास्तविक

लाजिक अनुसार जानकारी चाही गई है। मण्डल द्वारा पूर्व में जिला अपराध शाखा, इन्दौर को पत्र कमांक 4495 दिनांक 12.7.2013 द्वारा प्रेषित लाजिक की जानकारी आरोपीगणों द्वारा कम्प्यूटर शाखा प्रभारी की हैसियत से तैयार कर भेजी गई थी।

यह उचित होगा कि मण्डल में उपलब्ध डाटा से वास्तविक लाजिक का परीक्षण एवं तकनीकी रूप से जॉच हेतु तकनीकी समिति का गठन किया जाना प्रस्तावित है। तकनीकी समिति में शहर के तकनीकी संस्थानों यथा–NITTTR, MANIT, RGPV, तकनीकी शिक्षा से तकनीकी शिक्षा में उपलब्ध विशेषज्ञ एवं IT Deptt. से कम्प्यूटर विशेषज्ञों के एक–एक नाम उपलब्ध करवाने हेतु लिखा जाना उचित होगा। उक्त विशेषज्ञों को केन्द्रीय पर्यवेक्षक को दिये जाने वाला मानदेय देना उचित होगा। कृपया उपरोक्त प्रस्ताव का अनुमोदन प्रदान करना चाहें।

हस्ता.
(जॉन किंग्सली)
संचालक
30.08.2013

Chairman

अध्यक्ष Director

तकनीकी विशेषज्ञ उपलब्ध करवाने हेतु NITTTR, MANIT, RGPV, IT Deptt. एवं तकनीकी शिक्षा विभाग को पत्र भेजे गये, किन्तु NITTTR एवं MANIT द्वारा तकनीकी विशेषज्ञ उपलब्ध करवाने में असमर्थता व्यक्त की गई है। अतः किस्प संस्थान को तकनीकी विशेषज्ञ उपलब्ध करवाने हेतु पत्र लिखा गया है। कृपया अवगत होना चाहें।

हस्ता.
(जॉन किंग्सली)
संचालक
05.08.2013

अध्यक्ष Director

हस्ता./06.09.13"

Pursuant to the said decision, a six members Computer Experts Committee was constituted to give its opinion..

49. The said Computer Experts Committee met on 7th September, 2013 and after analysing the computer data available with the Board, submitted their opinion in the form of Minutes dated 7th September, 2013, which has

been reproduced in its entirety in paragraph 4(viii) of this judgment. The second meeting of the Computer Experts Committee was held on 30th September, 2013, which once again analysed the entire matter in the light of new information and submitted its opinion in the form of Minutes dated 30th September, 2013, which has also been reproduced in paragraph 4(xii) of this judgment. On conjoint reading of the Minutes of the two meetings held by the Computer Experts Committee, the process adopted by the Experts Committee to unravel the logic of allocation of roll numbers by manipulating the specified formula of randomisation, can be discerned. The Computer Experts Committee analysed the electronic record/data after decryption thereof. The process so adopted by the Computer Experts Committee is not the subject matter of challenge nor the exercise undertaken by the Computer Experts Committee to collate the mismatch roll numbers from the computer data, is questionable and can be amenable to judicial review. This argument of the respondent Board was buttressed on the basis of the provisions contained in the Information Technology Act, 2000 providing for authentication of electronic record.

50. One set of petitioners went to the extent of contending that the Board had no authority to constitute such Committee. This extreme stand taken by those petitioners, however, was not supported by the other set of petitioners represented by Shri Rajendra Tiwari, Senior Counsel. In our opinion, it is preposterous to hold that the Board which is empowered to take action in connection with the unfair means adopted by the candidates in the examination conducted by it, can have no power to inquire into the said episode by constituting Experts Committee to aid and assist it in the said enquiry in respect of technical matters concerning the Computer operations. We, therefore, reject that contention.

51. It was then contended that in the first Computer Experts Committee meeting, the mismatch was as high as 30195, as against the total 40086 applications/candidates. Whereas, in the second meeting the same dropped down to only 876 mismatch cases. Even this submission will have to be stated to be rejected. Inasmuch as, from the Minutes of the first meeting, the process adopted by the Committee to identify the mismatch cases has been delineated. On reconsideration of the available material, in the second meeting, the Committee opined that the mismatch cases were only 876. The process adopted by the Committee has been noted by the Committee in the concerned Minutes. It is not for the Court to examine the correctness of the opinion

formed by the Experts Committee. The judicial review can be only with regard to the decision making process. In our opinion, there is nothing contrary to indicate that the process adopted by the Experts Committee was impermissible and absurd in any manner.

52. The other contention pressed into service to question the opinion recorded by the Computer Experts Committee was that the second meeting held on 30th September, 2013 was hastened and was attended only by five members of the said Committee. The meeting was hastened to keep the outstation member away from deliberations. Even this argument does not commend to us. There is nothing in the Minutes of the first meeting even to remotely indicate that the process followed for recording opinion was authored by Dr. Samar Upadhyay, who was the outstation member of the Committee being resident of Jabalpur. Nor any material is brought to our notice that Dr. Samar Upadhyay was intentionally kept out as there was possibility of his resisting the opinion formed in the second meeting. We cannot assume malice in fact, merely because the said member did not or could not attend the second meeting of the Experts Committee held on 30th September, 2013. The office record indicates that the second meeting was necessitated to expedite the information sought by the Crime Branch. Since the second meeting of the Computer Experts Committee was convened on 30th September, 2013 at short notice, the same was attended only by five other local members available at Bhopal. Further, it is not as if those five members had no technical knowledge. Even these five members were qualified and possessed technical knowledge regarding Computer operations. They could have, therefore, proceeded with the second meeting without any impediment. The petitioners have, however, relied on the case of *Vijay Singh Lamba* (supra) of the Apex Court which dealt with the question of fixation of quorum to contend that the second meeting of the Computer Experts Committee was vitiated. This submission will have to be stated to be rejected. For, no document has been brought to our notice mentioning that the quorum of the said meeting was fixed of all the six members. In the decision pressed into service, the Apex Court has held that fixation of quorum is generally left to the Committees themselves to devise its day to day procedure. Hence, this decision will be of no avail to the petitioners, in the fact situation of the present case. As aforesaid, in that second meeting, the matter was fully examined and opinion was given that the mismatch cases were only 876. The reason why there was change of opinion can be culled out from the highlighted portion of Minutes of that

meeting. The process adopted for arriving at that conclusion has been adverted to in the Minutes, already reproduced in paragraph 4(xii) of this judgment.

53. It was then contended on behalf of the petitioners that the opinion so given by the Computer Experts Committee was under dictation of the Special Task Force investigating the criminal case. As aforesaid, the Minutes recorded by the Experts Committee are self-eloquent. There is nothing in the Minutes of the said meeting to suggest that figure of 876 mismatch cases has been arrived at in arbitrary manner or only on the basis of the inputs given by the STF. We hold that the said figure has been arrived at independently after reconsideration of the Computer data and including with reference to the answers given by Nitin Mohindra, Ajay Kumar and C.K. Mishra, who were in police custody. The Committee opined that the said information was unclear and incomplete. The Committee, therefore, applied its own process to analyse the logic of giving manipulated roll numbers. It created separate files of candidates city-wise and indexing of files was done on the basis of date of birth, Part-7 to 11 of Transaction ID and C.L. Name (Surname). In the index file, firstly, roll numbers were allotted as per specified record and thereafter roll numbers were allotted on the basis of deviated record. After carrying out this exercise, the Experts Committee found that the data of the roll numbers of all 14 cities was developed by subject Experts. In the roll numbers developed by the subject Experts and the numbers used in PMT 2013, the mismatch shown by the subject Experts was on the basis of 40135 applications/ candidates. The mismatch of 876 was unravelled, which was kept in file MIS876.docx. A chart of various probable options of Transaction ID was kept in file Digits_2013_Revised.docx and the programme used by subject Experts was kept in file Rol_GEN.docx. On that material, the city-wise mismatch position has been noted in the Minutes of the second meeting of the Experts Committee totalling to 876 cases. Suffice it to note that no flaw in the process adopted by the Experts Committee has been substantiated by the petitioners.

54. Merely criticising the said process as imaginary and farce of enquiry, cannot be the basis to overlook the said opinion of the Experts Committee. The Experts Committee's opinion was then further considered by the Committee of Controllers. The Committee of Controllers analysed the entire matter in its meeting held on 4th October, 2013 and on 8th October, 2013. The process adopted by the Committee of Controllers can be discerned, *inter alia,* from the highlighted portion of its examination report dated 8th October, 2013,

which is reproduced in paragraph 4(xvi) of this judgment. The opinion of the Committee of Controllers was then considered by the Director and placed along with the proposal before the Chairperson for taking appropriate action against 345 identified candidates allegedly having involved in unfair means during the examination. The Chairperson approved the said proposal and issued direction to the Director to take follow-up action. On the basis of that direction, the Director issued the impugned order on 9th October, 2013 against 345 candidates. Similar process was carried out by the Committee of Controllers in respect of second lot of 70 candidates against whom action was taken vide impugned order dated 6th December, 2013. Even the examination report prepared on the second occasion by the Committee of Controllers concerning 70 candidates has also been reproduced in paragraph 4(xxi) of this judgment. In other words, the impugned orders have been passed under the signature of the Director of the Board after due deliberations and consideration at different levels and including on the basis of opinion of the Computer Experts Committee and the Committee of Controllers. It is not as if decision has been taken by the Board arbitrarily or merely because of the communications received from the Crime Branch or for any other consideration. For forming such opinion, if material received from the Crime Branch was also considered, being relevant, that does not mean that the opinion formed was under the dictation of STF. There is no reason to doubt the justness of the process followed by the Board before issuance of the impugned decisions.

55. The attempt of the petitioners was to persuade the Court to go into the question as to whether the opinion formed by the Computer Experts Committee or for that matter the Committee of Controllers, was proper or some other opinion could have been formed. That cannot be the scope of judicial review. It is not for the Court to sit over the opinion of the Experts Committee as a regular Court of Appeal. It is not the case of the petitioners that the members of the Computer Experts Committee were unqualified or incompetent to be the members of that Committee. If the Board has taken aid of such well-qualified, competent and impartial experts and the final decision is taken keeping in mind the said opinion along with other material, no fault can be found with that approach.

56. Suffice it to observe that it is not a case where the decision has been taken by unauthorised or incompetent persons or, for that matter, a *mala fide* or arbitrary decision. It has been taken after due deliberations and consideration of relevant material. Even assuming that another view was

possible, that cannot be the basis to undo that decision. The fact that initial mismatch figure revealed in the first meeting of the Computer Experts Committee was very high and it was later reduced to only 876 by the Committee of Joint Controllers or that the action was limited to 345 in the first lot and 70 candidates in the second lot, it does not mean that the said decisions are unjust and unreasonable.

57. In the context of the argument of the petitioners that the Board has taken action against selective candidates out of 876 candidates, it has been pointed out that the matter was being examined by the Board in respect of the remaining candidates and lateron we were told that similar action has been taken against other 24 left over candidates. Be that as it may, it is not possible to hold that the process adopted by the Board before arriving at the impugned decisions, is unjust or unreasonable.

58. It has come on record that after the matter was processed at different levels, the proposal was then submitted by the Director to the Chairman for his approval who, in turn, approved the same and issued directions to the Director to take follow-up action. On the basis of those orders, the Director issued the impugned orders dated 9th October, 2013 and 6th December, 2013. As regards the decision which culminated with the first order dated 9th October, 2013, that was placed before the Executive Committee of the Board in the meeting convened on 19th November, 2013. The Executive Committee not only approved the said decision but also ratified the same. As regards the second decision dated 6th December, 2013 concerning 70 candidates, the matter is yet to be placed before the Executive Committee. It is stated that the Executive Committee of the Board has not met since the said decision was taken; and as and when the meeting of the Executive Committee of the Board is held, even this decision will be placed before the Executive Committee. In this context, it was argued that even the Chairman could not have taken the final decision much less without taking prior approval of the Executive Committee. We are not impressed by this submission. The fact that the first decision dated 9th October, 2013 was placed before the Executive Committee of the Board for its consideration, does not mean that the Chairman of the Board had no authority to take the final decision at his level. The Chairman, being the Administrative Head, had requisite authority to take the final decision in respect of all matters concerning the examination conducted by the Board and, in particular, about the unfair means adopted during the said examination. No express provision of law has been brought to our notice which required

prior approval of the Executive Committee of the Board before final decision was taken by the Chairperson. Reliance placed on the provisions of the Act of 2007 (I) by the petitioners to buttress this argument will be of no avail. We have already held that although the Act of 2007 (I) has come into force, the provisions of that Act cannot be invoked to regulate the working of the existing Board. The existing Board has been constituted by the State Government in exercise of its executive powers under Article 162 of the Constitution to discharge the obligation of the State of conducting pre-admission professional courses examination. Suffice it to observe that the decision of the Chairperson which culminated with the issuance of impugned orders under the signature of the Director could be acted upon and taken to its logical end irrespective of the approval or the ratification thereof by the Executive Committee.

59. It was faintly argued that the ratification of impugned order dated 9th October, 2013, by the Executive in its meeting dated 19th November, 2013 was not legal and enforceable as it was not even signed. Firstly, this argument was canvassed on the basis of information received by the petitioners under RTI. Secondly, having already found that the Chairperson of the Board was fully competent to take all decisions in the matter concerning the institution of inquiry and to annul the candidature of the candidates, who were identified in the enquiry as having involved in the commission of organised unfair means, ratification of the final decision of the Chairperson was unnecessary. Moreover, the counsel for the Board had shown willingness to produce the original official file containing the duly signed Minutes of the Executive Committee dated 19th November, 2013. Thus, we find no merits in this submission.

60. Reliance was placed on *Goa Shipyard Ltd.* (supra) in support of the argument that ratification of invalid act for being validated retrospectively is no more *res integra.* In para-13 of this decision the Apex Court has accepted this contention relying upon the decision in *Maharashtra State Mining Corporation vs. Sunil*[53]. In the present case, however, we have already held that the Chairperson had complete authority to deal with matters connected with and incidental to the examinations held by the Board and for which reason ratification of his decision was not imperative.

61. In the case of *Dr. Mohanjit Singh* (supra), the Apex Court was dealing with a case where ratification of the decision taken by the member was done

53. (2006) 5 SCC 96

subsequently by the absentee member. The Court has opined that ratification by that member at a later point of time cannot validate the proceedings of the selection committee as there was no quorum and in its absence, the committee was not entitled to transact business. We fail to understand as to how the principles stated in this case are applicable to the case on hand. Moreso, we have held that there was no need to take approval of the Executive Committee or, for that matter, ratification of the decision of the Chairperson.

62. The next question is: when the mismatch is found in respect of 876 candidates, the action of the Board can be sustained as it chose to take action selectively only against 415 candidates. The argument of the Board is that the figure of 876 mismatch pertains to the combination of scorer and the genuine candidate. Thus, the action to cancel the examination results was required to be taken only against the genuine candidates constituting 50% of 876 mismatches. The 50% of 876 mismatches would work out to 438 candidates. Instead, the Board has presently taken action against 415 candidates and, as was stated across the Bar, against additional 24 candidates. That takes the total figure to 439 candidates. It is intriguing that why similar action cannot be taken against the pseudo candidates (scorers) who had appeared to enhance the prospects of the genuine candidates. They also sail in the same position of having indulged in organised unfair means during the examination and, therefore, must visit with the same consequences. We hope that the Board would consider this aspect, irrespective of the fact that the remaining 437 out of 876 identified candidates have secured admission to any professional course or named in the list of candidates furnished by STF or otherwise. However, we hold that that approach of the Board cannot be a ground to interfere with the just orders passed against the petitioners and similarly placed persons.

63. Further, the logic applied by the Board in limiting its action to 415 candidates, as can be culled out from the reasons recorded in the impugned decisions and the contemporaneous record on the basis of which that decision is taken, is that, the action has been taken against candidates whose names are correspondingly appearing in the list of candidates prepared by the STF allegedly involved in commission of unfair means during the examination. The question is: whether that approach of the Board can be sustained. The learned counsel for the Board has placed reliance on the decision of the Apex Court in the case of *Chairman, All India Railway Recruitment Board* (supra) in support of the argument that if more than one option was available to the Board and if the Board had taken decision to take action only against the

candidates whose names appeared in both the lists prepared by the STF and the Board, that decision ought not to be interfered with by the Court. In the above noted reported case, in paragraph 20, the Supreme Court adverted to three options available to the Authority as against which the Authority chose to take action against limited number of candidates:

> "20. We may indicate that the Railway Board had three alternatives viz., (1) to cancel the entire written test, and to conduct a fresh written test inviting applications afresh; (2) to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test; and (3) to go ahead with the first written test (as suggested by the High Court), confining the investigation to 62 candidates against whom there were serious allegations of impersonation."

It may be useful to refer to following observations in this decision:

> ***"Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA) and Proportionality***
>
> 36. *Wednesbury* applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a State

burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

39. The courts have to develop an indefeasible and principled approach to *proportionality,* till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker.

"Application of the principles

41. We have already indicated the three alternatives available to the decision-maker (Board) when serious infirmities were pointed out in the conduct of the first written test. Let us examine which was the best alternative the Board could have accepted applying the test of *Wednesbury* unreasonableness. Was the decision taken by the Board to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test so unreasonable that no reasonable

authority could ever have decided so and whether the Board before reaching that conclusion had taken into account the matters which they ought not to have taken into account or had refused to take into account the matters that they ought to have taken into account and the decision taken by it was so unreasonable that no reasonable authority could ever have come to it? Judging the decision taken by the Board applying the standard laid down in the *Wednesbury* principle of unreasonableness, the first alternative, that is, the decision to cancel the entire written test and to conduct a fresh written test would have been time consuming and expensive. Initially 10,02,909 applications were received when advertisement was issued by the Board out of which 5,86,955 were found to be eligible and call letters were sent to them for appearing in the written test held at various centres. 3,22,223 candidates appeared for the written test, out of which 2690 were selected. Further, the candidates who had approached the court had also not opted that course instead many of them wanted to conduct a retest for 2690 candidates, the second alternative. The third alternative was to go ahead with the first written test confining the investigation to 62 candidates against whom there were serious allegations of impersonation. The Board felt in the wake of the vigilance report and the reports of the CBI, it would not be the best option for the Railway Administration to accept the third alternative since there were serious allegations of malpractices against the test. From a reasonable man's point of view it was felt that the second option i.e. to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test was the best alternative.

42. We will now apply the proportionality test to three alternatives suggested. Principle of proportionality, as we have already indicated, is more concerned with the aims of the decision- maker and whether the decision-maker has achieved the correct balance. The proportionality test may require the attention of the court to be directed to the relative weight

according to interest and considerations. When we apply that test and look at the three alternatives, we are of the view that the decision maker has struck a correct balance in accepting the second alternative. The first alternative was not accepted not only because such a process was time-consuming and expensive, but nobody favoured that option, and even the candidates who had approached the court were more in favour of the second alternative. Applying the proportionality test also in our view the Board has struck the correct balance in adopting the second alternative which was well balanced and harmonious.

43. We, therefore hold, applying the test of *Wednesbury* unreasonableness as well as the proportionality test, the decision taken by the Board in the facts and circumstances of this case was fair, reasonable, well balanced and harmonious. By accepting the third alternative, the High Court was perpetuating the illegality since there were serious allegations of leakage of question papers, large scale of impersonation by candidates, mass copying in the first written test.

44. We are also of the view that the High Court has committed a grave error in taking the view that the order of the Board could be judged only on the basis of the reasons stated in the impugned order based on the report of Vigilance and not on the subsequent materials furnished by CBI. Possibly, the High Court had in mind the Constitution Bench judgment of this Court in *Mohinder Singh Gill v. Chief Election Commr.* (1978) 1 SCC 405.

45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in *Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti,* (1998) 9 SCC 236 found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in

Mohinder Singh Gill case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.

46. We also find it difficult to accept the reasoning of the High Court that the copy of the Vigilance report should have been made available to the candidates at least when the matters came up for hearing. Copy of the report, if at all to be served, need be served only if any action is proposed against the individual candidates in connection with the malpractices alleged. The question here lies on a larger canvas as to whether the written test conducted was vitiated by serious irregularities like mass copying, impersonation and leakage of question paper, etc. and not against the conduct of a few candidates.

47. In this connection reference may be made to the judgment of this Court in *Bihar School Examination Board v. Subhas Chandra Sinha,* (1970) 1 SCC 648. That was a case where 36 students of SSHE School, Jagdishpur and HE School, Malaur District Shahbad moved a writ petition before the Patna High Court against the order of the Board cancelling annual Secondary School Examination of 1969 in relation to Hanswadih centre in Shahbad District. The High Court quashed the order of cancellation and directed the Board to publish the results. Against the judgment and order of the High Court the Board filed an appeal by way of special leave petition to this Court. This Court allowed the appeal and upheld the order of the Board cancelling the examination. On the complaint that no opportunity was given to the candidates to represent their case before cancellation, this Court observed as follows: (SCC p.652 para 13)

> "13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a

vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

48. Applying the above principle, we are of the view that the finding recorded by the High Court that non-supply of the copy of the Vigilance report to the candidates was a legal infirmity, cannot be sustained."

(emphasis supplied)

In this case, the Court was called upon to examine the issue regarding validity of the order passed by the Board directing holding of re-test for recruitment Group D post, for those candidates who had obtained minimum qualifying marks in the first written examination where large scale irregularities were noticed. The Court noted that the High Court rejected the contention that the order was politically motivated and mala fide. In the present case, no argument has been advanced that the impugned orders are politically motivated or mala fide, as such. The argument is about the justness of the approach and the conclusion reached by the Board. That argument will have to be examined on the touchstone of principles enunciated by the Apex Court. This decision is also an authority on the proposition that it is open to the Authority to justify its decision relying on subsequent material available to support its action, in public interest. The stand taken by the Board, in the present case, commends to us. In that, the Board chose to resort to one of the options amongst other options

including of cancellation of the entire examination results. Judicial review of that subjective satisfaction of the Board is not permissible. No doubt, in the initial enquiry by the Computer Experts Committee, it was revealed that there were as much as 30195 mismatches out of total 40086 applicants/candidates. But, on further scrutiny the said mismatch condensed to only 876 mismatches. We have already found that the process adopted by the concerned Committees is a possible approach and, therefore, unexceptional. No doubt, mismatch of as many as 876, is a substantial number, but that did not warrant cancellation of entire examination especially keeping in mind the fact that the results were to be declared on 13.07.2013 and the entire admission process to professional courses in the State was to be completed before 30th September, 2013. Keeping in mind the paucity of time and the fact that involvement of concerned candidates was revealed essentially after the constitution of the Computer Experts Committee in September, 2013 which culminated with the opinion of the said Committee on 30th September, 2013 and followed by the further enquiry by the Committee of Controllers which culminated with the opinion rendered by that Committee on 8th October, 2013, no fault can be found with the decision of the Board to proceed only against the identified candidates. By cancellation of the entire examination, that would not only have affected large body of other candidates, but, also entailed in keeping all the seats in the professional and medical colleges of the entire State vacant for the concerned academic year. Viewed in this perspective, no fault can be found with the decision of the Board of having initially proceeded against the identified 415 candidates, vide impugned decisions.

64. The next question is: whether impugned decisions fulfil the requirement of Chapter-IV of the Brochure. In the first place, the Brochure is only a handbook issued for guidance and the procedure to be followed. That would not limit the expansive powers of the Board to take action having found that organized mass-copying was indulged during the examination conducted by it. Assuming that the power vested in the Board could be limited to the provisions contained in the Brochure being advance declaration of the procedure to be followed by it, we have no hesitation in taking a view that the impugned decisions are well within the parameters specified in the Brochure. For the sake of convenience, we will reproduce the relevant extract of the Brochure.

"अध्याय –4

निर्देश एवं परीक्षा संचालन नियम

महत्वपूर्ण :–

ऑनलाईन आवेदन पत्र में भरी गई जानकारी का सत्यापन काउंसलिंग/प्रवेश के समय मूल दस्तावेजों के आधार पर संबंधित विभाग/संस्था द्वारा किया जायेगा। अतः बाद मे यह पता चलता है कि सफल आवेदक द्वारा ऑनलाईन आवेदन–पत्र भरते समय गलत अथवा असत्य जानकारी अथवा किसी जानकारी को छुपाया है, ऐसी स्थिति में यदि यह पाया गया कि कोई उम्मीदवार झूठी/गलत जानकारी देकर या सुसंगत तथ्यों को छुपा कर प्रवेश पाने में सफल हो गया है या प्रवेश के पश्चात् किसी भी समय यह पाया गया कि आवेदक को किसी गलती या चूकवश प्रवेश मिल गया है, तो आवेदक को दिया गया प्रवेश संस्था प्रमुख/प्रवेश प्राधिकरण/मध्यप्रदेश व्यावसायिक परीक्षा मण्डल द्वारा उसके अध्ययन काल के दौरान तुरंत बिना किसी सूचना के रद्ध किया जा सकेगा।

xxx xxx xxx

4.12 अनुचित साधन (Unfair Means, UFM) :–

अनुचित साधन (यू.एफ.एम.) :– निम्नलिखित में से कोई भी क्रियाकलाप/गतिविधि परीक्षार्थी द्वारा उपयोग में लाने पर उसे अनुचित साधन (यू.एफ.एम.) के अंतर्गत माना जावेगा :–

(क) परीक्षा कक्ष में अन्य परीक्षार्थी से किसी भी प्रकार का सम्पर्क।

(ख) अपने स्थान पर किसी अन्य व्यक्ति से परीक्षा दिलाना या परीक्षार्थी क स्थान पर अन्य कोई व्यक्ति उपस्थित होना।

(ग) परीक्षा कक्ष में अपने पास किसी भी प्रकार की प्रतिबंधित सामग्री रखना।

(घ) परीक्षा के दौरान चिल्लाना, बोलना, कानाफूसी करना, ईशारे करना व अन्य प्रकार से संपर्क साधना।

(ड.) अन्य परीक्षार्थी की उत्तरशीट या प्रश्नपुस्तिका से अन्य किसी प्रकार से नकल करना।

(च) अन्य परीक्षार्थी के साथ उत्तरशीट या प्रश्नपुस्तिका की अदला–बदली करना।

(छ) प्रतिबंधित सामग्री पाये जाने पर परीक्षार्थी द्वारा उसे सौंपने से इंकार करना या उसे स्वयं नष्ट करना।

(ज) नकल प्रकण से संबंधित दस्तावेजों/प्रपत्रों पर हस्ताक्षर करने से मना करना।

(झ) सक्षम अधिकारी के निर्देशों की अवहेलना/अवज्ञा करना या उनके निर्देशों का पालन न करना।

(ञ) सक्षम अधिकारी के निर्देशानुसार उत्तरशीट या अन्य दस्तावेज वापस नहीं करना या वापस करने से मना करना।

(ट) परीक्षा कार्य में लगे कर्मचारियों/अधिकारियों को परेशान करना, धमकाना या शारीरिक चोट पहुँचाना।

उपरोक्त अनुचित साधनों तथा अभ्यर्थी के किसी अन्य कृत्य को पर्यवेक्षक/केन्द्र अधीक्षक/वीक्षक द्वारा अनुचित साधन की श्रेणी माना जाता है, तो उस पर न्यायिक कार्यवाही की जायेगी। अभ्यर्थी की उत्तरपुस्तिका को अनुचित साधन के अंतर्गत मानते हुए मूल्यांकन नहीं किया जायेगा तथा उसका अभ्यर्थित्व निरस्त कर दिया जायेगा। इसके अतिरिक्त किसी अन्य प्रकार के अनुचित साधन का उपयोग किये जाने पर अभ्यर्थी को पुलिस को आवश्यक कार्यवाही हेतु सौपा जायेगा और उसके विरूद्ध वैधानिक कार्यवाही की जायेगी।

यदि कोई व्यक्ति किसी अन्य उम्मीदवार के स्थान पर परीक्षा में सम्मिलित होता है तो वह कृत्य पररूपधारण (IMPERSONATION) की श्रेणी में आयेगा। पररूपधारण का कृत्य विधि के अनुसार अपराध है। ऐसे अपराध के लिए आवेदनकर्ता एंव उसके स्थान पर परीक्षा में बैठने वाला व्यक्ति विधि के अनुसार सजा या जुर्माना एवं दोनों से दण्डित किये जा सकेंगे। साथ ही उम्मीदवार का परीक्षा परिणाम भी निरस्त किया जायेगा ।

विभाग द्वारा दस्तावेजों के परीक्षण/सत्यापन व नियुक्ति के समय कोई आव दक या उसके दस्तावेज फर्जी या संदिग्ध पाये जाते हैं, तो विभाग द्वारा उक्त अभ्यर्थी की नियुक्ति निरस्त करते हुए पुलिस थाने में रिपोर्ट दर्ज करवा कर मंडल को अवगत कराया जायेगा, ताकि मंडल स्तर से संबंधित अभ्यर्थी का परीक्षा परिणाम निरस्त किया जा सके।"

The opening part of the Brochure gives important instructions. The same, inter alia, stipulates that the candidate must give correct information while submitting the application form but it also goes on to mention that if it is noticed that the applicant got entry (in the examination conducted by the Board) because of any mistake, that can be cancelled. The overarching power of the Board does not get whittled down by this instruction. Clause 4.12 of the Brochure refers to unfair means. The said clauses are only illustrative instances when the act of commission or omission of a candidate will result in indulging in unfair means during the examination. We find force in the argument of the counsel for the Board that clauses (Ka), (Gha), (Da), (Cha) and the later part of the same provisions, are

sufficient enough to attract action as taken by the Board, as a result of organized mass-copying by the candidates concerned. We also agree with the submission of the Board that the action in respect of any of the acts referred to in clause 4.12 could be taken by the Board on its own. The requirement of initiating action on the basis of complaint received from Supervisor/ Invigilator is mutually exclusive power vested in the Board. We are also not impressed by the argument of the petitioners that the only option available to the Board was to refer the matter to the police. Suffice it to observe that the conclusion reached by the Board in the impugned orders is ascribable to the acts of commission and omission referred to in clause 4.12 of the Brochure and that provision also speaks about the Authority of the Board to initiate action and including to cancel the examination results if the candidates had indulged in organized mass-copying, and including impersonation.

65. It was argued by the petitioners that the Board had sufficient time to cancel the entire examination in view of the news items circulated in public domain and to conduct fresh examination process. In case, it was not possible to complete the process before 30th September, nothing prevented the Board to approach the Supreme Court for granting further time. Indeed, cancellation of entire examination was one of the options available to the Board and it would have instilled public confidence about the fairness of action. Similarly, prompt action in such situation was the need of the hour, which was expected from the Head of the Department. Further, the cancellation of entire examination may have caused inconvenience to large section of candidates, but it would have been in larger public interest. However, as we have already held that merely because more than one option was available to the Board and it could have resorted to some other option, does not mean that the impugned decisions are vitiated. Similar plea has been rejected by the Apex Court in *Chairman, All India Railway Recruitment Board* (supra). For the sake of record, it was pointed out by the counsel for the Board during the argument, that the Board had applied to the Apex Court for extension of time to complete the admission process. But, the said request was rejected. As aforesaid, assuming that the Board had not approached the Apex Court and could have resorted to other options available to the Board, it does not mean that the impugned decisions are vitiated. The challenge to the impugned decisions will have to be examined on its own merits.

66. In the case of *B. Ramanjini and others Vs. State of Andhra Pradesh*

and others,[54] the action was challenged on the ground that there was no legally acceptable material to cancel the examinations. Further, the Court ought to have cancelled the examinations in all the districts as they are similarly situated and in not doing so, the Government had acted with discrimination. While dealing with this contention, the Apex Court in Paragraphs 7 & 8 observed thus:

> "7. In matters of this nature, as to how the courts should approach is explained in *Bihar School Examination Board vs. Subhas Chandra Sinha* (1970) 1 SCC 648 and *Board of High School & Intermediate Education, U.P., Allahabad vs. Ghanshyam Dass Gupta,* AIR 1962 SC 1110. The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which were brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs.2,000/- each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres. It is clear that so far as the centre at Anantapur District is concerned, there was enough reason for the Government to cancel the examinations. We have no doubt in our mind that what has weighed with the Government is the letter of the Collector accompanied by the report of the Superintendent of Police, though unfortunately the same does not seem to have been made available to the High Court, which was the basis for making the order on 15.5.1998 cancelling the examination and holding of the fresh examination.
>
> 8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude

54. (2002) 5 SCC 533

should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19-4-1998. The same stood cancelled by the order made on 15-5-1998. Fresh examinations were held on 11-7-1998 and results have been published on 29-7-1998. Interviews were however held on 29-7-98 *(sic 27-8- 1998)* in such cases. The events have taken place in quick succession. The parties have approached the court after further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for large number of candidates and in Anantapur District alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15-5-1998 in cancelling the examinations and holding fresh examination."

(emphasis supplied)

67. Reverting to the contents of the impugned orders dated 9th October, 2013 and 6th December, 2013, it is noticed that after adverting to the conditions specified in Chapter IV of the Brochure and clause 4.12 thereof concerning the unfair means and the consequences therefor, it is noted that after opinion and analysis done by the Committees and taking overall view of the matter it transpired that the names of candidates identified by the Committee corresponded with the names of 345 and 70 candidates given in the list of STF of having indulged in organised unfair means. It then proceeds to note that those candidates were party to the conspiracy of change of roll numbers

and were also in contact of the accused. It is further noted that the roll numbers assigned to these candidates were changed after generation of their roll numbers as per the specified norms. Thus, it confirms that undue benefit has been passed on to those candidates. The involvement of 415 (345 + 70) candidates out of 876 candidates in the commission of unfair means of allocation of roll numbers to them along with the roll numbers allocated to candidates from outside State during the examination is confirmed from the opinion and analysis done by the Committees and the documents received from the police. The orders then proceed to highlight the fact that identical pattern emerges in respect of allocation of roll numbers to 415 (345 + 70) candidates in a well planned manner along with candidates from outside State, which was not possible while allocating roll numbers by specified random procedure. The orders then note that the Board being satisfied about the involvement of (415) identified candidates, who had indulged in unfair means and have violated the examination regulations, their candidature in the said examination was being cancelled.

68. The petitioners relied on *Mohinder Singh Gill and another vs The Chief Election Commissioner, New Delhi and others*[55] and *Rashmi Metaliks Limited* (supra) to contend that the public orders made by the public Authority must be considered objectively on the basis of language used in the order itself. This legal position is unassailable. On the analysis of the impugned orders, it is obvious that all relevant factors have been adverted to by the Authority. The correctness of the impugned decisions, no doubt, can be tested on those factors and the relevancy thereof. At the same time, we find force in the argument of the respondent-Board that in the subsequent decision the Apex Court had occasion to consider the decision in the case of *Mohinder Singh Gill* (supra) and has held that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. There is no irregularity in placing reliance on such subsequent report to sustain the cancellation of examination conducted by the Authority where there has been serious allegations of mass-copying. [See *Abhilash Shiksha Prasar Samiti* (supra); and *Chairman, All India Railway Recruitment Board* (supra) paragraph 45].

69. Further, the fact that the order refers to the documents received from the Police does not pre-suppose that it has been issued under dictation of the

55. (1978) 1 SCC 405

STF/Police. The order clearly discloses the basis on which it has been passed. It is not only founded on the material furnished by the Police but also on the opinion formed by the two Committees after due enquiry and other relevant materials. We are not inclined to accept the argument that the order is passed without application of mind or that it is issued under dictation of STF/Police.

70. Another shade of the same contention as urged by the petitioners, is, that the opinion of the Experts Committee was false and concocted and founded on the communication received from STF dated 27th September, 2013. For that, we may usefully refer to the communication sent by STF to the Director of the Board dated 27th September, 2013. The same reads thus:

"कार्यालय–स्पेशल टास्क फोर्स (एस0टी0एफ0) मध्यप्रदेश भोपाल

कमांक–एस.टी.एफ./म.प्र./मुख्यालय/2013 दिनांक 27.09.13

प्रति,

संचालक

मध्यप्रदेश व्यावसायिक परीक्षा मण्डल

भोपाल, म0प्र0

विषयः– थाना राजेन्द्र नगर इन्दौर के अप0कं0 539/13 धारा 419, 420, 467,468,471,120–बी भा0द0वि0 की विवेचना के संबंध में जानकारी बावत्।

संदर्भः– आपके कार्यालय का पत्र कमांक–व्यापम/5955/13 दिनांक 21. 09.13 व 5979/13 दिनांक 24.09.13।

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उपरोक्त विषय में लेख है कि विषयांकित अपराध के विषय में निम्न जानकारी उपलब्ध कराने का कष्ट करेः–

1. आपके कार्यालय से संदर्भित पत्र कमांक व्यापम/5955/13 दिनांक 21.09.13 के द्वारा 400086 आवेदको के टी.ए.सी. का उल्लेख किया गया है जबकि केन्द्र सूची में 400135 का उल्लेख है, उक्त भिन्नता क्यों है?

2. ऐसा प्रतीत होता है कि पत्र कमांक व्यापम/5955/13 भोपाल दिनांक 21.09.13 में उल्लेखित तालिकाएँ 400086 पर आधारित हैं। अतः 400135 के आधार पर तालिकाएँ प्रस्तुत करें।

3. आपके कार्यालय से प्रदाय की गई जानकारी के अनुसार एम.पी.ऑन

लाईन द्वारा उपलब्ध कराये गए आवेदन–पत्रों में से 120 आवेदकों की फोटो व हस्ताक्षर स्पष्ट नहीं थे, जिन्हें निरस्त की सूची में रखा जाकर उक्त आवेदकों के फोटो व हस्ताक्षर पुनः प्राप्त किये जाने हेतु एम.पी. ऑन लाईन को पत्राचार किया गया है। उक्त पत्राचार किस स्तर पर किसके द्वारा किया गया है? पत्र की सत्यापित प्रति उपलब्ध करावें साथ ही यह स्पष्ट करने का कष्ट करें कि इस प्रकार का पत्र व्यवहार किया जाना, क्या नियमानुकूल था? क्योंकि पी0एम0टी0 परीक्षा के आवेदन प्रक्रिया की नियमावली में उपरोक्त प्रकार के आवेदन–पत्रों को निरस्त किये जाने का स्पष्ट उल्लेख है।

4. यदि निरस्त आवेदन पत्रों से संबंधित आवेदकों को टी0ए0सी0 जारी किये गए है, तो उनकी सूची प्रस्तुत करें तथा यह भी अवगत करावें कि उक्त निरस्त आवेदन पत्रों की टी.ए.सी. किसके द्वारा जारी की गई है? यदि यह त्रुटिपूर्ण कार्यवाही है तो इस हेतु उत्तरदायी कौन है?

5. न्यूनतम मिस मैच लॉजिक के आधार पर मिंस मैच आवेदकों की पते सहित सूची उपलब्ध करावें।

6. पत्र कमांक–व्यापम/5979/13 भोपाल दिनांक 24.09.13 में उल्लेखित 363 आवेदकों में से मिस मैच डाटा में कितने आवेदन पत्र उपलब्ध हैं, उनकी सूची पते सहित उपलब्ध करावें।

7. पी0एम0टी0 परीक्षा 2013 में आवेदकों को रोल नंबर आवंटन की प्रक्रिया में उपयोग में लाए गए प्रोग्राम की प्रति भी उपलब्ध करावें।

8. राज्य आर्थिक अपराध ब्यूरो में पंजीबद्व प्रकरण अपराध कमांक 26/04 में आपके मण्डल के नितिन मोहिन्द्रा व अजय सेन के विरूद्व अभियोजन स्वीकृति मण्डल द्वारा अभी तक प्रदान नहीं की गई है। जिसकी जानकारी आपके पत्र कमांक–5953/13 दिनांक 21.09.13 द्वारा दी गई है। इस संबंध में यह बताने का कष्ट करें कि उक्त प्रकरण में अभियोजन स्वीकृति हेतु मण्डल को पत्र कब प्राप्त हुआ और किन–किन अधिकारियों के पास उक्त नस्ती कब से कब तक लंबित रही तथा वर्तमान में किस स्तर पर लंबित है? उपरोक्तानुसार जानकारी तत्काल आज ही उपलब्ध कराने का कष्ट करें।

(डी0एस0 बघेल)
उप पुलिस अधिक्षक
एस0टी0एफ0 भोपाल"

(emphasis supplied)

On plain reading of this communication, it is noticed that STF had not referred to the figure of 876 mismatch cases. In point Nos.5 and 6 of the said communication, the query made was generally about the 363 applicants whose involvement was found in the commission of unfair means during the examination. In response to this communication, the Director, no doubt, on the same day, on 27th September, 2013, sent his reply. The said reply reads, thus :

"कमांक व्यापम/6071/2013 भोपाल, दिनांक 27.09.13

प्रति,

श्री डी0एस0बघेल,

उप पुलिस अधीक्षक एवं विवेचक,

म0प्र0 एस0टी0एफ0

भोपाल

विषय– थाना राजेन्द्र नगर, जिला इंदौर के अपराध कमांक 539/13 धारा 419,420,467,468,120बी भा0द0वि0 25/27 आर्म्स एक्ट 34 आबकारी एक्ट एवं 65 आईटी एक्ट की विवेचना के संबंध में।

संदर्भ– आपका पत्र कमांक एसटीएफ/मुख्यालय/2013/—— दिनांक 27.09.2013

उपरोक्त विषयान्तर्गत संदर्भित पत्र के माध्यम से चाही गई बिन्दु कमांक 01 से 07 तक की बिन्दुवार जानकारी निम्नानुसार है:–

1. बिन्दु क. 01 के संबंध में स्पष्ट किया जाता है कि नितिन मोहिन्द्रा, अजय कुमार एवं सी.के.मिश्रा द्वारा 40135 आवेदकों हेतु रोल नंबर जारी किए गए थे, परन्तु सिर्फ 40086 आवेदकों के ही रोल नंबर वेबसाईट पर अपलोड करवाए गए थे। परीक्षण करने पर पाया गया कि 49 ऐसे आवेदक हैं, जिनके प्रकरण स्पष्ट फोटो व हस्ताक्षर उपलब्ध करवाने हेतु एम.पी. ऑनलाईन को भेजे गए थे तथा इनके स्पष्ट फोटो व हस्ताक्षर एम.पी. ऑनलाईन से प्राप्त नहीं हुए; परन्तु तब भी इन 49 आवेदको को रोल नंबर आवंटित कर दिए गए। परीक्षण के दौरान यह 49 आवेदक रोल नंबर सहित अमान्य आवेदकों की सूची में पाए गए।

2. बिन्दु क. 02 अनुसार 40135 आवेदकों के लिए जन्मतिथि — 20 डिजिट के ट्रांजिक्शन आईडी के विभिन्न संभावित भागों—सरनेम के आधार पर इंडेक्सिंग करते हुए पहले सम एवं उसके पश्चात् विषम रिकार्ड हेतु शहरवार रोल नंबर आवंटित किए गए तथा नितिन मोहिन्द्रा, अजय कुमार एवं सी.के.मिश्रा द्वारा आवंटित/ उपलब्ध करवाए गए रोल नंबरो की शहरवार सूची से मिलान कर

मिसमैच का विवरण दर्शाया गया है। इससे संबंधित 20 पृष्ठीय सूची परिशिष्ट–1 में संलग्न है।

3. बिन्दु क. 03 के संबंध में लेख है कि 130 आवेदकों संबंधी पत्राचार सं संबंधित नस्ती क. 27–12/2013/08 के पृष्ठ क. 03 से 05 की प्रति परिशिष्ट–2 पर संलग्न है, जिसमें पत्र का प्रारूप सी.के.मिश्रा द्वारा अजय कुमार को प्रस्तुत किया गया था, अजय कुमार द्वारा नितिन मोहिन्द्रा को प्रस्तुत किया गया। नितिन मोहिन्द्रा द्वारा नस्ती के पृष्ठ क्रं. 04 पर तत्कालीन नियंत्रक डां.पंकज त्रिवेदी द्वारा दिये गए अनुमोदन के आधार पर स्वयं हस्ताक्षर करते हुए मुख्य परिचालन अधिकारी,एम.पीऑनलाईन लि. निरूपम शॉपिंग माल, द्वितीय तल, अहमदपुर, होशंगाबाद रोड, भोपाल को पत्र क./मप्रव्या/कम्प्यू/4229/2013 दि. 01.07. 2013 द्वारा जारी किया गया था, जिसकी प्रति परिशिष्ट–3 में संलग्न है। पी.एम. टी.–2013 से संबंधित आवेदन प्राप्त करने के उपरांत 05 दिवस का समय भरे गए आवेदन–पत्रों मे संशोधन के लिए निर्धारित समयावधि के पश्चात किसी भी प्रकार का संशोधन मान्य नहीं होगा व किसी भी आवेदन–पत्र पर मंडल द्वारा विचार नहीं किया जायेगा। ऐसी स्थिति में एम.पी.'ऑनलाईन को स्पष्ट फोटो व हस्ताक्षर प्राप्त कर उपलब्ध करवाने हेतु लिखा जाना नियम विरूद्व है। बिन्दु क. 4.6.4 से संबंधित पृष्ठ की प्रति परिशिष्ट–4 में संलग्न है।

4. बिन्दु क. 04 के संबंध में लेख है कि 49 अमान्य आवेदकों को रोल नंबर आवंटित किए गए थे, इसकी सूची रोल नंबर सहित परिशिष्ट–5 पर संलग्न है। यह रोल नंबर भी पीएमटी–2013 हेतु जारी रोल नंबरों के साथ जारी किए गए थे, जिससे संबंधित अधिकारी नितिन मोहिन्द्रा, अजय कुमार एवं कर्मचारी सी.के.मिश्रा है एवं यह ही कम्प्यूटर शाखा स्तर पर इस त्रुटि के लिए जिम्मेदार है।

5. बिन्दु क्र.05 से संबंधित जन्मतिथि—— 20 डिजिट के ट्रांजिक्शन आईडी के विभिन्न संभावित भागों— सरनेम के आधार पर इंडेक्सिंग करते हुए पहले सम एवं उसके पश्चात विषम रिकार्ड हेतु शहरवार रोल नंबर आवंटित किए गए तथा नितिन मोहिन्द्रा अजय कुमार एवं सी.के.मिश्रा द्वारा आवंटित/ उपलब्ध करवाए गए रोल नंबरों की शहरवार सूची से मिलान कर जो मिसमैच तैयार किया गया है, उसमें न्यूनतम मिसमैच 876 ट्रांजेक्शन आई.डी. के भाग 7–11 पर प्राप्त हो रहा है। प्राप्त होने वाले न्यूनतम मिसमैच 876 से संबंधित आवेदकों की पते सहित सूची परिशिष्ट–6 में संलग्न है।

6. बिन्दु क. 06 के संबंध में उल्लेखनीय है कि एसटीएफ द्वारा मण्डल को प्रषित पूर्व जानकारी में से जिन 363 वैध आवेदकों की जानकारी मंडल को प्राप्त हुई थी, उनमें से 345 आवेदक 876 की मिसमैच सूची में उपलब्ध है, जिनकी पता सहित जानकारी परिशिष्ट–7 में संलग्न है।

7. बिन्दु क. 07 के संबंध में उल्लेखनीय है कि उपरोक्त प्रकिया में

जन्मतिथि —— 20 डिजिट के ट्रांजिक्शन आईडी के विविभन्न संभावित भागों—— सरनेम के आधार पर इंडेक्सिंग करते हुए पहले सम एवं उसके पश्चात विषम रिकार्ड हेतु शहरवार रोल नंबर आवंटित कर नितिन मोहिन्द्रा, अजय कुमार एवं सी. के. मिश्रा द्वारा आवंटित/ उपलब्ध करवाए गए रोल नंबरों की शहरवार सूची से मिलान कर मिसमैच तैयार करने के लिए उपयोग में लाए गए प्रोग्राम की प्रति परिशिष्ट–8 में संलग्न है।

उपरोक्त संदर्भित पत्र में उल्लेखित बिन्दु कमांक 8 की जानकारी पृथक से प्रेषित की जा रही है।

संलग्न–उपरोक्तानुसार

नियंत्रक
म0प्र0 व्याससायिक परीक्षा मण्डल
भोपाल"

71. As regards point No.5 and 6, in the context of earlier queries made by the STF, no doubt, the Director, for the first time, mentioned the figure of 876 transactions. This information was shared by the Director obviously on the basis of material available with him, including the Experts Committee's report dated 7th September, 2013. Indeed, the Experts Committee report dated 7th September, 2013 mentions different mismatch numbers. However, that does not mean that the Director was not entitled to send this response in respect of information which had come to his notice to facilitate investigation by the STF. By no stretch of imagination, therefore, it can be assumed that the figure of mismatch indicated by the Director was without any basis much less under the dictation of STF. Presumably, the Director realizing that the matter needs further examination by the Computer Experts Committee, an emergent meeting of the Computer Experts Committee was convened on 30th September, 2013. The Computer Experts Committee thus met on 30th September, 2013 and analyzed the entire matter afresh and applying the logic referred to in its Minutes found mismatch of 876 roll numbers. The Minutes of the Computer Experts Committee meeting dated 30th September, 2013 are already reproduced in paragraph No.4 (xii) of this judgment. All that has been done is to identify the candidates on the basis of minimum mismatch logic instead of broad mismatch logic applied in the first meeting. On examining the said Minutes, it is not possible to suggest that the Computer Experts Committee merely restated the figure mentioned by the Director in communication dated 27th September, 2013. As a matter of fact, the Director, being overall incharge and second-in-line in the hierarchy, could have proceeded further on the basis of his own

analysis. However, if the second meeting of the Computer Experts was convened to re-examine the correct position in the context of the material available with the Board and the information shared by the investigating team, that does not mean that the Computer Experts Committee - consisting of five able, independent and competent officers - dealt with the matter casually and without any basis. The basis of their analysis can be discerned from the Minutes and opinion submitted by them. It is also noticed that the information of the Computer Experts Committee was considered by the Committee of Controllers. In the evaluation report prepared by the Committee of Controllers, complete analysis has been done, which reinforces the figure of mismatch of 876 applicants. The evaluation report has been reproduced in paragraph 4(xvi) of this judgment. Until paragraph 11, the evaluation report considered all the relevant material, and including the opinion received from the investigating team. The analysis for reaching at the minimum mismatch figures can be discerned from paragraph 12 onwards of that report. Considering the background in which communication was sent by the Director on 27th September, 2013, it is not possible to countenance the ground urged by the petitioners that the Board and its officials were acting under dictation of STF. The Board was acting independently not only on the basis of the information shared by the investigating team and the queries made by them, but, also on the basis of its own analysis of the record. By no stretch of imagination, therefore, it is possible to hold that the Computer Experts Committee's opinion was false and concocted, as is contended.

72. It will be useful to advert to the communication sent by Assistant Director General of Police which reads, thus:

"कार्यालय सहायक पुलिस महानिरीक्षक (एस.टी.एफ.) मुख्यालय, भोपाल

क–समनि/एस.टी.एफ./मुख्यालय/2013–(एम–119) भोपाल दिनांक 07.10.13

प्रति,

प्रभारी नियंत्रक

व्यावसायिक परीक्षा मण्डल

मध्यप्रदेश, भोपाल

विषयः– पी.एम.टी. परीक्षा वर्ष 2013 के परिणाम जॉच प्रकरण के संबंध में।

संदर्भः– आपका पत्र कमांक म.प्र. व्यापम 6262/2013 भोपाल दिनांक

07/10/2013 ।

विषयान्तर्गत संदर्भित पत्र का अवलोकन करने का कष्ट करें । पी. एम.टी परीक्षा 2013 के संबंध में थाना राजेन्द्र नगर जिला इन्दौर द्वारा अपराध कमांक 539/13 धारा 419, 420, 467, 468, 471, 120–बी, 201 भादवि, 65 आई.टी. एक्ट, 25, 27 आर्म्स एक्ट एवं 34 आबकारी अधिनियम का पंजीबद्व किया गया जो वर्तमान में एस.टी.एफ. भोपाल द्वारा विवेचनाधीन है, जिसमें अभी तक कुल 29 आरोपियों को गिरफ्तार किया गया है ।

परीक्षा की विवेचना के अन्तर्गत आरोपी डाक्टर जगदीश सागर से 317परीक्षार्थियों की सूची जप्त की गई है । जिसमें उसके द्वारा पी.एम.टी. परीक्षा 2013 में इन परीक्षार्थियों को फर्जी तरीके से पास करवाने हेतु व्यावसायिक परीक्षा मण्डल के कर्मचारी नितिन मोहिन्द्रा को जिन 317 परीक्षार्थीयों के रोल नम्बर सेट करवाने हेतु दिये गये थे उनकी टाईप की हुई एवं आरोपी डॉ0 जगदीश सागर से जप्त की गई सूची की छायाप्रति संलग्न है । पूछताछ पर नितिन मोहिन्द्रा द्वारा 317 में से 298 परीक्षार्थियों के रोल नम्बर पी.एम.टी. परीक्षा 2013 में आरोपी डॉ0 सागर के बताये अनुसार सेट करना बताया गया है ।

विवेचना के दौरान प्राप्त साक्ष्य अनुसार आरोपी सुधीर राय तथा संतोष गुप्ता द्वारा पी.एम.टी. परीक्षा 2013 में 52 परीक्षार्थियों को फर्जी तरीके से पास करवाने हेतु यावसायिक परीक्षा मण्डल के कर्मचारी नितिन मोहिन्द्रा को रोल नम्बर सेट करने हेतु दिये गये थे । आरोपी सुधीर राय तथा संतोष गुप्ता द्वारा व्यापम के कर्मचारी नितिन मोहिन्द्रा को जिन 52 परीक्षार्थियों के रोल नम्बर सेट करवाने हेतु दिये गये थे उनकी टाईप की हुई सूची संलग्न है । आरोपी से पूछताछ के दौरान 52 परीक्षार्थियों के नम्बर नितिन मोहिन्द्रा को दिये जाने बावत् मौखिक जानकारी प्राप्त हुई थी। उसके द्वारा कोई सूची जप्त नहीं कराई गई है, बल्कि मौखिक जानकारी एवं ई–मेल के द्वारा 52 परीक्षार्थियों की सूची देने के बारे में ज्ञात हुआ था । जिस कारण से उसकी हस्तलिखित सूची संलग्न नहीं की जा सकी है । आरोपी नितिन मोहिन्द्रा द्वारा 52 में से 48 परीक्षार्थियों के रोल नम्बर पी.एम.टी. परीक्षा 2013 में आरोपी सुधीर राय तथा संतोष गुप्ता के बताये अनुसार सेट करना बताया गया है ।

आरोपी डॉ0 जगदीश सागर, सुधीर राय तथा संतोष गुप्ता आदि के द्वारा नितिन मोहिन्द्रा को पी.एम.टी. परीक्षा 2013 में जिन परीक्षार्थियों के रोल नम्बर जिस प्रकार सेट करने हेतु दिये गये थे । व्यावसायिक परीक्षा मण्डल द्वारा उसी अनुसार रोल नम्बर परीक्षार्थियों को आवंटित किये गये हैं । जिससे स्पष्ट है कि उक्त परीक्षार्थियों द्वारा आरोपियों के माध्यम से अनुचित तरीके से परीक्षा में लाभ प्राप्त किया गया है ।

विवेचना में आयी साक्ष्य के आधार पर आरोपी डॉ0 जगदीश सागर, सुधीर राय तथा संतोष गुप्ता के विरूद्व अन्य आरोपियों के साथ ही दिनांक 05/10/2013 को माननीय न्यायालय में चालान भी प्रस्तुत किया गया है ।

संलग्न :– उपरोक्तानुसार ।

(आशीष खरे)
सहायक पुलिस महानिरीक्षक
एस.टी.एफ, मध्यप्रदेश,
भोपाल"

We will assume that this document was not part of the proposal submitted by the Director to the Chairperson for approval on 8th October, 2013. However, even this document nowhere suggests that the Board ought to proceed against the 345 candidates initially identified by the Board and named in the list appended to impugned order dated 9th October, 2013. Assuming that this document was not before the Director/Chairperson, being part of the official record, can be relied by the Board for refuting the argument of the petitioners that the impugned decisions are issued under dictation of the STF.

73. We are also not impressed by the argument of the petitioners that the Board could not have taken any decision in the matter on its own or that the Board was obliged to submit the examination results to the Council under the control of the Central Government. Reliance placed by the petitioners on the provisions of Medical Council of India Act in support of this submission, in our opinion, is misplaced. It is indisputable that the admission process in respect of State seats in the medical colleges within the State is required to be conducted by the State Government either itself or through any Agency under its control. In respect of such examination, the Council under the control of Central Government has no role to play. Similarly, the State Government is not required to submit examination results declared by it or the Agency under its control appointed for that purpose to any other Authority.

74. Reliance was placed on the provisions of the Universities Act, 1973 and the Ordinance No.54 issued thereunder to contend that the admission process to any college affiliated with the University in the State must be conducted in the manner prescribed. The Ordinance has the force of law. Therefore, the Board constituted by the State Government in exercise of its executive powers cannot be permitted to deal with the matters concerning such admissions. This argument does not commend to us. The controversy in

the present proceedings is in respect of pre-admission examination which is, in no way, governed by the provisions of the Universities Act or the Ordinance framed thereunder. This examination is required to be conducted by the State Government for allocation of students to respective colleges. It is only at the stage of taking admission or with regard to issues arising after taking admission, the provisions of the Universities Act and the Ordinance will come into play. No doubt, in the present set of cases, the colleges have cancelled the admissions granted to the petitioners in the respective colleges. The fact that for cancellation of such admission, procedure has been prescribed in the Ordinance, does not mean that the consequential action taken by the concerned college on the basis of the impugned orders can be said to be derogatory or in violation of any law. In that, indisputably, the admission was granted as a consequence of the examination conducted by the Board. The Board having found that the concerned candidate indulged in organised unfair means during the examination conducted by it and had rendered himself disqualified, annulled the examination process qua such candidate(s) being fraud played on public examination process. As a necessary corollary, the admission given to the concerned candidate cannot continue as the entire process had vitiated and had become *non-est* in the eyes of law.

75. It was submitted that the action of disqualifying the petitioners could, at best, be taken by the Director of Medical Education who had conducted the counselling or by the University where the candidate was admitted. This submission is also ill-advised. We have already held that the Board alone could deal with all matters connected with the examination by it whilst discharging the obligation of the State to conduct such examination. The fact that the candidate participated in counselling or was admitted in the College affiliated to the University cannot bestow authority either on the Director of Medical Education or the University to deal with the matters pertaining to the examination conducted by the Board. Accordingly, even this submission does not take the matter any further for the petitioners.

76. It was faintly argued that the conclusion reached by the Director/ Chairperson refers to the finding of some Committee *(Samiti)* without describing the name of the two Committees constituted during the enquiry. In our view, the non-description of the Committee does not mean that no Committee was constituted nor it would lead to a conclusion that the finding of the Chairperson/ Director was not in conformity with the final opinion of the two Committees.

It is also not a case of the petitioners that the report/opinion of the two Committees was not at all considered by the Director/Chairperson before taking the final decision. Accordingly, even this submission deserves to be rejected.

77. It was argued that there was no material to indicate about the manner in which analysis was done and by whom, for arriving at the conclusion of involvement of the named candidate. This submission was made in absence of the official record which was, however, made available to the Court during the arguments; and, which we have extensively reproduced in this judgment, to examine the question about the legality of the Board and its authority as also the justness and reasonableness of its decision. In view of the findings on those issues against the petitioners, this submission will have to be stated to be rejected.

78. It was then contended that the Board ought to have examined each case independently and recorded separate reasons in the order, as may be applicable, to the concerned candidates. In other words, it was not open to cancel the candidature of as many as 415 candidates by one common order on the same ground. This argument also deserves to be stated to be rejected. The reason recorded in the order makes it amply clear that identical pattern had emerged from the allocation of roll numbers to these 415 candidates. If the same pattern adopted by the candidates has been noticed, no fault can be found with the Board to have taken action against those candidates by one common order on the finding that it was a conspiracy and organized way of indulging in unfair means during the examination.

79. It is then contended that the reason recorded in the impugned decisions is not in conformity with the opinion of the Committees constituted to inquire into the entire episode. Even this submission does not commend to us. The reason recorded in the order, in our opinion, in no way deviates from the opinion and analysis done by the Computer Experts Committee as well as Committee of Controllers. Even the said Committees after examining the relevant records concluded about the involvement of the identified candidates in the commission of unfair means during the examination, as can be discerned from the evaluation report and the reasons recorded in the Minutes articulating the opinion of the concerned Committee. It was open to the Chairman not only to consider the said reports but also other material referred to in the impugned orders and the proposal placed before him for taking totality of the

circumstances into account before approving the proposal of cancelling the candidature of the identified candidates. The fact that the Chairman had not recorded detailed reasons for approving the proposal, does not mean that his subjective satisfaction for taking the final decision is vitiated.

80. It was vehemently argued that the material taken into consideration by the Director and also the Chairman was not legally admissible and, therefore, the conclusion reached by them is vitiated. This submission, in our opinion, is misdirected. The question of admissibility of evidence would arise in a full-fledged criminal trial pending against the concerned accused. The candidates against whom action has been taken by the Board may also be named as accused in the pending criminal cases. Suffice it to observe that the material considered by the Director and later on by the Chairman, by no stretch of imagination, can be said to be irrelevant for the purposes of enquiring into the matter under consideration. The material so relied does justify the subjective satisfaction reached by the Director and the Chairperson. It is not open for the Court to go into the question of sufficiency of that material. It is not a case of subjective satisfaction recorded by the Authority without any material whatsoever.

81. Reliance was placed on the case of *Mohammed Atik* (supra), to contend that there was no legal evidence before the Committee or the Chairman to take a drastic decision of cancelling the examination results of the petitioners. Section 10 of the Evidence Act postulates that common intention must subsist between the conspirators at the time of making of the statement. The Court noted that post-arrest statement made by a person to police, whether by way of confession or otherwise, relating to his involvement in the conspiracy, would not fall within the ambit of Section 10. Relying on this observation, it was argued that even in the present case, the STF was relying on the statements made after arrest of the coconspirator. This argument does not commend to us. The action in the present case is not singularly based on the statement of co-conspirator recorded by the STF. The Board after due analysis of the entire material was more than convinced about the involvement of the candidates whose roll numbers were mismatched. The Board finally decided to take action only against those candidates whose name also appeared in the STF list. Reliance was also placed on the decision in the case of *Varkey Joseph* (supra) to contend that suspicion is not the substitute for proof. It is, however, well established position that the quality of evidence required in a criminal trial is markedly different than the material to answer the issue in the inquiry relating

to unfair practice during the conduct of examination. Reliance was placed on the decision of the Apex Court in the case of *V.C. Shukla* (supra) to contend that the entry in the excel sheet depicting the name of the candidate or for that matter any further record recovered from the alleged conspirators cannot be the basis to proceed against the petitioners. We have already dealt with this aspect while considering another shade of the same contention. The material that could be considered for taking impugned decisions cannot be discarded on the argument that it is not admissible. Admissibility of those documents may be relevant in the criminal proceedings pending against the petitioners.

82. The argument of the petitioners that the Board ought to have adhered to the legal parameters while dealing with the case involving circumstantial evidence. We have already rejected similar argument on the finding that the admissibility of documents recovered during the investigation and statements recorded by the investigating team will have to be tested in the criminal trial pending against the candidates. On the other hand, in the enquiry, such as the present one, the Board was justified in proceeding on the basis of indisputable circumstances, pointing finger towards the involvement of the concerned candidate and record its subjective satisfaction in that behalf.

83. The attempt of the petitioners was to question the justness and reasonableness of the process adopted by the Board on the argument that relevant facts have been completely disregarded by the two Committees as well as the Director and Chairman. Inasmuch as, 20 petitioners secured less marks than the scorers. Moreover, two scorers were absent. Further, the petitioners had excellent academic record and by no standards, they would take aid of scorers for enhancing their prospects. These crucial facts would go to show that the petitioners/genuine candidates have not indulged in unfair means at all. Similar argument has been rejected by the Apex Court in the case of *Abhilash Shiksha Prasar Samiti* (supra). The Court held that such matters cannot be the basis to doubt the judgment of the institution (read 'Board' in this case).

84. It was also argued that the conclusion recorded in the impugned orders is based on fact which has not been inquired into. In that, whether the candidate, in fact, indulged in copying, ought to have been ascertained in the first place. That fact cannot be assumed. The sitting plan of the candidates clearly indicates the safe distance between the two candidates. Moreover, the question papers distributed to the candidates sitting in horizontal or vertical

row were completely different format. In other words, the candidates having engaged in copying from the answer-sheets of the scorer during the examination is completely ruled out. This submission will have to be rejected for the reasons already recorded. The Supreme Court has rejected similar plea while considering the enquiry into mass copying resorted to by the candidates. Further, in the case of *Bagleshwar Prasad* (supra) in paragraph 11 and 12 the Court observed as follows:-

> "11. Before the High Court, a statement was filed showing the seating arrangement in Room No. 10 where the respondent was sitting for writing his answers. It appears that he was No. 3 in the 3rd row, whereas the other candidate with Roll No. 94733 was No.4 in the second row. The High Court was very much impressed by the fact that the respondent could not have looked back and copied from the answer-book of the other candidate, and the High Court did not think that there was any evidence to show that the other candidate could have copied from the respondent's paper with his connivance. We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. The significance of this fact has been completely missed by the High Court. The question before the Enquiry Committee had to be decided by it in the light of the nature of the incorrect answers themselves, and that is what the Enquiry Committee has done. It would, we think, be inappropriate in such a case to require direct evidence to show that the respondent could have looked back and copied from the answer written by the other candidate who was sitting behind him. There was still the alternative possibility that the candidate sitting behind may have copied from the respondent with his connivance. It is also not unlikely that the two candidates may have talked to each other. The atmosphere prevailing in the Examination Hall does not rule out this possibility. These are all matters which

the Enquiry Committee had to consider, and the fact that the Enquiry Committee did not write an elaborate report, does not mean that it did not consider all the relevant facts before it came to the conclusion that the respondent had used unfair means.

12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decision of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Art. 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all the High Court would be justified to quash that order. But conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. In the present case, no animus is suggested and no mala fides have

been pleaded. The enquiry has been fair and the respondent has an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent."

(emphasis supplied)

Indeed, the observations in this decision are in the context of enquiry conducted against the individual candidate and not a case of mass copying. In the case of organized commission of unfair means during the examination, as observed earlier, may not necessitate holding of enquiry against individual candidates. This authority is also useful on the proposition about the circumspection to be observed while exercising jurisdiction under Article 226 of the Constitution of India by the High Court. In a given case the impugned order may not refer to any evidence at all, that order can be supported by the Authority on available material and considered by the Authority. In the present case, the impugned orders have noted supporting evidence and material considered by the Authority.

85. It was argued that the fact that name of some of the candidates has been found in the material recovered by the police during the investigation cannot be the basis to take such a drastic action against the candidate until the charge is proved against him by the criminal court. In the first place, more or less similar argument advanced by the petitioners has already been considered and rejected on the finding that the standard of proof in the two proceedings is qualitatively different. Moreover, the civil action on the basis of same set of facts in respect of which criminal case has been registered and pending against the petitioners can be no impediment. Both proceedings are required to be taken to its logical end in accordance with law and are mutually exclusive. For the same reason, we reject the other argument of the petitioners that before taking final decision the Board ought to have factually ascertained the relevant facts by adopting inquisitorial inquiry as to who had indulged in the change of roll numbers to benefit selective candidates and whether the concerned candidate himself was responsible for that situation.

86. The next moot question is: whether the impugned action against the petitioners is vitiated for not issuing show-cause notice indicating the allegations against them on case to case basis and of giving opportunity of being heard to respond thereto? In other words, the impugned action is vitiated because of abridgment of principles of natural justice? We may usefully refer to the case of

Aligarh Muslim University (supra), where the Court considered the applicability of principle of natural justice. In paragraph 22 of this decision, relying on its earlier judgment in the case of *S.L. Kapoor v. Jagmohan*[56], the Court restated the two exceptions, namely, "if upon admitted or indisputable facts only one conclusion was possible", in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. In paragraph 22, the Court after adverting to the authorities on the point concluded that in the ultimate analysis it may depend on the facts of a particular case. Finally, in paragraph 25 the Court relying on the decision in the case of *S.L. Kapoor* (supra) held that on the admitted indisputable facts – only one view is possible. In that, no prejudice can be said to have been caused though notice was not issued to the respondent. In yet another case of *Jalgaon Municipal Council* (supra), the Apex Court, in paragraph 32, restated the principle that in exceptional situation the ground regarding violation of principle of natural justice cannot be pressed into service. Similar view has been taken in the case of *M.C. Mehta* (supra). In para 21 of this decision, the Court observed that if on the admitted or indisputable position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principle of natural justice. The Apex Court in the case of *Jalgaon Municipal Council* (supra) in paragraph 32 observed thus:

> "32. The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision maker. The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situations defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are: (i) the nature of the subject-matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) need to take urgent action for safeguarding public health or safety or public

56. AIR 1981 SC 136

> interest, (ii) the absence of legitimate exceptions, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, (v) express legislation. There is also a situation which Prof. Wade & Forsyth terms as "dubious doctrine" that right to a fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play. (Administrative Law, ibid, at pp.543-544)"

In the case of *Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions* (supra), the Apex Court in paragraph 7 observed that by now, it is well-settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. Further, to sustain the complaint of the violation of principles of natural justice one must establish that he was prejudice due to non-observance of the principles of natural justice.

87. In the present case, we are in agreement with the stand taken by the Board that the matter of this nature - where identical pattern of commission of organised unfair means emerges, it would be nothing short of mass-copying and, therefore, could be dealt with together by a common order and without issuing notice to respective candidate. Reliance has been justly placed on the decision of the Apex Court in the case of *Chairman, All India Railway Recruitment Board* (supra), to buttress this submission. Indeed, counsel for the petitioners tried to distinguish the said decision on the ground that it was not a case of candidates indulging in unfair means in different examination centers, but pertaining to one examination center. That argument does not commend to us. For, if this argument were to be taken forward, it would then be argued that it would be a case of mass-copying only if it takes place in all the examination halls in the given center and not in one or some of the halls in that center. There is no basis to make such distinction. In our opinion from the indisputable facts referred to by the Board, it is noticed that same racketeers had organized the change of roll numbers for all the identified candidates in a well planned manner to ensure that the scorer from outside the State is allocated seat in front of the genuine candidate. That is reinforced from the Chart reproduced in paragraph 20 (xii). It makes it amply clear that each of the scorer was sitting in the front seat. Further, in respect of each case, matching correct answers as also wrong answers, are of very high percentage. That cannot be a co-incidence. Moreover, all the scorers and the concerned candidate were in

contact with the same persons who had organized the change of roll numbers for them through the same source (officials of VYAPAM). The scorers had filled the online form through common web portal facilitated by the racketeers. The fact that they were sitting in different examination centers, in no way, makes the case less mass-copying or different from mass-copying done in one examination center. Thus, non-issuance of show cause notice to individual candidate before passing the impugned decisions will not vitiate the impugned decisions. The petitioners would, however, rely on the decisions of the Apex Court in the case of *Olga Tellis* (supra) and *Priya Gupta* (supra) to contend that it is not open to the Authority to assert that no fruitful purpose would be served by issuing show cause notice and especially when the action entails in not only civil consequences but also criminal action by registration of criminal case on that count. Reliance was also placed on the decision of Apex court in the case of *Charanlal Sahu* (supra) in support of the argument that post decisional hearing would be impermissible in the fact situation of the present case. The principle stated in those decisions will have to be distinguished on the principle expounded in the cases of mass-copying by the Apex Court.

88. In the case of *Chandra Singh and others Vs. State of Rajasthan and another*[57], in paragraph 43 while relying on its earlier decision in the case of *Champalal Binani Vs. CIT*[58], the Apex Court opined that while exercising extraordinary jurisdiction under Article 226 or 32 of the Constitution, the Court may not strike down an illegal order although it would be lawful to do so. It went on to hold that in a given case, the High Court may refuse to extend the benefit of a discretionary relief to the applicant. Further, the discretionary jurisdiction need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. In the same paragraph, the Apex Court referred to yet another decision of the Apex Court in *S.D.S. Shipping (P) Ltd. Vs. Jay Container Service Co. (P) Ltd.*[59] wherein it is held that relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one.

89. Similarly, in the case of *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and others*[60], in paragraph 11 to 15, the Court observed thus:

57. (2003) 6 SCC 545
58. (1971) 3 SCC 20
59. (2003) 4 SCC 44
60. (1999) 8 SCC 16

"11. But in the Act, the authorities and their powers have been specified and we do not find any provision which vests power on the Board of Revenue, so we have to proceed on the assumption that the Board of Revenue has no power.

12. Therefore, the question is whether the order of the Member of Board of Revenue should be quashed on this ground. If the order is set aside, the result would be that the notice directing the appellant to refund the additional amount of compensation assessed at ten times of the net income would have to be quashed. In other words, the earlier re-assessment of compensation made by giving ten times of the net income would revive. If under the law the appellant is not entitled to get compensation more than three times of the net income it would amount to restoring an illegal order.

13. *In Gadde Venkateswara Rao v. Government of A.P.,* AIR 1966 SC 828, this Court considered the action of the State Government under the Andhra Pradesh Panchayats Samithis and Zilla Parishads Act, 1959 and came to the conclusion that the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act but refused to interfere with the orders of the High Court on the ground that if the High Court had quashed the said order, it would have restored an illegal order and, therefore, the High Court rightly refused to exercise its extraordinary jurisdictional power.

14. In *Mohd. Swalleh v. IIIrd ADJ* (AIR 1988 SC 94), similar view was also expressed by this Court. In that case the order passed by the Prescribed Authority under U.P. (Temporary) Control of Rent and Eviction Act, 1947 was set aside by the District Judge in appeal though the appeal did not lie. The High Court came to the finding that the order of the Prescribed Authority was invalid and improper but the District Judge had no power to sit in appeal. The High Court did not interfere with the Orders of the District Judge. The order of the High Court was affirmed by this Court on the ground that though technically the appellant had a point regarding the

jurisdiction of the District Judge but the order of the Prescribed Authority itself being bad, no exception can be taken against the refusal of the High Court to exercise powers under Article 226.

15. Therefore, in view of the above ratio laid down by this Court, we hold that even if the Member of Board of Revenue had no power to issue direction for giving notice for refund of the excess amount paid, no exception can be taken to the said order if it is found that legally the appellant was paid excess compensation under the Act."

(emphasis supplied)

90. Reliance has been placed by the learned counsel for the Board on the decision of the Apex Court in the case of *Gadde Venkateswara Rao Vs. Government of Andhra Pradesh and others*[61]. In paragraph 17 the Court observed thus:

"17. The result of the discussion may be stated thus: The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed; the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under S. 72 of the Act to review an order made under S. 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order- it would have given the Health Centre to a village contrary to

61. AIR 1966 SC 828

> the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

In substance, the Court upheld the decision of the High Court which had declined to exercise extraordinary discretionary power in the fact situation of that case, although the orders of the Government were not legally passed.

91. It was argued that the impugned decisions passed by the Director for and on behalf of the Board were in the nature of orders passed while discharging the quasi judicial function. For that reason the Board was obliged to adhere to minimum principles of natural justice. This argument will have to be rejected on the view already taken that in the case of mass copying it was open to the Board to proceed against all the candidates together by one common order; and for the same reason no show cause notice or hearing is required to be given to each candidate separately who have been found to be party to mass copying activity.

92. In the case of *Ghanshyam Das Gupta* (supra), the question before the Apex Court was whether the Authority acting under a statute, when it is silent, has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statue. The Apex Court opined that the Committee has to act judicially in the matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of the examinees, before it can take any action in exercise of its power. The Apex Court observed that if serious effects follow from the decision of the Committee and serious nature of misconduct which may be found in some cases, the Committee must be held to act judicially. The committee while exercising such powers is acting quasi judicial and the principles of natural justice which require that the other party, (namely the examinee) must be heard will apply to the proceedings before the Committee. In this case, however, the examination result of only three students was cancelled by the Board for their individual action and they were debarred from appearing the examination. The aggrieved students filed writ petitions challenging that action of Board *inter alia* being in violation of principles of natural justice. It was not a case of mass copying as in this case.

93. In the case of *Kumari Chitra Shrivastava* (supra), the Apex Court restated that the Board discharges quasi judicial functions and is bound to follow the principles of natural justice. Even in this case, the action taken by the Board was against one individual student. Her examination results were withheld as the Board was of the opinion that she was ineligible to appear in the examination because of deficit in keeping attendance. The Court rejected the arguments of the Board that no useful purpose would be served if the Board was to issue show-cause notice to the student.

94. As aforesaid, reliance was also placed on the decision of the Apex Court in *Olga Tellis* (supra) which rejected the argument that no useful purpose would be served by issuing notice. Paragraph 47 of the said decision, the Apex Court rejected the argument that notice need not be given of a proposed action because; there can possibly be no answer to it. The Court observed that justice must not only be done but must manifestly be seen to be done. All these decisions are in respect of individual action and not a case of mass copying, where the issuance of show cause notice can be dispensed with on the principle thereto.

95. Reliance was also placed on the decision of the Single Judge of Rajasthan High Court in the case of *Indra Methi* (supra), which had followed the decision in the case of *Ghanshyam Das Gupta* (supra) and held that principle of natural justice applies when it is a case of cancellation of examination results, consequent in an inquiry before domestic Tribunal, inasmuch as the examinees must be apprised of material against them which is being used in such inquiry. Again this decision will be of no avail to the fact situation of the present case involving mass copying in public examination.

96. In the case of *Shekhar Ghosh* (supra), the Apex Court has expounded that the principle of *audi alteram paterm* (sic:*partem*)for right to hearing and pre-decisional hearing is warranted when the decision involves civil consequences. The Court has held that the requirements to comply with the principles of natural justice would vary from case to case. No doubt, in the present case, the petitioners on account of impugned decisions of the Board would be visited with civil consequences; and also entail in criminal action because of the complaint filed by the Board. At the same time, keeping in mind the exposition of the Apex Court in the recent decision in the case of *Chairman, All India Railway Recruitment Board* (supra), *Ku. Shashi Tomer* (supra) and other decisions adverted on the point, when it is a case of mass

copying such as the present one, the question of giving opportunity of hearing to each individual candidate is not required provided the Board is in a position to substantiate the necessity for resorting to such action.

97. In the case of *Subhas Chandra Sinha* (supra), the Apex Court opined that from the Scheme of the Act under consideration, in an emergency, the power of the Chairman were co-terminus with that of the Board who can take action and later report to the Board. Action so taken by the Chairman, in that case, when reported to the Board, was fully endorsed by the Board. The action of cancellation of the examination at a particular centre was taken by the Chairman. The Court then went on consider the question whether in such a situation giving an opportunity to the examinees/candidates was imperative. The Apex Court opined that it was not necessary for the Board to give an opportunity to the candidates if the examination as a whole were being cancelled because of unfair means were adopted on large scale at the concerned centre. The Apex Court found that in comparison to the answer books showed such a remarkable agreement in the answers which left no doubt that the students had assistance from an outside source. In this judgment, the Apex Court referred to the decision in the case of *Ghanshyam Das Gupta* (supra) and has explained the same in paragraph Nos.12 to 15, which read thus:

> "12. These figures speak for themselves. However, to satisfy ourselves we ordered that some answer books be brought for our inspection and many such were produced. A comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an- outside source. Therefore the conclusion that unfair means were adopted stands completely vindicated.
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> 13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases ? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole

were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

14. Reliance was placed upon *Ghanshyam Das Gupta's* case (supra), to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was said that even if the inquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practised on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say? What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an

inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and are managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the university or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc., before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that he should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury.

15. We are satisfied that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the examinations at this Centre had been vitiated by practising unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held. There was no need to give the examinees an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent. We therefore set aside the order of the High Court and ordered dismissal of the writ petition but made no order as to costs."

(emphasis supplied)

98. In the case of *Biswa Ranjan Sahoo* (supra) while dealing with the case of mass malpractice, the principles of natural justice are required to be followed or otherwise the Court in paragraph 3 observed thus:

> "3. A perusal thereof would indicate the enormity of malpractices in the selection process. The question, therefore, is: whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass mal practice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedures adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution."

99. In the case of *Abhilash Shiksha Prasar Samiti* (supra) while dealing with the case involving students entering the examination hall with books and copying materials were hand in glove with the officials, the Apex Court confirmed the decision of the Board to treat the examination as cancelled. The Court observed thus:

> "2..... In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehavior of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students

> but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices."
>
> (emphasis supplied)

100. In the case of *K.S. Gandhi* (supra), the Court was dealing with a case where show cause notices were issued to the candidates for being privy to the fraudulent fabrication. It was not a case involving the question as to whether show cause notice ought to be given to all candidates even if it were to be a case of mass copying. We have already adverted to the decisions of the Apex Court directly on the point. The Court considered the validity of the notification issued by the Board in the context of procedural irregularities under the provisions of the Act, Regulations and including violation of principles of natural justice. The Court noted that the students involved at the examination of secondary education are by and large minors but that by itself would not be a factor to hold that the students were unfairly treated at an inquiry conducted during the domestic inquiry. It also dealt with the legal position about the standard of proof in the domestic inquiry. Even in that case, the candidates indulged in unfair practice gave wrong answers to particular questions in the same way in which the answers were given by another candidate who was having consecutive number. The Court adverted to the exposition in the case of *Bagleshwar Prasad* (supra). While rejecting the contention of the candidates, in paragraph 26, the Court noted that in the matter of adoption of unfair means direct evidence may sometimes be available but cases may arise where direct evidence is not available and the question will have to be considered in the light of the probabilities and circumstantial evidence. This is the problem with the educational-institution. The Court went on to say that.

the Court should be slow to interfere with the decisions of domestic tribunals appointed by the education bodies like universities. Further, in dealing with the validity of the impugned order passed by the Universities under Article 226 the High Court is not sitting in an appeal over the decision on this question.

101. In the case of *Surendra Nath Pandey* (supra), which was a case of suspected mass-copying, the Apex Court observed that the purpose of rules of Natural Justice is to ensure that the order causing civil consequences is not passed arbitrarily and it is not that in every case there must be an opportunity of oral hearing. The Apex Court observed thus:

> "18. We are of the considered opinion that the procedure adopted by the appellants can not be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It can not be said to be in breach of rules of Natural Justice. It must be remembered that rules of Natural Justice are not embodied rules. They can not be put in a strait-jacket. The purpose of rules of Natural Justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing. We may notice here the observations made by this Court in the case of *Bihar School Education Board Vs. Subhas Chandra Sinha,* 1970 (1) SCC 648, wherein a similar plea with regard to breach of rules of Natural Justice was examined. In this case, the appellant board had cancelled the examination upon detection of mass copying without affording the affected candidates the right to be heard.
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> xxx xxx xxx
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> 21. As noticed earlier, in the present case, the appellants had adopted a very reasonable and a fair approach. A bonafide enquiry into the fact situation was conducted by a Committee of high ranking officers of the department. In our opinion, the High Court was wholly unjustified in interfering with the decision taken by the appellants in the peculiar circumstances of the case. It is settled beyond cavil that the decisions taken by the competent authority could be corrected provided it is established that the decision is so perverse that no sensible

person, who had applied his mind to the question to be decided could have arrived at it. The aforesaid principle is based on the ground of irrationality and is known as Wednesbury Principle. The Court can interfere with a decision, if it is so absurd that no reasonable authority could have taken such a decision. In our opinion, the procedure adopted by the appellants can not be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision.

22. It is perhaps keeping in mind the aforesaid principles that this Court in the case of *B. Ramanjini and others Vs. State of A.P. and others*, 2002 (3) SLJ 28 (SC) = 2002 (5) SCC 533, indicated that a decision taken by the competent authority on the basis of relevant material ought not to be lightly interfered with by the Court in exercise of its power of judicial review. In Paragraph 8 of the aforesaid judgment, this Court observed as follows:

> "Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other."
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> (emphasis supplied)

102. In the present case, we find force in the stand taken by the respondent-

Board that from the indisputable facts referred to in paragraphs 20(xv) of the judgment, it was obviously a case of organized mass-copying and commission of unfair means during the examination.

103. Even in the case of *Anand Kumar Pandey* (supra), the Court considered similar challenge in respect of candidates indulged in mass-copying during the examination. In paragraph 9, the Court observed thus:

> "9. This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Out of the total candidates who appeared in the written test at the Centre concerned only 35 candidates qualified the test. In that situation the action of the railway authorities in directing the 35 candidates of Centre No. 115 to appear in a fresh written examination virtually amounts to canceling the result of the said centre. Although it would have been fair to call upon all the candidates who appeared from Centre No. 115 to take the written examination again but in the facts and circumstances of this case no fault can be found with the action of the railway authorities in calling upon only 35 (empanelled candidates) to take the examination afresh. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the exam. To make sure that the deserving candidates are selected the respondents have been asked to go through the process of written examination once again. We are of the view that there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

104. The decision of the learned Single Judge of the Kerala High Court in

the case of *Reshmi George* (supra), on which reliance has been placed by the petitioners, was obviously a converse situation where the learned Single Judge of that Court declined to question the opinion of the Board rejecting the challenge to the examination conducted by it on the allegation that large scale mass-copying and malpractice was committed during the said examination. We do not intend to examine the correctness of the said view taken by the Kerala High Court which obviously was in the fact situation of that case. In the present case, the indisputable facts emerging from the record justify the action taken by the Board.

105. We may now refer to the decision cited by the counsel for the petitioners in the case of *Kumari T.P. Roshana* (supra). We fail to understand as to how the principle stated in this decision has any application to any of the issues arising before us. In that case, the question was concerning reservation and the standard in the matter of syllabus, examination and evaluation obtaining in different Universities that varying standards of their own is productive of inequality. We are not concerned with that issue in the present case.

106. Having answered the argument under consideration in the negative, for the same reason, argument of the petitioners that any action which results in civil consequences, *ex post facto* hearing is not permissible, does not deserve consideration. Inasmuch as, having found that issuance of show-cause notice in a case of this nature or of giving hearing to individual candidate was not required, we need not dilate further on that argument.

107. Some of the petitioners argued that their past academic record was very brilliant and keeping that in mind, no reasonable person would be inclined to even think that such candidate would indulge in unfair means during the examination, that too by engaging a scorer who secured less marks than the candidate. In the present case, however, there were clinching circumstances to indicate that the roll numbers of the concerned petitioner was changed in a well planned manner after generation of the roll number. This is a common pattern noticed in respect of each of these candidates.Further, the fact that there is provision in the Brochure permitting the candidate to apply for change of roll number, does not belie the opinion and subjective satisfaction of the Board. No explanation is forthcoming as to why the roll numbers allotted to these petitioners were not in conformity with the norm of roll numbers specified by the Board. Besides, it is noticed that in every case, the matching correct as well as wrong answers of both were of high percentage.

108. Even the argument of the petitioners that there was no evidence to even remotely suggest that they were not responsible for the change of roll numbers or had applied for that purpose after generation of their roll number, also deserves to be rejected. The opinion reached by the Committees, and as found favour with the Director and the Chairperson, is that the roll numbers of the identified candidates were altered after generation of their roll numbers. Further, their link with the racketeers and conspirators was also noticed from the documents made available by the Police. There was no reason for the officials of VYAPAM who have been arrested as accused to tamper with the roll numbers of selective candidates nor is any explanation forthcoming as to why the name of that candidate is found in the documents recovered from the accused persons during the investigation. Suffice it to observe that the impugned orders passed by the Director with the approval of the Chairperson to take action against the identified 415 candidates cannot be said to be arbitrary, unjust or unreasonable.

109. For the reasons already recorded, we have no hesitation in rejecting the argument of the petitioners that instead of taking action against the petitioners on the basis of suspicion, the Board ought to cancel the entire examination and in any case conducted fresh examination for all the affected students to do substantial justice to them. It is not possible to issue such direction keeping in mind the dictum of the Apex Court in the case of *Mriduldhar (Minor)* (supra), which mandates that the admission process to professional courses ought to be completed before 30th September [also see decision of the Apex Court in the case of *Priya Gupta* (supra)]. Issuing direction to the Board to conduct fresh examination for the students against whom action has been taken would mean that the Board will have to initiate the admission process for these candidates after expiry of the stated period. That cannot be countenanced. Notably, the impugned orders do not disqualify the concerned candidate from appearing in the future preadmission examination for professional courses, or the following academic year. What follows from the earlier discussion is that the action against the identified 415 candidates is not on the basis of suspicion, as is contended, but, on the basis of clinching circumstances warranting such action in public interest. Besides this, nothing more is required to be said about this contention.

110. That takes us to the argument of the petitioners that the Board could have reacted promptly by postponing the date of examination as soon as the

commission of unfair means by large number of candidates came in public domain in the local newspapers or to cancel the entire examination or to withhold the results of the concerned candidate. That cannot be the basis to undo the impugned orders which have been validly passed in public interest. No doubt, the Board initiated action only in September by constituting Computer Experts Committee and later on the Committee of Controllers to enable the Chairman to take a final decision. That does not mean that the impugned decision is invalid much less vitiated in any manner. Inaction to take recourse to other measures cannot vitiate the impugned decisions.

111. It was vehemently argued that once the candidates were allowed to participate in the counselling and later on also secured admission in Medical Colleges, the Board was not competent to take any action against such candidate. This argument is another shade of argument of the petitioners already considered and rejected. To wit, the Board has become *functus officio* after declaration of the result, which argument has been considered by us and rejected. For the same reasons even this argument does not commend to us.

112. It was then contended that even if the conditions specified in the Brochure were to be taken as it is, it in no way authorizes the Board to take such a drastic action, in particular, after declaration of results of examination. For that, reliance was placed on the opening part of Chapter IV and clause 4.12 and 4.22. Once again this is another shade of the argument of the authority of the Board to initiate action after declaration of results, which we have already considered and rejected. In our opinion, in absence of any express regulation having the force of law or, for that matter, executive instructions, circumscribing the authority of the Board, the Board constituted by executive order to discharge the obligation of the State had complete authority to deal with all matters connected with the examination and incidental thereto and including after declaration of the results of the examination conducted by it. No other Authority has been constituted under any law to deal with those matters. If the foundation for admission is fraudulent, which fact has been found by the Board after analyzing of all the relevant materials and the opinion of two Committees, the decision taken by the Board in public interest cannot be undone. It necessarily follows that cancellation of admission of the petitioners by the concerned college will also have to be upheld. For, all actions based on such fraudulent examination result will be *non-est* in the eyes of law.

113. It was then contended that the Director as well as the Chairperson

before taking final decision has completely disregarded the fact that some of the petitioners did not even qualify the examination to get admission in Government college. We fail to understand as to how this fact would eclipse the clinching circumstances taken into account by the Director and the Chairperson indicating the involvement of the concerned candidate as emerging from the relevant records taken into account for reaching the final conclusion.

114. It was contended that the Board could have taken action only after the Supervisor or Invigilator in the Hall had reported about the involvement of the concerned candidate about copying. This submission is buttressed on the basis of clause 4.12 of the Brochure. We are in agreement with the submission of the respondent-Board that this submission is founded on complete misreading of the terms of Brochure. The requirement of complaint received from Supervisor or Invigilator in the examination hall is in respect of matters other than the acts referred to, inter alia, in Sub-clauses (Ka), (Gha), (Da), (Cha) of clause 4.12. The act of change of roll number, after it was generated, and the circumstance of substantial percentage of right and wrong answers given by the scorer and the candidate are matching and the indisputable facts emerging from the documents made available by the Police, it was clearly a case covered by one or the other sub-clauses referred to in clause 4.12. As the theory propounded by the respondent- Board that all this has happened as a large scale conspiracy, is plausible one, even the involvement of concerned Supervisor or Invigilator or officials at the concerned examination centers cannot be ruled out. Suffice it to observe that the existence of other clinching circumstances regarding organised unfair means during the examination were sufficient for the Board to proceed in the matter. Nay, it was the bounden duty of the Board to do so in public interest even in absence of any report from the Supervisors or Invigilators.

115. As regards the argument of the petitioners that the impugned decision of the Board dated 9th December, 2013 is questionable because it takes action only against 70 candidates out of 92 candidates identified in the list submitted by the STF, also does not merit consideration. Inasmuch as, the counsel for the Board has clarified that the record indicates that the remaining 22 candidates were already named in the list of candidates against whom action was taken in terms of impugned decision dated 9th October, 2013. That factual position is reinforced from the finding of the Committee of Controllers. In view thereof, even this argument will have to be rejected.

116. The argument of the petitioners that the Board ought to have also taken into account the CCTV footage to substantiate the fact as to whether the concerned candidate was or was not involved in unfair means during the examination, also deserves to be stated to be rejected for the reasons already noted that the Board acted on the basis of clinching and indisputable circumstances clearly pointing finger to the involvement of the identified candidates. Assuming that CCTV cameras were fitted in the concerned examination hall, non-consideration of that material cannot be the basis to hold that other clinching material considered by the Board was not sufficient to record the subjective satisfaction arrived at by the Director and approved by the Chairperson. Our attention was also invited to the decision of the Division Bench of the Calcutta High Court in the case of *Roupshanara Momtaz* (supra). In that case the examination of the candidate was cancelled on the finding of having committed malpractice. The Court held that the malpractice must be detected in the examination hall before answer book is deposited. The student cannot be punished for act of somebody else whose identity is not known. Suffice it to observe that this was not a case of organized mass-copying indulged by the large number of candidates as in the present case but of individual action against one candidate. We have already dealt with this aspect in extenso in the earlier paragraphs. Hence, we do not deem it necessary to dilate on this decision any further.

117. As regards the argument that the enquiry conducted by the Board by constituting two Committees was only farce of enquiry and was to justify cancellation of examination results of meritorious candidates on the basis of unsubstantiated information furnished by the STF, also deserves to be negatived. We have already noticed that the Computer Experts Committee analyzed the computer data available with the Board to ascertain the logic for allocation of roll numbers and the reasons for such mismatch. The final decision is not founded purely on the basis of material furnished by the STF. The material furnished by STF has been used only to reassure that action is being taken against deserving candidates and not to prejudice *bona fide* candidates. We find no merits in the submission that the constitution of Computer Experts Committee or for that matter the Committee of Controllers was a farce, as is contended. Notably, no allegation of bias or *mala fide* is alleged against any of the members of the two Committees nor the analysis done by them has been demolished in any manner. The process adopted by the concerned Committee having remained unchallenged and being sufficient to initiate action,

the argument under consideration deserves to be rejected.

118. The argument of the petitioners that the Board after declaration of results could not have taken any other action, but, only reported the matter to the local police, is essentially founded on clause 4.22 of the Brochure. That clause deals with the scope of function of the Board. It does not circumscribe the authority of the Board to cancel the candidature of the candidate after declaration of examination results, if it is found that the candidate had indulged in unfair means during the said examination. Accordingly, even this submission does not take the matter any further.

119. The other issue raised by the petitioners is on the basis of provisions of the Act of 2007 (II). That is an Act for the regulation of education and fixation of fee in private educational institutions. The Admission Rules under that Act have been framed in the year 2008 which provide for conducting of common entrance test and the procedure for admission including the circumstances in which the admission can be cancelled. The provisions contained in the said Act can have no application to the enquiry in connection with pre-admission examination for professional courses conducted by the Board. For, the examination referred to in the Admission Rules of 2008 is independent and different than the common entrance test conducted by the Board. That test is in connection with the management quota seats to be filled by private colleges. The State Government conducts common entrance test to fill in the quota of seats on merits (Government seats) in the Private Professional Colleges, on the basis of entrance test conducted by it for that purpose.

120. In the case of *Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others*[62], the Apex Court directed that the admissions in the private unaided medical/dental colleges in the State of Madhya Pradesh will be done by first excluding 15% NRI seats (which can be filled up by the private institutions as per para 131 of *P.A. Inamdar Vs. State of Maharashtra*[63], and allotting half of the 85% seats for admission to the undergraduate and post graduate courses to be filled in by an open competitive examination by the State Government. The remaining half seats could be filled by the Association of the Private Medical and Dental Colleges

62. (2009) 7 SCC 751

63. (2005) 6 SCC 537

by holding separate entrance examination for that purpose.

121. Therefore, the fact that the admission is taken in a private medical college on the basis of examination conducted by the Board does not mean that the illegality and fraud committed by the candidate during the examination conducted by the Board can be overlooked. Neither the private medical college nor any other Agency can enquire into the issues concerning the examination conducted by the Board. The Board is the sole repository of that power. The provision regarding cancellation of admission in private medical colleges in the Act of 2007(II) and Admission Rules, 2008 are in connection with the admission granted against the management seats on the basis of examination conducted under the said Act & Rules. The counsel for the respondent-Board, on instructions, submitted that each of the petitioners, who have taken admission in private medical college and have filed writ petitions have taken such admission against Government seats on the basis of the examination conducted by the Board. That submission was countered by the counsel for the concerned petitioners. We, however, have no reason to doubt the correctness of the stand taken by the Board. We have no manner of doubt that the private colleges have cancelled the admission of the concerned petitioner(s) because they were admitted against Government seats on the basis of the examination results of the Board. No official document has been brought to our notice to indicate to the contrary. Even so, we would observe that if the petitioner(s) herein have been admitted in Private College(s) against the "management seat" after qualifying the examination conducted under the Admission Rules, 2008; "and not on the basis of the results of pre-admission examination for professional courses conducted by the Board" to fill in the Government seats - that cannot be disturbed even if he had appeared in both the examinations - one conducted by the Board and the other by the Agency for giving admission against management quota. In other words, the impugned orders cannot be the basis to cancel their admission, taken against the management seats on the basis of the examination results of examination conducted under the Admission Rules of 2008. This will have to be kept in mind by the appropriate Authority on case to case basis. We are not expressing any final opinion in respect of that factual aspect. We, however, reiterate that if the admission to private medical college has been given on the basis of "examination conducted by the Board" qua the Government seats, due to

upholding the decision of the Board of annulling the candidature of the concerned candidate for that examination in terms of this order, cancellation of admission by the private medical college of that student will be unexceptionable.

122. In view of the conclusion reached by us, it is unnecessary to dilate on the argument of the petitioners that the impugned orders will have to be set aside as a whole and not conditionally. Reliance was placed on the decision of the Apex Court in the case of *Satyabrata Biswas* (supra) to contend that the Court after setting aside the impugned decisions must direct the parties to restore status quo ante bellum. As aforesaid, we need not dilate on this question any further. For, that would have become necessary only after setting aside of the impugned decisions, which we are not inclined to do. Relying on the observations of the Apex Court in the case of *Ram Kumar* (supra), it was contended that the petitioners be allowed to continue the course and be made subject to the outcome of the criminal case pending against them. If in the criminal case they were to be acquitted, it would presuppose that the action taken against them by the Board was inappropriate and unjust. We are not impressed by this argument. Inasmuch as, even if the petitioners were to be acquitted in the criminal case pending against them, that would not by itself vitiate the action taken by the Board on the basis of indisputable facts and circumstances. We have also noticed the settled legal position that the two proceedings are mutually exclusive and the quality of evidence/material to proceed in the matter in both these proceedings is markedly different. Hence, this argument will be of no avail to the petitioners.

123. We hold that the opinion of the Board officials and the reasons recorded in the impugned decisions should not prejudice the petitioners in the criminal action pending against them in any manner. That proceedings will have to be proceeded on its own merits in accordance with law, and including uninfluenced by the observations in this judgment or dismissal of the writ petitions. That is because, the present petitions are in respect of cause of action arising from civil action flowing from the impugned decisions passed by the Board in which the standard of proof is different. On the other hand, any criminal action against the petitioners and similarly placed persons will have to be tested on the basis of the legal and admissible evidence brought on record by the prosecution or by the defence.

124. While parting, we may impress upon the State Government to take

expeditious steps for establishment of the Board in terms of the provisions of the Act of 2007 (I). We hope and trust that the State Government will do the needful in that regard with utmost dispatch.

125. We also place on record our word of appreciation for the able assistance given by all the advocates who appeared before us in these matters.

126. For the reasons recorded hitherto, all the petitions and interim applications therein are dismissed with the abovenoted observations.

Petition dismissed.

I.L.R. [2014] M.P., 2684
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
W.P. No. 1819/2014 (Indore) decided on 17 June, 2014

DASHRATH & anr. ...Petitioners
Vs.
DECEASED RAJU BAI THROUGH L.Hs. & anr. ...Respondents

***Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Proviso* - Application for amendment of plaint - Amendment application cannot be allowed unless the application is filed with due diligence - No application for amendment can be allowed after commencement of trial.**

(Paras 6, 10 to 13)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – परंतुक – वादपत्र में संशोधन हेतु आवेदन – संशोधन के आवेदन को मंजूर नहीं किया जा सकता जब तक कि आवेदन, सम्यक तत्परता के साथ प्रस्तुत न किया गया हो – विचारण आरंभ होने के पश्चात संशोधन हेतु आवेदन मंजूर नहीं किया जा सकता।

Cases referred :

2005 AIR SCW 3827, AIR 2007 SC 806, AIR 2009 SC 1433, (2012) 2 SCC 300, (2003) 6 SCC 595, AIR 1979 SC 1436, AIR 1960 SC 941, AIR 1924 Privy Council 202, AIR 1929 Privy Council 289, W.P. No. 6089/2010 decided 02.12.2010, AIR 1997 Bombay 208.

Vinay Gandhi, for the petitioners.
Subodh Abhyankar, for the respondent No.1.

ORDER

PRAKASH SHRIVASTAVA, J. :- This writ petition under Article 227 of the Constitution of India is at the instance of the defendant in the suit challenging the order of the trial Court dated 24.1.2014 allowing the respondent's application for amendment of plaint under Order 6 Rule 17 of the CPC.

2. In brief, the respondent has filed the suit for permanent injunction in which the petitioners had filed the written statement as well as the counter claim. The respondent had also filed the reply to the counter claim. The petitioners thereafter had filed an application for amendment of the counter claim which was rejected by the trial Court, against which the petitioners had filed W.P. No.4766/2012 which was allowed by this Court by order dated 5.7.2012 with certain conditions permitting the petitioners to file fresh application. The petitioners had filed the fresh application for amendment of written statement and counter claim which was allowed by the trial Court. At the stage of consequential amendment, the respondents had declared that they did not want to make any consequential amendment and the matter had proceeded before the trial Court and after completion of the evidence, at the final stage the respondent had filed an application under Order 6 Rule 17 of the CPC which has been allowed by the trial Court by the impugned order dated 24.1.2014.

3. Learned counsel appearing for the petitioners submits that the trial Court while allowing the respondent's application for amendment, has not considered the effect of the proviso to Rule 17 of Order 6 of the CPC and had also not considered the earlier declaration by the respondents that they did not want to make any consequential amendment, and such a declaration acts as res judicata in respect of their application for consequential amendment. He has also submitted that the amendment will require fresh evidence by the parties.

4. As against this, learned counsel for the respondent submits that the application for amendment was only for consequential amendment for amending the written statement filed by the petitioners in reply to the counter claim and for that amendment no further evidence is necessary.

5. I have heard the learned counsel for the parties and perused the record.

6. After the amendment in the CPC and incorporation of the proviso in

Rule 17 of Order 6, the discretion to amend the pleading at any stage of the proceedings has been restricted and the requirement of showing "due diligence" has been imposed before allowing amendment after the commencement of the trial. In view of the amended provision unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial, no application for amendment can be allowed after the commencement of trial. The Supreme Court in the matter of *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India* Reported in 2005 AIR SCW 3827 while upholding the validity of the amendment in the CPC, has held that the proviso to some extent curtails the absolute discretion to allow amendment at any stage, by observing as under :-

> "27. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

7. In the matter of *Ajend:aprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors.* reported in AIR 2007 SC 806, the Court has expressed that the proviso has been introduced to strike a balance, by observing as under :-

> "33. Ultimately to strike a balance the Legislature applied its mind and re-introduced Rule 17 by Act 22 of 2002 w.e.f. 1.7.2002. It had a provision permitting amendment in the first part which said that the Court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless

the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration."

8. Supreme Court in the matter of *Vidyabai and others Vs. Padmalatha and Another* reported in AIR 2009 SC 1433 while expressing about the limited jurisdiction to allow amendment in terms of the proviso has held :-

"14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

9. In the matter of *J. Samuel and others Vs. Gattu Mahesh and others* reported in (2012) 2 SCC 300, the Supreme Court has noted that not only the two conditions i.e., No injustice should be done to the other side and necessity of amendment for determining the real question in controversy between the parties, must be satisfied but after the amendment and incorporation of proviso, the test of due diligence must also be satisfied. The Supreme Court in the matter of *J. Samuel* (supra) has held as under :-

"16. As stated earlier, in the present case, the amendment application itself was filed only on 24-9-2010 after the arguments were completed and the matter was posted for judgment on 4-10-2010. On proper interpretation of the proviso to Rule 17 of Order 6, the party has to satisfy the court that it could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, the proviso restricts that power once the trial has commenced. Unless the court satisfies (sic itself) that there is a reasonable cause for allowing

the amendment, normally the court has to reject such a request.

17. **********

18. The primary aim of the court is to try the case on its merit and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The court's discretion to grant permission for a party to amend his pleadings lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:

> "..... no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim

and is very critical to the outcome of the suit."

10. Coming to facts of the present case, petitioner's application for amendment in the counter claim was allowed by the trial Court by the order dated 5.7.2012 and thereafter the respondent had refused to avail the opportunity to make any consequential amendment and the parties had led evidence and matter had reached to the final stage. On 13.1.2014 the trial Court had heard final arguments and had reserved the case for judgment. The respondent thereafter had filed an application under Order 6 Rule 17 of the CPC on 17.1.2014 for consequential amendment in the written statement as a result of the amendment incorporated by the petitioner in the counter claim. The only reason disclosed in the amendment application is that it was necessary for the respondent to make consequential amendment in the written statement in response to the amendment in the counter claim but due to confusion and mistake the said amendment could not be done. There is nothing in the application indicating that inspite of the due diligence the respondent could not take steps for making the consequential amendment in the written statement. The test of due diligence in terms of the proviso to Rule 17 of Order 6 is not satisfied in the present case. The trial Court while passing the impugned order, has not recorded any finding that the respondent could not move for the consequential amendment earlier inspite of the due diligence.

11. There is yet another reason for setting aside the impugned order of the trial Court. The petitioners' application for amendment of counter claim was allowed by the trial Court by order dated 5.7.2012 and thereafter the matter was listed before the trial Court for consequential amendment of the written statement by the respondent on 6.12.2012 and on that date, the counsel for the respondent had declared before the trial Court that the respondent did not want to make any consequential amendment in the written statement (reply to the counter claim) and after recording the said statement of the counsel for the respondent, the matter was proceeded before the trial Court and the evidence of the parties was recorded. After making such a declaration which was binding on respondent, it was not open to the respondent to take a U turn and by acting contrary to declaration file, an application for consequential amendment even without furnishing any satisfactory explanation for retracting from the said declaration. [See: (2003) 6 SCC 595 *Roop Kumar Vs. Mohan Thedani,* AIR 1979 SC 1436 *Smt. Sukhrani (dead) by L.R.s and others Vs. Hari Shankar and others,* AIR 1960 SC 941 *Satyadhyan Ghosal and*

others Vs. Smt. Deorajin Debi and another, AIR 1924 Privy Council 202 *Maharajadhiraj Sir Rameshwar Singh Bahadur Vs. Hitendra Singh and others,* AIR 1929 Privy Council 289 *Charles Hubert Kinch Vs. Edward Keith Walcott and others* and the order of the Division Bench of this Court dated 2.12.2010 in W.P. No.6089/2010 in the matter of *Mangilal and others Vs. Jivajirao Sugar Co. Ltd. Daloda and others.*

12. The judgment of the Bombay High Court in the matter of *Salmona Villa Co-operative Housing Society Ltd. Vs. Smt. Mary Fernandes and others* reported in AIR 1997 BOMBAY 208 relied upon by counsel for the respondent has no application in the present case since the said judgment relates to the condonation of delay in carrying out the amendment after the application for amendment is allowed.

13. Keeping in view the aforesaid aspect of the matter, I am of the opinion that the impugned order of the trial court allowing the respondent's application under Order 6 Rule 17 of the CPC, can not be sustained and is hereby set aside.

14. The writ petition is allowed to the extent indicated above.

Petition allowed.

I.L.R. [2014] M.P., 2690
APPELLATE CIVIL
Before Mr. Justice S.K. Seth & Mr. Justice M.C. Garg
F.A. No. 627/2012 (Indore) decided on 1 April, 2014

STATE OF M.P. & anr. ...Appellants
Vs.
LATE ABDUL GANI THROUGH L.Hs. ...Respondents

***Limitation Act (36 of 1963), Section 5 - Condonation of delay - Sufficient Cause - Delay of 516 days* - Cause disclosed in application shows that except for lethargy on the part of officer of Govt at any stage no other cogent reason has been shown for seeking condonation of delay - Delay cannot be condoned - Application dismissed. (Paras 2 & 3)**

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब के लिए माफी – पर्याप्त कारण – 516 दिनों का विलम्ब – आवेदन में प्रकट किया गया कारण दर्शाता है कि विलम्ब के लिए माफी हेतु सरकार के अधिकारी की ओर से आलस्य को छोड़कर किसी प्रक्रम पर कोई अन्य प्रबल कारण नहीं दर्शाया गया है – विलम्ब माफ

नहीं किया जा सकता – आवेदन खारिज।

Cases referred :

AIR 2012 SC 1506, (2014) 2 SCC 422.

Sudhanshu Vyas, P.L. for the appellants/State.

ORDER

The Order of the Court was delivered by : **M.C. GARG, J. :-** Heard on **IA No.5405/2012**, an application seeking condonation of delay in filing the appeal.

2. This order shall dispose of the application for condonation of delay in filing the appeal against the order dated 20.12.2010 which is barred by 516 days. The appellants seeking condonation of delay has taken the following grounds:-

> "That after passing of the impugned award/judgment dated 20.12.2010, the necessary process was initiated.
>
> That after the matter came to the knowledge of the appellant/State for the first time on 20.10.2010 on the very day, the opinion in the matter was sought from the concerned Government Advocate and after receiving the opinion on 07/04/2011, the matter was forwarded by the S.D.O. to the Executive Engineer, Water Resources Division, who in turn forwarded the same to the Superintending Engineer on 19.10.2011. Copy of the aforesaid letter are annexed herewith and marked as Annexure A/2.
>
> Thereafter, the Superintending Engineer sent the case to the Chief Engineer, WRD, Indore for seeking the necessary instructions vide letter dated 08.11.2011, copy of the letter dated 08.11.2011, is annexed herewith and marked as Annexure A/3. The Chief Engineer forwarded the matter to the E. in C. on 23.12.2011 for seeking the necessary sanction of the Law Department for preferring the appeal. A copy of letter dated 23.12.2011 is annexed herewith and marked as Annexure A/4.

That, the Law and Legislative Affairs Department, MP Bhopal has granted the requisite permission on 17.05.2012 Annexure A/5 which was received on 11.06.2012 by the Officer In Charge through proper channel. Thereafter he in turn collected the entire record of the case and then has contacted the office of the Advocate General for the preparation of the appeal."

3. This shows that except for the lethargy on the part of the officer of the Government at any stage no other cogent reason has been shown for seeking condonation of delay.

4. The law with respect to the consideration of sufficient cause is well settled in the latest judgment delivered by Hon'ble Supreme Court in the case of *Office of the Chief Post Master General Vs. Living Media India Ltd.* AIR 2012 SC 1506 wherein the Hon'ble Apex Court has held as under:-

"11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there

is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and

commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

14) In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs."

5. The aforesaid view has again been affirmed by the Supreme Court in case of *State of Uttar Pradesh v. Amar Nath Yadav* [(2014) 2 SCC 422].

6. Accordingly, we find no good reason to condone the delay in this case. I.A.no.5405/2012 is dismissed. Consequently, the first appeal is also dismissed.

C.C.as per rules.

Appeal dismissed.

I.L.R. [2014] M.P., 2694
APPELLATE CRIMINAL
Before Mr. Justice S.K. Seth & Mr. Justice P.K. Jaiswal
Cr. A. No. 1109/2001 (Indore) decided on 21 August, 2014

DILIP SAGORKAR (DEAD) THROUGH L.R. ...Appellant
Vs.
STATE OF M.P. ...Respondent

***Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) R/w 13(2) - Illegal gratification* - Accused in his statement under Section 313 Cr.P.C. admitted the prosecution case however, took a defence that the amount was received towards repayment of loan which was earlier given to complainant - Defence witnesses are not trustworthy**

as they are trying to shield his sub-ordinate - If evidence of lending loan is accepted without any documentary proof in support of alleged loan, it would be virtually impossible to convict any bribe taker - Appeal dismissed. (Paras 5 & 6)

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराऐं 7, 13(1)(डी) सहपठित 13(2) – अवैध परितोषण – अभियुक्त ने द.प्र.सं. की धारा 313 के अपने कथन में अभियोजन प्रकरण को स्वीकार किया किन्तु यह बचाव लिया कि प्राप्त की गई रकम, ऋण की अदायगी के तौर पर प्राप्त की गई थी, जिसे पूर्व में शिकायतकर्ता को दिया गया था – बचाव साक्षी विश्वसनीय नहीं क्योंकि वे अपने अधीनस्थ को बचाने का प्रयास कर रहे हैं – यदि अभिकथित ऋण के समर्थन में बिना किसी दस्तावेजी सबूत के, ऋण दिया जाना स्वीकार किया गया, तो किसी रिश्वत लेने वाले को दोषसिद्ध करना वस्तुतः असंभव होगा – अपील खारिज।

JUDGMENT

The Judgment of the Court was delivered by:

S.K. SETH, J. :- This appeal arises out of conviction of Dilip Sagorkar (since dead) under Section 7 r/w 13(d) and 13 (2) of the Prevention of Corruption Act, 1988. He was sentenced to One year RI and fine of Rs. 1500/- with default clause of 3 month RI u/s 7 of the Act. He was also awarded sentence of one year RI with fine of Rs. 1500/- with default stipulation u/s 13 (1) (d) r/w 13 (2) of the Act. The sentences were to run concurrently.

2. During pendency of the appeal, Dilip Sagorkar expired and his name was deleted, the appeal being continued by his widow Smt. Nisha Sagorkar.

3. Looking to the examination of the accused Dilip u/s 313 Cr.P.C. it is clear that almost all the facts alleged by the prosecution are admitted, the defence being that the complainant Muneshwar Pal (PW2) earlier had borrowed a sum of Rs. 1500/- from the accused **prior to 6.11.1999** which amount Muneshwar was returning to the accused at the time of the incident dated 6.11.1999.

4. In view of this clear admission of the accused, it is no longer necessary for us to examine in detail the prosecution case about the accused demanding money, a trap being laid, he being caught red-handed with the marked notes, necessary sanction was obtained which is not challenged. In view of the above admissions of the accused, the burden shifts on him to prove the defence about Rs. 1500/- being loaned to Muneshwar prior to 6.11.1999, which

amount was being returned to the accused by Muneshwar at the time of the incident.

5. The accused examined two defence witnesses to establish the defence raised. We now turn to consider and evaluate the version of each of the defence witnesses. Om Prakash Jain (DW1) Assistant Engineer in the tube-well section of the Indore Municipal Corporation has stated thus; on 5.11.199 during office hours in his presence there was heated exchange of words between the accused and Muneshwar, the accused demanding return of his loan amount of Rs. 1500/- ; this led the witness Om Prakash asking the disputants to settle the matter out-side the office and at that time Muneshwar had stated that he would return the amount next day. The cross examination of this witness shows that the accused, Beldar in office was not authorized to make payments of salary or arrears. It seems to us that the testimony of Om Prakash DW1 is of doubtful value and he seems to be trying to shield his subordinate worker, the accused. The other defence witness Manik Lal (DW2) a Mechanic in the tube-well section of the Indor Municipal Corporation also comes out with the story about exchange of words between the accused and Muneshwar, a day prior to the incident of trapping when Muneshwar agreed to repay the loan next day at the same time. The criticism about the evidentiary value of the testimony of Om Prakash DW1 also applies to the testimony of Manik Lal DW2. The defence of earlier loan and repayment thereof is obviously and clearly a means to get out of the situation of being caught red-handed with the money, and as such the defence version is open to very serious doubts and misgivings. If such evidence is accepted without any documentary proof in support of the alleged loan, it would be virtually impossible to convict any bribe taker. Hence we would unhesitantly reject the defence raised. That being so, the prosecution case stands proved, according to us,

6. The result is that the appeal of deceased Dilip continued by his widow Smt. Nisha must fail and is hereby dismissed. Fines as ordered by the trial court, if paid, no further action is required; if not paid, we would set-aside the order regarding fines by the lower court, in the special circumstances of the case which is being, prosecuted by the widow of the accused.

7. Ordered accordingly.

Appeal dismissed.

I.L.R. [2014] M.P., 2697
CIVIL REVISION
Before Mr. Justice K.K. Trivedi
C.R. No. 20/2013 (Jabalpur) decided on 16 April, 2013

MADAN LAL VOHRA & ors ...Applicants
Vs.
SMT. NIRMALA DUBEY ...Non-applicant

A. ***Accommodation Control Act, M.P. (41 of 1961), Sections 23-A, 23-C & 23-E(2)*** **- Eviction order passed on the ground that applicants have not obtained leave of the court to defend as required u/s 23-C of the Act and the objections raised in respect of the maintainability were already decided - Held - Since the applicants have never applied for grant of leave to defend in terms of Section 23-C of the Act they were not to be heard. (Paras 7 & 8)**

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराऐं 23ए, 23सी व 23ई(2) – बेदखली का आदेश इस आधार पर पारित किया गया कि आवेदकगण ने बचाव के लिये न्यायालय से अनुमति नहीं ली जैसा कि अधिनियम की धारा 23सी के अंतर्गत अपेक्षित है और पोषणीयता से संबंधित उठाये गये आक्षेपों को पहले ही निर्णित किया गया था – अभिनिर्धारित – चूंकि आवेदकगण ने अधिनियम की धारा 23सी की शर्तों नुसार बचाव के लिये अनुमति प्रदान किये जाने हेतु आवेदन नहीं दिया, उन्हें सुना नहीं जा सकता।

B. ***Accommodation Control Act, M.P. (41 of 1961), Sections 23-A, 23-C & 23-E(2)*** **- Record of the court was manipulated by inserting the application seeking leave to appeal - No evidence that such application was ever filed - Applicants also tried to mislead this court by placing reliance on such a manipulated document - Such a litigant is not entitled to any relief - Revision is dismissed with cost of Rs. 10,000/-. (Paras 7 & 8)**

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराऐं 23ए, 23सी व 23ई(2) – न्यायालय के अभिलेख में अपील के लिये अनुमति चाहते हुए आवेदन रखकर छल साधन किया गया था – कोई साक्ष्य नहीं कि उक्त आवेदन कभी प्रस्तुत भी किया गया था – आवेदकगण ने उक्त छल साधन के दस्तावेज पर विश्वास रखकर न्यायालय को दिग्भ्रमित करने का प्रयास किया है – ऐसा मुकदमेबाज किसी अनुतोष का हकदार नहीं – रु. 10,000/– के व्यय के साथ पुनरीक्षण खारिज।

C. ***Fraud*** **- Any order obtained by suppression of facts or**

on misrepresentation would be an order obtained by fraud and would be a nullity. (Para 8)

ग. कपट – तथ्यों का छिपाव करके या दुर्व्यपदेशन द्वारा अभिप्राप्त कोई आदेश, कपट द्वारा अभिप्राप्त आदेश होगा और अकृत होगा।

Cases referred :

1994 (1) SCC 1, W.A. No. 397/2010 decided on 26.02.2013.

M.L. Patel, for the applicants.
D.K. Dixit, for the non-applicant.

ORDER

K.K. Trivedi, J. :- This revision under Section 23-E(2) of the M.P. Accommodation Control Act, 1961 (hereinafter referred to as the Act for brevity) has been filed seeking to challenge order dated 17.12.2012 passed in Case No.2-A/6/2011-2012 by the Rent Controlling Authority, Betul (hereinafter referred to as the RCA for short).

2. Facts giving rise to filing of this revision are that the respondent claiming herself to be a specified landlord as defined under the Act, made an application under Section 23-A of the Act, seeking eviction of the applicants. It was stated that the respondent was a widow. Her late husband has obtained a lease of the land from the State Government and constructed a small hotel and restaurant. Since the husband of the respondent expired untimely, the hotel was given on lease to the applicant No.1, who was the employee working in the said hotel from the time of the husband of the respondent. The applicant No.1 was paying Rs.5,000/- per month to the respondent, but all of a sudden the said payment was stopped. Since the son of the respondent has become adult and capable of running her business, the demise premises is required for the bonafide need of the respondent and her son.

3. Upon making of this application, the RCA issued notice to the applicants who were served. Under the Scheme of the Act, the applicants were required to move an application under Section 23-C of the Act seeking leave of the Court to defend. It appears that instead of making appropriate application in that respect when the notice of the eviction application was served on the applicants, some sort of objection was filed by them on 31.5.2012. However, the objection was not with respect to the bonafides of requirement of the respondent, but it was said that such an application for

eviction was not maintainable in view of the provisions of M.P. Parisar Kirayedari Adhiniyam, 2010. Such an objection was rejected and an appeal was filed by the applicants in the Court of District Judge. In response to the notice of the appeal issued to the respondent, the fact was brought to the notice of the appellate Court that the leave to defend as required to be obtained by the applicants was not obtained from the RCA in terms of the Scheme of the Act and as such, the appeal was also not maintainable. Some sort of written argument was filed before the Additional District Judge Betul by the applicants in the said appeal wherein they have said that no such leave was required to be obtained and such an appeal under Section 31 of the Act could have been filed before the Court.

4. Though no such leave to defend was obtained by the applicants, but they raised the objections, and contended that they were required to be heard. The RCA considering all these facts, came to the conclusion that since all the objection with respect to the maintainability of the eviction applications were already decided on 5.7.2012 and appeal against such an order was already rejected, the applicants have not obtained the required leave to defend, therefore, the applicants were not to be heard and, ultimately, allowed the eviction application by the impugned order. This revision is directed against such an eviction order.

5. It is, vehemently, contended by learned counsel for applicants that in fact application seeking leave to defend was already filed by the applicants as is clear from the application available on record, said to be filed on 31.5.2012. This application was never taken into consideration. It is, thus, contended that the application itself was not considered and, therefore, no opportunity of defence was granted to the applicants in appropriate manner. Copy of the application is said to be obtained and the same has been produced as Annx.A/1 with this revision. From this, it is contended that the RCA has committed grave error in deciding the claim of the applicants and in fact order passed by the RCA is a nullity.

6. *Per contra* opposing such submission made by learned counsel for the applicants, Shri D.K. Dixit, learned counsel for the respondent has pointed out that such an application dated 31.5.2012 was never filed before RCA and the same should not be included in record. Taking this Court to the record of the RCA, it is pointed out that immediately a complaint was made before the RCA by the respondent on 28.1.2013, the moment she came to know

that such application dated 31.5.2012 has been filed along with the revision petition. From the record it is clear that such a document was mischievously inserted in the record and originally it was never presented. Taking this Court to the submissions made in this respect before the Additional District Judge while hearing the appeal, it is pointed out that the objection filed on 31.5.2012 was with respect to the maintainability of the eviction application and not an application seeking leave to defend. It is, thus, contended that a perjury is committed by the applicants by placing a document on records of this Court, which was never produced before the RCA and it has been inserted by manipulation of the record of RCA. Thus, it is contended that in fact not only the revision is liable to be dismissed, but the applicants are liable to be punished for committing perjury with this Court.

7. While entertaining this revision, this Court has directed production of the record of the RCA. The entire record is seen. The order sheet dated 31.5.2012 indicates that an objection was filed by the applicants through their counsel and the case was fixed for reply of the said objection. The proceedings indicate that reply to such an objection was filed on 18.6.2012. The case was fixed for hearing on the said objection on 28.6.2012 on which date, the applicants filed their written arguments. The case was thereafter posted for orders on such an objection which was decided on 5.7.2012. The entire objection of the applicants was with respect to maintainability of the eviction application and not with respect to seeking any leave to defend as prescribed under Section 23-C of the Act. This makes it clear that the application dated 31.5.2012 was subsequently inserted in the records. One more reason to give such a finding is that the application dated 31.5.2012 was neither stamped nor notorised in the manner it should have been. There was no endorsement that a copy of the same was delivered to the opposite side. The written arguments submitted by the applicants herein was also not in respect of seeking leave to defend as is clear from documents already available on record at pages 19 and 20 of the RCA record. A date is mentioned in the said document by the presiding officer of the RCA which tallies with the date of presentation of said written arguments from the order sheets. Thus, in fact, the applicants have never applied for grant of leave to defend. On the other hand they were trying to oppose the application of the respondent on flimsy grounds.

8. While relying on such a document, the applicants have tried to obtain an interim stay from this Court on 21.1.2013. Had it not been so, such a document would not have been presented with the revision petition. Merely

because a certified copy of the same was obtained from the RCA records, the document would not become genuine unless it is demonstrated that the same was presented before the RCA at the relevant time. The entire decision is rendered by the RCA holding that the applicants have not applied for grant of leave to defend and in terms of the provisions of the Act, they were not to be heard. Thus, it is clear that in fact not only the manipulation in the record of the RCA is done by the applicants, but they have tried to mislead this Court by placing reliance in such a manipulated document. The Apex Court in the case of *S.P. Chengalvaraya Naidu (dead) by L.Rs Vs. Jagannath (dead)* by L.Rs [1994 (1) SCC 1], has categorically held that on suppression of material facts or on a misrepresentation if an order is obtained from the Court of law, the said order would be obtained by fraud with the Court and, therefore, would amount to a nullity. The Division Bench of this Court in the case of *Shivam Prathmik Upbhokta Sahkari Bhandar Vs. State of M.P. and others* W.A.No.397/2010, decided on 26.2.2013, has reached to the conclusion that such a litigant is not entitled to any relief from this Court.

9. This being so, in view of the definite reasons recorded herein above, this revision fails and is hereby dismissed. However, it would be open to the respondent to initiate proceedings against the applicants in the appropriate Court of law, if so advised, for prosecution of the applicants.

10. The revision fails and is hereby dismissed with costs. The counsel's fee is quantified to Rs.10,000/- if pre-certified.

Revision dismissed.

I.L.R. [2014] M.P., 2701
CRIMINAL REVISION
Before Mr. Justice B.D. Rathi
Cr. Rev. No. 1010/2013 (Gwalior) decided on 10 July, 2014

NAVEEN GUPTA ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Framing of Charge **- Held – That once the court decides to frame the charge u/s 228 there is no question of discharging him at a later stage by exercising the power u/s 227 – Further held, once charge has been framed, the trial has to proceed accordingly and it cannot be put to**

back gear for discharging u/s 227. **(Para 10)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किया जाना – अभिनिर्धारित – एक बार जब न्यायालय धारा 228 के अंतर्गत आरोप विरचित करने का निर्णय लेता है, उसे धारा 227 के अंतर्गत शक्ति का प्रयोग करते हुए बाद के प्रक्रम पर आरोपमुक्त किये जाने का कोई प्रश्न नहीं उठता – आगे अभिनिर्धारित, एक बार आरोप विरचित किये जाने पर, विचारण की कार्यवाही तद्नुसार होनी चाहिए और धारा 227 के अंतर्गत आरोपमुक्त किये जाने हेतु उसे पीछे नहीं ले जाया जा सकता।

Sanjay Gupta, for the applicant.
R.K. Shrivastava, P.L. for the non-applicant.

ORDER

B.D. RATHI, J. :- Present Revision has been preferred under Section 397/401 of the Code of Criminal Procedure, 1973 against the order dated 02.01.2013 passed by the XIV Additional Sessions Judge, Gwalior in Sessions Trial No.94/2012 whereby the application filed by the petitioner under Section 216 of Cr.P.C. has been rejected by saying that prima facie charge under Section 306 of IPC was rightly framed on the basis of factual aspect of case.

2. Facts necessary for just disposal of the present revision are that the marriage of Rashmi Gupta (since deceased) D/o Shri Ashok Gupta was solemnized with the petitioner in the year 1995.

3. According to the prosecution in the intervening night of 22-23/9/2009, Smt. Rashmi Gupta was got admitted by her husband in the hospital for treatment as she got burnt. Information was given by Dr. Chouhan, Casualty Ward Incharge, JAH Hospital Gwalior to P.S. Padav. Having received the information entered in Rojnamcha Sanha No.1472/23.09.2009. Thereafter, ASI Mr. Ashok Joshi reached on the spot. Early in the morning Smt. Rashmni Gupta was shifted to Safdarjung Hospital, New Delhi, where during treatment, on 26th September, 2009 she died. On 30.09.2009, one written complaint was filed by Smt. Madhu Gupta, who is the mother of the deceased, against present petitioner who is the husband of the deceased, Shriniwas Gupta (Father-in-law), Smt. Usha Gupta (Mother-in-law), Lalit Gupta (brother-in-law – Devar) and Smt. Shweta Gupta (Sister in law- Devrani) by alleging that her daughter was subjected to cruelty on non-fulfillment of demand of dowry and because of that she died unnaturally due to burn injuries in the intervening

night of 22-23/9/2009. Crime No.584/2009 for the offence punishable under Section 498A, 306 IPC was registered at Police Station Padav, District Gwalior. After completion of investigation, charge sheet has been filed. Case was committed to the Court of Session where Session Trial No.94/2012 has been registered.

4. Initially, being aggrieved by the order dated 02.01.2013 of dismissal of application under Section 216 of Cr.P.C., this petition was preferred under Section 482 Cr.P.C. on 07.02.2013. During the course of argument on 04.12.2013, it was prayed by the learned counsel on behalf of the petitioner that this petition may be treated as Criminal Revision because order passed under Section 216 Cr.P.C. is revisable. Prayer was allowed and the petition preferred under Section 482 Cr.P.C. (Mcrc No.998/13) was converted and registered as Criminal Revision No.1010 of 2013. In this way, delay of 90 days in filing Criminal Revision was also condoned by allowing the application filed under Section 5 of the Limitation Act.

5. It is pertinent to mention here that charges under Section 498A and 306 IPC were framed by X ASJ, Gwalior on 25.04.2012, in the aforesaid Session Trial, against all the five accused persons. Being aggrieved by that co-accused Shriniwas Gupta and Smt. Usha Gupta both had preferred criminal Revision No.320/12 and the same was decided on 05.10.2012 by this Court and both the petitioners were discharged of the offence punishable under Section 306 of IPC. Similarly, petitioner Lalit Gupta and Smt. Shewta Gupta both had preferred Criminal Revision No.424/2012 and the same was partly allowed on 11.12.2012. Sessions Judge was directed to proceed with trial against all these petitioners of both revisions, only for the offence punishable under Section 498A of IPC. It is also pertinent to mention here that present petitioner Mr. Naveen Gupta had not preferred any such Criminal Revision against the order of framing of charges under Section 498A and 306 IPC passed against him and instead such criminal revision he preferred an application under Section 216 Cr.P.C. before the Session Court on 02.01.2013 by praying that he also be discharged of the offence punishable under Section 306 IPC as other four co-accused persons were discharged by Hon. High Court as mentioned above. Said application was dismissed by the trial court on the ground that prima facie case under Section 306 of IPC was made out against the petitioner Naveen Gupta who was the husband of the deceased. In such circumstances, present revision has arisen.

6. It is submitted by Shri Sanjay Gupta, learned counsel appearing on behalf of the petitioner, that when four other co-accused persons were discharged of the offence punishable under Section 306 IPC then on the same set of evidence petitioner can not tried for the same offence but he should have also been discharged of the offence by the trial court but his application was illegally dismissed. It was also submitted by the learned counsel that prayer for discharge may also be made under Section 216 Cr.P.C. at any stage before passing the final judgment.

7. On the contrary, it is submitted by Shri Shrivastava, learned Panel Lawyer, that provisions contemplated under Section 216 of Cr.P.C. are not concerned with discharge of the accused. For this purpose, special provision for discharging the accused is contemplated under Section 227 of Cr.P.C. and the relief can be claimed under Section 227 Cr.P.C. at the time of passing the order for framing of charge under Section 228 Cr.P.C. It is also submitted by him that petitioner had not preferred any Criminal Revision being aggrieved by the order of framing charge dated 25.04.2012 by Session Court, therefore, now no relief can be granted in this petition. It is also argued by him that though High Court has wide powers under Section 482 Cr.P.C. but the same cannot be exercised if there is or was a specific provision in the Code for the redress of the grievance of the aggrieved party.

8. After having regard to the entire arguments advanced by the learned counsel for the parties and on perusal of the record, we will discuss the aspect of law and facts in the following paragraphs:

9. Sections 227 and 228 of Cr.P.C. read as thus:

> **227 Discharge-** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.
>
> **228. Framing of charge-**
>
> (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—
>
> (a) is not exclusively triable by the Court of Session, he may, frame

a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

10. From the provisions mentioned above, it appears that the law provides that on considering the relevant materials if the Court considers that there is no sufficient ground for proceeding against the accused then the accused has to be discharged, but if the Court is of opinion on such consideration that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court of Session then charge has to be framed against the accused. It is needless to mention that the question whether charge should be framed against the accused or he should be discharged has to be considered simultaneously and if on such consideration the Court thinks that the accused should not be discharged and rather charge should be framed against him, in that case the charge has to be framed against the accused. It is evident from the scheme of the provisions of the Chapter XVIII of the Criminal Procedure Code as well as from the logic of the sequence that once the Court decides to frame charge under S. 228 Cr.P.C. there is no question of discharging him at a later stage by exercising the power under Section 227, Cr.P.C. Once charge has been framed under Section 228 the trial has to proceed according to the procedure provided in the sections following the S.228, Cr.P.C and the process cannot be put to back-gear for discharging the accused thereafter under S.227, Cr.P.C. Where a charge has been framed by the Court of Session under S.228, the said Court thereafter cannot discharge the accused under S.227, Cr.P.C. Even if an accused against whom a charge has been framed under S.228, Cr.P.C. feels aggrieved by the framing of charge he has either to face the trial or he may approach the High Court in

its revisional jurisdiction. Otherwise, if the Court of Session remains free to discharge an accused on reconsideration under S.227 even after a charge has been framed under S.228, in that case it would be open to the accused persons against whom charge has already been framed to move the same Court one after another for reconsideration and discharge on repeated occasions thereby making it practically impossible to proceed with the trial of the case expeditiously or at all, even if such moves lack merit.

11. Section 216 of the Code of Criminal Procedure reads, thus:

> 216. (1) Any Court may alter or add to any charge at any time before judgment is pronounced
>
> (2) Every such alteration or addition shall be read and explained to the accused.
>
> (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case,the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
>
> (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
>
> (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

12. A plain reading of the said section would show that the alteration or addition referred to therein contemplates modification of or addition to charge but not discharging an accused in respect of a charge already framed so as to bring the trial itself to an end in respect of such accused. There may be addition of a new charge or even substitution of a charge in an appropriate case but S.216 does not contemplate discharge of an accused or the termination of the trial in respect of any accused. Sub-section (2) requires that every alteration or addition to a charge

has to be read and explained to the accused. The question of reading and explaining such alteration or addition would be meaningless in a good number of cases if discharge is contemplated by such alteration or addition. Sub-secs.(3) and (4) speak of proceeding with the trial or of directing a new trial or adjourning the trial. This also is a clear indication that any alteration or addition to charge shall not be of such nature as to get the accused discharged and bring the trial to an end in respect of that accused. Sub-sec (5) requires that where the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained on the same facts. Here also the sub-section contemplates of proceeding with the trial with fresh sanction, if necessary, and not ending the trial in respect of any accused by any obliteration of the charge. It is therefore evident that S.216 does not empower the Court to discharge an accused and bring the trial itself to an end in respect of an accused against whom a charge has already been framed, without following the procedure prescribed in the Code regarding the trial of a case. Of course there are certain independent provisions prescribed in the Code itself which when brought into play in any particular case may result in ending the trial at an intermediate stage, as for example, where the prosecution is withdrawn with the consent of the Court under S.321 or when an offence is validly compounded during trial under S.320, but S.227 being designed for a particular stage of the judicial proceeding one cannot revert to that provision when that stage has already been crossed.

13. It is submitted by Shri Gupta, learned counsel, that although criminal courts cannot alter judgment or final order but it does not mean that they cannot change their view resulting in discharging the accused by exercising their powers given under Section 216 Cr.P.C.

14. The argument advanced by the learned counsel Shri Gupta is not acceptable. Section 362 Cr.P.C. has been made for this purpose which reads as thus:

> **362. Court not to alter judgment** – Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

15. In the opinion of this Court, on bare perusal of provision of Section 362 Cr.P.C. as mentioned above, it is clear that it refers to judgment or final

order disposing of a case but that does not mean that all other orders can be reviewed by the Court at any time or in any manner. Had it been such position then certainly it would have been provided in Section 362 Cr.P.C. that except in judgment or in final order resulting final disposal of case, Court can review any order passed by its own, at any time. Therefore, in the absence of such specific proviso thereto, we cannot interpret Section 362 Cr.P.C. that trial court can set aside order of charge and discharge the accused under Section 216 Cr.P.C.

16. It is also submitted by Shri Gupta, learned counsel, that litigant cannot be deprived of justice only on the technical grounds. Because *prima facie* no case is made out also against the petitioner under Section 306 of IPC then he should also be benefited as other co-accused in their respective criminal revisions. The High Court by exercising its inherent powers under Section 482 Cr.P.C. may render justice to the petitioner in this revision.

17. Section 482 Cr.P.C. reads as thus:

> **482. Saving of inherent power of High Court.** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

18. Here again, argument of Shri Gupta can not be taken into consideration because it is settled law that (i) the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party; (ii) that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; and (3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

19. Suffice it to say that no strait-jacket formula is available to exercise or not to exercise the inherent powers. The power under Section 482 of the Code is not restricted or controlled by any other provisions of the Code so as to restrict its application. However, where alternative remedy is available, High Court should not be inclined the invoke inherent powers rather allow the parties to work out their remedies in the appropriate forum.

20. In the case in hand, there was ample opportunities available to the petitioner to file a Criminal Revision against the order of framing charge as preferred by other co-accused persons but even then that remedy had not been availed by the petitioner and so also reasons have also not been shown by him that as to why he had not availed the opportunity of preferring criminal revision. Now, emotionally one cannot be permitted to get relief by invoking the inherent powers of High Court under Section 482 Cr.P.C. otherwise it will be amounting to defeat the other remedies available to litigant under this Code. In such fashion, by ignoring the other available alternative remedial provisions by exercising the power under Section 482 Cr.P.C. the Court cannot grant any relief.

21. Accordingly, present petition is dismissed. However, the liberty is granted to the petitioner to raise all the objections and grounds as mentioned in this petition before the trial court at appropriate stage and in said eventuality same be considered and decided by the learned trial court in accordance with law. Thus, the Session Court is directed to proceed with the trial.

22. No order as to costs.

A copy of this order be sent to the trial court for necessary compliance.

Petition dismissed.

I.L.R. [2014] M.P., 2709
CRIMINAL REVISION
Before Mr. Justice J.K. Jain
Cr. Rev. No. 837/2013 (Indore) decided on 8 August, 2014

RAJENDRA SINGH & anr. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 319 - Power to summon additional accused **- Held - Court should not pass order u/s 319 of Cr.P.C. unless a higher standard of evidence for the purpose of forming an opinion to summon a person is available - In extraordinary case such jurisdiction be invoked sparingly - No prima facie evidence against the applicants - No sufficient and cogent reason has been assigned for summoning the applicant, impugned order is not sustainable, same is set aside. (Paras 13 to 16)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – अतिरिक्त अभियुक्त को समन करने की शक्ति – अभिनिर्धारित – न्यायालय को द.प्र.स. की धारा 319 के अंतर्गत आदेश पारित नहीं करना चाहिए जब तक कि किसी व्यक्ति को समन करने के लिए अभिमत बनाये जाने के प्रयोजन हेतु उच्च कोटि का साक्ष्य उपलब्ध न हो – असाधारण प्रकरण में उक्त अधिकारिता का अवलंब सावधानीपूर्वक करना चाहिए – आवेदकगण के विरुद्ध प्रथम दृष्ट्या साक्ष्य नहीं – आवेदक को समन करने के लिए कोई पर्याप्त एवं प्रबल कारण नहीं दिया गया, आक्षेपित आदेश पोषणीय नहीं, उसे अपास्त किया गया।

Cases referred :

AIR 2009 SC 2792, AIR 2008 SC 95.

Tausif Warsi, for the applicants.
C.R. Karnik, G.A. for the non-applicant/State.

ORDER

J.K. JAIN, J. :- This is a revision flied under Section 397/401 of Cr.P.C. against the Order dated 13/06/2013 passed by 2nd A.S.J., Shujalpur in ST No.143/2012 whereby an application under Section 319 of Cr.P.C. was allowed.

2. Brief facts of this case are that on 25.07.2011 complainant Vikram Singh lodged a report that three unknown persons have robbed cash worth Rs. 49,000/- from him by showing country made pistol. On this basis, a case was registered in Police-Station-Akodiya at crime No. 91/2011. under Section 394/397 of IPC. After investigation, police filed final report against Dinesh and Shantilal on 16.12.2011. They were tried and convicted for the offence punishable under Section 394 of IPC, thereafter on 07.06.2012, supplementary report has been filed against co-accused Ishwarlal. He is being tried for the offence under Section 394 of IPC. During trial Ishwarlal filed an application under Section 319 of Cr.P.C. for impleading applicants as accused persons. Learned A.S.J. allowed the application vide impugned order dated 13.06.2013 and issued summons against the applicants. The applicants have challenged the Order in this revision.

3. Learned counsel for the applicants submit that learned A.S.J. on the basis of deposition of Vikram Singh dated 12.06.2013 ordered to summon applicants - as accused, but there is no prima facie evidence to take cognizance against the applicants. Vikram Singh has lodged FIR against three unknown

persons and police has filed final report against Dinesh and Shantilal and supplementary report against Ishwarlal. On 30.05.2012, Vikram Singh was examined during the trial of accused Dinesh and Shantilal. In cross-examination, he was suggested that applicants have robbed him but he denied the suggestion. Thus, there is no material against the applicants for taking cognizance.

4. Learned counsel for the applicants submit that while passing order under Section 319 of Cr.P.C. the Court has to assign sufficient and cogent reasons which are lacking in the impugned order. He relied upon the judgment of the Hon'ble Supreme Court in the case of *Sarabjit Singh and Anr. V. State of Punjab,* reported in AIR 2009 SC 2792.

5. Learned counsel for the applicants further submit that on 12.06.2013, Vikram Singh deposed that the applicants were present at the place of occurrence, but no role attributed to the applicants; therefore, such persons cannot be summoned as additional accused. For this purpose, he relied upon the judgment of the Hon'ble Supreme Court in the case of *Guriya @ Tabassum Tauqir and Ors V. State of Bihar and Ann.,* reported in AIR 2008 SC 95.

6. Learned Government Advocate supports the impugned Order and submits that there is no illegality in the order.

7. After hearing rival contention of the parties, I have gone through the final report, application under Section 319 of Cr.P.C., impugned Order and the deposition of Vikram Singh dated 30.05.2012 and 12.06.2013.

8. Firstly I would like to refer the judgment of the Hon'ble Supreme Court in the case of *Sarabjit Singh* (supra). In this case the Hon'ble Court has elaborately discussed the scope, object and nature of evidence for exercise of power under Section 319 of Cr.P.C., which is as under :-

> "17 The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the Court. Has the criterion laid down by this Court in *Municipal Corporation of Delhi* (supra) been satisfied is the question? Indisputable, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make our grounds for exercise of extraordinary power. The materials brought before the Court must also be such which would satisfy the Court

that it is one of those cases where its jurisdiction should be exercised sparingly.

We may notice that in *Y. Saraba Reddy V. Puthur Rami Reddy and Anr.* { JT 2007 (6) SC 460 }, this Court opined:

" ..Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in the Court..."

An order under Section 319 of the Code, therefore, should not be passed only because the first information or one of the witnesses seeks to implicate other person (s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.

For the aforementioned purpose, the Courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

1 8. The observation of this Court in *Municipal Corporation of Delhi* (supra) and other decisions following the same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient. for taking cognizance of an offence at the stage of framing of charge; the Court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the Court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a

higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case, and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied."

9. In the light of this pronouncement, I have examined the impugned order.

10. Learned A.S.J. has summoned the applicants on the basis of;

(i) Statement of Vikram Singh under Section 161 of Cr.P.C.

(ii) Deposition of Vikram Singh dated 30.05.2012 recorded in the trial of accused Dinesh and Shantilal.

(iii) Deposition of Vikram Singh recorded on 12.06.2013 during trial of Ishwarlal.

11. For exercising powers under Section 319 of Cr.P.C., the statement recorded under section 161 of Cr.P.C. can not be considered as evidence. In the case of *Sarabjit Singh* (supra), it is held that the word "Evidence" in Section 319 contemplates the evidence of witness given in the Court. In the deposition dated 30.05.2012, Vikram Singh no where deposed that the applicants were involved in the crime. On the other hand, in the cross-examination, it was suggested that he was robbed by the applicants, he denied the suggestion.

12. During the trial of accused Ishwarlal on 12.06.2013, Vikram Singh was examined, relevant portion of his deposition is as under :-

"7 - मैं घटना दिनांक को जब घर से निकला था तब मेरे आगे पीछे रूपसिंह और राजेन्द्रसिंह परमार निवासी मुगोद वाले मेरे आगे पीछे होते रहे। मैने बैंक से पैसे निकाले तब भी वे मेरे पास ही थे। जब शुजालपुर गया तब भी वे मेरे पीछे रहे। अकोदिया से गांव रवाना हुआ तब भी वे मेरे पीछे थे और आगे जाकर खेडा जोड पर आकर बैठ गये थे। जिन्हें मैंने और कल्याण ने देखा था।

8- मुझे शंका है कि इन दोनो ने ही रैकी करके घटना करवाई है ये भी इस घटना में लिप्त है।"

13. It is clear that on 12.06.2013, first time Vikram Singh deposed that he has a doubt that the applicants were also involved in the incident. Whereas in his earlier deposition recorded during the trial of Dinesh and Shantilal, he

does not say anything against the applicants, therefore, only on the basis of above deposition, it cannot be presumed that the applicants were involved in the offence.

14. The Hon'ble Supreme Court in the case of *Sarabjit Singh* (supra) held that the Court should not pass Order under Section 319 of Cr.P.C. unless a higher standard of evidence for the purpose of forming an opinion to summon a person is available then in extraordinary cases such jurisdiction be invoked sparingly. In this case, there is no prima facie evidence to presume that the applicants have committed the offence.

15. Learned A.S.J. has not assigned any sufficient and cogent reasons for summoning the applicants. I am of the considered view that there is no material, at this stage, to proceed against the applicants.

16. Thus, the impugned order is not sustainable in law; therefore, it is set aside.

17. The revision is allowed. Copy of this Order be sent to trial Court for compliance.

Revision allowed.

I.L.R. [2014] M.P., 2714
CRIMINAL REVISION
Before Mr. Justice J.K. Jain
Cr. Rev. No. 398/2014 (Indore) decided on 12 August, 2014

JAGMOHAN & anr. ...Applicants
Vs.
STATE OF M.P. ...Non-applicant

A. Excise Act, M.P. (2 of 1915), Section 34(1)(a) - Chemical Examination of Foreign Liquor - **Liquor was identified by a Sub-inspector who is a trained person and has got vast experience to examine the liquor - Held - Chemical examination is not the only manner by which the identity of the liquor can be proved - It can be proved by the person having expertise in the field. (Para 9)**

क. आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(1)(ए) – विदेशी मदिरा का रासायनिक परीक्षण – मदिरा की पहचान उप.निरीक्षक द्वारा की गई थी, जो एक प्रशिक्षित व्यक्ति है और मदिरा परीक्षण का उसके पास व्यापक अनुभव है – अभिनिर्धारित – रासायनिक परीक्षण एकमात्र तरीका नहीं है जिसके द्वारा मदिरा की

पहचान साबित की जा सके – उसे ऐसे व्यक्ति द्वारा साबित किया जा सकता है, जिसके पास इस क्षेत्र में महारत है।

B. ***Excise Act, M.P. (2 of 1915), Section 34(1)(a) - Conscious possession of liquor*** **- Applicants are driver and cleaner - The Truck was in the sealed condition - They have no criminal antecedents - Held - It cannot be inferred that the applicants were aware about the fact that the liquor boxes were kept in the heap of the Cinthol products - There is no evidence against the applicants - Revision is allowed, conviction and sentence is set aside. (Paras 11 & 12)**

ख. आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(1)(ए) – मदिरा का बोधपूर्वक कब्जा – आवेदकगण वाहन चालक और क्लीनर हैं – ट्रक सीलबंद स्थिति में था – उनका आपराधिक पूर्ववृत्त नहीं – अभिनिर्धारित – यह निष्कर्ष नहीं निकाला जा सकता कि आवेदकगण इस तथ्य से अवगत थे कि सिन्थॉल उत्पादों के ढेर में मदिरा के बक्से रखे गये थे – आवेदकगण के विरुद्ध साक्ष्य नहीं – पुनरीक्षण मंजूर, दोषसिद्धि और दण्डादेश अपास्त।

Cases referred :

1980 JLJ 509, 1995 MPLJ 266.

V.K. Gangwal, for the applicants.
C.R. Karnik, G.A. for the non-applicant/State.

ORDER

J.K. JAIN, J. :- This revision has been preferred by the applicant u/s 397/401 of the Code of Criminal Procedure being aggrieved by the judgment dated 18.02.2014 passed by Additional Judge to the Court of I[st] A.S.J., Jhabua in Cr.A.No. 16/14 whereby he affirmed the conviction and sentence dated 22/1/2014 passed by CJM, Jhabua in cr.case No.2217/2013 awarded to the applicant as under :-

Sec. 34(1) r/w 34(2) of M.P.Excise Act	One year R.I. with fine of Rs.25,000/-
Sec.36 of M.P.Excise Act	Six months R.I. with fine of Rs. 1,000/-

2. Brief facts of this case are that on 14.11.13 at about 08 a.m. Excise Sub-Inspector, Sajendra Mori intercepted a truck bearing registration No.

HR-46-C-9756 near Toll Booth of Village Unnai Matapada Petlawad road which was going towards Thandla. The accused Jagmohan and Monu were driver and cleaner in that truck. On checking the Excise Sub-Inspector found that there was discrepancy in the number of truck and in the Invoice Cum Delivery Challan. Therefore the seal of truck was broken and on searching, it was found that in the heap of Cinthol Products, 357 boxes foreign liquor and beer were kept. Boxes containing 3440.16 bulk liters liquor were seized and driver and cleaner were arrested. Crime No. 200/2013 was registered and thereafter a complaint was filed before C.J.M., Jhabua.

3. C.J.M. stated the particulars of the offence to the accused persons and asked whether they plead guilty or have any defence. They denied the allegation and prayed for trial.

4. Prosecution examined three witnesses, whereas applicants did not produce any witness in defence. After hearing learned counsel for the parties, learned C.J.M, found the applicants guilty and convicted them for the offence punishable under Sections 34(1)(a) read with Section 34 (2) and Section 36 of the M.P.Excise Act and sentenced as aforesaid .The applicants took the matter to Sessions Court in appeal but they did not find favour with the learned Sessions Court. Feeling aggrieved thereby, they have preferred this Revision.

5. Learned counsel for the applicants raised only two contentions before this Court. The first contention is that the alleged liquor was not sent for chemical examination, therefore it was not proved that the seized articles were liquor.

6. Second contention is that there is no evidence to show that the driver and cleaner of the sealed truck were in conscious possession of the alleged liquor and moreover they did not tried to escape when the truck was being searched. Therefore, findings of the Courts below that the liquor was seized from the possession of the applicants is incorrect.

7. On the other hand, learned G.A. supports the order of conviction and sentence passed by the Courts below.

8. After hearing learned counsel for both the parties, I have gone through the judgment of courts below.

9. It is true that the seized liquor was not sent for chemical examination but relying upon the evidence of Excise Sub-Inspector Sajendra (PW-1) both the Courts below found that the seized articles were foreign liquor. Sajendra

(PW-1) deposed that he is a trained person and has got vast experience to examine the liquor. He stated that he applied the physical Test and found that the seized article was foreign liquor. In the aforesaid context this court in the case of *Kallu Khan Vs. State* (1980 JLJ 509) and *Sukhlal Vs. State* (1995 MPLJ 266) held that Chemical examination is not the only manner in which the identity of the liquid can be proved. It can be proved by the person having expertise in the field. Therefore I find nothing illegal in the findings recorded by the courts below in this regard.

10. Now coming to the second contention with regard to conscious possession of the alleged liquor, both the courts found that the applicants were in the possession of 357 boxes of foreign liquor and were transporting the same but it was nowhere found that they were in conscious possession of the foreign liquor. Therefore only on this finding the applicants cannot be held guilty as the articles were hidden in the heap of Cinthol Products.

11. The prosecution has not produced any evidence to infer that the contraband articles were transported with the knowledge of applicants whereas the circumstances show that the applicants had no knowledge about the liquor in the truck. This Court before coming to any conclusion considered the following circumstances:-

(i) That the applicants were driver and cleaner of the vehicle and the owner of the vehicle was not present in the truck.

(ii) That when the truck stopped it was in sealed condition and the seal was broken later but the driver and cleaner did not tried to escape from the place of occurrence but instead co-operated in the search.

(iii) That the export slip and invoice cum delivery challan were found in the truck, which were in "English" language. The applicants were unable to read these papers.

(iv) That the truck was in the sealed condition and the boxes of liquor were hidden in the heap of Cinthol products and hence there was no occasion for the applicants to distort or add any articles in the truck.

(v) That the applicants have no criminal antecedents.

12. After having been considered the aforesaid these circumstances it cannot be inferred that the applicants were aware about the fact that the liquor boxes were kept in the heap of the Cinthol Products in the truck. Since there

is no evidence against the applicants, the view of this Court is that the applicants have been wrongly convicted.

13. Resultantly, this Revision succeeds and is hereby allowed. The conviction and sentence of the applicants is set aside. The amount of fine (if deposited) be returned to the applicants.

It is report that the applicants are in jail. They be released forthwith if not required in any other case.

Office is directed to comply the order.

Revision allowed.

I.L.R. [2014] M.P., 2718
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice U.C. Maheshwari
M.Cr.C. No. 3244/2013 (Jabalpur) decided on 15 March, 2013

MOHD. AASIM ...Applicant
Vs.
ANIL KUMAR SARAF ...Non-applicant

(and M.Cr.C. Nos. 3247/2013, 3248/2013)

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Negotiable Instruments Act (26 of 1881), Section 138 - Notice - **Cheques were dishonoured but notice was given after dishonour of cheques for third time - Held - Even after dishonouring the first cheque for three times and second cheque for two times, if the demand notice was given first time from the last date of dishonouring such cheques in the month of July, 2003 then there is no ground to hold that the demand/statutory notice with respect of aforesaid earlier two cheques which was given by the respondent to the applicant in the month of July, 2003 was beyond the prescribed period provided under the provision of Negotiable Instruments Act. (Para 5)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 व परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – नोटिस – चेक अनादृत हुए थे किन्तु तीसरी बार चेक अनादृत होने के पश्चात नोटिस दिया गया – अभिनिर्धारित – यदि प्रथम चेक तीन बार और द्वितीय चेक दो बार अनादृत होने के पश्चात भी यदि मांग नोटिस प्रथम बार माह–जुलाई, 2003 में उक्त चेक अनादृत होने की अंतिम तिथि से दिया गया था, तब

यह धारणा करने का कोई आधार नहीं कि उपरोक्त पूर्ववर्ती दो चेक जो प्रत्यर्थी द्वारा आवेदक को माह जुलाई, 2003 में दिये गये थे, के संबंध में मांग/कानूनी नोटिस, परक्राम्य लिखत अधिनियम के उपबंध के अंतर्गत विहित अवधि से परे था।

Case referred :

2000 (1) MPLJ 149(SC).

Sanjay Kumar Tiwari, for the applicant.

ORDER

U.C. MAHESHWARI, J. :- The M. Cr. C. No.3244/2013, M. Cr. C. No.3247/13 and M. Cr. C. No.3248/13 arising out of the identical questions till some extent between the same parties because the same are being considered for admission jointly by this common order.

2. The applicant has filed all these three petitions under Section 482 of Cr. P. C. being aggrieved by the order dated 24.1.2013 passed by the Judicial Magistrate First Class, Kotma District Anuppur in complaint criminal case No.611/2004, No.613/2004 and No.612/2004, whereby his applications filed in all the cases for dismissal of the complaint on some technical grounds of the Negotiable Instruments Act have been dismissed.

3. M. Cr. C. No.3244/2013 has been arisen out of the order of aforesaid complaint case No.611/2004 filed by the respondent with respect of dishonoring the cheque Nos.0216435 dated 1.5.2003, while M. Cr. C. No.3247/13 has been arisen out of the order of complaint case No.613/2004 filed by the respondent with respect of dishonoring the cheque No.0216436 dated 1.6.2003. and M. Cr. C. No.3248/13 has been arisen out of the order of Compliant Case No.612/2004 filed by the respondent with respect of dishonoring the cheque No. 0216434 dated 1.4.2003.

4. After taking me through the averments of the petition and papers placed on the record along with the impugned order dated 24.1.2013 (Ann.A.1), the applicant counsel submits that the aforesaid cheques along with some other cheques were given by the applicant to the respondent to pay the consideration stated in such cheques. Out of aforesaid three cheques the cheque bearing number 0216434 dated 1.4.2003 was initially deposited by the respondent with his banker for collection on 7.4.2003 but according to memo of the bank the same was dishonored on 8.4.2003 on the ground that payment of the same has been stopped by the account

holder. Such cheque was again deposited along with second cheque bearing number 0216435 dated 1.5.2003 by the respondent with his banker for collection but according to memo of the bank both the cheques were dishonored. Thereafter aforesaid both the cheques along with third cheque bearing number 0216436 dated 1.6.2003 were deposited by the respondent with his banker for collection on 8.7.2003, but according to memo of the Bank all these three cheques were dishonored in the month of July, 2003, on the ground that the payment of all these cheques have been stopped by the account holder. In continuation he said that on dishonoring the first cheque in the month of April, 2003 stated above no demand/ statutory notice for payment of the cheque was sent by the respondent to the applicant, on dishonoring the aforesaid second cheque along with the aforesaid first cheque in the month of May, 2003 also no demand/ statutory notice for payment of such cheques was/were sent by the respondent to the applicant. Only on dishonoring aforesaid third cheque along with said two cheques in the month of July, 2003 the demand/ statutory notice to pay the consideration of cheques was/were sent by the respondent to the applicant. In such premises he said that for the cheque of dated 1.4.2003 the limitation to issue the statutory notice was started from 8.4.2003, the first date on which earlier cheque deposited with the bank in the month of April was dishonored and information in this regard was received by the respondent. The same position is on record regarding second cheque that on receiving the information of dishonoring such cheque in the month of May 2003 no demand notice was given. The same was given only after dishonoring the third cheque along with earlier two cheques on third and second time respectively in the month of July, 2003. In such premises the limitation to issue demand notice with respect of earlier two cheques was already over before July, 2003 and on the basis of the impugned demand notice given after dishonoring the third cheque, the limitation to issue such notices regarding earlier two cheques were not available to the respondent and in such premises the trial Court did not have the authority to take the cognizance of the offence with respect of above mentioned first and second cheque but the same was taken under the wrong premises and contrary to the provisions of Negotiable Instruments Act. So far, third cheque is concerned he has not made any arguments.

5. It is undisputed position in the case that on dishonoring the first cheque

twice in the month of April and May, 2003 and dishonoring the second cheque first time in the month of May, 2003 no demand/ statutory notice to pay it's consideration was/were given by the respondent to the applicant and only dishonoring the aforesaid cheques again along with third cheque in the month of July, 2003 at the first time demand/ statutory notice to pay the consideration of all cheques was/ were given by the respondent to the applicant. On counting the period of limitation to file the complaint from the date of such notice then in view of technical provision the same was filed within the prescribed limitation as laid down by the Apex Court in the matter of *Central Bank of India & another Vs. Saxons Farms and others* reported in 2000 (1) MPLJ 149 (SC), holding that till issuing the demand/ statutory notice by the holder of the cheque in due course within the prescribed validity period of the cheque he has a right to deposit the cheque with his banker for collection not only once but on various occasion and if the same is dishonored then at any moment after receiving the memo of dishonoring the cheque if the demand/ statutory notice is sent by him to the account holder like the applicant then the limitation starts for the purpose of filing the complaint under the provision of Negotiable Instruments Act from the date of sending and service of such first notice. Thus, I am of the considered view that even after dishonoring the first cheque for three times and second cheque for two times if the demand notice was given first time from the last date of dishonoring such cheques in the month of July, 2003 then there is no ground in the matter to hold that the demand/ statutory notice with respect of aforesaid earlier two cheques which was/ were given by the respondent to the applicant in the month of July, 2003 was beyond the prescribed period provided under the provision of Negotiable Instruments Act.

6. In the aforesaid premises I have not found any merits in all these three petitions, consequently the same are hereby dismissed at the initial stage of motion hearing. However, it is observed that the applicant shall be at liberty to raise all the permissible objections in this regard at the appropriate stage of trial and trial Court shall consider the same in accordance with the procedure prescribed under the law.

7. Aforesaid all three petitions are dismissed, as indicated above.

8. The separate copies of this order are being placed in all the aforesaid three cases.

Petition dismissed.

I.L.R. [2014] M.P., 2722
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sheel Nagu & Mr. Justice Sujoy Paul
M.Cr.C. No. 184/2013 (Gwalior) decided on 6 December, 2013

UDAY BHAN ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009), Section 2 (wa) - Power of transfer of Sessions Trial u/s 407, Cr.P.C. - Hearing to Victim **- Victim is an aggrieved person not only in a crime but also in an investigation, inquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this Court u/s 482, Cr.P.C. are invoked - The transfer certainly causes prejudice to the victim as he has a right not only to know the venue of conduction of trial, but also to oppose on cogent ground - Impugned order is recalled - M.Cr.C. No. 9261/2012 is restored to its original number. (Paras 8,11, & 12)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2008 (2009 का 5), धारा 2 (डब्लू ए) – द.प्र.सं. की धारा 407 के अंतर्गत सेशन विचारण के अंतरण की शक्ति – पीड़ित को सुना जाना – पीड़ित एक व्यथित व्यक्ति है, न केवल अपराध में बल्कि अन्वेषण, जांच, विचारण, अपील, पुनरीक्षण, पुनर्विलोकन में तथा ऐसी कार्यवाहियों में भी जिसके द्वारा द.प्र.सं. की धारा 482 के अंतर्गत इस न्यायालय की अंतनिर्हित शक्तियों का अवलंब लिया गया – अंतरण निश्चित रुप से पीड़ित पर प्रतिकूल प्रभाव कारित करता है क्योंकि उसे न केवल विचारण को चलाने के स्थान की जानकारी का अधिकार है, बल्कि प्रबल आधार पर विरोध का भी है – आक्षेपित आदेश वापिस लिया गया – एम.सी.आर.सी. क्र. 9261/2012 उसके मूल क्रमांक पर पुनः स्थापित।

Cases referred :

2004 (2) JLJ 91, (1977) 4 SCC 451, (2001) 3 SCC 462.

Anil Mishra, for the applicant.
Praveen Newaskar, Dy. G.A. for the non-applicant No.1/State.
Atul Gupta, for the non-applicant No.2.

ORDER

The Order of the Court was delivered by : SHEEL NAGU, J. :- This petition under Section 482 of the Criminal Procedure Code has been filed invoking inherent powers of this Court to recall the final order dated 19.12.2012 passed in M.Cr.C. No.9261/2012, whereby this Court while exercising powers under Section 407 r/w S. 482, Cr.P.C. ("Code" for brevity) transferred the Sessions Trial No.05/2011 pending before the Court of Third Additional Judge to the Court of Sessions Judge, Guna to Sessions Judge, Shivpuri after finding that the police force was present in the Court premises and the witnesses were taken in custody and, therefore conduction of trial against the petitioner and other co-accused persons at Guna is adversely affected by the prosecution agency thereby holding that fair trial is jeopardized.

2. Sole ground for seeking recalling of the abovesaid order dated 19.12.2012 is that the same has been passed without hearing the petitioner, who is the victim (complainant) in ST No.05/2011.

3. Learned counsel for petitioner has further submitted that the inherent powers of this Court under Section 482, Cr.P.C. can be exercised for recalling of order passed without affording opportunity to the party aggrieved. In this respect, reliance is placed on the decision of the Single Bench of this Court *Parmeshwardin Patel v. Snehlata* reported in 2004 (2) JLJ 91.

4. Thus, the core question which falls for consideration herein is as to whether while exercising the power of transfer under Section 407, Cr.P.C., the victim is required to be heard, and in case order of transfer is passed without hearing the victim, the same gets initiated in law or not?

5. Before 31.12.2009, the concept of "victim" was foreign to the Code of Criminal Procedure. By the Code of Criminal Procedure (Amendment) Act, 2009, widespread amendments were made not only introducing the definition of victim as Section 2 (wa) w.e.f. 31.12.2009 but various other provisions were inducted in the Code for benefit of victim. Thereby recognizing the importance and relevance of a "victim" in the process of investigation, enquiry, trial, appeal, revision, etc.

6. The term "victim" has been defined in newly introduced Section of 2 /(wa), Cr.P.C. The relevance of victim has further been recognized in other parts of the Code, which is evident from the following newly introduced

amended provisions by way of Code of Criminal Procedure (Amendment) Act, 2008. The said Amendment Act of 2008 was introduced based upon the statement of objects and reasons which are reproduced below alongwith only those newly introduced amendments which pertain to victim :-

> **"Statement of objects and reasons.-** The need to amend the Code of Criminal Procedure,1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite sometime. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. Also, as per the Law Commission's 177th report relating to arrest, it has been found necessary to revise the law to maintain a balance between the liberty of the citizens and the society's interest in maintenance of peace as well as law and order.
>
> 2. The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential , rich and powerful. At present, the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system. The application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimise the risk of escape of the remand prisoners during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair-trial to persons of unsound mind who are not able to defend themselves. To expedite the trial of minor offences , definition of warrant-case and summons-case are to be changed so that more cases can be disposed of in a summary

manner.

Amendment of section 2.- In section 2 of the Code of Criminal Procedure , 1973 (2 of 1974) (hereinafter referred to as the principal Act), after clause (w), the following clause shall be inserted, namely :-

'(wa) " victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir:'

Amendment of section 24.- In section 24 of the principal Act, in sub-section (8), the following proviso shall be inserted , namely :-

"Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.".

Insertion of new section 357A.- After section 357 of the principal Act, the following section shall be inserted, namely :-

"357A. Victim compensation scheme.- (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it

may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

Amendment of section 372.-In Section 372 of the principal Act, the following proviso shall be inserted, namely:-

"Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

7. In view of the above, it is evident that "victim", who is the ultimate sufferer in the commission of a crime, has been given recognition as an aggrieved party by introducing the abovesaid amendment in Cr.P.C. There is no manner of doubt that right from the occurrence of the incident till the decision of trial, appeal or revision, till the highest Court of law, the "victim" is as much interested in the decision as is the accused or the State. In fact, the "victim" on account of being the injured person and the sufferer, deserves to be recognized as the most aggrieved party in a crime. It is a happy state of affairs that the stand of the victim are now vindicated in shape of amendment in the Cr.P.C.

8. This Court has, thus, no hesitation to hold that the victim is an aggrieved

person not only in a crime, but also in an investigation, enquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this Court under Section 482, Cr.P.C. are invoked.

9. The Apex Court in various decisions has accepted the importance of hearing of the complainant before an order in favour of the accused is passed, which is evident from the decision of the Apex Court in the case of *Kurukshetra University v. State of Haryana* reported in (1977) 4 SCC 451, whereby while setting aside the judgment of the High Court quashing an FIR filed by the University, the Apex Court observed *inter alia* that the informant (University) was required to be heard by the High Court before quashing the FIR. In another case *J. K. International v. State* : (2001) 3 SCC 462, it was held that the victim or the person, on whose behest, the criminal prosecution is launched by the Police should be heard before quashing of such prosecution. While laying down this law, the Apex Court added a rider by making the said finding subject to the complainant seeking an opportunity of being heard. Pertinently, the said decisions of the Apex Court were rendered much prior to coming into effect of the Amended Code of Criminal Procedure in 2008 and, therefore when in the era of absence of statutory recognition granted to the victim, the Apex Court laid down the abovesaid law, it goes without saying that in the post amendment era, the victim has become nearly as indispensable as the accused or the Investigating Agency in a criminal trial.

10. From the above discussion, it is crystal clear that the law now recognizes importance of victim in a crime and also in all the subsequent proceedings contemplated by Cr.P.C., which take place right from lodging of an FIR till decision in appeal or revision.

11. The transfer of the sessions trial in question from Guna to Shivpuri was admittedly made without hearing the victim, which is evident from reading of the order which is sought to be recalled. The transfer certainly causes prejudice to the victim as he has a right not only to know the venue of conduction of trial, but also to oppose on cogent grounds an attempt of transfer of trial made on any ones behest out of territorial jurisdiction of the competent Court within whose purviews the crime was committed.

12. In view of the above, we have no hesitation to hold that the order sought to be recalled herein has been passed without hearing the victim and, therefore is vitiated.

13. Accordingly, the order dated 19.12.2012 passed in M.Cr.C. No.9261/2012 is recalled. The M.Cr.C. No.9261/2012 is restored to its original number.

Order accordingly.

I.L.R. [2014] M.P., 2728
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Sujoy Paul
M.Cr.C. No. 8262/2013 (Gwalior) decided on 10 December, 2013

R.P. SINGH & ors. ...Applicants
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent Power - Quashing of F.I.R. **- Complaint filed by Rival Trade Union that accused who are member of another Union are illegally collecting funds although its registration has already been cancelled - Held - Order cancelling registration already set aside by Labour Court which has attained finality - Criminal prosecution cannot be permitted to be used as a weapon of harassment - Complaint is lodged with ulterior motive to pressurize petitioner - The procedure for registration of Trade Union and its cancellation is prescribed in the Trade Unions Act - Correctness of the same can be examined only by the competent authority - Police authorities have no competence to give opinion on this aspect - If prosecution is permitted to be continued it will be an abuse of process of law - Petition is allowed. (Paras 21, 22)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अंतर्निहित शक्ति – प्रथम सूचना रिपोर्ट अभिखंडित की जाना – प्रतिद्वंदी ट्रेड यूनियन द्वारा शिकायत प्रस्तुत की गई कि अभियुक्त जो अन्य यूनियन के सदस्य हैं, अवैध रुप से निधि वसूल रहे हैं, जबकि उसका पंजीयन पहले ही निरस्त किया जा चुका है – अभिनिर्धारित – पंजीयन रद्दकरण का आदेश पहले ही श्रम न्यायालय द्वारा अपास्त किया जा चुका है, जिसने अंतिमता प्राप्त कर ली है – दाण्डिक अभियोजन का उपयोग, उत्पीड़न के शस्त्र के रुप में करने की अनुमति नहीं दी जा सकती – याची पर दबाव बनाने के अंतरस्थ हेतु के साथ शिकायत दर्ज की गई है – ट्रेड यूनियन के पंजीकरण एवं उसके निरस्तीकरण की प्रक्रिया व्यवसाय संघ अधिनियम में विहित है – उक्त की शुद्धता का परीक्षण केवल सक्षम प्राधिकारी द्वारा किया जा सकता है – इस पहलू पर अभिमत देने के लिए पुलिस प्राधिकारी सक्षम नहीं – यदि अभियोजन

को जारी रखने की अनुमति दी गई तो यह विधि की प्रक्रिया का दुरुपयोग होगा – याचिका मंजूर।

Cases referred :

(1990) 1 SCC 234, (1991) 4 SCC 1, (2004) 2 SCC 377, (2011) 3 SCC 363, (2013) 9 SCC 245, (1994) 1 AC 42, (1984) 80 Cr. App. R 164 (DC), (2013) 6 SCC 740, (2005) 1 SCC 122, (2006) 6 SCC 736, (2007) 12 SCC 1.

Prashant Sharma, for the applicants.
Sangeeta Pachauri, Dy. G.A. for the non-applicant No.1/State.
Vijay Dutt Sharma, for the non-applicant No.2.

ORDER

Sujoy Paul, J. :- By filing this petition under Section 482 of Cr. P. C. the petitioners have prayed for quashing the FIR in Crime No.09/2013 registered in Police Station GRP, Gwalior for offence punishable under Sections 420 and 468 of IPC.

2. Brief facts necessary for adjudication of this matter are as under:

The petitioners are members of North Central Railway Employee's Union, which is registered with Registrar of Trade Union, Kanpur. The copy of the registration certificate is filed as AnnexureA. It is contended that the said Union has large following. In the recent voting conducted for the purpose of recognition, the petitioners' Union secured No.1 position whereas the Union of respondent No.2 was trailing behind at No.3. Attention of this Court is drawn on the document filed at Page 18 which shows the percentage of votes received by the petitioners' Union and by other Unions for the purpose of recognition. It is contended that the petitioners' Union is NCRES whereas the Union of the respondent No.2 is NCRKS. The petitioners'Union secured 56.82% votes whereas respondent No.2's Union secured only 1.53% votes. The case of the petitioners is that the registration of the petitioners' Union is still prevailing and subsisting. As per bye-laws of their Union, the petitioners are free to take membership subscription and other funds from their members. In continuation with the legitimate Trade Union activities, the petitioners had collected funds from their members.

3. Shri Prashant Sharma, learned counsel for the petitioners submits that none of the members or the persons from whom subscription or collection

was obtained, had lodged any complaint with the police. The respondent No.2 who is office bearer of a rival Tradè Union, Allahabad has lodged the FIR, which is called in question. By taking this Court to the averments of the FIR, it is contended that the police has erred in lodging the FIR. It is further contended that earlier the registration of the petitioners' Union was cancelled by the Registrar of Trade Union. Against that, the Union filed the case before the Labour Court and the Industrial Court. The said Courts at Allahabad set aside the cancellation of registration order passed by the Registrar of Trade Union. In absence of challenge to the said orders passed by the Labour and Industrial Court at Allahabad (Annexure-C), the said orders have attained finality. The police authorities have erred in registering the FIR by treating that the petitioners' Union does not exist or survive. It is submitted that the registration of FIR is contrary to law. The police authorities cannot examine and opine about the registration process and validity of the registration. For this purpose, under the Trade Unions Act, 1926 there exists statutory registration authority. If the registration authority cancels the registration, it can be called in question before the Court. In the petitioners' case, as projected, the Industrial Court in Civil Appeal Nos. 02/2007 and 03/2007, set aside/taken back the order of Registrar, Trade Union, whereby the registration of the petitioners'Union was cancelled.

4. *Per contra,* Smt. Pachauri, learned Deputy Government Advocate for respondent No.1-State supported the FIR and submits that at this stage, no interference is warranted.

5. Shri Vijay Dutt Sharma, learned counsel for the respondent No.2-complainant had taken pains to submit that the police has not committed any error in lodging the FIR. By taking this Court to various documents obtained under RTI (Right to Information Act, 2005) and otherwise, it is contended that the Industrial Court, Allahabad had no authority, jurisdiction and competence to decide the validity of cancellation of registration order passed by the Registrar, Trade Union. It is contended that the said order has to be treated as nullity because it was obtained by the Union by approaching an incompetent Court. The attention is drawn to the notification dated 2nd February, 1944 (Annexure R-10). By relying on this notification and the judgment of Allahabad High Court in Annexure R-11, it is contended that the Industrial Court did not have jurisdiction to examine the validity of cancellation of registration of the petitioners' Union. In addition, it is contended that the petitioners have not taken any steps for restoration of their registration.

Attention is drawn on Annexure R-14 dated 25/02/2009 and Annexure R-15, dated 30-03-2009 in this regard. The Registrar, Trade Union, Uttar Pradesh in certain correspondence has given the opinion that for the purpose of deciding the validity of cancellation of registration under the Trade Unions Act, 1926, different Courts have been given power. Reliance is placed on Annexure R-12, dated 16th May, 2013 wherein, the Registrar, Trade Union opined that after the order dated 06/09/2007, the Registrar has not passed any order restoring the registration. Lastly, the reliance is placed by Shri Sharma, on the list of registered Trade Unions filed with Annexure R-5. It is contended that these documents make it clear that the petitioners-Union is not a valid Union. The petitioners'Union is not a registered Trade Union. No other point is pressed by learned counsel for the parties.

6. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

7. It is apt to quote relevant portion of FIR on which heavy reliance is placed by learned counsel for the respondents.

> "प्रार्थी ओ0पी0 पाठक केन्द्रीय महामंत्री एन.सी.आर.के.एस. इलाहाबाद जौन द्वारा ऊपर लिखे विषय में अनुरोध करता है कि अभियुक्तगणों ने फर्जी एवं असत्य जानकारी बगैर नार्थ सेन्ट्रल रेल्वे एम्पलाईज का पंजीयन कराया यूनियन का गठन दिनांक 1.4.2003 को होना था जिसका गजट नोटिफिकेशन के अनुसार उत्तर मध्य रेल्वे जोन बनी थी किन्तु जालसाजी करते हुये उसके पूर्व ही यूनियन का गठन कर लिया गया था एन.सी. रेल्वे के अस्तित्व के जाने के पूर्व ही गलत डिक्लेरेशन का फार्म भर कर असत्य जानकारी देकर फर्जी यूनियन पंजीयन कराया गया था एन.सी.आर.बी.एस. के धोखा धडी कर फिर कर्मचारियों से अवैध चंदा एकत्रित कर रहे हैं। अभियुक्तगणों के विरूद्ध धारा 406,409,420,467,468,471, भा.द.वि. के अधीन पंजीयन करने की कृपा करें। नोर्थ सेन्ट्रल रेल्वे एम्पलाएज के विरूद्ध उपकर रजिस्ट्रार ट्रेड यूनियन को प्रेषित पत्र दिनांक 7.12.2004 एन.सी.आर. ई.एस. के पंजीयन के निरस्त करने की अनुशंसा की तथा गलत आधारों पर पंजीयन कराने के लिये कार्यवाही की अनुशंसा की रजिस्ट्रार ट्रेड यूनियन द्वारा एन.सी.आर.ई.एस. का पंजीयन 15.4.2005 को निरस्त कर दिया गया निरस्तीकरण का आदेश आज तक निरस्त नहीं किया गया एवं समक्ष न्यायालय से फिर भी अवैध चन्दा रेल कर्मचारियों के बसूल कर रहे हैं अतः आपसे अनुरोध है कि निम्न लोगो के खिलाफ उचित कार्यवाही करें एवं अवैध बसूली को रूकवायें

हस्ताक्षर हिन्दी में ओ.पी. पाठक प्रार्थी ओ.पी. पाठक पंडित ज्वाला का पुरा ग्वालियर मोबाइल नं. 895241766 दिनांक 19.3.132 धारा 420,468 ता.ही. पंजीयन प्रकरण।"

8. A simple reading of this FIR, makes it crystal clear that the allegation against the petitioners'Union is that they furnished incorrect information before the registering authorities and got their Trade Union registered. The Union was registered prior to establishment of North Central Railway, which is impermissible. It is further alleged that the petitioners have submitted wrong declaration form and on the streiigth of it, got their Union registered. They are collecting illegal contribution from the employees and, therefore, offence under Sections 406, 409, 420, 467, 468 and 471 of IPC needs to be registered against them. By placing reliance on an order of the Registrar, Trade Union, dated 07/12/2004, it is mentioned in the complaint that the Registration of the petitioners'Union was recommended to be cancelled. It is further mentioned that the Registrar, Trade Union by order dated 15-04-2005 cancelled registration of the petitioners' Trade Union and said cancellation is not cancelled till date and therefore, collecting subscription from the employees amounts to an offence under aforesaid Sections of IPC.

9. On the face of the allegation mentioned in the complaint which is reduced in writing in the shape of FIR, it is clear that the police proceeded on the basis of document dated 15-04-2005, whereby allegedly the petitioners' Union's registration was cancelled. However, a bare perusal of the order of Industrial Court (Annexure-C-Page 22) shows that the said order of the Registrar, Trade Union, cancelling the registration dated 15-04-2005 was set aside by the Labour Court, Allahabad on 15-06-2007. Other orders of the Registrar, Trade Union, Kanpur cancelling the registration of petitioners'Union were put to test before the Industrial Court, Allahabad in Civil Appeal Nos. 02/2007 and 03/2007. The Industrial Court opined as under:

" अतः मेरे विचार से रजिस्ट्रार ने जिन कारणों से उपरोक्त यूनियन को पंजीकरण निरस्त किया है वह बिना किसी आधार के ही तथा जिस आदेश दिनांक 15.04.2005 द्वारा पंजीयन निरस्त किया गया है वह सक्षम श्रम न्यायालय इलाहाबाद के आदेश दिनांक 15.06.07 द्वारा अपास्त किया जा चुका है। अतः रजिस्ट्रार के द्वारा पारित आदेश दिनांक 06.9.2007 जिसके द्वारा पूर्व आदेश दिनांक 15.04.2005 को यथावत रखा गया है, विविध अनुकूल नहीं है। अतः रजिस्ट्रार ट्रेड यूनियन कानपूर का आदेश दिनांक 6.9.2007 जिसके द्वारा नार्थ सेन्ट्रल रेलवे इम्प्लाईज संघ इलाहाबाद का पंजीयन संख्या 9168 निरस्त करने का आदेश है, वह निरस्त होने योग्य है।

अतः रजिस्ट्रार ट्रेड यूनियन कानपुर का आदेश दिनांक 6.09.2007 जो केवल संबंधित यूनियन के पंजीकरण के निरस्त किए जाने से संबंधित है, को निरस्त किया जाता है और उक्त दोनों अपीलों को स्वीकार किया जाता है। विविध वाद संख्या 4/2007 एवं 5/2007 में पारित आदेश दिनांक 12.10.2007 जिसके द्वारा रजिस्ट्रार ट्रेड यूनियन के आदेश दिनांक 6.09.2007 का कियान्वयन स्थगित किया गया था, को तत्काल प्रभाव से वापस लिया जाता है।"

[Emphasis supplied]

10. The contention of Shri Prashant Sharma, learned counsel for the petitioners was that the Industrial Court's order by which cancellation of registration was set aside, was not put to test by anybody and, therefore, in absence of challenge, it has attained finality. As per this order, the police has no authority to act on cancellation order dated 15-04-2005, which was set aside by the Labour Court. The main contention of Shri Vijay Dutt Sharma, learned counsel for the respondent No.2' is that as per the notification Annexure R-10, dated 2nd February, 1944 and the finding of Allahabad High Court in Annexure R-11, Industrial Court had no jurisdiction/competence to decide the validity of cancellation of registration order.

11. In the considered opinion of this Court, the matter which was decided by the High Court of Allahabad was between different parties. The said order does not have the effect of automatic setting aside of the order of Labour Court and Industrial Court Annexure-C. Main question is whether in absence of challenge to the order of Industrial Court, the said order can be said to be void, non-existent and whether this can be so decided by the police authorities.

12. In the considered opinion of this Court, the law on this point is well-settled. This is settled in law that an order remains enforceable unless necessary proceedings are taken to get it quashed. An aggrieved person cannot presume and decide whether a Court or an authority had jurisdiction or not. If he is of the opinion that the said authority had no jurisdiction, he has to take proper steps to assail the said order. The order Annexure-C is passed by the Industrial Court. Nothing is brought to the notice of this Court that the said order was called in question before any higher forum. In absence thereof, the said order cannot be treated as void order.

13. The Apex Court in (1990)1 SCC 234 *(Shiv Chander Kapoor Vs. Amar Bose)* in this aspect has opined as under:

"void' is meaningless in an absolute sense; and 'unless

the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders'. In the words of Lord Diplock, "the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue".

Further, the Apex Court In (1991) 4 SCC 1] *[State of Punjab v. Gurdev Singh.]* has opined as under:

"That a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC* [(1956)1All ER 855] wherein Lord Radcliffe observed:(ACpp. 769-70)

"....An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

Similarly, the Apex Court in (2004) 2 SCC 377 *[Sultan Sadik v. Sanjay Raj Subha]* has opined as under:"

This Court took a similar view observing that once an order is declared non-est by the Court only then the judgment of nullity would operate *erga omnes* i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/ competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity."

The Apex Court in (2011) 3 SCC 363 *(Krishnadevi Malchand Kamathia and others Vs. Bombay Environmental Action Group and others)* has also held as under:"

"It is settled legal proposition that even if an order is void, it requires to be so declared by a competent Forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. *In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil* [(1996) 1 SCC 435]; *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd.*, [(1997) 3 SCC 443]; *M. Meenakshi v. Metadin Agarwal* [(2006) 7 SCC 470]; and *Sneh Gupta v. Devi Sarup* [(2009) 6 SCC 194], this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate Forum."

Thus, from the above, it emerges that even if the order/ notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration."

14. A simple reading of the aforesaid judgments make it clear that even if the order is void, it has to be declared by the competent forum that it is void or nullity. In absence of any such declaration or challenge to the said order/ judgment, the police authorities cannot decide about the validity of the judgment of Labour Court and Industrial Court, Allahabad.

15. The FIR is lodged on the basis of complaint that registration of the petitioners'Union was cancelled on 15-04-2005. The reproduced portion of the Industrial Court's judgment shows that the said order dated 15-04-2005 was set aside by the Labour Court. Another order of the Registrar cancelling the registration was also set aside by the Industrial Court. This is settled in law that if an order is set aside, it does not exist in the eyes of law. Thus, the police authorities intended to proceed against the petitioners' Union on the basis of an order dated 15-04-2005 which does not exist in view of the finding of the Industrial Court i. e. set aside by the Labour Court.

16. Although Shri V. D. Sharma, relied on Annexure R-5 to submit that this document contains list of registered Trade Unions and name of the petitioners' Union is absent, a careful reading of the document shows that it was issued before the order of the Industrial Court (Annexure-C). Naturally,

at that point of time, the cancellation of registration of petitioners'Union was under challenge and the matter was *sub judice.* Once the petitioners' Union succeeded from the Industrial Court, the inevitable consequence is that upon setting aside the cancellation of registration order, the registration is automatically revived. No further order or declaration in this regard was required.

17. It is also noticed that the complaint was lodged by the respondent No.2, a leader of rival Trade Union. No member of the petitioners'Union came forward with any complaint about any pressure, threat or extortion. It is canvassed by Shri Prashant Sharma, that the petitioners'Union secured more votes in recognition election than respondent No.2-Union. In this factual backdrop, it is to be seen whether the aforesaid complaint can be permitted to become a reason for the petitioners' prosecution.

18. At the cost of repetition, it is relevant to mention that the whole basis for the complaint is alleged cancellation of registration by order dated 15-04-2005. As discussed above, the said order was cancelled by the Labour Court. Thus, it is clear that respondent No.2 has based its complaint on a "false" ground. The dictionary meaning of word " false" means that, which is in essence incorrect, or purposefully untrue, deceitful, etc. Thus, the word "false" is used to cover only unlawful falsehood. It means something that is dishonest, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word "false" is used to characterize a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive. [See: (2013) 9 SCC 245 *Ravinder Singh vs. Sukhbir Singh and Others]*

The foundation of the complaint was a false information by the respondent No.2 about cancellation of registration. The whole story of prosecution is based on this false foundation.

19. This is settled in law that the inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash

vendetta to harass any person needlessly. *Ex debito justitiae* is in built in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently incorrect person, not to be subjected to prosecution on the basis of wholly untenable complaint. [See: (2013) 9 SCC 245 *Ravinder Singh vs. Sukhbir Singh and Others*]

20. In *R. vs. Horseferry Road Magistrates' Court, ex p Bennett* [(1994) 1 AC 42] it was held as under:

> "An abuse of process justifying the stay or quashment of prosecution could arise in the following circumstance:
>
> (i) where it would amount to misuse/ manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case."

In *R. Derby Crown Court, ex p Brooks* (1984) 80 Cr App R 164 (DC), it was held as under:

> " It may be an abuse of process if either
>
> (a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality; or
>
> (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."
>
> [See: (2013) 6 SCC 740, *Chandran Ratnaswami vs. K. C. Palanisamy and Others.*]

As per these judgments, it is clear that when Court's sense of justice is offended, interference can be made.

The Apex Court in *Zandu Pharmaceutical Works Ltd. vs. Mohd. Sharaful Haque* (2005) 1 SCC 122, has observed as under:

> "8. ..It would be an abuse of process of the Court to allow

any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/ continuation of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

The Apex Court further in *Indian Oil Corporation vs. NEPC India Ltd.* (2006) 6 SCC 736 has observed as under:

"13..... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

The Apex Court in *Inder Mohan Goswami vs. State of Uttaranchal* (2007) 12 SCC 1 has also observed as under:

"**46.** The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused."

21. In view of the aforesaid judgments, it is clear that the criminal prosecution cannot be permitted to be used as an weapon of harassment or to settle the scores. In the present case, in the opinion of this Court, the complaint is lodged with an ulterior motive to pressurize the petitioners. This may be because of Trade Union's rivalry. The procedure for registration of Trade Union and cancellation of it is prescribed in the Trade Unions Act, 1926. Whether the registration is rightly given or not, can be examined only by the competent statutory authority established under the Trade Unions Act. The police authorities have no competence to give opinion on this aspect. Thus, the stand taken in the reply of the police/State that before formation of Railway Zone, registration of petitioners'Union was improper, cannot be accepted. In the aforesaid backdrop, in my opinion, if the prosecution is permitted to be continued on the basis of aforesaid false complaint, it will be an abuse of process of law. Apart from this, Section 28-L provides protection to the

persons who are involved in legitimate Trade Union activities. The said Section of the Trade Unions (Madhya Pradesh Amendment) Act, 1968 reads as under:

> "**28L.** *Protection of action under the Act.* No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under this Act."

As per this provision, the petitioners are protected. They were collecting the subscription from their members, which is a routine Trade Union activity. For this, they cannot be prosecuted.

22. For the reasons stated above, the impugned FIR in Crime No.09/2013 registered against the petitioners' Union at Police Station GRP, Gwalior, for offence punishable under Sections 420 and 468 of IPC, is set aside. The petition is allowed. No cost.

Petition allowed.

I.L.R. [2014] M.P., 2739
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Prakash Shrivastava
M.Cr.C. No. 1585/2009 (Indore) decided on 2 May, 2014

SONALI THANAWALA (SMT.) ...Applicant
Vs.
M/S RAHUL GINNING INDUSTRIES & ors. ...Non-applicants

Negotiable Instruments Act (26 of 1881), Sections 138 & 141 - Complaint under Sections 138 and 141 - **Petitioner, Director of Company arrayed as a party - Petitioner had neither signed the cheque in question nor there is allegation that the petitioner is the Managing Director of the Company - There is also no allegation that the petitioner was in-charge and responsible for conduct of the business of the Company at the relevant time - Trial Court has committed an error in taking cognizance of the offence u/s 138 of Negotiable Instruments Act against the petitioner - Complaint filed against the petitioner is dismissed. (Paras 9 to 12)**

परक्राम्य लिखत अधिनियम (1881 का 26), धाराऐं 138 व 141 – धारा 138 व 141 के अंतर्गत शिकायत – याची, कम्पनी का निदेशक, को पक्षकार के रुप में शामिल किया गया – याची ने न तो प्रश्नगत चेक पर हस्ताक्षर किये और न ही कोई

अभिकथन है कि कम्पनी का प्रबंध निदेशक याची है – यह भी अभिकथन नहीं कि सुसंगत समय याची प्रभारी था और कम्पनी के कारोबार के संचालन हेतु उत्तरदायी था – विचारण न्यायालय ने याची के विरुद्ध परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत अपराध का संज्ञान लेकर, मूल कारित की है – याची के विरुद्ध प्रस्तुत की गई शिकायत खारिज।

Cases referred :

2010 CR.L.J. 1907, (2007) 3 SCC 693, AIR 2005 SC 3512, AIR 2006 SC 3086, (2007) 9 SCC 481, (2009) 6 SCC 729.

R.S. Laad, for the applicant.
None for the non-applicants.

ORDER

PRAKASH SHRIVASTAVA, J. :- This petition under Section 482 of Cr.P.C. has been filed by the petitioner challenging the order dated 10/9/08 taking cognizance of the offence under Section 138 of Negotiable Instruments Act against the petitioner as also the order dated 22/1/09 rejecting the prayer for review of the said order.

2. In brief, respondent No. 1 had filed a complaint under Section 200 of Cr.P.C. alleging commission of offence under Section 138 of Negotiable Instruments Act. The trial court on 10/9/08 had heard the arguments of respondent No. 1 on the question of registering the complaint and had taken cognizance of the offence under Section 138 of Negotiable Instruments Act against the petitioner. The petitioner had filed an application for deleting her name from the array of the parties but the said application was rejected by order dated 22/1/2009 on the ground that after taking the cognizance under Section 204 of Cr.P.C., there is no power with the Magistrate to review the said order.

3. Learned counsel for the petitioner submits that there is no allegation against the petitioner in the complaint and that the petitioner has unnecessarily been added in the complaint only on the ground that petitioner was one of the director of the company. He has further submitted that the petitioner had neither signed the cheque in question nor she was responsible for the offence.

4. Inspite of service of notice respondents have not appeared to oppose the petition.

5. I have heard the learned counsel for petitioner and perused the record.

6. It cannot be disputed that Section 141 is a penal provision creating vicarious liability and same must be strictly construed. The complaint should spell out as to how and in what manner the concerned respondent was incharge of or was responsible to the accused company for the conduct of its business. A company may have a number of directors and to make any or all the directors as accused in a complaint merely on the basis of a statement that they are in-charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141. (See:*National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and Another,* reported in 2010 Cri.L.J. 1907).

7. It is also settled position in law that with a view to make a director of a company vicariously liable for the acts of the company, it is obligatory on the part of the complainant to make specific allegations as are required under the law and under Section 141 of the Act and that in absence of such specific averments in the complaint showing as to how and in what manner the director is liable, the complaint should not be entertained. (See *Saroj Kumar Poddar Vs. State (NCT of Delhi),* reported in (2007) 3 SCC 693; *SMS Pharmaceuticals Vs. Neeta Bhalla and another*, reported in AIR 2005 SC 3512; and *Sabitha Ramamurthy Vs. R.B.S. Channabasavaradhya,* reported in AIR 2006 SC 3086.) It is also settled position in law that for launching a prosecution against the alleged directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. (See:*N. K. Wahi Vs. Shekhar Singh & others,* reported in (2007) 9 SCC 481). It is also necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was incharge of, and responsible for the conduct of the business of the company and that the vicarious liability was to be attributed only if the requisite statements which are required to be averred in the complaint petition are made so as to make the accused/director vicariously liable for the offence committed by the company. (See:*Ramraj Singh Vs. State of MP & another,* reported in (2009) 6 SCC 729).

8. The Supreme court in the matter of *National Small Industries Corporation Ltd.* (supra) has laid down the following principle in respect of

vicarious liability of the director and the requirement in this regard by holding as under:"

39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) The person sought to be made liable should be in charge

of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

9. In the present case, a perusal of the complaint reveals that the cheque in question was signed by respondent No. 3 as director of respondent No. 2 company. The only allegation against the present petitioner is that she is the director and in-charge of the company. There is no further allegation in the complaint that the petitioner was responsible for conduct of the business of the company. There is also no allegation in the complaint in respect of part played by the petitioner in the alleged transaction. The trial court while taking cognizance in the matter by order dated 10/9/08 had not considered the said aspect and had mechanically taken cognizance against the petitioner and when the petitioner had filed an application pointing out these relevant consideration, the trial court has rejected the same by order dated 21/2/09 on the ground that the order taking cognizance cannot be reviewed.

10. Since the complaint does not contain the specific averment as against the present petitioner as required under the law, therefore, the trial court could not have taken cognizance against the present petitioner. The vicarious liability on the part of the petitioner has not been clearly pleaded in the plaint. The petitioner had neither signed the cheque in question nor there is allegation that the petitioner is the managing director of the company. There is also no allegation that the petitioner was incharge and responsible for conduct of the business of the company at the relevant time.

11. Keeping in view the above position of law, and also taking note of the allegation made in the complaint, I am of the opinion that the trial court has committed an error in taking cognizance of the offence under Section 138 of Negotiable Instruments Act against the present petitioner.

12. In view of this, the impugned orders of the trial court cannot be sustained and are hereby set aside. Consequently, the complaint filed against the petitioner is dismissed and this petition filed under Section 482 of Cr.P.C. is allowed to the extent indicated above.

C.C. As per rules.

Order accordingly.

I.L.R. [2014] M.P., 2744
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice J.K. Jain
M.Cr. C. No. 1470/2013 (Indore) decided on 23 June, 2014

KESHAV CHOUHAN ...Applicant
Vs.
KIRAN SINGH ...Non-applicant

***Negotiable Instruments Act (26 of 1881), Section 138 and Proviso to Clause (b) of Section 142 - Limitation - Time Barred* - Complaint u/s 138-A of the Act was filed - At a defence evidence stage it was pointed out by the defence that the same is time barred - Then application u/s 5 of Limitation Act was filed - Held - An application as per proviso to clause (b) of Section 142 of the Act must be filed alongwith complaint - Such application is not maintainable at subsequent stage i.e. after taking the cognizance, if the Magistrate took cognizance on the time barred complaint, then this defect cannot be cured by filing an application for condonation of delay at later stage - Magistrate should not have recorded the conviction as he has erroneously taken the cognizance on a time barred complaint - Application is dismissed. (Paras 16, 18 & 19)**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 और धारा 142 के खंड (बी) का परंतुक – परिसीमा – समय वर्जित – अधिनियम की धारा 138 ए के अंतर्गत शिकायत प्रस्तुत की गई – बचाव साक्ष्य के प्रक्रम पर बचाव पक्ष द्वारा इस ओर इंगित किया गया कि वह समय वर्जित है – तब परिसीमा अधिनियम की धारा 5 के अंतर्गत आवेदन प्रस्तुत किया गया – अभिनिर्धारित – अधिनियम की धारा 142 के खंड(बी) के परंतुक के अनुसार आवेदन को शिकायत के साथ प्रस्तुत किया जाना चाहिए – उक्त आवेदन, पश्चातवर्ती प्रक्रम पर पोषणीय नहीं अर्थात संज्ञान लिये जाने के पश्चात यदि मजिस्ट्रेट ने समय वर्जित शिकायत का संज्ञान लिया है तब इस त्रुटि का सुधार, बाद के प्रक्रम पर विलम्ब के लिये माफी हेतु आवेदन प्रस्तुत करके नहीं किया जा सकता – मजिस्ट्रेट को दोषसिद्धि अभिलिखित नहीं करना चाहिए थी, जैसा कि उसने समय वर्जित शिकायत का त्रुटिपूर्ण रुप से संज्ञान लिया है – आवेदन खारिज।

Cases referred :

(2008) 13 SCC 689, 2014(1) JLJ 1, Crl.OP. Nos 31536 to 31538/2006, Cr.M.P. Nos. 1,1,1/2006 to 1,1,1/2007 decided on 23.07.2009.

N.J. Dave, for the applicant.

D.K. Goyal, for the non-applicant.

ORDER

J.K. JAIN, J. :- This is an application u/s 378(4) Cr.P.C. for leave to appeal against the judgment dated 19/12/2012 passed by XIII ASJ, Indore in Cr.Appeal No.139/2012 whereby learned ASJ has acquitted the non-applicant from the charges under section 138 of the Negotiable Instruments Act (hereinafter,referred as 'the Act' for brevity) and set aside the conviction and sentence passed by the learned JMFC, Indore in cr.case No.1352/06 on 23/1 /2012.

2. Facts in brief are that applicant has filed a complaint under section 138-A of Negotiable Instruments Act alleging that on 27/4/2006, non-applicant gave a cheque of Rs.50,000/- to applicant which was bounced by the bank for want of sufficient funds. Thereafter on 5/5/2006, applicant sent a notice to the non-applicant but the applicant did not receive any acknowledgement to the notice. Subsequently Customer Care Center of Postal Department vide letter dated 10/7/2006 informed the complainant that the registered notice has been delivered on 6/5/2006 to non-applicant. Meanwhile on 29/6/2006 a complaint u/s 138 of the Act was filed against the non-applicant before the Court of JMFC, Indore. Learned JMFC took cognizance on the basis of complaint and the non-applicant was put to trial. At the stage of defence evidence, the applicant moved an application u/s 5 of the Limitation Act praying for condoning the delay of 8 days in filing the complaint. Learned JMFC allowed the application and condoned the delay, thereafter non-applicant preferred a Criminal Revision bearing No.392/11 before the ASJ challenging the order of condonation of delay. Learned ASJ vide order dated 26/8/2011 allowed the revision and gave a finding that since proviso to the Section 142(b) of the Act provides for condoning delay and hence application u/s 5 of Limitation Act is not maintainable. Moreover, at the stage of defence evidence, such application was not maintainable.

3. Thereafter the JMFC proceeded in the matter with a view that once he took the cognizance in the matter he cannot retreat from it and further he recorded a conviction and passed sentence of six months imprisonment and awarded compensation of Rs.70,000/-(Rs.Seventy Thousand) u/s 357(3) Cr.P.C.. Being aggrieved the non-applicant preferred criminal appeal No.139/12 against such conviction before the XIII ASJ, Indore.

4. Learned ASJ vide order dated 19/12/2012 allowed the appeal and

set aside the conviction passed by learned JMFC on the ground that the complaint was time barred and no application was filed as per proviso of section 142(b) of the Act. Against the order of acquittal the complainant/ applicant has filed the instant application seeking leave to appeal.

5. Learned counsel for the applicant submitted that provision of section 142 of the Act should not be strictly construed and after taking the cognizance, the objection with regard to limitation cannot be agitated particularly when the applicant has satisfactorily explained the delay by filing the application u/s 5 of the Limitation Act. Therefore, order of acquittal passed by the learned ASJ solely on the ground that the application for condonation of delay at the defence stage was not maintainable, is illegal. There is no stage provided in the statute for filing an application for condonation of delay, therefore leave to Appeal be granted.

6. Learned counsel for the non-applicant vehementally (sic:vehemently) opposed, the application and submitted that admittedly, the complaint was time barred by 6 days and no application was filed for condonation of delay as per the proviso of Section 142(b) of the Act and therefore the Magistrate was not competent to take cognizance on a time barred complaint. Provisions of Sec.5 of Limitation Act are not applicable to the complaint u/s 138 of the Act. Thus there is no illegality in the order of acquittal passed by the learned ASJ.

7. I have considered the. rival contentions of both the parties and perused the record.

8. It is admitted fact that the notice was sent on 5/5/2006 which was received by the non-applicant on 6/5/2006. The non-applicant was required to make payment in terms of the said notice within fifteen days i.e. on or before 21/5/2006 but he failed to comply the notice therefore as per Sec.138(c) cause of action arose on 22/5/2006. As per the provision of Sec.142(b) the complaint must be filed within one month I.e. on or before 21/6/2006 whereas the complaint was filed on 29/6/2006. Thus the complaint is barred by 6 days.

9. In the complaint it is not mentioned that complaint is time barred by 6 days and no application is filed as per the proviso to the Section 142(b) of the Act. The application u/s 5 of the Limitation Act was filed when the case was fixed for defence evidence.

10. Firstly, it has to be seen whether the provisions of Sec.5 of the Limitation Act are applicable to the complaint under section 138 of the Act.

11. Hon'ble Supreme Court in the case of *Subodh S.Salaskar Vs. Jayprakash M. Shah,* (2008) 13 5CC 689 held as under:-

> "Ex facie, it was barred by limitation. No application for condonation of delay was filed. No application for condonation of delay was otherwise maintainable. The provisions of the Act being special in nature, in terms thereof the jurisdiction of the court to take cognizance of an offence under section 138 of the Act was limitated to the period of thirty days in terms of the proviso appended thereto. Parliament only with a view to obviate the aforementioned difficulties on the part of the complainant inserted proviso to clause(b) of Section 142 of the Act in 2002. It confers a jurisdiction upon the court to condone the delay. It is, therefore, a substantive provision and not a procedural one. The matter might have been different if the Magistrate could have exercised its jurisdiction either under Section 5 of the Limitation Act, 1963 or sec.473 of the Code or Criminal Procedure, 1976. The provisions of the said Acts are not applicable. In any event, no such application for condonation of delay was filed. If the proviso appended to clause(b) of Section 142 of the Act contained a substantive provisions and not a procedural one, it could not have been given a retrospective effect. A substantive law, as it is well settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation.'

12. Hon'ble Supreme Court in the recent judgment of *Econ Antri Ltd. Vs. Ram Industries Ltd.,* 2014(1) JLJ 1 while dealing computation of the period of Limitation for the purpose of complaint filed under the Act held as under:-

"As the limitation Act is held to be not applicable to N.I. Act drawing parallel from *Tarun Prasad Chatterjee*(supra) where the Limitation Act was held not applicable, we are of the opinion that with the aid of section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N.I.Act, the period has to be reckoned by excluding that date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that use of the two different words 'from' and 'of' in section 138 at different places indicates the intention of the legislature to convey different meanings by the said works.

13. It is clear that the provisions of Section 5 of the Limitation Act are

procedural provision whereas the proviso to the caluse (sic:clause) (b) of Section 142 of the Act is a substantive provision. Thus, provisions of Section 5 of the Limitation Act are not applicable to the complaint under Section 138 of the Act.

14. Now it has to be seen what is the proper stage for filing an application as per proviso to Section 142(b) of the Act.

15. Madras High Court in the case of *Sri Vasudharini Enterprises Vs. K.Sundar Ramanujam* in Crl.OP.Nos.31536 to 31538/2006 Cr.M,P.Nos.1,1,1/2006 to 1,1,1/2007 decided on 23/7/2009 held as under:-

> The proviso to clause (b) of Section 142 of the Negotiable Instruments Act has been inserted, conferring jurisdiction upon the Court to condone the delay, in case if the complaint was not filed within the limitation period of 30 day in terms of the proviso appended thereto. As the said provision has been held to be a substantive provision and not a procedure one, the complaint being filed beyond the period of limitation, it cannot be entertained by allowing the respondents to file an application after it has been taken cognizance of by the learned Magistrate. That being so, the cognizance taken by the learned Judicial Magistrate is without any sanction of law and therefore, I am of the considered opinion that it deserves to be quashed and accordingly, it is quashed.

16. Madras High Court has taken this view in the light of the judgment of Hon'ble Apex Court in the case of *Subodh S.Salaskar* (supra), therefore I am of the considered view that an application as per proviso to clause(b) of Section 142 of the Act must be filed along with complaint and such application is not maintainable at subsequent stage I.e. after taking the cognizance and if the Magistrate took cognizance on the basis of time barred complaint then this defect cannot be cured by filing an application for condonation of delay at later stage. Hon'ble Supreme Court in the cas (sic:case) of *Subodh S.Salaskar* (supra) held that when a time barred complaint is filed under Section 138 of the Act and no application for condonation of delay was filed then a substantive right accrued in favour of accused, therefore the accused can raise the objection about the limitation at later stage.

17. Thus, I am unable to convince with the arguments of learned counsel for the applicant that after taking the cognizance the application for condonation of delay can be filed and accused/non-applicant cannot raise the objection

with regard to limitation at later stage.

18. In this case, at a defence evidence stage, it was pointed out by the defence that the complaint is time barred, then an application under Section 5 of the Limitation Act for condonation of delay was moved which was erroneously allowed by the Magistrate. The order was challenged in revision and the learned ASJ has set aside the order. Even though, learned Magistrate proceeded further in the trial and recorded the conviction..

19. In these circumstances, Magistrate should have not recorded the conviction as he has erroneously taken the cognizance on a time barred complaint. Learned ASJ in appeal rightly held that the compliant (sic: complaint)was time barred, therefore, conviction recorded by the Magistrate was illegal, therefore, he acquitted the non-applicant.

20. I found that there is no illegality in the order of acquittal passed by learned ASJ in appeal, therefore, there is no merit in the application for grant of leave to appeal. Thus, the application is dismissed.

Application dismissed.

I.L.R. [2014] M.P., 2749

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice B.D. Rathi

M.Cr.C. No. 4183/2014 (Gwalior) decided on 8 July, 2014

SATENDRA SHARMA ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 438 - Anticipatory Bail - Juvenile* - Application for grant of anticipatory bail preferred by juvenile cannot be entertained by the High Court or the Sessions Court by applying the provisions u/s 6(2) of Juvenile Justice (Care and Protection of Children)Act, 2000. (Para 22)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – किशोर – अग्रिम जमानत प्रदान किये जाने हेतु किशोर द्वारा दिया गया आवेदन, किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 की धारा 6(2) के अंतर्गत उपबंधों को लागू करके उच्च न्यायालय अथवा सत्र न्यायालय द्वारा ग्रहण नहीं किया जा सकता।

Cases referred :

2007 CR.L.J. 3047, 2005 CR.L.J. 3271, 2011(1) MPWN 56, (2014) 1 SCC (Cri) 768.

R.K. Sharma, for the applicant.
R.K. Awasthy, P.P. for the non-applicant/State.
Pradeep Katare, for the complainant-Dinesh Sharma.

ORDER

B.D. Rathi, J. :- This is first application which has been preferred under Section 438 of the Code of Criminal Procedure on behalf of applicant Satendra who is aged 17 years. He claims himself to be juvenile.

2. Case diary has been perused. Applicant is apprehending his arrest in connection with Crime No.75/2014 registered at Police Station Mau, District Bhind for the offence punishable under Sections 294, 302, 34 of IPC.

3. As per the prosecution case, incident occurred on 24.02.2014 between 11 am to 12 noon when the work of maintenance of public road was going on at village Padaria and the same was opposed by Naval Sharma and Gurali Sharma by saying that the land was belonging to them. In the noon, Ashok was trying to stop them by saying that do not oppose. Thereafter, Ashok was beaten by Anand S/o Kalyan, Satendra, Bheekaram, Naval and Gurali on account of which Ashok fell down on the ground and died on the spot. FIR was lodged by Ramsharan Sharma and on that basis Crime No.75/2014 has been registered.

4. Anticipatory bail application No.66/2014 was preferred by Bheekaram and present applicant Satendra before the Sessions Court and the same was dismissed by the Additional Sessions Judge on 14.03.2014.

5. It is submitted by Shri R.K. Sharma, learned counsel appearing on behalf of the applicant, that as per the High School Marksheet-cum-Certificate issued by the Board of Secondary Education, Bhopal, date of birth of the applicant is 04.06.1996 and accordingly, on the date of incident applicant was below 18 years of age. Therefore, in view of the provisions contained under Section 12 of the Juvenile Justice (Care and Protection Children) Act, 2000 (for brevity "the Act"), applicant has right to get benefit of anticipatory bail because he has falsely been implicated. It is also submitted by Shri Sharma, learned counsel, that as per the provisions of Section 6(2) of the Act, the power conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session

also. Further, it is argued that provisions of Act have overriding effect on the provisions of Code of Criminal Procedure. Therefore, it is not necessary for the applicant to appear before the court personally. He may appear by filing such type of anticipatory bail application before the court. In support of his contention, he placed reliance on *Tara Chand Vs. State of Rajasthan* reported in 2007 Cri.L.J. 3047 and *Mohan, Applicant (in jail) V. State of Chhattisgarh,* non applicant reported in 2005 Cri.L.J. 3271.

6. *Per contra,* it is submitted by Shri Awasthy, learned Public Prosecutor and Shri Katare, learned counsel for the complainant, that this Court has no jurisdiction to decide the anticipatory bail application specially for juvenile because in the Act provision of anticipatory bail application has not been co-added. The only provision made under the Act for the bail of a juvenile is in Section 12 and according to that until and unless juvenile is arrested or detained or appears or brought before a Board, the application of such juvenile cannot be considered. Apart that, heinous offence has been committed by the applicant, therefore, he does not deserve the benefit of anticipatory bail and thus the application preferred by him should be dismissed.

7. It is also submitted on behalf of the State that as per the provisions of Section 6(2) of the Act the powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, but only in appeal, revision or otherwise. Otherwise means in proceedings filed under Section 482 of Cr.P.C. or in writ petition filed under the Articles of Constitution but the same cannot be exercised in deciding the anticipatory bail applications because if it is so then directly or indirectly juvenile will be deprived of his legal right given to him under Section 52 and 53 of the Act [Appeals and Revisions respectively] because if the matter is directly decided by the High Court against the juvenile, he cannot file appeal before the Court of Session or Revision before the High Court. To strengthen their stand, State placed reliance on *Kapil Durgawani V. State of M.P.* reported in 2011(1) MPWN 56.

8. It is also submitted by Shri Katare, learned counsel appearing on behalf of the complainant that in this case charge sheet has already been filed and the present applicant Satendra Sharma has been shown by the prosecution as absconder. Therefore, in view of the decision rendered by Hon'ble the Supreme Court in *State of Madhya Pradesh Vs. Pradeep Sharma* reported in (2014) 1 SCC (Cri.) 768, applicant is not entitled to get the benefit of anticipatory bail as he is under absconsion.

9. Having regard to the arguments advanced by the learned counsel for the parties, case diary and the relevant provisions of the Act have been perused.

10. Provisions contained under Section 6 of the Act are as under:

> **Section 6. Powers of Juvenile Justice Board.-** (1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.
>
> (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

11. Section 6(2) of the Act clearly says that powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise. The word "otherwise" cannot be interpreted for bail applications because if it so then juvenile will be deprived directly or indirectly of his legal right given under Sections 52 and 53 of the Act.

12. Section 52 of the Act reads as under:

> **Section 52 Appeals.-**(1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session:
>
> Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
>
> (2) No appeal shall lie from –
>
> (a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or
>
> (b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section.

13. Similarly, provisions contained under Section 53 of the Act read as under:

> **Section 53 Revision** – The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:
>
> Provided that the High Court shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

14. On bare perusal of the aforesaid provisions contained under Section 52 of the Act, it is clear that if any person, aggrieved by an order made by a competent authority then he may prefer an appeal to the Court of Session. Similarly, in view of the provisions of Section 53, High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding of competent authority or Court Session. Now, if the bail application of a juvenile is decided by the High Court or the Court of Session then the persons aggrieved cannot file an appeal before the Court of Session and cannot file a revision before the High Court. So, only on the basis of interpretation of word "otherwise", the right given by Section 52 and 53 of the Act cannot be snatched. Accordingly, arguments advanced by Shri Sharma, learned counsel, cannot be acceptable.

15. The provision of bail for juvenile is given under Section 12 of the Act which reads as under:

> **12. Bail of juvenile.**-(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of

any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

16. On bare perusal of this provision, it is clear that the bail application of a juvenile can be entertained by the Board only when he is arrested or detained or appears or is brought before the Board otherwise application cannot be entertained. If the juvenile is arrested or detained or appears or is brought before the Board then certainly bail application will be filed under Section 12 and the same be decided by the Board only but not by the High Court or Court of Session as discussed above.

17. So far as the word "appears" has been used in Section 12 as mentioned above is concerned, it has not been defined in the Act and for this purpose we will have to see the provisions of Section 437 (1) of the Code of Criminal Procedure, 1973. The word "appears" has been inserted in the same way as herein under Section 12 of the Act.

18. It would be profitable to quote here Section 437 of Cr.P.C. which reads as under:

437. When bail may be taken in case of non-bailable offence.-

(1) When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court

or Court of Session, he may be released on bail, but-

(i) xx xx xx

(ii) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(6) xx xx xx

(7) xx xx xx

19. From Section 437, it appears that the words "arrest" and "detention" are used to signify arrest and detention by a police officer.

20. The expression "appears" and "is brought" are used to signify appearance and arrest in obedience to a process of Court. The expression "appears" occurring in this section does not mean appearance through pleader. When a person appears in Court, his physical presence results in placing himself in custody of court for the purpose of releasing him on bail, therefore, meaning of word "appears" used under Section 12 of the Act will be the same as used in Section 437 of Cr.P.C.

21. The anticipatory bail can be granted in anticipation of arrest but such proceedings are not inserted in the Act. The only provision for bail of Juvenile is given under Section 12 of the Act which has been discussed as above.

22. In view of the aforesaid discussion, this Court is of the view that application for grant of anticipatory bail preferred by the juvenile cannot be entertained by the High Court or the Court of Session by applying the provision contained under Section 6(2) of the Act. The powers conferred on the Board can be used by High Court and the Court of Session only when proceedings come before them in appeal, revision or otherwise except under Section 438 and 439 of Cr.P.C. Therefore, I respectfully disagree with the interpretation made by the learned Single Judge of the Hon. Rajasthan High Court and Hon. Chhattisgarh High Court.

23. Accordingly, application for grant of anticipatory bail by the applicant is hereby dismissed. However, the applicant is at liberty to appear before the

competent authority and thereafter if he proves himself to be juvenile and moves an appropriate application for his release on bail under Section 12 of the Act then the same be considered by the competent authority in accordance with law.

Application dismissed.

I.L.R. [2014] M.P., 2756
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice B.D. Rathi
M.Cr.C. No. 1901/2013 (Gwalior) decided on 8 July, 2014

SHYAM BABU AGRAWAL & ors. ...Applicants
Vs.
STATE OF M.P. & anr. ...Non-applicants

***Criminal Procedure Code, 1973 (2 of 1974), Sections 173(2)(ii), 190 - Final Report - Notice to Complainant* - Police filed Khatma report after giving notice to complainant - Court upon objection filed by complainant recorded statements of witnesses and took cognizance - No fault with the order passed by trial Magistrate. (Paras 12 & 16)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराऐं 173(2)(ii), 190 – अंतिम प्रतिवेदन – शिकायतकर्ता को नोटिस – पुलिस ने शिकायतकर्ता को नोटिस देने के पश्चात खात्मा रिपोर्ट प्रस्तुत की – शिकायतकर्ता द्वारा आक्षेप प्रस्तुत करने पर न्यायालय ने साक्षियों के कथन अभिलिखित किये और संज्ञान लिया – विचारण मजिस्ट्रेट द्वारा पारित किये गये आदेश में कोई दोष नहीं।

Cases referred :

(2006) 4 SCC 359, 1983 Madras Law Weekly (Criminal) 347, 1994 Cr.L.J. 833 (A.P.), AIR 1985 SC 1285.

V.K. Saxena with *Aditya Singh*, for the applicants.
R.K. Awasthy, P.P. for the non-applicant No. 1.
Ankur Mody, for the non-applicant No. 2.

ORDER

B.D. Rathi, J. :- By invoking the extraordinary jurisdiction of this Court, petitioners have preferred this petition under Section 482 of Code of Criminal Procedure, 1973 (in short 'the Code') calling in question the order dated 04-03-2013 passed in Criminal Revision No.66/2013 by learned 10th Additional Sessions Judge, Gwalior whereby the order dated 06-02-2013

passed by JMFC, Gwalior in Criminal Case No.5269/2011 was upheld. By preferring this petition, petitioners have prayed that the orders passed by learned Courts below be set aside, order of taking cognizance be set aside and petitioners be discharged.

2. The factual matrix, in brief, giving rise to this petition are that respondent No.2 Anand Agrawal alias Lallu had made a complaint to the police station against the petitioners alleging that on 29-09-2010 petitioners have encircled him and thereafter petitioner No.2 Brijesh has opened fire on him which has resulted in causing gun shot injury at left thigh. Since police had not taken any action therefore, a petition under Section 482 of the Code was filed by respondent No.2 before this Court bearing M.Cr.C.No.8032/2010 and vide order dated 09-12-2010, Station House Officer, Police Station Morar was directed to proceed with crime No.855/2010 lodged at Police Station, Morar and conduct a fair and impartial investigation. When no action was taken by police, contempt petition bearing No.83/2011 was moved against the police authorities and vide order dated 21-04-2011 it was directed by this Court that final report in relation to investigation in the aforesaid crime be produced before the concerning Court within a period of two weeks. Thereafter, on 06-06-2011 final report was produced by the police station, Morar stating that no offence is made out against the petitioners/accused persons in absence of evidence. At the same time on 25-04-2011 one protest petition along with list of witnesses under Section 190(1) of the Code was moved by respondent No.2 seeking the relief that final report (Khatma) be disallowed, evidence of the complainant/respondent No.2 be recorded and order for arresting the accused petitioners be passed.

3. Thereafter, on 19-07-2011 final report (Khatma) produced by police was not accepted and cognizance has been taken on the basis of private complaint so called protest petition against the petitioners for the offence under Section 307/34 of IPC. The aforesaid order of taking cognizance against petitioners was put to test by petitioners by preferring Criminal Revision No.411/2011 before the Session Court which was allowed on 08-02-2012. The order of taking cognizance was set aside and the case was remanded back to the trial Court with a direction that entire evidence produced by the complainant be taken on record and after taking into consideration the facts mentioned in the final report produced by Police Station, Morar in crime No.855/2010, appropriate order on merits be passed. In compliance of the direction issued by revisional Court, statements of Saroj Devi, Radha Agrawal

and Dr. C.P. Suman were recorded and after taking into consideration the evidence and the statements of witnesses recorded by the police under Section 161 of Cr.P.C. and the documents submitted by police, order was passed on 06-02-2013. The complaint and police case was consolidated and criminal case bearing No.5269/2011 was registered.

4. Feeling aggrieved by the aforesaid order of Magistrate, petitioners have again preferred Criminal Revision bearing No.66/2013 but the same was dismissed by learned 10th Additional Sessions Judge, Gwalior vide order dated 04-03-2013 in confirmation of the order passed by Magistrate on 06-02-2013. Challenging the aforesaid revisional Court's order as well as the order of Magistrate, present petition by invoking the inherent jurisdiction of this Court has been preferred by the petitioners.

5. Learned senior counsel for the petitioners submitted that the final report (Khatma) was produced by prosecution before Magistrate then that may be accepted or cognizance may be taken and third option with the Magistrate was to direct further investigation but by ignoring the provisions of the Code, statements of witnesses were recorded during the final report proceedings on the basis of protest petition so called private complaint, by ignoring the provisions of Sections 200, 202, 203 and 204 of the Code. It is further urged that the revisional Court vide its order dated 08-02-2012 has directed the Magistrate to record all evidence produced by the complainant and pass a reasoned order but without following the direction issued by the revisional Court, cognizance has been taken. Further, it has been submitted that no offence is made out and petitioners have been implicated by respondent No.2 with ulterior motive. There is civil dispute between the parties, in absence of eye-witness of the incident and because respondent No.2 Anand Agrawal alias Lallu got himself admitted in a private hospital and instead of giving notice by the police with regard getting himself examined at Government hospital, he obtained the certificate from private hospital. In the opinion of Investigating Officer himself no case is made out against the petitioners, therefore, petition be allowed and orders impugned passed by Courts below be set aside.

6. Combating the submissions made by learned senior counsel for petitioners, respondent No.2's learned counsel Shri Ankur Mody submitted that impugned orders are well merited and no interference is called for. Further it has been submitted that since criminal revisional was dismissed by 10th Additional Sessions Judge, Gwalior no second revision in the shape of this

petition under Section 482 of the Code is maintainable as it is amounting to second criminal revision which is impermissible in the eyes of law. From perusal of order dated 04-03-2013 it is clear that the order has been rightly passed and it is in accordance with law. In support of his contention, reliance has been placed on a decision of Delhi High Court in the case of *Darshan Singh Vs. State & Others* and (2006) 4 SCC 359 *Minu Kumari and Another Vs. State of Bihar and others.*

7. On giving anxious consideration to the facts and circumstances of the case and the arguments tendered by learned counsel for the parties, following core questions are arising in this case:

i- Whether the direction issued on 08-02-2012 in Criminal Revision No.411/2011 were properly followed by the Magistrate ?

ii- Whether after filing of final report (Khatma), simultaneous proceedings taken by Magistrate in private complaint/protest petition are sustainable in the eyes of law ?

iii- Whether the cognizance taken by the Magistrate and on challenge affirmed by the revisional Court is liable to be set aside ?

The questions framed above for being answered, will be discussed in the following paras

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IN REGARD TO QUESTION NO.1

8. By virtue of directions issued on 08-02-2012 in Cr.R.No.411/2011, trial Court was directed to take in view the entire evidence produced by the complainant and after taking into consideration the facts mentioned in the final report in regard to crime No.855/2010 registered at Police Station Morar case be decided afresh on merits.

9. In compliance of these directions, evidence of Smt. Saroj Devi (PW-5), Smt. Radha Agrawal (PW-6) and Dr. Suman (PW-7) were recorded under Section 202 of the Code. Thus, the evidence produced by the complainant was recorded by the trial Court and after taking into consideration the facts and documents of final report, impugned order of taking cognizance was passed on 06-02-2013.

This being so, question No.1 is answered against the petitioners.

IN REGARD TO QUESTION NO.2

10. After investigation, final report will be produced under Section 173 sub-section (2) (i) of the Code and according to Section 173 (2)(ii) the police officer shall communicate to the person, by whom the information relating to commission of offence was first given. Reasoning behind it is that informant should know the result and fate of the FIR lodged by him and in view of that time to time it was held by the Court that on receipt of final report from the police under Section 173 of the Code recommending dropping of the proceedings, Magistrate has to first issue notice to the complainant before passing the order. Though statute does not expressly required a notice to be issued or hearing to be given to the party adversely affected, in the eyes of law it is just necessary that they should be heard by the Court before making an order of dismissal of the complaint. This view was expressed in *Chandrasekhara Pandian Vs. Muthukaruppa Thevar,* 1983 Madras Law Weekly (Criminal) 347. Similar view was expressed in the case of *K.V.N. Koteswara Rao Vs. P.V. Krishna Prasad,* 1994 Cr.L.J. 833 (A.P.) and AIR 1985 SC 1285 *Bhagwan Singh Vs. Commissioner of Police.*

11. In *Bhagwan Singh* (supra), the Apex Court has held as under:

> "There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section 2(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 of the Code decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

12. In view of the aforesaid principle laid down by the Apex Court and on

perusal of record, it is clear that in final report dated 06-06-2011 it was mentioned by Station House Officer, Police Station Morar that after giving notice to the complainant this final report along with diary is being submitted. Certainly, this notice was in accordance with the provisions of Section 173(2)(ii) of the Code and thereafter, on receiving the notice from the Court or without notice from the Court, objection under Section 190(1) of the Code (so called protest petition/ private complaint) has been submitted by respondent No.2. Opportunity of hearing was provided to him by Magistrate and the evidence produced by the complainant was recorded which is also in compliance of the revisional Court's order as discussed above and then impugned order dated 06-02-2013 was passed which is perfectly in accordance with law. In this way, the evidence recorded by the trial Court was of three folds:

i- It was taken in compliance of the order of revisional Court.

ii- It was recorded since opportunity of hearing was to be provided pursuant to the notice issued to him for accepting final report.

iii- Evidence recorded under Sections 200 and 202 of the Code.

13. This being so, the entire proceedings and steps taken by the Magistrate fall within four corners of law and by no stretch of imagination it can be said that the steps taken by the Magistrate was without jurisdiction. Accordingly, this question is also answered against the petitioners.

IN REGARD TO QUESTION NO.3

14. On perusal of order dated 06-02-2013, the evidence recorded by magistrate at the time of proceeding on final report, document and evidence collected by the Investigating Officer, it is clear that prima facie offence under Section 307/34 of IPC is made out against the petitioners, therefore, the order of rejecting the final report was rightly passed by the Magistrate and consequently, the revision was also rightly dismissed in confirmation of this order. Thus, this question is also answered against the petitioners.

15. Apart that, it is noteworthy to mention that this Court cannot ignore the provisions given under Section 210 of the Code which reads as under:

> "210. (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry

or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

16. On a bare perusal of this provision, it is clear that if final report is produced by the police after investigation and simultaneously if private complaint is registered by the Magistrate for the same offence then as per the provisions given under Section 210(2) of the Code the case arising out of police report shall prevail and complaint case shall be merged into police report. In the aforesaid premises, both the Courts below have not erred in passing the impugned orders because final report filed by the investigating officer was not dropped by Magistrate and on the basis of evidence recorded by Magistrate on private complaint/ protest petition, complaint case was merged in police report and police case was registered after taking cognizance as criminal case No.5269/2011. In this way also, the impugned orders passed by the Courts below are well merited and no interference is called for.

17. Resultantly, in view of the judgment passed in the case of *Darshan Singh* (supra) and *Minu Kumari* (supra), this petition cannot be worth treated to be a petition under Section 482 of the Code but it is second revision which is not maintainable. Accordingly, the petition stands dismissed. No order as to costs.

Copy of this order be sent to the Courts below.

Petition dismissed.