



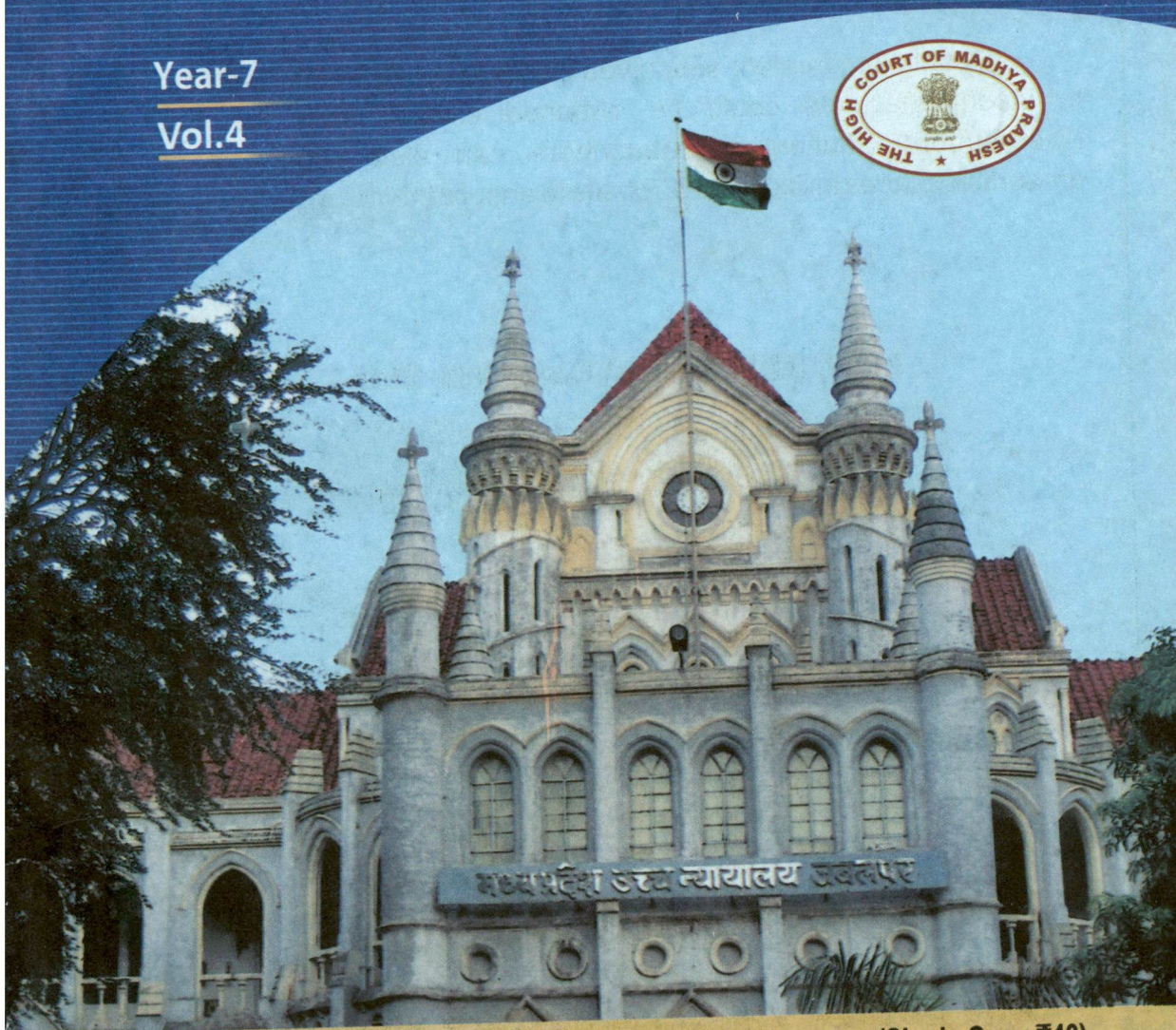
THE INDIAN LAW REPORTS

M.P. SERIES

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

Year-7

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(From 01-01-2015 to 31-12-2015)

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78	*12	101	638
121	1704	120	1284
138	2579	148	1662
153	26	218	1729
290	1867	285	2402
304	*15	311	1211
379	758	374	1989
389	1204	382	1772
399	964	446	2730
428	376	450	2408
430	406	458	2014
436	1475	472	3217
452	741	526	3204
466	958	540	*3
560	1754	650	1495
579	2712	673	1766
593	2726	686	1029
596	780	694	2462
618	*18	702	1502
626	139	2015 (3) MPLJ 65	I.L.R. 2015 M.P. 1311
630	*8	83	2456
652	944	95	2597
677	2977	130	2607
693	*4	145	2636
719	185	172	2075
2015 (2) MPLJ 1	I.L.R. 2015 M.P. 1111	213	2168
39	754	226	2084

COMPARATIVE TABLE

▪	▪	280	▪	2387	▪	▪	45	▪	▪	1597
▪	▪	356	▪	2845	▪	▪	48	▪	▪	*1
▪	▪	459	▪	2927	▪	▪	54	▪	▪	1582
▪	▪	463	▪	2745	▪	▪	57	▪	▪	1083
▪	▪	469	▪	379	▪	▪	106	▪	▪	2726
▪	▪	485	▪	2533	▪	▪	141	▪	▪	1191
▪	▪	590	▪	3395	▪	▪	149	▪	▪	*15
▪	▪	611	▪	2107	▪	▪	171	▪	▪	780
▪	▪	657	▪	2088	▪	▪	179	▪	▪	*29
▪	▪	673	▪	2921	▪	▪	181 (DB)	▪	▪	1754
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▪	▪	52	▪	143	▪	▪	231 (DB)	▪	▪	*8
▪	▪	134	▪	2505	▪	▪	234 (DB)	▪	▪	1145
▪	▪	178	▪	1808	▪	▪	252	▪	▪	2494
▪	▪	188	▪	415	▪	▪	265	▪	▪	1589
▪	▪	193	▪	1016	▪	▪	270	▪	▪	3130
▪	▪	301	▪	2640	▪	▪	291	▪	▪	1280
▪	▪	309	▪	2487	▪	▪	301 (DB)	▪	▪	754
▪	▪	338	▪	3026	▪	▪	305 (DB)	▪	▪	1352
▪	▪	406 (FB)	▪	3141	▪	▪	328	▪	▪	1041
▪	▪	439 (FB)	▪	3157	▪	▪	340	▪	▪	803
▪	▪	480	▪	2556	▪	▪	349	▪	▪	3127
▪	▪	514	▪	3016	▪	▪	356	▪	▪	638
2015 (1) MPHT 1 (SC) I.L.R. 2015 M.P. 2533					▪	▪	406	▪	▪	*12
▪	▪	11 (DB)	▪	964	▪	▪	438 (DB)	▪	▪	376
▪	▪	21	▪	137	▪	▪	454	▪	▪	758
▪	▪	23	▪	1749	2015 (2) MPHT 1 (SC) I.L.R. 2015 M.P. 1625					
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▪	▪	37	▪	741	▪	▪	29 (DB)	▪	▪	26

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91	2807	SN 21	1495
128 (DB)	1662	SN 25	1600
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166	*14	46	379
177	2788	67	139
196	1896	87	2977
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207	1029	356	*38
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309	479	106	2223
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	202		1284
	241 (SC)		1625
	262		1662
	266		1729
	280		2998
	282 (SC)		1403
	304		1211
	341		2977
	358		2377
	371		379
	391		2712
	412		501
	421		1912
2015 (2) J.L.J.	26	I.L.R. 2015 M.P. 2387	
	44		1642
	55		*1
	388 (SC)		2551
	398		2107
	433		1943
	439		2274
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	131 (SC)		3137
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	181 (FB)		3141

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

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) and Evidence Act (1 of 1872), Section 116 – Estoppel – In earlier suit of eviction between the parties, tenant-landlord relationship proved – Said finding was not challenged, merely because the suit was dismissed – Tenant would be bound by such findings and the principle of estoppel would be applicable against the tenant in subsequent suit – Tenant is estopped to deny the title of plaintiff. [Sunil Kumar Vs. Dilip] ...2965

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12 (i)(सी) एवं साक्ष्य अधिनियम (1872 का 1), धारा 116 – विबंधन – पक्षकारों के मध्य पूर्व के बेदखली के बाद में, किरायेदार-मूस्वामी संबंध सिद्ध – उक्त निष्कर्ष को चुनौती नहीं दी गयी मात्र इसलिये कि वाद खारिज कर दिया गया था – किरायेदार ऐसे निष्कर्षों से बाध्य होगा तथा पश्चात्तर्वर्ती वाद में विबंधन का सिद्धांत किरायेदार के विरुद्ध लागू होगा – वादी के हक को अस्वीकृत करने के लिये किरायेदार विबंधित है। (सुनील कुमार वि. दिलीप) ...2965

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) – Denial of title – In earlier litigation, it was held that defendant/respondent is tenant – Subsequently, defendant claims to have entered into an agreement to purchase same property with the brother of plaintiff – Defendant/tenant failed to prove such agreement – Decree was rightly granted u/s 12(1)(c). [Sunil Kumar Vs. Dilip] ...2965

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – हक से इंकार – पूर्ववर्ती वाद में यह अभिनिर्धारित किया गया था कि प्रतिवादी/प्रत्यर्थी किरायेदार है – तत्पश्चात्, प्रतिवादी यह दावा करता है कि उसने वादी के भाई के साथ उसी संपत्ति के क्रय का करार किया है – प्रतिवादी/किरायेदार उक्त करार को सिद्ध करने में असफल रहा है – धारा 12(1)(सी) के अंतर्गत उचित रूप से डिक्ली प्रदान की गई। (सुनील कुमार वि. दिलीप) ...2965

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) – Denial of Title – Tenant/Appellant was inducted by Plaintiff/Respondent – Appellant was continuously paying rent to Respondent – In written statement, the appellant admitted that respondent is the owner, however, by way of amendment he challenged the title of the respondent by alleging that the Will/Gift deed on the basis of which the respondent is claiming his title is not genuine – As the appellant had denied the title of the respondent, therefore, the Appellate Court rightly granted decree under Section 12(1)(c). [Rajendra Prasad

Rajoriya Vs. Shivcharan Malviya (Dead) Through L.Rs. Smt. Vimla Bai] ...3026

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – स्वत्व से इंकार – वादी/प्रत्यर्थी द्वारा किरायेदार/अपीलार्थी को प्रतिष्ठापित किया गया – अपीलार्थी प्रत्यर्थी को किराये का लगातार भुगतान कर रहा था – लिखित कथन में, अपीलार्थी ने यह स्वीकार किया कि प्रत्यर्थी स्वामी है, तथापि, संशोधन के द्वारा उसने प्रत्यर्थी के स्वत्व को यह आरोप लगाते हुए चुनौती दी कि वसीयत/दान विलेख जिसके आधार पर प्रत्यर्थी अपने स्वत्व का दावा कर रहा है वास्तविक नहीं है – चूंकि अपीलार्थी ने प्रत्यर्थी के स्वत्व से इंकार किया था, अतः अपील न्यायालय ने धारा 12(1)(सी) के अंतर्गत उचित रूप से डिक्री पारित की। (राजेन्द्र प्रसाद राजोरिया वि. शिवचरण मालवीय (मृतक) द्वारा विधिक प्रतिनिधि श्रीमती विमला बाई)

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c)
– *Derivative title* – Tenant not inducted by landlord who claims the derivative title – Principle of Estoppel would not apply against tenant.
[Sunil Kumar Vs. Dilip] ...2965

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) – व्युत्पन्न हक – मूस्वामी द्वारा किरायेदार को प्रतिष्ठापित नहीं किया गया जो व्युत्पन्न हक का दावा करता है – विबंधन का सिद्धांत किरायेदार के विरुद्ध लागू नहीं होगा। (सुनील कुमार वि. दिलीप)

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(e)
– *Bonafide Requirement* – *Alternative Accommodation* – Plaintiff/respondent has already disclosed that he has two houses one in which he is residing and another which has been let out to the appellant/tenant – Appellant has not clarified in his written statement or in his statement in Court with regard to the existence of any other accommodation apart from the two accommodations – Courts below have already recorded concurrent findings of fact in respect of bonafide requirement – No Substantial Question of Law arises for consideration – Appeal dismissed. [Rajendra Prasad Rajoriya Vs. Shivcharan Malviya (Dead) Through L.Rs. Smt. Vimla Bai]

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ई) – वास्तविक आवश्यकता – वैकल्पिक आवास – वादी/प्रत्यर्थी ने यह पहले ही प्रकट किया है कि उसके दो मकान हैं एक जिसमें स्वयं निवास कर रहा है तथा दूसरा जिसे उसने अपीलार्थी/किरायेदार को किराये पर दिया है – अपीलार्थी ने दो आवासों के अतिरिक्त किसी अन्य आवास के अस्तित्व के संबंध में अपने लिखित कथन एवं न्यायालयीन कथन

में स्पष्ट नहीं किया है — निचले न्यायालयों ने पहले ही वास्तविक आवश्यकता के संदर्भ में तथ्य के समवर्ती निष्कर्ष अभिलिखित किये हैं — विचारण हेतु विधि का सारवान प्रश्न उत्पन्न नहीं होता — अपील खारिज। (राजेन्द्र प्रसाद राजोरिया वि. शिवचरण मालवीय (मृतक) द्वारा विधिक प्रतिनिधि श्रीमती विमला बाई) ...3026

Accommodation Control Act, M.P. (41 of 1961), Section 13(3) — Dispute as to whom the rent is payable — Nature and stage of Enquiry — Should be decided framing specific issue alongwith other issues on pleadings, after appreciation of material on record by judgment and decree. [Sanjay Kumar Vs. Prem Kumar] ...2563

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(3) — विवाद कि भाड़े का मुग्तान किसे किया जाना है — जांच का स्वरूप एवं प्रक्रम — अभिवचनों के अन्य विवादकों के साथ विनिर्दिष्ट विवादक विरचित कर अभिलेख की सामग्री का मूल्यांकन करने के पश्चात् निर्णय एवं डिक्री द्वारा इसका विनिश्चय किया जाना चाहिए। (संजय कुमार वि. प्रेम कुमार) ...2563

Accommodation Control Act, M.P. (41 of 1961), Section 45 — Jurisdiction & power — No specific power conferred on Rent Controlling Authority — Landlord has choice to choose the forum. [Afsar Ara (Smt.) Vs. Iqbal Sharif] ...2955

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 45 — अधिकारिता एवं शक्ति — भाड़ा नियंत्रण प्राधिकारी को विनिर्दिष्ट शक्ति प्रदाय नहीं की गई है — मकान मालिक अपनी पसंद के फोरम का चुनाव कर सकता है। (अफसर आरा (श्रीमती) वि. इकबाल शरीफ) ...2955

Accommodation Control Act, M.P. (41 of 1961), Sections 45, 23-A, 23-J and 12(1) — Specified Landlady — Eviction — On the ground of bonafide need — Rent Controlling Authority only has jurisdiction. [Afsar Ara (Smt.) Vs. Iqbal Sharif] ...2955

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 45, 23-ए, 23-जे व 12(1) — विनिर्दिष्ट मकान मालकिन — बेदखली — वास्तविक आवश्यकता के आधार पर — केवल भाड़ा नियंत्रण प्राधिकारी को अधिकारिता है। (अफसर आरा (श्रीमती) वि. इकबाल शरीफ) ...2955

Accommodation Control Act, M.P. (41 of 1961), Sections 45, 23-A, 23-J & 12(1) — Suit for eviction by Specified landlady — Composite grounds which are not covered u/s 23-A, choice of litigant to choose the forum — Unless there is complete and specific bar created by law,

right to choose the forum cannot be restricted. [Afsar Ara (Smt.) Vs. Iqbal Sharif] ...2955

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 45, 23-ए, 23-जे व 12(1)– विनिर्दिष्ट मकान मालकिन द्वारा बेदखली के लिये वाद – संयुक्त आधार जो धारा 23-ए के अंतर्गत आच्छादित नहीं है, वादकारी स्वेच्छा से फोरम का चुनाव कर सकता है – जब तक कि विधि द्वारा संपूर्ण एवं विनिर्दिष्ट वर्जन का सृजन न किया गया हो, फोरम चुनने के अधिकार को प्रतिबंधित नहीं किया जा सकता। (अफसर आरा (श्रीमती) वि. इकबाल शरीफ) ...2955

Accommodation Control Act, M.P. (41 of 1961), Section 45, 23-A, 23-J & 12(1) – Suit for eviction in Civil Court – By specified landlord alongwith other landlords – On ground of bonafide need alongwith other grounds mentioned in Section 12(1) – Maintainable. [Afsar Ara (Smt.) Vs. Iqbal Sharif] ...2955

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 45, 23-ए, 23-जे व 12(1)– सिविल न्यायालय में बेदखली के लिये वाद–विनिर्दिष्ट मकान मालिक द्वारा अन्य मकान मालिकों सहित–धारा 12(1) में वर्णित अन्य आधारों सहित वास्तविक आवश्यकता के आधार पर–पोषणीय। (अफसर आरा (श्रीमती) वि. इकबाल शरीफ) ...2955

Administration of Justice – Access to justice should not be misused as license to file misconceived and frivolous petitions. [Manish Kumar Sharma Vs. Jagdish] (DB)...2951

न्याय प्रशासन – भ्रमित करने वाली या निरर्थक याचिकायें प्रस्तुत करने की अनुज्ञप्ति के रूप में न्याय के अधिकार का दुरुपयोग नहीं किया जाना चाहिए। (मनीष कुमार शर्मा वि. जगदीश) (DB)...2951

Administrative Tribunals Act (13 of 1985), Section 19 – Abatement – Admission of original application – Respondent by filing original application before Tribunal had challenged the show cause notice as to why his services may not be terminated – Notice was issued however, there is no formal order of admitting the application – During the pendency of the application, services of the respondent were terminated – It was pleaded before Tribunal as services have been terminated therefore, the application has become infructuous – Tribunal held that as notices were issued after hearing both the parties therefore, impliedly the Original Application was admitted and in view of provision of Section 19(3) of the Act, the proceedings would not abate – Held – As per the provision of Section 19(3), the Tribunal has to pass a specific order admitting the

application—As no formal order admitting Original Application was passed, the rejection of the application only on the ground that the application was already admitted is not correct – Matter remitted back to consider the objections of the Petitioner after hearing all the parties. [Union of India Vs. Sunil Kumar Choudhary] (DB)...3269

प्रशासनिक अधिकरण अधिनियम (1985 का 13), धारा 19 – उपशमन – मूल आवेदन की ग्राह्यता – प्रत्यर्थी द्वारा अधिकरण के समक्ष मूल आवेदन प्रस्तुत कर कारण बताओ नोटिस कि क्यों न उसकी सेवाएँ समाप्त कर दी जाए को चुनौती दी गई – नोटिस जारी किया गया यद्यपि, आवेदन स्वीकार करने का कोई औपचारिक आदेश नहीं है – आवेदन के लंबित रहने के दौरान, प्रत्यर्थी की सेवाएँ समाप्त कर दी गयी – अधिकरण के समक्ष यह अभिवचन किया गया कि चूंकि सेवाएँ समाप्त कर दी गयी हैं अतः आवेदन, निष्फल हो गया है – अधिकरण ने यह अभिनिर्धारित किया कि दोनों पक्षों को सुनने के पश्चात् नोटिस जारी किए गए थे अतः, विवक्षित रूप से मूल आवेदन स्वीकार किया गया तथा अधिनियम की धारा 19(3) के प्रावधान के परिप्रेक्ष्य में, कार्यवाहियाँ उपशमित नहीं होंगी – अभिनिर्धारित – धारा 19(3) के प्रावधान के अनुसार, अधिकरण को आवेदन स्वीकार करने के लिए विनिर्दिष्ट आदेश पारित करना चाहिए – चूंकि मूल आवेदन की स्वीकृति हेतु कोई औपचारिक आदेश पारित नहीं किया गया था, इसलिए आवेदन को केवल इस आधार पर अस्वीकार करना कि आवेदन पहले से ही स्वीकृत था सही नहीं है – मामले को सभी पक्षकारों को सुनने के पश्चात्, याची की आपत्तियों पर विचार करने के लिए प्रतिप्रेषित किया गया। (यूनियन ऑफ इंडिया वि. सुनील कुमार चौधरी) (DB)...3269

Ammonium Nitrate Rules, 2012, Rule 3 – See – Explosive Substances Act, 1908, Section 4 & 5 [Sharad Kumar Agrawal Vs. State of M.P.] ...3102

अमोनियम नाइट्रेट नियम, 2012, नियम 3 – देखें – विस्फोटक पदार्थ अधिनियम, 1908, धारा 4 व 5 (शरद कुमार अग्रवाल वि. म.प्र. राज्य) ...3102

Arbitration Act (10 of 1940), Section 8 – Appointment of Arbitrator—Order of Court appointing sole arbitrator was challenged upto Supreme Court and the order of Court appointing sole arbitrator was upheld – As order appointing sole arbitrator has attained finality and binds parties, therefore, the appointment of sole arbitrator in place of Tribunal of arbitration consisting of three arbitrators cannot be challenged. [Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha] ...2998

माध्यस्थम् अधिनियम (1940 का 10), धारा 8 – मध्यस्थ की नियुक्ति –

एकल मध्यस्थ की नियुक्ति के लिए दिए गए न्यायालय के आदेश को उच्चतम न्यायालय तक चुनौती दी गयी तथा एकल मध्यस्थ की नियुक्ति करने वाले न्यायालय के आदेश को कायम रखा गया – चूंकि एकल मध्यस्थ की नियुक्ति के आदेश ने अंतिमता प्राप्त कर ली है तथा पक्षकारों पर बाध्य है, अतः माध्यस्थम् अधिकरण जिसमें तीन मध्यस्थ होने हैं की जगह एकल मध्यस्थ की नियुक्ति को चुनौती नहीं दी जा सकती। (जवाहर लाल नेहरू कृषि विश्वविद्यालय, जबलपुर वि. जे.एच. कोटेचा) ...2998

Arbitration Act (10 of 1940), Section 29 & Interest Act, (14 of 1978), Section 3 – Pre Reference Interest – Where the agreement between the parties does not prohibit grant of interest, the arbitrator shall have power to grant interest – As award has been passed after coming into force of Act, 1978, therefore, Arbitrator had authority to award interest for pre-reference interest at 18% p.a. which has already been reduced to 10% by Addl. District Judge. [Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha] ...2998

माध्यस्थम् अधिनियम (1940 का 10), धारा 29 एवं ब्याज अधिनियम, (1978 का 14), धारा 3 – पूर्व संदर्भ ब्याज – जहां पक्षकारों के मध्य करार ब्याज के अनुदान को प्रतिबंधित नहीं करता है, वहां मध्यस्थ को ब्याज का अनुदान करने की शक्ति प्राप्त होगी – चूंकि अवार्ड अधिनियम 1978 के प्रभावशील होने के बाद पारित किया गया है, अतः मध्यस्थ को 18% प्रतिवर्ष की दर से पूर्व संदर्भ ब्याज के लिए ब्याज प्रदान करवाने का प्राधिकार था, जिसे अतिरिक्त जिला न्यायाधीश द्वारा पहले ही 10% तक कम कर दिया गया है। (जवाहर लाल नेहरू कृषि विश्वविद्यालय, जबलपुर वि. जे.एच. कोटेचा) ...2998

Arbitration Act (10 of 1940), Section 30 – Opportunity of hearing – Proceedings before arbitrator commenced on 29.11.1998 – On 23.09.2000, the arbitrator proceeded ex parte and passed ex parte award – From scrutiny of order sheets of proceedings, it is evident that the appellant adopted all possible tactics to linger on the proceeding before the arbitrator and on several occasions neither any officer nor counsel for the appellant appeared before arbitrator – Therefore, action of arbitrator in closing the right of the appellant to adduce evidence by taking into account the time limit fixed by the Court for delivery of award, was justified. [Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha] ...2998

माध्यस्थम् अधिनियम (1940 का 10), धारा 30 – सुनवाई का अवसर – मध्यस्थ के समक्ष कार्यवाही 29.11.1998 को प्रारंभ हुई – 23.09.2000 को मध्यस्थ

द्वारा एकपक्षीय कार्यवाही की गयी तथा एकपक्षीय अवार्ड पारित किया गया - कार्यवाही के आदेश-पत्रों की संवीक्षा से यह सुस्पष्ट है कि मध्यस्थ के समक्ष कार्यवाही को लंबा खींचने के लिए अपीलार्थी ने सभी संभावित युक्तियां अपनाई तथा विभिन्न अवसरों पर न तो कोई अधिकारी न ही अपीलार्थी की ओर से कोई अधिवक्ता मध्यस्थ के समक्ष उपस्थित हुआ - अतः, अवार्ड देने के लिये न्यायालय द्वारा दी गयी समय-सीमा को ध्यान में रखते हुए मध्यस्थ द्वारा अपीलार्थी का साक्ष्य प्रस्तुत करने के अधिकार को समाप्त करने की कार्यवाही न्यायसंगत थी। (जवाहर लाल नेहरू कृषि विश्वविद्यालय, जबलपुर वि. जे.एच. कोटेचा) ...2998

Arbitration Act (10 of 1940), Section 34 – Scope of Judicial Review – Court can interfere with the award only on the grounds set out in Section 30 i.e. whereas an arbitrator has misconducted himself or the proceeding, where an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceeding has become invalid and where an award has been improperly procured or is otherwise invalid – An award cannot be set aside merely on the ground that in the opinion of the Court award passed by the arbitrator would have been otherwise. [Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha] ...2998

माध्यस्थम् अधिनियम (1940 का 10), धारा 34 – न्यायिक पुनर्विलोकन का क्षेत्र – न्यायालय धारा 30 में दिए गए आधारों पर ही अवार्ड हस्तक्षेप कर सकता है, अर्थात् जब मध्यस्थ ने स्वयं अवचार किया हो अथवा कार्यवाही का कुसंचालन किया हो, जहां माध्यस्थम् का अधिक्रमण करते हुए न्यायालय द्वारा जारी किए गए आदेश के पश्चात् अवार्ड दिया गया हो अथवा जब माध्यस्थम् कार्यवाही अन्यथा अविधिमान्य हो गयी हो तथा जब कोई अवार्ड अनुचित तरीके से प्राप्त किया गया हो अथवा अन्यथा अविधिमान्य है – एक अवार्ड केवल इस आधार पर अपास्त नहीं किया जा सकता कि न्यायालय के अभिमत में मध्यस्थ द्वारा अवार्ड अन्यथा पारित किया होगा। (जवाहर लाल नेहरू कृषि विश्वविद्यालय, जबलपुर वि. जे.एच. कोटेचा) ...2998

Arbitration Act (10 of 1940), Section 39 – Appeal – New Ground – Raising a new ground in appeal for which no foundation was laid down in application for setting aside award is not permissible. [Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha] ...2998

माध्यस्थम् अधिनियम (1940 का 10), धारा 39 – अपील – नवीन आधार – अपील में एक नवीन आधार उठाना जिसके लिए अवार्ड अपास्त करने के लिए दिये गये आवेदन में कोई आधार प्रस्तुत नहीं किया गया अनुज्ञेय नहीं है। (जवाहर लाल नेहरू कृषि विश्वविद्यालय, जबलपुर वि. जे.एच. कोटेचा) ...2998

Arbitration and Conciliation Act (26 of 1996), Sections 8, 20, 34 & Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 20 – Appointment of Arbitrator – Jurisdiction of Civil Court – During the pendency of application for appointment of arbitrator, Act 1983 came into force – Bar contained in Act 1983 with regard to Civil Court applies only from the date of Constitution of Arbitration Tribunal i.e. 01.03.1985 – Reference which is pending prior to Constitution of Tribunal is saved by Section 20(2) of 1983 Act – As application for appointment of arbitrator was already pending therefore, District Judge had jurisdiction to appoint arbitrator. [Seth Mohanlal Hiralal (M/s.) Vs. State of M.P.] ...2745

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 8, 20, 34 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 20 – मध्यस्थ की नियुक्ति – सिविल न्यायालय की अधिकारिता – मध्यस्थ की नियुक्ति के लिये आवेदन लंबित रहने के दौरान, अधिनियम 1983 लागू हुआ – सिविल न्यायालय के संबंध में अधिनियम 1983 में दी गई रोक केवल माध्यस्थम् अधिकरण के गठन के दिनांक से अर्थात् 01.03.1985 से ही लागू होगी – संदर्भ जो अधिकरण के गठन के पूर्व से लंबित है वह अधिनियम 1983 की धारा 20(2) द्वारा रक्षित है – चूंकि मध्यस्थ की नियुक्ति का आवेदन पूर्व से लंबित था, अतः जिला न्यायाधीश को मध्यस्थ नियुक्त करने की अधिकारिता प्राप्त थी। (सेठ मोहनलाल हीरालाल (मे.) वि. म. प्र. राज्य) ...2745

Arbitration and Conciliation Act (26 of 1996), Section 11 – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 2 [Brajesh Sharma (Shri) Vs. Banco Construction] ...3374

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 – देखें – माध्यस्थम् अधिकरण अधिनियम, म.प्र., 1983, धारा 2 (ब्रजेश शर्मा (श्री) वि. बैंको कंस्ट्रक्शन) ...3374

Arbitration and Conciliation Act (26 of 1996), Section 34 – Objections – Scope of interference – If award is in conflict with public policy of India – Court would interfere with an award, if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of Act or terms of contract – Respondent's witness admitted that extra work of de-watering was done by appellant as an extra item – It was further held by Arbitrator that since the aforesaid amount was not included in award, therefore, the same was admittedly included by the Arbitrator as an extra item – Arbitrator had applied its mind – If two views are possible, view taken by Arbitrator would prevail

– Trial court should not have disallowed the said item – Appeal allowed.
[Seth Mohanlal Hirallal (M/s.) Vs. State of M.P.] ...2745

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – आपत्तियां—
हस्तक्षेप का विस्तार – यदि अधिनिर्णय भारत की लोकनीति के विरुद्ध है – किसी अधिनिर्णय में न्यायालय हस्तक्षेप करेगा, यदि वह कानून के उल्लंघन, भारत के हित, न्याय अथवा नैतिकता, प्रत्यक्ष अवैधता, अधिनियम अथवा अनुबंध की शर्तों के उल्लंघन में है – प्रतिवादी के साक्षी ने स्वीकार किया कि निर्जलीकरण का अतिरिक्त कार्य अपीलार्थी द्वारा अतिरिक्त मद के रूप में किया गया – मध्यस्थ द्वारा आगे यह भी अभिनिर्धारित किया गया कि चूंकि उपरोक्त घनराशि अधिनिर्णय में शामिल नहीं थी, अतः उसे मध्यस्थ द्वारा एक अतिरिक्त मद के रूप में स्वीकार करते हुए शामिल किया गया – मध्यस्थ ने अपनी बुद्धि का प्रयोग किया – यदि दो दृष्टिकोण संभावित हैं तो मध्यस्थ द्वारा लिया गया दृष्टिकोण अभिभावी होगा – विचारण न्यायालय द्वारा उक्त मद नामंजूर नहीं किया जाना चाहिए था – अपील स्वीकृत। (सेठ मोहनलाल हीरालाल (मे.) वि. म.प्र. राज्य) ...2745

Arbitration and Conciliation Act (26 of 1996), Section 45 – Arbitration Clause – Seat of Arbitration – Based on seat of arbitration so also the nationality of parties, an arbitration is classified to be an ‘International Arbitration’ and the governing law is also determined on the basis of the seat of arbitration – Therefore, it is clear that based on the seat of arbitration, the question of permitting two Indian companies/ parties to arbitrate out of India is permissible. [Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd.] (DB)...3328

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 45 – माध्यस्थम् खंड – माध्यस्थम् पीठ – माध्यस्थम् पीठ और साथ ही पक्षकारों की राष्ट्रीयता के आधार पर, एक माध्यस्थम् को ‘अंतर्राष्ट्रीय माध्यस्थम्’ के रूप में वर्गीकृत किया गया है तथा शासित विधि भी माध्यस्थम् की पीठ के आधार पर निर्धारित की जाती है – अतः, यह स्पष्ट है कि माध्यस्थम् की पीठ के आधार पर दो भारतीय कंपनियों/पक्षकारों को भारत के बाहर माध्यस्थम करने की अनुमति का प्रश्न अनुज्ञेय है। (सासन पॉवर लि. वि. नार्थ अमेरिकन कोल कारपोरेशन इंडिया प्रा.लि.) (DB)...3328

Central Excise Rules, Rule 57-A & 57G(1) – MODVAT Credit – Entitlement – Assessee entitled u/r 57-A – Merely because of the time frame fixed in making entries in Part II of RG-23-A and because of some error in making entry, benefit cannot be denied. [Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal] (DB)...3089

केंद्रीय उत्पाद-शुल्क नियम, नियम 57-ए व 57-जी(1) – एम.ओ.डी.वी.ए.टी.

जमा - यात्रता - नियम 57-ए के अंतर्गत निर्धारित पात्र है - मात्र इसलिये कि आर जी-23-ए के भाग II में प्रविष्टियां करने की समयसीमा निश्चित है और इसलिये कि प्रविष्टि करने में कोई त्रुटि हुई है, लाभ से वंचित नहीं किया जा सकता। (भारत हैवी इलेक्ट्रिकल्स लि. (मे.) वि. सी.ई.सी., भोपाल) (DB)...3089

Central Excise Rules, Rule 57-A & 57-G(1) - MODVAT Scheme -
Receipt of input mentioned in Part-I of a single comprehensive RG-23 -
Evidence of crystallization of right to MODVAT credit - On the basis of
inconsistency in Part II - Right to credit accrued already cannot be denied.
[Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal] (DB)...3089

केंद्रीय उत्पाद-शुल्क नियम, नियम 57-ए व 57-जी(1) - एम.ओ.डी.वी.ए.टी.
 योजना - एकल व्यापक आर.जी-23 के भाग-I में उल्लिखित निविष्टि की प्राप्ति -
 एम.ओ.डी.वी.ए.टी. जमा पर अधिकार की प्रबलता का साक्ष्य - भाग II में असंगतता
 के आधार पर - पहले से ही उपार्जित जमा के अधिकार से इंकार नहीं किया जा
 सकता। (भारत हैवी इलेक्ट्रिकल्स लि. (मे.) वि. सी.ई.सी., भोपाल) (DB)...3089

Central Excise Rules, Rule 57-A & 57-G(1) - MODVAT Scheme
- Right to Credit - Accrued to the assessee - On the date of payment
of tax on raw material or inputs and the right get crystallized to them
on receiving the inputs in factory. [Bharat Heavy Electricals Ltd. (M/s.)
Vs. C.E.C., Bhopal] (DB)...3089

केंद्रीय उत्पाद-शुल्क नियम, नियम 57-ए व 57-जी(1) - एम.ओ.डी.वी.ए.टी.
 योजना - निर्धारित जमा का अधिकार - कच्चे माल अथवा निविष्टियों पर कर
 के मुग्तान की तिथि को प्रोद्भूत होता है तथा कारखाने में निविष्टियां प्राप्त करने
 पर वह अधिकार प्रबलता प्राप्त कर लेता है। (भारत हैवी इलेक्ट्रिकल्स लि. (मे.) वि.
 सी.ई.सी., भोपाल) (DB)...3089

Central Excise Rules, Rule 57-A & 57-G(1) - Ultravires -
Notification issued u/r 57-G prescribing time limit for taking the credit -
Right to avail credit conferred u/r 57-A and Rule 57-G provides the
procedure - Thus, Central Govt. cannot curtail any right conferred by
substantive provision of Rule 57-A - The notification is ultra vires. [Bharat
Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal] (DB)...3089

केंद्रीय उत्पाद-शुल्क नियम, नियम 57-ए व 57-जी (1) - अधिकारातीत -
 नियम 57-जी के अंतर्गत जारी अधिसूचना जमा राशि लेने के लिये समय सीमा नि-
 र्धारित करती है - नियम 57-ए जमा राशि प्राप्त करने का अधिकार प्रदत्त करता है
 तथा नियम 57-जी प्रक्रिया उपबंधित करता है - अतः, नियम 57-ए के सारभूत
 उपबंध द्वारा प्रदत्त किसी भी अधिकार को केंद्र सरकार घटा नहीं सकती -

अधिसूचना अधिकारातीत है। (भारत हैवी इलेक्ट्रिकल्स लि. (मे.) वि. सी.ई.सी., मोपाल)
(DB)...3089

Civil Procedure Code (5 of 1908), Section 9 – Suit for declaration – Appellant filed suit for declaration that the name of defendant no. 2 be obliterated from the debenture certificate issued in the name of defendant no. 2 as appellant had invested money for purchase of debentures – Plaintiff/appellant failed to prove her income/source of money – Preponderance of probabilities – Where findings are based upon critical evaluation of evidence, no illegality or perversity is found – Appeal dismissed. [Sheela Yadav (Smt.) Vs. Muthoot Finance]
...3323

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 – घोषणा के लिये वाद – अपीलार्थी ने घोषणा के लिये वाद प्रस्तुत किया कि प्रतिवादी क्र. 2 के नाम पर जारी किये गये डिबेंचर प्रमाणपत्र से प्रतिवादी क्र. 2 का नाम अभिलोपित किया जाये क्योंकि अपीलार्थी ने डिबेंचर के क्रय में रुपये निवेश किये थे – वादी/अपीलार्थी अपनी आय/धन के स्रोत को सिद्ध करने में असफल रही – अधिसंभावनाओं की प्रबलता – जहाँ निष्कर्ष साक्ष्य के आलोचनात्मक मूल्यांकन पर आधारित है, वहाँ कोई अवैधता या विपर्यस्तता नहीं पायी जाती – अपील खारिज। (शीला यादव (श्रीमती) वि. मुथूट फाइनेंस)
...3323

Civil Procedure Code (5 of 1908), Section 11 – Principle of Res judicata – Merely filing the copies of pleading of earlier suit is not sufficient for considering the question of res judicata as well as Order 2 Rule 2 of the CPC – For considering the same some evidence must be adduced by the parties otherwise the court cannot compare the pleading – Revision dismissed. [Tulsiram Vs. Ramjan Khan]
...3388

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय का सिद्धांत – केवल पूर्वतर वाद के अभिवचन की प्रति प्रस्तुत करना पूर्व न्याय के प्रश्न के साथ ही सि.प्र.सं. के आदेश 2 नियम 2 पर विचार करने हेतु पर्याप्त नहीं है – उक्त पर विचार करने के लिये पक्षकारों द्वारा कोई साक्ष्य पेश करना आवश्यक है अन्यथा न्यायालय अभिवचन की तुलना नहीं कर सकता – पुनरीक्षण खारिज। (तुलसीराम वि. रमजान खान)
...3388

Civil Procedure Code (5 of 1908), Section 11 – Res judicata – Once the Court at an earlier stage decided the matter in one way will not allow the parties to re-agitate the same at subsequent stage of the same proceeding – Petition dismissed. [Devendra Kumar Nayak Vs. Sudha Nayak (Smt.)]
...3176

सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय – एक बार जब न्यायालय पूर्ववर्ती प्रक्रम में मामले को एक तरह से निर्णीत करता है तो उसी कार्यवाही के पश्चात्पूर्वी प्रक्रम में उसे दोबारा उठाने के लिए पक्षकारों को अनुज्ञा नहीं दी जा सकती – याचिका खारिज। (देवेन्द्र कुमार नायक वि. सुधा नायक (श्रीमती)) ...3176

Civil Procedure Code (5 of 1908), Section 100 – Substantial question of law – Held – Both the courts below have recorded a comprehensive findings of fact upon due appreciation of evidence on record – No question of law much less substantial question of law arises warranting interference. [Rewaram Vs. Veerendra Kumar] ...3315

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विधि का सारवान प्रश्न – अभिनिर्धारित – अभिलेख पर साक्ष्य का सम्यक् अधिमूल्यन करते हुए दोनों निचले न्यायालयों ने तथ्यों के व्यापक निष्कर्ष अभिलिखित किये – हस्तक्षेप के लिये कोई विधि का सारवान प्रश्न तो दूर, विधि का प्रश्न भी उत्पन्न नहीं होता। (रेवाराम वि. वीरेन्द्र कुमार) ...3315

Civil Procedure Code (5 of 1908), Section 115 – Civil Revision – Maintainability – Ex-parte decree of perpetual injunction was passed against applicant – Application u/o 9 Rule 13 for setting aside ex-parte decree was rejected and Misc. Appeal against such order is pending – In the meanwhile executing Court passed an order of sending applicant to Civil Jail for having violated the perpetual injunction – Only remedy available to applicant is to file an application for stay in pending Misc. Appeal – Revision not maintainable. [Mohan Vs. Matadin] ...3384

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – सिविल पुनरीक्षण – पोषणीयता – आवेदक के विरुद्ध स्थायी व्यादेश की एकपक्षीय डिक्री पारित – आदेश 9 नियम 13 के अंतर्गत एकपक्षीय डिक्री अपास्त किये जाने हेतु आवेदन अस्वीकार किया गया एवं उक्त आदेश के विरुद्ध विविध अपील लंबित है – इसी दौरान निष्पादन न्यायालय ने स्थायी व्यादेश के उल्लंघन के लिये आवेदक को सिविल जेल भेजे जाने हेतु आदेश पारित किया – आवेदक के पास केवल यह उपचार उपलब्ध है कि लंबित विविध अपील में रोक हेतु आवेदन प्रस्तुत करे – पुनरीक्षण पोषणीय नहीं। (मोहन वि. मातादीन) ...3384

Civil Procedure Code (5 of 1908), Section 115 – Civil Revision – Restoration – Civil Revision dismissed due to non compliance of the peremptory order to file four different Civil Revisions – If any common order is passed by the subordinate court in identical cases of the

different parties then such parties have a right to file common and joint proceeding before the superior court against such order and after making the payment of deficit court fees of three revisions by the applicant in the common the same ought to have been restored. [Jamila Bi Vs. Smt. Nazma Afzal] ...3099

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – सिविल पुनरीक्षण – पुनःस्थापन – चार अलग-अलग सिविल पुनरीक्षण प्रस्तुत करने के अलंघनीय आदेश का अनुपालन न करने के कारण सिविल पुनरीक्षण खारिज – यदि अधीनस्थ न्यायालय द्वारा भिन्न पक्षकारों के समान प्रकरणों में कोई सामान्य आदेश पारित किया जाता है तब ऐसे पक्षकारों को ऐसे आदेश के विरुद्ध उच्चतर न्यायालय के समक्ष सामान्य तथा संयुक्त कार्यवाही प्रस्तुत करने का अधिकार है तथा आवेदक द्वारा तीन पुनरीक्षणों की न्याय शुल्क में कमी का सामान्य रूप से भुगतान करने पर उसे पुनःस्थापित कर दिया जाना चाहिए था। (जमीला बी वि. श्रीमती नजमा अफजल) ...3099

Civil Procedure Code (5 of 1908), Section 115 – Civil Revision – Scope of interference – Intention of Legislation is to confer power on Trial Court to modify the decree as is discerned from the language of Section 28 of Specific Relief Act – Such power is not to be exercised by Revisional Court – Even if it is found that the Trial Court has acted beyond the jurisdiction, the Revisional Court is required to remit back the matter to the Trial Court afresh – Any modification in decree can be directed by the Trial Court and Trial Court only. [Murlidhar Pinjani Vs. Satyakam Tandon] ...3395

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – सिविल पुनरीक्षण – हस्तक्षेप का विस्तार – विचारण न्यायालय को डिक्री को परिवर्तित करने के लिए शक्ति देना विधान का आशय है जैसा कि विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 की भाषा से प्रकट होता है – ऐसी शक्ति का प्रयोग पुनरीक्षण न्यायालय द्वारा नहीं किया जाना चाहिए – भले ही यह पाया जाए कि विचारण न्यायालय ने अपनी अधिकारिता से परे जाकर कार्यवाही की है, पुनरीक्षण न्यायालय से अपेक्षित है कि वह नए सिरे से मामला विचारण न्यायालय को प्रतिप्रेषित करे – डिक्री में किसी भी परिवर्तन को विचारण न्यायालय द्वारा और केवल विचारण न्यायालय द्वारा ही निदेशित किया जा सकता है। (मुरलीधर पिंजानी वि. सत्यकाम टंडन) ...3395

Civil Procedure Code (5 of 1908), Section 115 – Revision against the order of rejection of an application under Order 7 Rule 11 of the CPC at the initial stage of trial – Held that the application under Order 7 Rule 11 of CPC cannot be decided at the initial stage of trial – It can only be adjudicated after the framing of the issues and if the issues

were framed and any of them is not relating to the question then the same could not be adjudicated without recording the evidence. [Tulsiram Vs. Ramjan Khan] ...3388

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – विचारण के प्रारंभिक प्रक्रम पर सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन निरस्त किये जाने के आदेश के विरुद्ध पुनरीक्षण – यह अभिनिर्धारित कि सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन विचारण के प्रारंभिक प्रक्रम पर निर्णीत नहीं किया जा सकता – इसे केवल विवाद्यक विरचित किये जाने के पश्चात् न्यायनिर्णीत किया जा सकता है एवं यदि विवाद्यक विरचित कर दिये गये हैं और उनमें से कोई भी प्रश्न से संबंधित नहीं है तब उक्त को बिना साक्ष्य अभिलिखित किये न्यायनिर्णीत नहीं किया जा सकता। (तुलसीराम वि. रमजान खान) ...3388

Civil Procedure Code (5 of 1908), Section 115 – See – Constitution – Article 227 [Ramavtar Vs. Shivbhajan] ... 2560

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – देखें – संविधान – अनुच्छेद 227 (रामअवतार वि. शिवमजन) ...2560

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary Party – Petitioners/plaintiffs herein have claimed declaratory decree against the respondents with respect of the disputed property stating themselves to be the co-owners with the proposed defendant who executed the alleged sale deed in favour of respondents No. 1 to 9 – Therefore, the said defendant is a necessary Party – So far the purchasers of the part of suit property from 1 to 9 is concerned, they shall be bound by the decree which would be passed in the suit by virtue of Section 52 of the Transfer of Property Act – In the present case since after execution of sale deed by respondents No. 1 to 9 in favour of the proposed defendants No. 1 & 2 the petitioners/plaintiffs want the decree of declaration against them also and thus the subsequent purchasers subject to the limitation of Section 52 of T.P. Act are also necessary parties. [Champa Rai (Smt.) Vs. Nafeesa Bi] ...2854

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक पक्षकार – याचीगण/वादीगण ने विवादित संपत्ति के संबंध में प्रत्यर्थीगण के विरुद्ध यह कहते हुए घोषणात्मक डिक्री का दावा किया है कि वे प्रस्तावित प्रतिवादी के साथ सह-स्वामी है जिसने प्रत्यर्थीगण क्रमांक 1 से 9 के पक्ष में अभिकथित विक्रय-विलेख निष्पादित किया – अतः उक्त प्रतिवादी आवश्यक पक्षकार है – जहां तक वाद संपत्ति के भाग के क्रेता 1 से 9 का संबंध है, वे उस डिक्री से बाध्य होंगे

जो कि संपत्ति हस्तांतरण अधिनियम की धारा 52 के आधार पर वाद में पारित होगी - वर्तमान प्रकरण में चूंकि प्रत्यर्थी क्रमांक 1 से 9 के द्वारा प्रस्तावित प्रतिवादी क्रमांक 1 और 2 के पक्ष में विक्रय-विलेख निष्पादित करने के पश्चात् याची/वादी उनके विरुद्ध भी घोषणा की डिक्री चाहते हैं तथा इस प्रकार संपत्ति हस्तांतरण अधिनियम की धारा 52 की परिसीमा के अधीन, पश्चात्वर्ती क्रेता भी आवश्यक पक्षकार है। (चम्पा राय (श्रीमती) वि. नफीसा बी)

...2854

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Plaintiff is dominus litis – It is settled law that the plaintiff is the sole dominus litis of his litigation and has a right to implead a party according to his choice and contrary to his wish, he cannot be insisted either by any of the party of the suit or by the court unless there is any cause of action in the suit against such person to file the application under Order 1 Rule 10 of CPC to implead him/ her as party in the matter. [Vinti Solanki Vs. Anil Kumar]

...2568

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – वादी वाद का नियंत्रणकर्ता है – यह एक सुस्थापित विधि है कि वादी अपने वाद का एकमात्र वाद नियंत्रणकर्ता होता है तथा उसे अधिकार है कि वह अपनी पसंद के अनुसार किसी पक्ष को पक्षकार बना सके तथा उसकी इच्छा के विरुद्ध उस पर न तो वाद के किसी पक्षकार द्वारा और न ही न्यायालय द्वारा जोर डाला जा सकता जब तक कि ऐसे व्यक्ति के विरुद्ध वाद में सि.प्र.सं. के आदेश 1 नियम 10 के अंतर्गत उसे पक्षकार बनाने हेतु आवेदन प्रस्तुत करने का वाद हेतुक न हो। (विनती सोलंकी वि. अनिल कुमार)

...2568

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Whether petitioner is a necessary party – Suit was filed for specific performance on the basis of agreement to sale, allegedly executed by respondent No. 2 in favour of respondent No. 1. – Nothing has been stated against the petitioner in the plaint and no relief is claimed against him – Petitioner is neither a necessary nor proper party and thus trial court has not committed any error in dismissing the application to implead the petitioner – However, in the peculiar facts of the case petitioner was extended liberty to file his separate suit against the respondents and other party on arising the occasion and on the basis of available cause of action. [Vinti Solanki Vs. Anil Kumar]

...2568

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – क्या याचिकाकर्ता एक आवश्यक पक्षकार है – प्रत्यर्थी क्रमांक 2 के द्वारा प्रत्यर्थी क्रमांक 1 के पक्ष में कथित तौर पर निष्पादित किये गये विक्रय के करार के आधार पर विनिर्दिष्ट पालन

हेतु वाद प्रस्तुत किया गया – वाद-पत्र में याचिकाकर्ता के विरुद्ध कुछ भी नहीं कहा गया है तथा उसके विरुद्ध कोई अनुतोष नहीं चाहा गया है – याचिकाकर्ता न तो आवश्यक न ही उचित पक्षकार है तथा इस प्रकार विचारण न्यायालय ने याचिकाकर्ता को पक्षकार बनाने के लिये प्रस्तुत किये गये आवेदन को खारिज करने में कोई त्रुटि नहीं कारित की है – तथापि, प्रकरण के विशेष तथ्यों में याचिकाकर्ता को प्रत्यर्थियों के विरुद्ध तथा अन्य पक्षकार के विरुद्ध यदि ऐसी स्थिति उत्पन्न हो तो तथा उपलब्ध वाद-हेतुक के आधार पर पृथक वाद प्रस्तुत करने की स्वतंत्रता प्रदान की गयी थी।
(विनती सोलंकी वि. अनिल कुमार) ...2568

Civil Procedure Code (5 of 1908), Order 5 Rule 12 – Service of summons to the defendant – It is no where mentioned that if the summons/notice is addressed giving the location of residence, the same can only be served at the residence and not at any other place – Hence, service to the petitioner at his shop is not illegal. [Manish Kumar Sharma Vs. Jagdish] (DB)...2951

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 5 नियम 12 – प्रतिवादी को समन की तामीली – यह कहीं भी उल्लिखित नहीं है कि यदि समन/नोटिस में निवास स्थान का पता दिया हो उक्त को केवल निवास पर तामील किया जा सकता है एवं किसी अन्य स्थान पर नहीं – अतः याची को उसकी दुकान पर तामीली अवैध नहीं। (मनीष कुमार शर्मा वि. जगदीश) (DB)...2951

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment – Application for amendment of plaint was filed when the defence evidence was going on – Allowing the application on payment of cost of Rs. 1000/- would not mitigate the circumstances – Delay not properly explained – Petition allowed – Amendment application rejected. [Jaywant Vs. Varsha] ...2640

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – संशोधन – वादपत्र में संशोधन हेतु आवेदन प्रस्तुत किया गया जब बचाव साक्ष्य चल रहा था – रु.1,000/- व्यय के भुगतान पर आवेदन को मंजूर किये जाने से परिस्थितियों की गंभीरता कम नहीं होगी – विलंब को उचित रूप से स्पष्ट नहीं किया गया – याचिका मंजूर – संशोधन आवेदन अस्वीकार किया गया। (जयवंत वि. वर्णा) ...2640

Civil Procedure Code (5 of 1908), Order 7 Rule 11 and Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 82 – Maintainability of suit – Society filed a suit that sale deed executed by defendant no. 1/member of society to defendant no. 2 who is not the member of society without the permission of society be declared as

null and void – Act of sale of plot by defendant no. 1 in favour of defendant no. 2 cannot be said to be touching the business of society – Civil suit maintainable. [Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri] ...3392

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 और सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 82 – वाद की पोषणीयता – सोसाइटी ने वाद प्रस्तुत किया कि प्रतिवादी क्र. 1/सोसाइटी के सदस्य ने सोसाइटी की अनुमति के बिना प्रतिवादी क्र. 2 जो कि सोसाइटी का सदस्य नहीं है को विक्रय विलेख निष्पादित किया जिसे अकृत और शून्य घोषित किया जाये – प्रतिवादी क्र. 1 द्वारा प्रतिवादी क्र. 2 के पक्ष में प्लॉट के विक्रय का कृत्य सोसाइटी के कार्य से संबंधित नहीं कहा जा सकता – सिविल वाद पोषणीय। (केदारनाथ नीखरा वि. सुप्रभात गृह निर्माण सहकारी संस्था मर्यादित, शिवपुरी) ...3392

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Rejection of plaint – Relevant facts which need to be looked into for deciding an application are the averments made in the plaint. [Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri] ...3392

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – वादपत्र का अस्वीकार किया जाना – किसी आवेदन को निर्णीत करने के लिए जिन सुसंगत तथ्यों को देखा जाना आवश्यक है वे वादपत्र में किये गये प्रकथन हैं। (केदारनाथ नीखरा वि. सुप्रभात गृह निर्माण सहकारी संस्था मर्यादित, शिवपुरी) ...3392

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Representation of the People Act, 1951, Sections 83(1), 123(4) [Paras Vs. Chaitanya Kashyap] ...2712

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धाराएं 83(1), 123(4) (पारस वि. चैतन्य कश्यप) ...2712

Civil Procedure Code (5 of 1908), Order 7 Rule 14 – Additional documents – Earlier the application under Order 11 Rule 14 of CPC was dismissed on merits by holding that the documents are being filed at very belated stage – At subsequent stage application under Order 7 Rule 14 of the CPC for taking same document on record is not maintainable – Once the trial Court has passed the order on merits have no authority to reconsider the matter contrary to the earlier order. [Devendra Kumar Nayak Vs. Sudha Nayak (Smt.)] ...3176

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 14 – अतिरिक्त दस्तावेज – पूर्व में सि.प्र.सं. के आदेश 11 नियम 14 के अंतर्गत आवेदन को यह ठहराते हुए कि दस्तावेज अत्यंत विलंबित प्रक्रम में प्रस्तुत किए जा रहे हैं, खारिज किया गया – पश्चात्पूर्वी प्रक्रम में उसी दस्तावेज को अभिलेख में लेने के लिए सि. प्र.सं. के आदेश 7 नियम 14 के अंतर्गत आवेदन पोषणीय नहीं है – विचारण न्यायालय ने जब एक बार गुणदोष के आधार पर आदेश पारित किया है तो उसे अपने पूर्ववर्ती आदेश के विरुद्ध मामले पर पुनर्विचार करने का प्राधिकार नहीं है। (देवेन्द्र कुमार नायक वि. सुधा नायक (श्रीमती)) ...3176

Civil Procedure Code (5 of 1908), Order 7 Rule 14 – Scope – If the document which desires to be taken on record was very well in the knowledge of the party since long but same not filed on earliest opportunity then the same could not be permitted to file on subsequent stage. [Devendra Kumar Nayak Vs. Sudha Nayak (Smt.)] ...3176

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 14 – विस्तार – यदि दस्तावेज जिसे अभिलेख पर लिया जाना चाहा गया है वह भली भांति पक्षकार की जानकारी में पहले से था परंतु उसे सर्वप्रथम अवसर पर प्रस्तुत नहीं किया गया, तब उसे पश्चात्पूर्वी प्रक्रम पर प्रस्तुत करने की अनुमति नहीं दी जा सकती। (देवेन्द्र कुमार नायक वि. सुधा नायक (श्रीमती)) ...3176

Civil Procedure Code (5 of 1908), Order 9 Rule 5 and Order 5 Rule 20 – Appellants despite service report to the effect that the respondent Nos. 2 & 4 are not residing at the given address and despite granting time, not supplied correct address – Though fresh steps were taken but not at the correct address – Held – Paying process fee alone without supplying the correct address cannot be considered as compliance of the provision – However, final opportunity is given to the appellant to file correct address or in alternative file application under Order 5 Rule 20 for substituted service, subject to payment of cost of Rs. 5,000/-. [Ashok Kumar Gupta Vs. United Commercial Bank] ...2782

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 5 एवं आदेश 5 नियम 20 – अपीलार्थीगण ने इस प्रभाव के तामीली प्रतिवेदन के बावजूद कि प्रत्यर्थी क्रं. 2 व 4 दिये गये पते पर निवासरत नहीं हैं एवं समय प्रदान किये जाने के बावजूद, सही पता उपलब्ध नहीं कराया है – यद्यपि नये सिरे से कदम उठाये गये परंतु सही पते पर नहीं – अभिनिर्धारित – सही पता उपलब्ध कराये बिना मात्र आदेशिका फीस अदा करना उपबंध के अनुपालन के रूप में नहीं माना जा सकता – यद्यपि, अपीलार्थी को रु. 5000/- व्यय के भुगतान के अधीन, सही पता प्रस्तुत करने के लिए या विकल्प में प्रतिस्थापित तामील हेतु आदेश 5 नियम 20 के अंतर्गत आवेदन प्रस्तुत

करने के लिए अंतिम अवसर दिया गया। (अशोक कुमार गुप्ता वि. यूनाईटेड कमर्शियल बैंक)
...2782

Civil Procedure Code (5 of 1908), Order 9 Rule 9 & Order 17 Rule 3 – Restoration of Civil Suit – Maintainability – Application under Order 17 Rule 1 C.P.C. was dismissed and the suit was dismissed under Order 17 Rule 3 although the Evidence was not recorded and Plaintiff and his witnesses were absent – As suit was dismissed under Rule 17 Rule 3, the only remedy lies to the applicants to file an appeal against the said order – Although the Trial Court had no power to proceed under Order 17 Rule 3 and acted erroneously in doing so, but application under Order 9 Rule 9 was not maintainable and only remedy available is to file an appeal – Revision dismissed. [Har Prasad Vs. Maniram]
...3067

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 9 व आदेश 17 नियम 3 – सिविल वाद का पुनःस्थापन – पोषणीयता – सि.प्र.सं. के आदेश 17 नियम 1 के अंतर्गत आवेदन निरस्त किया गया तथा आदेश 17 नियम 3 के अंतर्गत वाद निरस्त किया गया यद्यपि साक्ष्य अभिलेखित नहीं किया गया तथा वादी और उसके साक्षी अनुपस्थित थे – चूंकि आदेश 17 नियम 3 के अंतर्गत वाद निरस्त किया गया तो आवेदकों के समक्ष उक्त आदेश के विरुद्ध अपील प्रस्तुत करने का एकमात्र उपचार उपलब्ध है – यद्यपि विचारण न्यायालय को आदेश 17 नियम 3 के अंतर्गत कार्यवाही करने की शक्ति प्राप्त नहीं थी और ऐसा करने में उसने गलती की है, परंतु आदेश 9 नियम 9 के अंतर्गत आवेदन पोषणीय नहीं था तथा अपील प्रस्तुत करना ही एकमात्र उपचार उपलब्ध है – पुनरीक्षण खारिज। (हरप्रसाद वि. मनीराम)
...3067

Civil Procedure Code (5 of 1908), Order 14 Rule 2 – See – Motor Vehicles Act, 1988, Section 166 [Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari]
...3361

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – देखें – मोटर यान अधिनियम, 1988, धारा 166 (सुषमा सिंह (श्रीमती) वि. राम शिरोमणी तिवारी)
...3361

Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Issuance of Commission – Stage of consideration – At the interlocutory stage – No party could be permitted to use the court process to collect evidence as agency – Evidence yet to be recorded. [Ramavtar Vs. Shivbhajan]
...2560

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – कमीशन जारी

किया जाना – विचार किये जाने का प्रक्रम – अंतर्वर्ती प्रक्रम पर – किसी पक्षकार को साक्ष्य एकत्रित करने की एजेंसी के रूप में न्यायालय की प्रक्रिया का उपयोग करने की अनुमति नहीं दी जा सकती – साक्ष्य अभिलिखित किया जाना बाकी है। (रामअवतार वि. शिवमजन) ...2560

Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Issuance of Commission, to ascertain actual possession – Such prayer could be considered at the stage of appreciation of evidence and not prior to that. [Ramavtar Vs. Shivbhajan] ...2560

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – वास्तविक कब्जा सुनिश्चित करने के लिये, कमीशन जारी किया जाना – ऐसी प्रार्थना को साक्ष्य के मूल्यांकन के प्रक्रम पर विचार में लिया जा सकता है न कि इससे पहले। (रामअवतार वि. शिवमजन) ...2560

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Revocation of suspension and transfer – Composite order – If the authority is competent to revoke suspension as also to transfer the employee, it is open to such Authority to pass a composite order – Whether a transfer order can withstand the test of judicial scrutiny, will be an independent issue to be decided on settled legal principles. [Asif Mohd. Khan Vs. State of M.P.] (FB)...3141

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – निलंबन तथा स्थानांतरण का प्रतिसंहरण – संयुक्त आदेश – यदि प्राधिकारी निलंबन का प्रतिसंहरण करने तथा कर्मचारी का स्थानांतरण करने में भी सक्षम है उक्त प्राधिकारी को संयुक्त आदेश पारित करने की छूट होगी – क्या स्थानांतरण आदेश न्यायिक संवीक्षा की कसौटी को सहन कर सकता है, एक स्वतंत्र विवादक होगा जो कि स्थापित विधिक सिद्धांतों पर निर्णीत होगा। (आसिफ मोहम्मद खान वि. म.प्र. राज्य) (FB)...3141

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(i) to (iv) & Rule 12(2)(a) & (b) – Suspension Order – Challenged on the ground of competency of Commissioner despite there being a delegation of power under Rule 12(2)(a) & (b) – Held – As per notification except Director all Class I Government Servant posted under the control of Commissioner and since the petitioner does not hold the post of Director, Commissioner being a disciplinary authority is empowered to place the petitioner under suspension. [K.K. Tamrakar Vs. State of M.P.] ...2874

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 (i) से (iv) व नियम 12(2)(ए) व (बी) – निर्लंबन आदेश – नियम 12(2)(ए) व (बी) में शक्ति का प्रत्यायोजन होने के बावजूद आयुक्त की सक्षमता के आधार पर चुनौती दी गयी – अभिनिर्धारित – अधिसूचना के अनुसार संचालक के अतिरिक्त आयुक्त के नियंत्रण के अधीन पदस्थ सभी प्रथम श्रेणी शासकीय सेवक और चूंकि याची द्वारा संचालक का पद धारित नहीं किया गया है, आयुक्त एक अनुशासनात्मक प्राधिकारी होने के नाते याची को निर्लंबित करने के लिए सशक्त है। (के.के. ताम्रकार वि. म. प्र. राज्य)

...2874

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 & 15 – Non Supply of Enquiry Report – Matter remitted back to the disciplinary authority from the stage of supply of enquiry report for proceeding further in accordance with Rules, 1966 – Disciplinary Authority while taking final decision in the matter shall also take a decision regarding entitlement of petitioner to consequential benefits if so – Writ petition disposed off. [Yogiraj Sharma (Dr.) Vs. State of M.P.]

...2644

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 15 – जांच-प्रतिवेदन की आपूर्ति न होना – नियम 1966 के अनुसार आगे की कार्यवाही करने हेतु जांच प्रतिवेदन की आपूर्ति के स्तर पर मामला अनुशासनात्मक प्राधिकारी को वापस प्रेषित किया गया – मामले में अंतिम निर्णय लेते समय अनुशासनात्मक प्राधिकारी इस संबंध में भी निर्णय लेगा कि याचिकाकर्ता पारिणामिक लाभ यदि कोई हो का हकदार है – रिट याचिका निराकृत की जाती है। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य)

...2644

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 & 15 – Procedure for imposing Penalties – Charge sheet containing charges, statement of imputation of misconduct, list of documents and list of witnesses was supplied to petitioner – Petitioner was afforded an opportunity of inspection of documents – Supply of documents at the stage of written statement of defence is not required under Rule 14(4) – Petitioner never raised the plea of vagueness of charges in the departmental enquiry – Documents sought by petitioner were supplied to him – No question any prejudice on account of non-supply of documents arise – It is also clear from enquiry report that Enquiry Officer has assessed the evidence in respect of each article of charge and has recorded a finding after considering the defence of the petitioner – Departmental Enquiry has been conducted in accordance

with Rules. [Yogiraj Sharma (Dr.) Vs. State of M.P.]

...2644

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 15 — शास्तियां अधिरोपित करने की प्रक्रिया — आरोपों से युक्त आरोप-पत्र, कदाचार के आरोप का कथन, दस्तावेजों की सूची तथा साक्षियों की सूची याचिकाकर्ता को प्रदान की गई — याचिकाकर्ता को दस्तावेजों को निरीक्षण करने का अवसर प्रदान किया गया — नियम 14(4) के अंतर्गत प्रतिरक्षा के लिखित कथन के स्तर पर दस्तावेज प्रदान करना आवश्यक नहीं है — याचिकाकर्ता ने विभागीय जांच में कभी भी आरोपों की अस्पष्टता का अभिवाक नहीं किया है — याचिकाकर्ता द्वारा मांगे गये दस्तावेज उसे प्रदान किये गये — दस्तावेज की आपूर्ति न होने से किसी प्रकार के पूर्वाग्रह का कोई प्रश्न नहीं उठता — जांच प्रतिवेदन से यह भी स्पष्ट है कि जांचकर्ता अधिकारी ने आरोप के प्रत्येक बिंदु के संबंध में साक्ष्य का मूल्यांकन किया है तथा याचिकाकर्ता के बचाव को ध्यान में रखने के पश्चात् निष्कर्ष अभिलिखित किया है — विभागीय जांच नियमों के अनुसार संचालित की गई है। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य)

...2644

Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Recovery – Penalty of deduction of 10% of the amount from the pension of the petitioner – No show cause notice was issued to the petitioner – Second enquiry on the same charge which could not be proved during first enquiry is not permissible – In first enquiry, charges are not found to be proved against the petitioner – As no financial loss caused to Bank, punishment imposed is too harsh and disproportionate – Order quashed – Respondents directed to release pension. [G.D. Purohit Vs. State of M.P.]

...2607

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – वसूली — याची की पेंशन से 10% राशि का कटौती करने की शास्ति — याची को कोई कारण बताओ नोटिस जारी नहीं किया गया — उसी आरोप पर जिसे प्रथम जांच के दौरान साबित नहीं किया जा सका है, द्वितीय जांच अनुज्ञेय नहीं — याची के विरुद्ध प्रथम जांच में, आरोप सिद्ध नहीं पाये गये — चूंकि बैंक को कोई वित्तीय हानि कारित नहीं हुई, अधिरोपित शास्ति अधिक कठोर एवं अननुपातिक है — आदेश अभिखंडित — प्रत्यर्थीगण को पेंशन मुक्त करने के लिये निदेशित किया गया। (जी.डी. पुरोहित वि. म.प्र. राज्य)

...2607

Civil Services (Pension) Rules, M.P. 1976, Rule 9(1) – Consultation with Public Service Commission – Nothing on record that Public Service Commission was consulted before imposition of penalty of withholding of 10% of pension. [R.K. Jain Vs. State of M.P.]

...3204

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(1) – लोक सेवा आयोग से परामर्श – अभिलेख पर कुछ नहीं कि 10% पेंशन रोकने की शास्ति अधिरोपित करने के पूर्व लोक सेवा आयोग से परामर्श लिया गया था। (आर.के. जैन वि. म.प्र. राज्य) ...3204

Civil Services (Pension) Rules, M.P. 1976, Rule 9(2) – Report to Governor – If a departmental enquiry was initiated by an authority subordinate to Governor, a report regarding finding has to be submitted to Governor. [R.K. Jain Vs. State of M.P.] ...3204

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(2) – राज्यपाल को प्रतिवेदन – यदि राज्यपाल के अधीनस्थ प्राधिकारी द्वारा विभागीय जांच प्रारंभ की गई, निष्कर्ष संबंधी प्रतिवेदन राज्यपाल को प्रस्तुत किया जाना चाहिए। (आर.के. जैन वि. म.प्र. राज्य) ...3204

Civil Services (Pension) Rules, M.P. 1976, Rules 9, 64 & 65 – Withholding of pension – A definite finding is required to be recorded with regard to gravity of misconduct and ultimate result of such misconduct, whether it would have been resulted in dismissal from service, had Govt. servant remained in service – Then only penalty can be imposed. [R.K. Jain Vs. State of M.P.] ...3204

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9, 64 व 65 – पेंशन का रोका जाना – अवचार की गंभीरता के संबंध में निश्चित निष्कर्ष अभिलिखित किया जाना अपेक्षित है एवं उक्त अवचार का अंतिम परिणाम, क्या इसका परिणाम सेवा से पदच्युति होता है, यदि शासकीय सेवक सेवा में रहता – केवल तब शास्ति अधिरोपित की जा सकती है। (आर.के. जैन वि. म.प्र. राज्य) ...3204

Coal Mines Provident Fund & Miscellaneous Provisions Act, (46 of 1948), Section 3 – See – Succession Act, 1925, Section 373, 384 [Regional Commissioner Vs. Bhuria Bai] ...2777

कोयला खान भविष्य निधि तथा प्रकीर्ण उपबंध अधिनियम, (1948 का 46), धारा 3 – देखें – उत्तराधिकार अधिनियम, 1925, धारा 373, 384 (रीजनल कमिश्नर वि. भूरिया बाई) ...2777

Coal Mines Provident Fund, Coal Mines Family Pension & Coal Mines Deposit Linked Insurance Scheme 1948, Clause 64 – See – Succession Act, 1925, Section 373, 384 [Regional Commissioner Vs. Bhuria Bai] ...2777

कोयला खान भविष्य निधि, कोयला खान परिवार पेंशन एवं कोयला खान

निक्षेप संबद्ध बीमा योजना, 1948, खंड 64 - देखें - उत्तराधिकार अधिनियम, 1925, धारा 373, 384 (रीजनल कमिशनर वि. मूरिया बाई) ...2777

Conduct of Election Rules, 1961, Rule 63(1) & (2) - See - Representation of the People Act, 1951, Sections 80, 81 & 100(1)(d)(iv) [Arjun Kakodiya Vs. Kamal Marskole] ...2699

निर्वाचन का संचालन नियम, 1961, नियम 63(1) व (2) - देखें - लोक प्रतिनिधित्व अधिनियम, 1951, धाराएं 80, 81 व 100(1)(डी)(iv) (अर्जुन काकोडिया वि. कमल मार्सकोले) ...2699

Constitution - Article 14, 243-X(b) and Municipal Corporation Act, M.P. (23 of 1956), Section 133 - Collection of Tax - Delegation of power to Municipal Corporations subject to limitations and conditions - Article 243-X was incorporated to empower the Municipal Corporation to levy such taxes which was originally levied by State Govt. so as to make them independent units of self governance - Section 133(1) of Act, 1956 was thereafter amended and provision was incorporated for the purpose of empowering the Municipal Corporations to impose any Tax or Fee - However, imposition of tax is by resolution of Municipal Corporation and is subject to control of the State Government - Discretion is given to Municipal Corporation in the matter of fixation of tax and selection of minimum or maximum as may be required, and merely because the minimum or maximum rate of tax has not been fixed, the provision cannot be termed as unconstitutional. [Hoarding Advertisement People Welfare Association Vs. State of M.P.] (DB)...2611

संविधान - अनुच्छेद 14, 243-X(बी) एवं नगरपालिक निगम अधिनियम, म. प्र. (1956 का 23), धारा 133 - कर का संग्रहण - नगरपालिक निगमों को शक्ति का प्रत्योजन सीमाओं और शर्तों के अधीन - अनुच्छेद 243-X नगरपालिक निगम को सशक्त करने के लिए समाविष्ट किया गया जिससे वे ऐसे करों को उदग्रहित कर सकें जो कि मूलतः राज्य शासन द्वारा उदग्रहित किये जा सकें जिससे उन्हें स्वशासन की स्वतंत्र इकाई बनाया जा सके - अधिनियम 1956 की धारा 133(1) का तत्पश्चात् संशोधन किया गया तथा नगरपालिक निगमों को कोई भी कर अथवा शुल्क अधिरोपित करने के लिए सशक्त बनाने के उद्देश्य से प्रावधान समाविष्ट किया गया - तथापि, कर का अधिरोपण नगरपालिक निगम के प्रस्ताव से होता है तथा राज्य शासन के नियंत्रण के अधीन होता है - नगरपालिक निगम को कर के निर्धारण तथा न्यूनतम अथवा अधिकतम जैसी आवश्यकता हो के चयन के मामले में विवेकाधिकार दिया जाता है, तथा केवल इस कारण से कि कर की न्यूनतम अथवा

अधिकतम दर निर्धारित नहीं की गयी है, इस प्रावधान को असंवैधानिक नहीं ठहराया जा सकता। (होर्डिंग एडवर्टाइजमेन्ट पी-प्ल वेलफेयर एसोसिएशन वि. म.प्र. राज्य) (DB)...2611

Constitution – Article 16 – See – Educational Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, Rule 11-B [Gazetted Headmasters Pradeshi Sangh, Madhya Pradesh Vs. State of M.P.] (DB)...2888

संविधान – अनुच्छेद 16 – देखें – शैक्षिक सेवा (विद्यालय शाखा) मर्ती तथा पदोन्नति नियम, म.प्र. 1982, नियम 11-बी (गजटेड हेडमास्टर्स प्रादेशिक संघ, मध्यप्रदेश वि. म.प्र. राज्य) (DB)...2888

Constitution – Article 226 – Assessment by DPC – High Court cannot sit in appeal over the assessment made by DPC – If assessment made by DPC is perverse or not based on record or proper record has not been considered by DPC, it is open to High Court to remit the matter back to DPC for recommendation but it cannot assess the merit on its own. [H.S. Sidhu Vs. Devendra Bapna] (SC)...2819

संविधान – अनुच्छेद 226 – विभागीय पदोन्नति समिति द्वारा निर्धारण – विभागीय पदोन्नति समिति द्वारा किये गये निर्धारण पर उच्च न्यायालय अपील नहीं सुन सकता – यदि विभागीय पदोन्नति समिति द्वारा किया गया निर्धारण अनुचित है अथवा अभिलेख पर आधारित नहीं है अथवा विभागीय पदोन्नति समिति द्वारा उचित अभिलेख पर विचार नहीं किया गया है तब उच्च न्यायालय मामले को अनुशंसा के लिये विभागीय पदोन्नति समिति को वापस भेज सकता है परंतु वह स्वयं गुणदोष का निर्धारण नहीं कर सकता। (एच.एस. सिद्धू वि. देवेन्द्र बापना) (SC)...2819

Constitution – Article 226 – Departmental Enquiry – Judicial Review – Scope – Court is not constituted as a Court of Appeal under Article 226 of Constitution – Court concerned to determine whether the enquiry is held by a competent authority and whether rules of Natural Justice are not violated – Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty – High Court can not review the evidence and to arrive at an independent finding – If the decision of authority is vitiated by considerations extraneous to the evidence and merits case, or if conclusion made by authority, is wholly arbitrary or capricious and no reasonable person could have arrived at such a conclusion, only

then interference is permissible. [Yogiraj Sharma (Dr.) Vs. State of M.P.] ...2644

संविधान - अनुच्छेद 226 - विभागीय जाँच - न्यायिक पुनर्विलोकन - विस्तार - संविधान के अनुच्छेद 226 के अंतर्गत, न्यायालय का गठन अपीलीय न्यायालय के रूप में नहीं किया गया है - न्यायालय यह निर्धारित करने से संबंधित है कि क्या जाँच सक्षम प्राधिकारी द्वारा की गयी है तथा क्या प्राकृतिक न्याय के नियमों का उल्लंघन नहीं किया गया है - क्या ऐसा कोई साक्ष्य है, जो उस प्राधिकारी द्वारा स्वीकृत किया गया है जिसे जाँच करने का कर्तव्य सौंपा गया है तथा जो साक्ष्य इस निष्कर्ष का युक्तियुक्त रूप से समर्थन करे कि अपचारी अधिकारी दोषी है - उच्च न्यायालय साक्ष्य का पुनर्विलोकन नहीं कर सकता और स्वतंत्र निष्कर्ष पर नहीं पहुँच सकता - यदि प्राधिकारी का निर्णय साक्ष्य तथा प्रकरण के गुणागुण से परे बाहरी कारणों से दूषित होता है, अथवा यदि प्राधिकारी द्वारा दिया गया निष्कर्ष, पूर्ण रूप से मनमाना अथवा अनुचित है तथा कोई भी युक्तियुक्त व्यक्ति इस तरह के निष्कर्ष पर नहीं पहुँच सकता है, केवल तब हस्तक्षेप अनुज्ञेय है। (योगीराज शर्मा (डॉ.) वि. म.प्र. राज्य) ...2644

Constitution - Article 226 - Disputed question of fact - Whether writ jurisdiction under Article 226 can be invoked - Held - No. [Ram Swaroop Chaturvedi Vs. State of M.P.] (DB)...2921

संविधान - अनुच्छेद 226 - तथ्य का प्रश्न विवादित - क्या अनुच्छेद 226 के अंतर्गत रिट अधिकारिता का अवलंब लिया जा सकता है - अभिनिर्धारित - नहीं। (राम स्वरूप चतुर्वेदी वि. म.प्र. राज्य) (DB)...2921

Constitution - Article 226 - Education - Professional Examination Board (Vyapam) conducting examination in 2012 for Selection of Junior Supply Officers and Inspectors (Weights and Measures) - Petitioners were appointed on those posts - Irregularities were committed in that examination - Vyapam cancelling the results of candidates, leading to filing of the present writ petitions - Held - VYAPAM did not set up any enquiry Committee of its own - VYAPAM had not independently inquired into the factual aspects, abdication of duty by VYAPAM - It is wrong to say that inquiry by VYAPAM would be empty formality - The impugned common order dated 13.06.2014 quashed and VYAPAM granted liberty to commence independent inquiry on the basis of information received from the investigating agency (S.T.F.). [Shishuvendra Singh Tomar Vs. State of M.P.]

(DB)...2579

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संविधान - अनुच्छेद 226 - शिक्षा - कनिष्ठ आपूर्ति अधिकारी एवं निरीक्षक (नापतोल) के चयन हेतु व्यावसायिक परीक्षा मंडल द्वारा 2012 में परीक्षा ली गई - याचीगण उन पदों पर नियुक्त किये गये - उस परीक्षा में अनियमितताएं कारित की गई - व्यापम ने अभ्यर्थियों का परिणाम निरस्त किया जिसके फलस्वरूप वर्तमान रिट याचिकाएं प्रस्तुत की गई - अभिनिर्धारित - व्यापम ने अपने से कोई जांच समिति गठित नहीं की - व्यापम ने स्वतंत्र रूप से तथ्यात्मक पहलुओं की जांच नहीं की, व्यापम द्वारा कर्तव्य का त्याग किया गया - यह कहना गलत है कि व्यापम द्वारा जांच खाली औपचारिकता होगी - आक्षेपित सामान्य आदेश दिनांक 13.06.2014 अभिखंडित किया गया तथा व्यापम को अन्वेषण एजेंसी (एस.टी.एफ.) से प्राप्त जानकारी के आधार पर स्वतंत्र जांच आरंभ करने की स्वतंत्रता प्रदान की गई। (शिशुवेन्द्र सिंह तोमर वि. म.प्र. राज्य) (DB)...2579

Constitution - Article 226 - Maintainability of petition - Alternative Remedy - If a substantial legal question for interpretation is involved, Writ Court can directly interfere - As far as grant of benefit of rebate of input tax is concerned, is to be decided on admitted facts for which no dispute or enquiry into factual aspects of matter is called for - Petition maintainable. [Commercial Engineers & Body Building Company Ltd. (M/s.) Vs. Divisional Dy. Commissioner] (DB)...2668

संविधान - अनुच्छेद 226 - याचिका की पोषणीयता - वैकल्पिक उपचार - यदि निर्वचन हेतु कोई सारवान विधिक प्रश्न अंतर्गुस्त है, रिट न्यायालय प्रत्यक्ष रूप से हस्तक्षेप कर सकता है - जहां तक निवेश कर की छूट के लाभ को प्रदान किये जाने का संबंध है, इसका निर्णय स्वीकृत तथ्यों पर किया जाना चाहिए जिसके लिए मामले के तथ्यात्मक पहलुओं की जांच या विवाद आवश्यक नहीं - याचिका पोषणीय। (कमर्शियल इंजीनियर्स एण्ड बॉडी बिल्डिंग कंपनी लि. (मे.) वि. डिवीजनल डिप्टी कमिशनर) (DB)...2668

Constitution - Article 226 - Non-payment of salary - Payment - Petitioner was initially appointed as ad-hoc Assistant Professor - Subsequently he was recognized as regular Asstt. Professor - Order was withdrawn subsequently - Consequently, he was not paid salary for three years - Petition was allowed and order withdrawing the recognition as regular Asstt. Professor was quashed and it was directed to pay all benefits - Held - Although earlier order is silent about interest but at the same time it was not denied - As petitioner was denied of the amount, claim of petitioner for interest in lieu of wrongful non-payment of amount cannot be denied - Respondents directed to pay interest @ 9% p.a. [Subhash Tiwari Vs. State of M.P.] ...3202

संविधान - अनुच्छेद 226 - वेतन का भुगतान नहीं किया जाना - भुगतान - याची प्रारंभ में तदर्थ सहायक प्राध्यापक के रूप में नियुक्त किया गया था - तत्पश्चात् उसे नियमित सहायक प्राध्यापक के रूप में मान्यता दी गयी - तत्पश्चात् आदेश वापस लिया गया - परिणामस्वरूप, तीन वर्षों तक उसे वेतन का भुगतान नहीं किया गया - याचिका स्वीकार की गयी तथा नियमित सहायक प्राध्यापक की मान्यता वापस लेने वाला आदेश अभिखंडित किया गया तथा सभी लाभों का भुगतान करने का निदेश दिया गया - अभिनिर्धारित - यद्यपि ब्याज के संबंध में पूर्ववर्ती आदेश मौन है परंतु साथ ही उसे अस्वीकार नहीं किया गया था - चूंकि याची को राशि नहीं दी गई थी, इसलिये गलत तरीके से राशि का भुगतान नहीं किये जाने के एवज् में ब्याज के लिये याची के दावे को अस्वीकार नहीं किया जा सकता - 9% प्रतिवर्ष की दर से ब्याज का भुगतान करने के लिये प्रत्यर्थी को निदेशित किया गया। (सुभाष तिवारी वि. म.प्र. राज्य) ...3202

Constitution - Article 226 - Transfer - Stay till representation is decided - Representation filed by employee does not create any right in his favour to remain at a same place from where he has been transferred - He must join at transferred place, even if he has to pursue remedy of representation - It is not for court to sit over the subjective satisfaction or dictate to concerned authority, being purely administrative matter - Court must eschew from issuing interim direction. [Mridul Kumar Sharma Vs. State of M.P.] (DB)...2556

संविधान - अनुच्छेद 226 - स्थानांतरण - अभ्यावेदन का विनिश्चय किये जाने तक रोक - कर्मचारी द्वारा प्रस्तुत अभ्यावेदन उसे उसी स्थान पर बने रहने के लिये, जहां से उसे स्थानांतरित किया गया है, उसके पक्ष में कोई अधिकार सृजित नहीं करता - उसे स्थानांतरित स्थान पर पदभार ग्रहण करना चाहिए, यदि उसे अभ्यावेदन के उपचार का अवलंब लेना हो तब भी - यह न्यायालय के लिए नहीं है कि वैयक्तिक संतुष्टि पर विचार करे या संबंधित प्राधिकारी को आदेशित करे, क्योंकि यह शुद्ध रूप से प्रशासनिक मामला है - न्यायालय को अंतरिम निदेश जारी करने से बचना चाहिए। (मृदुल कुमार शर्मा वि. म.प्र. राज्य) (DB)...2556

Constitution - Article 226 - Writ of quo warranto - Respondent no. 1 was appointed on daily wages and subsequently his services were regularized - Order of regularization of services was quashed by High Court therefore, the respondent no. 1 was deemed to be daily wage employee - Thereafter, the respondent no. 1 was appointed on the post of Sub-Engineer on regular basis, on the recommendations of the Chief Minister without following the selection process as specified in M.P. Municipalities Act or recruitment Rules - Procedure to be followed for

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making appointments on civil post, is that, it is not only a matter of moment for administration but for affording equal and fair opportunity to aspiring candidates for being considered for appointment – Appointment of respondent no. 1 quashed – Directions issued for initiating action against those who were instrumental to the illegal appointment of respondent no. 1 – Chief Secretary also directed to enquire into whether any employee has been or was appointed on regular basis without following selection process prescribed in relevant rules and to proceed against all such persons – Chief Secretary must then initiate necessary proposal for revocation of illegal appointments – Petition allowed. [Mansukhlal Saraf Vs. Arun Kumar Tiwari] (DB)...3235

संविधान – अनुच्छेद 226 – अधिकार पृच्छा की रिट – प्रत्यर्थी क्र. 1 दैनिक वेतन पर नियुक्त हुआ था और बाद में उसकी सेवायें नियमित कर दी गई – सेवा के नियमितीकरण का आदेश उच्च न्यायालय द्वारा अभिखंडित किया गया, इस कारण प्रत्यर्थी क्रमांक 1 को दैनिक वेतन भोगी कर्मचारी माना गया—तत्पश्चात्, नगरपालिका अधिनियम या भर्ती नियम की विनिर्दिष्ट चयन प्रक्रिया अपनाये बिना मुख्यमंत्री की अनुशंसा पर प्रत्यर्थी क्रमांक 1 को नियमित रूप से उप अभियंता के पद पर नियुक्त किया गया था – सिविल पद पर नियुक्तियाँ करने हेतु अपनाये जाने की प्रक्रिया यह है कि यह न केवल प्रशासन के लिये आवश्यक विषय है बल्कि नियुक्ति के लिये विचार किये जाने हेतु पदाभिलाषी अभ्यर्थियों को समान एवं उचित अवसर प्रदान करने के लिये भी है – प्रत्यर्थी क्रमांक 1 की नियुक्ति अभिखंडित – प्रत्यर्थी क्रमांक 1 की अवैध नियुक्ति में सहायता करने वालों के विरुद्ध कार्यवाही आरंभ करने हेतु निदेश जारी किये गये – मुख्य सचिव को भी यह जांच करने के लिये कि क्या किसी कर्मचारी को सुसंगत नियमों में विहित चयन प्रक्रिया का पालन किये बिना नियमित आधार पर नियुक्त किया गया है अथवा किया गया था और ऐसे सभी व्यक्तियों के विरुद्ध कार्यवाही करने के लिये निदेशित किया गया—मुख्य सचिव को तब अवैध नियुक्तियों के निरसन के लिये आवश्यक प्रस्ताव रखना चाहिये—याचिका मंजूर। (मनसुखलाल सराफ वि. अरुण कुमार तिवारी) (DB)...3235

Constitution – Article 226 – Writ Petition – Necessary Party – Allegation of malafide against appointing authority – Held – Concerned authority against whom malafides are levelled is a necessary party by name in the proceedings. [Ram Swaroop Pandre Vs. State of M.P.] (DB)...2850

संविधान – अनुच्छेद 226 – रिट पिटीशन – आवश्यक पक्षकार – नियुक्ति प्राधिकारी के विरुद्ध कदाशय का अभिकथन – अभिनिर्धारित – संबंध प्राधिकारी जिसके विरुद्ध कदाशय आरोपित है, कार्यवाहियों में नाम से आवश्यक पक्षकार है। (राम स्वरूप पांद्रे वि. म.प्र. राज्य) (DB)...2850

Constitution – Article 227 and Civil Procedure Code (5 of 1908), Section 115 – Scope of Interference – Orders passed under the vested discretionary jurisdiction could not be interfered in writ or revisional jurisdiction. [Ramavtar Vs. Shivbhajan] ...2560

संविधान – अनुच्छेद 227 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 – हस्तक्षेप की परिधि – निहित वैवेकिक अधिकारिता के अंतर्गत पारित किये गये आदेशों में हस्तक्षेप रिट या पुनरीक्षण अधिकारिता में नहीं किया जा सकता। (रामअवतार वि. शिवमजन) ...2560

Constitution – Article 227 – Scope of interference of High Court in the order passed by the trial court under its vested discretionary jurisdiction – Impugned order passed by the trial court under its vested discretionary jurisdiction – It is settled law that such orders passed by the sub-ordinate courts under the vested discretionary jurisdiction of such courts, should not be interfered at the stage of revision or writ petition under Article 227. [Gajadhar Prasad Vs. Smt. Shakuntala Mishra] ...2859

संविधान – अनुच्छेद 227 – विचारण न्यायालय द्वारा उसमें निहित वैवेकिक अधिकारिता में पारित आदेश में उच्च न्यायालय के हस्तक्षेप की व्याप्ति – विचारण न्यायालय द्वारा पारित किया गया आक्षेपित आदेश उसमें निहित वैवेकिक अधिकारिता के अंतर्गत है – यह सुस्थापित विधि है कि अधीनस्थ न्यायालयों द्वारा उनमें निहित वैवेकिक अधिकारिता के अंतर्गत पारित किये गये ऐसे आदेशों में पुनरीक्षण या अनुच्छेद 227 के अंतर्गत रिट याचिका के प्रक्रम पर हस्तक्षेप नहीं किया जाना चाहिये। (गजाधर प्रसाद वि. श्रीमती शकुन्तला मिश्रा) ...2859

Constitution – Article 243 and Municipalities Act, M.P. (37 of 1961), Section 19 & 3(7) – Councillors – President of Municipality – Is not Councillor – May be representative of the entire municipal area. [Sangeeta Bansal (Smt.) Vs. State of M.P.] ...3217

संविधान – अनुच्छेद 243 एवं नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 19 व 3(7) – पार्षद – नगरपालिका अध्यक्ष – पार्षद नहीं है – संपूर्ण नगरीय क्षेत्र का प्रतिनिधि हो सकता है। (संगीता बंसल (श्रीमती) वि. म.प्र. राज्य)...3217

Constitution – Article 309 – Appointment – Right of a wait listed candidate – Post of Rozgar Sahayak fallen vacant due to resignation given by a person appointed on merit basis – Petitioner is seeking appointment on the ground that he was placed in the waiting list – Held – Wait list candidate has no vested right to be appointed –

He can only claim appointment when a selected candidate does not join and that too during the operative period of waiting list – Petition is dismissed. [Brajesh Kumar Pandey Vs. State of M.P.] ...2574

संविधान – अनुच्छेद 309 – नियुक्ति – प्रतीक्षा सूची के अभ्यर्थी का अधिकार – योग्यता के आधार पर नियुक्त एक व्यक्ति द्वारा त्यागपत्र दिये जाने के कारण रोजगार सहायक का पद रिक्त हुआ – याची इस आधार पर नियुक्ति चाह रहा है कि उसे प्रतीक्षा सूची में रखा गया था – अभिनिर्धारित – प्रतीक्षा सूची के अभ्यर्थी को नियुक्ति का कोई निहित अधिकार नहीं – वह नियुक्ति का दावा केवल तब कर सकता है जब कोई चयनित अभ्यर्थी पदभार ग्रहण नहीं करता और यह भी केवल प्रतीक्षा सूची की अवधि प्रवर्तनशील रहने के दौरान – याचिका खारिज। (ब्रजेश कुमार पांडे वि. म.प्र. राज्य) ...2574

Contract Act (9 of 1872), Sections 23 & 28 – Contracts opposed to public policy – When a dispute arises where both the parties are Indian, and if the contract has the effect of compelling them to resort to arbitration by foreign arbitrators and thereby impliedly excluding the remedy available to them under the ordinary law of India, the same is not opposed to public policy. [Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd.] (DB)...3328

संविदा अधिनियम (1872 का 9), धारा 23 व 28 – लोक नीति के विरुद्ध संविदाएँ – जब कोई विवाद उत्पन्न होता है जहाँ दोनों पक्षकार भारतीय हैं, और यदि संविदा में उन्हें विदेशी मध्यस्थों के द्वारा माध्यस्थता का सहारा लेने के लिए बाध्य करने का प्रभाव है तथा इस प्रकार भारत की सामान्य विधि के अंतर्गत उन्हें उपलब्ध उपचार को विवक्षित रूप से छोड़ा गया, यह लोक नीति के विरुद्ध नहीं है। (सासन पावर लि. वि. नार्थ अमेरिकन कोल कारपोरेशन इंडिया प्रा.लि.) (DB)...3328

Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 82 – See – Civil Procedure Code, 1908, Order 7 Rule 11 [Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri] ...3392

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 82 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 7 नियम 11 (केदारनाथ नीखरा वि. सुप्रभात गृह निर्माण सहकारी संस्था मर्यादित, शिवपुरी) ...3392

Court Fees Act (7 of 1870), Section 7(iv)(c) – See – Suits Valuation Act, 1887, Section 8 [Manoj Kushwah Vs. Chhotelal] ...3063

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv)(सी) – देखें – वाद मूल्यांकन अधिनियम, 1887, धारा 8 (मनोज कुशवाह वि. छोटेलाल) ...3063

***Court Fees Act (7 of 1870), Section 35 – Manner of conducting enquiry* – Anywhere in the statute where the word enquiry is used, the court is not always bound to call the report of any authority and appreciate the evidence in the light of such report – If on the basis of evidence adduced by the parties, the case could be decided, then there is no need to call the report of any authority either for assessing the annual income or the assets of the concerning plaintiff. [Kamlesh Vs. Tara Devi] ...2565**

न्यायालय फीस अधिनियम (1870 का 7), धारा 35 – जांच संचालित करने का ढंग – कानून में जहां कहीं भी जांच शब्द का प्रयोग किया गया है, न्यायालय किसी प्राधिकारी से प्रतिवेदन बुलाने और उक्त प्रतिवेदन के आलोक में साक्ष्य का मूल्यांकन करने के लिये सदैव बाध्य नहीं – यदि पक्षकारों द्वारा दिये गये साक्ष्य के आधार पर प्रकरण निर्णीत किया जा सकता है तब संबंधित वादी की या तो वार्षिक आय के या आस्तियों के निर्धारण हेतु किसी प्राधिकारी से प्रतिवेदन बुलाने की आवश्यकता नहीं। (कमलेश वि. तारा देवी) ...2565

***Court Fees Act (7 of 1870), Section 35 – Notification of 1984 (as amended on 14-02-2011) of State Government –* When the benefit of the same can be extended – To extend the benefit of the said notification to the plaintiff, enquiry is needed – No procedure of enquiry is provided in the notification – In such premises, trial court has a discretion to inquire into the matter according to its own way and decide the same in the judicial manner. [Kamlesh Vs. Tara Devi] ...2565**

न्यायालय फीस अधिनियम (1870 का 7), धारा 35 – राज्य सरकार की 1984 की अधिसूचना (14.02.2011 को यथा संशोधित) – इसका लाभ कब दिया जा सकता है – वादी को उक्त अधिसूचना का लाभ दिये जाने के लिये जांच आवश्यक है – अधिसूचना में जांच की प्रक्रिया उपबंधित नहीं – ऐसी स्थिति में, विचारण न्यायालय को अपने तरीके से मामले की जांच करने का और न्यायिक ढंग से उसका विनिश्चय करने का विवेकाधिकार है। (कमलेश वि. तारा देवी) ...2565

***Criminal Procedure Code, 1973 (2 of 1974), Section 85 – Release of property of proclaimed person* – When the petitioner has assigned sufficient reason for his absence, application under Section 85 should have been allowed by the Court below. [Krishnapal Singh Vs. State of M.P.] ...3422**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 85 – उद्घोषित व्यक्ति की संपत्ति मुक्त करना – जब याची ने अपनी अनुपस्थिति के लिये समुचित कारण दिया है, निचले न्यायालय द्वारा धारा 85 के अंतर्गत आवेदन मंजूर किया जाना चाहिए था। (कृष्णपाल सिंह वि. म.प्र. राज्य) ...3422

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Divorced Muslim Woman – Entitlement of maintenance during post iddat period – Divorced Muslim woman is entitled to get maintenance as long as she does not remarry – As applicant has not remarried, she is entitled to get maintenance – Order of trial court restored. [Azma Sultan Vs. Ausaf Ahmad Khan] ...2803

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – तलाकशुदा मुस्लिम महिला – इदत अवधि पश्चात् भरण-पोषण की हकदारी – तलाकशुदा मुस्लिम महिला भरण-पोषण प्राप्त करने की हकदार तब तक है जब तक कि वह पुनर्विवाह नहीं करती – चूंकि आवेदक ने पुनर्विवाह नहीं किया वह भरण-पोषण प्राप्त करने की हकदार है – विचारण न्यायालय का आदेश पुनःस्थापित। (अजमा सुल्तान वि. औसफ अहमद खान) ...2803

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Interim Maintenance – Family Court allowing the application filed by the respondent/mother granted interim maintenance to the tune of Rs. 4,500/- per month in her favour – Held – Looking to the relationship as well as social and economic status of parties, Judge of the Family Court has come to a right conclusion and has also affixed a reasonable amount for interim maintenance – No interference – Revision dismissed. [Radhe Shyam Mourya Vs. Smt. Dashmat Devi] ...2795

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – अंतरिम भरण-पोषण – कुटुम्ब न्यायालय ने प्रत्यर्थी/मां द्वारा प्रस्तुत आवेदन मंजूर करते हुए उसके पक्ष में रु. 4500/- प्रतिमाह के बराबर अंतरिम भरण-पोषण प्रदान किया – अभिनिर्धारित – पक्षकारों का रिश्ता और साथ ही सामाजिक एवं आर्थिक स्थिति को देखते हुए, कुटुम्ब न्यायालय के न्यायाधीश सही निष्कर्ष पर पहुंचे हैं और अंतरिम भरण-पोषण हेतु युक्तियुक्त रकम भी निश्चित की है – कोई हस्तक्षेप नहीं – पुनरीक्षण खारिज। (राधेश्याम भौर्य वि. श्रीमती दशमत देवी) ...2795

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Proceedings u/s 125 Cr.P.C. are quasi criminal and quasi civil – Principles of appreciation of evidence as in civil cases are applied – No pleadings in the application regarding second marriage – Certificate

regarding second wife not proved by signatories – Document should be properly proved before any interference on it – Document produced at cross-examination and applicant was not given opportunity to rebut – Held – Matter remanded back to trial court to give opportunity to respondent for incorporating amendment in application and to adduce evidence. [Aashiq Khan Vs. Anisa Bai @ Annabee] ...2784

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – मरणपोषण – दं. प्र.सं. की धारा 125 के अंतर्गत कार्यवाहियां, अर्ध आपराधिक एवं अर्ध सिविल हैं – साक्ष्य के मूल्यांकन के सिद्धांत जैसे कि सिविल प्रकरणों में लागू होते हैं, लागू किये गये – आवेदन में द्वितीय विवाह के संबंध में कोई अभिवचन नहीं – द्वितीय पत्नी से संबंधित प्रमाणपत्र को हस्ताक्षरकर्ताओं द्वारा साबित नहीं किया गया – दस्तावेज पर किसी हस्तक्षेप से पहले उसे उचित रूप से साबित किया जाना चाहिए – प्रतिपरीक्षण में दस्तावेज प्रस्तुत किया गया और आवेदक को उसका खंडन करने का अवसर नहीं दिया गया – अभिनिर्धारित – प्रत्यर्थी को आवेदन में संशोधन करने एवं साक्ष्य देने का अवसर प्रदान किये जाने हेतु विचारण न्यायालय को मामला प्रतिप्रेषित किया गया। (आशिक खान वि. अनीशाबाई उर्फ अन्नाबी) ...2784

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Marriage expenses – Marital obligations on the part of husband to incur expenses upon marriage of his daughter cannot be translated into a legally enforceable liability taking recourse to Section 125 of Cr.P.C. – Plain reading of provision cannot be stretched to include within its ambit, a lump-sum granted towards estimated expenditure on marriage of his daughter – Order of Court below set aside. [Bhaiyalal Vs. Subhadra Bai (Smt.)] ...3430

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – विवाह के खर्च – पति की ओर से अपनी पुत्री के विवाह उपरांत, खर्च उठाने के वैवाहिक दायित्व को दं.प्र.सं. की धारा 125 का अवलंब लेकर, कानूनी रूप से लागू दायित्व के रूप में परिवर्तित नहीं किया जा सकता – उपबंध के साधारण पठन को, अपनी पुत्री के विवाह के अनुमानित खर्चों के लिये प्रदत्त एकमुश्त राशि को उसकी परिधि में शामिल करने के लिये विस्तारित नहीं किया जा सकता – निचले न्यायालय का आदेश अपास्त। (भैयालाल वि. सुमद्राबाई (श्रीमती)) ...3430

Criminal Procedure Code, 1973 (2 of 1974), Section 126(1) Clause(b) – Territorial Jurisdiction – Mother can file application for maintenance u/s 125 of the new Criminal Procedure Code in the district where she resides. [Radhe Shyam Mourya Vs. Smt. Dashmat Devi] ...2795

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 126(1) खंड(बी) – क्षेत्रीय अधिकारिता – नयी दंड प्रक्रिया संहिता की धारा 125 के अंतर्गत भरण-पोषण हेतु आवेदन, मां उस जिले में प्रस्तुत कर सकती है जहां वह निवासरत है। (राधेश्याम मौर्य वि. श्रीमती दशमत देवी) ...2795

Criminal Procedure Code, 1973 (2 of 1974), Section 145 – Dispute relating to possession of immovable property – The order passed by the SDM remains valid till the Civil Court decides the matter with respect to the title of the property – Merely because an order is passed u/s 145 and appellants were found in possession, it would not prove that the appellants were in adverse possession. [Maharaj Singh Vs. Mahant Singh Chaturvedi] ...2730

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 – अचल संपत्ति के कब्जे से संबंधित विवाद – एस.डी.एम. द्वारा पारित आदेश वैध रहेगा जब तक कि संपत्ति पर हक के संबंध में सिविल न्यायालय विनिश्चय नहीं करता – मात्र इसलिये कि धारा 145 के अंतर्गत एक आदेश पारित किया गया और अपीलार्थीगण का आधिपत्य पाया गया, इससे यह सिद्ध नहीं होगा कि अपीलार्थीगण का प्रतिकूल कब्जा था। (महाराज सिंह वि. महंत सिंह चतुर्वेदी) ...2730

Criminal Procedure Code, 1973 (2 of 1974), Section 145 – Proper opportunity – Applicant was not given proper opportunity to adduce evidence as dates were preponed – Matter remanded back to the Court of Sub-Divisional Magistrate – Applicant should be given an opportunity to adduce oral and documentary evidence alongwith respondent – After recording the statements of the both the parties, fresh order should be passed. [Ludiram Vs. Anil Rao] ...2807

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 145 – उचित अवसर – आवेदक को साक्ष्य प्रस्तुत करने के लिए उचित अवसर नहीं दिया गया क्योंकि तिथियों को पूर्वस्थगित किया गया था – अनुविभागीय मजिस्ट्रेट के न्यायालय को मामला प्रतिप्रेषित – प्रत्यर्थी के साथ-साथ आवेदक को मौखिक एवं दस्तावेजी साक्ष्य प्रस्तुत करने का अवसर दिया जाना चाहिए – दोनों पक्षकारों के कथन अभिलिखित किये जाने के पश्चात्, नये सिरे से आदेश पारित किया जाना चाहिए। (लुदीराम वि. अनिल राव) ...2807

Criminal Procedure Code, 1973 (2 of 1974), Section 157 – See – Penal Code, 1860, Section 302 [Ramu Vs. State of M.P.] (DB)...3045

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – देखें – दण्ड संहिता, 1860, धारा 302 (रामू वि. म.प्र. राज्य) (DB)...3045

Criminal Procedure Code, 1973 (2 of 1974), Section 216 – Power of Court to add or alter the charges – There is no evidence at all for framing of charge u/s 302 or 302/34 – Trial Court has framed the charges mechanically under the direction of Supreme Court in Rajbeer's case – Trial Court is directed to continue the trial on the basis of charge u/s 498-A and 304-B IPC – Revision allowed. [Ramchandra Singh Vs. State of M.P.] ...3416

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216 – आरोपों को जोड़ने या परिवर्तित करने की न्यायालय की शक्ति – धारा 302 या 302/34 के अंतर्गत आरोप विरचित करने के लिये कोई साक्ष्य नहीं है – विचारण न्यायालय ने राजबीर के प्रकरण में उच्चतम न्यायालय के निदेश अंतर्गत यांत्रिक रूप से आरोपों को विरचित किया – विचारण न्यायालय को भा.द.सं. की धारा 498-ए एवं 304-बी के अंतर्गत आरोपों के आधार पर विचारण जारी रखने हेतु निदेशित किया गया – पुनरीक्षण मंजूर। (रामचन्द्र सिंह वि. म.प्र. राज्य) ...3416

Criminal Procedure Code, 1973 (2 of 1974), Section 216 and Penal Code (45 of 1860), Section 505(2)(1) – Alteration of charge – Objectionable literatures and pamphlets were found in possession of applicant – However, to prima facie make out a case u/s 505(2)(1), there should be publication and circulation – No permission was granted u/s 196 of Cr.P.C. for offence u/s 505(2)(1) – Prima facie offence u/s 505(2)(1) of I.P.C. not made out – Order altering the charge set aside. [Abdul Rashid Vs. State of M.P.] ...3127

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216 एवं दण्ड संहिता (1860 का 45), धारा 505(2)(1) – आरोप का परिवर्तन – आवेदक के कब्जे में आपत्तिजनक साहित्य एवं पुस्तिकाएं पाई गई – किंतु, धारा 505(2)(1) के अंतर्गत प्रथम दृष्ट्या प्रकरण बनाने के लिये प्रकाशन एवं वितरण होना चाहिये – धारा 505(2)(1) के अंतर्गत अपराध के लिये द.प्र.सं. की धारा 196 के अंतर्गत कोई अनुमति प्रदान नहीं की गई थी – भा.द.सं. की धारा 505(2)(1) के अंतर्गत अपराध के लिये प्रथम दृष्ट्या आरोप नहीं बनता – आरोप परिवर्तन का आदेश अपास्त। (अब्दुल राशिद वि. म.प्र. राज्य) ...3127

Criminal Procedure Code, 1973 (2 of 1974), Section 240 and Prevention of Corruption Act (49 of 1988), Section 13(1)(e) – Framing of Charge – At the time of framing of charge, it is only to be ascertained that whether there is a prima-facie case available against the accused or not – The date of registered sale deed, date of sanction and the date of repayment of loan within short period amounts to suspicion

and ground for prosecution. [Ajit Jain Vs. State of M.P.] (DB)...2810

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 240 एवं भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) - आरोप विरचित किया जाना - आरोप विरचित किये जाते समय केवल यह सुनिश्चित करना है कि क्या अभियुक्त के विरुद्ध प्रथम दृष्ट्या प्रकरण उपलब्ध है अथवा नहीं - पंजीकृत विक्रय विलेख की तिथि, मंजूरी की तिथि एवं कम अवधि के भीतर ऋण के प्रतिसंदाय की तिथि संदेह की कोटि में आती है और अभियोजन हेतु आधार है। (अजीत जैन वि. म.प्र. राज्य) (DB)...2810

Criminal Procedure Code, 1973 (2 of 1974), Section 311 - Recall of witness - Accused filed application for recalling some witnesses for further cross-examination as applicant had not cross-examined them on some points - Held - Object underlying 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party - The determinative factor is whether it is essential to just decision of the case - Grant of fairest opportunity to accused to prove his innocence is the object of every fair trial - Discovery of truth is the essential purpose of any trial - Merely because mistake was committed, should not result in the accused suffering a penalty totally disproportionate to the gravity of error committed by his lawyer - Application for recall of witnesses allowed. [Jaidev Vs. State of M.P.] ...3084

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 - साक्षी को वापस बुलाया जाना - अभियुक्त ने कुछ साक्षियों के अतिरिक्त प्रतिपरीक्षण हेतु उन्हें वापस बुलाने के लिए आवेदन प्रस्तुत किया क्योंकि आवेदक ने कुछ बिंदुओं पर उनका प्रतिपरीक्षण नहीं किया था - अभिनिर्धारित - द.प्र.सं. 311 का अंतर्निहित उद्देश्य यह है कि किसी भी पक्ष की भूल के कारण न्याय विफल नहीं होना चाहिये - निर्धारक कारक यह है कि क्या यह प्रकरण के उचित निर्णय के लिए आवश्यक है - अभियुक्त को अपनी निर्दोषिता सिद्ध करने के लिए उचित अवसर प्रदान करना प्रत्येक निष्पक्ष विचारण का उद्देश्य है - किसी भी विचारण का मुख्य उद्देश्य सत्य की खोज है - केवल इसलिये कि गलती कारित की गई, इसके परिणामस्वरूप अभियुक्त को अधिवक्ता द्वारा कारित त्रुटि की गंभीरता से पूर्ण रूप से अननुपातिक दंड नहीं दिया जायेगा - साक्षी को वापस बुलाने के लिए दिया गया आवेदन मंजूर। (जयदेव वि. म.प्र. राज्य) ...3084

Criminal Procedure Code, 1973 (2 of 1974), Section 313 - Examination - Presence of appellant and seizure of Katta shown as doubtful - In contra all eye witnesses supporting presence of appellant on spot - Seizure cannot be doubted - Also examination under Section 313 nowhere pleaded that appellant was not present on the spot nor

involved in the incident – Appeals dismissed. [Ramvilas Vs. State of M.P.] (SC)...3137

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – परीक्षण – अपीलार्थी की उपस्थिति तथा कटूटे की जप्ती को संदेहास्पद दर्शाया गया – इसके विपरीत सभी चक्षुदर्शी साक्षी घटनास्थल पर अपीलार्थी की उपस्थिति का समर्थन कर रहे हैं – जप्ती पर संदेह नहीं किया जा सकता – धारा 313 के परीक्षण में भी कहीं यह अभिवाक् नहीं किया गया कि अपीलार्थी घटनास्थल पर उपस्थित नहीं था और न ही घटना में शामिल था – अपीलें खारिज। (रामविलास वि. म.प्र. राज्य) (SC)...3137

Criminal Procedure Code, 1973 (2 of 1974), Sections 315, 317 – To produce defence evidence – Accused was permitted to appear as a defence witness u/s 315 of Cr.P.C. – His examination in chief was recorded and cross examination was deferred – On next day, he could not appear due to ill health and application u/s 317 was allowed and case was adjourned – On adjourned date the trial court closed the right of accused – Held – There is no reason on record for refusal to produce defence evidence particularly cross examination of applicant – To deny a litigant an opportunity is against criminal justice delivery system – Every party has right to be allowed sufficient opportunity to put up his case as well as his defence – Order of trial court set aside. [Mahendra Kumar Patel Vs. Sindh Hardware Store] ...3133

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएं 315, 317 – बचाव साक्ष्य प्रस्तुत करने हेतु – द.प्र.सं. की धारा 315 के अंतर्गत अभियुक्त को बचाव साक्षी के रूप में उपस्थित होने की अनुमति दी गई – उसका मुख्य परीक्षण अभिलिखित किया गया एवं प्रतिपरीक्षण आस्थगित किया गया था – अगले दिन, वह खराब स्वास्थ्य के कारण उपस्थित नहीं हो सका एवं धारा 317 के अंतर्गत आवेदन मंजूर किया गया एवं प्रकरण स्थगित किया गया – स्थगन दिनांक को विचारण न्यायालय ने अभियुक्त का अधिकार समाप्त कर दिया – अभिनिर्धारित – बचाव साक्ष्य प्रस्तुत करने से इंकार का कोई कारण अभिलेख पर नहीं विशेष रूप से आवेदक का प्रतिपरीक्षण – वादकारी को अवसर देने से इंकार करना आपराधिक न्याय व्यवस्था के विरुद्ध है – प्रत्येक पक्षकार का अधिकार है कि उसे अपने बचाव के साथ ही अपना प्रकरण प्रस्तुत करने का पर्याप्त अवसर मंजूर किया जाये – विचारण न्यायालय का आदेश अपास्त। (महेन्द्र कुमार पटेल वि. सिन्ध हार्डवेयर स्टोर) ...3133

Criminal Procedure Code, 1973 (2 of 1974), Section 340 – Procedure in cases mentioned in Section 195 – Applicant filed a civil suit and filed interpolated documents – After dismissal of his application under Order 39 Rule 1 & 2, C.P.C., he filed Misc. Appeal – Two applications

were filed u/s 340 of Cr.P.C. before the Trial Court as well as Appellate Court—Appellate Court rejected the application on the ground that enquiry is being done by the Trial Court—Subsequently, Civil Suit was dismissed in default however, the application filed u/s 340 of Cr.P.C. remained unconsidered—Trial Court directed to complete the enquiry and to proceed depending upon the outcome of the enquiry. [Anil Kumar Chouhan @ Anil Singh Chouhan Vs. State of M.P.] ...3105

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 340 — धारा 195 में उल्लिखित प्रकरणों में कार्यवाहियां — आवेदक ने एक सिविल वाद प्रस्तुत किया एवं अंतर्वेशित दस्तावेज प्रस्तुत किये — सि.प्र.सं. के आदेश 39 नियम 1 एवं 2 के अंतर्गत उसके आवेदन को खारिज किये जाने के उपरांत उसने विविध अपील प्रस्तुत की — दं.प्र.सं. की धारा 340 के अंतर्गत विचारण न्यायालय के साथ ही अपीली न्यायालय के समक्ष दो आवेदन प्रस्तुत किये गये — अपीली न्यायालय ने आवेदन इस आधार पर अस्वीकार किया कि विचारण न्यायालय द्वारा जांच की जा रही है — तत्पश्चात्, सिविल वाद व्यतिक्रम में खारिज किया गया था यद्यपि दं.प्र.सं. की धारा 340 के अंतर्गत प्रस्तुत आवेदन पर विचार करने से रह गया — विचारण न्यायालय को जांच पूर्ण करने हेतु एवं जांच के निष्कर्ष पर निर्भर रहते हुये आगे कार्यवाही करने के लिये निदेशित किया गया। (अनिल कुमार चौहान उर्फ अनिल सिंह चौहान वि. म.प्र. राज्य) ...3105

Criminal Procedure Code, 1973 (2 of 1974), Section 389 — Suspension of Sentence — Government servant sentenced by ACJM for offence u/s 409 of IPC to 4 years RI and fine of Rs. 3,36,705/- — Appellate Court suspended sentence of Jail but prayer for suspension of fine amount has been dismissed — Held — Order of appellate court modified to the extent that on depositing of Rs. 1,68,352/-, recovery of remaining fine shall remain stayed. [Dallu Vs. State of M.P.] ...2801

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 389 — दंडादेश निलंबित रखा जाना — सरकारी कर्मचारी को अतिरिक्त मुख्य न्यायिक दंडाधिकारी द्वारा भारतीय दंड संहिता की धारा 409 के अंतर्गत अपराध हेतु 4 वर्ष सश्रम कारावास एवं रु. 3,36,705/- के अर्थदंड से दंडित किया गया — अपीली न्यायालय ने कारावास का दंडादेश निलंबित रखा परंतु अर्थदंड के निलंबन हेतु प्रार्थना को खारिज किया — अमिनिर्धारित — अपीली न्यायालय का आदेश इस सीमा तक परिवर्तित किया गया कि रु. 1,68,352/- जमा किये जाने पर, शेष अर्थदंड की वसूली पर रोक रहेगी। (डल्लू वि. म.प्र. राज्य) ...2801

Criminal Procedure Code, 1973 (2 of 1974), Section 397 — See — Penal Code, 1860, Sections 420, 467, 468 & 471 [Fayyaz Ahmad Vs.

State of M.P.] ...3425

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 - देखें - दण्ड संहिता, 1860, धारा 420, 467, 468 व 471 (फयाज़ अहमद वि. म.प्र. राज्य) ...3425

Criminal Procedure Code, 1973 (2 of 1974), Section 427 - Subsequent sentence to run concurrently with previous - Applicant convicted under Section 138 Negotiable Instruments Act, 1881 in five different cases - Criminal liability arises from different transactions - Applicant not entitled for benefit - Revision dismissed. [Inayat Vs. Adarsh Vyapari Sakh Sahkarita Myd.] ...3427

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 427 - पश्चात्पूर्वी दंडादेश पूर्व के साथ-साथ ही चलेगा - अपीलार्थी परक्राम्य लिखत अधिनियम, 1881 की धारा 138 के अंतर्गत पांच भिन्न प्रकरणों में दोषसिद्ध - आपराधिक दायित्व भिन्न संव्यवहारों से उत्पन्न हुआ है - अपीलार्थी लाभ के लिये हकदार नहीं - पुनरीक्षण खारिज। (इनायत वि. आदर्श व्यापारी साख सहकारिता मार्या.) ...3427

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - For quashment of F.I.R. - Cognizance taken by Magistrate on the letter issued by District Magistrate for offence u/s 188 of IPC - Held - Without complaint cognizance could not be taken - F.I.R. and proceedings before Magistrate quashed - Applicant discharged u/s 188, IPC. [Ashok Agrawal Vs. State of M.P.] ...3130

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - प्रथम सूचना प्रतिवेदन का अभिखंडन - जिला मजिस्ट्रेट द्वारा जारी किये गये पत्र पर मजिस्ट्रेट द्वारा मा.द.सं. की धारा 188 के अंतर्गत अपराध के लिये संज्ञान लिया गया - अभिनिर्धारित - शिकायत के बिना संज्ञान नहीं लिया जा सकता - प्रथम सूचना प्रतिवेदन एवं मजिस्ट्रेट के समक्ष कार्यवाहियां अभिखंडित - मा.द.सं. की धारा 188 के अंतर्गत अपीलार्थी को आरोपमुक्त किया गया। (अशोक अग्रवाल वि. म.प्र. राज्य) ...3130

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साक्ष्य अधिनियम (1872 का 1), धारा 65 – द्वितीयक साक्ष्य – मूल दस्तावेज की छायाप्रति द्वितीयक साक्ष्य के रूप में अभिलेख पर लेने के लिये यह आवश्यक है कि प्रथम दृष्ट्या साबित किया जाये कि मूल दस्तावेज खो चुके हैं और अस्तित्व में नहीं हैं या अन्य पक्षकार के कब्जे में हैं, उक्त को साबित करने के अभाव में, मूल दस्तावेज की छायाप्रति द्वितीयक साक्ष्य के रूप में अभिलेख पर लेने की अनुमति नहीं दी जा सकती। (नरेन्द्र सूरी वि. रंजीत शाह) ...3180

Evidence Act (1 of 1872), Section 114(e) – Presumption regarding judicial acts – It was argued that examination of the witness was carried out in absence of the counsel though his presence is marked, in the lack of the affidavit of the concerning advocate such version is not reliable – The court is bound to presume that the deposition of said witness was recorded in the presence of the petitioner's counsel in view of the provision of presumption enumerated u/s 114(e). [Gajadhar Prasad Vs. Smt. Shakuntala Mishra] ...2859

साक्ष्य अधिनियम (1872 का 1), धारा 114(ई) – न्यायिक कार्यों से संबंधित उपधारणा – यह तर्क दिया गया कि साक्षी का परीक्षण अधिवक्ता की अनुपस्थिति में किया गया, यद्यपि उसकी उपस्थिति अंकित की गई है, संबंधित अधिवक्ता के शपथ-पत्र के अभाव में उक्त कथन विश्वसनीय नहीं है – धारा 114(ई) के अंतर्गत दिये गये उपधारणा के उपबंध को दृष्टिगत रखते हुए न्यायालय उपधारणा करने के लिये बाध्य है कि उक्त साक्षी के अभिसाक्ष्य याची के अधिवक्ता की उपस्थिति में दर्ज किये गये थे। (गजाधर प्रसाद वि. श्रीमती शकुन्तला मिश्रा) ...2859

Evidence Act (1 of 1872), Section 116 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(c) [Sunil Kumar Vs. Dilip] ...2965

साक्ष्य अधिनियम (1872 का 1), धारा 116 – देखें – स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 12 (i)(सी) (सुनील कुमार वि. दिलीप) ...2965

Evidence Act (1 of 1872), Section 137 & 154 – Declaring a witness as hostile and permitting to cross examine him – Affidavit under

Order 18 Rule 4 C.P.C. was filed on 23.11.12 and witness was cross-examined on 03.09.2013 – No prayer was made either to declare him hostile or sought permission for re-examination – After 16 days, an application was filed for declaring the witness as hostile – Held – Permission could be given by the court till the witness is under examination in witness box and not at a later stage – Application rightly rejected. [Gajadhar Prasad Vs. Smt. Shakuntala Mishra] ...2859

साक्ष्य अधिनियम (1872 का 1), धारा 137 व 154 – साक्षी को पक्षद्रोही घोषित किये जाने एवं उसका प्रतिपरीक्षण किये जाने की अनुमति – सि.प्र.सं. के आदेश 18 नियम 4 के अंतर्गत 23.11.12 को शपथ-पत्र प्रस्तुत किया गया एवं 3.9.2013 को साक्षी का प्रतिपरीक्षण किया गया – न तो उसे पक्षद्रोही घोषित किये जाने की प्रार्थना की गई न ही पुनः परीक्षण की अनुमति चाही गयी – सोलह दिनों बाद, याची को पक्षद्रोही घोषित किये जाने हेतु एक आवेदन प्रस्तुत किया गया – अभिनिर्धारित – साक्षी के कटघरे में परीक्षणाधीन रहने तक न्यायालय द्वारा अनुमति दी जा सकती है एवं बाद के प्रक्रम पर नहीं – आवेदन उचित रूप से अस्वीकार किया गया। (गजाधर प्रसाद वि. श्रीमती शकुन्तला मिश्रा) ...2859

Explosive Substances Act (6 of 1908), Section 4 & 5 and Ammonium Nitrate Rules, 2012, Rule 3 – Ammonium Nitrate was seized on 09.04.2009, Rules 2012 came into force on 11.07.2012 – Prior to that Ammonium Nitrate was not an explosive – No license was required before 11.07.2012 – Applicant cannot be prosecuted u/s 4 & 5 of Act, 1908 as no license was required – Application allowed. [Sharad Kumar Agrawal Vs. State of M.P.] ...3102

विस्फोटक पदार्थ अधिनियम (1908 का 6), धारा 4 व 5 एवं अमोनियम नाइट्रेट नियम, 2012, नियम 3 – 09.04.2009 को अमोनियम नाइट्रेट अभिगृहीत किया गया था, नियम 2012, 11.07.2012 में प्रभावी हुए – इसके पहले तक अमोनियम नाइट्रेट एक विस्फोटक नहीं था – 11.07.2012 के पहले अनुज्ञप्ति अपेक्षित नहीं थी – अनुज्ञप्ति अपेक्षित नहीं होने के कारण अधिनियम 1908 की धारा 4 एवं 5 के अंतर्गत आवेदक को अभियोजित नहीं किया जा सकता – आवेदन मंजूर। (शरद कुमार अग्रवाल वि. म.प्र. राज्य) ...3102

Fisheries (Gazetted) Service Recruitment Rules, M.P. 1987, Rule 15 – Preparation of list of suitable officers – Appellant and respondent No. 1 were officiating as Joint Directors – Appellant was junior to respondent No. 1 – Rule 15(3) postulates that any junior officer who in opinion of DPC is of exceptional merit and suitable can be assigned higher place in list than that of officer senior to him – Promotion of

appellant temporarily to officiate as Director was in accordance with Rules – Order of High Court set aside. [H.S. Sidhu Vs. Devendra Bapna] (SC)...2819

मत्स्य उद्योग (राजपत्रित) सेवा भर्ती नियम, म.प्र. 1987, नियम 15 – उपयुक्त अधिकारियों की सूची तैयार करना – अपीलार्थी तथा प्रत्यर्थी क्रमांक 1 संयुक्त संचालक के रूप में कार्यरत थे – अपीलार्थी, प्रत्यर्थी क्रमांक 1 से कनिष्ठ था – नियम 15(3) यह प्रावधान करता है कि कोई भी कनिष्ठ अधिकारी जो कि विभागीय पदोन्नति समिति की राय में असाधारण रूप से योग्य तथा उपयुक्त है तो उसे सूची में अपने वरिष्ठ अधिकारी से उच्चतर स्थान दिया जा सकता है – अपीलार्थी को संचालक के रूप से अस्थायी रूप से कार्य करने के लिये दी गयी पदोन्नति नियमों के अनुसार थी – उच्च न्यायालय का आदेश अपास्त। (एच.एस. सिद्धू वि. देवेन्द्र बापना) (SC)...2819

Fundamental Rules, M.P., Rule 9(3) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Revocation of suspension order – Lien – It is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension – Lien can be against a post and not a lien on a place. [Asif Mohd. Khan Vs. State of M.P.] (FB)...3141

मूलभूत नियम, म.प्र., नियम 9(3) एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – निलंबन आदेश का प्रतिसंहरण – धारणाधिकार – यह तर्क प्रस्तुत करने की छूट नहीं है कि धारणाधिकार उस स्थान के विरुद्ध होगा जहाँ पर कर्मचारी सुसंगत समय पर कार्यरत था जब उसे निलंबित कर दिया गया था – धारणाधिकार एक पद के विरुद्ध हो सकता है और स्थान के विरुद्ध धारणाधिकार नहीं हो सकता। [आसिफ मोहम्मद खान वि. म.प्र. राज्य] (FB)...3141

Hindu Marriage Act (25 of 1955), Section 13(1)(ia) – Cruelty – Appellant levelled allegations against the sister of husband that she is of shady character – She also filed various complaints u/s 498-A of I.P.C. and Protection of Women from Domestic Violence Act – She also filed various revisions against the orders granting bail – Appellant was guilty of inflicting cruelty upon her husband – Decree of divorce rightly granted – Appeal dismissed. [Mamta Bhardwaj Vs. Madhusudan Bhardwaj] (DB)...2977

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13 (1)(i) – क्रूरता – अपीलार्थी ने अपने पति की बहन पर आरोप लगाया कि वह संदिग्ध चरित्र की है –

उसने भा.द.सं. की धारा 498-ए तथा घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम के अंतर्गत भी विभिन्न शिकायतें दर्ज करायीं - उसने जमानत आदेशों के विरुद्ध भी विभिन्न पुनरीक्षण प्रस्तुत किये - अपीलार्थी अपने पति पर क्रूरता करने की दोषी थी - विवाह-विच्छेद की डिक्री उचित रूप से प्रदान की गयी - अपील खारिज। (ममता भारद्वाज वि. मधुसूदन भारद्वाज) (DB)...2977

Hindu Marriage Act (25 of 1955), Section 13(1)(ia) – Cruelty – To constitute cruelty, the conduct complained should be grave and weighty so as to make cohabitation virtually unendurable – Human mind is extremely complex – What is cruelty in one case may not be a cruelty in another case – There can never be any straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matter. [Mamta Bhardwaj Vs. Madhusudan Bhardwaj] (DB)...2977

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13(1)(i) – क्रूरता – क्रूरता संस्थापित करने के लिए जिस आचरण की शिकायत की गयी है वह गंभीर तथा वजनदार होना चाहिए जिससे सहवास लगभग असहनीय हो जाए - मानव मस्तिष्क अत्यंत जटिल है - एक प्रकरण में जो क्रूरता है वह दूसरे प्रकरण में क्रूरता नहीं भी हो सकती - वैवाहिक मामलों में मानसिक क्रूरता निर्धारित करने के लिये कभी भी कोई निश्चित सूत्र अथवा निश्चित मापदंड नहीं हो सकते। (ममता भारद्वाज वि. मधुसूदन भारद्वाज) (DB)...2977

Hindu Succession Act, (30 of 1956), Section 8 – See – Succession Act, 1925, Section 373, 384 [Regional Commissioner Vs. Bhuria Bai] ...2777

हिंदू उत्तराधिकार अधिनियम, (1956 का 30), धारा 8 – देखें – उत्तराधिकार अधिनियम, 1925, धारा 373, 384 (रीजनल कमिशनर वि. भूरिया बाई) ...2777

Hindu Succession Act (30 of 1956), Sections 8, 9 & 11 – See – Motor Vehicles Act, 1988, Section 166(1)(c) [Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar] ...3016

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धाराएं 8, 9 व 11 – देखें – मोटर यान अधिनियम, 1988, धारा 166(1)(सी) (प्रोप्राईटर ईस्टर्न मिनिरल्स कं. लि. वि. श्रीमती निशा तोमर) ...3016

Industrial Disputes Act (14 of 1947), Section 10 – Respondent no. 3 continuously worked from 1985 to 1987 – Services dispensed with after 3/8/1987 – Industrial dispute raised on 20/07/1997 – Conciliation failure report sent on 27/10/1998 – Dispute referred on 22/04/1999 to CGIT –

Challenge – Whether the dispute was raised with delay – Held – As there is no prescribed time limit for raising a dispute u/s 10 of the Act and also the fact that the workman was continuously agitating against his non employment, so the delay is not unexplained as would warrant interference – Petition dismissed. [Damoh, Panna, Sagar Kshetriya Gramin Bank Vs. Union of India] ...3188

औद्योगिक विवाद अधिनियम (1947 का 14) , धारा 10 – प्रत्यर्थी क्र. 3, 1985 से 1987 तक निरंतर कार्यरत – 3-8-1987 के पश्चात् सेवाओं से अभिमुखित प्रदान की गई – 20-07-1997 को औद्योगिक विवाद उठाया गया – समझौता असफल प्रतिवेदन 27-10-1998 को भेजा गया – 22-04-1999 को विवाद सी.जी. आई.टी. को निर्दिष्ट – चुनौती – क्या विवाद विलंब से उठाया गया – अभिनिर्धारित – चूंकि अधिनियम की धारा 10 के अंतर्गत विवाद को उठाने के लिये विहित समय सीमा नहीं है, एवं साथ ही यह तथ्य भी कि कर्मकार अपने अनियोजन के विरुद्ध निरंतर प्रश्न उठाता रहा, अतः विलंब अस्पष्टीकृत नहीं जिसमें हस्तक्षेप किया जा सके – याचिका खारिज। (दमोह, पन्ना, सागर क्षेत्रीय ग्रामीण बैंक वि. यूनियन ऑफ इंडिया) ...3188

Interpretation – “Liable to be rejected” and “shall be rejected” – Expression used in the document must be interpreted in the context it is executed. [Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd.] (DB)...2914

निर्वचन – “निरस्त करने योग्य” तथा “निरस्त किया जायेगा” – दस्तावेज में प्रयुक्त की गयी अभिव्यक्ति का निर्वचन उस संदर्भ में किया जाये जिसमें वह निष्पादित की गयी। (अनुज एसोसिएट्स (मे.) वि. नेशनल मिनिरल डेवेलपमेन्ट कारपोरेशन लि.) (DB)...2914

Interpretation of statutes – Evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of injured witnesses. [Ramvilas Vs. State of M.P.] (SC)...3137

कानूनों का निर्वचन – आहत साक्षियों का साक्ष्य अधिक महत्व पाने का हकदार है तथा आहत साक्षियों के साक्ष्य को नकारने के लिये बहुत ही तर्कपूर्ण तथा विश्वसनीय आधार अपेक्षित है। (रामविलास वि. म.प्र. राज्य) (SC)...3137

Interpretation of Statute – Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 74-A – Order under – Word “shall” – Raises presumption – Its imperative – Presumption is rebuttable by other consideration such as object and scope of enactment and the

consequence flowing therefrom – Central Govt. having control over sale, purchase etc. of N.D.P.S., to ensure that the State Govt. do not deviate from basic object the word “shall” used – The provision is mandatory – State Govt. cannot deviate from order issued by Central Govt. [Man Singh Rajpoot Vs. State of M.P.] (DB)...2826

कानून का निर्वचन – स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 74-ए – आदेश अंतर्गत – शब्द “करेगा” – उपधारणा करता है – अनिवार्य है – अन्य विचार द्वारा जैसे कि अधिनियमिती का उद्देश्य और विस्तार तथा उससे निकलने वाले परिणाम से उपधारणा खंडनीय है – केंद्र सरकार का स्वापक औषधि और मनःप्रभावी पदार्थों के क्रय-विक्रय आदि पर नियंत्रण है, यह सुनिश्चित करने के लिए कि राज्य सरकार अपने मूल उद्देश्य से विचलित न हो शब्द “करेगा” प्रयुक्त किया गया है – यह उपबंध आज्ञापक है – केंद्र सरकार द्वारा जारी किए गए आदेश से राज्य सरकार विचलित नहीं हो सकता। (मान सिंह राजपूत वि. म.प्र. राज्य) (DB)...2826

Interpretation of Statutes – Principle governing local resident criteria in the matter of appointment of ‘Aanganwadi Karyakarta’ cannot be applied in the case of ‘Panchayat Karmi’. [Raghvendra Singh Vs. State of M.P.] (DB)...2845

कानूनों का निर्वचन – आंगनवाड़ी कार्यकर्ता की नियुक्ति के मामले में स्थानीय निवासी मानदंड का प्रभावी सिद्धांत पंचायत कर्मों के प्रकरण में लागू नहीं किया जा सकता। (राघवेंद्र सिंह वि. म.प्र. राज्य) (DB)...2845

Interpretation of Statutes – Ratio decidendi – Ratio decidendi of a judgment to be culled out only on reading the entire judgment – Observation in a judgment cannot be read in isolation or by reading a line here and there. [Asif Mohd. Khan Vs. State of M.P.] (FB)...3141

कानूनों का निर्वचन – विनिश्चय आधार – संपूर्ण निर्णय को पढ़ने के पश्चात् ही निर्णय का विनिश्चय-आधार निकाला जाए – किसी भी निर्णय में आए हुए विचार को पृथक करके अथवा यहां वहां की पंक्ति पढ़कर नहीं पढ़ा जा सकता। (आसिफ मोहम्मद खान वि. म.प्र. राज्य) (FB)...3141

Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 12(3) – Determination of age – Prosecutrix – Birth certificate depicts birth on 29.08.1987 – Middle School Examination Certificate depicts birth on 27.08.1987 – Difference of two days – Reliability – Held – Difference of two days in dates is minor discrepancy and these certificates cannot be discarded for determination of age – Prosecutrix

below 16 years of age. [State of M.P. Vs. Anoop Singh] (SC)...2545

किशोर न्याय (बालकों की देख-रेख और संरक्षण) नियम 2007, नियम 12(3) - आयु का निर्धारण - अभियोक्त्री - जन्म प्रमाणपत्र 29.08.1987 का जन्म दर्शाता है - माध्यमिक विद्यालय परीक्षा प्रमाणपत्र 27.08.1987 का जन्म दर्शाता है - दो दिनों का अंतर - विश्वसनीयता - अभिनिर्धारित - तिथियों में दो दिन का अंतर मामूली विसंगति है एवं आयु के निर्धारण के लिये इन प्रमाणपत्रों को त्यागा नहीं जा सकता - अभियोक्त्री की आयु 16 वर्ष से कम। (म.प्र. राज्य वि. अनूप सिंह) (SC)...2545

Land Revenue Code, M.P. (20 of 1959), Section 51 - Review - Lands were auctioned in 1961 and sale certificates were issued after obtaining sanction from Collector - In 1970, Collector on suo motu proceedings held that sale was not in accordance with law and since earlier order was passed by his predecessor, therefore sought permission to review - Permission was granted by Board of Revenue, however thereafter proceedings were not reopened and no notice was issued and no order was passed - Held - It cannot be said that the sales were set aside by Collector by order passed in 1970 - It was not a final order - Further as constructions have already been raised, now after 55 years it cannot be said that constructions were raised illegally. [State of M.P. Vs. Mangilal Bohare (Deceased) Through L.Rs.] (DB)...3172

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 - पुनर्विलोकन - 1961 में भूमियों की नीलामी की गई एवं कलेक्टर से मंजूरी प्राप्त करने के बाद विक्रय प्रमाणपत्र जारी किये गये - 1970 में कलेक्टर ने स्वप्रेरणा से कार्यवाही करते हुए यह अभिनिर्धारित किया कि विक्रय विधि के अनुसार नहीं था और चूंकि पूर्ववर्ती आदेश उसके पूर्वाधिकारी द्वारा पारित किये गये थे, अतः पुनर्विलोकन की अनुमति चाही गई - राजस्व मंडल द्वारा अनुमति दी गई, किंतु उसके बाद कार्यवाहियां पुनः प्रारंभ नहीं की गई एवं नोटिस जारी नहीं किये गये तथा कोई आदेश पारित नहीं किया गया था - अभिनिर्धारित - यह नहीं कहा जा सकता कि कलेक्टर द्वारा 1970 में आदेश पारित कर विक्रय अपास्त किया गया था - यह अंतिम आदेश नहीं था - इसके अतिरिक्त, पहले ही निर्माण हो चुके हैं, अब 55 वर्षों के पश्चात् यह नहीं कहा जा सकता कि निर्माण अवैध रूप से हुए थे। (म.प्र. राज्य वि. मांगीलाल बोहरे (मृतक) द्वारा विधिक प्रतिनिधि) (DB)...3172

Limitation Act (9 of 1908), Section 5 - Condonation of delay - Reasons - Where the reasons given are hypothetical and presumptive, the unexplained delay cannot be condoned. [State of M.P. Vs. Kamlesh Kumar] ...2732

परिसीमा अधिनियम (1908 का 9), धारा 5 – विलंब के लिये माफी – कारण – जहाँ दिये गये कारण उपकाल्पनिक एवं उपधारित हैं, अस्पष्टीकृत विलंब, माफ नहीं किया जा सकता। (म.प्र. राज्य वि. कमलेश कुमार) ...2732

Limitation Act (36 of 1963), Section 5 – Condonation of delay
– Date of knowledge – Delay of 1047 days – Applicant not impleaded as a party either in succession case or at Appellate Stage – Knowledge on 24.03.2013, when order placed for compliance – Held – Applicant though a necessary party, not impleaded as a party – Sufficient cause shown explaining delay – Delay condoned. [Regional Commissioner Vs. Bhuria Bai] ...2777

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिये माफी – जानकारी की तिथि – 1047 दिनों का विलंब – आवेदक को न तो उत्तराधिकार प्रकरण में न ही अपीली प्रक्रम पर पक्षकार के रूप में अभियोजित किया गया – 24.03.2013 को जानकारी हुई जब अनुपालन हेतु आदेश रखा गया – अभिनिर्धारित – यद्यपि आवेदक आवश्यक पक्षकार था उसे पक्षकार के रूप में अभियोजित नहीं किया गया – विलंब स्पष्ट करने के लिये पर्याप्त कारण दर्शाया गया – विलंब माफ किया गया। (रीजनल कमिशनर वि. भूरिया बाई) ...2777

Limitation Act (36 of 1963), Section 5 – Condonation of delay
– Delay of 6 years and 86 days for filing the application for restoration
– No proper explanation for delay – Application filed in very casual manner by stating some emotional grounds rather than the ground permissible under the law – Whenever and wherever under prescribed period the requisite proceeding under the right is not filed by a party then after expiration of such period a valuable right is created in favour of other party and such right could not be curtailed on the basis of any flimsy or insufficient ground – Application dismissed. [Usha Bai (Smt.) Vs. State of M.P.] ...3096

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – पुनःस्थापन हेतु आवेदन प्रस्तुत करने में 6 वर्ष तथा 86 दिन का विलंब – विलंब के लिए कोई उचित स्पष्टीकरण नहीं – विधि के अंतर्गत अनुज्ञेय आधारों के स्थान पर कुछ भावनात्मक आधार देते हुए अनौपचारिक रूप से आवेदन प्रस्तुत किया गया – जब भी और जहाँ कहीं किसी पक्षकार के द्वारा अधिकार के अंतर्गत अपेक्षित कार्यवाही विहित अवधि के अधीन प्रस्तुत नहीं की जाती है तब ऐसे अवधि के अवसान के पश्चात् अन्य पक्षकार के पक्ष में एक मूल्यवान अधिकार सृजित हो जाता है तथा ऐसे अधिकार को किसी भी कमजोर एवं अपर्याप्त आधार पर घटाया नहीं जा सकता – आवेदन खारिज। (उषा बाई (श्रीमती) वि. म.प्र. राज्य) ...3096

Limitation Act (36 of 1963), Section 65 – Adverse possession –
Party setting up plea of acquisition of title by adverse possession has to be specific as regards to period and date from which he claims possession and then has to prove that possession was adequate in continuity, in publicity and in extent to show his possession was actually visible, exclusive, hostile and continues over statutory period to the knowledge of real owner – Person pleading adverse possession has no equity in his favour. [Brijmohan Vs. Chandresh] ...3318

परिसीमा अधिनियम (1963 का 36), धारा 65 – प्रतिकूल कब्जा – प्रतिकूल कब्जे द्वारा हक/स्वत्वाधिकार अर्जित करने का अभिवाक् करने वाले पक्षकार को समय अवधि एवं तिथि जिससे वह कब्जे का दावा करता है, के संबंध में विनिर्दिष्टित करना चाहिए तथा इसके पश्चात् उसे यह सिद्ध करना होगा कि कब्जा निरंतरता में, प्रचार में तथा सीमा में पर्याप्त था तथा यह दर्शाना होगा कि उसका कब्जा वास्तव में दृश्यमान, अनन्य, प्रतिकूल तथा वास्तविक स्वामी की जानकारी में वैधानिक अवधि से जारी है – प्रतिकूल कब्जे का अभिवचन करने वाले व्यक्ति के पक्ष में कोई साम्या नहीं है। (ब्रजमोहन वि. चंद्रेश) ...3318

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 2 and Arbitration and Conciliation Act (26 of 1996), Section 11 – Appointment of arbitrator – Adhiniyam, 1983 could be made applicable only when either party is State Govt. or Public Undertaking or its officials – M.P. Rural Road Development Authority is neither a State nor its undertaking – Arbitrator is appointed. [Brajesh Sharma (Shri) Vs. Banco Construction] ...3374

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 2 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 – मध्यस्थ की नियुक्ति – अधिनियम, 1983 को केवल तभी लागू किया जा सकता है जब कोई एक पक्ष या तो राज्य शासन है या सार्वजनिक उपक्रम या उसके अधिकारी – म.प्र. ग्रामीण सड़क विकास प्राधिकरण न तो एक राज्य है न ही उसका कोई उपक्रम – मध्यस्थ नियुक्त किया जाता है। (ब्रजेश शर्मा (श्री) वि. बैंको कंस्ट्रक्शन) ...3374

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 20 – See – Arbitration and Conciliation Act, 1996, Sections 8, 20, 34 [Seth Mohanlal Hiralal (M/s.) Vs. State of M.P.] ...2745

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 20 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धाराएँ 8, 20, 34 (सेठ मोहनलाल हीरालाल (मे.) वि. म.प्र. राज्य) ...2745

Minor Mineral Rules, M.P. 1996, Rule 7 – Grant of trade quarry – Sand Mining – Whether the expression “for 2 years” must be construed as “Minimum 2 years” as per clause (2) of Rule 7 of the Rules 1996 – Held – No, the expression “for 2 years” in case of trade quarry means as upto 2 years or the time period as specified in the auction notice issued as per Form 15 – Petition disposed of. [Ram Swaroop Chaturvedi Vs. State of M.P.] (DB)...2921

गौण खनिज नियम, म.प्र. 1996, नियम 7 – व्यापार खदान का प्रदान किया जाना – रेत खनन – क्या नियम 1996 के नियम 7 के खंड (2) के अनुसार अभिव्यक्ति “दो वर्ष के लिये” का “न्यूनतम 2 वर्ष के लिये” निर्वचन किया जाना चाहिये? – अभिनिर्धारित – नहीं, व्यापार खदान के संबंध में अभिव्यक्ति “दो वर्ष के लिये” का अर्थ है 2 वर्ष तक अथवा फॉर्म 15 के अनुसार, जारी की गयी नीलामी सूचना में विनिर्दिष्ट समयावधि – याचिका निराकृत। (राम स्वरूप चतुर्वेदी वि. म.प्र. राज्य) (DB)...2921

Minor Mineral Rules, M.P. 1996, Rule 22 – Period of quarry lease – Whether the provisions of Rule 22 is applicable on grant of trade quarry – Held – No, the provision of Rule 22 is applicable for duration of grant of quarry lease and not for grant of trade quarry. [Ram Swaroop Chaturvedi Vs. State of M.P.] (DB)...2921

गौण खनिज नियम, म.प्र. 1996, नियम 22 – खदान पट्टा की अवधि – क्या नियम 22 के उपबंध व्यापार खदान के प्रदान पर लागू होते हैं – अभिनिर्धारित – नहीं, नियम 22 का उपबंध खदान पट्टा के प्रदान की अवधि पर लागू होता है और न कि व्यापार खदान के प्रदान पर। (राम स्वरूप चतुर्वेदी वि. म.प्र. राज्य) (DB)...2921

Minor Mineral Rules, M.P. 1996, Rule 37 – Agreement – Clause 26 – Arbitration Clause – Dispute as to whether amenable to writ jurisdiction – Held – As there is Arbitration Clause in the agreement and efficacious and alternate remedy is available to the petitioner, so remedy of writ jurisdiction under Article 226 of the Constitution is not available for relief regarding refund of the amount deposited by the petitioner. [Ram Swaroop Chaturvedi Vs. State of M.P.] (DB)...2921

गौण खनिज नियम, म.प्र. 1996, नियम 37 – करार – खंड 26 – माध्यस्थम् खंड – क्या विवाद रिट अधिकारिता के अध्यधीन है – अभिनिर्धारित – चूंकि करार में माध्यस्थम् खंड दिया गया है तथा याची को प्रभावशाली एवं वैकल्पिक उपचार उपलब्ध है, अतः याची द्वारा जमा की गई धनराशि की वापसी के संबंध में अनुतोष के लिये संविधान के अनुच्छेद 226 के अंतर्गत रिट अधिकारिता का उपचार उपलब्ध

नहीं है। (राम स्वरूप चतुर्वेदी वि. म.प्र. राज्य)

(DB)...2921

Motor Vehicles Act (59 of 1988), Section 147 – Liability of Insurance Company – Insurance Policy – Cover note appears to be prima-facie genuine – No cuttings are there and even it was properly stamped by the seal of the Company – Therefore, at the time of the accident the vehicle was insured by the Company. [Vimla (Smt.) Vs. Sheikh Jabbar] ...2739

मोटर यान अधिनियम (1988 का 59), धारा 147 – बीमा कंपनी का दायित्व – बीमा पॉलिसी – जोखिम ग्रहण पत्र प्रथम दृष्ट्या वास्तविक प्रकट होता है – कुछ काटा नहीं गया है और कंपनी की मुहर (सील) द्वारा उचित रूप से स्टाम्पित था – अतः, दुर्घटना के समय कंपनी द्वारा वाहन बीमित था। (विमला (श्रीमती) वि. शेख जब्बार) ...2739

Motor Vehicles Act (59 of 1988), Sections 147, 166 – Liability of Insurance Company – Appellant failed to prove that deceased was its employee and was travelling in dumper in prosecution of his job – Claims Tribunal rightly held that deceased was a passenger – As there was a violation of Insurance Policy, Insurance Company is not liable to pay compensation. [Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar] ...3016

मोटर यान अधिनियम (1988 का 59), धाराएं 147, 166 – बीमा कम्पनी का दायित्व – अपीलार्थी यह सिद्ध करने में असफल रहा है कि मृतक उसका कर्मचारी था तथा अपने कार्य के दौरान वह डंपर में यात्रा कर रहा था – दावा अधिकरण ने यह सही अभिनिर्धारित किया कि मृतक एक यात्री था – चूंकि बीमा पॉलिसी का उल्लंघन हुआ था, इसलिये बीमा कंपनी प्रतिकर का भुगतान करने के लिये दायी नहीं है। (प्रोप्राईटर ईस्टर्न मिनिरल्स कं. लि. वि. श्रीमती निशा तोमर) ...3016

Motor Vehicles Act (59 of 1988), Section 163 and Evidence Act (1 of 1872), Section 59 – Proof – Claims Tribunal although held that damages were caused to pair of bullocks and bullock-cart but held that appellant had failed to prove that he was owner of the same – Held – Provisions of Evidence Act do not apply with full force before Claims Tribunal – Certificates issued by Gram Panchayat conveys the meaning that bullocks & bullock-cart belongs to appellant – Compensation of Rs. 33,000/- directed to be paid towards loss of property – Appeal allowed. [Gaurishankar Vs. Specialty Electromars] ...2735

मोटर यान अधिनियम (1988 का 59), धारा 163 एवं साक्ष्य अधिनियम (1872

का 1), धारा 59 – सबूत – यद्यपि दावा अधिकरण ने यह अभिनिर्धारित किया कि बैलों की जोड़ी को एवं बैलगाड़ी को क्षति कारित की गई परंतु यह अभिनिर्धारित किया कि अपीलार्थी यह साबित करने में विफल रहा कि वह उसका स्वामी था – अभिनिर्धारित – दावा अधिकरण के समक्ष साक्ष्य अधिनियम के उपबंध संपूर्ण बल के साथ लागू नहीं होते – ग्राम पंचायत द्वारा जारी किये गये प्रमाणपत्रों से यह अर्थ निकलता है कि बैलों की जोड़ी एवं बैलगाड़ी अपीलार्थी की है – संपत्ति की हानि की ओर रु.33,000/- का प्रतिकर अदा किये जाने के लिये निदेशित किया गया – अपील मंजूर। (गौरीशंकर वि. स्पेशलिटी इलेक्ट्रोमर्स) ...2735

Motor Vehicles Act (59 of 1988), Section 166 – Accident between tractor-trolley and Goods train – Claim application dismissed on the ground that Motor Accident Claims Tribunal has no jurisdiction – Whether in the peculiar facts of the case Motor Accident Claims Tribunal has jurisdiction to entertain the claim petition – Held – As the Claims Tribunal has initially entertained the claim petition because motor vehicle was involved, so afterwards the Tribunal cannot dismiss the claim application on the ground of jurisdiction as the accident took place due to sole negligence of the Railways – Claim application entertainable. [Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari] ...3361

मोटर यान अधिनियम (1988 का 59), धारा 166 – ट्रैक्टर-ट्राली तथा मालगाड़ी के बीच दुर्घटना – दावा आवेदन इस आधार पर खारिज किया गया कि मोटर दुर्घटना दावा अधिकरण को कोई अधिकारिता नहीं है – क्या प्रकरण के विशेष तथ्यों में मोटर दुर्घटना दावा अधिकरण को दावा याचिका ग्रहण करने की अधिकारिता है – अभिनिर्धारित – चूंकि दावा अधिकरण ने प्रारंभ में दावा याचिका को ग्रहण किया क्योंकि मोटर यान शामिल था, अतः बाद में अधिकरण दावा आवेदन को अधिकारिता के आधार पर खारिज नहीं कर सकता क्योंकि दुर्घटना केवल रेलवे की उपेक्षा से कारित हुई – दावा आवेदन ग्रहण करने योग्य। (सुष्मा सिंह (श्रीमती) वि. राम शिरोमणी तिवारी) ...3361

Motor Vehicles Act (59 of 1988), Section 166 – Accident between tractor-trolley and Goods train – Negligence – Contributory negligence – Gate of Railway crossing not closed – Sound, vibration and headlight of Goods train not noticed by driver of tractor-trolley – Held – Railways is negligent to the extent of 75% and driver of tractor-trolley is composite negligent to the extent of 25%. [Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari] ...3361

मोटर यान अधिनियम (1988 का 59), धारा 166 – ट्रैक्टर-ट्राली तथा मालगाड़ी के बीच दुर्घटना – उपेक्षा – योगदायी उपेक्षा – रेल फाटक बंद नहीं –

ट्रैक्टर-ट्राली के चालक ने मालगाड़ी की ध्वनि, कंपन तथा हेडलाईट पर ध्यान नहीं दिया - अभिनिर्धारित - रेलवे की उपेक्षा 75% तक की सीमा तक है तथा ट्रैक्टर-ट्राली के चालक की संयुक्त उपेक्षा 25% की सीमा तक है। (सुषमा सिंह (श्रीमती) वि. राम शिरोमणी तिवारी) ...3361

Motor Vehicles Act (59 of 1988), Section 166 - Accident is of the year 1999 - Deceased, a farmer, aged 50 years - Owing 11 acres of agricultural land - Dependant wife and three minor children - Computation of income - Loss of supervision - Income assessed at Rs. 2,400/- p.m., more than income of an unskilled labourer - 1/4th deducted towards personal expenses - Multiplier of 13 adopted - Rs.2,80,800/- granted towards loss of dependency, Rs. 10,000/- each on account of loss of consortium and loss of estate and Rs. 6,000/- for funeral expenses, so in all an amount of Rs. 3,07,000/- granted as compensation - Appeal partly allowed. [Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari] ...3361

मोटर यान अधिनियम (1988 का 59), धारा 166 - दुर्घटना, वर्ष 1999 की है - मृतक, एक कृषक, आयु 50 वर्ष - 11 एकड़ कृषि भूमि का स्वामी - पत्नी तथा तीन अव्यस्क बच्चे आश्रित - आय की गणना - पर्यवेक्षण का नुकसान - आय 2,400/- प्रतिमाह निर्धारित की गई जो कि अकुशल मजदूर की आय से अधिक है - व्यक्तिगत खर्चों की ओर 1/4 भाग की कटौती की गई - 13 का गुणक अपनाया गया - आश्रितता की हानि की ओर रु. 2,80,800/- प्रदान किये गये, रु. 10,000/- प्रत्येक सहकार की हानि के लिए एवं संपत्ति की हानि के लिए तथा रु. 6,000/- अंतिम संस्कार के खर्चों के लिए, अतः कुल राशि 3,07,000/- प्रतिकर के रूप में प्रदान की गई - अपील अंशतः मंजूर। (सुषमा सिंह (श्रीमती) वि. राम शिरोमणी तिवारी) ...3361

Motor Vehicles Act (59 of 1988), Section 166 and Civil Procedure Code (5 of 1908), Order 14 Rule 2 - Preliminary issue - Question of jurisdiction - Preliminary issue shall be considered first and if cause of action continues then all the issues are to be decided on merits. [Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari] ...3361

मोटर यान अधिनियम (1988 का 59), धारा 166 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 - प्रारंभिक विवादक - अधिकारिता का प्रश्न - प्रारंभिक विवादक पर पहले विचार किया जायेगा तथा यदि वाद-हेतुक जारी रहता है तो सभी विवादकों को गुणदोष के आधार पर निर्णीत किया जाये। (सुषमा सिंह (श्रीमती) वि. राम शिरोमणी तिवारी) ...3361

Motor Vehicles Act (59 of 1988), Section 166(1)(c) and Hindu Succession Act (30 of 1956), Sections 8, 9 & 11 – Legal Representatives (Claimants) – Legal Representative would be a person who represents the Estate of the deceased – Claim Petition filed by brothers, and father was made non-applicant who is alive – According to Section 9 and 11 of Act, 1956, in absence of Class I heir, property would devolve amongst heirs of Category II of Class II – As deceased was not survived by Class I heirs, therefore, so long as father is alive, brothers of deceased cannot file claim petition as they are not successors of deceased. [Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar]...3016

मोटर यान अधिनियम (1988 का 59), धारा 166(1)(सी) एवं हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धाराएं 8, 9 व 11 – विधिक प्रतिनिधि (दावेदार) – विधिक प्रतिनिधि वह व्यक्ति होगा जो कि मृतक की संपदा का प्रतिनिधित्व करता है – दावा याचिका भाइयों द्वारा प्रस्तुत की गयी तथा पिता को अनावेदक बनाया गया जो कि जीवित है – अधिनियम 1956 की धारा 9 तथा 11 के अनुसार वर्ग I के वारिस की अनुपस्थिति में संपत्ति, वर्ग II की श्रेणी II के वारिसों के मध्य हस्तांतरित होगी – चूंकि मृतक अपने पीछे वर्ग I के वारिस नहीं छोड़ गया है, अतः जब तक कि पिता जीवित है, मृतक के भाई दावा याचिका प्रस्तुत नहीं कर सकते क्योंकि वे मृतक के उत्तराधिकारी नहीं हैं। (प्रोप्राईटर ईस्टर्न मिनिरल्स कं. लि. वि. श्रीमती निशा तोमर) ...3016

Motor Vehicles Act (59 of 1988), Section 166(1)(c) – Non-Applicant – Legal representative of deceased was joined as non-applicant in claims petition – If a person is joined as non-applicant and if it is found that he is entitled to get compensation, it is not required that he should file claim petition to pay for his portion of compensation – Father of deceased who was joined as non-applicant is entitled to get compensation. [Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar] ...3016

मोटर यान अधिनियम (1988 का 59), धारा 166(1)(सी) – अनावेदक – दावा याचिका में मृतक के विधिक प्रतिनिधि को अनावेदक के रूप में जोड़ा गया था – यदि किसी व्यक्ति को अनावेदक के रूप में जोड़ा जाता है तथा यदि यह पाया जाता है कि वह प्रतिकर पाने का हकदार है तो यह आवश्यक नहीं है कि वह अपने हिस्से के प्रतिकर के भुगतान हेतु दावा याचिका प्रस्तुत करे – मृतक का पिता जिसे अनावेदक के रूप में जोड़ा गया था, प्रतिकर पाने का हकदार है। (प्रोप्राईटर ईस्टर्न मिनिरल्स कं. लि. वि. श्रीमती निशा तोमर) ...3016

Motor Vehicles Act (59 of 1988), Section 173 – Compensation –

Deceased age 33 years – Earning Rs. 3000 per month – Dependency Rs. 2000/- per month – Multiplier of 16 applied – Total compensation of Rs. 4,01,500/- and interest @ 6% p.a. from the date of application. [Vidhya Bai (Smt.) Vs. Kailashchandra] ...2972

मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – मृतक आयु 33 वर्ष – आय रु. 3000 प्रतिमाह – आश्रितता रु. 2000/- प्रतिमाह – 16 का गुणक लागू किया गया – कुल प्रतिकर रु. 4,01,500/- तथा आवेदन की तिथि से 6% प्रतिवर्ष की दर से ब्याज। (विद्या बाई (श्रीमती) वि. कैलाशचन्द्र) ...2972

Motor Vehicles Act (59 of 1988), Section 173 – Compensation – Offending vehicle (Truck) was parked at the middle of road – Evidence for parking of truck supported by three witnesses including cleaner of truck – No evidence in rebuttal by Insurance Company – Finding of Tribunal that deceased was negligent as he was coming from back side of truck not proper. [Vidhya Bai (Smt.) Vs. Kailashchandra] ...2972

मोटर यान अधिनियम (1988 का 59), धारा 173 – प्रतिकर – वाहन जिससे दुर्घटना कारित हुई (ट्रक) सड़क के मध्य खड़ा किया गया था – ट्रक को खड़े किये जाने का साक्ष्य तीन साक्षीगण, जिसमें ट्रक का क्लीनर भी शामिल है, द्वारा समर्थित है – बीमा कंपनी द्वारा इसके खंडन में कोई साक्ष्य नहीं – अधिकरण का यह निष्कर्ष कि मृतक उपेक्षापूर्ण था क्योंकि वह ट्रक के पीछे से आ रहा था, उचित नहीं है। (विद्या बाई (श्रीमती) वि. कैलाशचन्द्र) ...2972

Motor Vehicles Act (59 of 1988), Section 173 – Dependency – Claims Tribunal deducted 1/3 of annual income of deceased towards his personal expenses – Appellant/mother was given 1/3 of income of deceased and 1/3 of amount to wife of deceased – Wife has already remarried and remained ex-parte – Giving of 1/3 amount to wife of deceased not proper. [Vidhya Bai (Smt.) Vs. Kailashchandra] ...2972

मोटर यान अधिनियम (1988 का 59), धारा 173 – आश्रितता – दावा अधिकरण ने मृतक के व्यक्तिगत खर्चों के मद में उसकी वार्षिक आय में से 1/3 भाग की कटौती की – अपीलार्थी/मां को मृतक की 1/3 आय का हिस्सा दिया गया तथा मृतक की पत्नी को धनराशि का 1/3 हिस्सा दिया गया – पत्नी ने पहले ही पुनर्विवाह किया है और एकपक्षीय रही हैं – मृतक की पत्नी को 1/3 धनराशि दी जाना उचित नहीं है। (विद्या बाई (श्रीमती) वि. कैलाशचन्द्र) ...2972

Municipal Corporation Act, M.P. (23 of 1956), Sections 80 & 84 – Grant of lease of immovable property – An agreement was entered into between the Municipal Corporation and the builder – Municipal

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Corporation delegated limited right of recovering premium from allottee and to recommend the person to whom the shop should be allotted, to the builder – It cannot be held that the agreement in question between Municipal Corporation and Builder is contrary to law. [Vijay Shanker Shukla Vs. Municipal Corporation, Jabalpur] (DB)...3275

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएं 80 व 84 – अवल संपत्ति का पट्टा प्रदान किया जाना – नगरपालिक निगम तथा बिल्डर के मध्य करार किया गया – नगरपालिक निगम ने आबंटिती से प्रीमियम की वसूली तथा उस व्यक्ति की अनुशंसा, जिसे दुकान आबंटित की जानी चाहिए, का सीमित अधिकार बिल्डर को प्रत्यायोजित किया – यह अभिनिर्धारित नहीं किया जा सकता कि नगरपालिक निगम तथा बिल्डर के मध्य प्रश्नगत करार विधि के विरुद्ध है। (विजय शंकर शुक्ला वि. म्यूनिसिपल कारपोरेशन, जबलपुर) (DB)...3275

Municipal Corporation Act, M.P. (23 of 1956), Section 133 – See – Constitution – Article 14, 243-X(b) [Hoarding Advertisement People Welfare Association Vs. State of M.P.] (DB)...2611

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 133 – देखें – संविधान – अनुच्छेद 14, 243-X(बी) (होर्डिंग एडवर्टाइजमेन्ट पी-पल वेलफेयर एसोसिएशन वि. म.प्र. राज्य) (DB)...2611

Municipalities Act, M.P. (37 of 1961), Section 19 & 3(7) – See – Constitution – Article 243 [Sangeeta Bansal (Smt.) Vs. State of M.P.] ...3217

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Municipalities Act, M.P. (37 of 1961), Section 47(1) – Recalling of President – Total number of the elected Councillors – Means, elected Councillors available on the date of signing of the proposal – On this basis calculation of three-fourth strength has to be counted. [Sangeeta Bansal (Smt.) Vs. State of M.P.] ...3217

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47(1) – अध्यक्ष को वापस बुलाना – निर्वाचित पार्षदों की कुल संख्या – का अर्थ है, प्रस्ताव पर हस्ताक्षर करने की तिथि को उपलब्ध निर्वाचित पार्षद – इस आधार पर तीन चौथाई संख्याबल की गणना को गिना जाए। (संगीता बंसल (श्रीमती) वि. म.प्र. राज्य) ...3217

Municipalities Act, M.P. (37 of 1961), Section 47(2) – Satisfaction of the Collector – Meaning – Collector himself verified

documents and eligibility of Councillors and their intention of making proposal for recall – Their signature on proposal – Correctness of signing of proposal was tested by Collector himself. [Sangeeta Bansal (Smt.) Vs. State of M.P.] ...3217

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47(2) – कलेक्टर की संतुष्टि – अर्थ – कलेक्टर ने स्वयं दस्तावेजों तथा पार्षदों की पात्रता तथा उनके वापस बुलाने के लिए प्रस्ताव के आशय का सत्यापन किया – प्रस्ताव पर उनके हस्ताक्षर – प्रस्ताव पर हस्ताक्षर की सत्यता की कलेक्टर द्वारा स्वयं जांच की गई। (संगीता बंसल (श्रीमती) वि. म.प्र. राज्य) ...3217

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Sections 5, 14, 15, 16, 17 & 19 – Use of Stadium and its complex – Approval was granted by State Government for development of stadium and construction of shops but actual use of same is contrary to actual purpose and shops are being mostly used for purpose unconnected with sports or sports related activities – Directions issued for stopping all activities in all or any of 65 shops which carry out business or functions or activities which are not in accordance to permission granted and which have no nexus with sports or sports related activities – Only business activities like hotel, restaurants, medical shops etc. be permitted in these shops – Municipal Corporation should take over the entire complex disengage the builder and contractor from any activity concerned with shopping complex, its management or leasing – Three months time be given to the shop owners and give them an option either to change their business activity and bring in conformity with requirement of sanction granted or else to vacate the shop – Municipal Corporation shall take over the possession of all shops which are vacated and shall take steps for allotting these shops in accordance with rules applicable – 10 ft. corridor in front of each shop should be free from obstructions, no business activity or any other activity should be permitted in this area and the same should be left free for movement of sports personnel and other persons who use the stadium – Petition allowed. [Vijay Shanker Shukla Vs. Municipal Corporation, Jabalpur] (DB)...3275

नगर तथा ग्राम निवेश अधिनियम (1973 का 23), धारा 5, 14, 15, 16, 17 व 19 – स्टेडियम तथा उसके काम्प्लेक्स/भवन का उपयोग – राज्य शासन द्वारा स्टेडियम के विकास तथा दुकानों के निर्माण के लिए अनुमति प्रदान की गयी थी परंतु उसका (वास्तविक) उपयोग वास्तविक प्रयोजन के विपरीत है एवं दुकानों का उपयोग अधिकांशतः खेल अथवा खेल संबंधित गतिविधियों से असंबद्ध उद्देश्यों के

लिए किया जा रहा है — सभी अथवा 65 दुकानों में से कोई भी दुकान जो ऐसे व्यापार अथवा कार्य अथवा गतिविधियों में संलग्न है जो प्रदान की गयी अनुमति के अनुरूप नहीं है तथा जिनका खेल अथवा खेल संबंधी गतिविधियों से कोई संबंध नहीं है, को सभी गतिविधियां रोकने के निर्देश जारी किए गए — इन दुकानों में केवल होटल, भोजनालय, दवाई-दुकान इत्यादि जैसी व्यापारिक गतिविधियों के लिए अनुमति दी जाए — नगरपालिक निगम द्वारा संपूर्ण काम्प्लेक्स/भवन का अधिकार ले लेना चाहिए तथा शापिंग काम्प्लेक्स, उसके प्रबंधन तथा पट्टे पर देने से संबंधित किसी भी गतिविधि से बिल्डर तथा ठेकेदार को पृथक कर देना चाहिए — दुकान मालिकों को तीन माह का समय दिया जाए तथा उन्हें यह विकल्प दिया जाये कि या तो वे अपनी व्यापारिक गतिविधि बदल ले और उसे प्रदान की गयी अनुमति की अपेक्षा के अनुरूप लाये अथवा दुकान खाली करे — नगरपालिक निगम खाली की गयी सभी दुकानों के कब्जे प्राप्त करेगा तथा प्रयोज्य नियमों के अनुरूप इन दुकानों के आबंटन के लिए कदम उठायेगा — प्रत्येक दुकान के सामने 10 फुट का गलियारा किसी भी रूकावट से मुक्त रखा जाये, इस क्षेत्र में कोई भी व्यापारिक गतिविधि अथवा कोई अन्य गतिविधि की अनुमति न दी जाए तथा उसे खिलाड़ियों एवं अन्य व्यक्तियों जो स्टेडियम का उपयोग करते हैं के गमनागमन के लिए मुक्त छोड़ा जाए — याचिका मंजूर। (विजय शंकर शुक्ला वि. म्यूनिसिपल कारपोरेशन, जबलपुर) (DB)...3275

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8 & 74-A – Order/direction – Issued by Central Government – Mandatory – State Government to comply. [Man Singh Rajpoot Vs. State of M.P.] (DB)...2826

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Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8(c) & 21-B – Rexcof Cough Syrup – As per notification dated 14.11.1985, a preparation containing not more than 100 mgs of Codeine Phosphate per dosage unit with the concentration of not more than 2.5% in undivided preparation is exempted from application of Section 21 of the Act, 1985 – As per report of Laboratory, each 5 ml Syrup containing 9.825 mg. Codeine Phosphate which is permissible – Merely because Syrup bottles in bulk were seized would not make it punishable in absence of any express penal provision – Applicant discharged. [Rohit Chadha Vs. State of M.P.] ...3079

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8(सी) व 21-बी - रैंक्सकॉफ कफ सीरप - अधिसूचना दिनांक 14.11.1985 के अनुसार ऐसी तैयार दवा जिसमें प्रति खुराक 100 मि.ग्रा. से अधिक कोडीन फॉस्फेट नहीं है, के साथ अविभाजित तैयार दवा जिसमें 2.5% से अधिक सांद्रता को 1985 के अधिनियम की धारा 21 के अनुप्रयोग से छूट दी गयी है - प्रयोगशाला के प्रतिवेदन के अनुसार प्रति 5 मि.ग्रा. सीरप जिसमें 9.825 मि.ग्रा. कोडीन फॉस्फेट मौजूद है जो कि अनुज्ञेय है - केवल इसलिये कि सीरप की बोतलें बहुलता में जल की गयी थी किसी अभिव्यक्त दंड के उपबंध की अनुपस्थिति में उसे दण्डित नहीं किया जा सकता - आवेदक उन्मोचित। (रोहित चड्ढा वि. म.प्र. राज्य) ...3079

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 9 & Art. 22 - Single convention - Cultivation of Poppy - By cultivator on behalf of Government - Cultivator has right only on seed - Rest of the plant and product belongs to Government. [Man Singh Rajpoot Vs. State of M.P.] (DB)...2826

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 9 अनुच्छेद 22 - एकल कन्वेंशन- अफीम की खेती - शासन की ओर से कृषक द्वारा - कृषक का केवल बीज पर अधिकार है - बचा हुआ पौधा और उत्पाद शासन का होता है। (मान सिंह राजपूत वि. म.प्र. राज्य) (DB)...2826

Narcotic Drugs and Psychotropic Substances Rules, M.P., 1985, Rule 37-M & Art. 22-25 of Single convention - Destruction of poppy straw - After cancellation or determination of license poppy straw which remained un-utilized has to be destroyed. [Man Singh Rajpoot Vs. State of M.P.] (DB)...2826

स्वापक औषधि और मनःप्रभावी पदार्थ नियम, म.प्र., 1985, नियम 37-एम व एकल कन्वेंशन के अनुच्छेद 22-25 - अफीम के मूसे का विनष्टीकरण - अनुज्ञप्ति के निरस्तीकरण अथवा निर्धारण के पश्चात् बचे हुये अप्रयुक्त अफीम के मूसे का विनष्टीकरण किया जाना चाहिए। (मान सिंह राजपूत वि. म.प्र. राज्य) (DB)...2826

National Security Act (65 of 1980), Sections 5 & 5A - Order of detention - Multiple grounds - Non-mentioning of material facts - Detention order if it is saved by Section 5A, cannot be set aside due to non-mentioning of material facts like acquittal or detention of detainee. [Mangal Singh @ Mangu Vs. State of M.P.] (FB)...3157

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5 व 5ए - निरोध का आदेश - अनेक आधार - तात्त्विक तथ्यों का उल्लेख नहीं किया जाना - निरोध आदेश यदि वह धारा 5-ए द्वारा अपवादित है तो, निरुद्ध व्यक्ति की दोषमुक्ति अथवा उसके निरोध में होने जैसे तात्त्विक तथ्यों का उल्लेख न किये जाने के कारण, अपास्त नहीं किया जा

सकता। (मंगल सिंह उर्फ मंगू वि. म.प्र. राज्य)

(FB)...3157

National Security Act (65 of 1980), Section 5A – Grounds of detention severable – Detention order passed on more than one ground – If detaining Authority is able to demonstrate that even one ground is valid for issuing the order of detention, the fact that other grounds are vague, non-existent, not relevant, not connected, etc. would make no difference. [Mangal Singh @ Mangu Vs. State of M.P.] (FB)...3157

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5ए – निरोध के आधार पृथक्करणीय – निरोध आदेश एक से अधिक आधार पर पारित – यदि निरोध प्राधिकारी यह प्रदर्शित करने में सक्षम है कि निरोध का आदेश जारी करने के लिए एक आधार भी वैध है, यह तथ्य कि अन्य आधार अस्पष्ट, अस्तित्वहीन, असंगत, असंबद्ध इत्यादि हैं से कोई फर्क नहीं पड़ेगा। (मंगल सिंह उर्फ मंगू वि. म.प्र. राज्य) (FB)...3157

National Security Act (65 of 1980), Section 5A – Ground of detention severable – Whether required to be specifically pleaded – No – It is a matter of legal presumption under Section 5A and need not to restate in Counter Affidavit to be filed by the detaining authority. [Mangal Singh @ Mangu Vs. State of M.P.] (FB)...3157

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5ए – निरोध के आधार पृथक्करणीय – क्या विनिर्दिष्ट रूप से अभिवाक् करना आक्षेपित है – नहीं – यह धारा 5ए के अंतर्गत विधिक उपधारणा का मामला है तथा निरोध प्राधिकारी द्वारा प्रस्तुत किए जाने वाले प्रति-शपथपत्र में पुनः कथन करने की आवश्यकता नहीं है। (मंगल सिंह उर्फ मंगू वि. म.प्र. राज्य) (FB)...3157

Panchayat Adhyapak Samvarg (Employment & Conditions of Service) Rules M.P. 2008, Rule 5 – See – Educational Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, Rule 11-B [Gazetted Headmasters Pradeshi Sangh, Madhya Pradesh Vs. State of M.P.] (DB)...2888

पंचायत अध्यापक संवर्ग (नियोजन तथा सेवा की शर्तें) नियम म.प्र. 2008, नियम 5 – देखें – शैक्षिक सेवा (विद्यालय शाखा) मर्ती तथा पदोन्नति नियम, म. प्र. 1982, नियम 11-बी (गजटेड हेडमास्टर्स प्रादेशिक संघ, मध्यप्रदेश वि. म.प्र. राज्य) (DB)...2888

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Sections 69, 70 – Panchayat Karmi/Panchayat Secretary – Appointment – Whether a candidate belonging to a different Area other

than the village for which the appointment of Panchayat Karmi/Panchayat Secretary is to be made is eligible for seeking appointment to the post – Held – Yes, the requirement of scheme is only directory in nature and not mandatory as it is policy of State Government to transfer Panchayat Karmi/Secretary from one village to another in the same District – Appeal dismissed. [Raghvendra Singh Vs. State of M.P.] (DB)...2845

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 69, 70- पंचायत कर्मी/ पंचायत सचिव – नियुक्ति – ऐसा अभ्यर्थी जो उस ग्राम जहां पर पंचायत कर्मी/पंचायत सचिव की नियुक्ति होनी है के अतिरिक्त किसी अन्य स्थान का निवासी है तो क्या वह उस पद पर नियुक्ति के लिये पात्र है – अभिनिर्धारित – हां, योजना की अपेक्षा केवल निदेशात्मक स्वरूप की है और न कि आज्ञापक क्योंकि राज्य शासन की नीति एक ही जिले में एक ग्राम से दूसरे ग्राम में पंचायत कर्मी/ सचिव के स्थानांतरण की है – अपील खारिज। (राघवेन्द्र सिंह वि. म.प्र. राज्य) (DB)...2845

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 – Recounting of votes – Not a matter of course – Secrecy of ballot papers – Tinkering of, not to be permitted lightly – No irregularity took place at the time of polling – No written complaint was made by petitioner to the Returning Officer – Petitioner has failed to substantiate the allegation with regard to irregularity in the counting of votes – Petition dismissed. [Netlal Panche Vs. Santosh Matre] ...2592

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – मतों की पुनर्गणना – प्रक्रिया का विषय नहीं – मतपत्रों की गोपनीयता – इधर उधर करने की अनुमति हल्के रूप से नहीं दी जानी चाहिए – मतदान के दौरान कोई अनियमितता नहीं घटी – याची के द्वारा निर्वाचन अधिकारी को कोई लिखित शिकायत नहीं की गई – याची मतगणना में अनियमितता के संबंध में आरोप सिद्ध करने में असफल – याचिका खारिज। (नेतलाल पांचे वि. संतोष मात्रे) ...2592

Payment of Gratuity Act (39 of 1972), Section 3(A) – Grant of interest on account of delayed payment – Controlling Authority while granting gratuity also directed payment of interest on a finding that the employer was guilty of delayed payment – Appellate Authority set-aside order of grant of interest – Held – Since petitioner tendered resignation on 04.11.1998 and he approached respondent for grant of gratuity on 09.02.2009 which was paid on 16.03.2009 – There is no delay in payment – Delayed payment is due to the employee's own fault – Interest is not payable – Petition is dismissed. [Leeladhar Puria

Vs. General Manager WCL]**...2869**

उपदान संदाय अधिनियम (1972 का 39), धारा 3(ए) – विलंबित भुगतान के फलस्वरूप ब्याज प्रदान करना – नियंत्रणकर्ता प्राधिकारी ने उपदान देते समय इस निष्कर्ष के आधार पर कि नियोक्ता विलंबित भुगतान का दोषी था, ब्याज के भुगतान का भी निदेश दिया – अपीलीय प्राधिकारी ने ब्याज प्रदान करने के आदेश को अपास्त किया – अभिनिर्धारित – चूंकि याची ने 04.11.1998 को त्यागपत्र दिया तथा उसने उपदान के प्रदाय के लिए प्रत्यर्थी से 09.02.2009 को संपर्क किया जिसका उसे 16.03.2009 को भुगतान किया गया – भुगतान में कोई विलंब नहीं है – विलंबित भुगतान कर्मचारी की स्वयं की गलती के कारण हुआ है – ब्याज देय नहीं है – याचिका खारिज। (लीलाधर पूरिया वि. जनरल मैनेजर डब्ल्यूसीएल) ...2869

Penal Code (45 of 1860), Section 109 – Abetment – There is direct allegation of conspiracy – It is not necessary that the abettor should concert in the offence with the person who commits it – It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. [Ajit Jain Vs. State of M.P.] (DB)...2810

दण्ड संहिता (1860 का 45), धारा 109 – दुष्प्रेरण – षडयंत्र का प्रत्यक्ष आरोप है – यह आवश्यक नहीं कि दुष्प्रेरक ने उस व्यक्ति के साथ जिसने उसे कारित किया है मिलकर अपराध किया हो – यह पर्याप्त है, यदि वह षडयंत्र में संलग्न होता है जिसके अनुसरण में अपराध कारित किया गया है। (अजीत जैन वि. म.प्र. राज्य) (DB)...2810

Penal Code (45 of 1860), Sections 147, 148, 149, 302, 323 & 324 – Deceased sustain 26 injuries – Conviction by trial Court and upheld by High Court – Challenge – Held – Conviction based on evidence of injured eye witnesses which is amply corroborated by evidence of eye witnesses & medical evidence, so not liable to be interfered – Appeals dismissed. [Ramvilas Vs. State of M.P.] (SC)...3137

दण्ड संहिता (1860 का 45), धाराएं 147, 148, 149, 302, 323 व 324 – मृतक को 26 चोटें आई – विचारण न्यायालय द्वारा दोषसिद्धि तथा उच्च न्यायालय द्वारा पुष्टि की गई – चुनौती – अभिनिर्धारित – दोषसिद्धि आहत चक्षुदर्शी साक्षियों के साक्ष्य पर आधारित जो कि पर्याप्त रूप से चक्षुदर्शी साक्षियों के साक्ष्य तथा चिकित्सीय साक्ष्य से समर्थित है, अतः हस्तक्षेप योग्य नहीं – अपीलें खारिज। (रामविलास वि. म.प्र. राज्य) (SC)...3137

Penal Code (45 of 1860), Sections 147, 148, 149, 302, 323 & 324 – Prosecution case – Deceased sustain gun shot injury, lathi blows and spear injuries – No seizure of 'Katta' – Nor gun shot injury found

– Held – All eye witnesses supporting carrying of Katta by the appellant, so his presence cannot be doubted because no 'Katta' was recovered from him. [Ramvilas Vs. State of M.P.] (SC)...3137

दण्ड संहिता (1860 का 45), धाराएं 147, 148, 149, 302, 323 व 324 – अभियोजन प्रकरण – मृतक को बंदूक की गोली से चोट, लाठी के वार तथा भाले की चोटें आई – 'कट्टे' की जप्ती नहीं – नही बंदूक की गोली की चोट पायी गई – अभिनिर्धारित – सभी चक्षुदर्शी साक्षियों ने अपीलार्थी द्वारा कट्टा रखे जाने का समर्थन किया है, अतः उसकी उपस्थिति पर इस कारण संदेह नहीं किया जा सकता क्योंकि उससे कोई 'कट्टा' बरामद नहीं हुआ। (रामविलास वि. म.प्र. राज्य) (SC)...3137

Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Copy of FIR to Magistrate – Two eye witnesses who are son and brother of deceased have admitted their inimical relation with accused – Their evidence is full of contradictions and not in conformity with medical evidence – Their presence on spot doubtful – When presence of witnesses on spot at the time of incident and lodging of FIR is doubtful, the mandatory provisions of Section 157 Cr.P.C. have to be complied with by prosecution – Prosecution failed to prove that copy of FIR was sent to Magistrate – Prosecution also failed to prove blood stains on seized weapons – Appeal allowed. [Ramu Vs. State of M.P.] (DB)...3045

दण्ड संहिता (1860 का 45), धारा 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – मजिस्ट्रेट को प्रथम सूचना प्रतिवेदन की प्रति – दो चक्षुदर्शी साक्षी जो मृतक के पुत्र एवं भाई हैं उन्होंने स्वीकार किया कि अभियुक्त के साथ उनके संबंध वैमनस्यतापूर्ण थे – उनके साक्ष्य विरोधाभास से परिपूर्ण एवं चिकित्सीय साक्ष्य से भी पुष्टि नहीं – घटनास्थल पर उनकी उपस्थिति संदेहास्पद – जब घटना के समय घटनास्थल पर एवं प्रथम सूचना प्रतिवेदन दर्ज कराते समय साक्षियों की उपस्थिति संदेहास्पद हो, द.प्र.सं. की धारा 157 के आज्ञापक उपबंधों का अभियोजन द्वारा अनुपालन करना होगा – अभियोजन यह साबित करने में असफल रहा कि प्रथम सूचना प्रतिवेदन की प्रति मजिस्ट्रेट को भेजी गई – अभियोजन जल्ल आयुधों पर रक्त के धब्बे साबित करने में भी असफल रहा – अपील मंजूर। (रामू वि. म.प्र. राज्य) (DB)...3045

Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32– Multiple dying declarations. – In first dying declaration, the deceased stated that she got burnt accidentally – Second dying declaration was got recorded on the saying of Mahila Mandal and Chairman of Zila Panchayat – No smell of kerosene oil was found – Second dying declaration

implicating the appellant not trustworthy – In order to test the reliability of a dying declaration the court has to keep in mind, the circumstances like the opportunity of the dying man for observation and that it has been made at the earliest opportunity and was not the result of tutoring by interested parties – Appeal allowed. [Guddi Bai @ Sahodara Bai Vs. State of M.P.] (DB)...3054

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – बहुविध मृत्युकालिक कथन – प्रथम मृत्युकालिक कथन में मृतिका ने कथन किया कि वह दुर्घटनावश जल गयी – दूसरा मृत्युकालिक कथन महिला मंडल तथा जिला पंचायत अध्यक्ष के कहने पर दर्ज किया गया – मिट्टी तेल की कोई गंध नहीं पायी गयी – अपीलार्थी को अपराध में आलिप्त करने वाला दूसरा मृत्युकालिक कथन विश्वसनीय नहीं है – मृत्युकालिक कथन की विश्वसनीयता की जांच हेतु न्यायालय को ऐसी परिस्थितियों को ध्यान में रखना चाहिए जैसे कि मरते हुए व्यक्ति को मिला पर्यवेक्षण का अवसर और यह कि वह यथाशीघ्र अवसर पर दिया गया हो तथा किसी हितवद्ध पक्षकार द्वारा सिखाने के परिणामस्वरूप नहीं था – अपील मंजूर। (गुड्डी बाई उर्फ सहोदरा बाई वि. म.प्र. राज्य) (DB)...3054

Penal Code (45 of 1860), Section 302 – Murder – Circumstantial Evidence – Appellant was having illicit relations with deceased – Appellant was alone in the house along with the deceased – Presence of sperms on petticoat and vaginal swab clearly shows that there was a cohabitation soon before the death – Deceased was alive when the appellant entered inside the house otherwise, he would have immediately came out of the house, if the deceased was already dead – In view of Section 106 of Evidence Act it shall be presumed that the appellant was the person who killed the deceased – Appeal dismissed. [Chandramani Tripathi Vs. State of M.P.] (DB)...2764

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – परिस्थितिजन्य साक्ष्य – अपीलार्थी के मृतिका के साथ अवैध संबंध थे – अपीलार्थी मकान में मृतिका के साथ अकेला था – पेटीकोट एवं वैजाइनल स्वेब पर शुक्राणुओं की उपस्थिति स्पष्ट रूप से दर्शाती है कि मृत्यु के तुरंत पहले सहवास हुआ था – जब अपीलार्थी ने मकान के अंदर प्रवेश किया तब मृतिका जीवित थी अन्यथा वह तुरंत मकान से बाहर निकलता यदि मृतिका पहले से मृत होती – साक्ष्य अधि. की धारा 106 को दृष्टिगत रखते हुए, यह उपधारणा की जायेगी कि अपीलार्थी वह व्यक्ति था जिसने मृतिका की हत्या की – अपील खारिज। (चन्द्रमणी त्रिपाठी वि. म.प्र. राज्य) (DB)...2764

Penal Code (45 of 1860), Section 304-B – Acquittal – The judgment of the acquittal should not be disturbed unless the conclusion drawn on

the basis of evidence brought on record is found to be grossly unreasonable or manifestly perverse or palpably unsustainable— Further, if two views are possible then the view in favour of accused should be taken into consideration. [Dileep Vs. State of M.P.] (DB)...3036

दण्ड संहिता (1860 का 45), धारा 304-बी - दोषमुक्ति - दोषमुक्ति के निर्णय को तब तक नहीं छेड़ा जा सकता जब तक कि अभिलेख में आए साक्ष्य के आधार पर निकाला गया निष्कर्ष अत्यंत अनुचित अथवा प्रकट रूप से विकृत या सुस्पष्ट रूप से अपोषणीय पाया जाता है - आगे, यदि दो दृष्टिकोण संभावित हैं तो अभियुक्त के पक्ष वाले दृष्टिकोण पर विचार किया जाना चाहिए। (दिलीप वि. म. प्र. राज्य) (DB)...3036

Penal Code (45 of 1860), Section 304-B - Soon before death - Father of deceased was present at the time of autopsy but did not allege against appellant - Allegations were made after 2-3 months of incident - No evidence that deceased was subjected to cruelty soon before her death - Other accused already acquitted as evidence of witnesses were not found trustworthy - Appellant entitled to be acquitted - Appeal allowed. [Dileep Vs. State of M.P.] (DB)...3036

दण्ड संहिता (1860 का 45), धारा 304-बी - मृत्यु के शीघ्र पूर्व - मृतक के पिता शव परीक्षण के समय उपस्थित परंतु अपीलार्थी के विरुद्ध अभिकथन नहीं - घटना के 2-3 माह पश्चात् अभिकथन किये गये - कोई साक्ष्य नहीं कि मृत्यु के तुरंत पहले मृतक के साथ क्रूरता का व्यवहार किया गया - अन्य अभियुक्त पहले ही दोषमुक्त क्योंकि साक्षियों के साक्ष्य विश्वसनीय नहीं पाये गये - अपीलार्थी दोषमुक्ति का हकदार है - अपील मंजूर। (दिलीप वि. म.प्र. राज्य) (DB)...3036

Penal Code (45 of 1860), Section 306 - Abetment of Suicide - Applicant after the death of her husband was having illicit relations with deceased - She financed the deceased for opening a medical store - Later on, she started pressurizing the deceased to return the money, she had invested in the medical store - Held - Deceased was ultrasensitive to the situation and chose to end his life - Commission of suicide by deceased was sheer exercise in escapism for which the applicant cannot be held to be legally liable because by no stretch of imagination, it can be said that the applicant had succeeded in creating such a situation for the deceased that he was left with no option but to commit suicide - Charges set aside - Applicant discharged. [Mamta Rai (Smt.) Vs. State of M.P.] ...3072

दण्ड संहिता (1860 का 45), धारा 306 – आत्महत्या का दुष्प्रेरण – प्रार्थिनी के अपने पति की मृत्यु के पश्चात् मृतक के साथ अवैध संबंध थे – उसने मृतक को मेडिकल स्टोर खोलने हेतु आर्थिक सहायता दी – बाद में, वह रकम वापस करने हेतु मृतक पर दबाव डालने लगी जो उसने मेडिकल स्टोर में निवेश की थी – अभिनिर्धारित – मृतक इस परिस्थिति के प्रति अतिसंवेदनशील था तथा उसने अपने जीवन का अंत करना चुना – मृतक द्वारा आत्महत्या करना सरासर पलायन का कदम था जिसके लिए प्रार्थिनी को कानूनी तौर पर जिम्मेदार नहीं ठहराया जा सकता क्योंकि किसी भी तरह से यह कल्पना नहीं की जा सकती तथा यह कहा जाये कि प्रार्थिनी मृतक के लिए ऐसी परिस्थिति उत्पन्न करने में सफल रही कि उसके पास आत्महत्या कारित करने के अलावा कोई विकल्प शेष नहीं था – आरोप अपास्त – प्रार्थिनी आरोपमुक्त। (ममता राय (श्रीमती) वि. म.प्र. राज्य) ...3072

Penal Code (45 of 1860), Section 307 – Attempt to murder – Against acquittal – Complainant alleged in FIR that he had received gun shot injury in calf of left leg and in Court evidence it was stated that he had received gun shot injury in the calf of right leg – Doctor found only abrasion in calf of left leg and no gun shot injury was found – FIR also lodged after 3 1/2 hours – Trial court rightly acquitted the respondents – Appeal dismissed. [Shiv Singh Vs. Harnarayan] (DB)...3051

दण्ड संहिता (1860 का 45), धारा 307 – हत्या का प्रयत्न – दोषमुक्त के विरुद्ध – शिकायतकर्ता ने प्रथम सूचना प्रतिवेदन में यह अभिकथित किया कि उसके बायें पैर की पिंडली पर पिस्तौल की गोली से चोट लगी एवं न्यायालयीन साक्ष्य में यह कथित किया कि पिस्तौल की गोली से उसके दांयें पैर की पिंडली पर चोट लगी – चिकित्सक ने बांयें पैर की पिंडली पर केवल खरोंच का निशान पाया एवं पिस्तौल की गोली की चोट नहीं पाई गई थी – प्रथम सूचना प्रतिवेदन भी 3 1/2 घंटे बाद दर्ज की – विचारण न्यायालय ने उचित रूप से प्रत्यर्थियों को दोषमुक्त किया – अपील खारिज। (शिव सिंह वि. हरनारायण) (DB)...3051

Penal Code (45 of 1860), Sections 363, 366 & 376 and Juvenile Justice (Care and Protection of Children) Rules 2007 – Determination of age – Rule 12(3)(a)(i) to (iii) – Birth Certificate and Middle School Examination Certificate, vis-a-vis Rule 12(3)(b) – Ossification Test – Held – The certificate produced as per Rule 12(3)(a)(i) to (iii) should have been relied firstly and in absence of it, the medical opinion under Rule 12(3)(b) ought to have been sought. [State of M.P. Vs. Anoop Singh] (SC)...2545

दण्ड संहिता (1860 का 45), धाराएं 363, 366 व 376 एवं किशोर न्याय (बालकों की देख-रेख और संरक्षण) नियम 2007 – आयु का निर्धारण – नियम

12(3)(ए)(i) से (iii) – जन्म प्रमाणपत्र एवं माध्यमिक विद्यालय परीक्षा प्रमाणपत्र के संदर्भ में नियम 12(3)(बी) – अस्थि विकास परीक्षण – अभिनिर्धारित – सर्वप्रथम नियम 12(3)(ए)(i) से (iii) के अनुसार प्रस्तुत प्रमाणपत्र पर विश्वास किया जाना चाहिये और इसकी अनुपस्थिति में, नियम 12(3)(b) के अंतर्गत चिकित्सीय मत प्राप्त किया जाना चाहिए। (म.प्र. राज्य वि. अनूप सिंह) (SC)...2545

Penal Code (45 of 1860), Section 364-A, r/w Section 120-B – Abduction for ransom – Abductee duly identified the appellants during identification parade – Revolver with cartridges, mobile phone and car were recovered at the instance of appellants – Appellants have also threatened to cause death or hurt in order to extort ransom – Held – Prosecution has to prove that the abductee was kept in detention and threatened to cause death or hurt in order to extort ransom and communicates that demand for ransom – Prosecution has proved all the three ingredients of Section 364-A of IPC – Trial Court has not committed any error in convicting and sentencing the appellants – Trial Court's order is maintained. [Balindar Kumar Vs. State of M.P.] (DB)...2752

दण्ड संहिता (1860 का 45), धारा 364-ए, सहपठित धारा 120-बी – फिरौती के लिए अपहरण – अपहृत ने पहचान परेड के दौरान सम्यक् रूप से अपीलार्थीगण को पहचाना – अपीलार्थीगण की निशानदेही पर कारतूस के साथ रिवॉल्वर, मोबाइल फोन और कार बरामद किये गये – फिरौती वसूलने के उद्देश्य से अपीलार्थीगण ने मृत्यु या उपहति कारित करने की धमकी भी दी – अभिनिर्धारित – अभियोजन को साबित करना होगा कि अपहृत को निरोध में रखा गया था और फिरौती वसूलने के उद्देश्य से मृत्यु या उपहति कारित करने की धमकी दी गई थी तथा फिरौती की मांग संसूचित की गई – अभियोजन ने भा.द.सं. की धारा 364-ए के सभी तीन घटक सिद्ध किये हैं – विचारण न्यायालय ने अपीलार्थीगण को दोषसिद्ध और दंडित करने में कोई त्रुटि कारित नहीं की है – विचारण न्यायालय के आदेश को कायम रखा गया। (बलिनंदर कुमार वि. म.प्र. राज्य) (DB)...2752

Penal Code (45 of 1860), Section 376 – Rape – According to prosecutrix, she was thrown on the ground – However, no external or internal injury was found – Investigating Officer has also admitted that during investigation, it was found that report of rape was false and prosecutrix was in habit of lodging false report – Appellant acquitted – Appeal allowed. [Ghanshyam Singh Raghuvanshi Vs. State of M.P.] (DB)...3032

दण्ड संहिता (1860 का 45), धारा 376 – बलात्कार – अभियोक्त्री के अनुसार उसे जमीन पर पटक दिया गया था – किंतु बाह्य या आंतरिक चोट नहीं

पाई गई थी - अन्वेषण अधिकारी ने भी स्वीकार किया कि अन्वेषण के दौरान यह पाया गया था कि बलात्कार की रिपोर्ट मिथ्या थी एवं अभियोक्त्री मिथ्या रिपोर्ट करने की आदी थी - अपीलार्थी दोषमुक्त - अपील मंजूर। (घनश्याम सिंह रघुवंशी वि. म.प्र. राज्य) (DB)...3032

Penal Code (45 of 1860), Section 376 - Rape - In a case of rape the medico-legal examination has great importance - The story of prosecution is not supported by the medical evidence and prosecution evidence suffers from discrepancies - Further prosecutrix admitted the suggestion that she and her mother had gone to Govt. Advocate's Office where her police statement was read out - It gives rise to presumption that there is an element of tutoring - Appeal allowed. [Phool Chand Vs. State of M.P.] (DB)...3369

दण्ड संहिता (1860 का 45), धारा 376 - बलात्कार - बलात्कार के प्रकरण में चिकित्सा-विधिक परीक्षण अत्यंत महत्वपूर्ण है - अभियोजन कथानक चिकित्सकीय साक्ष्य से समर्थित नहीं है तथा अभियोजन साक्ष्य विसंगतियों से ग्रसित है - इसके अतिरिक्त अभियोक्त्री ने यह सुझाव स्वीकार किया है कि वह तथा उसकी माता शासकीय अधिवक्ता के कार्यालय गई थीं जहां उसका पुलिस कथन पढ़कर सुनाया गया - इससे यह उपधारणा उत्पन्न होती है कि यहां सिखाने का तत्त्व विद्यमान है - अपील मंजूर। (फूलचन्द वि. म.प्र. राज्य) (DB)...3369

Penal Code (45 of 1860), Section 376 - Rape - Medical Evidence - Medical Jurisprudence - Oozing of blood from hymen - Necessary - If intercourse happened last 24 hours. [State of M.P. Vs. Keshar Singh] (SC)...2551

दण्ड संहिता (1860 का 45), धारा 376 - बलात्कार - चिकित्सीय साक्ष्य - चिकित्सीय विधिशास्त्र-योनिच्छद से रक्तस्राव - आवश्यक - यदि पिछले 24 घंटों में संभोग हुआ हो। (म.प्र. राज्य वि. केशर सिंह) (SC)...2551

Penal Code (45 of 1860), Section 376 - See - Evidence Act, 1872, Section 3 [State of M.P. Vs. Keshar Singh] (SC)...2551

दण्ड संहिता (1860 का 45), धारा 376 - देखें - साक्ष्य अधिनियम, 1872, धारा 3 (म.प्र. राज्य वि. केशर सिंह) (SC)...2551

Penal Code (45 of 1860), Sections 419, 420, 467, 468 & 471 - Cheating - Application for quashment of FIR registered on the basis of forged sale deed - Society allotted a plot in favour of "A" who in his turn sold the same to "B" without obtaining permission of society -

Society cancelled the allotment made in favour of "A" and allotted the same to applicant – Respondent no. 5 society admits execution of documents in favour of applicant – It cannot be assumed that the sale deed is forged, unless proved before civil court – Matter purely of civil nature – FIR related to applicant quashed. [Sanjay Kumar Vs. State of M.P.] ...3434

दण्ड संहिता (1860 का 45), धाराएं 419, 420, 467, 468 व 471 – छल – कूट रचित विक्रय-पत्र के आधार पर पंजीबद्ध किये गये प्रथम सूचना प्रतिवेदन को अभिखंडित किये जाने के लिये आवेदन – सोसायटी ने "अ" के पक्ष में एक भूखंड का आबंटन किया जिसने उक्त को सोसाइटी की अनुमति प्राप्त किये बिना "ब" को विक्रय कर दिया – सोसाइटी ने "अ" के पक्ष में किया आबंटन रद्द किया एवं उक्त को आवेदक को आबंटित किया – प्रत्यर्थी क्रमांक 5 सोसाइटी ने दस्तावेजों का निष्पादन आवेदक के पक्ष में किया जाना स्वीकार किया – यह धारणा नहीं की जा सकती कि विक्रय-पत्र कूटरचित है – जब तक कि सिविल न्यायालय के समक्ष साबित न किया जाये – मामला विशुद्ध रूप से सिविल प्रकृति का है – आवेदक से संबंधित प्रथम सूचना प्रतिवेदन अभिखंडित। (संजय कुमार वि. म.प्र. राज्य) ...3434

Penal Code (45 of 1860), Sections 420, 467, 468 & 471 and Criminal Procedure Code, 1973 (2 of 1974), Section 397 – Revision – Matters related to forgery of sale deed and order of mutation which cannot be decided without proper evidence – FIR shows commission of cognizable offences – No interference is called for in the order of framing of charge – Revision dismissed. [Fayyaz Ahmad Vs. State of M.P.] ...3425

दण्ड संहिता (1860 का 45), धारा 420, 467, 468 व 471 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 – पुनरीक्षण – विक्रय पत्र की कूट रचना एवं नामांतरण आदेश संबंधी मामले जो कि बिना उचित साक्ष्य के निर्णीत नहीं किये जा सकते – प्रथम सूचना प्रतिवेदन संज्ञेय अपराध किया जाना दर्शाता है – आरोप विरचित किये जाने के आदेश में किसी हस्तक्षेप की आवश्यकता नहीं – पुनरीक्षण खारिज। (फयाज अहमद वि. म.प्र. राज्य) ...3425

Penal Code (45 of 1860), Sections 420, 467, 468 & 471 – Cheating – Society sold Plot No. 344 – It is alleged that the applicant/purchaser made interpolation in the sale deed and added Plot No. 344-A however, no such plot is in existence as per lay out – Applicant is also alleged to have taken possession of Plot No. 345 – Applicant could not produce original documents in respect of Plot Nos. 344, 344-A before the police when matter was being investigated in compliance of order

u/s 156(3) of Cr.P.C. – Allegations are required to be enquired upon – Application u/s 482 for quashing the proceedings dismissed. [Anil Kumar Chouhan @ Anil Singh Chouhan Vs. State of M.P.] ...3105

दण्ड संहिता (1860 का 45), धाराएं 420, 467, 468 व 471 – छल – सोसाइटी ने भूखंड क्रमांक 344 विक्रय किया – यह अभिकथित किया गया है कि आवेदक/क्रेता ने विक्रय विलेख में अंतर्वेशन किया एवं भूखंड क्रमांक 344-ए जोड़ दिया जबकि, अभिन्यास के अनुसार ऐसा कोई भूखंड अस्तित्व में नहीं है – यह भी अभिकथित किया कि आवेदक भूखंड क्रमांक 345 का कब्जा ले चुका है – द.प्र.सं. की धारा 156(3) के अंतर्गत आदेश के पालन में जब मामले का अन्वेषण किया जा रहा था, आवेदक भूखंड क्रमांक 344, 344-ए के संबंध में पुलिस के समक्ष मूल दस्तावेज प्रस्तुत नहीं कर सका – अभिकथनों की जांच की जाना अपेक्षित – धारा 482 के अंतर्गत कार्यवाहियां अभिखंडित किये जाने के लिये आवेदन खारिज। (अनिल कुमार चौहान उर्फ अनिल सिंह चौहान वि. म.प्र. राज्य) ...3105

Penal Code (45 of 1860), Sections 467, 468 & 471 – See – Criminal Procedure Code, (M.P. Amendment) Act, 2007, Section 4 [Dilip Kumar Vs. State of M.P.] ...2788.

दण्ड संहिता (1860 का 45), धाराएं 467, 468 व 471 – देखें – दण्ड प्रक्रिया संहिता, (म.प्र. संशोधन) अधिनियम, 2007, धारा 4 (दिलीप कुमार वि. म.प्र. राज्य) ...2788

Penal Code (45 of 1860), Section 505(2)(1) – See – Criminal Procedure Code, 1973, Section 216 [Abdul Rashid Vs. State of M.P.] ...3127

दण्ड संहिता (1860 का 45), धारा 505(2)(1) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 216 (अब्दुल राशिद वि. म.प्र. राज्य) ...3127

Police Regulations, M.P., Regulations 10, 12, & 232 – Departmental Enquiry – Appointment of Enquiry Officer – Whether Superintendent of Police is the only authority to appoint the Enquiry Officer to conduct departmental enquiry against the Inspector of Police – Held – No, as per Regulation 10 read with Regulation 12, Inspector General of Police, being a Superior Officer than S.P. is also competent to exercise power of appointing Enquiry Officer to conduct the departmental enquiry. [Ram Swaroop Pandre Vs. State of M.P.] (DB)...2850

पुलिस विनियमन, म.प्र., विनियमन 10, 12, व 232 – विभागीय जांच – जांचकर्ता अधिकारी की नियुक्ति – क्या केवल पुलिस अधीक्षक ही पुलिस निरीक्षक

के विरुद्ध विभागीय जांच के संचालन हेतु जांचकर्ता अधिकारी नियुक्त करने के लिये प्राधिकारी है? — अभिनिर्धारित — नहीं, विनियम 10 सहपठित विनियम 12 के अनुसार पुलिस महानिरीक्षक भी, पुलिस अधीक्षक से उच्चाधिकारी होने के नाते विभागीय जांच संचालन के लिये जांचकर्ता अधिकारी की नियुक्ति हेतु शक्ति का प्रयोग करने के लिये सक्षम है। (राम स्वरूप पांडे वि. म.प्र. राज्य) (DB)...2850

Practice — Court can permit a person who calls a witness to put question to him which might be put in the cross-examination at any stage of the examination of witness — However, such permission could be given by the Court till the witness is under examination in the witness box and not at later stage. [Gajadhar Prasad Vs. Smt. Shakuntala Mishra] ...2859

पद्धति — न्यायालय ऐसे व्यक्ति को जो किसी साक्षी को बुलाता है, साक्षी के परीक्षण के किसी भी प्रक्रम पर उससे ऐसा प्रश्न पूछने के लिये अनुमति दे सकता है जो कि उसके प्रतिपरीक्षण में पूछा जा सकता हो — किंतु न्यायालय द्वारा उक्त अनुमति साक्षी के कटघरे में परीक्षण के अधीन रहने तक दी जा सकती है और न कि बाद के प्रक्रम पर। (गजाधर प्रसाद वि. श्रीमती शकुन्तला मिश्रा) ...2859

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 3, 18, 23 & 25 — Quashment of proceedings — Report of Tehsildar — Alleged violations and irregularities in the report can be considered by the Magistrate while hearing the complaint filed by the appropriate authority/Collector — Whether Tehsildar while conducting the inspection has authority or not can also be considered by the Magistrate — Whether such complaint is true or baseless can be determined by the Magistrate after the trial — At this stage it cannot be inferred that there is an abuse of law — As such the application is devoid of merit and liable to be dismissed and dismissed accordingly. [Dinesh Agarwal (Dr.) Vs. State of M.P.] ...3438

गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएं 3, 18, 23 व 25 — कार्यवाहियों को अभिखंडित किया जाना — तहसीलदार का प्रतिवेदन — समुचित प्राधिकारी/कलेक्टर द्वारा प्रस्तुत की गयी शिकायत की सुनवाई के दौरान प्रतिवेदन में अभिखंडित अतिलंघन एवं अनियमितता पर मजिस्ट्रेट विचार कर सकता है — क्या निरीक्षण करते समय तहसीलदार को प्राधिकार है या नहीं इस पर भी मजिस्ट्रेट द्वारा विचार किया जा सकता है — क्या ऐसी शिकायत सत्य है या आधारहीन है, इसका निर्धारण मजिस्ट्रेट द्वारा विचारण के पश्चात् किया जा सकता है — इस प्रक्रम पर यह निष्कर्ष नहीं

निकाला जा सकता है कि विधि का दुरुपयोग किया गया है - इस प्रकार आवेदन गुणदोष रहित है एवं खारिज किये जाने योग्य है और तदनुसार खारिज किया जाता है। (दिनेश अग्रवाल (डॉ.) वि. म.प्र. राज्य) ...3438

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) - See - Criminal Procedure Code, 1973, Section 240 [Ajit Jain Vs. State of M.P.] (DB)...2810

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 240 (अजीत जैन वि. म.प्र. राज्य) (DB)...2810

Prevention of Corruption Act (49 of 1988), Section 19 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Sanction - Observations were given by the trial Court while deciding Special case pending against co-accused person observing that the prosecution agency shall be at liberty to file fresh charge-sheet against the petitioner after obtaining the requisite sanction from the competent authority u/s 19 of Prevention of Corruption Act - Held - It could not be said that the sanction of the competent authority dated 10.07.2013 was influenced by any observation made by the trial Court in the impugned judgment - Petition did not have any question which requires any consideration on merit for which this petition could be admitted for final hearing - Application dismissed. [Ajita Bajpai Pande (Smt.) Vs. State of M.P.] (DB)...3113

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - मंजूरी - विचारण न्यायालय द्वारा सह अभियुक्त के विरुद्ध लंबित विशेष प्रकरण को निर्णीत किये जाते समय इस टिप्पणी के साथ समुक्तियां दी गई कि अभियोजन एजेंसी, भ्रष्टाचार निवारण अधिनियम की धारा 19 के अंतर्गत सक्षम प्राधिकारी से अपेक्षित मंजूरी अभिप्राप्त करने के पश्चात्, याची के विरुद्ध नये सिरे से आरोप-पत्र प्रस्तुत करने के लिए स्वतंत्र होगी - अभिनिर्धारित - यह नहीं कहा जा सकता कि सक्षम प्राधिकारी की मंजूरी दिनांक 10.07.2013, विचारण न्यायालय द्वारा आक्षेपित निर्णय में दी गई किसी समुक्ति से प्रभावित थी - याचिका में कोई ऐसा प्रश्न नहीं जिसके गुणदोष पर कोई विचार किया जाना अपेक्षित हो जिसके लिये यह याचिका अंतिम सुनवाई हेतु स्वीकार की जा सके - आवेदन खारिज। (अजिता बाजपेयी पांडे (श्रीमती) वि. म.प्र. राज्य) (DB)...3113

Procedure - Interim stay granted - Till next date of hearing - Meaning and effect - On next date of hearing means, when the Court applies its mind - Should not confused with - Step in proceedings -

Simple adjourned without any order – Stay not specifically vacated – Stay continue. [Sangeeta Bansal (Smt.) Vs. State of M.P.] ...3217

प्रक्रिया – अंतरिम रोक प्रदान की गई – सुनवाई की अगली तिथि तक – अर्थ एवं प्रभाव – सुनवाई की अगली तिथि का अर्थ है जब न्यायालय अपनी बुद्धि का प्रयोग करे – से भ्रमित नहीं होना चाहिए – कार्यवाही के चरण – बिना किसी आदेश के साधारण रूप से स्थगित – रोक के आदेश को विनिर्दिष्ट रूप से रद्द नहीं किया गया – रोक जारी। (संगीता बंसल (श्रीमती) वि. म.प्र. राज्य) ...3217

Railways Act (24 of 1989), Sections 123(c)(2) & 124-A – Compensation claimed in lieu of death – Deceased was aboard a General Compartment and must have got down at Station either to quench his thirst or may be because of the pressure of crowd to ease himself and found it difficult to aboard the train when it has started moving – It cannot be said that the deceased was not acting like a prudent man and deliberated a self inflicted injury – Deceased was a bona fide passenger and his death was an untoward incident – Judgment set-aside – Compensation of Rs. 4,00,000/- awarded with 7.5% interest – Appeal allowed. [Pushpa Devi (Smt.) Vs. The General Manager] ...2726

रेल अधिनियम (1989 का 24), धारा 123(सी)(2) व 124-ए – मृत्यु के बदले में किया गया प्रतिकर का दावा – मृतक सामान्य श्रेणी के डिब्बे में यात्रा कर रहा था और हो सकता है कि वह अपनी प्यास बुझाने के लिए या भीड़ के दबाव से स्वयं को आराम देने के लिए स्टेशन पर उतरा था और जब रेलगाड़ी चलने लगी तो उसे रेलगाड़ी में चढ़ने में कठिनाई हुई – यह नहीं कहा जा सकता कि मृतक प्रज्ञावान व्यक्ति जैसे कार्य नहीं कर रहा था और उसने जानबूझकर स्वयं को चोट कारित की – मृतक सद्मावी यात्री था और उसकी मृत्यु एक दुर्भाग्यपूर्ण घटना थी – निर्णय अपास्त – प्रतिकर रू. 4,00,000/- 7.5% ब्याज के साथ अवार्ड किया गया – अपील मंजूर। (पुष्पा देवी (श्रीमती) वि. द जनरल मनेजर) ...2726

Representation of the People Act (43 of 1951), Section 33 – Filing of certified copy of Electoral Roll, where the candidate is enrolled – Mandatory provision. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33 – निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत करना, जहाँ प्रत्याशी सूचीबद्ध है – आज्ञापक उपबंध। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Section 33(5) – Certified copy of Electoral Roll not filed by candidate – Mere

mentioning of serial number as elector in nomination form is not compliance of mandatory provision. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) — प्रत्याशी द्वारा निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत नहीं — नामांकन पत्र में केवल निर्वाचक की क्रम संख्या का उल्लेख किया जाना आज्ञापक उपबंध का पालन नहीं है। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Section 33(5) — Onus/Burden of Proof of filing of certified copy of Electoral Roll is on the returned candidates (respondent) — As respondent failed to prove that he had filed certified copy of Electoral Roll, his nomination paper was wrongly accepted by returning officer. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) — निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत किया जाना साबित करने का भार/दायित्व निर्वाचित प्रत्याशियों (प्रत्यर्थी) पर है — चूंकि प्रत्यर्थी यह सिद्ध करने में असफल रहा कि उसने निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत की थी, निर्वाचन अधिकारी द्वारा उसका नामांकन पत्र गलत रूप से स्वीकार किया गया था। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Section 33(5) — Stages of filing of certified copy of Electoral Roll — Firstly at the time of filing of nomination paper — Secondly at the time of screening. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) — निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत करने के प्रक्रम — प्रथमतः नामांकन पत्र प्रस्तुत करते समय — द्वितीयतः जांच के समय। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Sections 33(5), 36(2)(b) — Non-compliance of Section 33(5) — Fatal — Candidate ineligible to contest election — Nomination liable to be rejected — Election set-aside. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) व 36(2)(बी) — धारा 33(5) का अननुपालन — घातक — प्रत्याशी चुनाव लड़ने के लिये अपात्र —

नामांकन अस्वीकार किये जाने योग्य — निर्वाचन अपास्त। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Sections 33(5) & 36(7) — Proof of Elector — Copy of Electoral Roll or relevant part thereof or certified copy of relevant entries of such roll — Filed at the time of filing nomination form. [Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram] ...2932

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) व 36(7) — निर्वाचक का सबूत — निर्वाचक नामावली की प्रति या उसका सुसंगत खंड या उक्त नामावली की सुसंगत प्रविष्टियों की प्रमाणित प्रति — नामांकन प्रपत्र प्रस्तुत करते समय प्रस्तुत करना चाहिये। (वंशमणी प्रसाद वर्मा वि. राजेन्द्र कुमार मेश्राम) ...2932

Representation of the People Act (43 of 1951), Sections 80, 81 & 100(1)(d)(iv) and Conduct of Election Rules, 1961, Rule 63(1) & (2) — Irregularity in counting of Votes — Petitioner has failed to plead and prove any irregularity committed in counting the votes and how such irregularities have materially affected the election of Respondent No. 1 — Petitioner has also failed to plead and prove that he was polled highest number of votes — Petition is dismissed. [Arjun Kakodiya Vs. Kamal Marskole] ...2699

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 80, 81 व 100(1)(डी)(iv) एवं निर्वाचन का संचालन नियम, 1961, नियम 63(1) व (2) — मतों की गणना में अनियमितता — याची यह अभिवाक् करने एवं साबित करने में विफल रहा है कि मतों की गणना में कोई अनियमितता कारित हुई है तथा कैसे उक्त अनियमितताओं ने प्रत्यर्थी क्र. 1 के निर्वाचन को तात्त्विक रूप से प्रभावित किया है — याची यह भी अभिवाक् करने एवं साबित करने में विफल रहा है कि उसे सबसे अधिक संख्या में मत प्राप्त हुए हैं — याचिका खारिज। (अर्जुन काकोडिया वि. कमल मार्सकोले) ...2699

Representation of the People Act (43 of 1951), Sections 80, 81 & 100(1)(d)(iv) and Conduct of Election Rules, 1961, Rule 63(1) & (2) — Recounting of Votes — Petition on the ground that the petitioner's application for recounting of votes has been refused by Returning Officer on frivolous grounds under the influence of ruling party although the same was filed at an appropriate stage — Held — There is no pleading in regard to non-compliance of instructions — There is also no specific pleading and proof regarding the influence as to who made the influence

upon whom and how influence has been exerted upon the Returning Officer – Objection was also raised after completion of counting and after declaration of result – There was only suspicion which cannot form a basis for order of recount – Returning Officer has rightly rejected the application/objection. [Arjun Kakodiya Vs. Kamal Marskole]

...2699

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 80, 81 व 100(1)(डी)(iv) एवं निर्वाचन का संचालन नियम, 1961, नियम 63(1) व (2) – मतों की पुनर्गणना – याचिका का आधार है कि मतों की पुनर्गणना हेतु याची के आवेदन को निर्वाचन अधिकारी द्वारा सत्ताधारी पक्ष के प्रभाव में मामूली आधारों पर अस्वीकार किया गया है, यद्यपि उसे समुचित प्रक्रम पर प्रस्तुत किया गया था – अभिनिर्धारित – अनुदेशों के अननुपालन के संबंध में कोई अभिवचन नहीं – प्रभाव के संबंध में भी कोई विनिर्दिष्ट अभिवचन एवं सबूत नहीं कि किसने किस पर प्रभाव डाला और कैसे निर्वाचन अधिकारी पर प्रभाव डाला गया है – आक्षेप भी मतगणना पूर्ण होने और परिणाम घोषित किये जाने के पश्चात् उठाया गया था – यहां केवल संदेह था जो पुनर्गणना के आदेश हेतु आधार निर्मित नहीं कर सकता – निर्वाचन अधिकारी ने उचित रूप से आवेदन/आक्षेप अस्वीकार किया है। (अर्जुन काकोडिया वि. कमल मार्सकोले)

...2699

Representation of the People Act (43 of 1951), Sections 83(1), 123(4) & Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Cause of Action – Respondent's application under Order 7 Rule 11 seeking rejection of Election Petition, on the ground of non-disclosure of cause of action and that the material facts regarding corrupt practice are missing – Held – This is an undisputed fact that the name of respondent No. 1 is enrolled at Sr. No. 248 at Assembly Constituency No. 220, Ratlam City – It is also clear from the details of immovable property and the Bank account, that respondent No. 1 is permanent resident of Ratlam – Thus, it cannot be blamed that he has mentioned incorrect residential address in the nomination paper – Similarly – Closure report has been submitted in regard to Crime No. 286/1988, registered against respondent No.1 – Neither any cognizance was taken nor any charges were framed by Magistrate – Therefore, no case can be legally said to be pending against respondent No.1 – Thus, it cannot be held that respondent No.1 has concealed the fact in nomination form. [Paras Vs. Chaitanya Kashyap]

...2712

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 83(1), 123(4) एवं

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 - वाद हेतुक - चुनाव याचिका को नामजूर किये जाने हेतु प्रत्यर्थी का आदेश 7 नियम 11 के अंतर्गत आवेदन, वाद कारण न दर्शाये जाने के आधार पर एवं यह कि भ्रष्ट आचरण संबंधी तात्त्विक तथ्य अनुपलब्ध हैं - अभिनिर्धारित - यह एक अविवादित तथ्य है कि प्रत्यर्थी क्रमांक 1 का नाम रतलाम शहर विधान सभा निर्वाचन क्षेत्र क्रमांक 220 के क्रम संख्यांक 248 पर तालिकांकित है - अचल संपत्ति एवं बैंक खाता के विस्तृत विवरण से भी स्पष्ट है कि प्रत्यर्थी क्रमांक 1 रतलाम का स्थायी निवासी है - अतः यह दोष नहीं लगाया जा सकता कि उसने नामांकन पत्र में निवास का गलत पता दर्शाया है - उसी प्रकार - प्रत्यर्थी क्रमांक 1 के विरुद्ध पंजीबद्ध अपराध क्रमांक 286/1988 के संबंध में खात्मा प्रतिवेदन प्रस्तुत कर दिया गया है - मजिस्ट्रेट द्वारा न कोई संज्ञान लिया गया न ही कोई आरोप विरचित किये गये - इसलिये विधिक रूप से प्रत्यर्थी क्रमांक 1 के विरुद्ध कोई प्रकरण लंबित होना नहीं कहा जा सकता - अतः यह अभिनिर्धारित नहीं किया जा सकता कि प्रत्यर्थी क्रमांक 1 ने नामांकन पत्र में तथ्यों का छिपाव किया। (पारस वि. चैतन्य कश्यप) ...2712

Representation of the People Act (43 of 1951), Sections 83(1), 123(4) & Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Material particulars regarding corrupt practice - Averments made with regard to false publication are not fulfilling the requirement of Section 123(4) of the Act - There is also no averment that the false publication was made at the instance of Respondent No. 1 - The advertisement is also not false - Material facts regarding corrupt practice are missing - Petition is rejected on both the grounds. [Paras Vs. Chaitanya Kashyap] ...2712

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 83(1), 123(4) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 - भ्रष्ट आचरण के संबंध में तात्त्विक विशिष्टियां - मिथ्या प्रकाशन के संबंध में निर्मित प्रकथन अधिनियम की धारा 123(4) की आवश्यकताओं की पूर्ति नहीं करते - यह भी प्रकथन नहीं कि मिथ्या प्रकाशन प्रत्यर्थी क्रमांक 1 के अनुरोध पर तैयार किया गया था - विज्ञापन भी मिथ्या नहीं है - भ्रष्ट आचरण संबंधी तात्त्विक तथ्य अनुपलब्ध हैं - दोनों आधारों पर याचिका निरस्त। (पारस वि. चैतन्य कश्यप) ...2712

Representation of the People Act (43 of 1951), Section 87(1) & Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, M.P., (16 of 1967), Section 3(1) - Removal of certain disqualifications - Respondent was holding office of profit as President, District Co-operative Bank, Damoh - Disqualification - Held - Though, the respondent was holding the office of Profit on date of filing the

nomination but said disqualification has been removed as per Section 3 of the Act of 1967 as District Co-operative Bank is registered under the Co-operative Societies Act and is engaged in performing Banking functions – Election Petition dismissed. [Pushpendra Singh Hazari Vs. Lakhan Lal] ...2942

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 87(1) एवं विधान मंडल सदस्य निर्हता निवारण अधिनियम, म.प्र., (1967 का 16), धारा 3(1) – कतिपय अनर्हताओं को दूर करना – प्रत्यर्थी द्वारा जिला सहकारी बैंक, दमोह के अध्यक्ष के रूप में लाभ का पद धारण किया गया था – अनर्हता – अभिनिर्धारित – यद्यपि, नामांकन भरने की तिथि को प्रत्यर्थी लाभ का पद धारित किये हुआ था, परंतु उक्त अनर्हता को 1967 के अधिनियम की धारा 3 के अनुसार हटा दिया गया है, क्योंकि जिला सहकारी बैंक, सहकारी समिति अधिनियम के अंतर्गत पंजीकृत है तथा बैंकिंग कार्य करने में संलग्न है – निर्वाचन याचिका खारिज। (पुष्पेन्द्र सिंह हजारी वि. लखनलाल) ...2942

Representation of the People Act (43 of 1951), Section 87(1) – Cause of Action – Non-disclosure of pending criminal cases by respondent in nomination paper – Proforma Part II Serial No. 5 requires disclosure of criminal cases wherein charges have been framed – Held – Respondent has made disclosure of criminal case though charges have not been framed in it, so it cannot be said that election of petitioner materially affected – Election Petition dismissed. [Pushpendra Singh Hazari Vs. Lakhan Lal] ...2942

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 87(1) – वाद हेतुक – नामांकन पत्र में प्रत्यर्थी द्वारा लंबित दांडिक प्रकरणों को प्रकट नहीं किया जाना – प्रोफार्मा भाग II अनुक्रमांक 5 में ऐसे दांडिक प्रकरण, जिनमें आरोप विरचित किये गये हैं, प्रकट किया जाना अपेक्षित है – अभिनिर्धारित – प्रत्यर्थी ने दांडिक प्रकरण को प्रकट किया है यद्यपि उसमें आरोप विरचित नहीं किये गये हैं, अतः यह नहीं कहा जा सकता कि याची का निर्वाचन तात्त्विक रूप से प्रभावित हुआ – निर्वाचन याचिका खारिज। (पुष्पेन्द्र सिंह हजारी वि. लखनलाल) ...2942

Representation of the People Act (43 of 1951), Section 87(1) – Objection – Alteration in affidavit and non-filling of certain columns in nomination paper – Held – Alteration in the affidavit are endorsed by small initials of respondent and important column in nomination paper has not been left blank, such non-compliance has not materially affected election of petitioner. [Pushpendra Singh Hazari Vs. Lakhan Lal] ...2942

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 87(1) – आपत्ति – शपथपत्र में संशोधन तथा नामांकन पत्र के कुछ स्तंभों का रिक्त छोड़ा जाना – अभिनिर्धारित – शपथपत्र के संशोधनों को प्रत्यर्थी के लघु हस्ताक्षर से पृष्ठांकित किया गया है तथा नामांकन पत्र के महत्वपूर्ण स्तंभों को रिक्त नहीं छोड़ा गया है, उक्त अननुपालन ने याची के निर्वाचन को तात्त्विक रूप से प्रभावित नहीं किया है। (पुष्पेन्द्र सिंह हजारी वि. लखनलाल) ...2942

Representation of the People Act (43 of 1951), Sections 87(1), 86 & 81(3) r/w Order 7 Rule 11 & r/w Section 151 C.P.C. – Objections – Proper attestation of petition and its Annexures are not there – Signatures of the petitioner in petition and its annexures – Held – As the petition as well as the annexures bears signature of the petitioner so it amounts to sufficient attestation as per the provisions of Section 81(3) of the Act of 1951. [Pushpendra Singh Hazari Vs. Lakhan Lal] ...2942

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएं 87(1), 86 व 81(3) सहपठित आदेश 7 नियम 11 व सहपठित धारा 151, सि.प्र.सं. – आपत्तियां – याचिका तथा उसके अनुलग्नकों का उचित सत्यापन नहीं किया गया – याचिका तथा उसके अनुलग्नकों में याची के हस्ताक्षर – अभिनिर्धारित – चूंकि याचिका तथा उसके अनुलग्नकों में याची के हस्ताक्षर हैं अतः यह अधिनियम 1951 की धारा 81(3) के उपबंधों के अनुसार पर्याप्त सत्यापन की कोटि में आता है। (पुष्पेन्द्र सिंह हजारी वि. लखनलाल) ...2942

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) – Caste Certificate not filed – Prosecution failed to prove the caste of prosecutrix. [Ghanshyam Singh Raghuvanshi Vs. State of M.P.] (DB)...3032

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(2)(v) – जाति प्रमाणपत्र प्रस्तुत नहीं किया गया – अभियोजन अभियोक्त्री की जाति साबित करने में असफल रहा। (घनश्याम सिंह रघुवंशी वि. म.प्र. राज्य) (DB)...3032

Service Law – Appointment – Court acquitted the petitioner of the charges under Sections 323, 294, 506-B and 451 of the IPC – Petitioner has been fair enough in disclosing the facts of criminal case and the acquittal thereof in the verification roll – It was not at all possible for the appointing authority to take a view that the petitioner was not suitable for appointment to the post of a Warder/Prahari in Central jail – Impugned order quashed – Petition allowed. [Akhilesh

Kumar Patel Vs. State of M.P.]**...3196**

सेवा विधि - नियुक्ति - न्यायालय ने याची को मा.दं.सं. की धारा 323, 294, 506-बी व 451 के अंतर्गत आरोपों से दोषमुक्त किया - याची ने सत्यापन रोल में आपराधिक प्रकरण के तथ्य तथा उसमें दोषमुक्ति को प्रकट करने में ईमानदारी दर्शायी - नियुक्तिकर्ता प्राधिकारी के लिये यह दृष्टिकोण रखना कदापि संभव नहीं था कि याची केंद्रीय जेल में वॉर्डर/प्रहरी के पद पर नियुक्ति के लिये उपयुक्त नहीं था - आक्षेपित आदेश खारिज - याचिका मंजूर। (अखिलेश कुमार पटेल वि. म.प्र. राज्य)

...3196

Service Law - Appointment on Compassionate Ground - Petitioner was appointed on the post of Shiksha Karmi Grade-III on compassionate ground in the year 1998 - Petitioner seeks appointment on the post of Asstt. Teacher as another person has been so appointed on compassionate ground - Held - Petitioner was appointed in the year 1998 and has filed the petition in the year 2015 - No averment that he was entitled to be granted appointment on the post of Asstt. Teacher on the basis of qualification held by him but was denied - Petitioner also failed to establish parity - Petition dismissed. [Sandip Tripathi Vs. State of M.P.]

...2636

सेवा विधि - अनुकंपा आधार पर नियुक्ति - याची वर्ष 1998 में अनुकंपा आधार पर शिक्षा कर्मी श्रेणी-3 के पद पर नियुक्त हुआ था - याची सहायक अध्यापक के पद पर नियुक्ति चाहता है क्योंकि एक अन्य व्यक्ति अनुकंपा के आधार पर इसी तरह नियुक्त हुआ है - अभिनिर्धारित - याची की नियुक्ति वर्ष 1998 में हुई थी और उसने वर्ष 2015 में याचिका प्रस्तुत की - कोई प्रकथन नहीं कि वह अपनी अर्हता के आधार पर सहायक अध्यापक के पद पर नियुक्ति प्रदान किये जाने हेतु हकदार था परंतु उसे इंकार किया गया - याची समानता स्थापित करने में भी असफल रहा है - याचिका खारिज। (संदीप त्रिपाठी वि. म.प्र. राज्य)

...2636

Service Law - Appointment - Petitioner on being examined found fit for the post of Constable - Medical Admit Card for medical examination was issued to him - However same was received by him after the examination - Therefore, he could not participate in the medical examination - On being approached respondent declined him to undergo medical examination - Held - Since there is no denial of the fact that the letter issued for medical examination was delivered to the petitioner after the scheduled date of medical examination, denial of an opportunity for medical examination is not justified - Respondent shall give one opportunity and thereafter shall consider him for

appointment on the basis of his performance. [Ajay Kumar Sahu Vs. Union of India] ...2879

सेवा विधि - नियुक्ति - याची परीक्षण उपरांत आरक्षक के पद हेतु उपयुक्त पाया गया - चिकित्सकीय परीक्षण हेतु उसे चिकित्सा प्रवेश पत्र जारी किया गया - किंतु उसे वह परीक्षण के पश्चात् प्राप्त हुआ - अतः, वह चिकित्सकीय परीक्षण में शामिल नहीं हो सका - संपर्क करने पर प्रत्यर्थी ने उसका चिकित्सकीय परीक्षण करवाने से इंकार कर दिया - अभिनिर्धारित - चूंकि इस तथ्य को अस्वीकार नहीं किया गया है कि चिकित्सकीय परीक्षण हेतु जारी किया गया पत्र याची को चिकित्सकीय परीक्षण के लिये नियत तिथि के पश्चात् प्राप्त हुआ था, चिकित्सकीय परीक्षण के अवसर को अस्वीकार करना न्यायसंगत नहीं है - प्रतिवादी एक अवसर प्रदान करेगा तथा तत्पश्चात् उसके प्रदर्शन के आधार पर नियुक्ति हेतु उसका विचार करेगा। (अजय कुमार साहू वि. यूनियन ऑफ इंडिया) ...2879

Service Law - Appointment - Qualification - Petitioners although hold Diploma/Degree in Pharmacy but not registered with M.P. Pharmacy Council - Only registered Pharmacist can compound, prepare, mix or dispense any medicine on the prescription of a medical practitioner - Advertisement has to be considered in the stipulation contained in Pharmacy Act - Petitioners were rightly not considered - Petition dismissed. [Brijesh Shukla Vs. State of M.P.] ...2864

सेवा विधि - नियुक्ति - अर्हता - याचीगण यद्यपि फार्मसी में डिप्लोमा/डिग्री धारक हैं किंतु म.प्र. फार्मसी परिषद् के साथ पंजीकृत नहीं हैं - चिकित्सा व्यवसायी के औषधि संबंधी लिखित परामर्श पर केवल पंजीकृत फार्मासिस्ट ही किसी औषधि का सम्मिश्रण, निर्माण, मिश्रण या वितरण कर सकता है - फार्मसी अधिनियम में अंतर्विष्ट शर्तों के अनुसार विज्ञापन पर विचार किया जाना चाहिए - याचीगण को उचित रूप से विचार में नहीं लिया गया - याचिका खारिज। (ब्रजेश शुक्ला वि. म. प्र. राज्य) ...2864

Service Law - Compassionate appointment - Antecedents/ Character - Verification of antecedents - Acquittal/discharge in criminal case pursuant to a compromise - Held - Candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity - A person having criminal antecedents will not fit in this category - Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated - Impugned order set aside - Appeal allowed. [State of M.P. Vs. Parvez Khan] (SC)...2533

सेवा विधि - अनुकम्पा नियुक्ति - पूर्ववृत्त/चरित्र - पूर्ववृत्त का सत्यापन - समझौते के अनुसरण में आपराधिक प्रकरण में दोषमुक्त/आरोपमुक्त किया जाना - अभिनिर्धारित - पुलिस सेवा में भर्ती के लिये अभ्यर्थी को विश्वसनीय और अत्यंत सदाचारी व्यक्ति होना चाहिए और निर्दोष चरित्र एवं सत्यनिष्ठ होना चाहिए - आपराधिक पूर्ववृत्त का व्यक्ति इस श्रेणी में आने योग्य नहीं होगा - यदि उसे दोषमुक्त या आरोपमुक्त किया गया है तब भी यह उपधारणा नहीं की जा सकती कि उसे पूर्ण रूप से माफ किया गया था - आक्षेपित आदेश अपास्त - अपील मंजूर। (म.प्र. राज्य वि. परवेज खान) (SC)...2533

Service Law - Pay Scale - Post of Surgical Specialist to be filled in by 100% promotion after the year 1993 - Prior to amendment, 60% of post were to be filled by direct recruitment - Petitioners were promoted in the year 1994 however, prior to that there were certain direct recruitments - Direct recruits were given the senior scale and selection grade pay scale therefore, they took a march over and above petitioners - The anomaly remained and inspite of various opportunities and directions by High Court, such anomaly was not explained by respondents - Where the pay is regulated by Revision of Pay Rules, the provisions of Fundamental Rules and any other rules shall not apply to the extent they are inconsistent with the Revision of Pay Rules - If a person is working on the selection grade pay scale and is promoted on the post carrying the lesser pay scale at the initial stage, the benefit of pay protection is required to be granted - Fixation of pay scale is not in accordance with Revision of Pay Rules - Matter is referred to Highly Specialized Committee for grant of proper pay scale to petitioners on promotion from the post of Asstt. Surgeon Selection Grade and to take a final decision within four months from the date of receipt of certified copy of the order. [S.K. Saxena (Dr.) Vs. State of M.P.] ...2597

सेवा विधि - वेतनमान - वर्ष 1993 के पश्चात् शल्य चिकित्सा विशेषज्ञ के पद 100% पदोन्नति से भरे जाने हैं - संशोधन के पूर्व, 60% पद सीधी भर्ती के द्वारा भरे जाने थे - याचिकाकर्ताओं को वर्ष 1994 में पदोन्नत किया गया तथापि इसके पूर्व कुछ सीधी भर्तियां की गयीं थी - सीधी भर्तियों को वरिष्ठ वेतनमान तथा चयन ग्रेड वेतनमान दिया गया अतः उन्होंने याचिकाकर्ताओं पर बढ़त हासिल कर ली - यह विसंगति विद्यमान रही तथा उच्च न्यायालय द्वारा विभिन्न अवसर तथा निर्देश देने के बावजूद प्रत्यर्थियों द्वारा इस विसंगति को स्पष्ट नहीं किया गया - जहां पर वेतन के पुनरीक्षण नियमों द्वारा वेतन नियंत्रित किया जाता है, वहां मूल नियमों के प्रावधान तथा अन्य कोई नियम उस सीमा तक लागू नहीं होंगे जहां तक

वे वेतन के पुनरीक्षण नियम से असंगत हो — यदि कोई व्यक्ति चयन ग्रेड वेतनमान में कार्यरत है तथा उसे प्रारंभिक स्तर पर कम वेतनमान वाले पद पर पदोन्नत किया जाता है तो उसे वेतन सुरक्षा का लाभ दिया जाना अपेक्षित है — वेतनमान का निर्धारण वेतन के पुनरीक्षण नियमों के अनुरूप नहीं है — मामले को उच्च स्तरीय समिति के पास याचिकाकर्ताओं को सहायक शल्य चिकित्सक चयन ग्रेड के पद से पदोन्नति पर उचित वेतनमान प्रदान करने के लिए तथा आदेश की सत्यापित प्रतिलिपि की प्राप्ति के दिनांक से चार माह के भीतर अंतिम निर्णय लेने हेतु भेजा जाता है। (एस.के. सक्सेना (डॉ.) वि. म.प्र. राज्य) ...2597

Service Law – Pension Scheme 1995 – Held – Where the PF organization itself qualified the employees and took their contribution, these employees must be treated as eligible employees for the grant of pension. [Jiyajirao Cotton Mills Vs. B.I.F.R., New Delhi] ...2682

सेवा विधि – पेंशन योजना 1995 – अभिनिर्धारित – जहां भविष्य-निधि संगठन ने स्वयंमेव कर्मचारियों को अर्ह बनाया और उनसे अंशदान लिया है, इन कर्मचारियों को पेंशन प्रदान किये जाने हेतु पात्र कर्मचारी माना जाना चाहिए। (जियाजीराव कॉटन मिल्स वि. बी.आई.एफ.आर., न्यू देहली) ...2682

Service Law – Termination – Natural Justice – Petitioner applied for appointment on the post of Samvida Shala Shikshak Grade III – Although the petitioner failed to secure 40% marks in entrance examination as required under Rule 6 of M.P. Panchayat Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules, 2001, but by mistake treating 42.64 marks as percentage obtained by petitioner, permitted her to participate in counseling and also granted an appointment – Subsequently her services were terminated – Held - No show cause notice is required to be issued as no useful purpose would have been served as issuance of such notice would be a useless formalities – If undisputed facts are involved, non issuance of notice to employee is not fatal – Petition dismissed. [Rekha Pandey (Smt.) Vs. State of M.P.] ...2927

सेवा विधि – सेवा समाप्ति – नैसर्गिक न्याय – याची ने संविदा शाला शिक्षक श्रेणी तीन के पद पर नियुक्ति के लिये आवेदन किया – यद्यपि याची म.प्र. पंचायत संविदा शाला शिक्षक (नियुक्ति एवं संविदा की शर्तें) नियम, 2001 के नियम 6 के अंतर्गत प्रवेश परीक्षा में अपेक्षित 40% अंक अर्जित करने में असफल रहा, किंतु त्रुटिवश याची द्वारा अर्जित 42.64 अंकों को प्रतिशत मानते हुए उसे परामर्श में भाग लेने की अनुमति दी गई एवं नियुक्ति भी प्रदान की गई – तत्पश्चात् उसकी सेवायें समाप्त की गई – अभिनिर्धारित – कारण बताओ नोटिस जारी करना

अपेक्षित नहीं, क्योंकि उक्त नोटिस जारी करना कोई उपयोगी प्रयोजन सिद्ध नहीं करता केवल निरर्थक औपचारिकता होगी – यदि अविवादित तथ्य शामिल हैं, कर्मचारी को नोटिस जारी नहीं किया जाना घातक नहीं है – याचिका खारिज। (रेखा पांडे (श्रीमती) वि. म.प्र. राज्य) ...2927

Specific Relief Act (47 of 1963), Section 6 – Suit for recovery of possession – Dismissal – Barred by Time – Plaintiff dispossessed on 27.01.2004 – Suit filed on 14.10.2004 – Knowledge of dispossession shown in October, 2004 – Held – As the report of dispossession lodged on 27.01.2004, itself and the suit has not been filed within 6 months, so the suit is barred by time – Order of trial Court upheld – Revision dismissed. [Chanda Bai Bhura (Smt.) Vs. Inderchand Bhura] ...2773

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6 – कब्जा वापस लेने हेतु वाद – खारिजी – समय द्वारा वर्जित – वादी को 27.01.2004 को बेकब्जा किया गया – 14.10.2004 को वाद प्रस्तुत किया गया – बेकब्जा किये जाने की जानकारी अक्टूबर 2004 में दर्शायी गयी – अभिनिर्धारित – चूंकि बेकब्जा किये जाने की रिपोर्ट 27.01.2004 को ही दर्ज की गई और वाद छः माह के भीतर प्रस्तुत नहीं किया गया है, इस तरह वाद समय द्वारा वर्जित है – विचारण न्यायालय के आदेश की पुष्टि की गई – पुनरीक्षण खारिज। (चन्दा बाई भूरा (श्रीमती) वि. इंदरचन्द भूरा) ...2773

Specific Relief Act (47 of 1963), Section 6 – Suit for recovery of possession – Factum of possession – Plaintiff's past possession not established – Held – As the past possession of plaintiff is not established, no question of dispossession arises – Revision dismissed. [Chanda Bai Bhura (Smt.) Vs. Inderchand Bhura] ...2773

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 6 – कब्जा वापस लेने हेतु वाद – कब्जे का तथ्य – वादी का पूर्व का कब्जा स्थापित नहीं – अभिनिर्धारित – चूंकि वादी का पूर्व का कब्जा स्थापित नहीं, बेकब्जा किये जाने का प्रश्न उत्पन्न नहीं होता – पुनरीक्षण खारिज। (चन्दा बाई भूरा (श्रीमती) वि. इंदरचन्द भूरा) ...2773

Specific Relief Act (47 of 1963), Section 28 – Rescission of Contracts, the specific performance of which has been decreed – Decree for specific performance of contract was passed with a direction that Judgment debtor shall execute the sale deed after receiving the remaining consideration amount within one month from the date of decree – Decree holder neither deposited the remaining amount nor filed any application for extension of time – Decree holder failed to perform his part of contract – Matter remanded back to Executing

Court for decision on application under Section 28 for rescission of contract afresh. [Murlidhar Pinjani Vs. Satyakam Tandon] ...3395

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 – उन संविदाओं का विखंडन, जिनका विनिर्दिष्ट पालन डिक्रीत किया गया है – संविदा के विनिर्दिष्ट पालन के लिए डिक्री इस निदेश के साथ पारित की गयी थी कि डिक्री पारित होने के एक माह के भीतर, निर्णीत ऋणी प्रतिफल की शेष राशि को प्राप्त करने के पश्चात्, विक्रय विलेख निष्पादित करेगा – डिक्रीधारी ने न तो शेष राशि जमा की और न ही समय बढ़ाने के लिए कोई आवेदन किया – डिक्रीधारी संविदा के अपने हिस्से का पालन करने में असफल रहा – नए सिरे से, संविदा के विखंडन के लिए धारा 28 के अंतर्गत आवेदन निर्णीत करने हेतु, निष्पादन न्यायालय को मामला प्रतिप्रेषित। (मुरलीधर पिंजानी वि. सत्यकाम टंडन) ...3395

Succession Act, (39 of 1925), Section 373, 384, Coal Mines Provident Fund & Miscellaneous Provisions Act, (46 of 1948), Section 3 and Coal Mines Provident Fund, Coal Mines Family Pension & Coal Mines Deposit Linked Insurance Scheme 1948, Clause 64 and Hindu Succession Act, (30 of 1956), Section 8 – Succession certificate – Proviso to sub-clause (ii) of clause 64 – vis-a-vis – Hindu Succession Act, 1956 – Whether provisions of Coal Mines Provident Fund Scheme, 1948 will prevail over statutory law like Hindu Succession Act, 1956 – Held – No, the statutory law will have the overriding effect over the Coal Mines Provident Fund Scheme 1948. [Regional Commissioner Vs. Bhuria Bai] ...2777

उत्तराधिकार अधिनियम, (1925 का 39), धारा 373, 384, कोयला खान भविष्य निधि तथा प्रकीर्ण उपबंध अधिनियम, (1948 का 46), धारा 3 एवं कोयला खान भविष्य निधि, कोयला खान परिवार पेंशन एवं कोयला खान निक्षेप संबद्ध बीमा योजना, 1948, खंड 64 एवं हिंदू उत्तराधिकार अधिनियम, (1956 का 30), धारा 8 – उत्तराधिकार प्रमाणपत्र – खंड 64 के उपखंड (ii) का परंतुक – सम्मुख – हिंदू उत्तराधिकार अधिनियम, 1956 – क्या कोयला खान भविष्य निधि योजना, 1948 के उपबंध कानूनी विधि जैसे कि हिंदू उत्तराधिकार अधिनियम, 1956 पर अभिभावी होंगे – अभिनिर्धारित – नहीं, कानूनी विधि का कोयला खान भविष्य निधि योजना, 1948 पर अध्यारोही प्रभाव रहेगा। (रीजनल कमिश्नर वि. भूरिया बाई) ...2777

Suits Valuation Act (7 of 1887), Section 8 and Court Fees Act (7 of 1870), Section 7(iv)(c) – Valuation of Suit – Plaintiff filed suit for declaration that sale-deed is void – Plaintiff not party to sale-deed – Suit valued on the basis of land revenue and not on the basis of consideration amount – Held – That the value for the purpose of

jurisdiction of the suit shall be dependent upon the value to be determined for computation of court fees – Plaintiff is required to pay fix court fee – Trial Court has not committed any illegality in accepting the valuation done by plaintiff – Revision dismissed. [Manoj Kushwah Vs. Chhotelal] ...3063

वाद मूल्यांकन अधिनियम (1887 का 7), धारा 8 एवं न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iv) (सी) – वाद का मूल्यांकन – वादी ने विक्रय-विलेख को शून्य घोषित करने हेतु वाद प्रस्तुत किया – वादी विक्रय-विलेख का पक्षकार नहीं है – वाद का मूल्यांकन भू-राजस्व के आधार पर किया गया न कि प्रतिफल की राशि के आधार पर-अभिनिर्धारित-यह कि वाद के क्षेत्राधिकार के उद्देश्य के लिये मूल्य न्यायालय शुल्क की गणना के लिये निर्धारित किये जाने वाले मूल्य पर निर्भर करेगा-वादी द्वारा निश्चित न्याय शुल्क अदा करना अपेक्षित है-विचारण न्यायालय द्वारा वादी द्वारा किये गये मूल्यांकन को स्वीकृत करने में कोई गलती नहीं की गई है – पुनरीक्षण खारिज। (मनोज कुशवाह वि. छोटेलाल) ...3063

Tender – Estoppel – Bidder participated – Cannot challenge its terms and conditions. [Man Singh Rajpoot Vs. State of M.P.] (DB)...2826

निविदा – विबंधन – बोलीदाता ने भाग लिया – उसके निबंधन तथा शर्तों को चुनौती नहीं दे सकता। (मान सिंह राजपूत वि. म.प्र. राज्य) (DB)...2826

Tender – NIT prescribed filing of experience certificate alongwith tender form – Non submission – Fatal – Form is defective – Should be rejected at threshold – The requirement is mandatory. [Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd.] (DB)...2914

निविदा – एन.आई.टी. द्वारा निविदा प्रपत्र के साथ अनुभव प्रमाणपत्र प्रस्तुत करना विहित किया गया – अप्रस्तुतीकरण – घातक – प्रपत्र त्रुटिपूर्ण – प्रारंभ में ही निरस्त किया जाना चाहिए – यह आवश्यकता आज्ञापक है। (अनुज एसोसिएट्स (मे.) वि. नेशनल मिनिरल डेव्लपमेन्ट कारपोरेशन लि.) (DB)...2914

Tender – Requirement in NIT – To file experience certificate – Alongwith tender form – Whether Mandatory – Yes, because its the proof of experience which touches the issue of eligibility and the same is highlighted by bold letters to attract the attention of all concern. [Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd.] (DB)...2914

निविदा – एन.आई.टी. में आवश्यकता – अनुभव प्रमाण-पत्र प्रस्तुत करना – निविदा प्रपत्र के साथ – क्या आदेशात्मक है – हाँ, क्योंकि वही अनुभव का प्रमाण है जिससे योग्यता के मुद्दे का पता चलता है तथा उसे ही सभी संबंधितों का ध्यान आकर्षित करने के लिए मोटे अक्षरों से उभारा जाता है। (अनुज एसोसिएटस् (मे.) वि. नेशनल मिनिरल डेव्हलपमेन्ट कारपोरेशन लि.) (DB)...2914

Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2 – Whether questions of fact can be allowed to be urged for the first time during the arguments of an intra-Court appeal, if not agitated while arguing the writ petition – Held – No. [Ram Swaroop Pandre Vs. State of M.P.] (DB)...2850

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2 – क्या किसी अंतर्न्यायालयीन अपील में, तर्क के दौरान तथ्य के प्रश्नों को पहली बार उठाने की अनुमति दी जा सकती है यदि वे रिट याचिका में तर्क के दौरान न उठाये गये हों? – अभिनिर्धारित – नहीं। (राम स्वरूप पांद्रे वि. म.प्र. राज्य) (DB)...2850

University Grants Commission (Minimum Qualification's for Appointment of Teachers And other Academic Staff In Universities and Colleges and Measures for the maintenance of standard in Higher Education), Regulation, 2010, Clause 4.1.0A (ii) – Appointment to the post of Professor Anthropology – Petitioner working as Assistant Professor and holding Ph.D degree – Found ineligible for the post of Professor – Non-fulfillment of Clause 4.1.0A (ii) of UGC regulation – Held – As the petitioner was not possessing the experience of guiding candidates for research at doctoral level as per Clause 4.1.0A (ii) of UGC regulation, though fulfilling other qualifications, so, the petitioner was rightly held ineligible for presentation – Petition dismissed. [Rajesh. Gautam (Dr.) Vs. Hari Singh Gour University] ...3192

विश्वविद्यालय अनुदान आयोग (विश्वविद्यालयों एवं महाविद्यालयों में शिक्षकों एवं अन्य शैक्षणिक स्टाफ की नियुक्ति के लिए न्यूनतम अर्हताएँ तथा उच्च शिक्षा के अंतर्गत मानकों के व्यवस्थापन के लिये आवश्यक उपाय), विनियमन, 2010, खंड 4.1.0ए (ii) – प्रोफेसर मानव विज्ञान (ऐंथ्रोपोलॉजी) के पद पर नियुक्ति – याची सहायक प्रोफेसर के रूप में कार्यरत एवं पी.एच.डी. डिग्री धारक है – प्रोफेसर के पद के लिये अपात्र पाया गया – यू.जी.सी. विनियमन के खंड 4.1.0ए(ii) की पूर्ति नहीं की गई – अभिनिर्धारित – चूंकि यू.जी.सी. के खंड 4.1.0ए (ii) के अनुसार याची डॉक्टरल स्तर के शोध करने वाले अभ्यर्थियों को मार्गदर्शन देने का अनुभव नहीं रखता, यद्यपि अन्य अर्हताओं की पूर्ति करता है, अतः याची को उचित रूप से

प्रस्तुतिकरण के लिये अपात्र ठहराया गया — याचिका खारिज। (राजेश गौतम (डॉ.) वि. हरि सिंह गौर यूनिवर्सिटी) ...3192

Value Added Tax Act, M.P. (20 of 2002), Sections 2(o), 14 – Rebate of Input Tax – Petitioner purchased material from a registered dealer after payment of VAT – Material was used for making a plant and machinery which was ultimately used for manufacturing final product – Provision of Section 14 is applicable – Matter remitted back for reconsideration in the light of interpretation. [Commercial Engineers & Body Building Company Ltd. (M/s.) Vs. Divisional Dy. Commissioner] (DB)...2668

मूल्य वर्धित कर अधिनियम, म.प्र. (2002 का 20), धाराएं 2(ओ), 14 – निवेश कर की छूट – याची ने एक पंजीकृत डीलर से मूल्य वर्धित कर का भुगतान करने के पश्चात् सामग्री क्रय की – सामग्री का उपयोग संयंत्र और मशीनरी बनाने हेतु किया गया जिसे अंततः अंतिम उत्पाद निर्मित करने के लिये उपयोग किया गया था – धारा 14 का उपबंध लागू होता है – निर्वचन के आलोक में पुनर्विचार हेतु मामला प्रतिप्रेषित। (कमर्शियल इंजीनियर्स एण्ड बॉडी बिल्डिंग कंपनी लि. (मे.) वि. डिवीजनल डिप्टी कमिश्नर) (DB)...2668

Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, M.P., (16 of 1967), Section 3(1) – See – Representation of the People Act, 1951, Section 87(1) [Pushpendra Singh Hazari Vs. Lakhan Lal] ...2942

विधान मंडल सदस्य निर्हता निवारण अधिनियम, म.प्र., (1967 का 16), धारा 3(1) – देखें – लोक प्रतिनिधित्व अधिनियम, 1951, धारा 87(1) (पुष्पेन्द्र सिंह हजारी वि. लखनलाल) ...2942

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**THE INDIAN LAW REPORTS M.P. SERIES, 2015
(VOL-4)**

JOURNAL SECTION

**IMPORTANT ACTS, AMENDMENTS, CIRCULARS,
NOTIFICATIONS AND STANDING ORDERS.**

[Published in the Gazette of India (Extraordinary) Part II, Section 1, dated 29-12-2015, page no. 1 to 3]

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th December, 2015/Pausha 8, 1937 (Saka)

The following Act of Parliament received the assent of the President on the 26th December, 2015, and is hereby published for general information :-

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2015

No. 26 OF 2015

[26th December, 2015.]

An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:-

1. Short title and commencement. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

2. Amendment of section 6. In the Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter referred to as the principal Act), in section 6,—

(i) in *Explanation I*, for clause (a), the following clause shall be substituted, namely:—

‘(a) “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;’;

(ii) after *Explanation II*, the following *Explanation* shall be inserted, namely:—

‘*Explanation III.*— For the purposes of this section, the expressions “asymmetric crypto system”, “computer resource”, “digital signature”, “electronic form” and “electronic signature” shall have the same meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).’.

3. Amendment of section 142. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”.

4. Insertion of new section 142A.— In the principal Act, after section 142, the following section shall be inserted, namely :—

“142A. Validation for transfer of pending cases.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any judgment, decree, order or direction of

any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

5. Repeal and savings. (1) The Negotiable Instruments (Amendment) Second Ordinance, 2015 (Ord. 7 of 2015), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

DR. G. NARAYANA RAJU.

Secretary to the Govt. of India.

[Published in the Gazette of India (Extraordinary) Part II, Section 3, Sub-section (ii), dated 10-04-2015, page no. 2 regarding Unlawful Activities (Prevention) Act, 1967 (37 of 1967)]

MINISTRY OF HOME AFFAIRS

ORDER

New Delhi, the 9th April, 2015

S.O. 984 (E).— Whereas, the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the said Act) has been enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith;

And, whereas, under clause (m) of Sub-section (1) of Section 2 of the said Act, 'terrorist organisation' means an organisation listed in the Schedule to the said Act or an organisation operating under the same name as an organisation so listed;

And whereas, the Schedule to the said Act contains the names of such terrorist organisations and the name of Harkat-ul-Mujahideen/Harkat-ul-Ansar/Harkat-ul-Jehad-E-Islami has been specified at Serial Number 7 thereof;

And whereas, the Harkat-ul-Mujahideen has created a front organisation by the name Ansar-ul-Ummah, which advocates the use of terrorist activities, particularly in Jammu & Kashmir State, and has offices and terrorist training camps in the neighbouring countries;

And whereas, Ansar-ul-Ummah is one of the Members of Jamat-Ud-Dawa of Pakistan and is also associated with Lashker-e-Toiba, a terrorist organisation mentioned at Serial Number 5 of the said Schedule;

And whereas, the Central Government believes that the Ansar-ul-Ummah is a terrorist organisation and is involved in terrorism has decided to add the said organization and all its manifestations in the First Schedule to the said Act.

Now, therefore, in exercise of the powers conferred by clause (a) of Sub-section (1) read with Sub-section (2) and (3) of Section 35 of the Unlawful Activities (Prevention) Act, 1967, the Central Government hereby makes the following further amendments in the First Schedule to the said Act, namely:-

In the First Schedule to the said Act, for serial number 7 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

“7. Harkat-Ul-Mujahideen or Harkat-Ul-Ansar or Harkat-Ul-Jehad-E-Islami or Ansar-Ul-Ummah (AUU).”

[F.No.11034/24/2014-IS.VI]

M.A. GANAPATHY, Jt. Secy.

MADHYA PRADESH ACT

No. 7 OF 2015

**THE MADHYA PRADESH LOKAYUKT EVAM UP-LOKAYUKT
(SANSHODHAN) ADHINIYAM, 2014**

(Received the assent of the Governor on the 24th January, 2015; assent first published in the “Madhya Pradesh Gazette (Extra-ordinary)”, dated the 30th January, 2015, page no. 98)

An Act further to amend the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-fifth year of the Republic of India as follows :—

1. Short title. This Act may be called the Madhya Pradesh Lokayukt Evam Up-Lokayukt (Sanshodhan) Adhiniyam, 2014.

2. Amendment of Section 5. In Section 5 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (No. 37 of 1981), in sub-section (1), —

- (i) in the existing first proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;
- (ii) in the existing second proviso, for the words “Provided further that”, the words “Provided also that” shall be substituted;
- (iii) before the existing first proviso, the following proviso shall be inserted, namely:—

“Provided that the Lokayukt shall, notwithstanding the expiry of his

term, continue to hold office until his successor is appointed and enters upon his office, but this extended period shall not in any case exceed one year.”.

[Published in the Madhya Pradesh Gazette (Extra-ordinary), dated 31 March, 2015, page no. 280(9) to 280(19)]

MADHYA PRADESH CRIME VICTIM COMPENSATION SCHEME, 2015

S.No. 1686-2015-two-C-1. –

In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (2 of 1974), the State Government in co-ordination with the Central Government, hereby make the following scheme for providing funds for the purpose of compensation and deciding the quantum of compensation to the crime victims or their dependents, according to their financial status, who have suffered loss or injury as a result of the crime and who require rehabilitation, namely: –

1. Short title, extent and commencement. –

- (a) This scheme may be called the Madhya Pradesh Crime Victim Compensation Scheme, 2015.
- (b) It shall extend to the whole State of Madhya Pradesh.
- (c) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

2. Definitions. – In this scheme, unless the context otherwise requires, –

- (a) “applicant” means a victim or the dependent of a victim who applies for compensation;
- (b) “Code” means the Code of Criminal Procedure, 1973 (No. 2 of 1974);
- (c) “Fund” means the Victim Compensation Fund constituted under para 3 of the said Scheme;

- (d) "injury" means any injury specified in the Schedule appended to this Scheme;
- (e) "loss", includes loss to any property occurred as a result of an injury caused by reason of the criminal act or omission on the part of the accused;
- (f) "offence" means, any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (No. 1 of 1871);
- (g) "probation officer" means an officer appointed by the State Government as a Probation Officer under section 13 of the Probation of Offenders Act, 1958 (No. 20 of 1958);
- (h) "schedule" means the Schedule appended to this scheme;
- (i) "State" means the State of Madhya Pradesh;
- (j) "victim" means a person who has suffered any loss or injury caused by reason of the criminal act or omission on the part of the accused and who requires rehabilitation under this scheme and includes the guardian or legal heir of such person, but does not include a person who is responsible for injury to such person;
- (k) "dependent" means and includes wife, husband, father, mother, unmarried daughter and minor children of victim as determined by the authority empowered to issue dependency certificate or any other authority authorized by Government in this regard;
- (l) all other words and expressions used herein and not defined, but defined in the Criminal Procedure Code, 1973 (No. 2 of 1974), Indian Penal Code, 1860 (No. 45 of 1860) or the Madhya Pradesh General Clauses Act have the same meanings respectively as assigned to them in the said Acts.

3. Constitution of Crime Victim Compensation Fund. –

- (a) There shall be constituted a Fund to be called by the "Victim Compensation Fund."

- (b) The Victim Compensation Fund shall consist of: –
- (i) Budgetary allocation made in the annual budget by the State;
 - (ii) Receipt of amount of fines imposed-under section 357 of the Code;
 - (iii) Donations and contributions received from International or National Charitable Institutions, Organizations and individuals.
- (c) The amount in the Fund shall be deposited in Public Account under a new head of account.
- (d) The existing head of account in which the fines and fees are deposited as per section 357 of the Code have to be credited to the newly opened head of account.
- (e) The Home Department shall be the Nodal Department for regulating, administering and monitoring the said scheme.
- (f) The Member-Secretary of the Madhya Pradesh State Legal Services Authority shall operate the fund constituted under the Scheme.
- (g) The State Legal Service Authority shall be accountable for its functions under the scheme and also for furnishing periodical returns of the amounts allotted to them by the State Government through the Nodal Department.

4. Monitoring of Scheme: – For the purpose of monitoring the scheme the State and District level Committees shall be constituted and shall consist of the following:–

State Level Committee

- (i) Principal Secretary, Government of Madhya Pradesh
Home Department – Chairman
- (ii) Principal Secretary, Government of Madhya Pradesh
Law and Legislative Affairs Department – Member

- (iii) State Legal Services Authority, Government of Madhya Pradesh – Member
- (iv) Deputy Secretary, Government of Madhya Pradesh Home Department – Secretary

District Level Committee

- (i) District and Sessions Judge of the District – Chairman
- (ii) District Magistrate of the District – Member
- (iii) District Superintendent of Police of the District – Member
- (iv) District Legal Services Authority – Secretary
- (a) The State Level Committee shall hold quarterly meeting to review the pendency of applications and appeals.
- (b) The State Legal Service Authority, shall present state level data after collecting the data from the concerned district and shall submit to the State Level Committee.
- (c) The district level committee shall meet and review the pending cases in the first week of every month.

5. Eligibility for Compensation. –

The victim or his dependent shall be eligible for compensation under the scheme in the following cases, namely:–

- (1) Where a recommendation is made by the Court under sub-section (2) or sub-section (3) of section, 357 A of the Code, the District Legal Services Authority or State Legal Services Authority will decide the amount of compensation.
- (2) Where the trial Court makes a recommendation, on conclusion of the trial, when it is satisfied that the compensation awarded under section 357 of the Code is not adequate for such rehabilitation or where the case

ends in acquittal or discharge and the victim has to be rehabilitated, or

(3) Where the offender is not traced or identified, but the victim is identified and where no trial takes place or the Trial Court has not passed any order for award/compensation to the victim and in which case, the victim or his dependent may make an application to the District Legal Services Authority;

(4) The crime, on account of which the compensation is to be paid under the scheme, should have been occurred within the State or crime started in the State.

Exception.— In case, the crime has occurred outside the State and the victim is found within the limit of the State, he shall be eligible for interim relief contemplated under sub-section (6) of section 357-A of the Code.

6. Procedure for grant of compensation.—

(1) On receipt of the recommendation by the trial court, Appellate Court, High Court or Court of Session when exercising its power on application under sub-section (4) of section 357-A of the Code, the State or the District Legal Services Authority shall, after due enquiry through appropriate authority as deemed fit by the State or the District Legal Services Authority, award adequate compensation by completing the enquiry within two months.

(2) The District Legal Services Authority shall examine and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the crime. The Authority may call for any relevant informations necessary to determine the genuineness of the claim. After verifying the claim and conducting due enquiry, the District Legal Services Authority shall award adequate compensation within two months, in accordance with the provisions of the scheme.

(3) The District Legal Services Authority 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 an officer-in-charge of the police station or a Judicial or Executive Magistrate or a competent medical officer of the area concerned or any other interim relief as deemed fit by the Authority.

(4) The amount of compensation will be decided by the District Legal

Services Authority based on the standard criteria given in the Schedule appended to the scheme.

(5) Compensation shall be paid as a single lump sum or in two installments as decided by the District Legal Services Authority.

(6) The District Legal Services Authority shall decide the quantum of compensation under sub-section (2) and (3) of section 357-A of the Code within sixty days of the receipt of the recommendation.

(7) The District Legal Services Authority shall decide the quantum of compensation on the basis of loss caused to the victim, medical expenses occurred on treatment, minimum sustenance amount required for rehabilitation.

(8) In the case of compensation to victim of rape/victim wider trauma, the matter shall be informed to the probation officer in the district concerned for effective rehabilitation and continuous evaluation.

(9) If the trial court, while passing judgment at a date later than the award of compensation, order the accused person to pay any amount by way of compensation under sub-section (3) of section 357 of the Code, the accused person shall remit an amount equal to the amount of compensation or the amount ordered to be paid under sub-section (3) of section 357 of the Code, whichever is less. An undertaking to this effect shall be given by the victim or his claimant before the disbursal of the compensation amount.

(10) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependent from the Victim Compensation Fund. Compensation received by the victim from the State in relation to crime in question, namely, insurance whose premium has been paid by the State or Central Government, ex-gratia or payment received under any other Act or any other State scheme, shall be considered as part of the compensation amount under this scheme. The victim or his dependent who has received compensation amount from collateral sources mentioned above shall be deemed to have been compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payment received by the victim from collateral sources mentioned above, the balance amount shall

be paid out of the Fund.

(11) The cases covered under the Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accidents Claims Tribunal, shall not be covered under the scheme.

(12) If the annual income of the victim person, from all the sources of income, exceeds Rupees Five Lakh (Rupees 5 Lakh) then, the compensation as given in different categories of Schedule, amount payable would be 50% (Fifty Percent only)

(13) Copy of the order of compensation passed by the District Legal Services Authority under this scheme shall be placed on record of the trial court to enable the court to pass an order of compensation under sub-section (3) of section 357 of the Code.

(14) The District Legal Services Authority, shall institute proceedings before the competent court of law for recovery of the compensation, granted to the victim or his dependent, from the accused if found ineligible later.

7. Disbursement of compensation. –

(1) Disbursement of compensation will be done, through the Aadhar linked bank account.

(2) In the case of a victim who is a minor, the amount of Compensation awarded shall be deposited in the account of the minor as fixed deposit, to be withdrawn only on attainment of his majority. In exceptional cases, the amount of compensation can be withdrawn for educational or medical needs of the beneficiary by the competent person as decided by the District Legal Services Authority/Appeal Authorities.

(3) In case of acid attack a sum of 1 lakh (one lakh) shall be paid to such victim within 15 days of such incidents.

8. Rejection, withholding or reduction of compensation. –

The District Legal Services Authority may reject, withhold or reduce the award of compensation where the Authority considers that:–

(a) The applicant failed to inform the crime to the Police Officer without

reasonable delay:

- (b) The applicant failed to co-operate with the police officer or other Authority to bring the accused before justice;
- (c) The applicant failed to give all reasonable assistance to the District Legal Services Authority or other related authorities in connection with the application.
- (d) The eligibility of the victim as shown by the facts and circumstances of the case does not justify award of compensation.

9. Dependency Certificate.—

The Tehsildar concerned or the authority designated as competent authority by the Government from time to time, shall issue Dependency Certificate within a period of fifteen days from the date of the application.

10. Limitation.—

No claim made by the victim or his dependent under sub-section (4) of section 357A of the Code shall be entertained after a period of one hundred and eighty days from the occurrence of the crime. The District Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the said claim.

11. Appeal.—

(1) Any victim or his dependents aggrieved by the rejection of his/her claim by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days;

(2) A second appeal shall lie to Government in Home Department against the decision of 1st Appeal Authority, viz. State Legal Services Authority within a period of 30 days from the date of decision of the first Appeal Authority and the decision of second Appeal Authority shall be final:

Provided that the State Legal Services Authority/Government if satisfied, for sufficient reasons to be recorded in writing, may condone the delay in filing the appeal.

(3) A decision made by the District Legal Services Authority and accepted

by the applicant will normally be considered as final; The State Legal Services Authority/Government may, however, subsequently re-open a case where there has been such a material change in the medical condition of the victim that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has died in consequence of the injury.

SCHEDULE

COMPENSATION TO VICTIMS FOR INJURY/LOSS

Note:— If annual income of the victim person, from all the sources of income, exceeds Rupees Five Lakh (Rupees 5 Lakh) then, the compensation amount payable would be 50% of the limit prescribed.

Sl.No.	Details of Loss or Injury	Maximum limit of Compensation	
(1)	(2)	(3)	(4)
1.	a. Loss of life (Death) b. Loss of Fetus	a. Death of an earning member b. Death of a non earning member.	Maximum upto Rs. 4.00 lakh Maximum upto Rs. 2.00 lakh Maximum upto Rs. 50,000 and Free medical treatment in Government Hospitals
2.	In case of permanent disability being 100%	a. Victim being the earning member	Maximum upto Rs. 3.00 lakh (Free medical treatment in Government Hospital)

		b. Victim not being the earning member	Maximum upto Rs. 1.50 lakh (Free medical treatment in Government Hospital)
3.	In case of permanent disability being more than 40%	a. Victim being the earning member	Maximum upto Rs. 2.00 lakh (Free medical treatment in Government Hospital)
		b. Victim not being the earning member	Maximum upto Rs. 1.00 lakh (Free medical treatment in Government Hospital)
4.	(a) Loss of fertility (due to other criminal incident except rape) (b) Serious injury to vital part of body or surgery		Maximum upto Rs. 1.50 lakh (free medical treatment Government hospitals)
		a. Victim being the earning member	Maximum upto Rs. 50,000 (Free medical treatment in Government Hospital)
		b. Victim not being the earning member	Maximum upto Rs. 25,000 (Free medical treatment in Government Hospital)
5.	a. Gang Rape.	Maximum upto Rs. 3.00 lakh and Free medical treatment in Government Hospital	
	b. Sexual crime with minors	Maximum upto Rs. 2.00 lakh and Free medical treatment in Government Hospital	
6.	a. Acid attack leading to disfiguration of more than 40%	Maximum upto Rs. 3.00 lakh out of which Rs. 1.00 lakh to be paid within 15 days of intimation date and balance amount Maximum Rs. 2.00 lakh within 2 months and	

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	b. Acid attack leading to disfiguration of less than 40%	free medical treatment in Government Hospital Maximum upto Rs. 1.50 lakh out of which Rs. 50,000 to be paid within 15 days of intimation date and balance amount within 2 months and free medical treatment in Government hospital

By order and in the name of Governor of Madhya Pradesh,

Dev Prakash Gupta, Secretary.

I.L.R. [2015] M.P., 3137

SUPREME COURT OF INDIA

Before Mr. Justice T.S. Thakur & Mr. Justice R. Banumathi

Cr. Appeal Nos. 1786-1787/2009 decided on 18 August, 2015

RAMVILAS

...Appellant

Vs.

STATE OF M.P.

...Respondent

(Alongwith Cr. Appeal Nos. 1788-1789/2009)

A. Penal Code (45 of 1860), Sections 147, 148, 149, 302, 323 & 324 - Deceased sustain 26 injuries - Conviction by trial Court and upheld by High Court - Challenge - Held - Conviction based on evidence of injured eye witnesses which is amply corroborated by evidence of eye witnesses & medical evidence, so not liable to be interfered - Appeals dismissed. (Paras 5 to 8)

क. दण्ड संहिता (1860 का 45), धाराएं 147, 148, 149, 302, 323 व 324 - मृतक को 26 चोटें आई - विचारण न्यायालय द्वारा दोषसिद्धि तथा उच्च न्यायालय द्वारा पुष्टि की गई - चुनौती - अभिनिर्धारित - दोषसिद्धि आहत चक्षुदर्शी साक्षियों के साक्ष्य पर आधारित जो कि पर्याप्त रूप से चक्षुदर्शी साक्षियों के साक्ष्य तथा चिकित्सीय साक्ष्य से समर्थित है, अतः हस्तक्षेप योग्य नहीं - अपीलें खारिज।

B. Penal Code (45 of 1860), Sections 147, 148, 149, 302, 323 & 324 - Prosecution case - Deceased sustain gun shot injury, lathi blows and spear injuries - No seizure of 'Katta' - Nor gun shot injury found - Held - All eye witnesses supporting carrying of Katta by the appellant, so his presence cannot be doubted because no 'Katta' was recovered from him. (Para 7)

ख. दण्ड संहिता (1860 का 45), धाराएं 147, 148, 149, 302, 323 व 324 - अभियोजन प्रकरण - मृतक को बंदूक की गोली से चोट, लाठी के वार तथा माले की चोटें आई - 'कट्टे' की जप्ती नहीं - न ही बंदूक की गोली की चोट पायी गई - अभिनिर्धारित - सभी चक्षुदर्शी साक्षियों ने अपीलार्थी द्वारा कट्टा रखे जाने का समर्थन किया है, अतः उसकी उपस्थिति पर इस कारण संदेह नहीं किया जा सकता क्योंकि उससे कोई 'कट्टा' बरामद नहीं हुआ।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 313 - Examination - Presence of appellant and seizure of Katta shown as

doubtful - In contra all eye witnesses supporting presence of appellant on spot - Seizure cannot be doubted - Also examination under Section 313 nowhere pleaded that appellant was not present on the spot nor involved in the incident - Appeals dismissed. (Para 7)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 - परीक्षण - अपीलार्थी की उपस्थिति तथा कट्टे की जप्ती को संदेहास्पद दर्शाया गया - इसके विपरीत सभी चक्षुदर्शी साक्षी घटनास्थल पर अपीलार्थी की उपस्थिति का समर्थन कर रहे हैं - जप्ती पर संदेह नहीं किया जा सकता - धारा 313 के परीक्षण में भी कहीं यह अभिवाक् नहीं किया गया कि अपीलार्थी घटनास्थल पर उपस्थित नहीं था और न ही घटना में शामिल था - अपीलें खारिज।

D. Interpretation of statutes - Evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of injured witnesses. (Para 6)

घ. कानूनों का निर्वचन - आहत साक्षियों का साक्ष्य अधिक महत्व पाने का हकदार है तथा आहत साक्षियों के साक्ष्य को नकारने के लिये बहुत ही तर्कपूर्ण तथा विश्वसनीय आधार अपेक्षित है।

J U D G M E N T

The Judgment of the Court was delivered by :
R. BANUMATHI, J. :- In these appeals, the appellants challenge the correctness of the judgment passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeals No.377 of 1995 and 481 of 1995 whereby the High Court confirmed the conviction and sentence awarded to the appellants by the trial court under Sections 302 read with Section 149 IPC, 324, 323 read with Section 149 IPC and 148 IPC.

2. Case of the prosecution is that on 23.07.1991 at about 7.00 O'clock in the morning at village Hathighat, deceased-Bansilal had gone towards the riverside to attend nature's call. One Harisingh Kachhi (PW-7), Jagdish (PW-13) and Noor Khan (PW-9) came to the house of Narmada Prasad (PW-3) and informed him that the accused-appellants were assaulting his brother-Bansilal. Narmada Prasad (PW-3) immediately rushed to the spot alongwith them and near 'otla' of Hardul Baba, he noticed that all the appellants armed with lethal weapons had surrounded his brother-Bansilal. Appellants Chhotelal, Kailash and Suresh were armed with spears, appellant-Ramvilas was armed with pistol, whereas appellants Ramsingh and Gorelal were carrying *lathis* with them. When Bansilal tried to escape,

appellant-Ramvilas fired a shot from his pistol and when Bansilal fell down, appellants Chhotelal and Kailash attacked him with spear on his scalp and forehead. When Narmada Prasad (PW-3) tried to intervene, appellant-Kailash attacked Narmada Prasad with spear and caused injury below his right eye. Then Uma Bai (PW-5) sister of the deceased and Sona Bai-mother of the deceased tried to save Bansilal, the appellants Kailash and Ram Singh also attacked them. Appellant-Ramvilas intimidated and threatened the persons present there and said that if anybody would intervene, he would be shot dead. The appellants gave repeated blows to Bansilal by spear and *lathis* and then fled away. Injured Bansilal was immediately taken to the hospital where he was declared dead. On the complaint lodged by Narmada Prasad (PW-3), brother of the deceased, FIR was registered in Criminal Case No.131 of 1991 under Sections 147, 148, 149, 341 and 302 IPC at PS Nasirullahganj. After due investigation, the appellants were prosecuted under Sections 148, 302, 302 read with Section 149, 324, 324 read with Section 149, 323 and 323 read with Section 149 IPC.

3. Upon consideration of the evidence, the trial court convicted the appellant-Ramvilas and other accused under Sections 302 read with Section 149, 324, 323 read with Section 149 and 148 IPC and sentenced them to undergo life imprisonment and further imposed sentence of imprisonment for other offences. On appeal, the High Court confirmed the conviction of the appellants and also the sentence of imprisonment imposed on each of them. These appeals assail the correctness of the impugned judgment. On application filed on behalf of the appellants, the appeal was dismissed as withdrawn qua the appellants Suresh (A1), Kailash (A2) and Ram Singh (A4) by the Chamber Judge Order dated 18.02.2013.

4. We have heard the arguments of Mr. Ajay Veer Singh, the learned counsel for the third appellant-Ramvilas and also the learned counsel appearing for the State. We have carefully considered the rival contentions and perused the evidence on record and also the impugned judgment.

5. Conviction of the appellant-Ramvilas and other accused is based mainly on the evidence adduced by six eye witnesses, namely, Narmada Prasad (PW3), Rekha Bai(PW-4), Uma Bai (PW-5), Hari Singh (PW-7), Noor Khan (PW-9) and Jagdish (PW-13) coupled with other corroborative evidence. All the eye witnesses have consistently spoken about the occurrence and the overt acts of the accused including the appellant-Ramvilas. Courts below have recorded the concurrent findings of fact observing that the testimony of eye

witnesses is credible and trustworthy. Deceased-Bansilal had sustained as many as twenty six injuries. Evidence of eye witnesses is amply corroborated by medical evidence. By perusal of the records, no cogent reasons are forthcoming to disbelieve the testimony of the eye witnesses and we find no reason to interfere with the concurrent findings recorded by the courts accepting the evidence of eye witnesses as trustworthy.

6. In the incident, Narmada Prasad (PW-3) and Uma Bai (PW-5) sister of the deceased sustained injuries and Ex.P-9 and Ex.P-10 are the MLC Reports of Narmada Prasad (PW-3) and Uma Bai (PW-5) respectively issued by Dr. S.K. Dhoble (PW-10). Narmada Prasad (PW-3) and Uma Bai (PW-5) being injured witnesses, their presence at the time and place of occurrence cannot be doubted. Evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses. We do not find any ground to disbelieve the evidence of injured witnesses Narmada Prasad (PW-3) and Uma Bai (PW-5).

7. Learned counsel for the appellant Mr. Ajay Veer Singh contended that the presence of appellant-Ramvilas at the scene of occurrence was doubtful as no 'katta' was seized from him nor any gun shot injury was found on the person of deceased-Bansilal. As observed by the High Court all the eye witnesses have spoken in one voice so far as carrying of 'katta' by appellant-Ramvilas and therefore his presence at the scene of occurrence cannot be doubted merely because no 'katta' was recovered from him. It has come out in the evidence that the appellant-Ramvilas had exhorted the other accused in attacking the deceased and also actually participated in the attack. As pointed out by the courts below that the appellant-Ramvilas nowhere pleaded in his examination under Section 313 Cr.P.C. that he was neither present at the scene of occurrence nor involved in the incident.

8. The conviction of the appellant-Ramvilas is based on the evidence of injured witnesses which is amply corroborated by the evidence of eye witnesses and medical evidence. Conviction of the appellant is based on proper appreciation of evidence and courts below have recorded concurrent findings and the same is not liable to be interfered with in exercise of power under Article 136 of the Constitution of India.

9. These appeals are dismissed.

Appeal dismissed.

I.L.R. [2015] M.P., 3141

FULL BENCH

*Before Mr. Justice A.M. Khanwilkar, Chief Justice, Mr. Justice
Rajendra Menon & Mr. Justice S.K. Seth*

W.P. No. 7440/2013 (Jabalpur) decided on 14 September, 2015

ASIF MOHD. KHAN

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.A. No. 607/2015 & W.A. No. 652/2015)

A. Interpretation of Statutes - Ratio decidendi - Ratio decidendi of a judgment to be culled out only on reading the entire judgment - Observation in a judgment cannot be read in isolation or by reading a line here and there. (Para 12)

क. कानूनों का निर्वचन – विनिश्चय आधार – संपूर्ण निर्णय को पढ़ने के पश्चात् ही निर्णय का विनिश्चय-आधार निकाला जाए – किसी भी निर्णय में आए हुए विचार को पृथक करके अथवा यहां वहां की पंक्ति पढ़कर नहीं पढ़ा जा सकता।

B. Fundamental Rules, M.P., Rule 9(3) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 - Revocation of suspension order - Lien - It is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension - Lien can be against a post and not a lien on a place. (Paras 34 & 35)

ख. मूलमूल नियम, म.प्र., नियम 9(3) एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – निलंबन आदेश का प्रतिसंहरण – धारणाधिकार – यह तर्क प्रस्तुत करने की छूट नहीं है कि धारणाधिकार उस स्थान के विरुद्ध होगा जहां पर कर्मचारी सुसंगत समय पर कार्यरत था जब उसे निलंबित कर दिया गया था – धारणाधिकार एक पद के विरुद्ध हो सकता है और स्थान के विरुद्ध धारणाधिकार नहीं हो सकता।

C. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 - Revocation of suspension and transfer - Composite order - If the authority is competent to revoke suspension as also to transfer the employee, it is open to such Authority to pass a composite order - Whether a transfer order can withstand the test of

judicial scrutiny, will be an independent issue to be decided on settled legal principles. (Para 41)

ग. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – निलंबन तथा स्थानांतरण का प्रतिसंहरण – संयुक्त आदेश – यदि प्राधिकारी निलंबन का प्रतिसंहरण करने तथा कर्मचारी का स्थानांतरण करने में भी सक्षम है उक्त प्राधिकारी को संयुक्त आदेश पारित करने की छूट होगी – क्या स्थानांतरण आदेश न्यायिक संचीक्षा की कसौटी को सहन कर सकता है, एक स्वतंत्र विवाद्यक होगा जो कि स्थापित विधिक सिद्धांतों पर निर्णीत होगा।

Cases referred :

2005 (4) MPHT 352 (DB), 2013 (3) MPLJ 126, ILR (2003) MP 491, (2003) 6 SCC 697, (1989) 2 SCC 84 (Para 15), W.P. No. 12219/2014 decided on 11.8.2014, W.P. No. 8311/2012 decided on 7.12.2012, AIR 1971 SC 823.

Anshuman Singh and Rahul Diwakar, for the petitioner in W.P. No. 7440/2013.

Prashant Sharma, for the appellant in W.A. No. 607/2015.

None, for the appellant in W.A. No. 652/2015.

Amit Seth, G.A. for the respondents/State.

J U D G M E N T

The Judgment of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- These matters have been referred for consideration -of question which is overlapping and, therefore, have been listed together for analogous hearing.

2. The leading writ petition (W.P. No.7440/2013)has been filed at the Principal Seat at Jabalpur. When the said writ petition was listed for admission, the learned Single Judge by a speaking order dated 26.04.2013 opined that the legal position expounded in the case of *Kendriya Vidyalyaya Sangathan and others vs. Dr. R.K. Shastri and another*¹, will have no application to the fact situation of the case under consideration. Notwithstanding this opinion, the learned Single Judge referred the matter to Larger Bench for consideration. In such situation, it was open to the Full Bench to observe that the matter should proceed before the Single Judge on the basis of opinion already recorded and no question arises for consideration of the Full Bench.

1. 2005(4) MPHT, 352 (DB)

3. However, we may still have to consider the matter because of the companion Writ Appeal No.607/2015 (renumbered—originally W.A. No.196/2013 filed before the Bench at Gwalior), which has been placed for analogous hearing. This writ appeal has been filed by the employee whose writ petition No.1673/2013 filed before the Bench at Gwalior was dismissed by the learned Single Judge vide order dated 15.04.2013² on the finding that the judgments of this Court in *Dr. R.K. Shastri (supra)* and another decision of the Division Bench in *Union of India and others vs. Sri Vilas Ramesh Chand Tarhate*³, were distinguishable on the facts of that case and cannot be applied as binding precedents. The learned Single Judge rejected the challenge to the order of the Commissioner, Higher Education, revoking the suspension of the writ petitioner and by the same order posting him to a place (Government College, Chanderi, District Ashok Nagar) other than the place where he was working when placed under suspension (as Lab Technician in Government Excellence Science College, Gwalior). The learned Single Judge opined that the Commissioner, Higher Education had power to pass such a composite order and the analogy from the observations made in *Dr. R.K. Shastri's* case cannot be applied; which observations were on the facts of that case. The writ petitioner questioned the said decision by filing the Writ Appeal No.196/2013, before the Bench at Gwalior. The Division Bench while considering the said appeal on admission, however, was of the opinion that there was conflict between the opinion expressed in the two Division Bench judgments referred to above [*Dr. R.K. Shastri (supra)* and *Sri Vilas Ramesh Chand Tarhate (supra)*]. Accordingly, the Division Bench vide order dated 04.04.2014, directed the Registry to place the matter before the Chief Justice for constitution of a Larger Bench and formulated two questions to be answered by the Larger Bench, namely:-

- “(1) Whether it is necessary to post an employee on the same place after revocation of order of suspension from where he was suspended?
- (2) Whether the law laid down by the Division Bench of this court in *Kendriya Vidyalaya Sangathan Vs. Dr. R.K. Shastri* reported in 2005(4) M.P.H.T. 352 (DB) is correct or not?”

4. In addition to the two cases, the third matter being Writ Appeal No.652/2015 (renumbered—originally W.A. No.146/2015 filed before the Bench at Gwalior), arises from the decision of the learned Single Judge at Gwalior Bench dated 17.06.2015 in Writ Petition No.3487/2015(S). The learned Single Judge dismissed even this writ petition following the earlier decision in *Dheer Singh Yadav vs. State of M.P. and another* (renumbered W.A. No.607/2015—second matter). When writ appeal against this decision was notified for admission on 02.07.2015, the Division Bench noted the fact stated across the Bar that the question involved in the writ appeal was similar to one already referred to the Larger Bench by another Division Bench on 04.04.2014, mentioned hitherto. In view of this submission, the Division Bench directed the Registry to place the papers of even this writ appeal along with other matters already referred to a Larger Bench, for analogous hearing. As a result of which, the said writ appeal, has been transferred to the Principal Seat at Jabalpur and renumbered as W.A. No.607/2015 and posted for analogous hearing.

5. Accordingly, we are required to answer the two questions formulated by the Division Bench vide order dated 04.04.2014 in W.A. No.607/2015 (renumbered—original W.A. No.196/2013 of Gwalior Bench).

6. We may usefully refer to the broad facts involved in the said appeal. The appellant—Dheer Singh Yadav filed writ petition before the Bench at Gwalior being W.P. No.1673/2013 under Article 226 of the Constitution of India to question the order dated 06.03.2013 issued under the signature of Commissioner, Higher Education, Madhya Pradesh to the extent of posting him at Government College, Chanderi, District Ashok Nagar instead of reinstating him at the place where he was working at the time when he was placed under suspension in lieu of disciplinary proceedings instituted against him, at Government Excellent Science College, Gwalior. As the said appellant was placed under suspension, he had challenged that decision first by way of W.P. No.3022/2012 which was disposed of with direction to the Authorities to conclude the disciplinary enquiry pending against him preferably within eight months. According to the said appellant, since the enquiry was not concluded within stipulated time, the suspension order stood revoked automatically and in which case the writ petitioner was entitled to join at Gwalior where he was working at the relevant time when he was placed under suspension. This plea was considered by the learned Single Judge and negatived.

7. The learned Single Judge then posed question as to whether, as a matter of right, the petitioner can claim the same place of posting, from where he was placed under suspension. After analyzing the decision of *Dr. R.K. Shastri (supra)*, the learned Single Judge opined that the only substantive or statutory right of the petitioner was to occupy a substantive post which he was holding before suspension, on revocation of the suspension. However, he had no legal or constitutional right to get reinstated at the same place where he was posted when placed under suspension. On this opinion, the learned Single Judge proceeded to hold that the Commissioner did not commit any error in reinstating the said appellant at a different place at Chanderi, instead of Gwalior.

8. While dealing with the decision of *Dr. R.K. Shastri's* case, the learned Single Judge, in substance, noted that the said decision was essentially in the context of Rule 27 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and for which reason, observed that sub-rule (1) of the said Rule does not vest wide or discretionary power on the Appellate Authority while dealing with appeals against orders of suspension. The jurisdiction of the Appellate Authority is limited to either confirm the suspension or to revoke the same. Thus, the dictum of the Division Bench in *Dr. R.K. Shastri's* case has been distinguished. Even the opinion of another Division Bench in the case of *Sri Vilas Ramesh Chand Tarhate (supra)* has been discussed by the learned Single Judge, as not applicable to the facts of the present case.

9. The learned Single Judge further noted that there was no conflict between the view expressed in the decision of *Sri Vilas Ramesh Chand Tarhate (supra)* and *Dr. R.K. Shastri (supra)* and that those decisions were on peculiar factual matrix in the concerned case. The learned Single Judge noticed the observations in *Sri Vilas Ramesh Chand Tarhate (supra)* that revocation of the order of suspension does not confer a premium on the officer concerned to treat it as a privilege and put forth a claim as a matter of right to be retained at the place where he was posted. On the other hand, the *ratio decidendi* in the case of *Dr. R.K. Shastri*, was about the competence of the Appellate Authority under CCS (CCA) Rules to revoke the suspension and on revocation to post the employee elsewhere itself. The learned Single Judge then observed that those decisions were inapplicable to the facts of the case before him.

10. The Division Bench vide order dated 04.04.2014, however, was of

prima facie opinion that the legal position expounded in the case of *Dr. R.K. Shastri* will bind the Authority and, as a result, the appellant (writ petitioner) was required to be first posted at the same place from where he was suspended. But, after referring to the observations in the case of *Sri Vilas Ramesh Chand Tarhate* (supra), the Division Bench found that there was conflict in the opinion expressed by the two Division Benches. Further, the Division Bench noted that the judgment in the case of *Dr. R.K. Shastri* (supra) did not consider the dictum of the Division Bench in *Sri Vilas Ramesh Chand Tarhate* (supra) and further more, whether the employee has lien also against the post where he was posted, in view of the definition of expression "lien" also required consideration.

11. Considering the nature of questions to be examined by us, it is not necessary to advert to the facts of the other two cases before us, nor to give a finding on merits one way or the other in any of these cases. We would prefer to examine the question in abstract and not specific to the facts of the cases before us. As a matter of fact, both the questions, in one sense, are overlapping.

12. The principal decision pressed into service on behalf of the petitioners/appellants, is the case of *Dr. R.K. Shastri* (supra). It is well established position that the legal precedent must be analyzed in the context of the matter in issue therein and would be binding precedent for similar fact situation. The Constitution Bench of the Supreme in the case of *Islamic Academy of Education Vs. State of Karnataka*⁴ has restated the well settled legal principle—that *ratio decidendi* of a judgment to be culled out only on reading the entire judgment. Further, the observation in a judgment cannot be read in isolation or by reading a line here and there.

13. Keeping this principle in mind, we must revert to the case of *Dr. R.K. Shastri*. In that case, the writ petition arose from the decision of the Central Administrative Tribunal, Jabalpur in Original Application No.487/2002 -which had considered the challenge for quashing the order dated 6/8-7-2002 to the extent it transferred the respondent No.1 to Kendriya Vidyalaya, Karimganj in Assam on the condition that his suspension will be revoked on joining at Kendriya Vidyalaya, Karimganj. The first respondent, in the writ petition (Dr. R.K. Shastri) was working as a Trained Graduate Teacher (Sanskrit) at Kendriya Vidyalaya No.2, Bhopal, when he was placed under suspension

4. (2003) 6 SCC 697

pending enquiry by the third petitioner vide order dated 13.07.2001, with a stipulation that his headquarter during the suspension will be Kendriya Vidyalaya, Bairagarh, Bhopal. The first respondent had filed appeal against the order of suspension on 05.11.2001, to the second petitioner. The second petitioner, in the said appeal, revoked the suspension of the first respondent vide order dated 6/8-7-2002 and by the same order posted the first respondent to Kendriya Vidyalaya, Karimganj, Assam instead of directing reinstatement at the same place where he was working at Bhopal, without prejudice to the disciplinary proceedings pending against him.

14. In the context of these facts, the question considered by the Division Bench was whether the Appellate Authority (second petitioner) was competent in subjecting the revocation of suspension to a condition that revocation will come into effect only on employee reporting duty at a far away place of transfer.

15. The service of the first respondent in the said writ petition, undoubtedly, was governed by the provisions of CCS (CCA) Rules. After analyzing the provisions of the said Rules, and in particular Rule 27, the Division Bench in paragraphs 9.2 and 9.3 observed thus:-

“9.2. Rule 27 relating to consideration of appeals contains three distinct provisions. Sub-rule (1) deals with appeals against suspension. Sub-rule (2) deals with appeals against imposition of penalty. Sub-rule (3) deals with appeals against other orders specified in Rule 23. While Sub-rule (2) enables the Appellate Authority to issue such directions as it may deem fit in the circumstances of the case and Sub-rule (3) enables the Appellate Authority to make such orders as it may deem just and reasonable, significantly Sub-rule (1) does not vest any such wide or discretionary power on the Appellate Authority while dealing with appeals against orders of suspension. Sub-rule (1) merely enables the Appellate Authority to either confirm the suspension or revoke the suspension. Rule 27(1) controls the manner of consideration and disposal of an appeal against suspension. Having regard to Sub-rule (1) of Rule 27, the Appellate Authority has no power, while considering an appeal against an order of suspension or while revoking the suspension, to direct transfer of an employee or making the revocation or suspension subject to the employee

reporting at the place of transfer.

9.3. The reason behind Sub-rule (1) of Rule 27 not giving the wide latitude or discretion to the Appellate Authority, as done under Sub-rule (2) or (3) of Rule 27, is obvious. Suspension pending enquiry is not a punishment. But it causes prejudice and hardship to the employee as it prevents him from performing his legitimate duties and earning his salary and subjects him to a payment of a subsistence allowance far below his salary and further subjects him loss of reputation. An appeal is provided only to consider whether the suspension should be confirmed or not. Therefore, the question of Appellate Authority transferring the suspended employee as a condition of revocation, or making the revocation subject to the employee reporting at the place of transfer, does not arise."

(emphasis supplied)

16. On a bare reading of this analysis, it is crystal clear that the Division Bench in this case considered only one aspect of the matter—with reference to the power of the Appellate Authority flowing from Rule 27 of CCS (CCA) Rules. No more and no less. This decision of the Division Bench, therefore, is an authority on the question framed in paragraph 8 of the reported decision—as to the scope of “power of the Appellate Authority”. The Division Bench found that the “Appellate Authority” had no power to direct transfer of an employee or making the revocation of suspension subject to the employee reporting to duty at a different place than the place where he was working when placed under suspension.

17. This reported decision will be of no avail in cases where a composite order is passed by the Authority itself, if competent to pass such an order. In other words, if the Authority, who passes a composite order of revocation of suspension and of posting the employee at some other place, has power to do so, that will be permissible in law. For, there is no express provision in the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, which prohibits issuance of a composite order by the Authority otherwise competent to pass such order of revocation of suspension as well as to transfer the employee to some other place.

18. Before we turn to the other decision, we may reproduce paragraphs

11 and 12 of the same reported decision in *Dr. R.K. Shastri's* case (supra), for answering the argument canvassed by the appellants/petitioners. The same reads thus:-

“11. It is well settled that when an employee is kept under suspension pending enquiry, he retains his lien over the post from which he is suspended. It is also a settled position that the station of posting immediately before suspension would be the headquarter vis-a-vis the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. It is also well settled that any vacancy caused on account of suspension pending enquiry, is to be filled by a reservist and where a reservist is not available by officiating appointment. Therefore on revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. Therefore, we agree with the finding of the Tribunal that the order of the Appellate Authority dated 6/8-7-2002 to the extent it posts the first respondent to Karimganj and makes the revocation of suspension effective from the date of reporting at K.V., Karimganj, is invalid and liable to be quashed.

12. It follows therefore that the suspension stood revoked with effect from 8-7-2002 and the petitioners could not have been relieved him from Bhopal. As a consequence of revocation of suspension and as a consequence of the action of the petitioners in not permitting him to report back to duty at Kendriya Vidyalaya No. 2 Bhopal, the first respondent will be entitled to all consequential benefits. He will be deemed to be on duty at K.V. No. 2, Bhopal from 8-7-2002 will all monetary benefits. In so far as order dated 7-11-2003 passed during the pendency of this petition; it has no legal sanctity. As a consequence of upholding of the order of the Tribunal, the said order becomes ineffective.”

(emphasis supplied)

19. In our opinion, the observations in paragraph 11 cannot be divorced

from the factual matrix considered by the Division Bench. These observations are obviously in the context of facts of that case and would be binding precedent only in that regard. No doubt, the Division Bench has observed that the position stated in these paragraphs is well settled position. However, with due respect, we find that there is no express or even implied legal provision to reinforce the proposition that the employee has a right much less vested right to be reinstated at the same place where he was working when suspended, nor any binding precedent. None of that has been brought to our notice, much less an express provision in the Act or the Rules governing the services of the appellants/petitioners, which would preclude or prohibit the Appropriate (Competent) Authority from passing a composite order of revoking the suspension as well as transferring the employee to another place instead of reinstating him at the same place. If the Competent Authority is free to change the headquarter of the suspended employee in public interest, it is too much to suggest that it cannot do so whilst revoking the suspension.

20. No other legal precedent, besides the case of *Dr. R.K. Shastri* (supra), has been brought to our notice, which will reinforce the statement found in paragraph 11 of the reported decision -to the effect that after the revocation of suspension, the employee becomes entitled to report back to his place of posting from where he was suspended. In our view, there is marked difference between having lien on a "post" held substantively whilst under suspension, than the entitlement of being "posted" at an appropriate place after revocation of suspension. We may, however, agree with the observation that it is settled position that the station of posting immediately before suspension would be the headquarter *vis-a-vis* the suspended employee, unless the Competent Authority changes the headquarter of the suspended employee in public interest. Similarly, there is no difficulty in accepting the position mentioned in paragraph 11 that an employee placed under suspension pending enquiry retains his lien over the "post" from which he was suspended. But, it does not follow that he has a vested right to be reinstated at the same place or location and nowhere else, as a rule.

21. To put it differently, it is not possible to countenance the argument that the Appropriate Authority cannot exercise power to pass a composite order to revoke suspension and to simultaneously transfer the employee to another place in public interest. For, the Appropriate Authority has power to transfer the employee subordinate to him as per the governing service conditions, after revocation of his suspension. Indeed, whether such transfer is just and proper

can be tested on well settled legal principles.

22. We may observe that in service jurisprudence the field regarding appointment or termination including the lien on the "post" held substantively on which the person is appointed, is, one field. The other field is about the matters of disciplinary enquiry—to wit, suspension and including revocation of suspension. The third field is about the service conditions such as transfer, being incidence of service. The Authorities, for each of these fields, may be different or it is possible that in a given case, it can be the same Authority. It is also possible that the Authority who may place the employee under suspension may be different than the Authority empowered to transfer that employee. Absent explicit exclusion of power, composite order of revocation of suspension and transfer to another place can certainly be passed by the concerned Authority competent to pass order on those matters. Similarly, if the composite order were to be passed by the Superior Authority, to which that Authority (who has power to suspend and/or to revoke suspension and/or to transfer) is subordinate, there is no reason why a composite order cannot be passed by the Superior Authority.

23. A priori, the test for deciding whether the composite order is valid or otherwise, would depend on the fact as to whether the Authority, who has passed the order, was competent to exercise such power—on both the matters—relating to revocation of suspension and also of transfer of the concerned employee. It may be possible that the same Authority may be the Appellate Authority. While entertaining appeal of the employee, however, the jurisdiction to be exercised is limited of an Appellate Authority under Rule 27. That jurisdiction would be governed by the provisions providing for remedy of appeal against the order of suspension. In that situation, it may be possible to suggest that the Appellate Authority must first set aside the suspension order and direct reinstatement of the employee at the same place where he was working at the time of suspension and then by a separate order the employee may be transferred to another place in public interest. This situation will be governed by the principle expounded in *Dr. R.K. Shastri's* case (supra).

24. To put it differently, there may be different factual matrix which may be germane to answer the question about the competency of the Authority who passed the composite order. That would depend on the facts of each case and will have to be decided in the context of the governing provisions pertaining to matters of suspension and transfer and indeed on the touchstone of competency of the Authority to pass such an order, as the case may be.

25. The argument of the appellants/petitioners, however, is that the revocation of suspension can be in three different situations. One, by operation of law, in view of the deeming provision contained in Rule 9(5)(a) of the Rules of 1966. The second situation may be by issuance of revocation order by the Appropriate Authority under Rule 9(5)(b) of the Rules of 1966; and the third situation may arise when the Appellate Authority allows the appeal against the order of suspension and as a result of which sets aside the same.

26. No doubt, the three situations referred to above, are mutually exclusive. However, the scheme of the Rules of 1966 do not prohibit, either expressly or impliedly, passing of a composite order by the Authority who is empowered under the Rules to revoke the suspension as also to transfer the concerned employee.

27. Indeed, in the case of revocation of suspension by virtue of Rule 9(5)(a), it would be a case of revocation in law -*de jure*. Whereas, revocation of suspension by the Appropriate Authority under Rule 9(5)(b) may be a case of revocation in fact -*de facto*. The same may be true about the order passed by the Appellate Authority of setting aside the suspension order. Nevertheless, in absence of any express provision in the Rules of 1966, prohibiting the Appropriate Authority, competent to suspend subordinate employee and including to revoke the suspension as also to transfer the concerned employee, it is not open to doubt the existence of power to pass a composite order of revoking suspension as also to simultaneously transfer the employee to another place in public interest. Taking any other view would be a pedantic approach and only necessitating multiplicity of orders (ministerial work), to be passed by the same Authority.

28. Suffice it to observe that the decision of *Dr. R.K. Shastri* is not an authority on the proposition that it is mandatory even for the Competent Authority to post the employee at the same place after revocation of the order of suspension from where he was suspended. It is, however, an authority on the proposition about the limited power invested in the Appellate Authority - either to uphold the suspension or not and confirm or revoke the order accordingly, as per Rule 27 of the Rules of 1966.

29. In the present cases, it is not necessary for us to examine the wider question as to whether, if the Appellate Authority is the same as Authority competent to transfer the employee, can it pass a composite order indicating that it was exercising both powers simultaneously. Therefore, we leave that

question open.

30. That takes us to the question of law as to whether there is any conflict of opinion in the decisions of coordinate Benches (Division Benches) of this Court in *Dr. R.K. Shastri* (supra) and *Sri Vilas Ramesh Chand Tarhate* (supra). In the case of *Sri Vilas Ramesh Chand Tarhate* (supra), the writ petition was filed for challenging the order passed by the Central Administrative Tribunal, Jabalpur. The said Vilas had filed Original Application questioning the soundness of order dated 19.07.2001 by which he was transferred from Jabalpur to Mumbai. It was not a case of composite order as such. In that case, the suspension order was passed against Vilas on 15.06.2001. Charge-sheet was issued against him. He offered explanation after receipt of the charge-sheet. After some time the suspension was revoked. After revoking the order of suspension Vilas was transferred from Jabalpur to Mumbai by order dated 19.07.2001. The challenge to the transfer order was essentially on the ground of *malafide* exercise of power by the Authority and not because of public interest or administrative exigency. The observations in this decision, therefore, must be understood in the context of the said controversy.

31. As the decision in *Sri Vilas Ramesh Chand Tarhate* (supra) is not strictly on the question considered in *Dr. R.K. Shastri* (supra), the question of there being any conflict in the opinion on the same issue will not arise. The controversy considered in the case of *Sri Vilas Ramesh Chand Tarhate* (supra) was on the touchstone of *malafide* exercise of power by the concerned Authority, as can be discerned from the following observations at page nos.497 and 498 of the judgment reported in (2003) ILR 491:-

“In view of the aforesaid enunciation of law
.....To put it differently, if *malafide* would have
been established possibly the concept of punitive nature of transfer
would have gained ground but if the disciplinary authority thought
it appropriate that a particular officer should be kept away from
the scene of occurrence it cannot be said that the order of transfer
being punitive is liable to be quashed. If such a logic is adopted
the effect would be catastrophic and the public administration
will be in a state of total chaos. A person which has been charge-
sheeted may conceive the notion that he will remain embedded
where charge-sheet has been served against him. This can never
be the case and should never be the one.

The next limb of submission by Mrs. Menon is that the order of transfer was passed only to accommodate Mr. S.K. Singh. The said argument is in the compartment for assailing the order of transfer on the ground of *malafide*. On a perusal of the order passed by the Tribunal and the documents which have been brought on record we are not able to attach any significance to the said submission. There may be cases where one particular employee is transferred some one has to be posted in his place unless there are overwhelming circumstance to show that whole thing has been contrived to adjust or accommodate the said employee. The present factual matrix does not so expos it. The respondent No. 1 was transferred because of the allegations made against him. When a public officer is visited with a charge-sheet on the basis of certain serious allegations, the department may in its wisdom would like to transfer him to another place. True it is, in the case at hand an order of suspension was passed and later on it was revoked, but revocation of the order of suspension does not confer a premium on the officer concerned to treat it as a privilege and put forth a claim as a matter of right to be retained at the place where he was posted.

In view of the aforesaid analysis we are of the considered opinion that the decision rendered by the Tribunal is absolutely vulnerable and sensitively susceptible and we unhesitatingly quash the same.”

(emphasis supplied)

32. We accordingly disagree with the view expressed that there is conflict of opinion in the two decisions of the Division Bench, referred to above.

33. The next question is: whether the lien would be on the post held substantively or against the place where he was working. This doubt can be straightaway answered on the basis of the definition of expression “lien” given in Rule 9(13) of the Madhya Pradesh Fundamental Rules. Expression “lien” reads thus:-

“Lien” means the title of a Government servant to hold substantively, either immediately or on the termination of

a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively."

34. In view of this express provision, it is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension. In the case of *Haribans Mishra Vs. Rly. Board*⁵, the Supreme Court has held that lien can be on a post and not a lien on a place.

35. Indubitably, even if the employee is placed under suspension, he would continue to hold his lien on the "post" on which he was "appointed substantively", until reinstated after revocation of suspension. However, there can be no vested right to continue at a place where the employee was posted at the time of suspension. Any other view would be antithesis to the rule of transfer being an incidence of service. It may be a case of transfer and posting at a different place, by the Competent Authority. That may be open to challenge on permissible grounds.

36. A priori, the mere fact that the transfer has been ordered simultaneously with revocation of suspension, by passing a composite order, that per se cannot be the basis to question the authority of the Competent Authority. What needs to be established in such a case, is, whether the Authority who passed the composite order, had limited power and could not have passed such a composite order on both the matters - of revocation of suspension as also transfer, to successfully challenge the order.

37. We agree with the view expressed by the learned Single Judge in *Dheer Singh Yadav* (supra) that the judgment in *Dr. R.K. Shastri* (supra) must be read only in the context of power to be exercised by the "Appellate Authority" under the statutory Rules. Further, we agree with the view taken by the learned Single Judge, that it is not impermissible for the original Authority to pass a composite order of revocation of suspension and transfer. Similarly, we agree with the view of the learned Single Judge that the analogy of the principle stated in *Dr. R.K. Shastri's* case with reference to the limited power of the Appellate Authority, will be of no avail qua the original Authority competent (sic:competent) to pass such orders. Further, we agree with the learned Single Judge that there is no conflict in the view expressed in *Sri Vilas Ramesh Chand Tarhate* (supra) and *Dr. R.K. Shastri* (supra).

5. (1989) 2 SCC 84(Para 15)

38. Our attention was also invited to an unreported decision of another learned Single Judge of this Court in the case of *Ramashankar Mishra vs. State of M.P. and another*⁶. The learned Single Judge in this judgment has taken the same view that the decision in *Dr. R.K. Shastri* (supra) is with reference to the power of the Appellate Authority and not with reference to Rule 9(5) of the Rules of 1966. The learned Single Judge has rightly highlighted the observation in paragraph 11 in the case of *Dr. R.K. Shastri* (supra) that once the employee reports back to duty, the employer may, in exercise of power of transfer, transfer him. The learned Single Judge has also noticed the exposition of coordinate Bench in the case of *Dheer Singh Yadav* (supra) which had distinguished the judgment of *Dr. R.K. Shastri* on facts.

39. Reference was also made to the unreported decision in the case of *V.K. Chouksey vs. State of M.P. and others*⁷ in support of the argument that after the suspension is revoked the employee must be first reinstated at the same place and then transferred, if necessary. From the bare reading of this order, it is noticed that the order was passed merely following the dictum in *Dr. R.K. Shastri*'s case, without analyzing any other aspect.

40. The counsel for the State then invited our attention to the decision of the Supreme Court in the case of *The Government of India, Ministry of Home Affairs and others vs. Tarak Nath Ghosh*⁸, in particular, paragraph 8 thereof. This decision amplifies the situation when the action of suspension from service is necessitated and including the consequences of suspension.

41. Taking overall view of the matter; therefore, we answer the two questions referred to us for consideration. We hold that the question as to whether it is necessary to post an employee at the same place after revocation of order of suspension from where he was suspended, may have to be answered on case to case basis in the context of existence or non-existence of the authority/power in the Authority passing the order in question. If the Authority is competent to revoke suspension as also to transfer the employee, it is open to such Authority to pass a composite order, if the situation so warrants. Whether the transfer can stand the test of judicial scrutiny, will be an independent issue to be decided on the settled legal principles. There is nothing in the Rules of 1966 or the Madhya Pradesh Fundamental Rules which

6. W.P. No.12219/2014 decided on 11.8.2014

7. W.P. No.8311/2012 decided on 7.12.2012

8. AIR 1971 SC 823

prohibits the Competent Authority from passing a composite order of revocation of the suspension and transfer at a different place.

42. We further hold that the dictum of the Division Bench in the case of *Dr. R.K. Shastri* (supra) to the effect that the power of the Appellate Authority while deciding the challenge to the order of suspension is circumscribed by Rule 27 of the Rules, is correct and needs no reconsideration. However, at the same time, we hold that the wide observations found in paragraph 11 of the same judgment, may have to be understood in the context of the question considered in the fact situation of that case.

43. We accordingly answer the questions referred to us on the above terms and direct the Registry to place the matter before the appropriate Bench for consideration. The two writ appeals (W.A. No.607/2015 and W.A. No.672/2015) be transmitted back to the Gwalior Bench and the writ petition (W.P. No.7440/2013) be placed before the Single Judge forthwith.

44. While parting we place our appreciation on record for the able assistance given by the counsel appearing for the respective parties and in particular in completing the arguments in the given time frame.

Order Accordingly.

I.L.R. [2015] M.P., 3157

FULL BENCH

***Before Mr. Justice A.M. Khanwilkar, Chief Justice, Mr. Justice
Rajendra Menon & Mr. Justice S.K. Seth***

W.P. No. 13987/2015 (Jabalpur) decided on 14 September, 2015

MANGAL SINGH @ MANGU

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.P. No. 13989/2015)

A. *National Security Act (65 of 1980), Section 5A - Grounds of detention severable - Detention order passed on more than one ground - If detaining Authority is able to demonstrate that even one ground is valid for issuing the order of detention, the fact that other grounds are vague, non-existent, not relevant, not connected, etc. would make no difference.* (Para 11)

क. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5ए – निरोध के आधार पृथक्करणीय – निरोध आदेश एक से अधिक आधार पर पारित – यदि निरोध प्राधिकारी यह प्रदर्शित करने में सक्षम है कि निरोध का आदेश जारी करने के लिए एक आधार भी वैध है, यह तथ्य कि अन्य आधार अस्पष्ट, अस्तित्वहीन, असंगत, असंबद्ध इत्यादि हैं से कोई फर्क नहीं पड़ेगा।

B. National Security Act (65 of 1980), Sections 5 & 5A - Order of detention - Multiple grounds - Non-mentioning of material facts - Detention order if it is saved by Section 5A, cannot be set aside due to non-mentioning of material facts like acquittal or detention of detainee.
(Para 12)

ख. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5 व 5ए – निरोध का आदेश – अनेक आधार – तात्त्विक तथ्यों का उल्लेख नहीं किया जाना – निरोध आदेश यदि वह धारा 5-ए द्वारा अपवादित है तो, निरुद्ध व्यक्ति की दोषमुक्ति अथवा उसके निरोध में होने जैसे तात्त्विक तथ्यों का उल्लेख न किये जाने के कारण, अपास्त नहीं किया जा सकता।

C. National Security Act (65 of 1980), Section 5A - Ground of detention severable - Whether required to be specifically pleaded - No - It is a matter of legal presumption under Section 5A and need not to restate in Counter Affidavit to be filed by the detaining authority.

(Para 18)

ग. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 5ए – निरोध के आधार पृथक्करणीय – क्या विनिर्दिष्ट रूप से अभिवाक् करना अपेक्षित है – नहीं – यह धारा 5ए के अंतर्गत विधिक उपधारणा का मामला है तथा निरोध प्राधिकारी द्वारा प्रस्तुत किए जाने वाले प्रति-शपथपत्र में पुनः कथन करने की आवश्यकता नहीं है।

Cases referred :

2011 (1) MPHT 513 (DB), (1989) 2 SCC 370 = AIR 1989 SC 1282, AIR 1973 SC 207, AIR 1975 SC 728, AIR 1979 SC 447, (2013) 4 SCC 531, (2011) 5 SCC 244, 2012 (5) MPHT 111 (DB), 2012 (2) SCC 176, 2000 (4) MPHT 482 (DB) = 2000 (2) MPLJ 618, (1994) 5 SCC 54, AIR 2000 SC 2662, 2001 SCW 2413, AIR 2004 SC 4703, AIR 1981 SC 1480, AIR 1990 SC 1272.

Prashant Sharma, for the petitioner in W.P. No. 13987/2015.

None, for the petitioner in W.P. No. 13989/2015.

A.A. Barnad, G.A. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- These matters have been placed before the Full Bench pursuant to the reference made by the Division Bench in the respective writ petitions.

2. The first reference was made in Writ Petition No.2689/2013 filed by Kheri Gurjar before the Bench at Gwalior (now renumbered as Writ Petition No.13989/2015 at Jabalpur) vide order dated 05.09.2013. The judges of the Division Bench differed in their views, as a result of which reference to the third Judge became necessary. The question formulated by the Bench reads thus :-

“Whether, after considering the provision of Section 5(A) of National Security Act and judgment of this Court in *Haji Abdul Rajjak Vs. State of M.P. and Others* 2012 (5) M.P.H.T. 111 (DB), the detention order of the competent authority passed under the N.S.A. Act can be set-aside on the basis of earlier view held in this Court’s judgment reported as *Tasildar Singh Vs. State of M.P. and Others* 2011 (1) M.P.H.T. 513 (DB) wherein, the provision of Section 5 (A) of the Act was not considered.”

3. In another writ petition which came up for consideration before the same Division Bench at Gwalior being Writ Petition No.4038/2013 (now renumbered as Writ Petition No.13987/2015 at Jabalpur), the Court vide order dated 21.10.2013, formulated substantial questions of law for consideration by the Larger Bench, as follows :-

“(1) Whether the judgment passed by the Division Bench in *Haji Abdul Rajjak* (supra) interpreting Section 5-A of NSA Act has laid down the correct law or not?

(2) Whether the observations of the Division Bench in *Haji Abdul Rajjak* (supra) that earlier two judgments *Dharamdas Shamlal Agrawal* (supra) and *Tahsildar Singh* (supra) have lost significance in the facts of the case and in view of Section 5-A of the NSA Act is correct or not?

(3) Whether the State has to plead and mention in the counter affidavit or return the fact that the order of detention has been passed on each ground and it be treated as a separated order under Section 5-A of the NSA Act in view of the decision of Hon'ble Supreme Court in *A.Sowkath Ali* (supra)?"

However, the Registry mistakenly placed this matter before the third Judge, after taking administrative order of the Chief Justice. The third Judge, vide order dated 18.12.2013, justly, opined that there was no difference of opinion on any point amongst the judges comprising the Division Bench in this case and, therefore, it was not necessary to give any opinion.

4. Both the matters were thereafter placed before the Chief Justice on the administrative side. It was ordered that the matter be placed before the Full Bench, to be heard at the Principal Seat. Accordingly, both the writ petitions were transferred to the Principal Seat from Bench at Gwalior and have been placed for analogous hearing before the Full Bench.

5. Briefly stated, in writ petition filed by Kheri Gurjar which was the first writ petition heard by the same Division Bench at Gwalior, there was difference of opinion between the two judges. One judge was of the opinion that as the detenu has been acquitted in nine out of twelve criminal cases referred to in the grounds accompanying the detention order, that fact was a material fact and essential to be placed before the Detaining Authority. Having failed to do so, the detention order was vitiated. For taking that view, the learned Judge placed reliance on paras 11 to 13 of the decision of the Division Bench of this Court in the case of *Tahsildar Singh Vs. State of M.P. and others*¹. The said decision has mainly considered the exposition of the Supreme Court in the case of *Dharamdas Shamlal Agarwal Vs. The Police Commissioner and another*², *Mohd. Subrati Vs. State of West Bengal*³, *Suresh Mahato Vs. The District Magistrate, Burdwan*⁴ and *Asha Devi Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat*⁵. The learned Judge additionally relied on the decision of the Supreme Court in the case of *Baby Devassy Chully alias Bobby Vs. Union of India and others*⁶ which has quoted the observations made in the case of *Rekha Vs. State of T.N.*⁷ with approval. Relying on these decisions, the learned Judge was of the opinion that it was

1. 2011 (1) M.P.H.T. 513 (DB)

2. (1989) 2 SCC 370= AIR 1989 SC 1282

3. AIR 1973 SC 207

4. AIR 1975 SC 728

5. AIR 1979 SC 447

6. (2013) 4 SCC 531

7. (2011) 5 SCC 244

obligatory on the part of the Superintendent of Police (Sponsoring Authority) to bring correct facts before the District Magistrate (Detaining Authority) so that the District Magistrate could record his subjective satisfaction and apply his mind properly. Non placement of material facts before the Detaining Authority entails in non-application of mind and for which reason the subjective satisfaction of the Detaining Authority as recorded in the detention order is rendered invalid. On that reasoning, the first learned Judge was of the opinion that the detention order deserves to be quashed.

6. However, the second learned Judge, relying on the dictum of the Division Bench of this Court in the case of *Haji Abdul Rajjak Vs. State of M.P.*⁸, in particular, paragraph 12 thereof observed that it was not possible to quash the detention order merely on that basis. Paragraph 12 of the said reported decision reads thus :-

“In view of the decision by the Constitution Bench of Supreme Court, the two Division Bench decisions relied on by learned Senior counsel for the petitioner, namely, *Dharamdas Shamlal Agarwal* (supra) and *Tahsildar Singh Vs. State of M.P. and others* (supra), lose their significance in the facts of the case. Therefore, aforesaid contention of the learned counsel for the petitioner cannot be accepted.”

(emphasis supplied)

In this backdrop, question of law was formulated as reproduced in paragraph 2 above. It was this matter which ought to have been referred to the third Judge for opinion but the other matter being Writ Petition No.4038/2013 was referred to the third Judge for opinion.

7. In the second matter bearing Writ Petition No.4038/2013 (*Mangal Singh @ Mangu* –now renumbered as Writ Petition No.13987/2015 at Jabalpur), the same Division Bench at Gwalior on this occasion vide order dated 21.10.2013, chose to refer the matter to Larger Bench. Even in this case, the Detaining Authority has relied on eight crimes in the grounds of detention, registered against the detenu. The Detaining Authority was not made aware that the detenu was already acquitted in two crimes as also the fact that detenu was already in jail. On that basis it was argued that the subjective

satisfaction of the Detaining Authority was vitiated and the detention order was invalid. The Division Bench made reference to the exposition in the case of *Dharamdas Shamlal Agarwal* (supra) as also in the case of *Rekha Vs. State of T.N.* (supra); *Baby Devassy Chully* (supra) and *Yumman Ongbi Lembi Leima Vs. State of Manipur*⁹. Reference is also made to the decision of the Division Bench of this Court in the case of *Geeta Sahu Vs. District Magistrate, Shahdol and others*¹⁰ and *Tahsildar Singh* (supra). After advertent to these decisions, in the context of the argument available to the State referable to Section 5A of the National Security Act, the Division Bench noticed the decision of the Constitution Bench of the Supreme Court in the case of *Attorney General for India Vs. Amratlal Prajivandas*¹¹ and in the case of *A. Sowkath Ali Vs. Union of India and others*¹² as well as *P. Sarvanan Vs. State of Tamil Nadu*¹³ and *State of U.P. Vs. Sanjai Pratap Gupta*¹⁴. After referring to these Supreme Court decisions, the Division Bench then noted that the observations made in paragraph 11 and 12 in the case of *Haji Abdul Rajjak* (supra) deserve reconsideration; and further observed that the Division Bench in this case did not consider the judgment of the Supreme Court in *A. Sowkath Ali* (supra). Further, because of the observation made in paragraph 12 of the said judgment in *Haji Abdul Rajjak* (supra)- that the decision in the case of *Dharamdas Shamlal Agarwal* (supra), *Tahsildar Singh* (supra) have lost their significance, the Division Bench opined that the matter should be considered by a Larger Bench and formulated three questions for consideration, referred to in paragraph 3 above.

8. The question formulated in the first case (Kheri Gurjar) though differently worded has the same meaning as formulated in the subsequent reference order passed in the second case (Mangal Singh @ Mangu). As regards, the correctness of the view taken by the Division Bench in the case of *Haji Abdul Rajjak* (supra), the same need not detain us because that decision was taken up in appeal before the Supreme Court being Criminal Appeal No.215/2013 and has been set aside by the Supreme Court on January 31, 2013, in the facts of that case.

9. In this judgment, therefore, we may deal only with the other shade of the question of law as to whether the detention order passed under the National

9. 2012 (2) SCC 176

11. (1994) 5 SCC 54

13. 2001 SCW 2413

10. 2000 (4) M.P.H.T. 482 (DB)= 2000 (2) MPLJ 618

12. AIR 2000 SC 2662

14. AIR 2004 SC 4703

Security Act can be set aside by merely relying on the decision in *Tahsildar Singh (supra)* which decision, however, has not considered the effect of Section 5A of the National Security Act.

10. At the outset, we may mention that the decision in the case of *Dharamdas Shamlal Agarwal (supra)* is of the Supreme Court and not of Division Bench of this Court, as is incorrectly mentioned in the question articulated by the Division Bench for consideration. As a result, the exposition of the Supreme Court in *Dharamdas Shamlal Agarwal (supra)* must govern all cases of the same type so long as it is in force. There, the Court was pleased to set aside the detention order on the finding that relevant material was not placed before the Detaining Authority for consideration. Indeed, in this case the argument of the State on the basis of provision such as Section 5A, has been noticed in paragraph 9 of the judgment. But, the Court having found that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order was vitiated because of non-consideration of material and vital facts which would have bearing on the issue and weighed the satisfaction of the Detaining Authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the Detaining Authority before issuing the detention order. It is on that basis the Court proceeded to answer the controversy before it.

11. While answering the question posed in the first case (Kheri Gurjar), we may observe that, if, the provisions of Section 5A of the Act are attracted in the fact situation of any case, the same must be given effect to; and the challenge to the detention order in such a case must be tested on that basis. In that, if it is possible to take the view that the detention order is founded on more than one ground and if the Detaining Authority is able to demonstrate that even one ground was valid for issuing the order of detention against the concerned detenu, the fact that the other grounds are vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever would make no difference -as the order of detention will be deemed to have been made with reference to the valid ground or grounds. The fact that the decision of the Division Bench of this Court in the case of *Tahsildar Singh (supra)* does not refer to Section 5A of the Act, will not come in the way of the Court to consider the applicability of Section 5A of the National Security Act, if arises in the fact situation of a

given case. That is a matter to be considered on case to case basis.

12. The decision of the Division Bench in the case of *Tahsildar Singh* (supra) is only an authority on the proposition that the subjective satisfaction of the Detaining Authority will be vitiated due to non-mentioning of material fact such as acquittal or detention of the detenu in the criminal case referred to in the grounds of detention. It is not an authority on the proposition arising from Section 5A of the Act that the order of detention is deemed to be valid, as having been made with reference to remaining ground or grounds. In other words, the detention order cannot be set aside if it is saved by virtue of the deeming provision in Section 5A of the Act, if applicable to the fact situation of that case, merely by following the dictum of the Division Bench in *Tahsildar Singh's case* (supra).

13. Reverting to Section 5A of the Act, the same reads thus :-

“[5A. Grounds of detention severable. – Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly –

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground

or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.]”

This provision has been interpreted by the Constitution Bench of the Supreme Court in the case of *Attorney General for India* (supra). It may be useful to refer to para 47 to 49, which read thus :-

“47. The section is in two parts. The first part says that where an order of detention is made on two or more grounds, “such order of detention shall be deemed to have been made separately on each of such grounds”, while the second part says that such order shall not be deemed to be invalid or inoperative merely for the reason that one or some of the grounds are either vague, non-existent, irrelevant or unconnected. That the second part is merely a continuation of and consequential to the first part is evident from the connecting words “and accordingly”. The second part goes further and says that the order of detention must be deemed to have been made on being satisfied with the remaining good ground or grounds, as the case may be. Both the parts are joined by the word “and”.

48. Now, it is beyond dispute that an order of detention can be based upon one single ground. Several decisions of this Court have held that even one prejudicial act can be treated as sufficient for forming the requisite satisfaction for detaining the person. In *Debu Mahato v. State of W.B.* it was observed that while ordinarily-speaking one act may not be sufficient to form the requisite satisfaction, there is no such invariable rule and that in a given case one act may suffice. That was a case of wagon-breaking and having regard to the nature of the Act, it was held that one act is sufficient. The same principle was reiterated in *Anil Dey v. State of W. B.* It was a case of theft of railway signal material. Here too one act was held to be sufficient. Similarly, in *Israil SK v. District Magistrate of*

West Dinajpur and Dharua Kanu v. State of W.B. single act of theft of telegraph copper wires in huge quantity and removal of railway fish-plates respectively was held sufficient to sustain the order of detention. In Saraswathi Seshagiri v. State of Kerala, a case arising under COFEPOSA, a single act, viz., attempt to export a huge amount of Indian currency was held sufficient. In short, the principle appears to be this: Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity. That is the reason why single acts of wagon-breaking, theft of signal material, theft of telegraph copper wires in huge quantity and removal of railway fish-plates were held sufficient. Similarly, where the person tried to export huge amount of Indian currency to a foreign country in a planned and premeditated manner, it was held that such single act warrants an inference that he will repeat his activity in future and, therefore, his detention is necessary to prevent him from indulging in such prejudicial activity. If one looks at the acts the COFEPOSA is designed to prevent, they are all either acts of smuggling or of foreign exchange manipulation. These acts are indulged in by persons, who act in concert with other persons and quite often such activity has international ramifications. These acts are preceded by a good amount of planning and organisation. They are not like ordinary law and order crimes. If, however, in any given case a single act is found to be not sufficient to sustain the order of detention that may well be quashed but it cannot be stated as a principle that one single act cannot constitute the basis for detention. On the contrary, it does. In other words, it is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention.

49. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of

the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the section creates a legal fiction, viz., it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly"-apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article 22(5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court this was indeed the situation in *K. Yadigiri Reddy v. Commissioner of Police* as we shall presently indicate. It is difficult to conceive any inconsistency or conflict between Article 22(5) and the first the main part of Section 5-A. Parliament is competent to create a legal fiction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the section and Article 22(5) can arise."

(emphasis supplied)

14. The Supreme Court has pithily dealt with the interpretation of Section 5A. This decision is holding the field and has been followed in subsequent decisions by the Supreme Court. We do not wish to multiply the same. In the light of the settled legal exposition, the issue regarding applicability of Section 5A or otherwise, will have to be considered on case to case basis. If Section 5A is applicable, in such cases, merely because one or some of the grounds of order of detention disclosed to the detenu under Section 8 is or are found to be invalid or inoperative due to application of specified reason(s), still the detention order shall be deemed to be valid and operative with reference to the remaining ground or grounds disclosed therein. For, both clause (a) and clause (b) in Section 5A independently provide for a legal fiction -that the order of detention has been validly passed with reference to the remaining ground or grounds. That is the principle of severability of the grounds of detention. Indeed, Section 5A will be applicable only when the order of detention is made on two or more grounds disclosed to the detenu. The Supreme Court in the case of *State of Gujarat vs. Chaman Lal Manjibhai Soni*¹⁵, which decision has been quoted with approval by the Constitution Bench of the Supreme Court in *Attorney General for India* (supra), in para 2 has observed thus:-

“2..... In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which Section 5A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Section 5(A) was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it can not be predicted to what extent the subjective satisfaction of the authority could have been influenced by the Vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5(A) in order to make it clear that

even if one of the grounds is irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention. Mr. G.A. Shah appearing for the detenu frankly conceded that he is not in a position to support the view taken by the Gujarat High Court on the interpretation of Section 5(A). He also stated that he does not want to challenge the vires of Section 5(A) of the Act. Mr. Phadke has frankly stated that he only wants the law to be settled in the peculiar circumstances of this case and the order of the High Court quashing the detention need not be disturbed. We, therefore, hold that the view taken by the High Court on interpretation of Section 5(A) is legally erroneous and is hereby overruled. With these observations the appeal is disposed of without disturbing the order of the High Court quashing the order of detention.”

(emphasis supplied)

15. That takes us to the last question presented to us for consideration namely; whether the State must plead and assert in the reply-affidavit or return about the fact that the order of detention has been passed on each ground and it be treated as a separate order under Section 5A of the National Security Act, in view of the decision of the Supreme Court in *A. Sowkath Ali (supra)*. For considering this question, we may straightway refer to the Supreme Court decision in the case of *A. Sowkath Ali (supra)*. In that case, the detention order was passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. That detention order was challenged on diverse grounds. The main ground pressed by the petitioner as noted in paragraph 3 of the reported judgment, was that the detention order was liable to beset aside as there was suppression of vital and important document by the Sponsoring Authority from it being placed before the Detaining Authority. The Court dealt with that contention and answered the same in favour of the detenu. The last contention considered at the instance of the Detaining Authority was with reference to Section 5A of the Act. In paragraph 27, after adverting to its earlier decisions in the case of *Vashisht Narain Karwaria Vs. State of Uttar Pradesh*¹⁶, observed as follows :-

16. AIR 1990 SC 1272

“Firstly, we find the question of severability under Section 5-A has not been raised by the State in any of the counter affidavit, but even otherwise it is not applicable on the facts of the present case. Section 5A applies where the detention is based on more than one ground, not where it is based on single ground. Same is also decision of this Court in unreported decision of Criminal Appeal No.1790 of 1996, *Prem Prakash Vs. Union of India and others* decided on 7th October, 1996 relying on *K.Satyanarayan Subudhi Vs. Union of India*, 1991 (suppl) (2) SCC 153 : (1991 AIR SCW 1087; AIR 1991 SC 1375 : 1991 Cri LJ 1536). Coming back to the present case we find really it is a case of one composite ground. The different numbers of the ground of detention are only paragraphs narrating the facts with the details of the document which is being relied but factually, the detention order is based on one ground, which is revealed by Ground 1 (xvi) of the ground of detention which we have already quoted hereinbefore. Thus on the facts of this case Section 5A has no application in the present case.”

(emphasis supplied)

We find that this is not an authority on the proposition that the Detaining Authority “must” take a specific plea in the return to be filed to oppose the writ petition of the detenu about the applicability of Section 5A of the Act as such. The opening sentence, no doubt, gives that impression -that the question of severability under Section 5A was not raised by the State in the counter-affidavit filed in that case. But, the essence of the conclusion, is, that Section 5A was inapplicable to the facts of that case –as the detention order was passed only on one (single) ground.

16. In our view, considering the legal presumption predicated in Section 5A of the Act, there is no reason why the Detaining Authority should restate that fact in the reply/counter-affidavit. Non mentioning of that fact in the counter-affidavit, cannot preclude the Detaining Authority from invoking the said provision on the basis of admitted, indisputable or proved facts available from the record, which may be sufficient to answer the controversy. That would be a pure question of law to be answered on the basis of such admitted,

indisputable or proved facts.

17. Indisputably, provision such as Section 5A is an exception to the ordinary rule. To wit, the ordinary rule is that the whole of the subjective satisfaction is vitiated even on one count. The statement of objects and reasons for introducing Section 5A makes it amply clear that the said provision was necessitated because of the whole of the detention order was being set aside by the Courts even due to one invalid or non-operative ground. To remove that difficulty and to make the special provisions in respect of persons whose detention is necessary for dealing effectively with the exigency, Section 5A was enacted.

18. We have no hesitation in taking the view that, as it is a matter of legal presumption under Section 5A of the Act, the need to restate that fact in the counter affidavit or return to be filed by the Detaining Authority to oppose the writ petition challenging the order of detention may arise, in cases where the petitioner in the writ petition was to rebut the legal presumption by stating material facts in support of that plea. If the writ petitioner failed to rebut the said legal presumption in the writ petition, there would be "no occasion or necessity" for the Detaining Authority to plead about the applicability of Section 5A of the Act, in matters where the order of detention is based on two or more grounds, in view of the legal presumption in Section 5A. The third question articulated in the second case (Mangal Singh @ Mangu) is answered accordingly.

19. Having dealt with the questions referred to for consideration by the Larger Bench, we direct the Registry to place the matter before the appropriate Bench for deciding the same on merits, in accordance with law. Since the two writ petitions have been transferred from Gwalior Bench, the Registry may forthwith re-transfer the said petitions to proceed before the appropriate Bench at Gwalior.

20. While parting we place our appreciation on record for the able assistance given by the counsel appearing for the respective parties and in particular in completing the arguments in the given time frame.

Order accordingly.

I.L.R. [2015] M.P., 3172

WRIT APPEAL

Before Mr. Justice S.K. Gangele & Mr. Justice B.D. Rath

W.A. No. 444/2006 (Gwalior) decided on 1 May, 2014

STATE OF M.P. & ors. ...Appellants.

Vs.

MANGILAL BOHARE (DECEASED)

THROUGH LR.s. & ors. ...Respondents

Land Revenue Code, M.P. (20 of 1959), Section 51 - Review - Lands were auctioned in 1961 and sale certificates were issued after obtaining sanction from Collector - In 1970, Collector on suo motu proceedings held that sale was not in accordance with law and since earlier order was passed by his predecessor, therefore sought permission to review - Permission was granted by Borad of Revenue, however thereafter proceedings were not reopened and no notice was issued and no order was passed - Held - It cannot be said that the sales were set aside by Collector by order passed in 1970 - It was not a final order - Further as constructions have already been raised, now after 55 years it cannot be said that constructions were raised illegally.

(Para 6 to 10)

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 51 - पुनर्विलोकन - 1961 में भूमियों की नीलामी की गई एवं कलेक्टर से मंजूरी प्राप्त करने के बाद विक्रय प्रमाणपत्र जारी किये गये - 1970 में कलेक्टर ने स्वप्रेरणा से कार्यवाही करते हुए यह अभिनिर्धारित किया कि विक्रय विधि के अनुसार नहीं था और चूंकि पूर्ववर्ती आदेश उसके पूर्वाधिकारी द्वारा पारित किये गये थे, अतः पुनर्विलोकन की अनुमति चाही गई - राजस्व मंडल द्वारा अनुमति दी गई, किंतु उसके बाद कार्यवाहियां पुनः प्रारंभ नहीं की गई एवं नोटिस जारी नहीं किये गये तथा कोई आदेश पारित नहीं किया गया था - अभिनिर्धारित - यह नहीं कहा जा सकता कि कलेक्टर द्वारा 1970 में आदेश पारित कर विक्रय अपास्त किया गया था - यह अंतिम आदेश नहीं था - इसके अतिरिक्त, पहले ही निर्माण हो चुके हैं, अब 55 वर्षों के पश्चात् यह नहीं कहा जा सकता कि निर्माण अवैध रूप से हुए थे।

Case referred :

(2014) 3 SCC 430.

Ravindra Dixit, for the appellants/State.*S.K. Jain*, for the respondents No. 1(a) to (e).*C.R. Roman*, for the respondents No. 2 to 4.

Ajay Bhargava, for the respondent No. 5.

Harish Dixit, for the respondent No. 6.

J U D G M E N T

The Judgment of the Court was delivered by :
B.D. RATIL, J. :- This appeal has been preferred under Clause 10 of the Letters Patent (M.P.) on being aggrieved by the order dated 24/9/94 passed by the learned Single Bench of this court in Writ Petition No.834/86 (Mangilal & others Vs. State of M.P. & others).

2. The facts leading to filing the appeal may be summarized as under:-

On 9/2/1961, Tehsildar, Guna auctioned some of the plots comprised in Survey No. 883 and 656/1, which was duly sanctioned by the Collector and thereafter sale certificates were issued to the concerned persons. The petitioner Mangilal and others who came up before the writ court were such of the persons in whose favour sale certificates were issued. Later on, it was found by the superior authority that process of auction initiated on the orders of the Collector was against the provisions of law. Thereafter, the matter was again taken up and notices were issued to the petitioners. But at the time of conclusion, it was opined by the Collector that since requisite permission for reviewing the decision by which sale certificates were issued is necessary, the matter be placed before the Board of Revenue for seeking permission under Section 51 (1)(i) of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called "the Code" for short), which was accorded to the Collector, Guna vide Annexure-P/12 dated 20/1/71, by the Board of Revenue.

3. Against such a decision taken by the respondents, the petition was preferred before the writ court, which was decided under the order impugned. The learned writ court by the order dated 24/9/94 held that such a review cannot be permitted after lapse of long passage of time and since the petitioners raised constructions they cannot be put to a more disadvantageous position. It was further held that the order Annexure-P/11 is not a final order which would nullify the sale transactions. By observing so, the petition was allowed. Aggrieved by the same, the present appeal has been preferred.

4. Learned counsel for the appellants/State contended that the order impugned is passed against the provisions of law inasmuch as ignoring the facts and material on record. By inviting attention of this court to para 9 of the

order impugned, it was contended that after the earlier order was passed by the Collector vide Annexure-P/11, further orders vide Annexures- RR/II dated 13/12/1972 and 22/12/1972 were issued after due notices to all such persons under which the sale proceedings and entire sale transaction came to an end, hence, there was nothing left to be considered again by the writ court. It was further pointed out that after rendering the proceedings as nullified in consequence of the said orders dated 13/12/1972 and 22/12/1972, the possession was taken over from the purchasers and was handed over to the respondent No.6 herein, which would be evident from perusal of Annexures-R/1 and R/2, dated 22nd May, 1981 and 1st September, 1981, respectively. Therefore, whatever observed by the Collector in his earlier order Annexure-P/11 that has been washed out by the subsequent orders and in these state of affairs, the order passed by the writ court is not in consonance with law and is liable to be set aside.

5. Having regards to the arguments advanced by the learned counsel for the parties, we are of the considered view that this appeal is liable to be allowed for the reasons mentioned in the subsequent paragraphs.

6. The sale certificates which were issued were taken into consideration for cancellation by the Collector, Guna in Case No.B.121/69-70 under *suo motu* revision and after affording an opportunity of hearing order was passed on 26/9/70. It was observed by the collector, Guna that in violation of the provisions of Section 162 of the Code (which was later on omitted by M.P.25 of 1964) as well as provisions of section 181 of the Code, disputed lands were auctioned and sale certificates were issued. After a period of more than ten years when the matter was taken up for consideration by that time some houses were constructed on the respective plots by the allottees and because sale certificates were issued by his predecessor therefore, matter was referred under Section 51(1)(i) of the Code to the Board of Revenue to accord permission for reviewing the matter. In view of this order, letter was written to the Board of Revenue and on 20/1/1971 vide letter No.103 it was informed by the Board of Revenue that the Collector, Guna is permitted to take up the disputed matter for consideration under *suo motu* revisional powers.

7. It is an admitted fact that after getting this permission, the matter was never opened and no notices were issued to the parties and even *exparte* order was also not passed by the Collector, Guna for cancellation of the sale certificates. In the aforesaid premises, it is thus clear that the sale certificates

issued by the Collector, Guna were and are in existence. Therefore, the order dated 26/9/70 passed by the Collector, Guna cannot be treated to be an order for cancellation of sale certificates passed in exercise of *suo motu* revisional powers.

8. At this stage, it is relevant to reproduce Section 51(1)(i) of the Code, which runs as is under:-

“51. Review of orders:- (1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested, review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit: provided that-

(i) if the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an Officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinates.”

9. It is further apparent that after getting permission under Section 51(1)(i) under the Code from the Board of Revenue, the Collector, Guna was supposed to get *suo motu* case registered and thereafter notices were required to be issued to the affected parties and after affording opportunity of hearing, the order was to be passed by the Collector, Guna. But in the absence of following the above-mentioned procedure, it cannot be said that the observations made by the Collector for seeking necessary approval for taking the matter into consideration under *suo motu* powers should be treated to be an order passed finally in *suo motu* revisional jurisdiction.

10. Apart that, admittedly when certain houses were constructed by some of the holders over the respective plots in purview of sale certificates issued to them, then after a period of 55 years now it cannot be held that the construction raised by them is illegal. It also cannot be held that their sale certificates were not in existence.

11. After thus examining the matter to a rigorous test on the touchstone of the principles of law laid down by the Hon'ble Apex Court in the case of *Godrej & Boyce Manufacturing Company Limited and another Vs. State of Maharastra and others* (2014) 3 SCC 430, this court is of the considered view that the findings given by the learned writ court are perfectly legal and not suffered from any infirmity or perversity. In other words, the order passed by the writ court is well merited calling for no interference by this court. The appeal thus fails and is dismissed.

No order as to costs.

Appeal dismissed.

I.L.R. [2015] M.P., 3176

WRIT PETITION

Before Mr. Justice U.C. Maheshwari

W.P. No. 17730/2013 (Jabalpur) decided on 29 October, 2013

DEVENDRA KUMAR NAYAK & anr.

...Petitioners

Vs.

SUDHA NAYAK (SMT.) & ors.

...Respondents

A. Civil Procedure Code (5 of 1908), Order 7 Rule 14 - Additional documents - Earlier the application under Order 11 Rule 14 of CPC was dismissed on merits by holding that the documents are being filed at very belated stage - At subsequent stage application under Order 7 Rule 14 of the CPC for taking same document on record is not maintainable - Once the trial Court has passed the order on merits have no authority to reconsider the matter contrary to the earlier order.

(Para 4)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 14 - अतिरिक्त दस्तावेज - पूर्व में सि.प्र.सं. के आदेश 11 नियम 14 के अंतर्गत आवेदन को यह ठहराते हुए कि दस्तावेज अत्यंत विलंबित प्रक्रम में प्रस्तुत किए जा रहे हैं, खारिज किया गया - पश्चात्पूर्ति प्रक्रम में उसी दस्तावेज को अभिलेख में लेने के लिए सि.प्र.सं. के आदेश 7 नियम 14 के अंतर्गत आवेदन पोषणीय नहीं है - विचारण न्यायालय ने जब एक बार गुणदोष के आधार पर आदेश पारित किया है तो उसे अपने पूर्ववर्ती आदेश के विरुद्ध मामले पर पुनर्विचार करने का प्राधिकार नहीं है।

B. Civil Procedure Code (5 of 1908), Order 7 Rule 14 - Scope - If the document which desires to be taken on record was very well in

the knowledge of the party since long but same not filed on earliest opportunity then the same could not be permitted to file on subsequent stage. (Para 6)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 14 – विस्तार – यदि दस्तावेज जिसे अमिलेख पर लिया जाना चाहा गया है वह भली भांति पक्षकार की जानकारी में पहले से था परंतु उसे सर्वप्रथम अवसर पर प्रस्तुत नहीं किया गया, तब उसे पश्चात्वर्ती प्रक्रम पर प्रस्तुत करने की अनुमति नहीं दी जा सकती।

C. Civil Procedure Code (5 of 1908), Section 11 - Res judicata - Once the Court at an earlier stage decided the matter in one way will not allow the parties to re-agitate the same at subsequent stage of the same proceeding - Petition dismissed. (Para 4)

ग. सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – पूर्व न्याय – एक बार जब न्यायालय पूर्ववर्ती प्रक्रम में मामले को एक तरह से निर्णीत करता है तो उसी कार्यवाही के पश्चात्वर्ती प्रक्रम में उसे दोबारा उठाने के लिए पक्षकारों को अनुज्ञा नहीं दी जा सकती – याचिका खारिज।

Cases referred :

AIR 1964 SC 993, AIR 1979 SC 1436, 2007 (5) M.P. High Court Today 37, AIR 1960 SC 914.

Amrit Ruprah, for the petitioners.

ORDER

U.C. MAHESHWARI, J. :- The petitioners/defendants no.1 & 2 have filed this petition under Article 227 of the Constitution of India, being aggrieved by the order dated 24.09.2013 (Annexure-P-1) passed by VIth Additional District Judge Sagar, in Civil Original Suit No.53-A/09, whereby their application filed under Order 7 Rule 14 of CPC, permitting them to produce/ file the annexed documents, has been dismissed.

2. Smt. Amrit Ruprah, learned counsel appearing for the petitioners', after taking me through the averments of the petition as well as the papers placed on the record including the impugned application filed under Order 7 Rule 14 of CPC., so also the impugned order argued that, their application has been dismissed without considering the relevancy and necessity of the annexed documents with the present matter, only on the ground that an earlier identical application filed by mentioning the provision of Order 11 Rule 14 of

CPC., has already been dismissed vide order dated 21.6.2011 and such order was challenged by the present petitioners before this Court by way of writ petition No.11894/11. The same was dismissed as withdrawn at the request of the petitioners' counsel vide order 23.7.2013 (Annexure-P-9) with liberty to file the fresh application under Order VII Rule 14 of CPC before the trial Court. In continuation she said that, in view of the principle laid down by the apex Court in the matter of *Arun Singh vs. Mohindra Kumar and others* reported in AIR 1964 SC 993, in the matter of *Smt. Sukhrani (dead) by L.R's and others vs. Hari Shanker and others* reported in AIR 1979 SC 1436 and in the matter of *Kashi Bai wd/o Hiralal (dead) through L.R. Pinkal Gupta vs. Sundarlal vaidh and others* reported in 2007 (5) M.P. High Court Today 37, filing subsequent application under the same provision is not bar even after dismissal of the earlier application. In response of some query of the Court she said that, earlier application was filed by mentioning wrong provision of CPC., i.e. under Order 11 Rule 14 of CPC. that is why such application was dismissed, but the impugned application has been filed under Order 7 Rule 14 of CPC., therefore, it ought to have been considered and allowed by the trial Court. She also said that such documents are relevant with the matter to prove the defence of the present petitioners and if such documents are not taken on record, then the petitioners have to suffer in a lot. With these submissions, she prayed to set aside the impugned order and allow her impugned application by admitting and allowing this petition.

3. Having heard the counsel, keeping in view her arguments, I have carefully gone through the papers placed on the record along with the impugned order.

4. It is undisputed fact in the matter that same documents were filed on behalf of the petitioners before the trial Court on earlier occasion along with the application dated 3.5.2011 (Annexure-P-2) by mentioning the provision of Order 11 Rule 14 of CPC on the cause title and on consideration, such application was not dismissed only on the ground of mentioning wrong provision, but the same was dismissed on its own merit holding that the annexed documents are being filed at very belated stage while, according to nature of such documents, the same were very well in the knowledge of the petitioners prior to filing the written statement so also at the stage of settling the issues and, in any case, the same was in the knowledge of the petitioners while recording the evidence in the matter. Such order of dismissal dated 21.6.2011 (Annexure-P-8) was challenged before this Court through writ petition

No.11894/11, but on listing the same for consideration before the co-ordinate Bench of this Court on dated 23.7.2013, instead to argue such petition on merits, the same was withdrawn by the petitioner's counsel herself with liberty to file the application under Order 7 Rule 14 of CPC. before the trial Court. So, in such premises, earlier order dismissing the application has got finality between the parties. The same was not set aside by this Court in the aforesaid writ petition. Although the petitioners have filed the impugned application in the trial Court at the stage of final hearing under the liberty obtained by them from this Court in the aforesaid writ petition. But in view of the settled proposition of law that the Court, who has passed the order on earlier occasion on some issue, has no authority to consider such issue at subsequent stage and pass the order contrary to such earlier order, as such earlier order is having binding effect as *res judicata* between the parties at two different stages before the same Court. Such principle is laid down by the apex Court in the matter of *Satyadhyan Ghosal and others vs. Smt. Deorajin Debi and another* reported in AIR 1960 SC 914 in which it was held as under:-

“The principle of *res judicate* (sic:*judicata*) applies also as between two stages in the same litigation to this extent that a Court, whether the trial or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter gain (sic:*again*) at a subsequent stage of the same proceedings.”

5. The aforesaid principle is directly applicable to the present case so in such premises, unless the earlier order is set aside by the superior Court, the trial Court did not have any authority to reconsider the matter contrary to the earlier order and allow the petitioners' application. So in such premises, the trial Court has not committed any error in dismissing the impugned application of the petitioners by the impugned order.

6. Even otherwise, for the sake of argument, if the case is taken up for consideration on merits again then, it is apparent that the annexed documents were very well in the knowledge of the petitioners/defendants on the date of filing the written statement and on the date of settling the issues between the parties so also at the stage of recording the evidence, but on all such occasions, the same were not filed and it is settled principle of law that if the documents were very well in the knowledge of the party since long and the same were not filed on earliest opportunity, then such party could not be permitted to file

such documents.

7. In view of the aforesaid elaborate discussions, the case law cited on behalf of the petitioners being distinguishable on the factual matrix of the case at hand, are not helping to the petitioners. As any of the aforesaid cited cases have not been decided taking into consideration the identical question as involved in the case at hand while, the principle laid down by the apex Court in the aforesaid cited case *Satyadhyan Ghosal and others* (supra) is directly applicable to the present case.

8. In view of the aforesaid discussions, I have not found any perversity, illegality, irregularity or anything against the propriety of law in the order impugned which requires any interference at this stage under Article 227 of the Constitution of India. Consequently, this petition being devoid of any merit, deserves to be and is hereby dismissed at the stage of motion hearing.

9. There shall be no order as to the costs.

Petition dismissed.

I.L.R. [2015] M.P., 3180

WRIT PETITION

Before Mr. Justice U.C. Maheshwari

W.P. No. 16491/2013 (Jabalpur) decided on 29 October, 2013

NARENDRA SURI & anr.

...Petitioners

Vs.

RANJEET SHAH & ors.

...Respondents

Evidence Act (1 of 1872), Section 65 - Secondary evidence - For taking the photocopies of the original document on record in the form of secondary evidence it is necessary to prove prima facie that the original document have been lost and are not in existence or in possession of the other party, lack of proving the same the photocopies of the original document can not be permitted to be taken on record in the form of secondary evidence.

(Para 12)

साक्ष्य अधिनियम (1872 का 1), धारा 65 - द्वितीयक साक्ष्य - मूल दस्तावेज की छायाप्रति द्वितीयक साक्ष्य के रूप में अभिलेख पर लेने के लिये यह आवश्यक है कि प्रथम दृष्ट्या साबित किया जाये कि मूल दस्तावेज खो चुके हैं और अस्तित्व में नहीं हैं या अन्य पक्षकार के कब्जे में हैं, उक्त को साबित करने के अभाव में, मूल दस्तावेज की छायाप्रति द्वितीयक साक्ष्य के रूप में अभिलेख पर लेने की अनुमति नहीं

दी जा सकती।

Cases referred :

AIR 1971 SC 1070, AIR 1974 SC 199, 2008 (2) SCC 370, AIR 2008 SC 166, AIR 2009 SC 1489.

Ashish Shroti, for the petitioners.

O R D E R

U.C. MAHESHWARI, J. :- The petitioners/plaintiffs no.1 & 2 have filed this petition under Article 227 of the Constitution of India being aggrieved by the order dated 10.9.2013 (Annexure-P-8) passed by XIVth Additional District Judge Bhopal, in Civil Original Suit No. 882-A/2012, whereby their application filed under Section 65 of the Evidence Act permitting them to prove the photo copy of the notarized letter written on some letter head vide dated 5.9.1996 (Annexure-P-4) and the photo copies of some other documents through secondary evidence, has been dismissed.

2. The facts giving rise to this petition in short are that, the petitioners no.1 & 2 and respondents no.3 to 5 have filed the impugned suit against the respondent no.1 & 2 for Specific Performance, declaration and perpetual injunction with respect of the property described in the plaint on the strength of the agreement to sale dated 9.6.2000. Apart this, the photo copy of aforesaid document dated 5.9.1996 (Annexure-P-4) to show the part payment of the settled consideration of such agreement to sale has also been referred in the pleadings.

3. In the written statement of the respondent no.1, beside the other averments, it is stated that the aforesaid document 05.09.1996, being made by the plaintiffs under some conspiracy is a forged and fabricated document is also objected on the ground that the same is neither properly stamped nor registered with the Registrar and in such premises, the same is not admissible in evidence.

4. In pendency of the suit on behalf of the petitioners and respondents no.3 to 5, the impugned application (Annexure-P-3) under Section 65 of the Evidence Act was filed. *Inter-alia* in such application it is stated that along with the suit, the photo copy of this document dated 5.9.1996 written on letter head was also filed and its notarized copy was filed at later stage. It is

also stated that after its execution the original document was kept by the respondent no.1 and the notarized copy of the same was given to the plaintiffs by the respondent no.1. The respondent no.1 inspite having the possession of original has not produced the same. So in such circumstances to prove such document the petitioners filed the impugned application permitting them to prove the same through secondary evidence on the basis of notarized copy of the same. Beside this, to prove the demand notice of the property tax dated 27.6.1996, and some fax message sent by the respondent no.1 from his Bombay Office to Bhopal Office on dated 12.8.1999, through secondary evidence on the basis of their photo copies is also made.

5. The averments of the aforesaid I.A., has been denied on behalf of the respondent no.1 in his reply (Annexure-P-7), *inter-alia* in such reply it is stated that the aforesaid document dated 5.9.1996 being forged and fabricated and in the lack of proper stamp duty and registration, is not admissible and in such premises, the petitioners/plaintiffs could not be permitted to prove the same through secondary evidence. So far other documents are concerned, by disputing their existence it is stated that in the lack of positive evidence regarding source of receiving the same, petitioners could not be permitted to prove such documents through secondary evidence on the basis of the photo copies. The photo copy could not be treated to be the secondary evidence. In further averments, it is stated that in the lack of delivery report of the fax message, no permission to prove the same on the basis of the photo copy could be given to the petitioners and the prayer for dismissal of the I.A., was made.

6. On consideration such application was dismissed by the trial Court on which, the petitioners have come to this Court with this petition.

7. After taking me through the impugned order along with the papers placed on the record, petitioners' counsel has argued that the description of the said document dated 5.9.1996, is stated in the pleadings of the plaint and in such premises, beside the agreement dated 9.6.2000, the petitioners have to prove this document also. Such original document dated 5.9.1996, being remained in possession of the respondents no.1 & 2, the same could not be produced by the petitioners hence, they want to prove the same on the basis of aforesaid notarized photo copy which was given to the petitioners/plaintiffs. So in such premises, there was no option with the petitioners except to prove such document through aforesaid secondary evidence. In continuation he said that, in order to prove the part payment of the consideration of the agreement

dated 9.6.2000, the aforesaid document is necessary to prove on the record because in such document, the description of payment received by the respondents/plaintiffs has been stated. He further said that such document being notarized by the notary could not be doubted at this stage and in the lack of any proper stamp duty or registration, the petitioners could not be deprived to prove the same in support of their contention, he also referred the proviso (C) of Section 35 of the Stamp Act. So far as the other documents are concerned, he said that the same being demand notice issued by the public authority and the photo copy of fax message sent by the Office of the respondent no.1 from Bombay to his Office at Bhopal, could not be doubted and in the lack of production of the original by the respondent no.1, the petitioners should have been permitted by the trial Court to prove all these documents through secondary evidence by allowing his application, but the same has been dismissed by the trial Court under the wrong premises. He also placed his reliance on a case decided by the apex Court in the matter of *Jupudi Kesava Rao vs. Pulavarthi Venkata Subbarao and others* reported in AIR 1971 SC 1070 and in the matter of *Sri Mahalinga Thambiran Swamigal vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal* reported in AIR 1974 SC 199, and prayed to allow his application and set aside the impugned order by admitting and allowing this petition.

8. Keeping in view his arguments, I have carefully gone through the paper placed on the record along with the impugned order.

9. Mere perusal of the document dated 5.9.1996 (Annexure-P-4), the same appears to be an agreement to sell. It is also apparent that such documents has not been written on any stamp as per requirement of the Stamp Act, and undisputedly the same is not registered. It is also apparent that in the endorsement of the notary, the required informations like serial number of the notarized document, on whose instance the same was notarized, have not been stated. It is also apparent from the agreement dated 9.6.2000 that any where in this agreement the reference of such document has also not been stated. So in such premises, there is no nexus between the aforesaid both the documents. It is also apparent from the papers placed on the record that the petitioners also prayed to prove the demand notice, of the property tax and some fax message on the basis of their photo copies through secondary evidence. It is also apparent from the application that the source of obtaining the same and the averments regarding manner in which the photo copies of

the same were taken out, have not been stated.

10. At this stage, as ready reference, I would like to reproduce the version stated in the aforesaid document dated 5.9.1996 (Annexure-P-4). The same is as under:-

“Tool Masters

42 BHEL, Anchiary Industrial Estate, Habibganj, Bhopal.

Total area converted into delicacy restaurant

201 to 204 -3812 Se. Ft. approx

Back of the delicacy 212 -5363 Sq. Ft. approx

A/c Room (Passage Side) -200 Sq. ft. approx

Mapatted

TOTAL 9375 Sqf. Ft. approx

Total amount of deal to the paid Rs. 60,000,00.00 (Sixty lacs)

Starting from 5.9.1996 to 30th June 2002.

Hole of payment- in 60 installment by cheque previously deposited amount of Rs.3.5 lakhs is to be considered as advance in this deal which can be adjusted at any stage.

Registration will be made after full payment and in the names of as deserved by Shri Narendra Suri.

This is decided between Shri R.H. Shah of tool Masters, Bhopal and Shri Narendra Suri of Delicacy Bhopal.

Sd/-

Narendra Suri

Sd/-

(R.H. Shah)”

11. The trial Court while considering the impugned application in the light of the aforesaid document has stated that the same has not been referred in the agreement dated 9.6.2000 on which, the impugned suit has been filed. In the agreement dated 9.6.2000, contrary to the aforesaid document, it is stated that out of the settled consideration of Rs.60 Lacs, Rs.41,50,000/- has been paid in cash. In the written statement of respondent no.1, the execution of such document dated 5.9.1996, has been denied and possession of the same with him is also denied and pursuant to these pleadings and circumstance, it

was held that mere on the basis of signature of the notary on photo copy of such letter, petitioners could not be permitted to prove the same by way of secondary evidence and such approach does not appears to be perverse.

12. So far as the other documents are concerned, in the lack of positive prima facie evidence and particulars showing that original demand notice and fax message have been lost, and are not in existence or in possession of other party, the trial Court in the light of the decision of the apex Court in the matter of *Directorate of Revenue and others vs. Mohd. Nisar Hotia*, reported in 2008 (2) SCC 370, has not committed any error in holding that mere on the basis of the photo copies of aforesaid documents, the petitioners could not be permitted to prove the same by secondary evidence. In the available circumstances, such approach of the trial Court for dismissing the impugned application, does not appear to be perverse or contrary to any procedure.

13. Apart the aforesaid, mere perusal of the document dated 5.9.1996, prima facie it appears to be an agreement to sale of some property but the same was neither written nor prepared on a requisite stamp duty. So in such situation, for the sake of arguments for a moment if it is deemed that the photo copy of such document was taken out on the basis of original even then, in the lack of proper stamp duty on the original document in view of the provisions of Section 35 of the Stamp Act and in the light of the decisions of the apex Court in the matter of "*Hariom Agrawal vs. Prakash Chand Malviya*" [AIR 2008 SC 166], the same is not admissible document in evidence for any purpose. In the case it was held as under:-

"8. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899.

13. Section 37 of the Act would be attracted where although the instrument bears a stamp of sufficient amount but such stamp is of improper description, as in the present case where the proper stamp duty of Re.1/- under the Act has not been paid but a notarized stamp of Rs.4/- was affixed on the document. The sufficient amount of the stamp duty has been paid but the duty paid by means of affixture of notarized stamp is of improper description. By virtue of Rule 19 of the Madhya Pradesh Stamp Rules, 1942, the Collector of Stamp is authorized to receive the proper stamp duty on an instrument which bears a stamp of proper amount but of improper description, and on payment of the adequate duty chargeable under the Act he would certify by endorsement on the instrument that the instrument is duly stamped. Under the proviso to the Rule, the Collector may pardon the further payment of duty prescribed in this Rule provided the person holding the original instrument moves the Collector within three months of the execution of the instrument for certification by endorsement and the Collector is satisfied that the stamp of improper description was used solely on the account of the difficulty or inconvenience of the holder of the instrument to procure the adequate stamp duty required to be paid on the instrument. But the power under Section 37 and Rule 19, even after framing the rules by the State Government, could only be exercised for a document which is an instrument as described under Section 2(14). By various authorities of this Court, an instrument is held to be an original instrument and does not include a copy thereof. Therefore, Section 37 and Rule 19 would not be applicable where a copy of the document is sought to be produced for impounding or for admission as evidence in a case.

14. Section 48-B is a provision applicable in the State of Madhya Pradesh which was inserted by Indian Stamp (M.P. Amendment) Act, 1990 (No. 24 of 1990] in Chapter IV under heading Instrument not duly stamped of the Act. This Section reads as under:

48-B. Original instrument to be produced before the

Collector in case of deficiency. Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may by order require the production of original instrument from a person in possession or in custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon. If the original instrument is not produced before him within the period specified in the order, it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in this Chapter:

Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument.”

14. Such question was also answered by the apex Court in the matter of *Avinash Kumar Chauhan vs. Vijay Krishna Mishra* (AIR 2009 SC 1489) in which it was held as under:-

“12. The Parliament has, in Section 35 of the Act, advisedly used the words “for any purpose whatsoever”. Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.”

15. In the aforesaid premises, if the original document could not be permitted to mark the exhibit in evidence, then mere on the basis of the signature of the notary on the photo copy, the petitioners could not be permitted to prove the same by way of secondary evidence. It is apparent from the above cited decision “*Directorate of Revenue and others*” (supra), that the photo copies of the documents could not be permitted to prove by secondary evidence.

16. While advancing the arguments, the counsel has also referred the proviso (C) of Section 35 of the Stamp Act, but such provision is not helping to the petitioners because in the aforesaid discussions the nexus between the document dated 5.9.1996 and the agreement to sale dated 9.6.2000 has not been found. As such nothing has been stated in the agreement to sale dated 9.6.2000, with respect of the agreement dated 5.9.1996. So such proviso could not be invoked in the matter to permit the petitioner to prove such

document as secondary evidence. In such premises, the case laws cited on behalf of the petitioners *Jupudi Kesava Rao* (supra), is also not helping to the petitioners. Such case is also distinguishable on facts in the available scenario of the case at hand.

17. In view of the aforesaid discussions, the case law cited on behalf of the petitioner in the matter of *Sri Mahalinga Thambiran Swamigal* (supra) is also not helping to the petitioners.

18. In the aforesaid premises, I have not found any perversity, irregularity, illegality or anything against the propriety of the law in the order impugned. Consequently, this petition being devoid of any merit, deserves to be and is hereby dismissed at the stage of motion hearing.

19. There shall be no order as to the costs.

Petition dismissed.

I.L.R. [2015] M.P., 3188

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 6179/2001 (Jabalpur) decided on 9 July, 2014

DAMOH, PANNA, SAGAR KSHETRIYA
GRAMIN BANK

...Petitioner

Vs.

UNION OF INDIA & ors.

...Respondents

Industrial Disputes Act (14 of 1947), Section 10 - Respondent no. 3 continuously worked from 1985 to 1987 - Services dispensed with after 3/8/1987 - Industrial dispute raised on 20/07/1997 - Conciliation failure report sent on 27/10/1998 - Dispute referred on 22/04/1999 to CGIT - Challenge - Whether the dispute was raised with delay - Held - As there is no prescribed time limit for raising a dispute u/s 10 of the Act and also the fact that the workman was continuously agitating against his non employment, so the delay is not unexplained as would warrant interference - Petition dismissed. (Paras 2, 3, 8 & 13)

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 - प्रत्यर्थी क्र. 3, 1985 से 1987 तक निरंतर कार्यरत - 3-8-1987 के पश्चात् सेवाओं से अग्निमुक्ति प्रदान की गई - 20-07-1997 को औद्योगिक विवाद उठाया गया - समझौता

I.L.R.[2015]M.P. D.P.S.,Kshetriya Gramin Bank Vs. Union of India 3189

असफल प्रतिवेदन 27-10-1998 को भेजा गया - 22-04-1999 को विवाद सी.जी. आई.टी. को निर्दिष्ट - चुनौती - क्या विवाद विलंब से उठाया गया - अभिनिर्धारित - चूंकि अधिनियम की धारा 10 के अंतर्गत विवाद को उठाने के लिये विहित समय सीमा नहीं है, एवं साथ ही यह तथ्य भी कि कर्मकार अपने अनियोजन के विरुद्ध निरंतर प्रश्न उठाता रहा, अतः विलंब अस्पष्टीकृत नहीं जिसमें हस्तक्षेप किया जा सके - याचिका खारिज।

Cases referred :

(2000) 2 SCC 455, (2003) 4 SCC 27, (2010) 14 SCC 176.

Ashish Shroti, for the petitioner.

None, for the respondents.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Heard on admission.

2. Respondent No.3, Messenger on daily wages engaged with the petitioner Bank at Branch Kopra, District Sagar, raised an industrial dispute before Assistant Labour Commissioner (c) Jabalpur on 20.7.1997, alleging that having continuously worked from 1985 to 1987 his services were abruptly dispensed with after 3.8.1987.

3. The Assistant Labour Commissioner (c), recording failure of conciliation sent the report to Central Government on 27.10.1998. The Central Government vide memo dated 22.4.1999 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court as to "whether the action of the management of President Damua, Panna Sagar Kshetriya Gramin Bank Damua M. P. in not regularizing the services of Shri Prahalad Namdev son of Shri Paramulal Namdev Ex-Peon and terminating the services w.e.f. 4.8.1997 is legal and justified. If not to what relief the concerned workman is entitled for.

4. The reference is pending adjudication before Central Government Industrial Tribunal cum Labour Court, Jabalpur.

5. Drawing exception to the reference petitioner employer seeks its quashment on the ground that the Central Government ought to have declined the belated claims as the workman having acquiesced for almost 10 years, no

industrial dispute existed in the year 1997 in respect of grievance of 1987.

6. Reliance is placed on the decision in *Nedungadi Bank Ltd. v. K. P. Madhavankutty and others*: (2000) 2 SCC 455, to bring home the submission that delayed raising of dispute presupposes fading of the cause.

7. The decision in *Nodugadi Bank Ltd.* (supra) was considered by the Supreme Court in *S. M. Nilajkar and others v. Telecom District Manager, Karnataka*: (2003) 4 SCC 27 in the following terms-

“17- It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in *M/s Shalimar Works Limited Vs. Their Workmen* (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in *M/s Shalimar Works Limited Vs. Their Workmen* (supra). In *Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Ors.* (supra), a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan Chandra Sammanta and Ors. Vs. Union of India and Ors.* (supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the

High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Employees Under P & T Department Vs. Union of India* (supra) the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

8. The above view has been affirmed in *Kuldeep Singh v. General Manager, Instrument Design Development and Facilities Centre and another*: (2010) 14 SCC 176 wherein it is held-

"30- In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government "at any time" refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference."

9. Thus it is not the thumb rule that the delay in raising a dispute as a matter of rule be nibbed and be not referred for adjudication.

10. In the case at hand, the documents on record reveals that the workman was not sitting ideal (sic: idle) but had continuously pursued against his non employment. Workman approached the employer in 1988 whereon vide communication dated 20.4.1988 he was informed that his services are not

required. Thereafter as apparent from the application under Section 10 the Workman continuously approached the concerned authority of the Bank who gave assurance.

11. In paragraph 3 he has to state-“आवेदक से अनावेदक संस्थान के शाखा प्रबंधक द्वारा कहा गया है कि अभी उसकी सेवायें समाप्त की जा रही हैं तथा कुछ समय पश्चात उसे पुनः सेवा में ले लिया जावेगा, इस प्रकार अनावेदक संस्थान के अधिकारियों द्वारा लगातार आश्वासन दिया जाता रहा है कि उसे पुनः सेवा में ले लिया जावेगा । आवेदक द्वारा अनावेदक द्वारा दिये जा रहे आश्वासन से लगातार पुनः पर कार्य पर लेने बावत आवेदन पत्र पर भी समय समय पर दिये गये परन्तु अनावेदक संस्थान द्वारा न तो उक्त आवेदनकर्ता पर सहानुभूति पूर्वक ही किया गया और न ही उसे कार्य पर लिया गया । आवेदन पत्रों की प्रतियों की फोटोकापी इस आवेदन पत्र के साथ संलग्न है ।

12. आवेदक द्वारा दिनांक 10/2/95 को रजिस्टर्ड पोस्ट से भी आवेदन पत्र अनावेदक संस्थान को भेजा गया, परन्तु अनावेदक संस्थान द्वारा उसका कोई उत्तर नहीं दिया गया तब आवेदक ने अपने अधिवक्ता के मार्फत एक सुचना पत्र भी रजिस्टर्ड पोस्ट से भेजा, जिसकी प्रतियों की फोटो कापी संलग्न है ।”

13. Thus the delay is not unexplained as would warrant an indulgence in the decision taken by the Central Government in referring the matter to the Central Government Industrial Tribunal cum Labour Court for adjudication.

14. In view whereof, the petition be sans substance deserves to, and is dismissed. No costs.

Petition dismissed.

I.L.R. [2015] M.P., 3192

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 3331/2013 (Jabalpur) decided on 1 August, 2014

RAJESH GAUTAM (DR.)

...Petitioner

Vs.

HARI SINGH GOUR UNIVERSITY

...Respondent

University Grants Commission (Minimum Qualification's for Appointment of Teachers And other Academic Staff In Universities and Colleges and Measures for the maintenance of standard in Higher Education), Regulation, 2010, Clause 4.1.0A (ii) - Appointment to the post of Professor Anthropology - Petitioner working as Assistant Professor and holding Ph.D degree - Found ineligible for the post of Professor - Non-

fulfillment of Clause 4.1.0A (ii) of UGC regulation - Held - As the petitioner was not possessing the experience of guiding candidates for research at doctoral level as per Clause 4.1.0A (ii) of UGC regulation, though fulfilling other qualifications, so, the petitioner was rightly held ineligible for presentation - Petition dismissed. (Para 12)

विश्वविद्यालय अनुदान आयोग (विश्वविद्यालयों एवं महाविद्यालयों में शिक्षकों एवं अन्य शैक्षणिक स्टाफ की नियुक्ति के लिए न्यूनतम अर्हताएं तथा उच्च शिक्षा के अंतर्गत मानकों के व्यवस्थापन के लिये आवश्यक उपाय), विनियमन, 2010, खंड 4.1.0ए (ii) - प्रोफेसर मानव विज्ञान (ऐंथ्रोपोलॉजी) के पद पर नियुक्ति - याची सहायक प्रोफेसर के रूप में कार्यरत एवं पी.एच.डी. डिग्री धारक है - प्रोफेसर के पद के लिये अपात्र पाया गया - यू.जी.सी. विनियमन के खंड 4.1.0ए (ii) की पूर्ति नहीं की गई - अभिनिर्धारित - चूंकि यू.जी.सी. के खंड 4.1.0ए (ii) के अनुसार याची डॉक्टरल स्तर के शोध करने वाले अभ्यर्थियों को मार्गदर्शन देने का अनुभव नहीं रखता, यद्यपि अन्य अर्हताओं की पूर्ति करता है, अतः याची को उचित रूप से प्रस्तुतिकरण के लिये अपात्र ठहराया गया - याचिका खारिज।

Vinayak Prasad Shah, for the petitioner.

Shobha Menon with C.A. Thomas, for the respondent.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- With consent of learned counsel for the parties, the matter is heard finally.

2. Being deprived from presentation scheduled on 18.1.2013 for appointment to the post of Professor Anthropology, Dr. Harisingh Gour University Sagar (hereinafter referred to as University) petitioner has filed this petition seeking direction for consideration for appointment as Professor Anthropology.

3. Petitioner, belonging to Scheduled Caste Category, having Master's Degree in Anthropology and being qualified the National eligibility test (UGC-NET) with subject Anthropology, appointed as Assistant Professor on 10.7.2004 and having accomplished Doctorate (Ph.D) from University of Delhi on 24.2.2007, applied for the post of Professor Anthropology in response to open/rolling advertisement No.R-03/T/P/RA/2010 dated 30.10.2010/31.10.2012. The petitioner was not short listed for presentation. On enquiry made by him that he does not fulfill

the requisite qualification prescribed vide University Grants Commission (Minimum Qualification's for Appointment of Teachers And other Academic Staff In Universities and Colleges and Measures for the maintenance of standard in Higher Education) Regulation 2010.

4. To be precise, the petitioner was informed that he does not fulfill the criteria envisaged in clause 4.1.0 A (ii) of the UGC Regulation.

5. The controversy thus revolves round as to whether the petitioner fulfills the qualification prescribed in Clause 4.1.0A (ii) of the Regulation 2010.

6. The Regulation 2010 as evident therefrom are framed by the University Grants Commission in exercise of the powers conferred under Clause (c) and (g) of sub section (1) of Section 26 of the University Grants Commission Act 1956 and in pursuance of the MHRD O.M No.F23-7/2008 IFD dated 23.10.2008 read with Ministry of Finance (Department of Expenditure) O.M No.F.I-1/2008-IC dated 30th August 2008 and in terms of the MHRD notification No.1-32/2006 U.1 (1) issued on 31.12.2008.

7. Regulation 4.0.0 deals with direct recruitment whereon Regulation 4.1.0 lays down eligibility criteria for appointment of Professor, stipulating:

"4.1.0 PROFESSOR"

A (i) An eminent scholar with Ph.D. qualification (s) in the concerned/allied/relevant discipline and published work of high quality, actively engaged in research with evidence of published work with a minimum of 10 publications as books and/or research/policy papers.

(ii) A minimum of ten years of teaching experience in University/college, and/or experience in research at the University/National level institutions/industries, including experience of guiding candidates for research at doctoral level.

(iii) Contribution to educational innovation, design of new curricula and courses, and technology-mediated teaching learning process.

(iv) A minimum score as stipulated in the Academic

Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in Appendix III.

.OR

B. An Outstanding professional, with established reputation in the relevant field, who has made significant contributions to the knowledge in the concerned/allied/relevant discipline, to be substantiated by credentials.”

8. The controversy revolves round clause 4.1.0 A (ii) which envisages "A minimum of ten years of teaching experience in University/college, and/or experience in research at the University/National Level Institutions/Industries, including experience of guiding candidates for research at doctoral level". The provision thus envisages, a minimum of ten years of teaching experience in University/College, and/or in the alternative experience in research at the University/National Level Institution/Industries, including experience of guiding candidates for research at doctoral level. In other words the incumbent must have:

(i) A minimum of ten years of teaching experience including experience of guiding candidates for research at doctoral level and/or

(ii) experience in research at the University/National level Institution/Industries including experience of guiding candidates for research at doctoral level.

9. The candidate thus may have the experience either of the two or both, but must possess the experience of guiding candidates for research at doctoral level.

10. Thus unless comprehended with the experience of guiding candidates for research at doctoral level, an incumbent possessing ten years of teaching experience in University/College, and/or experience in research at the University/National level institution/industries, will not fulfill the qualification prescribed. This is what the import of clause 4.1.0 A (ii) of Regulations, in the considered opinion of this Court, would be.

11. In the case at hand in application form for teaching posts, the petitioner

at serial No.9 which required detail about Teaching/Professional/Research Employment petitioner gave following details :

D द	Number of Thesis Supervised: पर्यविक्षित शोध	Awarded मदत्त	Submitted पूर्ण हुई	In progress प्रगति पर
i	Ph.D/पीएच.डी.	-	-	-
ii	M.Phil./एम.फिल	-	-	-
iii	M.Tech/M.E./M.Sc./ एम.टेक/एम.ई/एम.एससी	22	-	-

12. Evidently, the petitioner did not guide any candidate for research at doctoral level. For this reason he has been held ineligible for presentation for appointment to the post of Professor Anthropology. The decision being in consonance with the stipulations contained under Regulation 4.1.0 A (ii) of Regulation, does not warrant any interference.

Consequently, petition fails and is dismissed. No costs.

Petition dismissed.

I.L.R. [2015] M.P., 3196

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 22417/2013 (Jabalpur) decided on 4 August, 2014

AKHILESH KUMAR PATEL

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law - Appointment - Court acquitted the petitioner of the charges under Sections 323, 294, 506-B and 451 of the IPC - Petitioner has been fair enough in disclosing the facts of criminal case and the acquittal thereof in the verification roll - It was not at all possible for the appointing authority to take a view that the petitioner was not suitable for appointment to the post of a Warder/Prahari in Central jail - Impugned order quashed - Petition allowed. (Paras 11 to 13)

सेवा विधि - नियुक्ति - न्यायालय ने याची को भा.द.सं. की धारा 323, 294, 506-बी व 451 के अंतर्गत आरोपों से दोषमुक्त किया - याची ने सत्यापन रोल में

आपराधिक प्रकरण के तथ्य तथा उसमें दोषमुक्ति को प्रकट करने में ईमानदारी दर्शायी – नियुक्तकर्ता प्राधिकारी के लिये यह दृष्टिकोण रखना कदापि संभव नहीं था कि याची केंद्रीय जेल में वॉर्डर/प्रहरी के पद पर नियुक्ति के लिये उपयुक्त नहीं था – आक्षेपित आदेश खारिज – याचिका मंजूर।

Cases referred :

Civil Appeal No. 4965/2013 decided on 02.07.2013, (2010) 14 SCC 103, (2011) 4 SCC 644, Civil Appeal No. 7106/11 arising out of Special Leave Petition (C) No. 12091/2010.

Anil Lala, for the petitioner.

Sudesh Verma, G.A. for the State.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- I.A. No.9551/2014, an application for hearing at motion stage. Taking into consideration the nature of dispute involved and that the pleadings are complete, with consent of learned counsel for the parties, petition is finally heard.

2. The solitary issue, which arises for consideration is whether the respondents having satisfied with the disclosure and declaration given by the petitioner on his being appointed as Warder/Prahari in Central Jail, in the Character Verification Roll about the offences registered against him and co-accused under Sections 294, 451, 147, 323/149 and 506-B of the Indian Penal Code, having been compromised, acquitting the petitioner from said charges, are justified in their action in dispensing with the services of the petitioner by order-dated 8.12.2013, holding him unfit for the job.

3. Relevant facts, briefly are, that in pursuance to selection of Prahari in Jail Department taken recourse to vide Joint Selection Examination, 2012, the petitioner was selected and vide communication dated 14.12.2012 was called upon to submit his option for appointment. Thereafter, vide order-dated 16.12.2012, the petitioner was appointed as Prahari in grade ₹5200-20200+1900 subject to fulfillment of terms and conditions in the appointment letter. One of the conditions was that the appointment was subject to character verification. In character verification form which the petitioner was required to fill in on 1.1.2013, petitioner disclosed the fact about the registration of

offences under Section 323, 294, 506-B and 451 of the IPC vide Crime No.90/2010 and acquittal of the charges as the matter was compromised.

4. That, Inspector General of Police, Special Branch vide communication-dated 26.11.13 called upon Jail Superintendent, Satna that in view of provisions contained under Paragraph 64 of the M.P. Police Regulation and decision in *Commissioner of Police, New Delhi vs. Mehar Singh* : Civil Appeal No.4965/2013 decided on 2.7.2013, the petitioner's character was not found suitable for appointment, his services be dispensed with. The communication led to issuance of order-dated 8.12.2013 dispensing with the services of the petitioner with immediate effect. It is this order which is being assailed by the petitioner.

5. It is in the backdrop of these facts that the issue crops up for consideration, whether having being acquitted of the charges, the stigma continues to haunt. The aspect has travelled long-way. There has been cases wherein there has been non-disclosure or the cases where the acquittal is on technical ground or on benefit of doubt. Drawing a difference on various aspects of disclosure and non-disclosure of criminal cases/antecedents, it has been observed in *Daya Shankar Yadav v. Union of India* (2010) 14 SCC 103 -

"14. .. The purpose of seeking the said information is to ascertain character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these Columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service."

6. Though while formulating an opinion, the Authorities concerned has relied upon the decision in *Mehar Singh* (supra). It is observed that the issue as posed in paragraph 16 was -

"16. The question before this Court is whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of constable in Delhi Police; who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could

be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of constable."

7. While taking into consideration the Standing Order, it has been held in *Meharsing* (supra) -

"19. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such persons involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

...

21. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the

Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

8. As to honourable acquittal it has been observed by Their Lordships ".... that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted".

9. In the case at hand, there is no occasion for the prosecution to prove the charges as the complainant taking into consideration the cordial relations which has developed took recourse to compromise leading to holding the petitioner not guilty of charges by order dated 1.1.2013; wherein, the Court records -

"प्रकरण का अवलोकन किया जिससे स्पष्ट है कि आरोपीगण के विरुद्ध आरोप धारा 294, 451, 147, 323/149, 506बी भा.द.वि. के अपराधों के तहत प्रस्तुत किया गया है। जिनमें धारा 294, 506बी, 147 भा.द.वि. न्यायालय की अनुमति से राजीनामा के आधार पर उपशमनीय हैं एवं धारा 323/149, 451 भा.द.वि. स्वयं आहतगण के द्वारा राजीनामा के आधार पर उपशमनीय अपराध हैं। आहतगण ने स्वेच्छयापूर्वक राजीनामा करना व्यक्त किया है। दोनों पक्षों के मधुर संबंधों को देखते हुये आहतगण को राजीनामा की अनुमति प्रदान की जाती है तथा राजीनामा आवेदन स्वीकार कर आरोपीगण को राजीनामा के आधार पर धारा 294, 451, 147, 323/149, 506बी भा.द.वि. के आरोप से दोषमुक्त किया जाता है।"

10. In *Commissioner of Police vs. Sandeep Kumar* (2011) 4 SCC 644, it has been held -

"8. . When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives."

11. In *Ram Kumar vs. State of U.P.* : Civil Appeal No.7106/11 arising out of Special Leave Petition (C) No.12091/2010, it has been observed by Their Lordships in paragraph 8 -

"8. In the facts of the present case, we find that though Criminal Case No.275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18.07.2002 by the Additional Chief Judicial Magistrate, Etawah. On a reading of the order dated 18.07.2002 of the Additional Chief Judicial Magistrate would show that the sole witness examined before the Court, PW-1 Mr. Akhilesh Kumar, had deposed before the Court that on 02.12.2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable."

12. Present case is also not dissimilar to the case of *Ram Kumar* (supra); rather, the case at hand reveals that the petitioner has been fair enough in disclosing the facts of criminal case and the acquittal thereof in the verification roll.

13. The principles of law when applied to the present case and the action of the respondents is tested on the anvil of these principles, the same does not stand the scrutiny. Therefore, the impugned order is quashed.

14. The petitioner is directed to reinstate forthwith with consequential benefits.

15. Consequently, the petition is allowed to the extent above. No costs.

Petition allowed.

I.L.R. [2015] M.P., 3202

WRIT PETITION

Before Mr. Justice Sanjay Yadav

W.P. No. 17994/2011 (Jabalpur) decided on 5 August, 2014

SUBHASH TIWARI

...Petitioner

Vs.

STATE OF M.P. & anr.

...Respondents

Constitution - Article 226 - Non-payment of salary - Payment -
Petitioner was initially appointed as ad-hoc Assistant Professor -
Subsequently he was recognized as regular Asstt. Professor - Order
was withdrawn subsequently - Consequently, he was not paid salary
for three years - Petition was allowed and order withdrawing the
recognition as regular Asstt. Professor was quashed and it was directed
to pay all benefits - Held - Although earlier order is silent about interest
but at the same time it was not denied - As petitioner was denied of the
amount, claim of petitioner for interest in lieu of wrongful non-payment
of amount cannot be denied - Respondents directed to pay interest @
9% p.a. (Paras 2, 6 & 7)

संविधान - अनुच्छेद 226 - वेतन का भुगतान नहीं किया जाना - भुगतान
- याची प्रारंभ में तदर्थ सहायक प्राध्यापक के रूप में नियुक्त किया गया था -
तत्पश्चात् उसे नियमित सहायक प्राध्यापक के रूप में मान्यता दी गयी - तत्पश्चात्
आदेश वापस लिया गया - परिणामस्वरूप, तीन वर्षों तक उसे वेतन का भुगतान
नहीं किया गया - याचिका स्वीकार की गयी तथा नियमित सहायक प्राध्यापक की
मान्यता वापस लेने वाला आदेश अभिखंडित किया गया तथा सभी लाभों का भुगतान
करने का निदेश दिया गया - अभिनिर्धारित - यद्यपि ब्याज के संबंध में पूर्ववर्ती
आदेश मौन है परंतु साथ ही उसे अस्वीकार नहीं किया गया था - चूंकि याची को
राशि नहीं दी गई थी, इसलिये गलत तरीके से राशि का भुगतान नहीं किये जाने
के एवज में ब्याज के लिये याची के दावे को अस्वीकार नहीं किया जा सकता - 9%
प्रतिवर्ष की दर से ब्याज का भुगतान करने के लिये प्रत्यर्थी को निदेशित किया गया।

Case referred :

(2011) 11 SCC 269.

Dileep Pandey, for the petitioner.

Sheetal Dubey, G.A. for the State.

(Supplied: Paragraph numbers)

ORDER

SANJAY YADAV, J. :- Petitioner seeks direction to the respondents to pay interest on the amount of Rs.1,44,687/- paid to the petitioner in lieu of arrears of salary for the period from 1987 to 1995 paid in the year 2010.

2. Facts giving rise to the controversy, in nutshell, is that initially appointed in 1983 as ad-hoc Assistant Professor in Private College receiving grant-in-aid, by order dated 3.1.1991, the petitioner was recognized as regular Assistant Professor w.e.f. 11.2.1987. The order-dated 3.1.1991 was, however, cancelled by order-dated 3.1.1992. The petitioner was, therefore, not paid the salary from 1987 to 1990 nor was given the increment. Aggrieved, the petitioner preferred a petition, registered as Writ Petition No.190/1998. The petition was decided by a common order dated 6.4.2010 and the impugned order-dated 3.1.1992 was quashed with a direction for grant of all benefits including selection grade and senior pay scale. The respondents complied with the order and amount of Ra.1,44,687/- was paid.

3. The petitioner thereafter alleging that he is wrongfully deprived of his rightful claim, is entitled for the interest on the arrears @ 18 per annum or the rate equivalent to as applicable for Contributory Provident Fund.

4. Respondents have denied the claim contending *inter alia* that the claim having been adjudicated in the year 2010, the respondents are not liable for interest.

5. Considered the rival contentions.

6. Evidently, in *Subhash Tiwari vs State of M.P. : W.P. No. 190/1998* (supra); the action of the respondent in cancelling the order dated 31.1.1991 by order dated 3.1.1992 was found to be erroneous and the respondent-employer were found at fault, resulting in quashment of order. True it is that the order is silent about interest; however, equally true it is that it has not even denied the interest. Thus, the petitioner was wrongfully denied the salary due to him and though this wrong has been corrected in Writ Petition No.190/1998. Had the order recognizing the petitioner as Assisant Professor since 1987 was maintained, the petitioner would have benefited and since he is deprived of the said amount; for that, the claim by petitioner for interest in lieu of wrongful detaining of his rightful claim, cannot be denied. It has been held in *Rubi (Chandra) Dutta vs United India Insurance Company Limited*

(2011) 11 SCC 269 -

"26. It is correct that the Act does not contain any provision for grant of interest, but on account of catena of cases of this Court that interest can still be awarded, taking recourse to Section 34 of the Code of Civil Procedure, to do complete justice between the parties. We accordingly do so. This principle is based upon justice, equity and good conscience, which would certainly authorize us to grant interest, otherwise, the very purpose of awarding compensation to the Appellant would be defeated. We accordingly deem it fit to award interest at the rate of 9% per annum on the aforesaid amount from the date of filing the complaint till it is actually paid."

7. Accordingly, the petition is allowed to the extent that respondents shall pay interest on the arrears from the date of order passed in Writ Petition No.190/1998 till actual payment @ 9% per annum.

Certified copy as per rules.

Petition allowed.

I.L.R. [2015] M.P., 3204

WRIT PETITION

Before Mr. Justice K.K. Trivedi

W.P. No. 1916/2012 (Jabalpur) decided on 26 November, 2014

R.K. JAIN

...Petitioner

Vs.

STATE OF M.P. & anr.

...Respondents

A. *Civil Services (Pension) Rules, M.P. 1976, Rule 9(1) - Consultation with Public Service Commission - Nothing on record that Public Service Commission was consulted before imposition of penalty of withholding of 10% of pension. (Para 6)*

क. सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(1) - लोक सेवा आयोग से परामर्श - अभिलेख पर कुछ नहीं कि 10% पेंशन रोकने की शास्ति अधिरोपित करने के पूर्व लोक सेवा आयोग से परामर्श लिया गया था।

B. *Civil Services (Pension) Rules, M.P. 1976, Rule 9(2) - Report to Governor - If a departmental enquiry was initiated by an*

authority subordinate to Governor, a report regarding finding has to be submitted to Governor. (Para 7)

ख. सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(2) - राज्यपाल को प्रतिवेदन - यदि राज्यपाल के अधीनस्थ प्राधिकारी द्वारा विभागीय जांच प्रारंभ की गई, निष्कर्ष संबंधी प्रतिवेदन राज्यपाल को प्रस्तुत किया जाना चाहिए।

C. *Civil Services (Pension) Rules, M.P. 1976, Rules 9, 64 & 65 - Withholding of pension* - A definite finding is required to be recorded with regard to gravity of misconduct and ultimate result of such misconduct, whether it would have been resulted in dismissal from service, had Govt. servant remained in service - Then only penalty can be imposed. (Para 14)

ग. सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9, 64 व 65 - पेंशन का रोका जाना - अवचार की गंभीरता के संबंध में निश्चित निष्कर्ष अभिलिखित किया जाना अपेक्षित है एवं उक्त अवचार का अंतिम परिणाम, क्या इसका परिणाम सेवा से पदच्युति होता है, यदि शासकीय सेवक सेवा में रहता - केवल तब शास्ति अधिरोपित की जा सकती है।

Ashutosh Tiwari, for the petitioner.

Vaibhav Tiwari, P.L. for the respondents/State.

ORDER

K.K. TRIVEDI, J. :- This writ petition under Article 226 of the Constitution of India is directed against the order dated 27.06.2008 passed by the respondent No.2 as also the order dated 24.05.2011 passed in appeal of the petitioner by respondent No.1. By the impugned final order dated 24.05.2011, a penalty of withholding of 10% pension of the petitioner is imposed on the petitioner under Rule 9(1) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (herein after referred to as 'Pension Rules'). By the order dated 27.06.2008, recommendation is made by respondent No.2 for imposition of penalty of withholding of 5% pension of the petitioner for a period of one year under the aforesaid Pension Rules.

2. The facts giving rise to the present writ petition are that while the petitioner was in service as Food Inspector, a charge-sheet dated 19.02.2002 was issued to him under the provisions of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (herein after referred to as 'CCA Rules') for conducting a regular departmental enquiry for alleged

misconduct, in terms of Rule 14 of the CCA Rules. The petitioner attained the age of superannuation and stood retired during the pendency of the departmental enquiry. However, in view of the provisions of Rule 9 of the Pension Rules, the enquiry remained pending against the petitioner. In terms of the Pension Rules, the matter was referred to the competent authority for passing an order.

3. From the order impugned it is clear that the matter was referred to the higher authority, i.e. the State Government, by the respondent No.2 only because the petitioner had retired during the pendency of the departmental enquiry and penalty was to be imposed by the competent authority. The respondent No.2 proposed only withholding of 5% of pension for a period of one year. Probably this was done because only Charge No.7 was said to be partially proved against the petitioner by the Enquiry Officer and to that extent the report of the Enquiry Officer was accepted. However, the State Government was of the view that instead of withholding of 5% pension for a period of one year, looking to the grave misconduct of the petitioner, he should be visited with a penalty of withholding of 10% pension permanently and accordingly the order was issued on 24.05.2011. It is this order which is sought to be challenged in the present writ petition mainly on the ground that opportunity of hearing was not given to the petitioner in appropriate manner, inasmuch as the petitioner was ill. This fact was brought to the notice of the Enquiry Officer and on account of his illness, the petitioner could not appear in the enquiry. Even when the charges were said to be not proved fully against the petitioner and the misconduct alleged in Charge No.7 was not such grave that a penalty of withholding of pension could be imposed, such order of imposition of penalty was issued. It is contended in the writ petition that no opportunity of personal hearing was given and without following the procedure laid-down under Rule 14 of the CCA Rules, the enquiry report was sent to the higher authority. This order was sought to be challenged in an appeal before the respondent No.1 and that appeal ought to have been decided in appropriate manner, whereas the order impugned has been passed imposing the aforesaid penalty.

4. As has already been noted down in the order-sheet, the notices after admission of this writ petition were issued in the year 2012 granting sufficient time to the respondents to rebut the allegations made by the petitioner but no return whatsoever has been filed. Looking to this conduct as well as the fact

that the order of penalty amounts to taking away proprietary right of the petitioner, the matter has been heard finally.

5. The moot question, which is to be looked into, is what should be the procedure for imposing penalty on a retired Government servant and to what extent penalty can be imposed on a retired Government servant, if a departmental enquiry was initiated during the service of the Government servant and has remained continued after his retirement. The right of Governor to withhold or withdraw the pension is prescribed under Rule 9 of the Pension Rules, which needs elaborate discussion and, therefore, same is reproduced below :

“9. Right of governor to withhold or withdraw pension.-

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the State Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];

2(a) The Departmental proceedings [x x x], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are

instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his reemployment:-

(i) shall not be instituted save with the sanction of the Governor;

(ii) Shall not be in respect of any event which took place more than four years before such institution; and

[(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government].

(3) No judicial proceedings, if not instituted while the

Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under subrule (2), a provisional pension and death-cum-retirement gratuity as provided in [rule 64], as the case may be, shall be sanctioned:

[Provided that where pension has already been finally sanctioned to a Government servant prior to institution of departmental proceedings, the Governor may, by order in writing, withhold, with effect from the date of institution of such departmental proceedings fifty per cent of the pension so sanctioned subject however that the pension payable after such withholding is not reduced to less than [the minimum pension as determined by the Government from time to time]:

Provided further that where departmental proceedings have been instituted prior to the 25th October, 1978, the first proviso shall have effect as it for the words "with effect from the date of institution of such proceedings" the words "with effect from a date not later than thirty days from the date aforementioned," had been substituted:

Provided also that-

(a) If the departmental proceedings are not completed within a period of one year from the date of institution thereof, fifty per cent of the pension withheld shall stand restored on the expiration of the aforesaid period of one year;

(b) If the departmental proceedings are not

completed within a period of two years from the date of institution the entire amount of pension so withheld shall stand restored on the expiration of the aforesaid period of two years; and

- (c) If in the departmental proceedings final order is passed to withhold or withdraw the pension or any recovery is ordered, the order shall be deemed to take effect from the date of the institution of departmental proceedings and the amount of pension since withheld shall be adjusted in terms of the final order subject to the limit specified in sub-rule (5) of rule 43].

(5) Where the Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be initiated-
 - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and
 - (ii) In the case of civil proceedings, on the date the plaint is presented in the court.”

6. It is no doubt the right of the Governor to withhold or withdraw the pension is prescribed under sub-rule (1) of Rule 9 of the Pension Rules and it is also not in dispute that for the said purposes, each and every matter is not required to be referred to the Governor for taking a decision by him personally. It is the competent authority of the State to pass such an order in the given circumstances. However, the feature which is important, is that if the power under sub-rule (1) of Rule 9 of the Pension Rules is to be exercised, the State Public Service Commission is required to be consulted before any final order is passed. In the order impugned it is nowhere indicated that the matter was referred to the State Public Service Commission before imposition of the penalty on the petitioner. The reference is made to the report submitted by the respondent No.2, meaning thereby the matter was not referred to the State Public Service Commission and the orders were obtained from the Council of Ministers for imposition of penalty. At least this important fact is not disclosed in the order impugned and nothing has been placed on record by the respondents that such compliance was done.

7. The other part of the Rule referred to herein above, mainly sub-rule (2) of Rule 9 of the Pension Rules, deals into different arena. First where the departmental enquiry is instituted while the Government servant was in service, whether before his retirement or during his re-employment, which according to the provisions of sub-rule (2)(a) of Rule 9 of the Pension Rules, be deemed to be proceedings under the Rule and shall be continued and concluded by the authority by which the same were commenced, in the same manner as if the Government servant had continued in service. The proviso prescribes that if the departmental enquiries are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor. There is nothing except this provision made under the Rules in respect of departmental enquiry, which is initiated before the final retirement of the Government servant.

8. The other part of this Rule contained in sub-rule (2)(b) of Rule 9 of the Pension Rules contemplates that in case the departmental enquiry is not instituted when the Government servant was in service, shall not be instituted save with the sanction of the Governor, shall not be in respect of any event which took place more than four years before such institution, and shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings.

The most important part prescribed in this Rule is the nature of the penalty, which could be imposed and in what circumstances such a penalty is required to be imposed. It is specifically prescribed that such enquiry would be in respect of a misconduct for which a penalty of dismissal from service could be imposed, had the Government servant not been retired, if the charges are proved. The other part of the penalty is recovery of the loss caused to the State by the negligence or breach of orders by the Government servant concerned.

9. If this is the specific provision made for imposition of penalty on a retired Government servant, it is more important to see why such a prescription is made in the Rules. Normally a Government servant while in service is governed by the CCA Rules where specific penalties are prescribed under Rule 10 of the said Rules. The said penalties are as follow :

“10. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor penalties :-

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;
- (iv) withholding of increments of pay or stagnation allowance;

Major Penalties :-

- (v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as the case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.

Note.- The expression "reduction to a lower stage in the time scale of pay" shall also include reduction of pay from the stage of pay drawn by a Government servant on account of grant of stagnation allowance, if any.

- (vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;"

10. Any of such penalties referred to herein above are to be imposed with prospective effect and not with retrospective effect. For the purposes of imposition of such penalty, a Government servant must be in service otherwise none of the penalties referred to herein above can be imposed on a Government servant after his retirement. Precisely this was the reason when on earlier occasion it was held by the Courts of law that after the retirement there would not be any continuance of the departmental enquiry. The Rules which are made in the Pension Rules for imposition of penalty are subsequently added because of the fact that after the retirement a Government servant, if has committed even serious misconduct, should not go scot-free without imposition of penalties as none of the penalties under the CCA Rules could be imposed on such a Government servant. Therefore, it is necessary to examine whether for a minor misconduct, for which a minor penalty would have been imposed on the Government servant, had he remained in the employment and would not have retired from service, major penalty could still be imposed by way of

withholding pensionary benefits.

11. Under Rule 64 of the Pension Rules it is prescribed that the provisional pension would be granted where the departmental or judicial proceedings may be pending against the Government servant. Yet another rule is Rule 65 of Pension Rules, which prescribes recovery and adjustment of Government dues. The provisions of these Rules are relevant, therefore, they are also reproduced :

“64. Provisional pension where departmental or judicial proceeding may be pending.- (1)(a) In respect of Government servants refer to in sub-rule (4) of rule 9 the Head of Office shall authorise the payment of provisional pension not exceeding the maximum pension and 50% of gratuity taking into consideration the gravity of charges levelled against such Government servant, which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office during the period commencing from the date of retirement to the date on which upon conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) Provisional gratuity shall be drawn on establishment pay bill and paid to retired Government servant by the Head of Office after adjusting dues mentioned in sub-rule (2) of rule 60, under intimation to Audit Office. Payment of provisional pension/gratuity made under sub-rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings, but no recovery shall be made where the pension/gratuity finally sanctioned is less than the provisional pension/gratuity or the pension/gratuity is reduced or withheld either permanently or for a specified period.

65. Recovery and adjustment of Government dues.- (1)

It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable.-

- (a) an equivalent cash deposit may be taken from him; or
- (b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

Explanation.-1. The expression "ascertainable Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (No.43 of 1961)."

12. A further perusal of these Rules will make it clear that it is only a temporary arrangement made till the departmental enquiry is pending, with respect to the payment of pension but it nowhere prescribes that final orders will also be required to be issued in the matter of recovery. Rule 9 of the Pension Rules, if seen as a whole, deals with withholding of the pension in respect of a Government servant against whom the departmental enquiry is initiated after the final retirement or is deemed to be continued under the provisions of the aforesaid rules but the provisions of this sub-rule are nothing but the adjustment of the recoverable amount of pension.

13. After this analysis, now it has to be examined whether charge against the petitioner was such that a penalty of dismissal from service could have been imposed on him, had he remained in the employment. Charge No.7 is said to be partially proved by the Enquiry Officer. The charge against the petitioner was that he has not made the entry in the register of samples, licence, sanction for prosecution and nomination. By not making such entries, it was alleged that the petitioner has provided assistance to those, who were found guilty of adulteration in the food grains. Reply to the said charge by the

petitioner was that he has made the entries in the relevant register of all the information provided to him. The blank entries were because information in that respect was not provided by other Food Inspectors. The evidence was required to be produced in respect of such charge of the petitioner. The defence of the petitioner was required to be examined. Neither in the enquiry report nor in the proposal or even in the order impugned the facts have been discussed as to how this charge was found proved against the petitioner and whether such misconduct of the petitioner was such grave that had he been in the employment, he could have been dismissed from service. In the order impugned only this much is said that the proposal made by the respondent No.2 for imposition of penalty is accepted. In absence of clear finding with respect to the guilt of the petitioner, it was not to be held that the petitioner was guilty of the aforesaid charge. In his memo of appeal the petitioner has categorically contended that he was not posted at the place where irregularities were found with effect from 03.03.1995 to 30.05.1996 and, therefore, such a charge was not to be held proved against him. Nothing is discussed in the order or the report in that respect. Even when the petitioner was absent in the departmental enquiry, a definite finding was required to be recorded in respect of such misconduct. The statements were recorded but when the petitioner was not available in the departmental enquiry on account of his spinal injury, though ex parte proceedings were done but again the provisions of Rule 14(11) of the CCA Rules were not followed. That being so, the report itself given by the Enquiry Officer was faulty one and was not to be relied upon. All these aspects were not examined by the respondent No.1 nor a definite finding was recorded that looking to the misconduct of the petitioner, he was liable to be dismissed from service, had he remained in the employment and, therefore, because of his retirement his pension was to be forfeited.

14. From this analysis and keeping in view the fact that for imposition of penalty of withholding of pension the findings were not properly recorded, the orders impugned cannot be sustained. Pension is a proprietary right as has been held by the Courts in several pronouncements. Such a proprietary right is not required to be taken away without following proper procedure of law. If such a drastic penalty of withholding of pension is required to be imposed on any such Government servant, definite finding is required to be recorded with respect to the gravity of the misconduct and the ultimate result of the said misconduct, whether it would have been resulted in dismissal from service, had the Government servant remained in the employment, and then only penalty

aforesaid is required to be imposed. As nothing is found in this respect, no such consideration is done by the respondents while imposing penalty on the petitioner, the order dated 24.05.2011 cannot be sustained.

15. Resultantly the petition is allowed. The order dated 24.05.2011 (Annexure P-1) is hereby quashed. Full pension of the petitioner is restored. The arrears of pension be paid to the petitioner within a period of three months from the date of receipt of the copy of this order. There shall be no order as to costs.

Petition allowed.

I.L.R. [2015] M.P., 3217

WRIT PETITION

Before Mr. Justice K.K. Trivedi

W.P. No. 14819/2014 (Jabalpur) decided on 20 December, 2014

SANGEETA BANSAL (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. Constitution - Article 243 and Municipalities Act, M.P. (37 of 1961), Section 19 & 3(7) - Councillors - President of Municipality - Is not Councillor - May be representative of the entire municipal area. (Para 13)

क. संविधान - अनुच्छेद 243 एवं नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 19 व 3(7) - पार्षद - नगरपालिका अध्यक्ष - पार्षद नहीं है - संपूर्ण नगरीय क्षेत्र का प्रतिनिधि हो सकता है।

B. Municipalities Act, M.P. (37 of 1961), Section 47(1) - Recalling of President - Total number of the elected Councillors - Means, elected Councillors available on the date of signing of the proposal - On this basis calculation of three-fourth strength has to be counted. (Para 20)

ख. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47(1) - अध्यक्ष को वापस बुलाना - निर्वाचित पार्षदों की कुल संख्या - का अर्थ है, प्रस्ताव पर हस्ताक्षर करने की तिथि को उपलब्ध निर्वाचित पार्षद - इस आधार पर तीन चौथाई संख्याबल की गणना को गिना जाए।

C. Municipalities Act, M.P. (37 of 1961), Section 47(2) -

Satisfaction of the Collector - Meaning - Collector himself verified documents and eligibility of Councillors and their intention of making proposal for recall - Their signature on proposal - Correctness of signing of proposal was tested by Collector himself. (Para 21)

ग. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 47(2) - कलेक्टर की संतुष्टि - अर्थ - कलेक्टर ने स्वयं दस्तावेजों तथा पार्षदों की पात्रता तथा उनके वापस बुलाने के लिए प्रस्ताव के आशय का सत्यापन किया - प्रस्ताव पर उनके हस्ताक्षर - प्रस्ताव पर हस्ताक्षर की सत्यता की कलेक्टर द्वारा स्वयं जांच की गई।

D. Procedure - Interim stay granted - Till next date of hearing - Meaning and effect - On next date of hearing means, when the Court applies its mind - Should not confused with - Step in proceedings - Simple adjourned without any order - Stay not specifically vacated - Stay continue. (Paras 23 & 24)

घ. प्रक्रिया - अंतरिम रोक प्रदान की गई - सुनवाई की अगली तिथि तक - अर्थ एवं प्रभाव - सुनवाई की अगली तिथि का अर्थ है जब न्यायालय अपनी बुद्धि का प्रयोग करे - से भ्रमित नहीं होना चाहिए - कार्यवाही के चरण - बिना किसी आदेश के साधारण रूप से स्थगित - रोक के आदेश को विनिर्दिष्ट रूप से रद्द नहीं किया गया - रोक जारी।

Cases referred:

1977 J.L.J. SN. 63, 2008 (4) MPLJ 316, 2005 (3) MPLJ 578, AIR 2005 SC 658, 2008 (1) MPLJ 577, (2011) 6 SCC 321, W.A. No. 663/2014 decided on 25.8.2014.

Rajendra Tiwari with Manikant Sharma, for the petitioner.

R.P. Tiwari, G.A. for the respondent Nos. 1 & 2.

Siddharth Seth, for the respondent No. 4.

V.S. Shroti with Ashish Shroti, for the intervenor in I.A. No. 12964/2014.

V.S. Shukla, for the intervenor in I.A. No. 13970/2014.

ORDER

K.K. TRIVEDI, J. :- This writ petition take exception to the order dated 09.09.2014 passed by the respondent No.2 as also the final order dated 25.09.2014 passed by the respondent No.1 accepting the proposal made for recall of the petitioner as President of the Municipal Council, Harda.

Undisputedly the petitioner was elected as President of the said Municipal Council and such election was notified in the year 2011. The Municipal Council, Harda consists of 30 wards and 30 members have been elected as Councillors. Such notification of election was issued on 9th November, 2011 in the M.P. Gazette (Extraordinary).

2. It is the contention of the petitioner that in terms of Section 47 of the Madhya Pradesh Municipalities Act, 1961 (herein after referred to as 'Act'), a proposal was made by 23 Councillors before the Collector for recall of the petitioner. The fact stated in the said application/proposal was that the manner of working of the petitioner was not in the interest of the Municipal Council and, therefore, such proposal was made. It is contended by the petitioner that in fact the strength of 23 elected Councillors was short of three-fourth elected Councillors of the Municipal Council and, therefore, the proposal was liable to be rejected. When the petitioner came to know about this fact that such proposal was made, she immediately made an objection on 08.09.2014 but the objection was not looked into. No document was made available to the petitioner even when a demand was made and matter was referred to the State Government. Without there being any justified reason or complete satisfaction of the authorities, the matter was referred to the State Election Commission to take action under Section 47(3) of the Act. That being so, the order passed in that respect was liable to be quashed. Hence this petition has been filed by the petitioner.

3. The writ petition was entertained and interim stay was granted to the petitioner to the effect that the Election Commission may take all steps and process for recall but the notification of the date of election shall not be issued till the next date of hearing.

4. A return has been filed by the respondents No.1 and 2 contending *inter alia* that the procedure as laid-down under Section 47 of the Act was complied with and after being satisfied with the proposal made by the Councillors, the Collector has forwarded the same to the State Government, which has been further sent to the State Election Commission to take action in accordance to law. In fact the voting has to be done on the proposal so made in the matter of recall of the petitioner and in case the votes are cast against the petitioner and in favour of proposal of recall then only the petitioner would be liable to vacate the seat of the President of Municipal Council. It is contended that no wrong has been committed by the respondents in doing so

and as such the writ petition is liable to be dismissed.

5. The intervenors have filed applications seeking permission to intervene in the writ petition to oppose the same. I.A. No.12964/2014 has been filed by one Lokesh Rao, son of Shri Ram Chandra Rao, an elected Councillor of Municipal Council, Harda to oppose the prayer made by the petitioner in the writ petition and I.A. No.13970/2014 has been filed by Dilawar Khan, son of Majid Khan, Councillor of Municipal Council, Harda, for the same purpose. The applications for intervention have been treated as reply of the aforesaid intervenors and they are also granted permission to be heard. Such intervenors were also heard at the time of final hearing. The contentions raised by the intervenors are that since there were 30 elected Councillors of Municipal Council, Harda, three-fourth of the same would be 22.5, rounding of which would mean 23 and, therefore, if 23 Councillors have signed the proposal for recall of the petitioner, the same is in accordance to the provisions of Section 47 of the Act. Therefore, proposal has rightly been accepted by the Collector, forwarded to the State Government and action has been taken by the State Government in appropriate manner. It is, thus, contended that the claim made in the writ petition cannot be granted to the petitioner and the same deserves to be dismissed.

6. The only submission made by learned Counsel for the State Election Commission is that the Commission is duty bound to comply with the requirement of Section 47(3) of the Act, the moment proposal is sent by the State Government to the Commission for recall of any elected President of the Municipal Council. For the said purposes entire process has to be done, voting is required to be done and then only on the basis of the votes cast, the proposal to recall is to be accepted or to be denied. It is submitted that since such a process is held up because of interim order passed by this Court, it would be just and expedient to decide the controversy at an early date.

7. To buttress the submissions and the grounds raised in the writ petition, learned senior Counsel for the petitioner has submitted that the composition of a municipality is prescribed under Article 243R of the Constitution of India. It is nothing but the enabling power of the State Legislature to make laws with respect to the filling in the seats in the municipality, making of territorial constituencies in the name of wards within the municipal area and the law for representation in a municipality but nominated members are not authorized to cast a vote in the meeting of the municipality. The other special power provided

to the Legislature for making of the law is the manner of election of the Chairperson of a Municipality. For the purposes of election of the Chairperson of the Municipality, it is contended that the entire area of Municipal Council is to be treated as constituency and, therefore, the Chairperson of a municipality is also to be treated as a Councillor having all rights to vote in such meetings of the Municipal Council. It is, thus, contended that the composition of the Municipal Council would be number of wards made by the Legislature in particular municipality plus the Chairperson of the Municipal Council. Thus, the submission is made that the strength of the Municipal Council should be calculated on the basis of the number of wards, elected Councillors and adding in it the President as a Councillor. According to learned senior Counsel for the petitioner, the notified strength of the wards in Municipal Council, Harda is 30 and as one President is elected in the entire municipal area, adding the same as one of the Councillor, the total strength of the elected Councillors of Municipal Council would be 31. In any case if three-fourth elected Councillors of the Municipal Council, Harda are calculated, it would be more than 23 and not 23 as is claimed by the respondents and the intervenors. The submission is that the proposal made by the elected Councillors was short of the strength and, therefore, was not required to be referred to the State Government for its transmission to the Election Commission for initiating any action of recall of the petitioner.

8. The other submission made by learned senior Counsel for the petitioner is that one of the elected Councillor was subjected to an election dispute before the Election Tribunal and his election was set aside by the Election Tribunal. A civil revision was preferred before this Court against the said order and an interim stay was granted in respect of the said elected Councillor. However, the said interim stay was not made absolute and was not extended and, therefore, the said Councillor was not authorized to sign the proposal for recall of the petitioner. If that Councillor is removed from the list of Councillors, who have made proposal against the petitioner, there would be only 22 elected Councillors available to propose the action for recall of the petitioner and that being not in consonance of Section 47(1) of the Act, the proposal was liable to be turned down. It is further submitted by learned senior Counsel for the petitioner that no subjective satisfaction was recorded by the Collector in respect of making of the proposal to recall the petitioner and, therefore, the forwarding letter of the Collector itself was bad in law. That being so, no action could be founded on such a forwarding memo and, therefore, the action

initiated against the petitioner for her recall is liable to be quashed. Lastly, it is submitted that an elected member like petitioner is not to be thrown out without assigning any reason. The proposal made by the elected Councillors for recall of the petitioner contains no reason except that the working of the petitioner was not in the interest of Municipal Council. There was no valid ground raised for recall of the petitioner from the post of President of the Municipal Council concerned and, therefore, the proposal was liable to be rejected. Rather it has been accepted and forwarded to the State Government for taking action against the petitioner, which in turn has been transmitted to the Election Commission, therefore, entire proceedings in that respect are bad in law and are liable to be quashed. Putting great reliance in the provisions of Section 47 of the Act, seeking interpretation of the said provisions in terms of the orders passed by this Court in earlier occasion, it is contended that the action taken by the respondents was per se illegal and thus liable to be quashed.

9. *Per contra* learned Government Advocate has contended that the action is rightly taken, in the original proceedings placed before the Court, subjective satisfaction was recorded by the Collector after verifying the correctness of the proposal, therefore, no interference in such proceedings is called for. As is referred to herein above, learned Counsel for the State Election Commission has submitted only this much that the election process for recall of the petitioner is held up because of the interim stay granted by this Court, therefore, an early disposal is required.

10. Much stress has been placed by learned senior Counsel for the intervenor that the provisions of Article 243R of the Constitution of India are nothing but the enabling provisions to constitute the municipality in terms of the provisions made in Part-IXA of the Constitution of India. It is contended that in terms of the provisions of Article 243Q, a municipality is to be constituted for a smaller urban area. The law has been made by the State Government in terms of the provisions of the Act, therefore, relevant amendments have been made after coming into force of provisions of Part-IXA of the Constitution of India in the Act. It is contended that the elections of the ward members after making of a ward within municipal area are differently conducted. Section 19 of the Act deals with such composition where the President is to be elected by direct election from the municipal area whereas the Councillors are elected by direct election from the wards. Undisputedly the municipal area of Harda is distributed in 30 wards and, therefore, Councillors will mean the Councillors

electd from the said wards excluding the Chairperson or the President, who is to be elected directly from the municipal area. Reading out the provisions of Section 47 of the Act, learned senior Counsel for the intervenor has emphatically contended that the word used by the Legislature is, only the Councillors in appropriate number, as indicated in sub-section (2) of Section 47 of the Act, who are required to make the proposal and that has to be verified by the Collector and is required to be referred to the State Government. According to learned senior Counsel for the intervenor, since there were only 30 wards within the municipal area of Harda, 22.5 was the required number of the Councillors to make a proposal and, therefore, if 23 elected Councillors have made the proposal for recall of the petitioner, the same was in consonance to the provisions of sub-section (2) of Section 47 of the Act. The Collector has got the proposal verified through his subordinate Officer, that too of the rank of Joint Collector and after verifying the relevant documents annexed with the proposal, he personally called the Councillors, satisfied himself with respect to making of proposal by each of them and then only forwarded the same to the State Government. Therefore, according to learned senior Counsel for the respondents, there is no violation of the provisions of law by the Collector, Harda, in forwarding the proposal for recall of the petitioner. It is contended that the reasons are not required to be mentioned in the proposal for recall of the elected President as such would be tested by cast of votes by the electors and, therefore, it was not necessary to mention any such reason for recall of the petitioner in her capacity as President of the Municipal Council. Sufficient reason was mentioned if it was said in the proposal that the working of the petitioner was not in the interest of the Municipal Council. Lastly, it is submitted by learned senior Counsel for the intervenor that there was no vacation of interim order granted in favour of the elected Councillor, who has suffered an order in the Election Tribunal in an election petition as in the civil revision, till the same was dismissed, there was no vacation of interim stay. Interpreting the word "till the next date of hearing", learned senior Counsel for the intervenor submitted that since there was no vacation of interim order, no hearing had taken place on the date when the matter though was listed but was adjourned on account of non-availability of the Counsel for the parties because of call of the lawyers for abstaining the Court work. Therefore, it is submitted that the order of interim stay was in operation and, therefore, said Councillor has rightly signed the proposal for recall of the petitioner. It is, thus, contended that the entire claim in the writ petition is baseless and

misconceived and such petition deserves to be dismissed.

11. This Court has directed the respondents to produce the original record for perusal, which has been produced in sealed cover and is examined. Heard learned Counsel for the parties at length and perused the record.

12. First of all it would be necessary to interpret the provisions of the law made in respect of controversy involved and, therefore, relevant provisions are to be quoted. Undisputedly, constitution of municipalities is prescribed under Article 243Q of the Constitution of India, which simply says that there shall be constituted in every State a **Municipal Council for a smaller urban area**. Nothing more is added except exclusion of certain areas or non-constitution of a municipality in particular area, subject to the satisfaction of the Governor having regard to the size of the area and municipal services being provided or proposed to be provided. The most important aspect is in Article 243R of the Constitution of India where the composition of the municipalities is prescribed. Since the same is relevant for the purposes of adjudication of the claim made in the present writ petition, the provisions of Article 243R of the Constitution of India are reproduced below, which read thus:

“243R. Composition of Municipalities.—(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of—

- (i) persons having special knowledge or experience in Municipal administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.”

13. As has been pointed out herein above, the provision of Part-IXA of the Constitution of India was inserted by 74th amendment in the Constitution with effect from 01.06.1993. In the State of Madhya Pradesh the Municipalities Act was made in the year 1961 by the Legislature. The relevant provisions have been inserted in the Act aforesaid after coming into force of the 74th amendment in the Constitution of India. Certain provisions have been omitted, which were not in consonance to the prescribed law in the Constitution of India. However, the provisions of Section 19 of the Act were inserted vide an amendment made on 21.04.1997 by M.P. Act No.18 of 1997. The provisions of Section 19 consisting of composition of Municipal Council or Nagar Panchayat read thus :

“19. Composition of Municipal Council or Nagar Parishad.-(1) A Municipal Council or a Nagar Parishad, shall consist of-

- (a) President, that is Chairperson, elected by direct election from the Municipal area;
- (b) Councillors elected by direct election from the wards;
- (c) Not more than four persons in the case of Municipal Councils and not more than two persons in the case of Nagar Parishads having special knowledge or experience in Municipal Administration nominated by the State Government:

Provided that only a person residing within the Municipal area and being otherwise not ineligible for election as a Councillor may be nominated;

- (d) Members of the House of the people and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area;
- (e) Members of the Council of State registered as electors within the municipal area;

Provided that a member of the House of the people and a member of the State Legislative Assembly as mentioned in clause (d) or a member of council of State, as mentioned in clause (e) may nominate his representative, who possesses such qualifications as may be prescribed in this behalf to attend the meeting of the Council.

(2) The persons nominated under clause (c) of sub-section (1) shall hold office during the pleasure of the State Government.

(3) Persons referred to in clauses (c), (d), and (e) of sub-section (1) shall be deemed to be councillors, but shall not have the right to vote in the meetings of the Council.

(4) If any municipal area fails to elect a President or any ward fails to elect a Councillor, fresh election proceedings shall be commenced for such municipal area or ward, as the case may be, within six months to fill the seat, and until the seat is filled it shall be treated as casual vacancy :

Provided that proceedings of election of Vice- President, or any of the Committees under the Act shall not be stayed, pending the election of such seat.”

A perusal of this will leave no doubt that the municipal area is required to be divided into wards and each ward is to be represented by a Councillor, who is to be elected directly by the electors of the concerning ward. The definition of Councillor, as given in Section 3(7) of the Act means any person who is legally a member of a Council. However, the definition of President or the Chairperson

is not given in the Act. For the said purpose if the provisions of Article 243 of the Constitution of India are seen, the State Legislature is given the power to make laws for the manner of election of the Chairperson of a Municipality. In Section 19 of the Act, while prescribing the composition of Municipal Council or Nagar Parishad, it is said that the Municipal Council or a Nagar Parishad, as the case may be, shall consist of the President; i.e. the Chairperson, elected by direct election from the **municipal area**. The other part of the composition is the elected Councillors **from the wards**, therefore, at any rate the President of the Municipal Council may be an elected person but he is not to be treated as a Councillor in either case because of the reason that in the definition of the Councillor given under the Act, such persons are the elected representatives of the wards of municipal area but not the representative of the entire municipal area. The President or a Chairperson of the Municipality is to be treated as representative of the entire municipal area. Therefore, the submission which is made that the President of the Municipal Council is also to be treated as a Councillor, cannot be accepted.

14. The other aspect is that every Municipal Council is required to be bifurcated in wards and a notification is required to be issued in that respect. The petitioner herself has placed on record Annexure P-1 indicating that the notification of election of the Municipal Council, Harda was issued on 9th November, 2011 where the petitioner was shown to be elected as President and there were 30 Councillors elected. Therefore, though the petitioner has taken part in the election of Vice President, has cast her vote but that would not mean that the petitioner became a Councillor. The Councillor is otherwise defined under the Act and, therefore, at any rate the petitioner is not to be treated as a Councillor nor to be included in the number of Councillors. She was elected as a President of the Municipal Council and she was to be treated as President of the Municipal Council.

15. Now in the context of the aforesaid, if provisions of Section 47 of the Act are seen, which provisions again have been inserted by amendment made in the Act on 23.04.1999 by M.P. Act No.11 of 1999, it is clear that only the Councillors are required to make a proposal for recall of the President. Since the interpretation of the said provisions is also required, the amended provisions of Section 47 of the Act are reproduced, which read thus :

“47. Recalling of President.- (1) Every President of a Council shall forthwith be deemed to have vacated his office if

he is recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal area casting the vote in accordance with the procedure as may be prescribed :

Provided that no such process of recall shall be initiated unless a proposal is signed by not less than three-fourth of the total number of the elected Councillors and presented to the Collector :

Provided further that no such process shall be initiated :-

- (i) within a period of two years from the date on which such President is elected and enters his office;
- (ii) If half of the period of tenure of the President elected in a bye-election has not expired.

Provided also that process for recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three-fourth of the Councillors specified in sub-section (1) have the proposal of recall, shall send the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of recall in such manner as may be prescribed."

16. It is not in dispute that the proposal was made on 08.09.2014 for recall of the petitioner. It is also not in dispute that on the date of making of the proposal the same was signed by 23 elected Councillors. The said proposal was required to be verified by the Collector in terms of provisions of Section 47(2) of the Act. The original record produced before the Court indicates that when the Collector received the proposal, he got the same verified. Certain affidavits, photocopy of identity cards and certificate of elections were produced along with the said proposal. It appears that for the verification of the said documents and signatures, the Collector asked all the Councillors to remain present before him, who came at 12.30 AM in his office and their documents

were got verified, signatures were compared. All those proceedings were written by the Collector in presence of one of the Joint Collector posted in his office and facts were recorded that all those 23 elected Councillors have verified the documents annexed with the proposal for recall of the petitioner, verified their signatures and stated that they have signed such proposal without any fear or duress. The Joint Collector witnessed such proceedings and did nothing. The entire proceedings were signed by the Collector himself.

17. After undergoing this requirement, the Collector forwarded the proposal to the respondent No.1 vide his memo dated 08.09.2014, a copy of which is already placed on record as Annexure R-3 with the return of the respondents No.1 and 2. From the recital in the said memo and from the perusal of the original record, it is clear that in none than the definite words the Collector recorded his satisfaction with respect to making of the proposal for recall of the petitioner and referred the matter to the respondent- State for onward action in terms of provisions of sub-section (3) of Section 47 of the Act.

18. It is the submission made by learned senior Counsel for the petitioner that such an act of the Collector was not in accordance to the law. Placing reliance in the case of *Laxmi Narayan Garg vs. Municipal Council Sardarpur and others*, M.P. No.90/1976, decided on 12.04.1977 (1977 J.L.J. SN 63), it is contended by learned senior Counsel for the petitioner that if the total strength of the Municipal Council was one President plus 30 Councillors, that would be 31 as the President is also elected from amongst the persons, who were not the Councillors and, therefore, the total number of Councillors determined shall, in respect of such Municipality, be deemed to have been increased by one. First of all the provisions of Section 43 of the Act, which were dealt with in the said case are not *pari materia* to the provisions of Section 47 of the Act. The Act as amended did not contain any provision for No Confidence Motion against the President of the Municipal Council. Secondly it is to be seen that even in the case of No Confidence Motion, two-third of elected Councillors present and voting in the meeting was the requirement for passing of the said No Confidence Motion whereas in the new provisions of recall of President, making of a proposal by three-fourth of the total number of elected Councillors is the requirement of law. As has been pointed out, in that situation the petitioner who is not to be treated as an elected Councillor, was not to be included amongst the elected

Councillors. Therefore, such a decision is not helpful to the petitioner.

19. Essentially it has to be seen that earlier the procedure which was prescribed under the Act was for moving of a notice of No Confidence against the President of the Municipal Council but subsequently by amending the provisions since the election of the President of Municipal Council is prescribed directly and all the electors of the municipal area are required to elect the President of the Municipal Council, only a proposal is required to be made by the elected Councillors to initiate such process of recall of President. By making the provisions in Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994, the process for recall of the President of Municipal Council is prescribed. A time and schedule for the poll aforesaid is to be notified in the manner indicated in the Rules, polling stations are to be established, symbols are to be allotted and then polling is to commence. All electors of the municipal area are required to cast their votes either in favour or against recall of the President of Municipal Council. Thus, mere making of proposal will not be enough for stepping down the President of the Municipal Council by initiation of process of recall under the provisions of Section 47 of the Act. On the other hand, if the proposal of recall is not acceptable to the electors and they vote against it, the said proposal would be turned down and the elected President will continue on the post till completion of the term of office. This being a special feature, the President of the Municipal Council cannot be termed as a Councillor in any manner after the amendment in the Act. Earlier the No Confidence Motion was moved against a President, who was elected by the elected Councillors themselves and who was one of them. Therefore, the proposition of law laid-down by the Division Bench of this Court in the case of *Laxmi Narayan Garg* (supra) would not be attracted at all in the present situation after the change of law.

20. The interpretation of the provisions of Section 47 of the Act have to be done to ascertain what was the intention of the Legislature to prescribe three-fourth of the total number of elected Councillors, as is mentioned in the proviso to sub-section (1) of Section 47 of the Act. The simple interpretation of total number of the elected Councillors would mean the available elected Councillors and not otherwise the total strength of the elected Councillors constituting the Municipal Council for the simple reason that had it been so, instead of mentioning the total number of elected Councillors, it would have been specifically mentioned by the Legislature the total strength of the elected Councillors constituting the Municipal Council. Therefore, it has to be held

that total number of the elected Councillors available on the date of signing of the proposal would be taken into consideration and on the basis of that calculation, the three-fourth strength of the said elected Councillors is to be worked out. Having said so, now it has to be examined whether the proposal as was made was in consonance to the provisions of Section 47(1) of the Act or not.

21. Reliance is placed by learned senior Counsel for the petitioner in the case of *Madan Lal Narvariya vs. Smt. Satya Prakash Parsedia and others*, [2008(4) MPLJ 316] and it is contended that the satisfaction of the Collector as prescribed in sub-section (2) of Section 47 of the Act means personal satisfaction of the Collector concerned and it has a much higher degree, therefore, mechanically proposal was not to be sent to the State Government. The distinction between the case in hand and case of *Madan Lal Narvariya* (supra) is that the Collector in the case of *Madan Lal Narvariya* (supra) has approved the decision taken by his subordinate, who verified the documents of Councillors, who have made proposal for recall of the President in that Municipal Council whereas in the case in hand, the Collector himself has recorded the satisfaction with respect to verification of documents, eligibility of the Councillors and their intention of making proposal for recall of the petitioner by verifying their signatures on the said proposal. The Joint Collector has simply witnessed such proceedings and did nothing else. Therefore, it cannot be said that the Collector has not personally satisfied himself with the intention of making of proposal for recall of the petitioner by the elected Councillors and as such the submission made by learned senior Counsel for the petitioner is not to be accepted at all. Further reliance is placed by learned senior Counsel for the petitioner in Full Bench decision of this Court in the case of *State of M.P. and another vs. Mahendra Kumar Saraf*, [2005(3) MPLJ 578] contending inter alia that the requirement is that signing the proposal has to be verified by the Collector as the State Government is nothing but required to forward the proposal to the State Election Commission like a Postoffice after its receipt from the Collector. For the reasons and finding recorded herein above, such submission is not acceptable as the correctness of signing of the proposal was tested by the Collector himself as has been held by this Court after perusal of the original record produced before it.

22. It is submitted on behalf of learned senior Counsel for the petitioner

that even if it is taken for the sake of arguments that total strength of elected Councillors of Municipal Council was 30, even then when the proposal was made, one of the Councillor signing proposal was ineligible as he has already suffered a decision against him in the election dispute before the Election Tribunal and the interim stay granted by this Court was not in operation. Thus, the contention raised by learned senior Counsel for the petitioner is that such a person was ineligible and if his number is excluded, there would be only 22 elected Councillors available to sign the proposal to recall the petitioner and that would be short of total strength of three fourth elected Councillors and, thus, the proposal was not to be forwarded at all. Main emphasis has been placed on the interim order passed by this Court in Civil Revision No.64/2014, which order was passed with a condition that the same was to remain in force **till the next date of hearing**. It is the contention that the interim order was passed on 10.02.2014. The matter was again posted on 06.05.2014 on which date the interim order was made to remain continue again till the next date of hearing. On 04.07.2014 since the Advocates were adjusted, the matter was adjourned and the interim order was not extended. As a result, there was no interim order after 04.07.2014 and the said person namely Deepak Kumar Soni was not authorized to sign the proposal of recall of the petitioner as made on 08.09.2014. It is, thus, contended that there would be only 22 elected Councillors available on that date and three-fourth of the total elected Councillors would mean more than 22 elected Councillors and as such the proposal was not to be forwarded. For the purposes of rounding off, learned senior Counsel has relied in the case of *State of U.P. and another vs. Pawan Kumar Tiwari*, AIR 2005 SC 658.

23. First of all the submissions made by learned senior Counsel for the intervenor in respect of continuance of interim stay is required to be tested and it is to be examined whether the said stay was continuing on the date when the proposal was made or not. It is the contention of learned senior Counsel for the intervenor that the interim stay has to be vacated specifically if an order is passed to the effect that interim stay would remain in operation till the next date of hearing. Placing reliance in the Division Bench decision in the case of *Kunal Kanti Majee vs. Chancellor, Rani Durgawati Vishwavidyalaya, Jabalpur and others*, [2008(1) MPLJ 577], it is contended that unless an interim stay is specifically vacated, it will remain in operation. Reading paragraph 18 of the aforesaid decision, it is contended that there is a distinction between the quashment of an order and stay of an

order. The stay of an order will remain effective from the date of its passing and if the action in terms of the order sought to be stayed has been taken, the said action is not required to be interfered with as the doctrine of relation back does not come to play to an executed order. However, there was no execution of the order passed in respect of the said intervenor as after the decision in the election petition against him, the seat was not declared vacant by the competent authority nor any action was taken for filling the said seat. Further placing reliance in the case of *Mahadev Govind Garge and others vs. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka*, (2011) 6 SCC 321, it is contended that the date of hearing is to be only when the Court applies its mind and it should not be confused with the expression step in the proceedings. Since there was no application of mind on the date when the Civil Revision filed by said Councillor was adjourned on 04.07.2014, there was no vacation of interim stay as the same was made to remain in operation **till next date of hearing.**

24. After giving thoughtful consideration and looking to the law laid-down by the Apex Court, one thing is clear that though an interim stay was granted by this Court in the case of the said Councillor, by name Deepak Kumar Soni in Civil Revision No.64/2014, but the said interim stay was not vacated specifically. On 04.07.2014 for the reasons of non-availability of the Counsel, the case was simply adjourned and there was no hearing which had taken place. Precisely this is what the ratio of the law laid-down by the Apex Court in the case of *Mahadev Govind Garge* (supra) in paragraphs 39 to 42 of the report, which reads thus :

“39. First and foremost, we must explain what is meant by ‘hearing the appeal’. Hearing of the appeal can be classified in two different stages; one at the admission stage and the other at the final stage. Date of hearing has normally been defined as the date on which the court applies its mind to the merits of the case. If the appeal is heard *ex parte* for admission under Order XLI Rule 11 of the Code, the Court could dismiss it at that very stage or admit the same for regular hearing. Such appeal could be heard in the presence of the other party at the admission stage itself, particularly, in cases where a caveat is lodged by the respondent to the appeal.

40. The concept of ‘hearing by the Court’, in fact, has common

application both under Civil and Criminal jurisprudence. Even in a criminal matter the hearing of the case is said to be commenced by the Court only when it applies its mind to frame a charge etc. Similarly, under civil law also it is only when the Court actually applies its mind to averments made by the party/parties, can it be considered as hearing of the case.

41. This Court in *Siraj Ahmad Siddiqui v. Prem Nath Kapoor* while dealing with the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, referring to the concept of first hearing, held as under : (SCC p.412, para 13)

"13. The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

42. The date of hearing must not be confused with the expression 'step in the proceedings'. These are two different concepts of procedural law and have different connotation and application. What may be a 'step in the proceeding', essentially, may not mean a 'hearing' by the Court. Necessary ingredients of 'hearing' thus are application of mind by the court and address by the party to the suits."

Therefore, in the considered opinion of this Court, the stay was in operation and the said Councillor was competent to sign the proposal for recall of the petitioner.

25. Even otherwise if such analogy is not applied, since it has already been held herein above that the petitioner was not to be treated as elected Councillor, there would be only 29 elected Councillors, who were available and from amongst them, 22 have signed the proposal for recall of the petitioner,

if one Councillor is excluded from amongst 23 elected Councillors, who have signed the proposal. The available Councillors who have signed the proposal for recall of the petitioner were in fact just more than three-fourth of the elected Councillors. In that case, the requirement was only of 21.75 and rounding off in terms of the law laid-down by the Apex Court in the case of *Pawan Kumar Tiwari* (supra), the figure would reach to 22 elected Councillors and accordingly those Councillors have signed the proposal for recall of the petitioner. In that circumstances as well, the proposal sent by the Collector against the petitioner for her recall, as made by the elected Councillors, cannot be said to be bad in law. Such a finding is further fortified by a Division Bench decision of this Court in the case of *Kamal Kant Bhardwaj vs. State of Madhya Pradesh and others*, W.A. No.663/2014, decided on 25.08.2014. This has been held by this Court that in case the procedure is properly followed and if it is found that the requirement of law was satisfied, interference in such an action is not called for.

25. In the totality of the circumstances and specially after the perusal of the original proceedings, this Court finds no error of law in making proposal for recall of the petitioner. Consequently, the writ petition fails and is hereby dismissed. However, there shall be no order as to costs.

Petition dismissed.

I.L.R. [2015] M.P., 3235

WRIT PETITION

***Before Mr. Justice A.M. Khanwilkar, Chief Justice &
Mr. Justice K.K. Trivedi***

W.P. No. 198/1999 (Jabalpur) decided on 6 August, 2015

MANSUKH LAL SARAF

...Petitioner

Vs.

ARUN KUMAR TIWARI & ors.

...Respondents

Constitution - Article 226 - Writ of quo warranto - Respondent no. 1 was appointed on daily wages and subsequently his services were regularized - Order of regularization of services was quashed by High Court therefore, the respondent no. 1 was deemed to be daily wage employee - Thereafter, the respondent no. 1 was appointed on the post of Sub-Engineer on regular basis, on the recommendations of the Chief Minister without following the selection process as specified in M.P.

Municipalities Act or recruitment Rules - Procedure to be followed for making appointments on civil post, is that, it is not only a matter of moment for administration but for affording equal and fair opportunity to aspiring candidates for being considered for appointment - Appointment of respondent no. 1 quashed - Directions issued for initiating action against those who were instrumental to the illegal appointment of respondent no. 1 - Chief Secretary also directed to enquire into whether any employee has been or was appointed on regular basis without following selection process prescribed in relevant rules and to proceed against all such persons - Chief Secretary must then initiate necessary proposal for revocation of illegal appointments - Petition allowed. (Para 52)

संविधान - अनुच्छेद 226 - अधिकार पृच्छा की रिट - प्रत्यर्थी क्र. 1 दैनिक वेतन पर नियुक्त हुआ था और बाद में उसकी सेवायें नियमित कर दी गईं - सेवा के नियमितीकरण का आदेश उच्च न्यायालय द्वारा अभिखंडित किया गया, इस कारण प्रत्यर्थी क्रमांक 1 को दैनिक वेतन भोगी कर्मचारी माना गया - तत्पश्चात्, नगरपालिका अधिनियम या भर्ती नियम की विनिर्दिष्ट चयन प्रक्रिया अपनाये बिना मुख्यमंत्री की अनुशांसा पर प्रत्यर्थी क्रमांक 1 को नियमित रूप से उप अभियंता के पद पर नियुक्त किया गया था - सिविल पद पर नियुक्तियाँ करने हेतु अपनाये जाने की प्रक्रिया यह है कि यह न केवल प्रशासन के लिये आवश्यक विषय है बल्कि नियुक्ति के लिये विचार किये जाने हेतु पदाभिलाषी अभ्यर्थियों को समान एवं उचित अवसर प्रदान करने के लिये भी है - प्रत्यर्थी क्रमांक 1 की नियुक्ति अभिखंडित - प्रत्यर्थी क्रमांक 1 की अवैध नियुक्ति में सहायता करने वालों के विरुद्ध कार्यवाही आरंभ करने हेतु निदेश जारी किये गये - मुख्य सचिव को भी यह जांच करने के लिये कि क्या किसी कर्मचारी को सुसंगत नियमों में विहित चयन प्रक्रिया का पालन किये बिना नियमित आधार पर नियुक्त किया गया है अथवा किया गया था और ऐसे सभी व्यक्तियों के विरुद्ध कार्यवाही करने के लिये निदेशित किया गया - मुख्य सचिव को तब अवैध नियुक्तियों के निरसन के लिये आवश्यक प्रस्ताव रखना चाहिये - याचिका मंजूर।

Cases referred :

(2013) 1 SCC 501, 2005 (4) MPLJ 424, (2009) 5 SCC 65, 1993 Supp (3) SCC 575, (2014) 7 SCC 416, (1993) 2 SCC 703, (2006) 11 SCC 42, (1996) 7 SCC 118, (2006) 11 SCC 356.

Vibhudhendra Mishra, for the petitioner.

Samdarshi Tiwari, Dy. A.G. for the respondents No. 2 to 4.

J U D G M E N T

The Judgment of the Court was delivered by :
A.M. KHANWILKAR, C.J. :- This *pro bono publico* petition, under Article 226 of the Constitution of India, for a writ of *quo warranto*, raises questions regarding the appointments made on the public posts in illegal and arbitrary manner in the State of Madhya Pradesh, resulting in denial of opportunity of employment to the eligible persons.

2. According to the petitioner, the impugned appointment of respondent No.1 on the post of Sub-Engineer in the Water Resources Department of the State Government, is a classic case of not only arbitrary action of persons involved in the decision making process of having bestowed undue favour on the respondent No.1 but also nullifying or defying the order passed by this Court in the previous litigation regarding the appointment of respondent No.1 in the same manner elsewhere.

3. In brief, the facts of the case are that the respondent No.1 was initially appointed on daily wages in the service of Nagar Panchayat, Mauganj, District Rewa. His appointment as daily rated employee on the post of Sub Engineer, made in the year 1990, was against the statutory provisions of the rules governing those services in the Nagar Panchayat. The State Government in exercise of its powers vested under the provisions of the Madhya Pradesh Municipalities Act, 1961, framed rules known as Madhya Pradesh Municipal Services (Scale of Pay and allowances) Rules, 1967. Under the said Rules, the posts were classified. Under the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968, wherein provision has been made for making direct recruitment on the post sanctioned in any Municipal Council/Nagar Panchayat. The method of recruitment prescribed therein did not contemplate appointment on daily wage basis.

4. Be that as it may, the persons in power went on to regularize the appointment of respondent No.1 on the post of Sub Engineer by an order dated 03.04.1995. That order was passed, purportedly, on the basis of some recommendation made by the Selection Committee said to have been constituted, vide minutes dated 28.03.1995. The petitioner, who was the elected Councillor of Nagar Panchayat, Mauganj at the relevant time, therefore, approached this Court to challenge the order of regularization of respondent No.1 herein by way of W.P. No.2673/1995. It was specifically alleged that

the order of regularization issued in favour of the respondent No.1 was in utter breach of the law and the rules framed therefor, and that the recommendation made by the Committee was in gross violation of the rules and the prevailing instructions of the State Government.

5. The said writ petition was heard by a single Bench of this Court and by order dated 11.09.1997, the Court held that the selection procedure followed, preceding the regularisation of respondent No.1, was *de hors* the rules. From the finding recorded by this Court in the said case, it is abundantly clear that from day one the appointment of respondent No.1 in the service was against the law, as observed in paragraphs 5 and 6 of the order passed by this Court, which reads thus :

“5. From a perusal of the proceedings of the selection committee, this Court finds that the authorities of the State and the Nagar Panchayat have patently shown favouritism to respondent no.2. Although the respondent no.2 did not fulfill the requisite minimum prescribed period of service, the Directorate issued a letter for his regularisation and the selection committee of the Nagar Panchayat immediately obeyed those directions. When such orders of regularisation are obtained by approach and favouritism, public interest suffers because eligible candidates who could compete for the post lose chance of employment. The petitioner was appointed as daily rated Sub Engineer only in the year 1990. If he was working against a sanctioned post, the post was required to be advertised for regular recruitment to enable eligible candidates to compete for the post along with respondent no.2. The Govt. circulars on subject of regularisation which have been made applicable to local authorities did not permit consideration of respondent no.2 as he was not in continuous service since 1988 had not completed ten years of service on the post as daily rated employee. No letter of recommendation, therefore, could have been issued by the Directorate of Local Administration and on that basis no appointment could have been made by regularising the services of respondent no.2. Merely because the petitioner is not himself an aspirant for any appointment but is only an elected coucillor, the Court cannot dismiss the petition on the

alleged ground of locus standi. In this case, the Court has come to a conclusion that the regularisation of the respondent no.2 is against recruitment rules framed under the M.P. Municipalities Act and Govt. circulars on regularisation. No rule or circular has been brought to the notice of the Court which provides for relaxation of the prescribed period of service, either by the State authorities or by the authorities of the Nagar Panchayat.

6. Consequently, the petition succeeds and is hereby allowed. The impugned proceedings of the selection committee contained in the minutes dated 28.3.1995 (Annexure-P/7) and the consequent order of regularisation of the petitioner's services dated 6.4.1995 by the Nagar Panchayat as also the order dated 3.4.1995 giving approval to his appointment by the Joint Director, Local Administration, Bhopal are all hereby quashed. It is directed that the respondent no.2 be continued in service only as a daily rated employee. The post against which the respondent no.2 was regularised be now advertised for recruitment through open competition in accordance with the recruitment rules and the provisions of M.P. Municipalities Act. Let the necessary advertisement be issued within three months from the date of this order. Along with other eligible candidates, the respondent no.2 be also given opportunity to compete for the post. Let the formalities for making regular appointment as per the rules be completed within outer limit of six months. Since the petitioner has brought a just and rightful cause in this Court, he shall also be entitled to get costs of this petition, which is assessed at Rs.1000/- to be paid in equal proportion by respondent no.1 State of Madhya Pradesh in the concerned department, respondent no.2 Arun Kumar Tiwari and respondent no.4-Nagar Panchayat, Mauganj."

6. As a result of the High Court order, of quashment of regularization of respondent No.1, he was deemed to be a daily wage employee with the Nagar Panchayat, Mauganj and was not entitled to any other benefit whatsoever. However, on 21st May, 1998, the respondent No.1 was favoured by appointing him in the Government department of Local Government

Department. That order reads thus :

“कमांक 332800/64/98

कार्यालय प्रमुख अभियंता

जल संसाधन संभाग म0प्र0 भोपाल, दिनांक 21.5.98

आदेश

म0प्र0 शासन जल संसाधन विभाग के कमांक एफ05-24/97/पी/31 दिनांक 21 मई 1998 के अनुसार श्री अरुण कुमार तिवारी, आत्मज श्री उग्रभान प्रसाद तिवारी, दैनिक वेतन भोगी, स्थानीय शासन विभाग, भोपाल की विशेष प्रकरण मानकर सेवा भर्ती नियमों को शिथिल कर जल संसाधन विभाग में उपयंत्री [नाम] के पद पर नियुक्ति दिये जाने के आदेश प्रसारित किये गये। तदनुसार श्री अरुण कुमार तिवारी आत्मज श्री उग्रभान प्रसाद तिवारी की मध्यप्रदेश तृतीय श्रेणी तकनीकी [कार्यपालिक] सेवा में उपयंत्री श्री [नाम] के पद पर वेतनमान रु05000-150-8000 तथा शासन द्वारा घोषित महगाई भत्ते एवं अन्य भत्ते में कार्य ग्रहण करने के दिनांक से आगामी आदेश तक अस्थाई रूप से स्थापन्न रूप से निम्नांकित शर्तों के अधीन नियुक्त किया जाकर उनके नाम के समक्ष दर्शाए गए मुख्य अभियंता की संरचना में पदस्थ किया जाता है।

स0क0 नाम एवं पिता का नाम कार्यालय जिनके अधीन पदस्थ किया जाता है।

1- श्री अरुण कुमार तिवारी मुख्य अभियंता, गंगा कछार रीवा आत्मज श्री उग्रभान प्रसाद तिवारी के अधीन जल संसाधन उप संभाग व्योहारी

1- आदेश प्राप्त होने के 30 दिवस के अन्दर कार्य ग्रहण करना अनिवार्य है, यदि समयावधि में अभ्यर्थी कार्य ग्रहण नहीं करेंगे तो नियमित आदेश निरस्त माना जावेगा।

2- कार्य ग्रहण करने के पूर्व निम्नांकित प्रमाण पत्र व पत्रक जिला कार्यालय में अभ्यर्थी कार्यग्रहण करेंगे, उस कार्यालय प्रमुख को प्रस्तुत करना अनिवार्य है।

अ- सम्बंधित जिले के प्रमुख चिकित्सक के स्वास्थ्य परीक्षण प्रमाण पत्र।

ब- चरित्र एवं पूर्ववत चरित्र सत्यापन का पत्रक पूर्ण करके (परिशिष्ट संलग्न)

स- शैक्षणिक योग्यता डिप्लोमा प्रमाण पत्र एवं जन्मतिथि का प्रमाण पत्र।

मूल रूप से मय एक-एक सत्यप्रतिलिपि के सत्यापन के पश्चात् मूल प्रमाण पत्र वापिस कर दिये जायेंगे।

द- कार्यग्रहण सूचना (परिशिष्ट संलग्न)

ई- मध्यप्रदेश का मूल निवासी प्रमाण पत्र (परिशिष्ट संलग्न)

3- चरित्र एवं पूर्ववत् सत्यापन में निर्धारित प्रपत्र में जानकारी कार्यग्रहण सूचना के साथ प्रस्तुत करना अनिवार्य है।

4- अभ्यर्थी को कार्यग्रहण करने के तुरन्त बाद संलग्न प्रपत्र में अस्थायी सेवा घोषणा पत्रक भरकर प्रस्तुत करना अनिवार्य है (परिशिष्ट संलग्न)

5- उनकी नियुक्ति नियमित स्थापना में कार्य ग्रहण करने के दिनांक से मानी जावेगी।

6- यदि अभ्यर्थी सेवा त्यागना चाहते हैं तो एक माह का नोटिस अथवा एक माह का वेतन एवं भत्ते देकर सेवा त्याग सकते हैं अथवा शासन द्वारा भी उन्हें एक माह का नोटिस अथवा एक माह के वेतन भत्ते देकर सेवा से निकाला जा सकता है।

7- कार्य ग्रहण करने हेतु यात्रा भत्ता की पात्रता नहीं होगी।

8- अभ्यर्थी को वर्क्सडिपार्टमेंट मेन्युअल भाग-1 के पैरा 1-005 एवं 1-0056 के अनुसार लेखा एवं यांत्रिकी परीक्षा 3 वर्ष के अन्दर उत्तीर्ण करना अनिवार्य है, अन्यथा शासकीय सेवा से हटाया जा सकता है।

9- उपरोक्त अभ्यर्थी की तकनीकी शैक्षणिक योग्यता एवं जन्मतिथि आदि की जानकारी का परीक्षण इस कार्यालय द्वारा नहीं किया गया है अतः कार्य ग्रहण सूचना मान्य करने से पूर्व शैक्षणिक योग्यता/तकनीकी योग्यता/जन्मतिथि आदि का पूर्ण परीक्षण मुख्य अभियंता गंगा कछार द्वारा किया जायेगा उसके पश्चात् ही कार्य ग्रहण प्रतिवेदन मान्य होगा। किसी भी प्रकार की त्रुटि होने पर कार्यग्रहण सूचना मान्य न की जाकर प्रकरण इस कार्यालय को भेजा जावे।

हस्ता/-

(व्ही0 एल0 वर्मा)

प्रमुख अभियंता जल संसाधन

पृष्ठांकन क0 3322800/64/98

भोपाल, दिनांक 21.05.98”

Challenging this order, the present writ petition has been filed by the petitioner. The reliefs, claimed in the present writ petition, are as under:

“That the petitioner prays :

- (i) That the order No.F-5-24/97/P/31 dated 21/5/98 passed by respondent No.2 be quashed by issuing writ of quo warranto.
- (ii) That order No.3322800/64/99 dated 21/5/98 passed by the respondent No.3 and order No.9380/Stha/8-5-K-93 dated 26/5/98 passed by the respondent No.4 be quashed.
- (iii) That the State be directed not to appoint the respondent No.1 on any other regular post without justified reasons.
- (iv) Any other relief which deem fit and proper this Hon'ble Court may also kindly be issued alongwith cost of the petition.”

7. This Court, however, vide order dated 22.01.1999 directed to convert this petition into PIL. The said order reads thus :-

“The petition appears to be in the nature of Public Interest Litigation against the alleged favouritism done to respondent No.1 in accommodating him in Government service after his appointment in municipal services was set aside by this court in WP. 2673/95 decided on 11-9-97 which was a petition filed by the present petitioner.

The petitioner is granted a weeks' time to convert this petition into a PIL and place before the appropriate Division Bench.”

The writ petition was admitted on 01.10.2002, with a direction to issue notice to respondent No.1. The order-sheets indicate that the respondent No.1 was not served, therefore, *Dasti notice* was issued to respondent No.1, vide order dated 30th April, 2010. It appears that *Dasti notice* could not be served on respondent No.1 and for that reason this Court directed service of notice on respondent No.1 through the Secretary of the Department of Water Resources and thereafter the matter was to proceed for hearing. In terms of order dated 20.01.2011, action was taken for service of notice on respondent No.1 and a note has been made that the respondent No.1 was duly served (as noted on 13.05.2011), but was not represented. Thereafter, the matter proceeded for

hearing on several occasions and as it was noticed that no counter affidavit has been filed by the respondents, on the prayer made by the counsel for the State, opportunity was granted to do so. When the matter was heard on 15.04.2014, this Court observed thus :

“Shri Vibhudendra Mishra, Advocate for the petitioner.

Shri S.D. Tiwari, G.A. for the respondents-State.

Grievance in this petition, filed as back as in the year 1999, is to question the regular appointment of respondent no.1 against the post of Sub Engineer vide order dated 21/5/1998. For, the same has been in utter disregard of the decision of this Court in W.P. No.2673/1995 dated 11/9/1997 setting aside regularization order of respondent no.1 and appointing him as Sub Engineer.

This Court plainly noted that respondent no.1 could not be regularized and, at best, could be permitted to participate in the selection process pursuant to public advertisement issued in that behalf.

According to the petitioner, admittedly, soon thereafter respondent no.1 has been appointed in some other department without following the norms and, in particular, issuing public advertisement to fill up the post on which he has been appointed on regular basis.

Respondent no.1 has not chosen to file any reply affidavit nor the department has filed any reply affidavit to counter the assertions made in this petition.

On the basis of un-controverted facts, this petition ought to succeed. Nevertheless, by way of indulgence, we give last opportunity to learned counsel for the State to file reply in this petition, if so advised, on or before 28/4/14, failing which this petition shall proceed further.

Be listed under caption “Top of the List” in the daily Board on 28/4/14.

We place on record that the Court, while allowing the petition, may not only direct setting aside of the order appointing respondent no.1 on regular basis, but also further order to proceed against the persons responsible for taking such untenable decision to circumvent the order of this Court.

Original record pertaining to impugned appointment of respondent no.1 shall be kept ready for perusal of the Court on the next date of hearing.”

8. Lateron, return was filed by the respondents on 18th June, 2014. Nothing much has been said in the return except that the order of appointment of respondent No.1 was issued because of the recommendation made by the then Chief Minister of the State in the year 1997, which decision was duly placed and approved by the Cabinet of Ministers on 5th May, 1998. It is thus contended that no case has been made out for interference by this Court in exercise of its extraordinary jurisdiction in the matter of appointment of respondent No.1. At the cost of repetition, it is to be reiterated that respondent No.1 has not filed any return, nor has chosen to appear though duly served.

9. During the course of hearing, the State was directed to produce the original record pertaining to the appointment of respondent No.1. As per the direction, photocopy of the original record has been produced before us. We have examined the said record and heard learned Counsel for the parties at length.

10. The foremost question is: whether in the given circumstances the respondent No.1 could have been appointed in the manner he has been appointed; and whether the appointment so made can be said to be within the framework of the rules or the law?

11. It is noticed from the original record produced before us that, without there being any application by the respondent No.1, on his own, the then Chief Minister made a note purportedly on 27.09.1997, which has been annexed with the return and relevant part of which reads thus :

“श्री अरुण कुमार तिवारी, उपयंत्री, स्थानीय शासन विभाग कार्यालय, उप संचालक, नगर प्रशासन रीवा में पदस्थ हैं। इनका संविलियन उप यंत्री के पद पर सिंचाई विभाग में किया जाता है। संविलियन आदेश मंत्रिपरिषद की स्वीकृति की प्रत्याशा में इनकी पदस्थापना कार्यालय, मुख्य अभियंता गंगा कछार रीवा में की जाती है। आदेश प्रसारित करें।

Sd/-

27/9

[दिग्विजय सिंह]

मुख्यमंत्री

मध्यप्रदेश शासन”

12. Notably, the process for appointment of respondent No.1 in the Government Department was ignited with the direction issued by the then Chief Minister; and not because of any proposal submitted by the concerned Department. Moreover, no reference is made to the decision of this Court in W.P.No:2673 of 1995 dated 11.09.1997, which was in public domain, of having quashed the regularisation of service of respondent No.1 in the Nagar Panchayat and directing to continue him in service only as a daily rated employee until the regular appointment was made through open competition as per the recruitment rules and M.P. Municipalities Act. The impugned appointment obviously nullified the effect of Court's order against the respondent No.1. Significantly, direction was issued by the then Chief Minister in just about two weeks after the decision of the High Court dated 11.09.1997, which raises a strong presumption about the close proximity of respondent No.1 with the then Chief Minister, who exercised no restraint in directing appointment of respondent No.1 in the teeth of mandatory procedure prescribed in the relevant Rules and also in complete disregard of the order of the High Court, only to favour the respondent No.1. There can be no other reason as to why the Chief Minister of the State would go out of the way to make such appointment on his own.

13. Be that as it may, a bare reading of the aforesaid note makes it amply clear that neither any application was submitted by the respondent No.1 nor the sanction of the Governor was obtained to relax the stipulations prescribed in the recruitment rules. In fact, such relaxation was not permissible. Further, the status of respondent No.1 has been wrongly mentioned as an employee serving in the Local Government Department, for the reasons best known to the then Chief Minister. Whereas, the respondent No.1 at the relevant time was working only as a daily rated employee on the post of Sub-Engineer of Nagar Panchayat Mauganj, District Rewa and not on regular establishment in terms of order of the High Court dated 11.09.1997 in W.P.No.2673/1995 until the regular appointment was to be made. On such misdescription, straightway direction was issued to appoint respondent No.1 on the post of Sub-Engineer in the Government Department.

14. The abovesaid instructions dated 27.09.1997 issued by the then Chief Minister, on a note-sheet, was sent to the department for taking follow up action. Significantly, the Under Secretary of the Local Government Department made a noting, pointing out the fact that no objection certificate is being issued

by the department but since the order of regularization of the person concerned (respondent No.1) was set aside by the High Court, this fact be taken note of. From the record it is clear that the fact that respondent No.1 was appointed on daily wages in the year 1990, was made known to all concerned. Instructions were given to get relevant information from the Director, Urban Administration - as the earlier order of regularization issued by the Director, Urban Administration on 03.04.1995 was already quashed by the High Court. Such instructions were issued on 25.10.1997, to obtain status report of the said employee (respondent No.1). The fact relating to the order passed by this Court in the earlier writ petition on 11.09.1997 was also recorded in the note, with a suggestion to examine whether appointment of respondent No.1, in view of the aforesaid quashment of his earlier regularization, was possible or not.

15. The note-sheet further indicates that while the matter was to be placed before the Cabinet of Ministers, relevant notings were brought to the notice of the Deputy Secretary of the then Chief Minister vide communication dated 28th October, 1997, with a request to bring the relevant facts to the notice of the then Chief Minister. Notably, prior to this date certain note-sheets were moved to indicate that since the respondent No.1 was appointed on daily wages, he cannot be appointed directly. However, no rules under which appointment of respondent No.1 in the Government Department was permissible, have been pointed out in the entire note-sheet. Further, as the then Deputy Chief Minister was incharge of Ministry of Department of Water Resources, all these facts were brought to his notice with a specific noting that appointment of persons like respondent No.1 was not possible on regular basis in the department as he was only a daily wage employee and in terms of the policy made by the State, appointees after 31st December, 1988 could not be absorbed in service. The Minister incharge concurred with that noting and also noted that these facts be brought to the notice of the then Chief Minister. It was also suggested that relevant facts be brought to the notice of the Cabinet as well. However, nothing more is available in the note-sheets after this - except that the regular Cabinet meeting was not held, and the approval to the proposal was given by the Cabinet by circulation and thereafter the impugned order of appointment of respondent No.1 was issued, in terms of the directions issued by the then Chief Minister. The note-sheet regarding the decision taken by the Cabinet of Ministers on 5th May, 1998 reads thus :-

F 5/24/97/P/31

“पूर्व पृष्ठ से :

मंत्रि-परिषद आदेश

आयटम क्रमांक 8 दिनांक 5 मई 1998

विषय : श्री अरुण कुमार तिवारी उपयंत्री, स्थानीय शासन विभाग का जल संसाधन विभाग में संविलयन करना

निर्णय लिया गया कि श्री अरुण कुमार तिवारी उपयंत्री, (दैनिक वेतन भोगी), स्थानीय शासन विभाग को संबंधित भर्ती नियमों को शिथिल कर, जल संसाधन विभाग में उपयंत्री के पद पर नियुक्त किया जाए ।

सचिव,
जल संसाधन विभाग

(के. एस. शर्मा)
मुख्य सचिव
5 मई, 1998”

16. It will not be out of place to mention that continuous monitoring of the proposal was done by the then Chief Secretary as is indicated in the note-sheet dated 24.10.1997, presumably under dictation of the then Chief Minister.

17. The fact which may have some bearing on the issue on hand, as noticed from the note-sheet dated 22.12.1998, is that, note-sheet was moved that the previous service of respondent No.1 should be counted or not. Part of the note-sheet moved for this purpose is reproduced for ready reference :

“श्री अरुण कुमार तिवारी उपयंत्री जो दिनांक 7.9.90 से नगर पंचायत जिला रीवा में दैनिक वेतन भोगी पद पर उपयंत्री के रूप में कार्यरत थे। मंत्रि-परिषद के अनुमोदन अनुसार शासन के आदेश दिनांक 6.4.95 द्वारा नियमित उपयंत्री के रूप में नियुक्त किया गया तथा प्रमुख अभियन्ता के आदेश दिनांक 21.5.98 द्वारा नियमित उपयंत्री के रूप में अपर सोन जल संसाधन मण्डल शहडोल के अंतर्गत जल संसाधन उप संभाग ब्यौहारी में पदस्थ किया गया। श्री तिवारी द्वारा दिनांक 27.5.98 को स्थानीय शासन से भारमुक्त होकर 28.5.98 को जल संसाधन उप संभाग ब्यौहारी में अपना कार्यभार ग्रहण कर लिया गया।

2. श्री अरुण कुमार तिवारी उपयंत्री की स्थानीय शासन विभाग के अधीन नगर पंचायत जिला रीवा की दैनिक वेतन भोगी के रूप में की गई सेवा की वर्तमान सेवा के साथ निरंतर किये जाने की मांग की गई है।

3. इस संबंध में शासन के कोई स्पष्ट निर्देश उपलब्ध नहीं है, अतः सामान्य :

प्रशासन विभाग को मत प्राप्त करने हेतु प्रकरण प्रस्तुत किया गया था। सामान्य प्रशासन विभाग द्वारा एम/18 पर इस पृच्छा के साथ मत नहीं दिया है कि नियुक्ति के समय सामान्य प्रशासन विभाग से सहमति प्राप्त नहीं की गई थी। चूंकि श्री तिवारी की उपयंत्री के पद पर नियुक्ति के समय सामान्य प्रशासन विभाग से कोई सहमति प्राप्त नहीं की गई थी, उक्त स्थिति में पुनः निवेदन किया जाये कि मा० मुख्यमंत्रीजी के निर्देश के परिप्रेक्ष्य में क्या पूर्व सेवा जोड़ने की कार्यवाही की जा सकती है।

तदनुसार प्रकरण सामान्य प्रशासन विभाग को पुनः अंकित करना चाहेंगे।”

The opinion of the General Administration Department recorded on 3rd April, 1999 is of some relevance, which is reproduced below :

“प्रशासकीय विभाग की पूर्व पृष्ठ पर अंकित टीप के संदर्भ में निवेदन है कि विभाग में अतिशेष कर्मचारी उपलब्ध होते हुए भी श्री तिवारी को भर्ती नियमों के विरुद्ध नियुक्त करते समय सामान्य प्रशासन विभाग से परामर्श नहीं किया गया। मंत्रिपरिषद् आदेश के पूर्व सा०प्र०वि० का अभिमत लिया जाना चाहिए था।

विभाग में नियुक्ति से पहले वे शासकीय सेवा में भी नहीं थे। शासकीय सेवा से अन्यत्र की गई दैनिक वेतनभोगी सेवा को शासकीय सेवा में जोड़ने का कोई औचित्य नहीं है।

[अपर मुख्य सचिव द्वारा अनुमोदित]”

18. On the basis of these facts we may now examine whether the appointment of respondent No.1 in the Water Resources Department can be said to be proper and legal? Further, whether that has been done in utter disregard of the order passed by this Court in the earlier writ petition? An incidental issue also arises for consideration as to whether the appointment of respondent No.1 is bordering on criminal misconduct and would attract any penal action?

19. We may first advert to the settled legal position about the scope of writ jurisdiction for issuing a writ of quo warranto. The Supreme Court in the case of *Rajesh Awasthi Vs. Nand Lal Jaiswal & others*¹, in paragraph 19 has expounded thus :-

“19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor*

1. (2013) 1 SCC 501

Modern Coop. Transport Society Ltd. vs. Govt of Haryana held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B.Srinivasa Reddy*, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this court in *Hari Bansh Lal* wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.”

20. We may also usefully advert to the decision of the Division Bench of this Court in the case of *Pushpendra Singh Baghel Vs. State of M.P. and others*², which has dealt with the question that if the appointment on compassionate ground is in violation of the service rules, public interest litigation, challenging such appointment, must be entertained.

21. Although the prayer clause (i) in writ petition is *inter alia*, for issuance of a writ of quo warranto, but the other two substantive reliefs claimed are wider. The same may require issuance of a writ of certiorari and/or mandamus. Moreover, the present petition has already been treated as public interest litigation which may require elaboration of matters on all other relevant aspects for issuance of appropriate writ in larger public interest.

22. We may first examine the question whether the appointment of respondent No.1 is against the statutory provisions. Indisputably, recruitment rules for appointment on the post of Sub-Engineer have been framed in exercise of powers conferred by the second proviso of Article 309 of the Constitution of India, titled as “M.P. Water Resource Department (Non-Gazetted) Service Recruitment Rules, 1969.” These rules have been framed without prejudice to the generality of the provisions contained in the M.P. Civil Services (General Conditions of the Service) Rules, 1961, as predicated in Rule 3. Rule 4 mentions about the Constitution of the service. It postulates that service shall consist of three categories of persons referred to therein. In the present case, the appointment of respondent No.1 having been made on 21.05.1998, the third category mentioned in clause (iii) of Rule 4, will be applicable. It provides for persons recruited to the service “in

accordance with the provisions of these rules”.

23. The question is: whether the appointment of respondent No.1 is in accordance with the provisions of Rules of 1969. Rule 6 provides for the method of recruitment. Rule 6 reads thus :-

“6. Method of recruitment. - (i) Recruitment to the service after commencement of these rules, shall be by the following methods viz. –

(a) by direct recruitment, by Selection/by Competitive Examination as shown in schedule II.

(b) by promotion of substantive /officiating members of the service (as shown in the Schedule IV), and

(c) by transfer of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf.

(ii) The number of persons recruited under clause (b) and (c) of sub-rule (i) of Rule 6 shall not at any time exceed the percentage shown in the Schedule II.

(iii) Subject to the provisions of these rules, the method/ methods of recruitment to be adopted for the purpose of filling any particular vacancy vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method shall be determined on each occasion by the Appointing Authority.

[(iv) Notwithstanding anything contained in sub-rule (1). If in the opinion of the Government the exigencies of the service so require the Government may after obtaining concurrence of the General Administration Department, adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may, by order issued in this behalf, prescribe.”

24. One of the method of recruitment is by direct recruitment, by Selection/by Competitive Examination as mentioned in Schedule II. This is besides the two other methods of recruitment, namely, by promotion and transfer. As per Rule 6, direct

recruitment is permitted by Selection/by Competitive examination. The recruitment by selection is to be done by the Committee constituted for that purpose. Schedule II to the Rules specifies, who should be the member of the departmental selection committee, below column 7, which reads thus :-

SCHEDULE II
(See Rule 6)

Name of Department	Name of Service (i)Category (ii)Description of post	Total Number of duty posts	Percentage of the number of duty posts to be filled in			Name of members of Departmental Selection Committee	Remarks
			By direct recruitment vide Rule 6 (i) (a)	By promotion of substantive members of service vide Rule 6 (i) (b)	By transfer of persons from other service vide Rule 6 (i) (c)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Class-III Technical – Executive

Irrigation Department	Class III	<u>Junior Engineer*</u> 282		Cent			[1. Other Chief
				Percent			<u>Irrigation Department Nominated by E-in-C, Irrigation Deptt – Chairman]</u>
							<u>2. Two Superintendent Engineers Nominated by Engineers -in-Chief - Members</u>
	Do.	Overseer (Select Grade)	23		Cent		Do.
					Percent		
	Do.	Overseer	1776	75%	25%		Do

Substituted vide MPGG Pt IV (Ga) dt. 26-3-71 P.136

*Note : Post of "Junior Engineer" rechristened as "Sub-Engineer".

(emphasis supplied)

25. The other process to be followed for direct recruitment is by conducting competitive examination. Assuming that we were to agree with the submission of the respondents that the appointment of respondent No.1 is ascribable to direct recruitment by selection, the question is: whether the selection was done by following procedure prescribed by law. The answer is an emphatic "No". In that, it is indisputable that the appointment was made pursuant to the direction issued by the then Chief Minister. The argument of the respondents that the decision was taken at the highest level and was a collective decision of the Cabinet of Ministers is of no relevance. The fact that more persons joined hands in perpetrating the illegality or making appointment contrary to the statutory rules, cannot validate the action. One intriguing feature noticed from the note-sheet, is that, the then Chief Minister not only instructed appointment of respondent No.1 but also issued instructions to give posting to the respondent No.1 at a particular place. On account of such instructions issued by the then Chief Minister, the respondent No.1 came to be appointed at Rewa (District Rewa).

26. Notably, no reason is recorded, muchless a special reason as to why the appointment of respondent No.1 was so essential or indispensable, either by the then Chief Minister or by the Cabinet of Ministers, contrary to the prescribed procedure as per the Rules. No contemporaneous noting in that regard is found in the entire record preceding the issuance of the impugned appointment order. In the case of *Pushpendra Singh Baghel* (supra), the Division Bench of this Court has opined that the term 'exigencies of service' refers to a situation where there is an urgent need or necessity to appoint officers to public posts, but such appointment by prescribed mode is not feasible. It would be a different matter if the appointment was on contract basis, but the persons in power disregarding the statutory prescription and in spite of the judgment of the High Court proceeded to make appointment of respondent No.1 on regular basis on a civil post. Indubitably, the people's representatives being law makers cannot act in a manner or consider themselves to be above the law. It is the bounden duty of the elected representatives to administer and govern the State as per the rule of law; and not to show favour to any person or class of persons. That is the oath of office they take before putting on the gauntlet of policy makers and Ministers.

27. We have already alluded to the relevant factual matrix about the circumstances in which the impugned appointment order was issued in favour

of respondent No.1, in the preceding paragraphs. There is nothing to indicate that the respondent No.1 was subjected to “any” process of interview test, which, in any case, is indispensable - even in the matter of selection by the Committee. Nor it is the case of the respondents that the Cabinet of Ministers which considered the proposal for appointment of respondent, by circulation, had taken decision after conducting interview of the respondent No.1. Notably, the expression used in Rule 6 is “shall”. That presupposes that the procedure prescribed in the Rules for selection, is mandatory.

28. Clause (iv) of Rule 6, which opens with a non-obstante clause, does give an impression that if exigencies of service so require, the Government may after obtaining concurrence of the General Administration Department, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as it may, by order issued in this behalf. In the first place, the respondents are not taking support of this provision. Further, this provision was inserted on 10.02.1986. However, neither in the noting made by the then Chief Minister, nor the proposal prepared by the Department any exigency of service at the relevant point of time has been spelt out, which necessitated the Government to dispense with the mandatory selection procedure. The power to be exercised, by virtue of Clause (iv) of Rule 6, is obviously, an exception; and for tangible reasons to be recorded contemporaneously. Since the validity of this provision is not put in issue nor this provision is pressed into service by the respondents, we need not dilate on that provision any further.

29. The consistent view of the Supreme Court in regard to the procedure to be followed for making appointments on civil posts, is that, it is not only a matter of moment for the administration; but is equally significant for the aspiring eligible candidates, for affording equal and fair opportunity to them for being considered for appointment. The Supreme Court has ordained to adopt transparent and fair procedure for making appointments on public posts on regular basis. In the case of *State of Bihar Vs. Upendra Narayan Singh and others*³, the Supreme Court has deprecated the growing bane of “spoils system” evolved in appointments in different departments of the State after independence. After analysing its earlier decisions on that subject, it observed in paras 25, 27, 31, 32, 38, to 42, 44, 45 and 51, thus :-

“25. The equality clause enshrined in Article 16 mandates

that every appointment to public posts or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit - Umesh Kumar Nagpal v. State of Haryana and others [(1994) 4 SCC 138], Union Public Service Commission v. Girish Jayanti Lal Vaghela [(2006) 2 SCC 482], State of Manipur and others v. Y. Token Singh and others [(2007) 5 SCC 65] and Commissioner, Municipal Corporation, Hyderabad and others v. P. Mary Manoranjani and another [(2008) 2 SCC 758]. Although, the Courts have carved out some exceptions to this rule, for example, compassionate appointment of the dependent of deceased employees, for the purpose of this case it is not necessary to elaborate that aspect.

.....

27. For ensuring that equality of opportunity in matters relating to employment becomes a reality for all, Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short 'the 1959 Act'). Section 4 of that Act casts a duty on the employer in every establishment in public sector in the State or a part thereof to notify every vacancy to the employment exchange before filling up the same.

.....

31. The ratio of the above noted three judgments is that in terms of Section 4 of the 1959 Act, every public employer is duty bound to notify the vacancies to the concerned employment exchange so as to enable it to sponsor the names of eligible candidates and also advertise the same in the newspapers having wider circulation, employment news bulletins, get announcement made on radio and television and consider all eligible candidates whose names may be forwarded by the concerned employment exchange and/or who may apply pursuant to the advertisement published in the newspapers or announcements made on radio/television.

32. Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters

relating to employment for appointment to any office under the State, the spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together.

.....

38. With a view to insulate the public employment apparatus in independent India from the virus of spoils system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted a separate part, i.e., Part XIV with the title "Services under the Union and the States". Article 309 which finds place in Chapter I of this part envisages enactment of laws by Parliament and the State Legislatures for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Proviso to this Article empowers the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and the Governor of a State or such person as he may direct in the case of services and posts and in connection with the affairs of State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts till the enactment of law by the appropriate legislature.

39. Article 311 which also finds place in the same chapter gives protection to the holders of civil posts against dismissal, removal or reduction in rank by an authority subordinate to the one by which they are appointed. This Article also provides that an order of dismissal, removal or reduction in rank can be passed only after holding an inquiry and giving reasonable opportunity of hearing to the affected person.

40. The provisions contained in Chapter II of Part XIV relate to Public Service Commissions. Article 315 mandates that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 320(1) casts a duty on the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the State respectively.

41. Clause 3 of Article 320 makes consultation with Union Public Service Commission, or the State Public Service Commission, as the case may be mandatory on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers, on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India; or, as the case may be, out of the Consolidated Fund of the State, on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award. This clause also casts a duty on the Public Service Commissions to advise on any matter referred to them by the President or the Governor.

42. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get

equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades. The Public Service Commissions which have been given the status of Constitutional Authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoil system.

.....

44. The scenario is worst when it comes to appointment to lower strata of the civil services. Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution.

45. Thousands of cases have been filed in the Courts by aggrieved persons with the complaints that appointment to Class III and Class IV posts have been made without issuing any advertisement or sending requisition to the employment exchange as per the requirement of the 1959 Act and those who have links with the party in power or political leaders or who could pull strings in the power corridors get the cake of employment. Cases have also been filed with the complaints that recruitment to the higher strata of civil services made by the Public Service Commissions have been affected by the virus of spoil system in different dimensions and selections have been made for considerations other than merit.

.....

51. Notwithstanding the critical observations made in *Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and others* (supra) and *State of U.P. and others v. U.P. State Law Officers Association and*

others (supra), illegal employment market continued to grow in the country and those entrusted with the power of making appointment and those who could pull strings in the corridors of power manipulated the system to ensure that their favourites get employment in complete and contemptuous disregard of the equality clause enshrined in Article 16 of the Constitution and Section 4 of the 1959 Act. However, the Courts gradually realized that unwarranted sympathy shown to the progenies of spoil system has eaten into the vitals of service structure of the State and public bodies and this is the reason why relief of reinstatement and/or regularization of service has been denied to illegal appointees/backdoor entrants in large number of cases

- *Director, Institute of Management Development, U.P. v. Pushpa Srivastava* [(1992) 4 SCC 33], *Dr. M.A. Haque and others v. Union of India and others* [(1993) 2 SCC 213], *J & K Public Service Commission and others v. Dr. Narinder Mohan and others* [(1994) 2 SCC 630], *Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and others* [1994 Suppl. (3) SCC 380], *Union of India and others v. Kishan Gopal Vyas* [(1996) 7 SCC 134], *Union of India v. Moti Lal* [(1996) 7 SCC 481], *Hindustan Shipyard Ltd. and others v. Dr. P. Sambasiva Rao and others* [(1996) 7 SCC 499], *State of H.P. v. Suresh Kumar Verma and another* [(1996) 7 SCC 562], *Dr. Surinder Singh Jamwal and another v. State of J&K and others* [(1996) 9 SCC 619], *E. Ramakrishnan and others v. State of Kerala and others* [(1996) 10 SCC 565], *Union of India and others vs. Bishambar Dutt* [1996 (11) SCC 341], *Union of India and others v. Mahender Singh and others* [1997 (1) SCC 245], *P. Ravindran and others v. Union Territory of Pondicherry and others* [1997 (1) SCC 350], *Ashwani Kumar and others v. State of Bihar and others* [1997 (2) SCC 1], *Santosh Kumar Verma and others v. State of Bihar and others* [(1997) 2 SCC 713], *State of U.P. and others vs. Ajay Kumar* [(1997) 4 SCC 88], *Patna University and another v. Dr. Amita Tiwari* [(1997) 7 SCC 198] and *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra*

and others [(2005) 5 SCC 122].”

(emphasis supplied)

30. In the case of *Syed Khalid Rizvi and others Vs. Union of India and others*⁴ while dealing with the rules governing promotion, the Apex Court observed thus :-

“Accordingly we hold that seniority, though normally an incidence to service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable.”

31. Reverting to the Rules of 1969, Rule 7 mandates that all appointments to the service shall be made after selection by one of the methods of recruitments specified in Rule 6. From the circumstances emanating from the record as has been noticed earlier, the appointment of respondent No.1 is not ascribable to the procedure of appointment by direct recruitment, either by selection or by competitive examination. Moreover, it is also not ascribable to having been made in exercise of powers under Clause (iv) of Rule 6.

32. Rule 8 provides for the conditions of eligibility of direct recruitment. It is not known whether this aspect was duly kept in mind by the Appointing Authority, whilst appointing respondent No.1 as sub engineer in the Water Resource Department. We do not intend to dwell upon this issue further, as it is crystal clear from the circumstances available on record that the appointment of respondent No.1 was not as per the selection methods of recruitment specified in Rule 6, but only to favour him. As a matter of fact, the manner in which the respondent No.1 has been appointed by taking favour of the then Chief Minister, renders him disqualified for being appointed, by virtue of Rule 9 of the Rules of 1969. For, it stipulates that any attempt on the part of the candidate in support of his candidature by any means would disqualify him for selection.

33. Rule 10 of the Rules of 1969 envisages that the decision of the Selection Committee/Appointing Authority as to the eligibility or otherwise of the candidate for selection or competing at competitive examination shall be final.

We may now turn to Rule 11 of the Rules of 1969. It mentions about the procedure for direct recruitment by Selection/Competitive Examination. Rule 11 reads thus :-

“11. Direct Recruitment by Selection/Competitive Examination, - (i) Selection for recruitment to the Service shall be held at such intervals as the Appointing Authority may from time to time determine.

(ii) Selection of candidates for the service shall be made by the Selection Committee, after interviewing them. In Class IV posts interview is not necessary.

(iii) (a) A competitive examination for the recruitment of LDC's and 50 per cent of the posts of UDC II shall be held at such interval as the Appointing Authority may from time to time determine.

(b) The examination shall be conducted by the Appointing Authority in accordance with such orders as the Government may from time to time issue.

(iv) 16 per cent and 20 per cent of the available vacancies for direct recruitment shall be reserved for candidates who are members of the Scheduled Castes and Scheduled Tribes, respectively.

(v) In filling the vacancies so reserved candidates who are members of the Scheduled Castes and the Scheduled Tribes shall be considered for appointment in the order in which their names appear in the list referred to in rule 12 irrespective of their relative rank as compared with other candidates.

(vi) Candidates belonging to the Scheduled Castes or the Scheduled Tribes, declared by the Selection Committee to be suitable for appointment to the Service with due regard to the maintenance of efficiency of administration, may be appointed to the vacancies reserved for the candidates, of Scheduled Castes or the Scheduled Tribes as the case may be under sub-rule (4) of this Rule.

[(vii) Selection through interview with competitive examination. – If sufficient number of candidates belonging to the Scheduled Tribes are not available for filling all the vacancies reserved for them, the remaining vacancies shall be re-advertised for the candidates of these categories. If any vacancies remain unfilled after the re-advertisement, the same shall be filled in from general candidates and equal number of additional vacancies shall be reserved for candidates belonging to the Scheduled Castes and Scheduled Tribes in the subsequent selection:

Provided that total number of vacancies for Scheduled Castes and Scheduled Tribes candidates (including the number of carried forward vacancies) shall not exceed 45% of the total number of vacancies advertised.

(viii) Selection through competitive examination. – If the Scheduled Castes and Scheduled Tribes candidates are not available in sufficient number to fill up to reserved vacancies, then the remaining vacancies shall be filled up by other candidates and in the subsequent examination the same number of additional vacancies shall be kept reserved for Scheduled Castes and Scheduled Tribes candidates :

Provided that the total number of reserved vacancies (including carried forward vacancies) shall not exceed 45% of the total vacancies at any time.]”

34. Relying on clause (ii) of this provision, it was contended on behalf of the respondents that even this rule recognizes appointment by direct recruitment, merely after interviewing the candidate. That prescription, however, is in respect of the procedure to be followed by the selection committee. We fail to understand as to how this clause can come to the aid of the respondents, to justify the appointment of respondent No.1, which per se has been made under dictation of the then Chief Minister and not by resorting to the procedure by selection as such. It was also faintly argued by the respondents that the appointment of respondent No.1 was possible by exercising power of relaxation of the Rules as permitted by Rule 20. Rule 20 reads thus :-

“ 20. Relaxation.- Nothing in these Rules shall be construed

to limit or abridge the power of the Government to deal with the case of any person to whom these rules apply in such manner as may appear to it to be just and equitable:

provided that the case shall not be dealt with in any manner less favourable to him than that provided in these Rules.”

(emphasis supplied)

35. On a bare reading of this Rule, it is evident that the power of relaxation can be invoked in relation to a person to whom the rules apply. It is unfathomable as to how the Rules of 1969 would apply to the respondent No.1, when he had not even entered the service and was being considered for appointment on a civil post which could be filled only by the method prescribed in Rule 6 read with the procedure envisaged in Rule 11. Thus, it is not only a case of appointment against the prescribed procedure in the Rules, but one of bestowing favour on respondent No.1. It is also a case of denying opportunity to eligible candidates for being considered and appointed and of abridging Constitutional rights in that behalf.

36. It was then argued on behalf of the respondents that the appointment letter issued to the respondent No.1, was in the name of the Governor. The Cabinet having approved the proposal of appointment of respondent No.1, and the Governor having authorised issuance of appointment letter to respondent No.1, no fault can be found with that appointment. This, to say the least, is an argument of desperation. The people’s representatives, no doubt are law makers but are obliged to follow the prescribed procedure in decision making to uphold the Rule of law. It is well established position by now and for that matter, it was so in vogue in 1995, that when the Rules provide for the procedure to be followed for appointment on any public post(s), it must be strictly followed. Any appointment made dehors the mandate of the prescribed rules, must be treated as nonest; having been made without authority of law and thus, amenable to quashment by issuance of a writ of quo warranto.

37. Our attention was also invited to the circular issued by the under Secretary of General Administration Department dated 06.01.1996 and executive instructions dated 09.04.1995. However, since the appointment of respondent No.1 has been made in earlier point of time, it is not necessary to examine the efficacy of the said circular/executive instructions.

38. We have no hesitation in concluding that the impugned appointment of

respondent No.1 is non-est in law, having been made in the teeth of statutory provisions in the Rules of 1969 applicable to appointments by direct recruitment on the post of Sub-Engineer.

39. We may now turn to the question whether the impugned appointment order dated 21.05.1998 was intended to frustrate the effect of judgment of this Court dated 11.09.1997? Indeed, the appointment of respondent No.1 was not on the same post nor in the same establishment, where he was appointed as daily wage employee on the post of Sub-Engineer of Nagar Panchayat Mouganj, District Rewa and later on regularized on that post which, however, came to be quashed by this Court.

40. Even in the matter of impugned appointment, it is not only about the inappropriate manner of appointment of respondent No.1 as such. What is questionable, is, the approach of the persons in power. For, the then Chief Minister having pursued the cause of respondent No.1 for the reasons best known to him; and that too on the basis of misdescription of status of respondent No.1, issued instructions to his subordinates to take follow up action to favour the respondent No.1. It can be inferred that since the regularisation of respondent No.1 on the post of Sub-Engineer in Nagar Panchayat Mouganj, District Rewa was quashed by this Court in Writ Petition No.2673/1995, which was in public domain, to frustrate the effect of the judgment of the High Court and to guarantee employment to the respondent No.1, the then Chief Minister went out of the way and in utter disregard to the mandatory provisions in the Rules of 1969, issued instructions in just two weeks from the date of order passed by the High Court, on 27.09.1997. That is a clear case of colourable exercise of power, to favour the respondent No.1 and also to undermine the authority of the Court. It is quite possible that because of the proximity with persons in power the respondent No.1 may have succeeded in influencing the officials/elected representatives of the Nagar Panchayat Mouganj, District Rewa, to employ him initially as a daily rated employee on the post of Sub-Engineer (in 1990) and then regularized on that post (in 1995). His regularization, however, came to be quashed by the High Court on 11.09.1997. To frustrate the effect of that judgment, the respondent No.1 must have used the good offices of the then Chief Minister, who readily favoured the respondent No.1 by appointing him on a public post in the department of the State Government, without following procedure established by law. All persons involved in the process of undermining the decision of the High Court must be frowned upon for their misadventure - of frustrating the efficacy of the judgment of this Court dated 11.09.1997; and also for the arbitrary and illegal appointment, to

favour the respondent No.1. This view expressed by us, is reinforced from the exposition of the Supreme Court in the case of *Bihar State Government Secondary School Teachers Association Vs. Ashok Kumar Sinha and others*⁵. In that case, inspite of the decision of the Court, the Government proceeded to promulgate Rules with the sole intention to frustrate the effect of the judgment of the Court, which the Supreme Court, in no uncertain terms, has held that it constitutes contempt of Court. The case on hand, is a brazen attempt of defeating not only the law, but the judicial pronouncement which had declared the regularization of respondent No.1 elsewhere as illegal. That needs to be deprecated firmly.

41. On examination of the record, it is thus amply clear that the order passed by this Court in the earlier writ petition was never implemented in its letter and spirit. The respondent No.1, who was only a daily wager in Nagar Panchayat, Mauganj, could not have taken employment elsewhere in any other service, that too on a civil post of the State. The allegations of nepotism and favouritism made in the writ petition have not been denied. What were the special circumstances in which the respondent No.1 was directly recruited on the public post, have not been indicated. It is nothing but a case of showing special favour to a choiced person by the then Chief Minister. It is not as if the appointment of respondent No.1 was made on contract basis. Thus, the act of the then Chief Minister was nothing but exercise of uncanalized power to favour the respondent No.1 for the reasons best known to him. If the civil post was available for recruitment, it could be filled in only by the process known to law and by providing opportunity to the deserving aspirants in waiting to seek employment in public service.

42. A priori, the repercussion of the impugned order has had far reaching effect. It not only resulted in denial of opportunity to the aspirants in waiting to seek employment on such post, who could be more efficient, eligible, honest and sincere to discharge their duties for development of the State.

43. Suffice it to observe that there are clinching circumstances on record to indicate that both the respondent No.1 and the then Chief Minister knowingly acted without any restraint, so as to frustrate the effect of the judgment delivered by the High Court on 11.09.1997.

44. The incidental question posed by the petitioner is: whether the acts of

commission and omission of the persons in power, in showing undue favour to the respondent No.1 in the matter of appointment on a public post in one of the department of the State Government, constitutes any offence or entails in criminal liability or criminal misconduct by a public servant. We observe restraint in analysing this aspect, but leave it open to the Competent Authority of the State Government to examine all aspects in that behalf and to proceed appropriately against all concerned in accordance with law forthwith.

45. The next question is about the nature of order to be passed in this case. The order that we propose to pass is to do complete justice not only in the matter of illegal appointment of respondent No.1, but also to assuage the impression gaining ground that large number of similar appointments have been made in different departments of the State Government during the same time, in which similar pattern would emerge at least in respect of non-observance of the selection procedure prescribed by the Recruitment Rules applicable to the concerned Civil post. That is a matter of grave concern. If large number of civil posts have been usurped in this manner, resulting in denial of the opportunity of employment to the deserving candidates and for being considered for appointment, such illegality cannot be ignored and allowed to be perpetrated. All the persons appointed in such manner, being beneficiaries of the non-est appointment, must face the same consequence.

46. The order we propose to pass will be in two parts. One, dealing with the appointment of the respondent No.1 and the other about the argument advanced before us that the illegal appointment of respondent No.1 is only a tip of the iceberg. In that, there are several other appointments made in similar manner around the same time. It had become the norm to make appointments in similar manner in disregard of the selection process prescribed by the recruitment rules. However, the details of those cases are not before us. We cannot assume that large number of appointments have been made in similar manner, in breach of statutory rules. That is a matter to be enquired by the concerned department of the State. If the Secretary of the concerned department after due verification, is of the opinion that any appointment in his department has been made without following the selection process prescribed in the relevant recruitment rules, must take the same action as we propose to direct in respect of respondent No.1. The Secretary of the concerned Department shall conduct enquiry into the illegal appointments (made without following the selection procedure prescribed in the relevant Rules framed in

that behalf), in a time bound manner preferably within four months and submit report in that behalf to the Chief Secretary within such time. The Chief Secretary in turn must initiate the process for revoking all such illegal appointments either by issuing a general Government order or on case to case basis, as may be advised. That, however, must be done within four weeks after expiry of four months period given to the Secretary of the respective Department to submit their report to the Chief Secretary.

47. By this pronouncement, we declare that all appointments made in similar manner (without following the selection process prescribed by the relevant recruitment rules), in breach of statutory rules, be treated as non-est in the eye of law from its inception and would stand annulled forthwith. However, we may leave the passing of a formal general Government order for revocation of all such appointments or on case to case basis, to be issued by the Appropriate Authority of the State Government.

48. Now reverting to the appointment of respondent No.1, since we have held that the same is capricious, arbitrary and illegal, having been made against the statutory rules and also intended to defeat the judgment of this Court, in our opinion, not only the appointment order deserves to be quashed and set aside but it is necessary to also clarify that the respondent No.1 shall not be extended any other service benefits as given to regular appointees - as a consequence of quashment of his appointment order, in any manner. In that, the initial appointment will have to be treated as nonest in law from its very inception, being the product of fraud played on the statute to which the respondent No.1 was equally responsible. The period for which the respondent No.1 has worked on the post be treated only as a contractual appointment without accrual of any other rights, until this order of quashing his appointment is passed today. The fact that the respondent No.1 has been in service for quite some time can be no reason to take a lenient view, as from the inception his appointment was fraudulent, illegal and non-est in law. It is well established position that no person can be permitted to take advantage of his own wrong – NULLUS COMMODOUM CAPERE POTEST DE INJURIA SUA PROPRIA. Further, it is well established position that delay and laches do not constitute any impediment to deal with the lis on merits, as expounded in *Kashinath G. Jalmi V. Speaker*⁶. This has been restated in paragraph 31 of *Rajesh Awasthi's* case (supra). In the case of *V.C. Banaras Hindu University*

6. (1993) 2 SCC 703

*and others Vs. Shrikant*⁷, the Supreme Court held that if initial order is nullity, its purported approval by the Competent Authority would not cure the defect.

49. In the present case, we have held that the appointment of respondent No.1 must be treated as non-est in the eye of law from its very inception, for more than one reason. The illegality committed in appointment of respondent No.1 was not only to show undue favour to him but also entailed in denial of Constitutional rights of the deserving candidates who could have been appointed after following proper selection process as per the rules and more so denial of opportunity of being considered to several eligible aspirants waiting to be appointed on the post on which respondent No.1 came to be appointed by a back door method.

50. We have already adverted to the fact that the respondent No.1 in spite of service of notice has not chosen to appear before the Court. Presumably, he has advisedly stayed away from the present proceedings. As noticed earlier, this petition has already been treated as a Public Interest Litigation. In such proceedings, if any direction is issued by the Court which may prejudice some section of persons, can be no impediment for issuing appropriate directions in larger public interest in the quest for justice. Giving individual notice to persons likely to be affected by such decision is not necessary, in view of the principle underlying the exposition of the Supreme Court in the case of *State of M.P. and others Vs. Shyama Pardhi and others*.⁸ and *Inderpreet Singh Kahlon & others Vs. State of Punjab and others*⁹

51. One intriguing feature noticed in the present proceedings is about the pendency of this public interest litigation for over 15 years. Firstly because of non-service of notice on the respondent No.1 till May 2011 (for 12 years) and for non-filing of reply-affidavit by the State till April, 2014 (for 15 years). This is a matter for introspection, by all concerned as to how justice is being trivialized. The hearing of this petition finally materialised because of the CMIS software of the M.P. High Court, which ensures that the oldest matter pending in the High Court of a given category should be listed first on Board for being taken up accordingly. Because of the heavy docket load the more urgent matters get precedence, overlooking the need to hear the oldest matter of the same type first. That problem can be addressed only by rationalising the

7. (2006) 11 SCC 42

8. (1996) 7 SCC 118

9. (2006) 11 SCC 356

resources - both human resources (available number of judges) and time resources (Court working hours); and by logical prioritization of different category of cases so as to ensure transparent, logical, fair and consistent approach in the matter of listing of cases, as is followed as a policy for listing of cases by our High Court.

52. We, accordingly, **allow** this writ petition and make the rule absolute on the following terms :-

(i) The impugned appointment order dated 21.05.1998 issued by the respondent No.2 in favour of respondent No.1, is quashed and set aside.

(ii) Further direction is issued to the State of Madhya Pradesh, compliance whereof must be ensured by the Chief Secretary, to initiate appropriate legal action against the respondent No.1 and all concerned who were instrumental in the appointment of respondent No.1 knowing fully well that it was contrary to the selection procedure prescribed by the recruitment rules and would also result in defeating or nullifying the judgment of this Court dated 11.09.1997 in Writ Petition No.2673/1995 against the respondent No.1 quashing his regularization on the post of Sub-Engineer in Nagar Panchayat, Mauganj, District Rewa.

(iii) The respondent/State of Madhya Pradesh and all its functionaries are directed to make all future regular appointments on the public posts in the respective departments strictly in conformity with the selection procedure specified in the concerned recruitment rules.

(iv) The Chief Secretary of the State of Madhya Pradesh shall call upon the Secretary of the respective departments of the State, to enquire into whether any employee in his Department has been or was appointed on regular basis without following the selection process prescribed in the relevant rules framed therefor after coming into force of such rules; and to proceed against all such persons as also against the person(s) responsible for making such appointment, in accordance with law; and submit report in that behalf to the Chief Secretary of the State of Madhya Pradesh within four months from today. The Chief Secretary of the State of Madhya Pradesh must then initiate necessary proposal for issuance of a general Government order or on case to case basis, to formally revoke all such illegal appointments made in similar manner without following the selection procedure prescribed by the relevant recruitment rules. The services rendered by such persons consequential to revocation of appointment

be treated as only contractual appointment during the relevant period and that no other benefit shall be given or will accrue to them as in the case of regular appointee appointed as per the prescribed selection process for recruitment.

(v) The Chief Secretary to submit compliance report, within four weeks from the expiry of initial four months granted to the Secretary of the concerned Department.

(vi) The petition, though disposed of in terms of this judgment, be notified in the third week of **January, 2016**, under caption "**Direction**" for consideration of the compliance report.

Order accordingly.

I.L.R. [2015] M.P., 3269

WRIT PETITION

Before Mr. Justice Rajendra Menon &

Mr. Justice Sushil Kumar Gupta

W.P. No. 5885/2015 (Jabalpur) decided on 6 August, 2015

UNION OF INDIA & ors.

...Petitioners

Vs.

SUNIL KUMAR CHOUDHARY

...Respondent

Administrative Tribunals Act (13 of 1985), Section 19 - Abatement - Admission of original application - Respondent by filing original application before Tribunal had challenged the show cause notice as to why his services may not be terminated - Notice was issued however, there is no formal order of admitting the application - During the pendency of the application, services of the respondent were terminated - It was pleaded before Tribunal as services have been terminated therefore, the application has become infructuous - Tribunal held that as notices were issued after hearing both the parties therefore, impliedly the Original Application was admitted and in view of provision of Section 19(3) of the Act, the proceedings would not abate - Held - As per the provision of Section 19(3), the Tribunal has to pass a specific order admitting the application - As no formal order admitting Original Application was passed, the rejection of the application only on the ground that the application was already admitted is not correct - Matter

remitted back to consider the objections of the Petitioner after hearing all the parties. (Paras 9 to 17)

प्रशासनिक अधिकरण अधिनियम (1985 का 13), धारा 19 – उपशमन – मूल आवेदन की ग्राह्यता – प्रत्यर्थी द्वारा अधिकरण के समक्ष मूल आवेदन प्रस्तुत कर कारण बताओ नोटिस कि क्यों न उसकी सेवाएँ समाप्त कर दी जाए को चुनौती दी गई – नोटिस जारी किया गया यद्यपि, आवेदन स्वीकार करने का कोई औपचारिक आदेश नहीं है – आवेदन के लंबित रहने के दौरान, प्रत्यर्थी की सेवाएँ समाप्त कर दी गयी – अधिकरण के समक्ष यह अभिवचन किया गया कि चूंकि सेवाएँ समाप्त कर दी गयी हैं अतः आवेदन, निष्फल हो गया है – अधिकरण ने यह अभिनिर्धारित किया कि दोनों पक्षों को सुनने के पश्चात् नोटिस जारी किए गए थे. अतः, विवक्षित रूप से मूल आवेदन स्वीकार किया गया तथा अधिनियम की धारा 19(3) के प्रावधान के परिप्रेक्ष्य में, कार्यवाहियाँ उपशमित नहीं होंगी – अभिनिर्धारित – धारा 19(3) के प्रावधान के अनुसार, अधिकरण को आवेदन स्वीकार करने के लिए विनिर्दिष्ट आदेश पारित करना चाहिए – चूंकि मूल आवेदन की स्वीकृति हेतु कोई औपचारिक आदेश पारित नहीं किया गया था, इसलिए आवेदन को केवल इस आधार पर अस्वीकार करना कि आवेदन पहले से ही स्वीकृत था सही नहीं है – मामले को सभी पक्षकारों को सुनने के पश्चात्, याची की आपत्तियों पर विचार करने के लिए प्रतिप्रेषित किया गया।

Narinderpal Singh Ruprah, for the petitioners.

Meghnath Bannerjee, for the respondent.

O R D E R

The Order of the Court was delivered by :
RAJENDRA MENON, J. :- Calling in question tenability an order passed by the Central Administrative Tribunal on 30.03.2015 vide annexure P/1 rejecting a prayer made by the petitioner-Railway Administration for dismissing an application pending before the Tribunal under Section 19 of the Administrative Tribunal Act having been rendered infructuous and abated, this writ petition has been filed.

2. Facts in brief goes to show that respondent was engaged as a substitute Bungalow peon by the Railway Administration and according to the Railway Administration, he was granted a temporary status on 10.03.2014. His performance according to the Railway Administration was not satisfactory and as he was only a temporary employee, a show-cause notice was issued to him asking him to show-cause as to why his services should not be terminated for the reasons indicated therein. Challenging the show-cause notice so issued,

the respondent-employee filed an application before the Central Administrative Tribunal, Jabalpur under Section 19(1) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the "Act of 1985").

3. The Tribunal took cognizance of the application and on 06.02.2015 after hearing, directed for issuing notice to the respondents as per rule. Accordingly, a notice as per rule was issued against the respondents vide annexure P/6, i.e., form No.8 rule 29 and in the said notice, it was indicated that an application under Section 19 of the Administrative Tribunals Act, copy annexed thereto has been filed and upon preliminary hearing, the Tribunal has directed that the Railway Administration should show-cause as to why the application should not be admitted. Thereafter proceeding went on from time to time, there was no specific order admitting the application and in the meanwhile as the service of the respondent-employee was terminated, an application was filed by the Railway Administration to say that the proceedings initiated against the show-cause notice has been rendered infructuous due to the subsequent order of termination of the employee concerned and, therefore the application should be dismissed as having been abated as per Section 19(4).

4. The respondent-employee invited attention of the Tribunal to the provisions of sub-Section 4 of Section 19 and argued that as the application filed by him has been admitted by the Tribunal, the subsequent proceedings being something connected with the dispute which was already pending could be adjudicated in the pending proceedings itself and the application has not been rendered infructuous or abated. The Tribunal having accepted the aforesaid objections on the respondent-employee and as the Tribunal is now proceeding in the matter on the ground that in view of the sub-section 4 of Section 19, the original application filed under Section 19 has not been abated, this writ petition has been filed by the Railway Administration.

5. Even though various multifarious contentions were advanced at the time of hearing, one of the grounds raised by Shri N.S. Ruprah, learned counsel for the petitioners, was that the provisions of sub- Section 4 of Section 19 get attracted only if the application filed under Section 19 is admitted in accordance with the procedure contemplated under sub-Section 3 of Section 19. It was emphasized by him that in this case as only a notice to show-cause against admission was issued and as there were no orders on admission, provisions of Section 19(4) will not be attracted and by keeping the matter pending by

virtue of the said provision, it is argued that the Tribunal has committed an error of law which warrants reconsideration in these proceedings under Article 227 of Constitution of India.

6. Shri Ruprah invites our attentions to the various order sheets filed, the show-cause notice issued vide annexure P/6 and submitted that as the show-cause notice itself was issued for the purpose of admission, the Tribunal's finding that the application is deemed to have been admitted after notice was issued even though there is no specific order of admission is a perverse and incorrect finding and on the basis of same, the Tribunal could not have held that provision of Section 19(4) gets attracted.

7. Shri Meghnath Bannerjee refuted the aforesaid and argued that as a matter of practice the Tribunal in most of the cases only issues notice and as the notice in this case was issued in the presence of standing counsel for the respondent who was present in the Court 06.02.2015, the application is deemed to have been admitted and the Tribunal has not committed any error in so holding. He further clarifies that the show-cause notice annexure P/6 indicating as to why the application should not be admitted is only a ministerial work issued in a printed proforma. After the show-cause notice was issued, as the matter was heard by the Tribunal on various dates after 06.02.2015, the application is deemed to have been admitted and the Tribunal has not committed any error in holding that the provisions of sub-Section 4 of Section 19 gets attracted.

8. We have considered the rival contentions and we have also taken note of the provisions of Section 19 of the Act of 1985.

9. Sub-Section 1 of Section 19 provides for an aggrieved person to file an application before the Tribunal for redressal of his grievances with regard to any order which may be passed by the competent authority. Thereafter, sub-Section 2 contemplates a provision, as to in what manner the application under sub-Section 1 has to be filed, what are the documents and other ingredients necessary to be filed alongwith such an application. Sub-Section 3 of Section 19 which is important as far as the present controversy is concerned, reads as under:-

“(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for

adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.”

(emphasis supplied)

10. Thereafter sub-Section 4 contemplates that when an application is admitted by the Tribunal under sub-Section 3, every proceeding under the relevant service rule as to redressal of grievance in relation to the subject matter of such application pending immediately before such admission shall abate. Meaning thereby, that if the application has not been admitted then any application which is pending consideration with regard to any relevant service dispute or grievance in relation to the subject matter shall abate.

11. Admittedly, in this case because of the subsequent development of termination, which is a grievance in relation to the subject matter of the application if the application was not admitted, the proceedings would abate and if the application was admitted then the proceedings would not abate and, therefore, we are required to examine as to whether in the facts and circumstance of the case, it can be said that the Tribunal admitted the application filed under Section 19(1) or whether it only issued show-cause notice prior to admission.

12. In the impugned order passed by the Tribunal, after taking note of the facts as are narrated hereinabove, the Tribunal holds that on 06.02.2015, notices were issued to the respondent after hearing both sides and, therefore, the original application was deemed to be admitted even though it was not specifically so mentioned or ordered.

13. Admittedly, the entire order sheets available on record indicates that there was no specific order admitting the application for final hearing. The only order is for issuing notice to the respondents as per rule and the notice issued to the respondents as per rule i.e., annexure P/6 is a notice wherein it is indicated to the petitioner-Railway Administration that they are granted an opportunity to show-cause as to why the application should not be admitted. It is in the backdrop of these facts that we are required to take a decision as to whether the finding of the Tribunal that the application is deemed to have been admitted on 06.02.2015 is a correct finding or not.

14. We, at this stage, may refer to the provisions of sub-section 3 of Section

19 which has been reproduced by us herein above. On a perusal of the detailed procedure laid down therein, we find that a three stage process or three alternate options are available to the Tribunal after an application is filed under Section 19(1). Once an application is filed under sub-Section 1 of Section 19, the Tribunal, after such enquiry as it may deem necessary, satisfied that it is a fit case for adjudication or trial, the Tribunal may admit such application. Accordingly, when an application is filed, the Tribunal may, admit the application if it is satisfied that it is fit for adjudication/trial or else conduct an enquiry to find out whether it is a fit case for adjudication or trial and thereafter admit the matter, these are the first two options.

15. If the Tribunal chooses to do none of these then the third option available to the Tribunal is to reject the application summarily by recording reasons.

16. Accordingly, on a close scrutiny of the provisions of sub-Section 3, we are satisfied that the Tribunal, as per the statutory provision has to pass a specific order admitting the application and before admitting the application, an option is given to the Tribunal to conduct an enquiry to satisfy itself as to whether the case is fit for adjudication or trial. If the procedure followed by the Tribunal in this case is read alongwith with the statutory notice issued as per rules, it is clear that the Tribunal directed for issuing notice and did not record any order admitting the application and in the notice served on Railway Administration they were directed to show-cause as to why the application should not be admitted. From the material available on record, i.e., the order sheet dated 06.02.2015 and the notice issued shows that what the Tribunal did on 06.02.2015 was to initiate the process for enquiry to find out as to whether it was a fit case for adjudication of trial and did not pass any order on admission. Having not passed any specific order for admission and when only notice to show-cause was issued, under law, it is clear that the Tribunal was in the process of conducting an enquiry to find out as to whether it was a fit case for adjudication or trial, before actually admitting the application.

17. That being the position, we find that the Tribunal, in the present case having held that the application is deemed to have been admitted on 06.02.2015, has committed an error, which cannot be upheld by us. In the facts and circumstances of the case and keeping in view the procedure provided in Section 19(3) and the legislative intent in providing a three stage procedure to be followed by the Tribunal as detailed hereinabove in sub-section 3 or Section 19, it is a case where the application was not admitted, only a show-

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cause notice for admission was issued and, therefore, the provisions of Section 4 may get attracted in the facts and circumstances of the present case and in dismissing the application of the respondents by holding that the application has been admitted, the Tribunal has committed an error, to that extent, we deem it appropriate to interfere into the matter.

18. We hold that the application having not been admitted, now considering the application not to have been admitted, the tribunal should pass an appropriate order on the objections raised by the respondent, after hearing all concerned.

19. With the aforesaid, the impugned order stands quashed and the matter stands remanded back to the Tribunal for consideration.

Order accordingly.

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MISCELLANEOUS PETITION

Before Mr. Justice Rajendra Menon &

Mr. Justice Sushil Kumar Gupta

M.P. No. 2861/1989 (Jabalpur) decided on 11 August, 2015

VIJAY SHANKER SHUKLA & ors.

...Petitioners

Vs.

MUNICIPAL CORPORATION, JABALPUR

& ors.

...Respondents

(Alongwith M.P. No. 2876/1989 & M.P. No. 4140/1989)

A. *Municipal Corporation Act, M.P. (23 of 1956), Sections 80 & 84 - Grant of lease of immovable property - An agreement was entered into between the Municipal Corporation and the builder - Municipal Corporation delegated limited right of recovering premium from allottee and to recommend the person to whom the shop should be allotted, to the builder - It cannot be held that the agreement in question between Municipal Corporation and Builder is contrary to law.* (Para 25)

क. नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएं 80 व 84 - अवल संपत्ति का पट्टा प्रदान किया जाना - नगरपालिक निगम तथा बिल्डर के मध्य करार किया गया - नगरपालिक निगम ने आबंटिती से प्रीमियम की वसूली तथा

उस व्यक्ति की अनुशंसा, जिसे दुकान आबंटित की जानी चाहिए, का सीमित अधिकार बिल्डर को प्रत्यायोजित किया — यह अभिनिर्धारित नहीं किया जा सकता कि नगरपालिक निगम तथा बिल्डर के मध्य प्रश्नगत करार विधि के विरुद्ध है।

B. Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Sections 5, 14, 15, 16, 17 & 19 - Use of Stadium and its complex - Approval was granted by State Government for development of stadium and construction of shops but actual use of same is contrary to actual purpose and shops are being mostly used for purpose unconnected with sports or sports related activities - Directions issued for stopping all activities in all or any of 65 shops which carry out business or functions or activities which are not in accordance to permission granted and which have no nexus with sports or sports related activities - Only business activities like hotel, restaurants, medical shops etc. be permitted in these shops - Municipal Corporation should take over the entire complex disengage the builder and contractor from any activity concerned with shopping complex, its management or leasing - Three months time be given to the shop owners and give them an option either to change their business activity and bring in conformity with requirement of sanction granted or else to vacate the shop - Municipal Corporation shall take over the possession of all shops which are vacated and shall take steps for allotting these shops in accordance with rules applicable - 10 ft. corridor in front of each shop should be free from obstructions, no business activity or any other activity should be permitted in this area and the same should be left free for movement of sports personnel and other persons who use the stadium - Petition allowed

(Para 67)

ख. नगर तथा ग्राम निवेश अधिनियम (1973 का 23), धारा 5, 14, 15, 16, 17 व 19 — स्टेडियम तथा उसके काम्प्लेक्स/भवन का उपयोग — राज्य शासन द्वारा स्टेडियम के विकास तथा दुकानों के निर्माण के लिए अनुमति प्रदान की गयी थी परंतु उसका (वास्तविक) उपयोग वास्तविक प्रयोजन के विपरीत है एवं दुकानों का उपयोग अधिकांशतः खेल अथवा खेल संबंधित गतिविधियों से असंबद्ध उद्देश्यों के लिए किया जा रहा है — समी अथवा 65 दुकानों में से कोई भी दुकान जो ऐसे व्यापार अथवा कार्य अथवा गतिविधियों में संलग्न है जो प्रदान की गयी अनुमति के अनुरूप नहीं है तथा जिनका खेल अथवा खेल संबंधी गतिविधियों से कोई संबंध नहीं है, को समी गतिविधियां रोकने के निर्देश जारी किए गए — इन दुकानों में केवल होटल, मोजनालय, दवाई-दुकान इत्यादि जैसी व्यापारिक गतिविधियों के

लिए अनुमति दी जाए – नगरपालिक निगम द्वारा संपूर्ण काम्प्लेक्स/भवन का अधिकार ले लेना चाहिए तथा शापिंग काम्प्लेक्स, उसके प्रबंधन तथा पट्टे पर देने से संबंधित किसी भी गतिविधि से बिल्डर तथा ठेकेदार को पृथक कर देना चाहिए – दुकान मालिकों को तीन माह का समय दिया जाए तथा उन्हें यह विकल्प दिया जाये कि या तो वे अपनी व्यापारिक गतिविधि बदल ले और उसे प्रदान की गयी अनुमति की अपेक्षा के अनुरूप लाये अथवा दुकान खाली करे – नगरपालिक निगम खाली की गयी सभी दुकानों के कब्जे प्राप्त करेगा तथा प्रयोज्य नियमों के अनुरूप इन दुकानों के आबंटन के लिए कदम उठायेगा – प्रत्येक दुकान के सामने 10 फुट का गलियारा किसी भी रुकावट से मुक्त रखा जाये, इस क्षेत्र में कोई भी व्यापारिक गतिविधि अथवा कोई अन्य गतिविधि की अनुमति न दी जाए तथा उसे खिलाड़ियों एवं अन्य व्यक्तियों जो स्टेडियम का उपयोग करते हैं के गमनागमन के लिए मुक्त छोड़ा जाए – याचिका मंजूर।

Cases referred :

(2011) 10 SCC 529, 1999 (6) SCC 464, 2007 (11) SCC 172, AIR 1991 SC 1902, 1995 (5) SCC 762, (2006) 4 CompLJ 450 SC, AIR 1974 SC 2177, 1995 (6) SCC 127, 1995 Suppl. (4) SCC 595, 2005 (12) SCC 317, (2009) 15 SCC 705, 1997 (1) MPLJ 376, 2006 (3) SCC 549, AIR 2006 SC 2893, 1991 (3) SCC Pg. 91, 1996 (4) SCC 622, 1993 (1) SCC 445, 2006 AIR SCW 5192, 1995 Suppl (4) SCC 426.

Vijay Shankar Shukla, petitioner in person in M.P. No. 2861/1989.

Kostubh Jha, for the petitioner in M.P. No. 2876/1989.

None, for the petitioner in M.P. No. 4140/1989.

Anshuman Singh, for the Municipal Corporation, Jabalpur.

Pushpendra Yadav, G.A. for the State.

Contractor & Developer, appears in person and undertakes to file a written argument within 7 days but have not done so till pronouncing of the judgment.

Shashank Verma and *Alok Vagrecha*, for the intervenor.

ORDER

The Order of the Court was delivered by :
RAJENDRA MENON, J. :- As common questions of law and fact are involved in all these three petitions, they are being decided by this common order.

2. These petitions which have come up for hearing after a period of 27 years are glaring examples of a play ground / stadium being used, contrary to

the law laid down by the Supreme Court in the case of *Krishan Lal Gera Vs. State of Haryana & Others* – (2011)10 SCC 529 and various other judgments of the Supreme Court in the matter of illegal constructions being made contrary to the development plans, master plans and various other requirement of law with regard to constructions and developments in urban areas.

3. In the garb of financial crunch, the Municipal Corporation, Jabalpur which wanted to develop a permanent gallery in a stadium, so also to construct rooms/ offices for sports persons and sports association entered into an agreement under a promoter builder scheme with the respondent Contractor (builder) and consequently a commercial complex has been constructed where various activities unconnected with sports or sports related activities, contrary to the development plan are being carried out. Making a complaint with regard to misuse of the stadium complex, these Public Interest Litigations were filed in the year 1989.

4. In the case of *Krishan Lal Gera* (supra), the Hon'ble Supreme Court has clearly held that no part of a stadium or sports ground can be used for non sport or commercial puepose un-connected with sporting activity. In the present case, in total disregard of the aforesaid Judgment, the master plan and the statutory development plan for the area, various activities are going on, in the complex in question which is not at all related to the sports or sports related activity. That apart, in the development and construction of the shopping complex, various principles of law laid down by the Supreme Court, deprecating the manner in which such constructions are made by builders in urban areas and cities contrary to the statutory master plan / development plans is also writ large in this case.

5. All these petitions have been filed in Public interest and grievance of the petitioners as indicated herein above are with regard to the act of the Municipal Corporation, Jabalpur and the respondent builder in the matter of constructing a commercial complex in the Wright Town stadium (Pandit Ravi Shanker Stadium) complex.

6. In M.P. No.2861/89 petitioners are residents of Wright Town, Jabalpur, staying in and around the stadium in question and have questioned the construction of a commercial complex. It is their case that the commercial complex being constructed around the stadium which is a play ground, is without the authority of law. It is alleged that the construction for non residential purpose

i.e. opening of shops are illegal, unauthorized and contrary to the provisions of law. It is said that for making the construction proper approval from the State Government or the Director of Town and Country Planning as is required under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973, (herein after referred to as "the Adhiniyam 1973") has not been obtained. One of the petitioner in the said case Shri Vijay Shanker Shukla appeared in person and submitted a written note of argument. It is the case of these petitioners that for the purpose of development of the area within Municipal Corporation, Jabalpur, a development plan has been formulated and by referring to various provisions of Section 5, 14, 15, 16, 17 and finally Section 19 of the Adhiniyam 1973. It is said that the land use map has been published and a development plan (sic: plan) in accordance to the requirement of Section 19(4) of the Adhiniyam of 1973 has also been issued known as "Jabalpur Development Plan". It is said that in the land use map as per the development plan, this area is reserved for a play ground and recreational area and referring to clause 16.32 of the master plan, it is argued that such an area can be used only for the purpose of recreational uses such as parks, playgrounds, stadium, swimming pools and other purpose allocated for recreational activity and the permissible construction or use in such an area are petrol filling stations, restaurants, hotels, motels, residences incidental to recreation. It is said that by constructing a commercial shopping complex in and around the stadium, the land used plan is being violated. It is pointed out that when the administrator of the Municipal Corporation, Jabalpur, sought permission and submitted the development plan for the construction, the same was not approved by the Joint Director, in the Department of Town and Country Planning. By referring to Annexure E dated 30.1.1989 and Annexure G dated 28.3.1989 it is argued that sanction for construction was denied, inspite of that without there being any permission in accordance to the Adhiniyam of 1973, the construction has been carried out. The petitioners point out that the entire construction is contrary to law and should be removed. Shri Shukla invites our attention to various documents available on record to argue that as per the master plan and development plan approved for the area, the stadium is reserved for sports and sports related activity and by permitting construction of shops which have no relation with sports or permissible activities the Municipal Corporation has deviated from the land use plan and therefore, the entire construction is liable to be dismantled. That apart, it is tried to be argued that the contract given for development of the area to the contractor respondents is also illegal

as the work of the Corporation, statutory in nature under Section 80 and 84 of the M.P. Municipal Corporation Act, 1956 cannot be delegated to any other authority. Placing reliance on the following judgments the petitioner seeks for interference into the matter:

M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others – 1999(6) SCC 464; *M/s Vishal Properties Pvt. Ltd. Vs. State of U.P. & Others* – 2007(11) SCC 172; *Bangalore Medical Trust Vs. B. S. Muddappa and ors* – AIR 1991 SC 1902; *Dr. G. N. Khajuria Vs. Delhi Development Authority* – 1995(5) SCC 762; *Krishan Lal Gera Vs. State of Haryana & Others* – (2011)10 SCC 529; *MC Mehta Vs. UOI* – (2006)4 CompLJ 450 SC; *K.R. Shenoy Vs. Udipi Municipality* – AIR 1974 SC 2177; *Pleasant Stay Hotel Vs. Pilani Conservation Council* – 1995(6) SCC 127; *Cantonment Board, Jabalpur Vs. S. N. Awasthi* – 1995 Suppl.(4) SCC 595; *Debashis Roy Vs. Calcutta Municipal Corporation* – 2005(12) SCC 317; *Syed Muzaffar Ali Vs. Municipal Corporation of Delhi* – 1995 Suppl.(4) SCC; *Shanti Sports Club and another Vs. Union of India and others* – (2009)15 SCC 705; *Akhilendu Arjaria & Others Vs. Banarasidas and others* – 1997(1) MPLJ 376; *Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors.* – 2006(3) SCC 549 & *Mrs. Susetha Vs. State of Tamil Nadu & Others* – AIR 2006 SC 2893.

7. In M.P. No.2876/1989 Shri Kostubh Jha appeared for the petitioners and adopted the same argument as was canvassed by the petitioner in M.P. No.2861/1989. However, in addition, he submits that once the State Government in their return has categorically stated that no permission has been granted and when from the documents filed by the State Government i.e. Annexure R/4 dated 6.1.1989, R/5 dated 30.1.89 and Annexure R/11 dated 28.2.89 so also from the letters of the Joint Director dated 11.7.89, permission is seen to be refused, the construction made based on the so called permission granted by the Director vide Annexure R/2 dated 5.7.89 contained in W.P. No.2861/89 is illegal. He submits that the construction made is contrary to the development plan and therefore, the entire construction should be removed.

8. In M.P. No.4140/1989 the petitioners who claim to be traders contended that by entering into the agreement Annexure P/2 dated 20.1.1989 the Municipal Corporation has delegated its statutory powers under Section 80 and 84 of the M.P. Municipal Corporation Act, 1956 to the Builder and Developer which is not permissible and placing reliance on judgments of the

Supreme Court in the case of *M.I. Builders Pvt. Ltd.* (supra) it is said that contract granted to the respondents is unsustainable.

9. Shri Anshuman Singh, learned counsel appearing for the Municipal Corporation took us through the provisions of Adhiniyam of 1973, particularly the provisions of Section 13 to 19, the return filed by the State Government and argued that a sanctioned development plan as required under Section 19 has come into force and according to the State Government itself it has been published under Section 19(4) and all the petitioners accept this proposition. Accordingly, it is the case of the Municipal Corporation that they are entitled to make development in accordance to this development plan and for the same they applied to the competent authority under Section 28 of the Adhiniyam of 1973. Even though initially the Joint Director by communications dated 30.1.89 filed as Annexure E and communication dated 28.3.89 Annexure G in M.P. No.2861/1989 and filed by the State Government as Annexure R/4 and R/5 along with their return in M.P. No.2876/89 indicated certain restrictions for according permission but the matter was re-examined at the instance of the Corporation, thereafter, the competent authority, namely the Director i.e. the Statutory Authority, vide Annexure R/2 dated 5.7.89 available in the record of M.P. No.2861/89, has granted permission, therefore, the construction made is after due permission. However, Shri Anshuman Singh, referring to the permission granted vide Annexure R/1, did say that the permission granted is to make construction in accordance with the development plan and if there is any deviation from the approval so granted, to that extent only the Municipal Corporation can be directed to remove the irregularity, if any, and bring it in conformity with the requirement of the approval granted. Placing reliance on the judgment of the Supreme Court in the case of 1991 (3) SCC Pg. 91 namely *G.B. Mahajan & Others Vs. Jalgaon Municipal Council and others* and *Delhi Development Authority vs Skipper Construction Company(P)* - 1996(4) SCC 622, Shri Anshuman Singh argued that grant of contract to the contractor (builder) is within the permissible limits as provided in law and there is no illegality in the same. He argues that if the law laid down in the case of *G. B. Mahajan* (supra) is applied and if the so called offending provision of the agreement i.e. Clause 13 to 20 are analyzed, it would be seen that the Builder is only granted permission to make construction, recover the premium and recommend the first allottee. Thereafter, the lease has to be executed with the Corporation by the allottees. Builder is only a witness, right to the property is vested with the Corporation, rents are collected by the Corporation,

even as per the law laid down in the case of *M.I. Builders Pvt. Ltd.* (supra) Shri Anshuman Singh Argues that there is no illegality in the agreement executed. That apart, Shri Singh invites our attention to the detailed report submitted by a Committee constituted by this Court and submits that there is no error in the contract awarded. Shri Anshuman Singh argues that in the facts and circumstances of the case, no indulgence should be made and if at all this Court comes to the conclusion that any construction or allotment of the shops are in violation to the permission granted by the Director vide Annexure R/1 on 5.7.89, the Municipal Corporation would be correcting the same.

10. Shri Pushpendra Yadav, learned Government Advocate, appearing for the State Government, submitted that the State Government has not given any permission and, therefore, he has tried to indicate that the construction is not proper. However, when specific questions were asked as to whether the State Government has cancelled the order-dated 15.5.1989 – Annexure R/2, issued by the Director in exercise of powers under section 29 of the Adhiniyam, the State Government was unable to say anything.

11. Shri Shashank Verma and Shri Alok Vagrecha appearing for the interveners, namely the shop-keepers who have been allotted the shops, argued that the entire construction has been done in accordance to the requirement of the rules. Wright Town area where the construction is done, is now a commercial area and if in a commercial area, the shops have been constructed, then there is no irregularity or illegality in the same.

12. Shri Shashank Verma also took us through the provisions of Sections 14, 15, 16, 17, 18 and 19 of the Adhiniyam of 1973, and tried to indicate that the approved map as per section 19 has not been notified in the Gazette as required under section 19(4) and, therefore, the development plan as alleged by the petitioners have not come into force and by referring to the development plan approved for the year 1991 and 2005, learned counsel tried to argue that the development work has been in accordance with these plans and, therefore, no interference should be made in the matter.

13. Shri Verma, learned counsel for the interveners, invited our attention to the judgments of the Supreme Court in the cases of *Krishan Lal Gera* (supra) and *M.I. Builders Pvt. Ltd.* (supra) in support of his contention to say that the construction done is in accordance with law and no interference is called for.

14. We have heard learned counsel for the parties at length and have perused the records.

15. From the material available on record, we find that these petitions are pending since 1989 and when the matter came up for hearing on 9.7.2002, this Court took note of the provisions of Clause 13, 18 and 20 of the agreement entered into between the Municipal Corporation and the builder and after considering arguments that were advanced by the parties concerned, thought it proper to constitute a Three Member Committee of Advocates and directed the said Committee to conduct a spot inspection and submit Report with regard to the following two points:

- (i) The number of shops existing in the market complex which is the subject matter in issue;
- (ii) The nature of trade or business carried out in the said shops.

16. In pursuance to the said order, the Committee of Advocates conducted its spot inspection and submitted its report dated 11.7.2002. We shall refer to this Report at a later point of time.

17. Thereafter, we find from the records that all these petitions were heard finally by a Division Bench and a detailed order was passed on 5.9.2003 by a Bench of this Court consisting of Hon'ble Shri Justice Dipak Misra (as he then was) and Hon'ble Shri Justice A.K. Shrivastava (since retired). All the contentions as were advanced before us now during the course of hearing, were considered in detail by the learned Bench. Even the judgments in the case of *MI Builders* (supra); *G.B. Mahajan* (supra); and, *Delhi Development Authority Vs. Skipper Constructions Ltd.* - 1996(4) SCC 622 were considered and finally in paragraph 15 of the said order came to the conclusion that ordinarily the Court would have finally disposed of the petition, but they are not inclined to do so and finding various aspects of the matter which warrants inquiry, constituted a fact finding committee. The learned Bench constituted a Three Member fact finding Committee consisting of the Additional Chief Secretary, Government of MP; Secretary, Urban Administrative Department; and, a person to be nominated by the Director General, Central Bureau of Investigation, formulated eight questions to be answered by the Committee, detailed as question Nos. (a) to (h) and referred the matter to the Committee for submitting its report.

18. The eight questions, (a) to (h) formulated by the Committee reads as under:

- (a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment?
- (b) Whether the Municipal Corporation Jabalpur had entered into any lease agreement in regard to the same?
- (c) Whether the builder has put the occupiers in possession, and if so, on what basis?
- (d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation?
- (e) Whether the occupiers of the shops are the first lease holders or they have taken sub-lease from someone else?
- (f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature?
- (g) Whether such a construction should have been carried keeping in view the master plan? ; and,
- (h) Whether the permission for such construction was not necessary despite master plan being in existence?

19. Thereafter, on a application made on behalf of the Central Bureau of Investigation, by the counsel representing the Union of India, the Deputy Inspector General of Police, CBI, Bhopal was nominated as Member of the Committee. We find from the record that this three Member Committee, which consisted of Shri Sudhir Mishra, Deputy Inspector General of Police, CBI; Region Bhopal; Shri M.A. Khan, Secretary, Urban Administration Department, MP; and, Shri Arun Kumar, Additional Chief Secretary and Chairman, MP Electricity Board, Board, conducted a detailed inquiry into the matter, held sitting on more than eight occasions between 24.11.2003 to 19.2.2004 and submitted a detailed report on 12.3.2004 alongwith various documents. This Report answers all the queries made by the Court in its order passed on 5.9.2003 and we find that most of the dispute that are now canvassed in this

petition stands answered in this Report. Infact, the earlier Report submitted by the Three Member Advocate committee on 11.7.2002 also points out certain irregularities and illegalities in the allotment which were existing on 11.7.2002.

20. Having heard learned counsel for the parties at length and after taking note of two inspection reports available on record, we are of the considered view that based on the directions issued by this Court on 9.7.2002 and on 5.9.2003 and the consequential reports submitted in pursuance thereto, most of the controversy involved in the matter can be decided. However, before doing so, we deem it appropriate to refer to certain legal provisions which are applicable in the matter, analyse the objections raised by the parties in the backdrop of the same, the principles of law laid down in various judgments referred to at the time of hearing and thereafter proceeded to consider the reports filed by the respective parties.

21. One of the question that was canvassed at the time of hearing and the ground raised in M.P. No.4140/89 pertains to the act of the Municipal Corporation, Jabalpur in entering into the agreement/ contract Annexure P/2 dated 20th January 1989 with the respondent Builder/ Contractor and delegating the statutory power of the Municipal Corporation under Section 80 to the said Contractor. Section 80 of the Madhya Pradesh Municipal Corporation Act, 1956, contemplates a provision governing the disposal of the Municipal property or properties vesting in or under the management of the Corporation. Sub section (1) thereof contemplates that no street land, public places etc. shall be sold, leased or otherwise alienated save in accordance with such rules as may be made in this behalf. In this petition, except for contending that the provisions of Clause 13 to 18 of the agreement are contrary to the requirement of Rule 80, nothing specific in nature is pointed out as to which part of the statutory rule or regulation is violated. On the contrary, we find under sub section (2) of Section 80 so also Section 84 that discretion is given to the Commissioner for the purpose of granting lease of immovable property. Similarly with the sanction of the Corporation, the Commissioner is authorized to lease, sell or otherwise convey any immovable property belonging to the Corporation. It is therefore, clear from the provisions of Section 80 that there is no prohibition in granting lease, selling or conveying the immovable property of the Corporation. However, the same is subject to certain restriction and control of the Municipal Corporation or its officers and the State

Government. If the provisions of the agreement impugned in this writ petition is taken note of, it would be seen that the agreement with the Contractor or the Builder is for the purpose of development of the stadium by building a gallery on one side of the stadium and the need because of which the agreement was executed by the Municipal Corporation is spelt out in the reply filed by the Corporation. On going through the reply of the Municipal Corporation, we find that in the year 1988 the Municipal Corporation took a decision to replace the existing mud gallery of the Stadium by constructing a RCC gallery. It was also decided to construct certain rooms to provide accommodation to athletes and sports association and other sports Organizations. However, as the financial condition of the Corporation was very bad and if did not have the resources to make the construction, a decision was taken by the Municipal Corporation to invite tender and call for offers to make the construction. It was decided that for the purpose of constructing 30 shops of the size 10ft. X 20 ft. a notice inviting tender be issued. Accordingly, tender notices were published in the daily Newspapers on 4.11.98 and it was advertised that offers are invited for construction of shop and any person will be entitled to obtain the shops by paying the premium of Rs. 1 Lacs and a monthly rent of Rs.400/-. It is said that in pursuance to this not a single offer was received and as the maintenance of the stadium was being adversely effected, the Municipal Corporation decided to make the construction and development through a promoter builder scheme and after due approval from the State Government, a notice inviting tender for development of the stadium was published in the daily Newspaper on 30th November 1998, on the basis of the offers received and various negotiations held, the offer submitted by the respondent Shri Jaspal Oberoi was accepted and the proposal that was advertised under this promoter builder scheme was that the shops will have to be constructed and the entire work done in accordance to the drawing and design prepared and approved by the Municipal Corporation. In the first phase 60 shops will have to be constructed. The size of each shop would be 10' X 20'. Entire construction will have to be in accordance to the specification and map provided by the Municipal Corporation in front of the shops a 10 feet wide corridor will have to be made and above this corridor rooms are to be constructed measuring 10' x 10'. It was also notified that the shops and constructions to be made shall be as per the design approved by the Municipal Corporation and the entire structure will have to be on RCC beam. Between every 10 shops a staircase will have to be provided for going to the first floor gallery and rooms

to be constructed. It was also indicated that in the rooms to be constructed in the first floor there shall be a corridor 3 feet wide (balcony) in front of each room. The entire work shall be executed under the supervision of the Municipal Corporation and if required alterations as suggested by the Municipal Corporation will have to be carried out. It was also stipulated that the person who gives the proposal will only be entitled to obtain a premium for allotment of shop from the prospective allottee to meet the expenses for undertaking the construction and nothing more. It was indicated that the entire construction and the property so created shall be the property of the Municipal Corporation and the ownership of the shops and rooms to be constructed in the first floor shall remain with the Municipal Corporation. The rents for the shop shall be collected by the Municipal Corporation at the rate of Rs.2/- per Sq.ft. Based on the aforesaid conditions, the offer of the respondent builder was accepted and as indicated herein above, the agreement was executed with him on 20th July, 1989. As per the agreement the respondent builder was only conferred the right to charge premium from the respective allottee of shop in lieu of the expenditure incurred for carrying out the construction work in and around the stadium. The other conditions of the agreement i.e. clause 13 contemplates that the contractor builder shall complete the construction by 29th January 1990, that he shall only be entitled to allot the shop to the first allottee of a particular shop after due approval of the Municipal Corporation. On such allotment the agreement shall be executed by the Municipal Corporation. The rent of the shop shall be Rs.2/- per Sq.ft. Per month with condition for enhancement of rent by 15% every five year. Clause 14 contemplates that the Municipal Corporation will only allot shop by entering into an agreement as recommended by the builder. Clause 15 contemplates that in the lease to be executed between the allottee and the Municipal Corporation, the builder promoter Shri Jaspal Oberoi will also sign as a witness. Clause 16 contemplates that in case of breach of any provision of the agreement, the Municipal Corporation, Jabalpur will be entitled to take legal action against the person concerned. Clause 17 contemplates that the Municipal Corporation shall have all the right to get the agreement implemented and in case of any dispute to take a decision in the matter and promoter will abide by the same. In clause 18 the right for first allotment of the shop is given to the promoter builder and he is entitled to collect the premium. These are the offending provisions of the agreements as per the petitioners.

22. Before analyzing the matter any further at this stage it would be

appropriate to look into various judgments which are available and which are applicable in the matter. The contention of the petitioners are that the agreement gives exclusive right to the builder to deal with the property of the Municipal Corporation and as this is not permissible under Section 80 of the Municipal Corporation Act, the same is illegal. We have, in detail, reproduced the so-called offending parts of the agreement and we have also taken note of provisions of Section 80(1) (2) and sub section (c) of the Municipal Corporation Act which contemplates that the Municipal Corporation is given power through its Commissioner to lease or sell property of the Municipal Corporation. Now, we are required to examine as to whether the terms and conditions of the agreement as are detailed herein above can be said to be curtailing the rights or discretion available to the Municipal Corporation under Section 80 or amounts to relinquishing the rights of the Corporation in favour of the builder.

23. In the case of *G. B. Mahajan* (supra) similar agreement entered into with a private developer and builder for construction of commercial complex in Jalgaon Municipal Council was called into question. It was said that the permission granted by the Municipal Council, Jalgaon and the development being done through the builder developer amounts to giving up the right of the Municipal Council as contemplated under the Maharashtra Municipalities Act, 1965 and challenge was made on similar grounds. The Supreme Court examined the terms of the contract and finally came to the conclusion that a project, otherwise legal, does not become any the less permissible merely because the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The Supreme Court in the aforesaid case has taken note of various aspects of the matter, the scope of judicial review and has approved the action of the Municipal Council in undertaking development of the commercial complex through a builder promoter scheme and while doing so, has laid down the principles in the following manner :-

“A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is un-conventional by the standard of the extant practices, but

whether there was something in the law rendering it impermissible. Though there is a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios. etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. There are essentially matters of economic policy with lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications, or if they amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority. In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Therefore, in the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The contention that the project is ultra vires the powers of the Municipal Council is not acceptable.

....

The contention regarding impermissible delegation is not tenable. The developer to the extent he is authorized to induct occupiers in respect of the area earmarked for him merely exercises, with the consent of the Municipal Council, a power to substitute an Occupier in his own place. This is not impermissible when it is with the express consent of the Municipal Council. It would be unduly restrictive of the statutory powers of the local authority if a provision enabling

the establishment of markets and disposal of occupancy rights therein are hedged in by restrictions not found in the statute.

...

"Reasonableness" as test of validity is not the Courts own standard of reasonableness as it might conceive it in a given situation. A thing is not unreasonable in the legal sense merely because the court thinks it is unwise. Different contexts in which the operation of "Reasonableness" as test of validity must be kept distinguished. Some phrases which pass from one branch of law to another carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words "Reasonable", "Reasonableness" etc. The 'reasonableness' in administrative law must distinguish between proper use and improper abuse of power. The administrative law test of 'reasonableness' as the touch-stone of validity of the Resolution in the instant case is different from the test of the 'reasonable man' familiar to the law of torts, whom English Law figuratively identifies as the "man on the clapham omnibus". In the latter case the standards of the 'reasonable man', to the extent such a 'reasonable man' is court's creation, is a mere transferred epithet. Yet another area of reasonableness which must be distinguished is the constitutional standards of 'reasonableness' of the restrictions on the fundamental rights of which the Court of Judicial Review is the arbiter.

....

While principles of judicial review apply to the exercise by a government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. In a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the Court fails far short of what the law requires to justify interference."

(Emphasis Supplied)

24. If the law laid down by the Supreme Court in the aforesaid case is applied in the present case and if the terms and conditions of the contract entered into between the Municipal Corporation and respondent No.2 builder is analyzed, we find that the same meets the requirement of law as laid down in the case of *G. B. Mahajan* (supra). In fact, as per the agreement except for giving a limited option to the builder to take premium from the prospective purchaser of the shop and recommending as to who should be the first person to whom the shop should be allotted, no right is given to the builder. The right to collect rent, the right to ownership of the property and all other right accruing out of the property is vested and retained by the Municipal Corporation. Therefore, it cannot be said that the agreement entered into is in violation to the rights available to the Municipal Corporation under Section 80. Similarly, if we apply the law laid down in the case of *Skipper Construction Company(P)* (supra) also, we can safely come to the conclusion that the agreement in question and terms and conditions of the agreement as analyzed by us herein above, does not offend or take away the statutory right of the Municipal Corporation as contemplated under Section 80. In fact, by merely giving the right to collect premium, the builder is only given the liberty to recover the cost incurred by him for construction and nothing more. This cannot be termed as an arbitrary or unreasonable decision looking to the nature of construction made and advantage that Municipal Corporation would derive from said construction.

25. During the course of hearing great emphasis was made on the judgment rendered by the Supreme Court in the case of *M.I. Builders Pvt. Ltd.* (supra), to say that the agreement is unsustainable. In the case of *M.I. Builders Pvt. Ltd.* (supra), the agreement was found to be arbitrary and totally unreasonable and impermissible under law. In the said case license was granted to the builder to construct an underground shopping complex of a permanent nature and hold it in its name for a period which was not indicated. The builder was also authorized to lease the shop on behalf of the Municipal Corporation, recover rents and in fact, the builder was given all the rights available to the Municipal Council to deal with the shopping complex without any restriction as if the builder was the owner of the shopping complex. It was after analyzing the terms and conditions of such an agreement that the Supreme Court held that it is an arbitrary and unreasonable agreement and cannot be sustained. In the said case of *M.I. Builders Pvt. Ltd.* (supra) the judgment rendered in the case of *G. B. Mahajan* (supra) was also considered and after referring to the

same in para 39, Hon'ble Supreme Court came to the conclusion that the said judgment will not apply because the Court did not find any violation in the terms and conditions of the agreement in the case of *G.B. Mahajan* (supra), which was entirely different from the agreement entered into in the case of *M.I. Builders Pvt. Ltd.* (supra). It is therefore, clear that the law laid down in the case of *M.I. Builders Pvt. Ltd.* (supra) cannot be applied in the present case as in the case of *M.I. Builders Pvt. Ltd.* (supra) the entire right, authority and power of Municipal Corporation was given to the builder for an indefinite period of time without any restriction which is not a position in the present case. In this case only a limited right of recovering the premium from the allottee of the shop and to recommend the person to whom the shop should be allotted is delegated by the Municipal Corporation and therefore, in the facts and circumstances of the case, we cannot hold that the agreement in question entered into between the respondent Municipal Corporation and Builder is contrary to law and required to be quashed in its totality. The agreement meets the requirement of reasonableness and therefore, can be enforced. However, in the execution of the agreement and in the final implementation of the project as per this agreement, if any violation has been committed, that would be examined by us and any consequential directions, if required, in that regard issued when we go through the report of the Committee constituted by this Court and we would examine if there is any violation with regard to the points which was referred to for consideration to these Committees. Accordingly, as far as the grounds raised by the petitioners to say that entering into the agreement for execution of the project in question itself is unsustainable, cannot be accepted. The agreement seems to be reasonable, meeting the requirement of law as laid down in the case of *G. B. Mahajan* (supra) and we are not inclined to quash or nullify the agreement in its totality except for considering as to what extent there is breach of this agreement in the actual execution of the project and to that effect, if any consequential directions are to be issued.

26. In this regard we may also say the Supreme Court in the case of *Skipper Construction Company(P)* (supra) has held that unless and until the terms and conditions of the contract or the concerning circumstances shows that the State has acted malafidely or out of improper consideration or incorrect motive or in order to promote private interest of someone at the cost of the State, the Court will not interfere. In this case also the judgment in the case of *G.B. Mahajan* (supra) has been taken note of and finding that there is no

improper abuse of power, interference was not required. Similar principles were laid down in the case of *Sterling Computers Limited Etc vs M & N Publications Limited And Ors.* - 1993(1) SCC 445. On analyzing the contract in question in the backdrop of all these judgments we do not find that the agreement in question does (sic:does) not give us an impression that it has been entered into on its conditions and the concerning circumstances indicates any mala fide act on the part of the Corporation nor is there any material to show any improper or incorrect motive or intention on the part of the Corporation in promoting the interest of the Builder as a prime consideration for award of contract. On the contrary this seems to be an agreement entered into for a genuine purpose of development of the Stadium and its surrounding area for the purpose of advancing sports related activity. Accordingly, we see no reason to hold the agreement to be illegal or liable to be quashed.

27. Having decided the question with regard to tenability of the agreement entered into between the parties, we now propose to deal with the question as to whether the development of the complex in question is in accordance to the development plan prepared and approved under the Adhiniyam of 1973; and, whether sanction and approval of the competent authority as contemplated under the Adhiniyam have been obtained.

28. Before doing so, we may take note of various statutory provisions as are contemplated in the Adhiniyam of 1973.

29. The Adhiniyam 1973 was brought into force for the purpose of planned development and use of land in the State of Madhya Pradesh. It contemplates a provision for preparation of development plan, zoning plan, for ensuring that town planning schemes are made in a planned manner and are executed effectively. For the purpose of implementing the development plans, certain statutory authorities like Town and Country Planning Authority and the Special Area Development Authorities have been constituted. Provisions are also made for compulsory acquisition of land which can be used for development. Detailed procedure are laid down, in Chapter IV provisions are made from section 13 onwards for constituting Planning Area, direction to prepare development plan, preparation of existing land use maps and freezing of land use once the existing land use maps are prepared under section 15. Thereafter, in sections 17, contents of development plan and the ingredients necessary for preparation of a development plan are indicated. Section 18 contemplates as to how the draft development plan is to be published and objections invited. How the

objections are to be considered and finally the sanctioned development plan is prepared and notified in accordance to the requirement of Section 19.

30. Similarly, Chapter V deals with creation of zonal plan. Once the zonal plan and the developmental plans are created, control of development and use of land in accordance to these plans are provided in Chapter VI. Action to be taken if development is done contrary to the development plan are indicated and procedure for seeking permission to develop an area in accordance to the development plan are contained in Sections 27, 28 and 29. Under section 27, if the development is to be undertaken by the Union Government or the State Government, then the permission from the Director is to be obtained in accordance to the provisions of this Section. Similarly, if the development is to be done by any local authority or any other authority, constituted by the Adhiniyam 1973, then the same has to be done in accordance to the conditions stipulated in section 28. If the development is to be done by any other person other than the State Government or the Union or the Local Authority, it has to be in accordance to the provisions of Section 29.

31. In this case, from the documents and material available on record particularly the documents filed alongwith Misc. Petition No. 2861/1989 and 2876/1989, after following all the requirements of creating development plan and its preparation under sections 14, 15; its publication under section 18; the approved development plan under section 19 has come into force and according to the petitioners, the respondents and even the State Government, the sanctioned development plan as contemplated under section 19 has been notified in the official gazette as per sub-section (4) of Section 19.

32. Even though during the course of hearing Shri Shashank Verma, learned counsel appearing for some of the interveners, tried to indicate that the sanctioned development plan has not been formulated in accordance to the requirement of the Adhiniyam of 1973 and no notified development plan in the official gazette as contemplated under sub-section (4) of Section 19 is available, at the instance of the objector, we are not inclined to accept such a contention, particularly when none of the petitioners, the State Government or the Municipal Corporation subscribe to such a contention. On the contrary, they all come out with a case that the sanctioned development plan has been made applicable and, therefore, we proceed under the assumption that the development plan as required under the Adhiniyam of 1973 has come into force.

33. Petitioners, in M.P. No.2861/1989, have brought on record the sanctioned map. As per this development plan, which is filed as Annexure A, and according to them in the portion marked 'Green' and identified with a X mark, the Wright Town Stadium is demarcated and the same is indicated to be recreational park.

34. That apart, vide Annexures B, C and D, petitioners in this petition have brought on record the Notification and procedure followed in compliance to the provisions of Section 15, 18 and 19 of the Adhiniyam of 1973. It is also an admitted position that under the Master Plan and Clause 16.32 therein, when the land use zone is classified as 'recreational', the permitted use are all recreational uses such as park, play-ground, stadium, swimming pool and other activities incidental to recreation, including mela-grounds and exhibition grounds, and the specified uses permissible after approval from the competent authority are establishment of a petroleum filling station, restaurants, hotels, motels incidental to recreation and certain activities incidental thereto. It is, therefore, clear that the Wright Town stadium is notified as a recreational zone; the stadium is situated in the said area and in the approval granted by the Director vide Annexure R/2 dated 5.7.1989, it is indicated that for the purpose of development of the stadium and by approving the construction proposed by the Municipal Corporation, the land use permitted are park, play ground, hotel, motel etc and construction of everything except petroleum pump has been permitted. That apart, in this order, it is indicated that from the main entries door of the stadium; on both sides for about 60 feet, no shop shall be constructed or obstructions created.

35. From the aforesaid, it is clear that for the Wright Town Stadium, a development plan has been approved in accordance to the requirement of the Adhiniyam and it cannot be said that there is no development plan for the area in question. Even though some of the petitioners, particularly petitioner in M.P. No.2861/1989, tried to indicate that the entire area i.e... the Wright Town area is demarcated as a residential area and, therefore, no commercial activity in the area is permissible, the interveners and the Municipal Corporation tried to refute the aforesaid by saying that Wright Town area is now both a residential and commercial area, we are of the considered view that for the purpose of determining the dispute in this writ petition, this aspect of the matter pertaining to the entire Wright Town area is not required to be gone into by us. In these petitions, our scope of interference and jurisdiction is limited to

the Wright Town stadium and the construction of the so-called shopping complex around the same and nothing more, and we propose to confine to this issue only.

36. Accordingly, we can now safely come to the conclusion that as per the development plan approved, the Wright Town stadium is notified as a recreational area, where sports and sports related activities can be carried out, as it has been notified to be used only as a stadium and a play ground. As such, we hold that in the area in question which is subject matter of dispute before us, in these petitions i.e... the Wright Town stadium now known as Pandit Ravi Shankar Shukla Stadium, only sports and sports related activities can be carried out and we are constrained to hold so because the area has been notified as a play ground and stadium and in the case of *Krishanlal Gera* (supra), Hon'ble the Supreme Court has held that when an area is earmarked for a stadium, to be used as a play-ground, the infra-structure provided therein are meant for the benefit of the sports person, it has to be used for promotion of sports and activities to promote sports and allied activities and whenever by nepotism, favoritism and unwarranted government largeness to private interest, threats to frustrate such a scheme, comes to the notice of the High Court, the High Court is duty bound to strike at such an action.

37. It has been held by the Supreme Court that a stadium is meant for improvement of sports and benefit to sports-persons and activities related thereto. The Supreme Court has observed that slowly and steadily these are being ignored and in the garb of fund or financial constraints, maintenance of these complexes and infra-structure facilities meant for sports are going into the hands of persons in an unauthorized manner, who are using it for non-sporting activities. It has been held by the Supreme Court in paragraph 22 of the aforesaid judgment that no part of the stadium or sports ground can be carved out for non-sport or commercial activity which is not permissible in a stadium. The Supreme Court in the aforesaid case has come out heavily and has criticized the act of the statutory authorities in permitting use of a stadium for purposes which is not at all related to sports or sports related activities.

39. Similar is the principle laid down in the case of *Shanti Sports Club* (supra), wherein also the Supreme Court has observed that land use and development of cities and urban area in a planned manner has to be achieved by rigorously imposing the Master Plan which is prepared after careful study of complex issues, scientific research and rationalization of law. If the judgment

rendered in the case of *Shanti Sports Club* (supra) is read in its totality, we find that any action taken to convert an already approved area under a developed scheme for a particular purpose for any other purpose should be strictly dealt with and appropriate orders passed. The Supreme Court expresses its concern in this regard and lays down the principle in the following manner :-

“....The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illègal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct

buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc. - *K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi* 1974 (2) SCC 506, *Dr. G.N. Khajuria v. Delhi Development Authority* 1995 (5) SCC 762, *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu* 1999 (6) SCC 464, *Friends Colony Development Committee v. State of Orissa* 2004 (8) SCC 733, *M.C. Mehta v. Union of India* 2006 (3) SCC 399 and *S.N. Chandrasekhar v. State of Karnataka* 2006 (3) SCC 208.

75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans,

zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

40. Similar is the principle laid down in various other judgments relied upon by the parties, particularly petitioner Shri V.K. Shukla. All the judgments in one tone lay down a common principle of law to say that when a planned development of the area is required to be done in accordance to the statutory provision or law, any act on the part of the authorities to deviate from the development plan and make construction or use of the area in a manner contrary to the approved plan or scheme should be dealt with strict hand and all such activities which are contrary to the Master Plan or the Development Plan should be stopped and if required the buildings and structures brought down by judicial orders.

41. Similarly, in the case of *Muni Suvrat Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad & Others* – 2006 AIR SCW 5192 the matter was considered by the Supreme Court and after considering the another judgment of the Supreme Court in the case of *Syed Muzaffar Ali and others Vs. Municipal Corporation of Delhi* – 1995 Supp (4) SCC 426, in para 58, the matter has been dealt with in the following manner :-

“58. As pointed out by this Court in *Syed Muzaffar Ali and Others vs. Municipal Corporation of Delhi* (supra) that the mere departure from the authorized plan or putting up of a

construction without sanction does not ipso fact (sic:facto) and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorized construction and some are amenable to compounding and some may not be. According to learned counsel for the first respondent, the appellants have constructed the temple without obtaining any sanction whatsoever. There is serious breach of the licensing provisions or building regulations which may call for extreme step of demolition. In our view, these are matters for the Municipal Commissioner to consider at the appropriate time.”

In the above case instead of taking extreme step for demolition, the matter was remanded back to the Commissioner for reconsideration.

42. Similarly in the case of *Dr. G. N. Khajuria Vs. DDA* – (1995)5 SCC 762, it has been held by the Supreme Court that when large scale irregularities in construction is noted, consequential action should be taken for regularizing the same.

43. That being the principle of law and, therefore, in this case we are now required to consider as to whether in the shopping complex constructed in and around Wright Town stadium, there is any deviation from the approved Development Plan, if so to what extent and, if required, the consequential orders to be passed therein. This we will do after referring to the two reports that have come on record.

44. For the present, we have only analyzed the principle of law applicable and have only indicated as to what is the land use for the area in question permissible under the Development Plan, created under the Adhiniyam of 1973 and the law laid down by the Supreme Court in the matter of making developments and construction in contravention to such development plans and schemes. The last question which we are required to consider before analyzing the irregularities etc, if any, based on the inquiry report submitted, is a ground canvassed by the petitioners that the Municipal Corporation has made the construction without approval of the State Government and, therefore, the entire construction is illegal. We are also required to take note of the statement made by the State Government in the return, in a very vague and casual manner, which suggests that approval of the State Government was not

available.

45. We have indicated hereinabove the requirement and provisions of section 28 of the Adhiniyam of 1973, which contemplates a provision for development by the Local Authority or by any authority constituted under the Adhiniyam of 1973. Section 28 contemplates that where a Local Authority intends to carry out development on any land for the purpose of that authority the procedure applicable under section 22 shall apply '*mutatis mutandis*' in respect of such an authority and under section 27(1) the authority is required to submit its proposal alongwith the Development Plan and other details to the Director. In case Director raises any objection to the proposed development by pointing out that it is not in conformity with the Development Plan, necessary modification to the proposal to meet the objections of the Director are to be made and the State Government on receipt of the proposal together with the objection of the Director, shall approve the proposal with or without modifications or direct the office to make certain corrections.

46. In this case, we find that initially when the proposal was submitted the office of the Joint Director vide Annexure E dated 30.1.1989 did not approve the construction and directed that no construction should be made without any approval of the office of the Director. However, thereafter vide Annexure R/2 on 5.7.1989 as already indicated hereinabove, the permission was granted by the Director. The petitioners in M.P. No. 2861/1989 referres to a communication received by him i.e... petitioner No.1 vide Annexure G on 28.3.1989, to say that no permission has been granted. If this letter is seen, it shows that to a query made by the petitioner, the office of the Director indicated that upto 28.3.1989 no permission has been granted, but from the records it is seen that the Director thereafter accorded the permission vide Annexure R/2 on 5.7.1989.

47. However, from the return and the note-sheets filed by the Municipal Corporation and from the findings recorded by the Three Member Committee, which gave its report on 12.3.2004, we find that the Director gave the permission on 5.7.1989 and thereafter the State Government was apprised of the permission granted, the Commissioner of the Municipal Corporation has communicated with the Secretaries to the State Government in the concerned department and till date there is no letter, communication, order or any statement on behalf of the State Government that this permission granted on 5.7.1989 is withdrawn by the State Government, cancelled or is without

authority of the State Government. On the contrary, the Director, – who is a statutory authority acting on behalf of the State Government, indicates to have granted the permission subject to certain conditions stipulated therein. If the letter dated 5.7.1989 – Annexure R/2, available in the record, is scrutinized, it would be seen that it is a communication made by the Directorate of Town and Country Planning, MP, Bhopal to the Commissioner, Municipal Corporation, Jabalpur and this Directorate approves the proposal submitted by the Municipal Corporation and as the Directorate of Town and Country Planning is the competent authority under the statute to grant the approval, we have no doubt in our minds that the contentions of the petitioners that no approval has been obtained is not correct. Annexure R/1 dated 5.7.1989 is nothing but the approval of the competent authority under the Adhiniyam of 1973 for making the construction.

48. At this stage, we may refer to the return filed by the State Government in this regard. The State Government in its return does not specifically give any reply to various assertions made by the parties. On the contrary, it only says that approval from the State Government has not been obtained. We do not know as to how and on what basis such a statement is made on behalf of the State Government. The State Government does not say anything about issuance of the order – Annexure R/1 i.e. 5.7.1989 by the Directorate of Town and Country Planning. The return of the State Government is filed way back in the year 1989. The construction was done at that point of time and the State Government nowhere says that they have withdrawn the approval granted. The return of the State Government is filed in MP No.2876/1989 and in paragraphs 1, 2, 3 and thereafter in paragraph 4, it deal with the provisions of the Adhiniyam of 1973, the requirement of preparation of the zonal plan, developmental plan, preparation of such plans (sic:plans) for the city of Jabalpur and finally in paragraph 5 says that under section 19 of the Adhiniyam of 1973, the Development Plan for the Jabalpur region was published in the official gazette and, therefore, the only contention of the State Government upto paragraph 6 is that the development plan has been approved and the area marked as Wright Town Stadium is ear marked for a play-field and a stadium as well as certain recreational activities. Thereafter, in paragraph 6, they speak about the Municipal Corporation, Jabalpur approaching the Town and Country Planning Department for construction of shops around Pandit Ravi Shankar Shukla Stadium. They have filed a copy of the letter dated 6.1.1989 and they say that the Joint Director rejected the request vide

Annexure R-5 dated 30.1.1989; and, it is the same letter which has been filed by the petitioners in M.P. No.2861/1989, whereby it was stated that no development should be done without permission of the Director.

49. Thereafter, the Municipal Corporation again wrote to the Joint Director, who informed the Director about the request made by the Municipal Corporation on 30.1.1989 – Annexure R/6. All these communications made and filed by the State Government indicates that the State Government in the Directorate of Nagar Tatha Gram Nivesh Adhiniyam was dealing with the Municipal Corporation and there is nothing to indicate that the Directorate had passed the order on 5.7.1989, without approval of the State Government or the Government has cancelled the same, finally in paragraph 7, they go make the following statement is made on behalf of the State Government :-

“..... It is respectfully submitted that even the letter written by Director on 5.7.1989 was in consonance with permissible uses as indicated under zoning regulations annexed above.”

50. From this stand of the State Government, it is crystal clear that the Director vide communication dated 5.7.1989 had granted permission to the Municipal Corporation to make the construction subject to their confining to the limits prescribed therein. Under such circumstances, the contention of the petitioners that the State Government had not accorded sanction cannot be accepted. We have to hold that limited to the extent and subject to the conditions and restrictions as is indicated in the letter dated 5.7.1989, permission has been granted and if any construction has been made in deviation to the said sanction or permission to that extent there would be illegality and this position was even accepted by Shri Anshuman Singh, learned counsel for the Municipal Corporation at the time of hearing. Accordingly, with regard to the third ground raised that the construction has been made without approval of the State Government, we find that the Directorate of Town and Country Planning of the State Government which is the competent authority under the Adhiniyam of 1973, did grant certain permission on 5.7.1989 and the Municipal Corporation proceeded to take action on the basis of this communication. However, if there is any violation of the conditions based on which this permission was granted; the same shall be dealt with after going through the reports submitted on the basis of the inspection done.

51. Accordingly, as far as the legal questions involved in the writ petitions

are concerned, we hold that the contract given by the Municipal Corporation to the builder in question is permissible under law and, therefore, the contract in its totality cannot be quashed. We further hold that the area in dispute i.e.... the Wright Town stadium, Jabalpur has been notified under the land use and development map as a play ground, stadium and a place which can be used for certain recreational activities and finally, we hold that vide communication – Annexure R/2 dated 5.7.1989, permission has been granted to the Municipal Corporation, Jabalpur for development of complex around the stadium limited to the extent indicated in the said communication.

52. Having so held, we shall now proceed to take note of two inquiry reports submitted as per directions of this Court; violations, if any, pointed out in these reports and thereafter consider the question of issuing consequential directions in the matter.

53. Having considered various aspects of the matter as detailed hereinabove, now it would be appropriate to take note of the orders passed by this Court on 9.7.2002 and 5.9.2003, the consequential inspection reports submitted in pursuance to these orders and then consider as to what is the exact nature of illegality or irregularity in the matter and for the same what directions are required to be issued.

54. As already noted by us, initially on 9.7.2002, a detailed order was passed by this Court and even after taking note of the requirement of Clause 13, 18 and 20 of the agreement in question and after considering the question of the right available to respondent No.2 i.e.... the builder in the matter of collecting premium, the directions issued by this Court was to constitute a Committee which was to conduct its spot inspection during the course of the day and the next day i.e.... 10.7.2002 and submit a report on 11.7.2002. The Committee was to give its report on the following two aspects:

- (i) The number of shops existing in the market complex which is the subject matter in issue;
- (ii) The nature of trade or business carried out in the said shops.

55. On the basis of the aforesaid, a spot inspection report dated 11.7.2002 has been submitted by the Committee and the detailed report indicates that at the time of inspection various officials and authorities were present.

56. The Committee inspected the spot and found that there are 64 shops

and a 35 feet wide godown, all of which are facing the road. The details of the 64shops; the names of the occupants; the nature of the business being undertaken in these shops, are indicated in the report submitted by the Committee. The nature of business being carried out in these shops which was noted by the Committee at the time of inspection shows that in many of the shops work of motor repairing, jeep repairing, car repairing, denting and welding work, sale of motor parts, automobile, Air Conditioner selling; repairing, installation of A/c for motor vehicle; Auto-gas conversion; Godown keeping bore machine implements; automobile services stations were being carried out. However, in few of the shops, hotels and restaurants, establishment for selling surgical equipments, hospital equipments, wholesale business of garment, a pathology clinic, a Doctor's clinic, a sonography clinic, a retail medical shop, a beauty parlour, a Veterinary Clinic, STD booth, office of a borewell digging firm, office desktop publishing and certain shops were found to be closed. In one shop, Consultation Chamber of a Neuro-Surgeon and a big Godown 30' wide – belonging to Oberoi Tent House, were functional.

57. A perusal of this inspection report goes to show that most of the activities that were being carried out in the shops in question had no connection with or were not at all related to sports or sports related activities and except for certain hotel and restaurants and a medical shop or may be Doctors clinic and dispensary, STD Booth etc., none of the establishments functioning in the area could be said to be even remotely connected with sports or sports related activities. Most of the shops were carrying out business of motor repairing, automobile servicing, sale of motor parts, electrical parts and various other commercial activities which had no relationship with sports or its allied activities.

58. That being so, from the spot inspection that was conducted on 10.7.2002, it is clear that most of the commercial activities being carried out in these shops except a few, were not in accordance to the permission granted on 5.7.1989 nor was it in accordance to the purpose for which the stadium in question was notified under section 19, of the Nagar Tatha Gramin (sic:Gram) Nivesh Adhiniyam. It is, therefore, clear that as on 10.7.2002, the activities in the shops that was constructed were impermissible activities, which if not stopped till date are required to be stopped forthwith.

59. Thereafter, the second order was passed on 5.9.2013 and as already indicated in the previous part of our order, the Hon'ble Court constituted a

Committee consisting of the following three Members:

- (a) The Deputy Inspector General of Police, Central Bureau of Investigation;
- (b) Secretary, Urban Administration and Development Department; Government of MP, Bhopal.
- (c) Additional Chief Secretary, Government of MP, Bhopal.

60. This Committee was directed to conduct its inspection and in paragraph 17 of the order passed on 5.9.2003, the fact finding authority so constituted was given eight questions to be gone into and the report submitted to these aspects. The eight questions have already been detailed by us but for the sake of convenience, we detail them again herein under:

- (a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment?
- (b) Whether the Municipal Corporation Jabalpur had entered into any lease agreement in regard to the same?
- (c) Whether the builder has put the occupiers in possession, and if so, on what basis?
- (d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation?
- (e) Whether the occupiers of the shops are the first lease holders or they have taken sub-lease from someone else?
- (f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature?
- (g) Whether such a construction should have been carried keeping in view the master plan? ; and,
- (h) Whether the permission for such construction was not necessary despite master plan being in existence?

61. The report of the Committee dated 12.3.2004 is available on record and we find that the Committee consisted of Shri Sudhir Mishra, DIG, CBI, Bhopal; Shri M.A. Khan, Secretary, Urban Administration Development, Bhopal; and, Shri Arun Kumar Gupta, Additional Chief Secretary and Chairman, MPEB. The Committee visited the spot on various dates, went through and scanned the entire records available in the office of Municipal Corporation, Jabalpur; called for and inspected report in the Department concerned namely the Urban Administration Department; the Directorate of Nagar Tatha Gram Nivesh Adhiniyam and after conducting its deliberations, meetings and inspections on 24.11.2003, 9.12.2003, 10.12.2003, 9.1.2004, 11.2.2004, 17.2.2004, 18.2.2004 and 19.2.2004 has submitted a detailed report answering each question, which were given to the Committee for inquiry.

62. From the report of the Committee, the following facts emerge :- Pandit Ravi Shankar Shukla Stadium is in possession and under administrative control of the Municipal Corporation, Jabalpur since the year 1952. It was only an open ground surrounded by road on all the four sides. The land was under the ownership of Municipal Corporation, Jabalpur, bears Plot No.554, Locality Subhash Nagar, Area 4,44,328 square feet. The revenue records in this regard is filed by the Committee as Annexure A/2 to its report. Thereafter, the Committee detailed about the financial crisis of the Municipal Corporation in the year 1988-89, the decision taken by the Municipal Corporation for construction of 30 shops initially; the advertisement published in the daily newspaper on 4.11.1988, calling for offers for allotment of the shop on a premium of Rs. 1 Lac and a rent of Rs.400/- per month and the fact that no offer was received in pursuance to this advertisement. The subsequent decision to make construction of the building under the Builder Promoter scheme, publication of the notice in this regard, consultation of the Commissioner of the Municipal Corporation and their administrators with the Chief Secretary of the Government, the Principal Secretary of the Department concerned and the oral approval granted by these authorities and finally publication of the advertisement calling for offers on 30.11.1988. Various action taken finally concluding in execution of the agreement with the builder in question M/s Jaspal Oberoi, Developer and Builder on 20.1.1989. Copy of the agreement dated 20.1.1989 has been filed by the Committee and the features of the Agreement as have been detailed by us in this order are also taken note of. Thereafter, the Committee finds that the agreement has been entered into and construction of the shops commenced in the year 1990-91 and was in progress

even when the writ petition was filed.

63. The Committee after inspecting various records available in the office of the Municipal Corporation and the Government, finds that after the decision was taken to make the construction under the Promoters Scheme, the then Administrator of the Municipal Corporation vide his communication dated 28.12.1989 – Ex.P/6 requested for approval and guidance from the State Government and in the notings, on the file, the Committee found that the then Administrator of the Corporation deliberated and discussed the issue with the Principal Secretary of the Government and it is noted that after assurance and approval from the Principal Secretary, the matter was proceeded further by issuing tender and taking various other steps. The Committee finds that as per the record, the proposal was for constructing 60 shops and thereafter permission was granted for constructing 5 additional shops, i.e. 65 shops in all. The Committee took note of the requirement of the agreement, found that at the time they conducted inspection as per Annexure P/7, the outstanding rent to be collected from various shop-keepers was Rs.7,41,975/-. The Committee after inspection of various documents came to the conclusion that approval was granted by the Directorate of Town and Country Planning in accordance to the requirement of the statute on 5.7.1989. However, it was incorporated in this permission that the development and the construction of the shops shall be used for the limited purpose as indicated in the letter dated 5.7.1989 and on both side of the main gate, 60' land should be left open. However, the Committee found that after developing the shops, various activities are being carried out like motor part and scooter part dealership, repair of motor vehicles, printing press, lathe machine etc. All these are not only contrary to the permission granted and the development plan, but also creates nuisance and hinderance in proper use of the stadium. Certain irregularities in the execution of the leased deed with the shop-keepers by the Promoter were also taken note of, in as much as instead of signature of the authority of the Municipal Corporation in the lease-deed i.e. execution of the lease for allotment by the Municipal Corporation, the lease-deed is said to have been executed by the Promoter himself and thereafter forwarded to the Municipal Corporation. The Committee also found that the Builder has spent more than Rs. 20 Lacs in the development of the area and even though he indicates that he has charged premium from Rs.30,000 to Rs.35,000/- from each allottee of the shop, by filing various documents Ex.P/14 and after recording statement of various shop-keepers, the Committee found that premium collected by the Promoter

from the shop-keepers ranged from Rs.35,000/- to Rs.75,000/-. After taking note of all these facts, the final conclusion of the Committee with regard to each item referred to it is answered.

64. The Committee answers the 8 questions posed to it by this Court as under :-

(a) Whether the shops which are in the stadium complex are utilized for any purpose, having any relationship with sports or sports entertainment ?

This question is answered by saying that the shops in the stadium complex mostly were not being used for any purpose having relationship with sports or sporting activities. It is held that in the complex constructed, the allottees of most of the shops are not carrying on any activity which is in relation to sports or sports related activity. It is found that in about 26 shops, at that point of time i.e. 2004, prohibited business are being carried out and even though the authorities of the Municipal Corporation said that they are taking action to stop them, in most of the shops activities contrary to the sports activity are carried out.

(b) Whether the Municipal Corporation, Jabalpur had entered into any lease agreement in regard to the same ?

With regard to this query it is held that the Municipal Corporation, Jabalpur has not entered into any lease agreement but according to the document available, the promoter builder after obtaining premium has himself entered into the agreement with the shop keepers but in these agreements and lease executed counter signature of representative of Municipal Corporation is available.

(c) Whether the builder has put the occupiers in possession, and if so, on what basis ?

This question is answered by holding 'yes'. It is indicated that as per the lease agreement executed with the Promoter builder, it is a promoter builder after whose approval the shops have been allotted but it is also indicated that the agreements have been signed by the promoter builder with the shop keepers and he has given possession to the shopkeepers and because of the interim order and prohibition issued

by the High Court in these petitions, the Municipal Corporation did not execute the lease agreement.

(d) What premium the occupants of the shops had paid to the respondent No.2 and what rent they are paying to the Municipal Corporation ?

It has been held with regard to this question that as per the documents produced by the Municipal Corporation and the promoter and after taking note of the statement of the promoter it is found that every shopkeeper has paid the premium amount to the builder Shri Jaspal Oberoi, but the accounts and bills of premium so obtained are not available with the Municipal Corporation. It is also indicated that in the agreement there was no condition that the builder is to submit the details of the premium collected by him from the Shopkeepers, with the Municipal Corporation. It is further indicated that even though the Builder in his statement says that he has collected premium between 30,000/- to 35,000/- Rupees but some shopkeepers says that they have given premium of Rs.40,000/- and some have paid about Rs.70,000 to 75,000/-. However, it is seen from the record that the premium receipts ranging from Rs.35,000/- to 75,000/- have been produced by the shopkeepers and are filed along with the report. That apart, it is found that rent of the shop is being collected in accordance with the agreement by the Municipal Corporation and as on date when the report was submitted, i.e. in the year 2004 an amount of Rs.7,46,975/- was outstanding as rent.

(e) Whether the occupiers of the shops are the first lease holders or they have taken sub lease from someone else ?

On inspection it is found by the Committee that out of 65 shops allotted, in only 33 shops, the original occupiers are still carrying on their business. In 32 shops the present occupiers have obtained the possession from the original occupier and carrying out their business i.e. by sub lease.

(f) Whether the State as an actual fact granted permission to the Municipal Corporation to go ahead for the construction of this nature ?

This question pertains to grant of permission by the State Government

and this question is answered by referring to various documents to say that the shops have been constructed in accordance to the provisions of law after obtaining due permission from the competent authority and the report also indicates that the Administrator has deliberated and discussed the issues on various occasion with the Principal Secretary of the Government and the records do indicate that constructions have been made after due permission and approval of the Government.

(g) Whether such a construction should have been carried keeping in view the master plan ? and

(h) Whether the permission for such construction was not necessary despite master plan being in existence ?

The last two questions are as to whether the permission for such construction was not necessary. It is held that the permission has been granted by the State Government and reference to the permission given by the competent statutory authority i.e. Director on 5.7.1989 is made to say that this is an appropriate permission. As regard the question with regard to construction being made in deviation from master plan as was existing, it is held that even though the construction has been done after obtaining due permission and as per the master plan from the Director vide his letter dated 5.7.1989 but in actual use of the permission and in allotment of the shop illegality had been committed. It is held that the business activities in the complex is contrary to the permission granted.

65: On going through the report of the Committee and after analyzing the totality of the facts and circumstances of the case in the backdrop of various legal provisions and judgments as referred to by us herein above, we have to come to the following conclusion :-

(I) The Municipal Corporation entered into an agreement with the Builder and there is no illegality, arbitrariness or unreasonableness in entering into such an agreement.

(II) However, in the execution of the agreement the following illegalities/irregularities have been committed :-

(a) Proper lease agreement have not been executed between

the persons to whom the shops were allotted and the Municipal Corporation, Jabalpur, the agreement entered into is by the builder with counter signature of a representative of the Municipal Corporation this is not as per the agreement under the builder promoter scheme, dated 20.1.1989.

(III) Even though approval has been obtained from the State Government on 5.9.1989, the Director, Town and Country Planning for development of the stadium and construction of shops but actual use of the same is contrary to the approval granted, i.e. a play ground and a stadium is being used mostly for purpose unconnected with sports or sports related activities, which is not in accordance to the development plan.

66. On 10.8.2015 Shri Alok Vagrecha, learned counsel appearing for some of the intervenors in M.P.2876/1989 has submitted a written submission on behalf of the intervenors. Most of the legal grounds raised by Shri Vagrecha has been considered by this Court. However, in the said written submission on behalf of the intervenors Shri Vagrecha points out that at the most Municipal Corporation, Jabalpur could be asked to regulate the business of the shop keepers in accordance with the permission granted vide letter dated 5.7.89 and he says in the said submission that the intervenors have no objection in case a direction is issued to the Municipal Corporation to regulate the nature of business and activities for which the shops may be utilized in future in accordance with the directions contained in the letter dated 5.7.89. This was also infact, a alternate submission that was made by Shri Anshuman Singh, learned counsel appearing for the Municipal Corporation at the time of hearing and after taking note of all the aforesaid submissions and findings recorded by us, we proposed to do so only in the matter.

67. Even though the development and construction of the shop has been undertaken in accordance to the development plan and land use of the area as required under the scheme formulated in accordance to Section 19 of the Adhiniyam of 1973 but in fact, the actual use is not in accordance to the development plan in as much as most of the activities carried out in the 65 shops constructed under the promoter builder scheme are not in relation to anything connected with sports or sports related activity. Most of the shops are being used for purposes which have no relation with sports activities. Under such circumstances, we allow this petition and we direct the Municipal

Corporation to :

- (i) Stop all activities in all or any of 65 shops which carry out business or functions or activities which are not in accordance to the permission granted on 5.7.1989 and which have no nexus with sports or sports related activities. All activities pertaining to motor repairing, auto repairing, bore-well parts, sale of automobile parts, electrical parts or any other equipment or material not at all connected with sports activity should be stopped forthwith. Only such activity should be permitted in the shops which are in connection with the sports or sports related activity.
- (ii) Only such activities be permitted in the shops which are in accordance to the requirement of the permission granted on 5.7.89 and have any co-relation with sports, sports related activities or the business activities or the functioning of the shops are for such purpose which are beneficial to the sports person who come to use the stadium or to the sports association who have offices in the complex or sportsman who stay in the rooms constructed when they come to participate in sporting activity. Only such business establishment or activities like hotels, restaurants, medical shops etc. be permitted in these shops which are beneficiary to sportsman, sports-persons and the sports association operating in the stadium complex, except these all other activities should be prohibited.
- (iii) As the agreement entered into with the builder contractor on 20th January 1989 was authorizing the builder to obtain premium from the first allottee of the shops and thereafter, recommend for allotment to be made and as this phase is already over, now the Municipal Corporation should take over the entire complex dis-engage the builder and contractor from any activity concerned with the shopping complex, its management or leasing and now all allotment and regularization of the allotment in accordance to the development plan and permission granted on 5.9.1989 should be undertaken by the Municipal Corporation.
- (iv) The Municipal Corporation shall issue notice to all such shop owners who are carrying on activities which are impermissible, grant them adequate opportunity for stopping the same within a period of

three months, give them an option either to change their business activity and bring in conformity with the requirement of the sanction granted or the development plan or else to vacate the shop and handover their possession to the Municipal Corporation.

(v) The Municipal Corporation shall take over possession of all the shops which are vacated in pursuance to this order and thereafter shall take steps for allotting these shops in accordance with the rules applicable for allotment of shops and ensure that allotments are made strictly in accordance to the law i.e. the permission granted on 5.9.1989 and the development plan.

(vi) The Municipal Corporation shall ensure that proper lease agreement is entered into with all the allottees of the shop and even if any allottee of the shop is continuing with the occupation of the shop and is in possession on the basis of agreement entered into with the builder, which is found to be illegal by the Committee which submitted its report on 12.3.2004, the Corporation shall regularize the lease agreement after negotiation and discussion with the shop owner and bring it in conformity with the requirement of law and execute a fresh lease agreement. If the shop owner is not willing to enter into a fresh lease and bring the lease in conformity to the requirement of law, the Municipal Corporation shall be free to take such steps as may be permissible in accordance with law. The Municipal Corporation should regularize all the lease agreements with regard to each and every shop and make it in conformity with the rules and regulations applicable to the Municipal Corporation and it should be made clear in the agreement that the right of the builder with regard to shop stands discontinued or terminated and shop keepers shall not deal with the builder any further.

(vii) The 10 feet corridor in front of each shop should be free from obstructions, no business activity or any other activity should be permitted in this area and the same should be left free for movement of sports personnel and other persons who use the stadium. Any shop keeper misusing the corridor should be treated as an encroacher and action taken against him as permissible in law.

(viii) The entire area in front of the stadium and surrounding it, should be kept free from encroachment. Illegal parking of the vehicle should be prevented and with the help of District Administration and the police authorities, the

stadium and its surrounding area should be kept in such a manner that its utility for sports activities and by the sports personnel for sporting activity is optimized and by encroachment, illegal parking etc., no obstruction is created in the use of the stadium or its complex.

68. Municipal Corporation should comply with the aforesaid directions within a period of three months from the date of delivery of this judgment and submit a report to the Registrar General of this Court. Report so submitted shall be placed for consideration before this Court and in case no report is submitted within the period of three months from the stipulated period or by 30th November 2015. The Registrar General or the Principal Registrar (Judicial) should bring this fact to the notice of the appropriate Bench for taking action in accordance with law.

69. With the aforesaid, this petition stands allowed and disposed of. No orders on costs.

Petition allowed.

I.L.R. [2015] M.P., 3315

APPELLATE CIVIL

Before Mr. Justice Rohit Arya

S.A. No. 560/2004 (Gwalior) decided on 6 May, 2014.

REWARAM

...Appellant.

Vs.

VEERENDRA KUMAR & ors.

...Respondents

Civil Procedure Code (5 of 1908), Section 100 - Substantial question of law - Held - Both the courts below have recorded a comprehensive findings of fact upon due appreciation of evidence on record - No question of law much less substantial question of law arises warranting interference.
(Para 5)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 - विधि का सारवान प्रश्न - अभिनिर्धारित - अभिलेख पर साक्ष्य का सम्यक् अधिमूल्यन करते हुए दोनों निचले न्यायालयों ने तथ्यों के व्यापक निष्कर्ष अभिलिखित किये - हस्तक्षेप के लिये कोई विधि का सारवान प्रश्न तो दूर, विधि का प्रश्न भी उत्पन्न नहीं होता।

Varun Kaushik, for the appellant.

Anmol Khedkar, for the respondents.

J U D G M E N T

RONIT ARYA, J. :- This appeal under section 100 of CPC by the objector/judgment-debtor/tenant is directed against the concurring judgment and decree dated 16/07/2004 passed in civil appeal No.7/2004 by First Additional District Judge, Vidisha, District Vidisha affirming the order dated 13/05/2004 in execution case No.133-A/89/01 by Civil Judge, Class-I, Vidisha whereby the appeal has been dismissed.

2. The facts in detail need not be delved deep into as the matter at issue relates to eviction of suit premises by the tenant/judgment-debtor after the order passed by Hon'ble Supreme Court.

3. Instant case is a rare case and it has set a classic example of misuse of process of law at the behest of chronic litigant/tenant dragging the landlord in coils of litigation and labyrinth of adversarial procedural laws. It is, in fact, unfortunate that a landlord/decreed-holder having obtained a decree of eviction on 23/10/1997 in civil suit No.133A/89 which stands affirmed in first appeal No.13A/2000 decided on 13/12/2000 giving two months' to the judgment-debtor/tenant to vacate the suit premises and further affirmed by the said judgment and decree dated 27/04/2001 in S.A.No.77/2001 by a co-ordinate Bench of this Court. Eventually, Special Leave to Appeal (Civil) No.10178/2001 arising therefrom at the instance of the appellant tenant/judgment-debtor having been dismissed on 29/11/2001 with the direction that the appellant/tenant/judgment-debtor to give an undertaking to the effect that he will vacate and handover peaceful possession of the suit premises to the landlord/plaintiff on or before 30/06/2002, the landlord/decreed-holder was not delivered possession as appellant/tenant did not vacate the suit premises and acted contrary to the undertaking given before the Hon'ble Supreme Court. Instead of vacating the suit premises, he has filed objections under Order XXI Rule 97 of CPC through his daughter-in-law and sons. The same was dismissed on 14/10/2003 by the executing Court and affirmed upto by a co-ordinate Bench of this Court vide order dated 05/03/2004 in S.A.No.67/2004 (Meena Valecha and otrs. Vs. Rajmal Jalori and another). Thereafter, the appellant/tenant/judgment-debtor has filed an objection under Oder XXI Rules 97, 98, 99 read with section 151 of CPC. The same has been dealt with and dismissed by the executing Court and affirmed by the first appellate Court which are impugned in this second appeal. As such, the landlord obtained decree in the year 1989 has not been able to reap the fruits of the decree upto

the year 2014. More than 25 years has passed by and the appellant/ tenant / judgment-debtor is enjoying the legal protection for all these years by resorting to adversarial procedural laws to the grave prejudice of rights and interest of the plaintiff/ landlord/decree-holder. The conduct of the appellant/tenant/ judgment-debtor is worth condemnation as despite having given an undertaking before the Hon'ble Supreme Court on 29/11/2001 (Supra) to the effect that he will vacate and handover peaceful possession of the suit premises to the landlord on or before 30/06/2002 did not abide by his own undertaking and, hence, betrayed the trust reposed upon him by the Hon'ble Supreme Court.

4. That apart, after passing the impugned judgments/orders by the Courts below, the appellant/tenant/judgment-debtor instead of abiding by the undertaking has rushed to this Court and obtained interim protection on 02/09/2004 pending admission of the appeal. After 02/09/2004, for the first time, the case has come up for consideration on 25/02/2014 before a co-ordinate Bench of this Court, however, due to paucity of time, the matter could not be taken up for hearing and thereafter, the matter was listed on 23/04/2014 for consideration.

5. In view of the aforesaid facts and in the circumstances of the case and after having gone through the impugned judgments, this Court is of the opinion that both the Courts below have recorded a comprehensive findings of fact upon due appreciation of evidence on record. The entire gamut of matter is in realm of facts. No question of law much less substantial question of law arises warranting interference under section 100 of the Code. The appeal sans merit and is accordingly dismissed with cost. Looking to the conduct of the appellant/ tenant/judgment-debtor, cost of Rs.25,000/- (Rupees twenty five thousand only) is imposed which shall be paid to the landlord/plaintiff/decree-holder within fifteen days from today. It is made clear that as the appellant/tenant/ judgment-debtor has given an undertaking before the Hon'ble Supreme Court on 29/11/2001 (Supra), the executing Court must ensure that the appellant/ tenant/judgment-debtor will vacate and handover peaceful possession of the suit premises to the landlord/plaintiff/decree-holder without further loss of time, i.e., forthwith and if need be, by providing police force.

6. Office is directed to transmit the original record to the Court below for necessary compliance, forthwith.

Appeal dismissed.

I.L.R. [2015] M.P., 3318

APPELLATE CIVIL

Before Mr. Justice Rohit Arya

S.A. No. 395/2012 (Gwalior) decided on 17 June, 2014

BRIJMOHAN & ors.

...Appellants

Vs.

CHANDRESH & ors.

...Respondents

Limitation Act (36 of 1963), Section 65 - Adverse possession -
Party setting up plea of acquisition of title by adverse possession has to be specific as regards to period and date from which he claims possession and then has to prove that possession was adequate in continuity, in publicity and in extent to show his possession was actually visible, exclusive, hostile and continues over statutory period to the knowledge of real owner - Person pleading adverse possession has no equity in his favour. (Paras 12 & 13)

परिसीमा अधिनियम (1963 का 36), धारा 65 – प्रतिकूल कब्जा – प्रतिकूल कब्जे द्वारा हक/स्वत्वाधिकार अर्जित करने का अभिवाक् करने वाले पक्षकार को समय अवधि एवं तिथि जिससे वह कब्जे का दावा करता है, के संबंध में विनिर्दिष्टित करना चाहिए तथा इसके पश्चात् उसे यह सिद्ध करना होगा कि कब्जा निरंतरता में, प्रचार में तथा सीमा में पर्याप्त था तथा यह दर्शाना होगा कि उसका कब्जा वास्तव में दृश्यमान, अनन्य, प्रतिकूल तथा वास्तविक स्वामी की जानकारी में वैधानिक अवधि से जारी है – प्रतिकूल कब्जे का अभिवचन करने वाले व्यक्ति के पक्ष में कोई साम्या नहीं है।

Cases referred :

AIR 1968 SC 1413, (2004) 10 SCC 779, AIR 1970 Orissa 82.

K.S. Tomar with J.S. Kaurav, for the appellants.*M.K. Jain*, for the respondents No. 1 to 3.**J U D G M E N T**

ROHIT ARYA, J. :- This appeal under section 100 CPC by the defendants' No.5, 6, 7 and 8 is directed against the judgment and decree dated 15/05/2012 passed in civil appeal No.28A/2011 by II Additional District Judge, Vidisha District Vidisha partially allowing the appeal, set aside the judgment and decree passed by the trial Court dated 19/07/2010 in civil suit No.92A/2008. The suit has been decreed to the effect that the plaintiffs/

respondents' No.1 and 2 are entitled to half of 1/3rd share (Kamla Bai and Narmada Bai) with equal shares of agricultural land falling in survey Nos.87 area 03.45 hectare, 252 area 0.052 hectare, 511 area 0.336 hectare, 512 area 0.261 hectare, 513 area 0.597 hectare, total area 1.621 hectare (hereinafter referred to as 'the suit land').

2. Following substantial question of law needs to be addressed as contended by the learned senior counsel for appellants:

“(i) Whether the factum of alleged 'will' executed by Kamla Bai in favour of Gopilal father of defendants' No.5, 6, 7 and 8 to the exclusion of plaintiffs' No.1 and 2, husband and son respectively was proved?”

In the alternate:

(ii) Whether Kamla Bai had actually executed the 'will' in favour of Gopilal father of defendants' No.5, 6, 7 and 8?

3. With the consent of learned senior counsel for the appellants' and looking to the nature of the dispute involved in the instant case, appeal is heard finally. Record of the case is perused.

4. Plaintiffs' have filed a suit for declaration and partition of the suit land which was dismissed by the trial Court.

5. Facts necessary for disposal of this appeal are to the effect that admittedly in the year 1986-87, the suit land is jointly owned by Kamla Bai, Narmada Bai daughters of Lakshman Prasad had 1/3rd share each, Gopilal and Mathura Prasad both sons of Durga Prasad had 2/3rd share each in the suit land. It is an admitted position that Mathura Prasad had got divided his share and with his share separated himself in the past having taken the entire area falling in survey No.513, hence, the remaining land was to the extent of 0.056 hectare in that survey number. It is also an admitted fact that all the aforesaid four persons have passed away. Plaintiffs' No.1 and 2 are heirs of Kamla Bai being husband and son respectively. Plaintiff No.3 is heir of Mathura Prasad. Defendants' No.1 to 4 are heirs of Narmada Bai and defendants' No.5 to 8 are heirs of Gopilal. It is contended that while Mathura Prasad's share was apportioned in revenue case No.12A-27/ 86-87 either due to negligence of *patwari* or otherwise in the revenue record against the name of Gopilal instead of 2/6th, 2/3rd share is recorded which has resulted

into reduction of holdings of Kamla Bai and Narmda Bai. Likewise, certain mistakes were committed by *patwari* while making entries in relation to survey No.513 as a result in place of 0.501 hectare, 0.096 hectare is recorded and share of Mathura Prasad was shown to be 0.0541 hectare in place of 0.501 hectare without knowledge and notice to the plaintiffs'. Above all, behind the back of the plaintiffs', the name of Kamla Bai was deleted and against name of Narmada Bai 0.187 hectare has wrongly been mentioned in place of 0.270 hectare by Gopilal in collusion with *patwari*. Therefore, there were serious illegalities and irregularities in the revenue record as regards holdings of Kamla Bai and Narmada Bai and at the instance of defendants' No.5 to 8 in active collusion with the *patwari*. Hence, the instant suit was filed for declaration and permanent injunction as per agreed share of the original owners in respect of the suit land.

6. Defendants' No.5 to 8 have filed written statement disputing and denying the claim of the plaintiffs' *inter alia* contending that Kamla Bai had executed a 'will' dated 09/08/1985 and had bequeathed her share of suit land in favour of Gopilal during her life time. Accordingly, agricultural holding of her share has been mutated in the revenue record in the name of Gopilal, hence plaintiffs' have no right in the suit land and prayed for dismissal of the suit.

7. Trial Court based upon the aforesaid pleadings had framed issues and allowed parties to lead evidence. Trial Court dismissed the suit of the plaintiffs'.

8. On appeal, the first appellate Court while addressing upon the issue as regards execution of the 'will' dated 09/08/1985 has discussed the oral and documentary evidence on record from paragraph 27 onwards. Defendants' No.5 to 8 have asserted that by virtue of 'will' dated 09/08/1985, the agricultural holding to the extent of share of Kamla Bai since stood recorded in the name of Gopilal vide exhibit D/3, it was vested upon Gopilal and after his death upon the defendants' No.5 to 8. Plaintiffs' No.1 and 2 have no right, title and interest over the suit land. The plaintiffs' have no knowledge about the suit land and for the last 20 years they have remained quiet and did not assert any right over the suit land in any manner whatsoever. Hence, plaintiffs' are not entitled for any relief and, therefore, the suit deserved to be dismissed. The Court below held that to claim title with the supporting evidence of mutation regarding partition was upon the defendants' No.5 to 8 to prove the 'will' allegedly executed by Kamla Bai in favour of Gopilal. Neither the 'will' nor

copy thereof has been produced by the defendants' No.5 to 8 before the Courts below. There is no averment in the written statement that the aforesaid 'will' is not in their custody. As such, irresistible conclusion is that adverse inference has to be drawn against the defendants' No.5 to 8 in the context of the alleged 'will' in the light of judgment of the Hon'ble Apex Court reported in AIR 1968 SC 1413, *Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others*.

9. Mere assertion as regards 'will' and the mutation based thereupon shall not confer any title upon the defendants' No.5 to 8 in respect of agricultural holding falling to the share of Kamla Bai. Consequently, 'will' having not been proved, the first appellate Court has held that the suit land flows upon the natural heirs of Kamla Bai, i.e., plaintiffs' No.1 and 2 under Hindu Succession Act, 1925. Accordingly, plaintiffs' No.1 and 2 since have share in the suit land, they have been held to be entitled for the share to the extent of half of 1/3rd of the entire agricultural holding of the suit land. As regards point of limitation, it is held that the plaintiffs' are husband and son of late Kamla Bai seeking partition of the suit land having the effect of recurring cause of action and, therefore, suit cannot be said to be hit by the provisions of Limitation Act, as claimed.

10. Defendants' No.5 to 8 in the second breath have asserted title by adverse possession but there is no averment on that behalf in the written statement.

11. It is apposite to state law as regards to acquisition of title by adverse possession as consistently held by the Hon'ble Supreme Court and followed by the various High Courts including the jurisdictional High Court.

12. The facts required to plead and prove adverse possession when the party to a *lis* set up a plea of acquisition of title adverse possession has to be specific as regards to period and date from which he claims possession and then have to prove that the possession was adequate in continuity, in publicity and in extent to show that his possession was actually visible, exclusive, hostile and continues over the statutory period as contemplated under Section 65 of the Limitation Act to the knowledge of the real owner. Mere physical act of exclusive possession by, itself, cannot justify the claim of adverse possession.

13. A person pleading adverse possession has no equity in his favour if some one asserts acquisition of title by adverse possession. It, in fact, amounts

to trying to defeat the right of true owner and, therefore, burden is very heavy upon such person to prove title by adverse possession and for that he has to plead and establish all the facts necessary as aforesaid to establish his claim.

14. The Hon'ble Supreme Court in the case of *Karnataka Board of Wakf Vs. Government of India and others*, (2004) 10 SCC 779, in para-11 has observed as under :

“11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (see *S.M. Karim V. Bibi Sakina*, AIR 1964 SCC 1254 : *Parisinni V. Sukhi*, (1993) 4 SCC 375; (1993 AIR SCW 3606) and *D.N. Venkatarayappa V. State of Karnataka* (1997) 7 SCC 567) : (AIR 1997 SC 2930) Physical fact of exclusive possession and animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and possession and animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued,

and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (*Mahesh Chand Sharma (Dr) V. Raj Kumari Sharma* (1996) 8 SCC 128) : (AIR 1996 SC 869)."

15. During the course of hearing learned senior counsel has placed reliance on various pronouncements besides the decision reported in AIR 1970 Orissa 82 *Ram Nahak and others vs. Sita Dakuani and others*, however, the facts of those cases are different and, hence not helpful to the appellants'.

16. Having gone through the impugned judgments rendered by the Courts below and the record of the case, this Court is of the opinion that first appellate Court was fully justified in setting aside the judgment and decree passed by the trial Court to the extent of share of Kamla Bai over the suit land.

17. Accordingly, the judgment and decree of the first appellate Court is upheld and the suit of plaintiffs' is partially decreed. Hence, the question of law is answered in the affirmative.

18. The appeal sans merit and is accordingly dismissed.

Certified copy as per rules.

Appeal dismissed.

I.L.R. [2015] M.P., 3323

APPELLATE CIVIL

Before Mr. Justice Rohit Arya

F.A. No. 234/2013 (Gwalior) decided on 17 June, 2014

SHEELA YADAV (SMT.)

...Appellant

Vs.

MUTHOOT FINANCE & ors.

...Respondents

Civil Procedure Code (5 of 1908), Section 9 - Suit for declaration
- Appellant filed suit for declaration that the name of defendant no. 2 be obliterated from the debenture certificate issued in the name of defendant no. 2 as appellant had invested money for purchase of debentures - Plaintiff/appellant failed to prove her income/source of money - Preponderance of probabilities - Where findings are based

**upon critical evaluation of evidence, no illegality or perversity is found
- Appeal dismissed.** (Paras 3, 9, & 10)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 9 - घोषणा के लिये वाद -
अपीलार्थी ने घोषणा के लिये वाद प्रस्तुत किया कि प्रतिवादी क्र. 2 के नाम पर जारी किये गये डिबेंचर प्रमाणपत्र से प्रतिवादी क्र. 2 का नाम अभिलोपित किया जाये क्योंकि अपीलार्थी ने डिबेंचर के क्रय में रुपये निवेश किये थे - वादी/अपीलार्थी अपनी आय/धन के स्रोत को सिद्ध करने में असफल रही - अधिसंभावनाओं की प्रबलता - जहां निष्कर्ष साक्ष्य के आलोचनात्मक मूल्यांकन पर आधारित है, वहां कोई अवैधता या विपर्यस्तता नहीं पायी जाती - अपील खारिज।

Rajeev Shrivastava, for the appellant.

Neeraj Bhargava, for the respondent No.1.

S.P. Chaturvedi, for the respondent No. 2.

J U D G M E N T

ROHIT ARYA, J. :- This appeal by plaintiff is directed against the judgment and decree dated 1/11/2013 in Civil Suit No.32-A/2013.

2. Plaintiff is the daughter of defendant no.2 and sister of defendants no.3 and 4. Defendant no.1 is a finance company with its local office at City Centre, Gwalior.

3. Plaintiff filed a suit for the relief to the effect that name of defendant no.2 be obliterated from the debenture certificate and her name be substituted with further declaration that plaintiff is entitled to receive the amount payable vide debenture certificate No.0532/427 invested with defendant no.1 and permanent injunction restraining defendants not to interfere in release of the amount in her favour.

4. There is no dispute amongst the parties that defendant no.1- finance company had issued a debenture certificate no.0532/427 dated 10/12/2010 in the name of defendant no.2-Smt. Basso Bai.

5. It is averred in the plaint that plaintiff is a housewife and lives in Chandanpur. By virtue of gifts of money given to her by her father at times, she has deposited the same with the bank and as on 8/9/2010 she had Rs.3,25,793/- in her account. Defendant no.2 is an old lady of 70 years. Since she was being ill-treated by her sons viz. defendants no.3 and 4, she used to live with the plaintiff. As senior citizens of the age of 60 years and

above, as per the banking regulations, are entitled for 1% extra interest, therefore, out of her own savings plaintiff had invested Three Lacs Rupees with defendant no.1 in the name of defendant no.2 and, therefore, the original debenture certificate has been issued in the name of defendant no.2. Since with the change of time defendant no.2 developed ill-intentions and in collusion with her sons viz. defendants no.3 and 4 intended to withdraw the amount as secured by debenture, therefore, plaintiff has filed the suit as referred above.

6. Defendant no.2 has filed written statement denying plaintiff's allegations and asserted that as a matter of fact plaintiff has no source of income much less independent source of income. The debenture has been issued on investment done by defendant no.2 and not out of the funds allegedly invested by the plaintiff. The plaintiff with an ulterior motive has tried to obliterate the name of defendant no.2 from the debenture certificate and put her name over that in order to illegally encash the amount. With the aforesaid pleadings, the suit was prayed to be dismissed.

7. Trial Court framed following issues:-

“क्या वादी ने अपनी स्वयं की आय की राशि तीन लाख रुपये अधिक ब्याज प्राप्त करने के आशय से प्रतिवादी कमांक 2 अपनी मां श्रीमती बस्सो के नाम से प्रतिवादी कमांक -1 मुत्तु फायनेंस कम्पनी के यहाँ जमा कराई ?

2. क्या वादी श्रीमती शीला प्रतिवादी बस्सो के नाम से जमा तीन लाख रुपये प्रतिवादी कमांक -1 मुत्तु फायनेंस कम्पनी से प्राप्त करने की अधिकारिणी है ?

3. सहायता एवं व्यय ?”

8. While addressing upon the issue no.1, the trial court has threadbare discussed oral and documentary evidence brought on record by plaintiff as well as defendant no.2 in paras 8 and 9 of its judgment. While analyzing evidence, trial court bore in mind the concept of burden of proof as to on whom the burden of proof lies as conceptualized in the form of provision contained under Section 101 and 102 of the Indian Evidence Act in given set of facts. Plaintiff has filed the instant suit with assertions that she is a housewife and out of the gift amount given to her by her father, she had made savings of Rs.3,25,793/-. To fetch 1% more interest on deposits she had invested the aforesaid sum with Muthoot Finance-defendant no.1 by purchasing debenture certificate in the name of her mother-defendant no.2, who is more than 70 years of age, vide debenture certificate No.0532/427, therefore, the burden

of proof as regards availability of funds in her account, source thereof and its investment by her in the name of her mother-defendant no.2 with Muthoot Finance-defendant no.1 lied upon her. In para 15 of the impugned judgment it has been found that in para 11 of her cross-examination in the application filed before the court below seeking exemption from payment of court fees she has stated that she did not have any independent source of income. She has deposed, contrary to her assertion in the plaint, to the effect that her father did not give any gift amount to her from time to time. In para 17 she stated that she has deposited Rs.5,000/- on 2/7/2010 and Rs.82,510/- on 4/9/2010 and claimed it to be out of the salary of her husband. In para 22 she stated that she has no other source of income except by sale of milk, however, there is no evidence as regards alleged business of milk much less documentary evidence. She admitted that from her account she has withdrawn an amount of Rs.9,89,000/- on different dates and had made fixed deposit of Rs.3,00,000/- out of the said amount. In para 23 she stated that she lives in a tenanted house on payment of hundred rupees per month as rent. She has expressed her ignorance as regards agricultural land admeasuring 8 bigha 11 biswa of her mother in village Dinarpur, which was sold by her (mother DW-2) and an amount of Rs.14,00,000/- was received by her mother. She has further expressed her ignorance as regards deposit of said amount in Uco Bank. There is no dispute that plaintiff's husband is a driver and they have two sons.

9. It is further found that after sale of agricultural land by defendant no.2 on receipt of consideration Rs.14,00,000/- she has been staying with the plaintiff for at least 15-20 days; from the account of plaintiff an amount of Rs.9,89,000/- has been withdrawn on different dates; and During stay of defendant no.2 with plaintiff the debenture certificate was prepared. Looking to the status of plaintiff that her husband is a driver, children are not earning members, she lives in a tenanted house on rent of Rs.100/- per month, she herself failed to prove that she is in business of sale of milk, she is married for last 25 years, however, uptill the sale of land by defendant no.2 there was no balance in the account of plaintiff, but suddenly a sum of Rs.9,89,000/- was withdrawn from her account, as such there is no explanation as to where-from she had procured such a huge amount of Rs.9,89,000/-, which was withdrawn from her account on different dates. As such, obviously such a huge withdrawal on different dates is on account of the amount of sale proceed of Rs.14,00,000/- in

the hands of defendant no.2 who stayed with the plaintiff after sale of land. With the aforesaid critical analysis, the plaintiff has been found not to have discharged the burden of proof that out of her own funds, she had invested Rs.3,00,000/- to purchase of debenture certificate in the name of her mother, as required under Section 102 of the Indian Evidence Act and consequently held that the debenture certificate No.0532/427 does not belong to plaintiff. Applying the principles of concept of preponderance of probabilities, the trial court further discussed that it is one of the such cases where an old, illiterate and infirm lady of 75 years of age has been cajoled with ulterior motive and collateral purposes by her own daughter and in fact has been cheated, as her own money, which she had received after sale of agricultural land, has been cleverly deposited by the plaintiff in her account and thereafter withdrawals were made for various purposes including one in question playing with the ignorance and helplessness of her mother. Moreover, even her name in the debenture certificate was sought to be obliterated and to put her own name. Earlier this old and infirm widow was routed by her own sons and later on by the daughter after preparation of impugned debenture certificate. It is really an unfortunate situation where an old and infirm lady is sought to be exploited by her own children for personal collateral gains. Under such circumstances, the trial court held that plaintiff has failed to prove that the debenture certificate was issued out of her own funds, as required under Section 102 of the Indian Evidence Act and answered issue no.1. Answer to issue no.2 is consequential in nature. As it has rightly been found that the plaintiff is not entitled to receive Rs.3,00,000/- from defendant no.1-Finance Company against the debenture certificate, trial court has rightly dismissed the suit with the direction that vide Ex.P/1, debenture certificate, the amount shall be payable to defendant no.2-Basso Bai.

10. This Court has seen the entire evidence on record and endorse the findings recorded by the trial court on both the issues. The entire findings are based upon critical evaluation of evidence on record. No illegality or perversity is found in the impugned judgment. Hence, the First Appeal is dismissed.

Appeal dismissed.

I.L.R. [2015] M.P., 3328

APPELLATE CIVIL

Before Mr. Justice Rajendra Menon &

Mr. Justice Sushil Kumar Gupta

F.A. No. 310/2015 (Jabalpur) decided on 11 September, 2015

SASAN POWER LIMITED

...Appellant

Vs.

NORTH AMERICAN COAL CORPORATION

INDIA PVT. LTD:

...Respondent

A. Contract Act (9 of 1872), Sections 23 & 28 - Contracts opposed to public policy - When a dispute arises where both the parties are Indian, and if the contract has the effect of compelling them to resort to arbitration by foreign arbitrators and thereby impliedly excluding the remedy available to them under the ordinary law of India, the same is not opposed to public policy (Para 51)

क. संविदा अधिनियम (1872 का 9), धारा 23 व 28 - लोक नीति के विरुद्ध संविदाएँ - जब कोई विवाद उत्पन्न होता है जहाँ दोनों पक्षकार भारतीय हैं, और यदि संविदा में उन्हें विदेशी मध्यस्थों के द्वारा माध्यस्थ का सहारा लेने के लिए बाध्य करने का प्रभाव है तथा इस प्रकार भारत की सामान्य विधि के अंतर्गत उन्हें उपलब्ध उपचार को विवक्षित रूप से छोड़ा गया, यह लोक नीति के विरुद्ध नहीं है।

B. Arbitration and Conciliation Act (26 of 1996), Section 45 - Arbitration Clause - Seat of Arbitration - Based on seat of arbitration so also the nationality of parties, an arbitration is classified to be an 'International Arbitration' and the governing law is also determined on the basis of the seat of arbitration - Therefore, it is clear that based on the seat of arbitration, the question of permitting two Indian companies/parties to arbitrate out of India is permissible. (Para 56)

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 45 - माध्यस्थम् खंड - माध्यस्थम् पीठ - माध्यस्थम् पीठ और साथ ही पक्षकारों की राष्ट्रीयता के आधार पर, एक माध्यस्थम् को 'अंतर्राष्ट्रीय माध्यस्थम्' के रूप में वर्गीकृत किया गया है तथा शासित विधि भी माध्यस्थम् की पीठ के आधार पर निर्धारित की जाती है - अतः, यह स्पष्ट है कि माध्यस्थम् की पीठ के आधार पर दो भारतीय कंपनियों/पक्षकारों को भारत के बाहर माध्यस्थम् करने की अनुमति का प्रश्न अनुज्ञेय है।

Cases referred :

I.L.R.[2015]M.P. Sasan Power Ltd. Vs. N.A. Coal Corp. Ltd. (DB) 3329

(2008) 14 SCC 271, (1999) 7 SCC 61, 2012 (4) LW 475 (SCC Online Madras), AIR 1959 SC 1362, (2013) 10 SCC 535, (2002) 4 SCC 105, (2012) 9 SCC 552, 2014 SCC Online Del 7249, 2012 (5) MhLJ 822, 2014 (5) SCC 1, (2013) 1 SCC 641, (2011) 8 SCC 333, (1988) 2 SCC 602, Civil Appeal No. 6691/2005 decided on 10.09.2014, 2013 ARBLR 456 (SC), (2006) 2 SCC 628, LLR 1993 Vol 4, 445, (2000) 6 SCC 359, AIR 1963 SC 90, 1996 (2) SCC 667, 1999 (1) Maharashtra Law Journal 88, 1999 (1) Maharashtra Law Journal 629, (2005) 10 SCC 704, (2008) 4 SCC 190.

V.K. Tankha with Varun K. Chopra, Paras Anand, R. Gupta & Alok Hoonka, for the appellant.

Anirudh Krishnan and Ankit Agrawal, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by :
RAJENDRA MENON, J. :- In this appeal under Section 96 of the Code of Civil Procedure, challenge is made to a judgment and decree dated 19.3.2015 passed by the learned District Judge, Singrauli, in Regular Civil Suit No.4-A/2014, whereby a Suit filed by the appellant has been dismissed, upholding an objection raised by the respondents under Section 45 of the Arbitration and Conciliation Act, 1996 vide I.A. No.5/2015, said to have been filed under Order VII Rule 11 CPC.

2. It has been held by the learned Court below that parties have entered into an arbitration agreement and as the dispute is covered under Part II of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996"), the bar under Section 45 is attracted and therefore, the suit is not maintainable. However, it is the case of the appellants that the arbitration agreement in question is null, void and inoperative as contemplated under Section 45, of the Act of 1996 and therefore, the suit was maintainable. It was said that two Indian Companies cannot agree for arbitration in a foreign country, according to law of that country. This according to the appellant is violative of Section 23 of the Indian Contract Act and the law laid down by the Supreme Court in the case of *TDM Infrastructure (P) Ltd. Vs. UE Development India (P) Limited*, (2008)14 SCC 271. Whereas, it is a case of the respondents that as the order passed was under Section 45 of the Act of 1996 and against such an order as no appeal is provided under Section 50,

this appeal is not maintainable. It is also submitted that by allowing the objection, learned Court below has only held that the suit in question is barred by law in view of the provisions of Section 45 of the Act of 1996, the agreement in question is not hit by Section 23 of the Contract Act, the law laid down in the case of *TDM Infrastructure* (supra) is not applicable, as a Division Bench of the Supreme Court in the case of *Atlas Exports Industries Vs. Kotak & Company* -(1999)7 SCC 61 has laid down the principle to the effect that two Indian companies can enter into an agreement by having the seat of arbitration in a foreign country and in view of the above, the arbitration clause in question is neither null, void and inoperative.

3. Before advertng to consider the rival contentions in support of the aforesaid preposition put forth by learned counsel for the parties, it may be appropriate to take note of certain facts which are relevant for deciding this appeal.

4. The appellant is a Company incorporated and registered under the Indian Companies Act with its registered office at Navi Mumbai, Maharashtra, India, engaged in the business of developing, financing, designing, constructing, operating, maintaining and owns six independent power generation units i.e..... Ultra Mega Project of a total capacity of 3960 Mega Watt. The dispute in question pertains to Sasan Ultra Mega Power Project located near village Sasan, District Singrauli, Madhya Pradesh. The appellant further claims to be a fully owned subsidiary of Reliance Power Ltd. Respondent is a Company incorporated in India, under the Companies Act of 1956 with registered office in Pune, India, engaged in the business of providing technical consultancy relating to coal mining and related activities and is a subsidiary of North America Coal Corporation (hereinafter referred to as "NACC-US", a Delaware Corporation, carrying on various business activities including mining and marketing of Lignite, bituminous and metallurgical coal as fuel and consultancy service. Its Head Quarter is situated in USA.

5. The Government of India launched an initiative for development of Mega Power Projects for easing the power deficit in the country. This initiative was launched in the year 2005-2006 and accordingly in August 2007, Reliance Power Ltd. was awarded the first Ultra Mega Power Project which is located in village Sasan, District Singrauli, in the State of M.P. and for the purpose of execution of this project, three captive coal blocks were also allotted to M/s Reliance Power Project. On 20th September 2007, Reliance Power Project

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executed a Memorandum of understanding with North America Coal Corporation (NACC-US) and based on the aforesaid understanding on 1.1.2009, Sasan Power Ltd., the appellant's Company entered into an association agreement for mine development and operation with NACC-US. On 1.4.2011, NACC-US vide an assignment agreement assigned all its rights, liabilities and obligations under the association agreement of 1.1.2009 to the respondent Company namely, North America Coal Corporation, India (hereinafter referred to as "NACC-India"). By this assignment agreement all the rights and obligations under the original Association Agreement dated 1.1.2009 with respect to NACC-US was transferred to NACC-India. In the course of carrying out various activities and work in pursuance to the agreement, disputes started arising between the parties and on 23.7.2014, the respondent Indian Company issued a letter of termination in respect of the associate agreement on 8.8.2014 and also filed a request for arbitration with the International Council for Arbitration (ICC) being Arbitration No.20432/TO and claimed a compensation to the tune of 18,259,301=16 US Dollars along with compound interest. The documents evidencing the association agreement dated 1.1.2009, the assignment agreement dated 1.4.2011, the termination of association agreement dated 23.7.2014 and the request for arbitration are filed as Annexure A/2, A/3, A/4, A/5 and A/6 respectively. On 20th October 2014, the appellant sent to the ICC its reply to the respondent's request for arbitration without prejudice to their legal right as may be available and on 10.11.2014 filed the suit in question in the District Court at Singrauli being Civil Suit No.4A/2014 and on 11.11.2014, ex-parte injunction was granted against the ICC for proceeding with the arbitration. In the meanwhile, on 2nd December 2014 the respondents informed all concerned that it intends to respect the terms of the ex-parte injunction granted by the Indian Court but simultaneously NACC-US on 12.12.2014 wrote to the ICC intimating that the appellant's letter dated 20th November, 2014, placing on record its objection should be treated as an answer to the request for arbitration and consequentially a second request for arbitration was filed by NACC-US vide its communication dated 12.12.2014. On 22.12.2014 appellant sent their response to this and on 6.1.2015 appellant received a letter from ICC with regard to the second request for arbitration and were granted 30 days period to give their response. It is said that the appellant without prejudice to their rights raised and submitted their objection. On 7.1.2015 in the Civil Suit in question, the injunction was extended by the learned District Judge and in the

meanwhile, respondent filed two applications being I.A.No.5/2015 under Order VII Rule 11 CPC read with Section 45 of the Act of 1996 and I.A.No.4/2015, an application under Order 39 Rule 4 CPC seeking vacation of the ad interim injunction granted. In between the matter came to this Court in a Miscellaneous Appeal at the instance of the respondent challenging the injunction granted and this Court passed an order on 14.1.2015 directing the District Judge to decide the applications filed by the respondent i.e. I.A. No.4/2015 and I.A. No.5/2015 within a period of one month. The proceedings were held and by the impugned order passed on 19.3.2015 as the objection of the respondent has been upheld, this appeal has been filed. In the meanwhile, appellant filed a second suit challenging the action of the NACC-US in requesting for arbitration and simultaneously without prejudice to their right, nominated their arbitrator in the arbitration proceedings pending with ICC.

6. Shri V.K. Tankha, learned Senior Counsel for the appellant, referred to the governing law clauses as appearing in the Association Agreement dated 1.1.2009; the dispute resolution mechanism through Arbitration as provided under Section 12.2; the Terms and Conditions of the Assignment Agreement dated 1.4.2011; and, tried to indicate that once the respondent/Company stepped into the shoes of the US Company, after it had transferred all its rights and obligations under the Association Agreement to the Indian Company, the Contract in question becomes one between two Indian Companies and in the light of the law laid down in the case of *TDM Infrastructure Private Limited* (supra), the Arbitration through the ICC in United Kingdom, London, that also in accordance to the laws applicable in United Kingdom is not permissible. Learned Senior Counsel placed much emphasis on the ground that two Indian Companies cannot agree to have their dispute resolved outside India in the manner done and, therefore, the arbitration agreement is null, void and inoperative.

7. Learned Senior Counsel further submitted that the application under Order VII Rule 11(d) of the Code of Civil Procedure, was not maintainable, since the provisions of Section 45 of the Act of 1996 was not a bar with regard to maintainability of the suit. It was said that as the relief claimed for by the respondent in I.A. No.5/2015 was to declare the suit filed by them as barred by law, as contemplated under Order VII Rule 11(d) CPC, the learned District Court committed an error in holding that the bar created under section 45 is attracted. Learned Counsel took us through the provisions of Section 45

of the Act of 1996 and argued that the said provision does not operate as a bar to institution of the suit, in a Court which otherwise has jurisdiction over the matter. On the contrary section 45 only contemplates that the Court has power to refer the matter for arbitration in the event conditions stipulated in Section 45 are attracted, he submits that there is no prohibition in filing of a civil suit, merely because there is an arbitration clause and places reliance on a judgment of the Madras High Court in the case of *J. Mary Helan Vs. Lissy Biju*, 2012 (4) LW 475 [SCC Online Madras], in support of the said contention. Thereafter, it was submitted that section 45 of the Act of 1996 only applies to International Commercial Arbitration Agreement, section 45 as contained in Part II of the Act of 1996, is applicable only where a judicial authority is seized of an action in respect of matter pertaining to a Foreign Award/Agreement under section 44. It is argued that the provisions of Section 44 and 45 are not attracted in the present case, once the US Company assigns all its rights and liabilities to the Indian Company by the Assignment Agreement.

8. It is said that the Assignment Agreement was signed in India between two Indians and NACC US Company, by the said Agreement relinquished all its rights and obligations in favour of the respondent Indian Company; accordingly, the Agreement in question becomes an agreement between two Indian Companies and, therefore, the provisions of Section 45 were not attracted. Learned Senior Counsel further invited our attention to the judgments of the Supreme Court in the case of *Union of India Vs. Kishori Lal Gupta and Brothers*, AIR 1959 SC 1362; *Young Achievers Vs. IMS Learning Resources Private Limited*, (2013) 10 SCC 535, to say that an arbitration clause in an Agreement cannot survive if the agreement containing the arbitration clause has been superceded or novated by a later agreement. It was submitted that the arbitration agreement originally contained in section 12 of the Association Agreement stands assigned in favour of the respondent after execution of the Assignment Agreement; accordingly, post assignment, the Arbitration Agreement does not fall in the category of an International Commercial Arbitration as defined under section 2(1)(f) of the Act of 1996 and, therefore, Part II of the Arbitration Act in its entirety and section 45 in particular will not apply in the matter of arbitration between two Indian companies.

9. It was stated that the learned District Judge misconstrued the entire Assignment Agreement and held it to be tri-partite agreement between

NACC-US; NACC India and the appellant Company, this is unsustainable under law. It is stated that signature of NACC US in the Assignment Agreement was not as a party to the Agreement, but it was only to the effect of excluding or relinquishing its rights and obligations as contained in the Associate Agreement and also for assigning the same to the Indian Company. It was stated that the learned District Judge by holding that the assignment agreement is a tri-partite agreement between two Indian Companies, a US Company and consequently holding that in view of this, it is an International Commercial Arbitration and section 45 is applicable, has misconstrued itself and has recorded a perverse finding contrary to law. Learned Senior Counsel further argued that section 12 of the Association Agreement is null, void and inoperative as contemplated under section 45 of the Act of 1996, because two Indian Companies cannot arbitrate in a foreign country and cannot subject their contract to be under a Foreign Law. Detailed submissions were made in this regard as asserted from paragraph 46 onwards, in the written arguments, submitted by Shri Vivek Tankha, placing reliance on the case of *TDM Infrastructure Private Limited* (supra) it is said that the two Indian Companies/nationals cannot be permitted and should not be permitted to derogate from Indian Law.

10. In support thereof, learned Senior Counsel also placed reliance on the judgments of the Supreme Court in the case of *Bhatia International Vs. Bulk Trading SA and Another*, (2002) 4 SCC 105; and, *Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Incorporate*, (2012) 9 SCC 552, to say that two Indian Companies cannot enter into such an agreement. Reliance was also placed on a judgment of the Delhi High Court in the case of *Vikram Bakshi and Another Vs. Mc Donalds India Private Limited and others*, 2014 SCC Online Del 7249; and, the Bombay High Court in the case of *Seven Islands Shipping Limited Vs. Sah Petroleums Limited*, 2012 (5) MhLJ 822. It was argued that the learned District Judge rejected the contentions in this regard submitted by the appellant, by holding that the judgment rendered in the case of *TDM Infrastructure Private Limited* (supra) by the Supreme Court is by a Single Bench, it is not a binding precedent and placed reliance on the judgment relied upon by the respondents in the case of *Atlas Export Industry* (supra) by saying that it is a judgment by a Division Bench, this approach of the learned Court below is said to be erroneous and unsustainable.

11. Learned Senior Advocate tried to argue that *Atlas Export Industry* (supra) case was decided under the old Act i.e..... the Arbitration Act of 1940, where the principles of law were entirely different and, therefore, by relying upon the case of *Atlas Export Industry* (supra), for rejecting the law laid down and canvassed by the appellant in the case of *TDM Infrastructure Private Limited* (supra) an error apparent on the face of the record and an illegality has been committed by the learned District Judge.

12. By referring to paragraph 63 of the written submissions, learned Senior Counsel tried to indicate as to how the judgment in the case of *Atlas Export Industry* (supra) will not apply. It was tried to be submitted that in the case of *Atlas Export Industry* (supra), the agreement was between two Indian nationals and a foreign company based in Hong Kong and it was decided on the basis of the principle underlying the Arbitration Act, 1940, which is entirely different from the Act of 1996 and, therefore, the judgment in the case of *Atlas Export Industry* (supra) was not applicable.

13. It was argued by Shri Vivek Tankha, learned Senior Advocate, that the entire dispute resolution clause contained in Section 12 of the Association Agreement should be declared as void, null and inoperative as it cannot be severed from the other parts of the Agreement. It was emphasized that reliance placed by the learned District Judge on the judgments of the Supreme Court in the case of *Enercon (India) Private Limited and others Vs. Enercon GMBH and Another*, 2014 (5) SCC 1; and, *Chloro Control India Private Limited Vs. Severn Trent Water Purification Inc and others*, (2013) 1 SCC 641, to hold that section 45 is applicable is an incorrect and illegal finding and by pointing out how the judgments rendered in the cases of *Enercon (India) Private Limited* (supra) and *Chloro Control India Private Limited* (supra) will not apply in the facts and circumstances of the present case. Detailed submissions were made by referring to the written arguments from paragraph 65 onwards.

14. Finally, it was argued by learned Senior Advocate that the learned Court below found that the appellant by participating in the arbitration proceedings has submitted to the jurisdiction of the arbitral tribunal and by malafidely withholding certain facts about their participation in the arbitration proceedings and appointment of its arbitrator, has tried to mislead the Court.

15. Learned Counsel took us through various documents and material

available on record to say that this finding of suppression of fact or malafide against the appellant are baseless, learned counsel tried to show as to how this finding is unsustainable, is a perverse finding and referred to various facts as pleaded and available on record. It was said that by ignoring these facts, learned District Judge held that the petitioner has not placed correct facts on record.

16. It was argued that the finding recorded by the learned District Judge is wholly perverse, unsustainable and cannot be upheld. Emphasizing that two Indian companies cannot be permitted to have a seat of arbitration outside India and subject themselves to be bound by law of a Foreign Country, in violation to the requirement of section 23 of the Indian Contract Act, and as this is not permissible, the entire order passed by the learned court below is liable to be quashed.

17. Refuting the aforesaid contentions, Shri Anirudh Krishnan, learned counsel appearing for the respondent raised a preliminary objection at the very outset to say that as the suit filed by the appellant has been dismissed in view of the legal bar created by Section 45 of the Act of 1996, the appellant cannot file this appeal as an order passed allowing an objection under Section 45 is not appealable under Section 50 of the Act of 1996. He argued that even though the application was purported to be filed by the respondent under Order VII Rule 11 CPC but the main relief claimed by them was to dismiss the suit in view of the bar created under Section 45 and the relief under Order VII Rule 11 was only consequential to the main relief claimed under Section 45. He further argued that even if it is assumed that the suit is dismissed under Order VII Rule 11 CPC and the same is appealable before this Court, the only issue involved in this appeal is as to whether referral of the matter under Section 45 amounts to the bar under law for the purpose of invoking the provisions of Order VII Rule 11 CPC. He submitted and emphasized that the main issue before this Court is as to whether or not the order passed under Section 45 is proper, in accordance with law.

18. He took us through the scheme of the Act of 1996 and emphasized that classification of arbitration under the said Act having an element of international arbitration are based on two factors, **one** is the nationality of the parties; and, **second** is the seat of arbitration. If an arbitration, international in nature is based on nationality of the parties, then it falls under the provisions of Section 2(1)(F) of the Act of 1996. There again the arbitration i.e.

international commercial arbitration can be classified into two distinct categories : one where one of the parties atleast is a foreign party and second where all the parties are Indian but still based on certain factors like seat of arbitration, the arbitration may fall in the category of an international commercial arbitration. He has produced a detailed chart before us in support of his contention.

19. He argued that when a dispute falls within the category of part II of the Act, of 1996 the scheme of the Act contemplates minimal interference by the Court and as the requirement of law contemplated under Section 45 for reference of the matter for arbitration in accordance to the arbitration clause is made out in this case, the learned court below has not committed any error in dismissing the suit. He submitted that in the present case as agreed to between the parties, the seat of arbitration is in a foreign country and therefore, the provisions of part-II will apply and if the learned District Judge exercised his jurisdiction under such circumstances, by invoking the bar created under Section 45, no error has been committed and when the matter is referred to the arbitration, the question of procedure to be followed and various other objections raised can always be dealt with by Arbitral Tribunal itself and in support of his contention, he invited our attention to various judgments which we will refer to at a later stage. He emphasized that the appellant is relying mainly on the judgment rendered by the Supreme Court in the case of *TDM Infrastructure* (supra) in support of their contentions. He took us through the provisions of Act of 1996, the Act of 1940, compared both and indicated that infact, there is no difference between the enactments. He argued that the provisions of both the Acts i.e..... Act of 1996 and 1940, are infact similar in nature, there is no difference in the substance of both the Acts. The judgment relied upon by him in support of the aforesaid contention was a judgment of the Supreme Court in the case of *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2011) 8 SCC 333, he took us through the provisions of Section 2(1)(f) of the Act and various other provisions and tried to indicate that there is not much of a difference between both the Acts and therefore, the judgment rendered in the case of *Atlas Export Industries* (supra) will apply. He emphasized that in the case of *TDM Infrastructure* (supra), the Court was dealing with the question of appointing an Arbitrator in a proceeding under Section 11(6) of the Act of 1996 and while doing so, in view of the specific provisions of Section 28(1) had decided the matter by relying on the provisions of Section 28 which applies when the seat of arbitration is India. Learned

Counsel argued that in the present case provisions of Section 28(1) are not applicable, as agreed to between the parties the seat of arbitration is not India. It is said that in the case of *TDM Infrastructure* (supra) itself, Hon'ble Supreme Court has added a note of caution by saying that *finding/ observations made therein were only for the purpose of determining the jurisdiction of the Supreme Court in a proceeding under Section 11 and not for any other purpose*. Shri Anirudh Krishnan further argued that in the case of *TDM Infrastructure* (supra), the matter was decided by a learned Single Bench of the Supreme Court whereas, the case of *Atlas Export Industries* (supra) was decided by a Division Bench and therefore, as per the law of precedent, the judgment of the Larger Bench will prevail over a judgment of a Smaller Bench, by referring to a judgment of Supreme Court in the case of *R. Antulay Vs. R.S. Nayak* -(1988)2 SCC 602, it was emphasized that the judgment in the case of *Atlas Export Industries* (supra) will apply and in applying the same for rejecting the contentions of the appellant, the learned District Judge has not committed any error. He further argued that when the proceedings are held before the Chief Justice or his designate, while deciding an application under Section 11 of the Act of 1996, the order passed in such a proceeding and the proceeding in such cases are not held before a 'Court'. Even though the order passed in such a case is subject to judicial review under Article 226 and 227 of the Constitution but the proceedings are not before a Court and once the order passed in a proceeding under Section 11 is not by a Court, it will not have the effect of law, laid down by the Supreme Court as envisaged under Article 141 of the Constitution. To say that an order passed by a authority exercising jurisdiction under Section 11 is not by a Court, Shri Anirudh Krishnan places reliance on a judgment of the Supreme Court in the case of *State of West Bengal & Ors. Vs. Associated Contractors* Civil Appeal No.6691/2005 decided on 10.9.2014 and para 16 thereof. Accordingly, the main contentions advanced by Shri Anirudh Krishnan was that in the light of law laid down in the case of *Atlas Export Industries* (supra) and by applying the principles laid down in the aforesaid case read along with the provisions of Section 28 of the Contract Act, there is no bar in the matter of two Indian Companies entering into a contract whereby they agree for having the seat of arbitration in a foreign country. He thereafter took us through the provisions of Order VII Rule 11 and various other judgments with regard to the principles for rejecting a plaint in exercise of powers under Order VII Rule 11 and argued that even on the admitted facts of this case, the learned

Court below has correctly exercised its jurisdiction under Order VII Rule 11 CPC. He referred to various paragraphs of the plaint and tried to demonstrate before us that on these admitted facts itself, the suit could be dismissed by invoking the powers under Order VII Rule 11 CPC. He also referred to the principles of severability of an agreement, refers to various judgments on the said question and emphasized that the so called offending parts of the arbitration agreement i.e. with regard to applicability of the laws of United Kingdom or Seat of Arbitration can be severed and when once the parties have agreed to have their dispute resolved by arbitration, the intentions of the parties to resolve their dispute through arbitration is established, the offending clause could be severed, the matter can be take up in arbitration with regard to applicability of procedural law and other objectionable clause and the same can be decided by the arbitrator. He argued that there is no prohibition in law in view of law laid down in the case of *Atlas Export Industries* (supra) which prevents two Indian Companies agreeing to have the seat of arbitration in a foreign country. He argued that there is no conflict between the judgment in the case of *Atlas Export Industries* (supra) and *TDM Infrastructure* (supra), the legal principles in the case of *TDM Infrastructure* (supra) is based on reading of Section 28(1) and Section 11 whereas, *Atlas Export Industries* (supra) is based on the principles under-laying the contract law applicable in India. He also referred to a judgment in the case of *Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services* - (2012)9 SCC 552 [BALCO] relied upon by Shri Vivek Tankha, learned Senior Counsel, para 118 and 123 of the aforesaid judgment and emphasized that the entire para of the said judgment i.e. para 118 should be read in its totality. He referred to the observations appearing in the last portion of para 118 with reference to Section 28 to canvass his contention.

20. That apart, Shri A. Krishnan, learned counsel for the respondent, at the very outset had admitted that the findings recorded by the learned District Judge to say that the Assignment Agreement is a tri-partite agreement is not correct and the objection in this regard raised by Shri V.K. Tankha, learned Senior Advocate, may be accepted, he agrees that the same is a Bi parte agreement.

21. Learned counsel contends that the Assignment Agreement is not a tri-partite agreement, but it is an agreement between two Indian Companies, who have accepted the original arbitration clause as contained in Section 12.1 of the Association Agreement dated 1.1.2009, accordingly the entire arbitration

clause as contained in the Association Agreement becomes a Arbitration Agreement now between two Indian Companies and that being so, learned counsel argues that it is a bi-party agreement between two Indian Companies agreeing to resolve all their disputes through arbitration as contemplated under section 12.1 of the said Agreement with the seat of the Arbitration in London.

22. That being so, learned counsel submits that the contention of Shri V.K. Tankha, learned Senior Advocate, that the agreement is not a tri-partite agreement even if accepted, will not make any consequential difference on the final outcome with regard to the finding recorded by the learned District Judge pertaining to the bar created under section 45, of the Act.

23. Accordingly, it is submitted by Shri Krishnan that even if the Assignment Agreement is construed to be a bi-party agreement, it is an agreement between two Indian Companies, agreeing to have their seat of arbitration in a Foreign Country and as this is permissible in law, there is no reason for interference into the matter.

24. Referring to a judgment of the Supreme Court in the case of *Chatterjee Petroleum Company & Others Vs. Haldia Petro Chemicals Ltd. & Ors.* - 2013 ARBLR 456 (SC), it is argued that once the parties have agreed for arbitration and when the arbitration Act has been enacted for the purpose of amicable resolution of a dispute through arbitration, the Court should give effect to the arbitration agreement and the adversarial system of litigation should not be resorted to. Learned counsel argued that the Court must adopt a pro arbitration attitude and ensure that the arbitration is proceeded with, without any delay. Referring to the scope of interference in a proceeding under section 45 and the principle laid down in *Chloro Control India Private Limited* (supra), learned counsel for the respondent argued that in a proceeding under section 45, the Court must only decide the validity of the arbitration clause and based on the intention to arbitrate, if any, expressed by the parties, effect should be given to the arbitration agreement. It is only when the arbitration clause becomes unworkable that permission to prosecute the matter by the common law procedure should be resorted to. By emphasizing that if severability of an arbitration clause is possible then the offending part of the arbitration clause may be severed. The question of dispute and interpretation process should be left to the arbitrator. In support of the aforesaid contention, learned counsel placed reliance on a judgment of the Supreme Court in the case of *Shin Satellite Public Company Limited Vs. Jain Studios Limited*,

(2006) 2 SCC 628. It was argued that intention of the parties when is for resorting to the remedy of arbitration, arbitration should be resorted to and all other issues can be determined and decided by the arbitral tribunal.

25. Learned counsel for the respondent referred to the procedure for arbitration contemplated under the ICC Rules, filed at page 498- Part II, of the Paper Book and indicated that in the statutory procedure prescribed therein, specific procedures are laid down for resolution of such a dispute by the arbitrators itself. Referring to a Handbook of ICC Arbitration and the provisions of Article 18.1 thereof, learned counsel emphasized that this Clause contemplates that if the parties have not agreed for a place of arbitration, the Tribunal can take a decision in the matter. Learned counsel also referred to certain judgments of the Foreign Courts laying down the aforesaid principle and the powers of the Arbitrator to say that all questions with regard to jurisdiction of the arbitrator, the dispute with regard to place of arbitration can be settled by the arbitrators themselves and they have the jurisdiction to do so.

26. The judgment relied upon are *Star Shipping Vs. China Foreign Trade Corporation*, LLR 1993 Vol 4, 445; a decision of the US District Court, New York, in the case of *National Network of Accountants Investment Advisors, Inc and another Vs. James R. Gray*- order filed at page 513 of the Paper Book - Part I, and emphasized that once the arbitrators are conferred with the power to decide the dispute pertaining to the seat of arbitration and the procedure to be followed at this stage, it is not necessary for this Court to go into such a question.

27. Finally, learned counsel for the respondent submitted that in the admitted facts and circumstances of this case, it was not necessary to frame separate issues and put the parties to trial by recording of evidence and inquiry, as on the basis of the admitted position itself the Court can exercise its discretion and decide the question of maintainability even under Order VII Rule 11 and in support of the aforesaid contention learned counsel placed reliance on various judgments to say that the appeal be dismissed.

28. In support of their rival contentions various judgments were relied upon by the parties. The cases relied upon on behalf of the appellant are:-

(a) *Union of India Vs. Kishori Lal Gupta* (supra).

- (b) *Young Achievers Vs. IMS Learning Resources Private Limited* (supra) - to say that once an agreement is superceded or novated, the arbitration clause cannot survive.
- (c) *TDM Infrastructure* (supra); *Bhatia International* (supra); *Bharat Aluminium Company* (supra) to say that two Indian Companies cannot enter into an agreement for settlement of their dispute in a foreign country as per the law of that country. This is hit by public policy.
- (d) The judgment of the Delhi High Court in the case of *Vikram Bakshi and another* (supra).
- (e) *Seven Islands Shipping Limited* (supra), wherein the judgment of the Supreme Court in the case of TDM Infrastructure was followed.
- (f) Judgment of the Supreme Court in the case of *Kunhayammed and others Vs. State of Kerala and another*, (2000) 6 SCC 359, to say that a judgment rendered even by a Single Bench of the Supreme Court is binding under Article 141 of the Constitution.
- (g) *Waverly Jute Mills Company Limited and another Vs. Raymon and Company (India) Private Limited*, AIR 1963 SC 90, to say that mere participation or appearance of the party in an arbitration cannot cure the defects in the jurisdiction. For the same proposition to say that acquiesce does not confer jurisdiction. *UP Rajkiya Nirman Nigam Vs. Indore Private Limited and others*, 1996 (2) SCC 667, so also judgments of the Bombay High Court in the case of *Hotel Corporation Vs. Motwani (P) Ltd.*, 1999 (1) Maharashtra Law Journal 88; *Atul R. Shah Vs. V. Vrijlal Lalloobhai And Co.* - 1999 (1) Maharashtra Law Journal 629; and,
- (h) finally a judgment of the Madras High Court in the case of *J. Mary Helan* (supra) in support of his contention that merely because the objection is raised under section 45, the provision of Order VII Rule 11 CPC are not attracted.

29. Similarly, on behalf of the respondents, the following judgments were

relied upon :-

- (a) *Fuerst Day Lawson Limited Vs. Jindal Exports Limited*, (2011) 8 SCC 33, to state that the appeal was not maintainable.
- (b) *Enercon* (supra) and *Shin Satellite* (supra) in support of the contention relating to intention to arbitration/severability.
- (c) Foreign Judgments in the cases of - *Star Shipping* (supra) and *National Network of Accountants Inv Advisors* (supra), in support of his contention relating to jurisdiction of the Arbitral Tribunal to decide all objections.
- (d) *Atlas Export Industries* (supra), *TDM Infrastructure* (supra) and *Bharat Aluminium Company* (supra) in support of his contention whether Two Indian Companies can have seat of arbitration outside India.
- (e) *Chloro Controls India Private Limited* (supra) in support of his contention relating to the test under section 45.
- (f) *Enercon (India) Limited and others* (supra) in support of his contention relating to international arbitration.

Learned counsel for the respondents had also relied upon certain judgments of the Supreme Court in the case of *Shree Subhlaxmi Fabrics (P) Limited Vs. Chand Mal Baradia and others*, (2005) 10 SCC 704.

30. We have heard learned counsel for the parties at length and have gone through the material available on record and the elaborate written arguments submitted by the parties.

31. Before advertng to consider the rival contentions, we may take note of the agreements entered into between the parties and various relevant provisions as contained in the Arbitration and Conciliation Act, 1996.

32. The agreements which are relevant and which require consideration are the Association Agreement dated 1.1.2009; the First Amendment to the same brought about on 30.9.2009; and, the Assignment and Assumption Agreement dated 1.4.2011. In the Association Agreement dated 1.1.2009, in detail various aspects of the work to be performed are indicated. The said

agreement consists of 15 Articles and 4 Annexures. Article 1 pertains to definition and thereafter the various Articles relate to consulting and advisory service; implementation of the services, fines, royalty payments, mode of termination of the Agreement; consequences of Force Majeure and various aspects of the matter.

33. However, Article 12 deals with the governing law and a dispute resolution mechanism. Section 12.1 and 12.2 (a), which are relevant, read as under:

"Section 12.1 - Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the United Kingdom without regard to its conflicts of law principles.

Section 12.2 - Dispute Resolution Arbitration.

(a) Any and all claims, disputes, questions or controversies involving Reliance on the one hand and NAC on the other hand arising out of or in connection with this Agreement (collectively, "Disputes") which cannot be finally resolved by such parties within 60 (sixty) days of arising by amicable negotiation shall be resolved by final and binding arbitration to be administered by the International Chamber of Commerce (the "ICC") in accordance with its commercial arbitration rules then in effect (the "Rules"). The place of arbitration shall be London, England. Each party shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall together select and appoint a third arbitrator. If either Reliance, on the one hand, or NAC, on the other hand, fail to appoint their respective arbitrator within 30 (thirty) days after receipt by respondent(s) of the demand for arbitration or if the two (2) party-appointed arbitrators are unable to appoint the chairperson of the arbitral tribunal within thirty (30) days of the appointment of the second arbitrator, then the ICC shall appoint such arbitrator or the chairperson, as the case may be, in accordance with the listing, ranking and striking provisions of the Rules. Save and except the provision under Section 9, the provisions of the Part 1 of (Indian) Arbitration and Conciliation Act, 1996, as amended (the "Arbitration Act") shall not apply to the arbitration. The arbitrators shall not award punitive, exemplary, multiple or consequential damages. In connection with the arbitration proceedings, the parties hereby agree to cooperate

in good faith with each other and the arbitral tribunal and to use their respective best efforts to respond promptly to any reasonable discovery demand made by such party and the arbitral tribunal."

Sub-clause (d) of this Article deals with payments to be made by the parties for the purpose of Arbitration.

"(d) Each party shall bear its own arbitration expenses, and Reliance on the one hand, and NAC, on the other hand, shall pay one-half of the ICC's and the chairperson's fees and expenses, unless the arbitrators determine that it would be equitable if all or a portion of the prevailing party's expenses should be borne by the other party. Unless the Award provides for non-monetary remedies, any such Award shall be made and shall be promptly payable in (i) US Dollars if payable to NAC or (ii) Rupees if paid to Reliance net of any tax or other deduction. The Award shall include interest from the date of any breach or other violation of this Agreement and the rate of interest shall be specified by the arbitral tribunal and shall be calculated from the date of any such breach or other violation to the date when the Award is paid in full."

34. Section 15(2) deals with a severability clause and the same reads as under:

"Section 15.2 Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance is held invalid, illegal or unenforceable in any respect by a Court of competent jurisdiction, the remainder of the provisions of this Agreement (or the application of such provision in other jurisdictions or to Persons or circumstances other than those to which it was held invalid, illegal or unenforceable) will in no way be affected, impaired or invalidated, and to the extent permitted by Applicable Laws, any such provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability"

Section 15.6 contemplates a successor assignment, which reads as under:

"Section 15.6 Successor and Assigns. This Agreement may be assigned by NAC to any Affiliate of NAC; with the previous written consent of Reliance, which consent shall not be unreasonably withheld. Without the written consent of NAC, which consent shall not be unreasonably withheld, Reliance shall not assign its right under this Agreement or cause its obligations under this Agreement to be assumed by any other Person. No assignment or other transfer shall release the assignor from its obligations or liabilities hereunder. Any assignment in violation of the foregoing shall be null and void ab initio. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns"

35. Thereafter, the first amendment agreement is dated 30.9.2009 and it amends certain provisions of section 15.6, particularly with regard to the payment terms and conditions.

36. The Assignment and Assumption Agreement is dated 1.4.2011, it contemplates that the North American Coal Corporation has incorporated NAC India and desires to transfer all its rights and obligations under the Association Agreement to NAC India, which desire is accepted and thereafter the Agreement, i.e..... The Assignment and Assumption Agreement reads as under:

"ASSIGNMENT AND ASSUMPTION.

1. NAC hereby transfers and assigns all of NAC's rights and obligations under the Agreement to NACC India. NAC hereby acknowledges that, as provided in Section 15.6 of the Agreement, NAC's transfer and assignment of all of NAC's rights and obligations under the Agreement to NACC India does not release NAC, as assignor, from its obligations or liabilities under the Agreement.

2. NACC India hereby accepts the transfer and assignment of all of NAC's rights and hereby all of NAC's obligations under the Agreement, and hereby agrees to perform such obligations in accordance with the terms of the Agreement."

Thereafter, some amendments to the provisions of section 5.3, 5.6 pertaining to payments are incorporated in the Assumption Agreement and finally in Clause 6, it is said that except for the aforesaid amendments, the

Agreement shall remain in effect as written - namely the original Association Agreement and it reads as under :-

"6. Except as amended by this Amendment, the Agreement shall remain in effect as written."

37. If we go through the objects and reasons of the Bill for bringing into force the Act of 1996, it would be seen that one of the main objects of the enactment was to minimize the supervisory role of Courts in the arbitral process. An international commercial arbitration is defined in section 2(1)(f) to mean an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties are as indicated in sub-clauses (i) to (iv) thereto. Further it is indicated in section 2(2) that Part I of the Act of 1996 shall apply where the place of arbitration is in India. Section 28, of the Act of 1996, contained in Chapter VI pertaining to making of arbitral award and termination of proceedings, deals with Rules applicable to substance of dispute. Section 28 is divided into two parts namely - sub sections (1) and (2), where the office of Arbitration is situated in India, the provision of sub-section (1) of Section 28 would apply.

38. Part II of the Act of 1996, deals with enforcement of certain foreign awards and a 'foreign award' is defined in section 44 to mean an arbitral award on difference between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960.

39. Section 45, of the Act of 1996, in Part II, which is crucial for deciding this appeal, reads as under:-

"45. Power of judicial authority to refer parties to arbitration.

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

40. Finally, section 50 deals with appealable orders and it indicates that

an appeal under section 50 shall lie only against orders refusing to refer parties to arbitration under section 45, and under sub-section (2), a provision of second appeal to the Supreme Court is provided.

41. In the backdrop of the aforesaid, this Court is required to consider as to what is the nature of the agreement entered into between the parties, whether it can be termed as an agreement pertaining to a international commercial arbitration subject to jurisdiction of this Court or the Courts in India or it would be an arbitration covered under the provisions of Part II of the Act, meaning thereby that Section 45 would apply and, therefore, the suit was not maintainable.

42. If the scope of applicability of Part I of the Act of 1996, as contemplated under sub-section (2) of Section 2 is taken note of, it clearly stipulates that this Part, namely, Part I of the Act, shall apply where the place of arbitration is in India. Similarly, if this provision is read alongwith section 28(1), it would be clear that where the place of arbitration is situated in India, the procedure contemplated in Part I would apply. However, the appellant's have tried to indicate that as the agreement in question does not meet the requirement of the ingredients laid down in section 2(1)(f), to come within the purview of an international commercial arbitration, the provisions of Part I will apply.

43. In the case of *Bharat Aluminium Company* (supra), the Constitution Bench of Supreme Court dealt with conflicting views rendered in the two judgments- namely, *Bhatia International* (supra) relied upon by Shri V.K. Tankha, learned Senior Advocate; and *Venture Global Engineering Vs. Satyam Computer Services Limited and another*, (2008) 4 SCC 190, and after taking note of the provisions of sub-section (2) of Section 2, in paragraph 62, posed a question as to whether the provisions of section 2(2) bars the application of Part I to arbitration which takes place outside India. It took note of the judgments in the case of *Bhatia International* (supra) and *Venture Global Engineering* (supra) and found that in both the cases the Courts have held that Part I would also apply to all arbitration held outside India until the parties by an agreement - express or implied, excluded all or any of the provisions.

44. The Hon'ble Supreme Court expressed, that with utmost respect and humility they are unable to agree with the aforesaid view and after detailed

discussions, it has been held that a plain reading of section 2(2) reflects that Part I is limited in its application to arbitration which takes place in India.

45. Thereafter, various observations are made and in paragraph 89 in the case of *Bharat Aluminium Company* (supra), it has been held by the Supreme Court that Part I and Part II are exclusive of each other as is evident from the definition section of both the parts. It is held that the definition of international commercial arbitration contained in section 2(1)(a) to (b) is limited to Part I and section 44 gives the definition of 'foreign award' for the purpose of Part II. Thereafter, in paragraph 92, the Supreme Court agrees with certain submissions made by a learned Senior Counsel and holds that Part I only applies where the seat of arbitration is in India, irrespective of the kind of arbitration. It is held that section 2(7) does not indicate that Part I is applicable to arbitration held outside India.

46. Finally, in paragraph 118, the crucial part heavily relied upon by Shri V.K. Tankha, learned Senior Advocate, reference is made to section 28, and it is held as under:

"118. It was submitted by the learned counsel for the appellants that Section 28 is another indication of the intention of Parliament that Part I of the Arbitration Act, 1996 was not confined to arbitrations which take place in India. We are unable to accept the submissions made by the learned counsel for the parties. As the heading of Section 28 indicates, its only purpose is to identify the rules that would be applicable to 'substance of dispute'. In other words, it deals with the applicable conflict of law rules. This section makes a distinction between purely domestic arbitrations and international commercial arbitrations, with a seat in India. Section 28(1)(a) makes it clear that in an arbitration under Part I to which section 2(1)(f) does not apply, there is no choice but for the Tribunal to decide 'the dispute' by applying the Indian 'substantive law applicable to the contract'. This is clearly to ensure that two or more Indian parties do not circumvent the substantive Indian law, by resorting to arbitrations. The provision would have an overriding effect over any other contrary provision in such contract. On the other hand, where an arbitration under Part I is an international commercial arbitration within Section 2(1)(f), the parties would be free to agree to any other 'substantive law' and if not so agreed, the 'substantive law' applicable would be as determined by

the Tribunal. The section merely shows that the legislature has segregated the domestic and international arbitration. Therefore, to suit India, conflict of law rules have been suitably modified, where the arbitration is in India. This will not apply where the seat is outside India. In that event, the conflict of law rules of the country in which the arbitration takes place would have to be applied. Therefore, in our opinion, the emphasis placed on the express 'where the place of arbitration is situated in India', by the learned Senior Counsel for the appellants, is not indicative of the fact that the intention of Parliament was to give an extra-territorial operation to Part I of the Arbitration Act, 1996."

(Emphasis supplied)

Hon'ble Supreme Court holds that section 28 makes a clear distinction between purely domestic arbitration and international arbitration with a seat in India, and it is indicated that section 28(1)(a) makes it clear that in an arbitration under Part I to which section 2(1)(f) does not apply, there is no choice but for the Tribunal to decide the dispute by applying the Indian substantive law applicable to the Contract. It is this part of the judgment which was heavily relied upon by Shri V.K. Tankha, learned Senior Advocate further refers to the next sentence which says that two or more Indian parties cannot circumvent the substantive Indian Law by resorting to arbitration. By placing much emphasis on this part, learned Senior Advocate tried to indicate that the order of the learned District Judge is unsustainable.

47. However, if we further read the findings recorded by the Supreme Court in the same paragraph 118, as reproduced hereinabove, it is held by the Supreme Court that when the seat is outside India, the conflict of law rule of the country in which the arbitration takes place would have to be applied, and thereafter it is held that the expression 'whether the place of arbitration is situated in India' does not indicate the intention of the Parliament to give extra territorial operation to Part I, of the Arbitration Act of 1996. In paragraph 123 also, the matter has been considered in the backdrop of the provisions contemplated under section 28, this also makes us to come to the inevitable conclusion that the provisions of Part I will not apply where the seat of arbitration is outside India.

48. On consideration of the law laid down in the case of *TDM Infrastructure* (supra), we find, that the proceeding before the Hon'ble

Supreme Court was with regard to appointing an arbitrator under section 11(6) and after taking note of the definition of International Commercial Arbitration as provided in section 2(1)(f), the procedure for appointment of arbitrator and the provision of section 28, it was held that Part I of the Act of 1996 deals with domestic arbitration and Part II deals with 'foreign award', and by specifically taking note of the provisions of section 28, has held that companies incorporated in India and when both the parties have Indian nationality, then such arbitration cannot be said to be an international commercial arbitration. However, after having said so, in paragraph 23 reference is made to section 28, the intention of the legislature, to hold that two Indian nationals should not be permitted to derogate Indian Law.

49. Finally, in para 23 the following observations are made by the Supreme Court in the aforesaid case:-

"23. Section 28 of the 1996 Act is imperative in character in view of Section 2(6) thereof, which excluded the same from those provisions which parties derogate from (if so provided by the Act). The intention of the legislature appears to be clear that Indian nationals should not be permitted to derogate from Indian Law. This is part of the public policy of the country.

36. It is, however, made clear that any findings/ observations made hereinbefore were only for the purpose of determining the jurisdiction of this Court as envisaged under Section 11 of the 1996 Act and not for any other purpose."

(Emphasis Supplied)

50. If we analyse this judgment, we find, that apart from being one rendered in a proceeding held under section 11(6), is based on the consideration made with reference to section 28(1), as is evident from paragraph 23 relied upon by Shri V.K. Tankha and thereafter in paragraph 36, a caution is indicated with regard to applicability of this judgment. Whereas in the case of Atlas Exports (supra), we find that in Atlas Exports, in paragraphs 10 and 11, the following principles have been laid down :-

"10. It was however contended by the learned counsel for the appellant that the award should have been held to be unenforceable in as much as the very contract between the parties relating to arbitration

was opposed to public policy under Section 23 read with Section 28 of the Contract Act. It was submitted that Atlas and Kotak, the parties between whom the dispute arose, are both Indian parties and the contract which had the effect of compelling them to resort to arbitration by foreign arbitrators and thereby impliedly excluding the remedy available to them under the ordinary law of India should be held to be opposed to public policy. Under section 23 of the Indian Contract Act the consideration or object or an agreement is unlawful if it is opposed to public policy. Section 28 and Exception 1 to it, (which only is relevant for the purpose of this case) are extracted and reproduced hereunder:

"28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1 - This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred'.

11. The case at hand is clearly covered by Exception 1 to Section 28. Right of the parties to have recourse to legal action is not excluded by the agreement. The parties are only required to have their dispute/s adjudicated by having the same referred to arbitration. Merely because the arbitrators are situated in a foreign country cannot by itself be enough to nullify the arbitration agreement when the parties have with their eyes open willingly entered into the agreement. Moreover, in the case at hand the parties have willingly initiated the arbitration proceedings on the disputes having arisen between them. They have appointed arbitrators, participated in arbitration proceedings and suffered an award. The plea raised before us was not raised either before or during the arbitration proceedings, nor before the learned Single Judge of the High Court in the objections filed before him, nor in the letters patent appeal filed before the Division Bench. Such a plea is not available to

be raised by the appellant Atlas before this Court for the first time."

(Emphasis supplied)

51. In this case i.e. *Atlas Exports* (supra), Sections 23 and 28 of the Contract Act are considered and it is held that when a dispute arises where both the parties are Indian, and if the contract has the effect of compelling them to resort to arbitration by foreign arbitrators and thereby impliedly excluding the remedy available to them under the ordinary law of India, the same is not opposed to public policy. Section 28 exception (1) of the Contract Act is taken note of and it is held that merely because the arbitrators are situated in a foreign country that by itself cannot be enough to nullify the arbitration agreement, when the parties have with their eyes open, willingly entered into an agreement. If this observation made by the Supreme Court is taken note of, we find that merely because two Indian companies have entered into an arbitration agreement to be held in a foreign country by agreed arbitrators, that by itself is not enough to nullify the arbitration agreement.

52. Shri V.K. Tankha, learned Senior Advocate, tried to indicate that *Atlas Exports* (supra) case was rendered in a proceeding held under the Arbitration Act, 1940 which is entirely different from the Act of 1996 and, therefore, the said judgment will not apply in the present case. Instead, the judgment in the case of *TDM Infrastructure* (supra) would be applicable.

53. We cannot accept the aforesaid proposition. Shri Anirudh Krishnan, learned counsel, had taken us through the provisions of both the Act of 1940 and the Act of 1996, and thereafter he had referred to the judgment of the Supreme Court in the case of *Fuerst Day Lawson Limited* (supra), where after a detailed comparison of various sections of both the Acts, from paragraphs 65 onwards, Hon'ble Supreme Court discussed the provisions of both Acts, and finally has observed that there is not much of a difference between them. If the aforesaid judgment in the case of *Fuerst Day Lawson Limited* (supra) is considered, the same holds that both, the Act of 1980 and 1996 are identical and the Hon'ble Court has also indicated the similarity in both the Acts. That being so, we see no reason as to why the principle laid down of *Atlas Exports* (supra), which is by a Larger Bench i.e..... Division Bench, should not be applied particularly in the light of the law of precedent as laid down in the case of *A.R. Antulay* (supra). The contention of Shri V.K. Tankha, learned Senior Advocate, that the learned District Judge relied upon

the judgment in the case of *Atlas Exports* (supra) and refused to rely upon the case of *TDM Infrastructure* (supra) only because it is by a Single Bench is not convincing or acceptable, as the Division Bench Judgment in the case of *Atlas Exports* (supra) is a binding precedent and once it is held in the aforesaid case that two Indian companies can agree to arbitrate in a foreign country and the same is not hit by public policy, we see no error in the order passed by the learned District Judge.

54. That apart, we also find that in the case of *TDM Infrastructure* (supra), a note of caution is indicated in paragraph 36, which was added by a corrigendum subsequent to pronouncement of judgment, this clearly indicates the principle laid down by the Supreme Court was only for determining the jurisdiction under section 11 and nothing more. We need not go into the questions any further now, as we find that the judgment in the case of *Atlas Exports* (supra) is a binding precedent.

55. Various other contentions were also advanced by Shri Anirudh Krishnan, learned counsel, to say that the judgment in the case of *TDM Infrastructure* (supra) is not by a Court and, therefore, the provision of Article 141 of the Constitution will not apply. Once we have held that the principle of law laid down by the Supreme Court in the case of *Atlas Exports* (supra) is binding on us and is applicable to the present dispute, we need not go into all these questions.

56. On going through the scheme of the Arbitration and Conciliation Act, 1996, we find that based on the seat of arbitration so also the nationality of parties, an arbitration is classified to be an 'International Arbitration', and the governing law is also determined on the basis of the seat of arbitration. Therefore, it is clear that based on the seat of arbitration, the question of permitting two Indian companies/parties to arbitrate out of India is permissible. In the case of *Atlas Exports* (supra) itself, the principle has been settled that two Indians can agree to have a seat of arbitration outside India. Now, if two Indian Companies agree to have their seat of arbitration in a foreign country, the question would be as to whether the provisions of Part I or Part II would apply. Section 44, of the Act of 1996, contemplates a foreign award to be one pertaining to difference between persons arising out of legal relationship, whether contractual or not, which is in pursuance to an agreement in writing for arbitration, to which the convention set forth in the first schedule applies.

57. In the First Schedule to the Act of 1996, convention on the recognition and enforcement of foreign award popularly known as New York Convention has been laid down and admittedly in this case the parties have agreed to have an arbitration with its seat outside India i.e..... London. If that be the position then the provisions of section 45 would be attracted until and unless it is established that the agreement is null and void, inoperative or incapable of being performed. If we analyse the scheme of the Arbitration and Conciliation Act, 1996, we find that there is a distinction between 'International Commercial Arbitration' and a 'Foreign Award'. It is the case of the appellant that in a dispute between two Indian Parties, which is a domestic arbitration, Part II and Section 45 of the Act of 1996 will not apply. However, when we consider the distinction between 'International Commercial Arbitration' and 'Foreign Award', we find that there is a difference between an International Commercial Arbitration and an Arbitration which is not an International Commercial Arbitration. The same is based on the nationality of the parties and this distinction is only relevant for the purpose of following the appointment procedure as contemplated under section 11. As far as nationality of the parties are concerned, the same has no applicability for considering the applicability of Part II, of the Act of 1996. Applicability of Part II is determined solely based on what is the seat of arbitration, whether it is in a country which is signatory to the New York Convention. If this requirement is fulfilled, Part II will apply and in the present case as this requirement is fulfilled, we have no hesitation in holding that the dispute in question is covered by Part II of the Act of 1996.

58. The appellant wants this Court to hold that even though the arbitration agreement may be covered under the provisions of Section 44, but because two parties namely - Two companies, which are Indian Companies, are prevented from entering into the contract, in derogation to Indian Law, the agreement becomes null and void. But, once the law laid down in the case of *Atlas Exports* (supra) is applied and when the same permits two Indian Companies to arbitrate their dispute in a foreign country, this contention of the appellant cannot be accepted. The agreement cannot be termed as null and void or incapable only because the parties chose to arbitrate their dispute in a foreign country.

59. Having held that the provisions of section 45 are attracted and the agreement is not hit by the null and void clause as contemplated under section

45, then a jurisdictional authority which is seized of the matter under law is obliged to refer the parties for arbitration and that is precisely what has been done by the learned Court below.

60. During the course of hearing Shri V.K. Tankha, learned Senior Counsel had relied upon the judgment of the Madras High Court, in the case of *J. Mary Helan* (supra), to say that section 45 cannot be used to reject a plaint under Order VII Rule 11 of the CPC. In this case, the respondents' objection was to the maintainability of the suit in view of the bar contained under section 45. If section 45 is found to be applicable then the Court below had no option, but to refer the matter for arbitration and if this power is exercised, it is infact rejection of the suit on account of the bar created under section 45, and merely because in the application it was also indicated that it is under Order VII Rule 11(d), we cannot loose sight of the fact that once section 45 is attracted, the suit was not maintainable and by ignoring this aspect of the matter we cannot say that the suit could not be dismissed. This issue can be analysed in a different manner, as canvassed on behalf of the respondents at the time of hearing, it is a well settled principle of law that a bar of law can be an implied bar also. If we read section 9 and Order VII Rule 11 CPC together, we find that section 9 provides that a Civil Court's jurisdiction is presumed to be in existence unless expressly or impliedly barred meaning thereby that even if a bar is provided, either expressly or impliedly, the only option available is rejection of the plaint and now in this case when the implied bar as contained in section 45 is attracted, the suit has to be dismissed. In this regard, the Madras High Court itself has laid down the principle in the case of *Adam & Coal Resources Private Limited* (supra).

61. That apart, if an order is passed under section 45 and a suit is dismissed because of the bar created under section 45, then the appeal itself would be hit by the provision of section 50, of the Act. The Supreme Court while interpreting the provisions of section 45, in the case of *Chloro Control India Private Limited* (supra), has clearly laid down the principle of *Kompetenz-Kompetenz* and the test set out for determining the competence of a Court, under section 45, the Court is only to decide the validity of the arbitration clause and for the purpose of determining the validity of the arbitration clause, the crucial test as laid down in the case of *Enercon (India) Limited* (supra) is the intention of the parties to arbitrate.

62. The intention of the parties to arbitrate has been emphasized by the

Supreme Court in the case of *Enercon (India) Limited* (supra) and if it is found that the intention of the parties was to resolve their dispute through arbitration, then it is the bounden duty of the Court to give effect to the intention of the parties.

63. In the present case, if the test laid down with regard to the provisions of section 45; the intention of the parties; and, the principle of least intervention not only crystallized in the case of *Enercon (India) Limited* (supra), but also in the case of *Chatterjee Petroleum Company* (supra), is taken note of, it would be seen that once the parties have agreed to resolve their dispute by arbitration and when the learned Court below has only referred the parties for arbitration, this Court should not interfere into the matter until and unless the agreement is itself found to be null or void or inoperative.

64. After analyzing the matter as detailed herein above, we find that in this case even though initially the association agreement was entered into between the petitioner-Company and NACC US on 1st January 2009 but by virtue of the assignment agreement NACC US assigned all its rights, obligations and liabilities to the Indian subsidiary i.e. NACC-India, thereafter certain dispute have arisen between the two Indian Companies, when the claims and vouchers issued by the respondents was not honored by the appellant. As a result vide Annexure A/5 dated 23rd July, 2014, the respondent terminated the association agreement. In the association agreement under Section 12(1) a detailed arbitration procedure is contemplated for resolution of the dispute. As per the agreement entered into in the said clause, the seat of the Arbitration is London and the arbitration is to be undertaken as per the law applicable at the place of arbitration. Even though Shri Tankha, learned Senior Counsel tried to indicate that in view of the law laid down in the case of *Kishori Lal* (supra) and *Young Achievers* (supra) when an agreement is novated or assigned, the arbitration clause goes, we are unable to accept the said contention. The novation agreement only permits the Indian Company to step into the shoes of American Company but all other terms and conditions contained in the Association Agreement of 1st of January, 2009 continued to be existing between the parties and the appellant and respondents agreed to carry out the work as per original Association Agreement dated 1st January 2009. It was said that the entire section 12(2) of the Association Agreement goes and there cannot be an arbitration in accordance to the aforesaid provision. It was said that section 12 of the Association Agreement also stands novated on execution of the Assignment Agreement. It was argued that post assignment;

the arbitration agreement does not fall within the definition of International Commercial Arbitration. This argument cannot be accepted in the Assignment Agreement it is indicated that NAC (i.e. the US Company) has incorporated NACC India and desires to transfer and assign all of NAC's rights and obligations under the Association Agreement to NACC India, which desire is accepted and as Reliance is also willing to such consent and assignment entered into, i.e. the Assignment and Assumption Agreement, and it goes to indicate that NAC transfers and assigns all its rights and obligations under the Agreement to NACC India and as provided under Section 15(6) of the Association Agreement i.e.... the provision for Succession and Assignment, transfers and assigns all of its rights and obligations to NACC India; and, thereafter NACC India accepts the transfer and assignment and assumes all NAC's obligations and in Clause 2, the following stipulations are contained in the assignment agreement:

"2. NACC India hereby accepts the transfer and assignment of all of NAC's rights and hereby assumes all of NAC's obligations under the Agreement, and hereby agrees to perform such obligations in accordance with the terms of the Agreement."

65. Thereafter, in Clause 3, consent to assignment and assumption is given by Reliance and thereafter, amendment to the Association Agreement is made by deleting section 5.3 of the Association Agreement and substituting it with Clause 4. Clause 5.6 of the Association Agreement is deleted and certain amendments are made to the payment terms and conditions and separate payments.

66. Apart from the aforesaid change to the Association Agreement, under Clause 6 of the Assignment Agreement, it is clearly stipulated that except as amended, the Agreement shall remain in effect as written, meaning thereby that all the provisions of the Association Agreement which was entered into on 1.7.2009 remains in effect as it was originally written, except certain amendments as are incorporated in Clause 4 and 5, of the Assignment Agreement.

67. If that be so, it has to be assumed that under law the entire dispute resolution system stands accepted and adopted by the parties even by the Assignment Agreement and, therefore, the contention that the entire Association Agreement gets novated or superceded is not correct. Infact and in law, the Association Agreement continues to remain in force with certain amendments

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as stipulated in clause 4 and 5 and the material modification that NACC India replaces NACC US in the said agreement. Except for this change, there is no other change in the Agreement.

68. That apart, the Association Agreement is nothing but an agreement which now meets the requirement of Section 43 of the Indian Contract Act and if we analyze the same in the backdrop of the principles laid down by the Delhi High Court in the case of *Delhi Airport Metro* (supra), we find that in the said case somewhat identical and similar situation was existing, the learned Court had taken note of Section 43 of the Indian Contract Act and found that it is legally permissible when two or more persons can make a joint promise and in the absence of any express agreement to the contrary, agreement can be compelled by any of the joint promisor to perform the said promise. That being so, the arbitration agreement can be given effect to in the light of the aforesaid principle of law itself. That apart, when parties have agreed for arbitration and when it is the intention of the parties to resolve their dispute by Arbitration, in the light of law laid down in the case of *Enercon (India) Ltd* (supra), this Court is duty bound to give effect to the intention of the parties and it is not in the interest of law or in the interest of justice to permit the parties to take any steps which may have the effect of nullifying the arbitration agreement. In the case of *Enercon India Ltd* (supra) in para 77 and 79, the learned Supreme Court has laid down the following principle :-

"77. A bare perusal of this clause makes it abundantly clear that the parties have irrevocably agreed that clause 18 of the proposed IPLA shall apply to settle any dispute or claim that arises out of or in connection with this Memorandum of Understanding and negotiations relating to IPLA. It must also be noticed here that the relationship between the parties formally commenced on 12th January, 1994 when the parties entered into the first SHA and TKHA. Even under that SHA, Article XVI inter alia provided for resolution of disputes by arbitration. The TKHA also contained an identically worded arbitration clause, under Article XIX. This intention to arbitrate has continued without waiver. In the face of this, the question of the concluded contract becomes irrelevant, for the purposes of making the reference to the Arbitral Tribunal. It must be clarified that the doubt raised by the Appellant is that there is no concluded IPLA, i.e. the substantive contract. But this can have no effect on the existence of a binding Arbitration Agreement in view of Clause 3. The parties have

irrevocably agreed to resolve all the disputes through Arbitration. Parties can not be permitted to avoid arbitration, without satisfying the Court that it would be just and in the interest of all the parties not to proceed with arbitration. Furthermore in arbitration proceedings, courts are required to aid and support the arbitral process, and not to bring it to a grinding halt. If we were to accept the submissions of Mr. Nariman, we would be playing havoc with the progress of the arbitral process. This would be of no benefit to any of the parties involved in these unnecessarily complicated and convoluted proceedings.

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79. Further, the arbitration agreement contained in clause 18.1 to 18.3 of IPLA is very widely worded and would include all the disputes, controversies or differences concerning the legal relationship between the parties. It would include the disputes arising in respect of the IPLA with regard to its validity, interpretation, construction, performance, enforcement or its alleged breach. Whilst interpreting the arbitration agreement and/or the arbitration clause, the court must be conscious of the overarching policy of least intervention by courts or judicial authorities in matters covered by the Indian Arbitration Act, 1996. In view of the aforesaid, it is not possible for us to accept the submission of Mr. Nariman that the arbitration agreement will perish as the IPLA has not been finalised. This is also because the arbitration clause (agreement) is independent of the underlying contract, i.e. the IPLA containing the arbitration clause. Section 16 provides that the Arbitration clause forming part of a contract shall be treated as an agreement independent of such a contract."

(Emphasis supplied)

69. The aforesaid principle clearly indicates that when parties have agreed to resolve all their disputes by arbitration, they cannot be permitted to avoid arbitration. When arbitration is the process agreed to by the parties for resolution of their dispute, this Court under law is required to aid and support the arbitral proceedings and not to cause any hindrance in it.

70. Keeping in view the principles laid down in the case of *Enercon India Ltd.* (supra) also, we are unable to accept the contentions of the appellants. That apart, when we go through the law laid down in the case of *Shin*

Electronics (supra), we find that in that case it has been laid down by the Supreme Court that the Arbitral Tribunal is empowered to adjudicate all disputes with regard to its own jurisdiction.

71. Finally, we may observe that once it is found by us that parties by mutual agreement have decided to resolve their dispute by arbitration and when they, on their own, chose to have the seat of arbitration in a foreign country, then in view of the provisions of Section 2(2) of the Act of 1996, Part I of the Act, will not apply in a case where the place of arbitration is not India and if Part I does not apply and if the agreement in question fulfills the requirement of Section 44 then Part II will apply and when Part II applies and it is found that agreement is not null or void or inoperative, the bar created under Section 45 would come into play and if bar created under Section 45 comes into play then it is a case where the Court below had no option but to refer the parties for arbitration as the bar under Section 45 would also apply and the suit itself was not maintainable.

72. Accordingly, in the facts and circumstances, we find no error in the order passed by the learned District Judge, warranting reconsideration.

73. Appeal is therefore, dismissed. No order on costs.

Appeal dismissed.

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APPELLATE CIVIL

Before Mr. Justice N.K. Gupta

M.A. No. 2045/2002 (Jabalpur) decided on 22 September, 2015

SUSHMA SINGH (SMT.) & ors.

...Appellants

Vs.

RAM SHIROMANI TIWARI & ors.

...Respondents

A. Motor Vehicles Act (59 of 1988), Section 166 - Accident between tractor-trolley and Goods train - Claim application dismissed on the ground that Motor Accident Claims Tribunal has no jurisdiction - Whether in the peculiar facts of the case Motor Accident Claims Tribunal has jurisdiction to entertain the claim petition - Held - As the Claims Tribunal has initially entertained the claim petition because motor vehicle was involved, so afterwards the Tribunal cannot dismiss the claim application on the ground of jurisdiction as the accident took

place due to sole negligence of the Railways - Claim application entertainable. (Paras 9 & 10)

क. मोटर यान अधिनियम (1988 का 59), धारा 166 - ट्रैक्टर-ट्राली तथा मालगाड़ी के बीच दुर्घटना - दावा आवेदन इस आधार पर खारिज किया गया कि मोटर दुर्घटना दावा अधिकरण को कोई अधिकारिता नहीं है - क्या प्रकरण के विशेष तथ्यों में मोटर दुर्घटना दावा अधिकरण को दावा याचिका ग्रहण करने की अधिकारिता है - अभिनिर्धारित - चूंकि दावा अधिकरण ने प्रारंभ में दावा याचिका को ग्रहण किया क्योंकि मोटर यान शामिल था, अतः बाद में अधिकरण दावा आवेदन को अधिकारिता के आधार पर खारिज नहीं कर सकता क्योंकि दुर्घटना केवल रेलवे की उपेक्षा से कारित हुई - दावा आवेदन ग्रहण करने योग्य।

B. *Motor Vehicles Act (59 of 1988), Section 166 and Civil Procedure Code (5 of 1908), Order 14 Rule 2 - Preliminary issue - Question of jurisdiction - Preliminary issue shall be considered first and if cause of action continues then all the issues are to be decided on merits.* (Para 9)

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 - प्रारंभिक विवादक - अधिकारिता का प्रश्न - प्रारंभिक विवादक पर पहले विचार किया जायेगा तथा यदि वाद-हेतुक जारी रहता है तो सभी विवादकों को गुणदोष के आधार पर निर्णीत किया जाये।

C. *Motor Vehicles Act (59 of 1988), Section 166 - Accident between tractor-trolley and Goods train - Negligence - Contributory negligence - Gate of Railway crossing not closed - Sound, vibration and headlight of Goods train not noticed by driver of tractor-trolley - Held - Railways is negligent to the extent of 75% and driver of tractor-trolley is composite negligent to the extent of 25%. (Paras 11 & 12)*

ग. मोटर यान अधिनियम (1988 का 59), धारा 166 - ट्रैक्टर-ट्राली तथा मालगाड़ी के बीच दुर्घटना - उपेक्षा - योगदायी उपेक्षा - रेल फाटक बंद नहीं - ट्रैक्टर-ट्राली के चालक ने मालगाड़ी की ध्वनि, कंपन तथा हेडलाईट पर ध्यान नहीं दिया - अभिनिर्धारित - रेलवे की उपेक्षा 75% तक की सीमा तक है तथा ट्रैक्टर-ट्राली के चालक की संयुक्त उपेक्षा 25% की सीमा तक है।

D. *Motor Vehicles Act (59 of 1988), Section 166 - Accident is of the year 1999 - Deceased, a farmer, aged 50 years - Owing 11 acres of agricultural land - Dependant wife and three minor children - Computation of income - Loss of supervision - Income assessed at Rs.*

2,400/- p.m., more than income of an unskilled labourer - 1/4th deducted towards personal expenses - Multiplier of 13 adopted - Rs.2,80,800/- granted towards loss of dependency, Rs. 10,000/- each on account of loss of consortium and loss of estate and Rs. 6,000/- for funeral expenses, so in all an amount of Rs. 3,07,000/- granted as compensation - Appeal partly allowed. (Paras 15 & 16)

घ. मोटर यान अधिनियम (1988 का 59), धारा 166 - दुर्घटना, वर्ष 1999 की है - मृतक, एक कृषक, आयु 50 वर्ष - 11 एकड़ कृषि भूमि का स्वामी - पत्नी तथा तीन अव्यस्क बच्चे आश्रित - आय की गणना - पर्यवेक्षण का नुकसान - आय 2,400/- प्रतिमाह निर्धारित की गई जो कि अकुशल मजदूर की आय से अधिक है - व्यक्तिगत खर्चों की ओर 1/4 भाग की कटौती की गई - 13 का गुणक अपनाया गया - आश्रितता की हानि की ओर रु. 2,80,800/- प्रदान किये गये, रु. 10,000/- प्रत्येक सहकार की हानि के लिए एवं संपत्ति की हानि के लिए तथा रु. 6,000/- अंतिम संस्कार के खर्चों के लिए. अतः कुल राशि 3,07,000/- प्रतिकर के रूप में प्रदान की गई - अपील अंशतः मंजूर।

Cases referred :

2000 (Part II) MPWN Note 6, 2002 ACJ 721, 2005 (2) TAC 159 (MP), 2005 (1) MPLJ 372, 2009 ACJ 1298.

Deepak Pendharkar, for the appellants.

Pramod Sahu, for the respondent No. 3.

ORDER

N.K. GUPTA, J. :- The appellants/claimants have preferred the present appeal against the award dated 8.8.2002 passed by the Third Additional Motor Accident Claims Tribunal, Satna in C.T.No.16 of 1999 whereby, the claim application under Section 166 of the Motor Vehicles Act was dismissed by the Tribunal.

2. The facts of the case in short are that the appellants have filed an application under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal that on 29.11.1996 at about 8.00 to 9.00 p.m the deceased Brijnandan Singh was returning in his tractor from Mandi at Satna to his Village Ramsthan (Police Station Kolgawan, District Satna) after selling of the grains and purchasing some other articles. The deceased Brijnandan Singh was the owner of the Tractor No.MP19-A 0075 along with trolley No.MP19-A 0076 which was being driven by Ram Shiromani Tiwari, the respondent no.1: When the

vehicle reached at the railway gate Biruhali the gate was open. The respondent no.4 who was responsible to close the gate on arrival of the train did not close the gate and therefore, when the tractor and trolley was on the railway track a railway engine of a Goods train dashed the tractor and trolley causing death of the deceased Brijnandan Singh and 2-3 others. The applicants have moved an application for compensation of Rs.5 lacs against all of the respondents.

3. The respondents no.1 and 2 in their written statement have denied the negligence of the respondent no.1 and it was pleaded that the accident took place due to sole negligence of the respondent no.4 who did not close the railway crossing gate at the time when the Goods train was passing. In the alternate, it was pleaded that the tractor and trolley was insured with the respondent no.3 and therefore, it is the liability of the respondent no.3 to pay the compensation, if required.

4. The respondent no.3 in its written statement denied the allegations of the compensation application. It was pleaded that the concerned tractor and trolley was not insured by the respondent no.3. However, when photo copy of the cover note was produced before the Tribunal, learned counsel for the respondent no.3, has accepted it and it was marked as the document Ex.D/1. No other plea was taken by the Insurance Company.

5. The respondent no.4 has denied all the averments of the application filed by the claimants and a specific plea was taken that according to the provisions of Sections 122, 147, 149 of the Railways Act the deceased was himself responsible for the accident. The deceased opened the railway gate by taking a key from the respondent no.4 and tried to cross the tractor and trolley on the railway crossing that resulted in an accident due to his own overt act. The respondent no.4 had closed the gate soon before the arrival of the Goods train but it was forcefully opened by the deceased and his companions. In the alternate, it was pleaded that the Motor Accident Claims Tribunal has no jurisdiction to try the claim application.

6. The respondent no.5 has also submitted the written statement of the similar nature as submitted by the respondent no.4 and prayed that the Tribunal has no jurisdiction to decide the case.

7. The Presiding Officer of the Motor Accident Claims Tribunal has framed seven issues relating to negligence, computation of compensation, liability of the respondents, violation of policy conditions, jurisdiction of the Tribunal and

for relief and costs. After, recording the evidence of the parties, the application was dismissed on the ground that the Tribunal has no jurisdiction to try that application and the application under Section 166 of the Motor Vehicles Act was not maintainable.

8. I have heard the learned counsel for the parties at length. The learned counsel for the respondents no.4 and 5 did not appear before the Court though they were represented.

9. In the present case, the Tribunal has dismissed the application on the basis of jurisdiction only whereas, it is the principle of the Civil Procedure Code that if a Court decided a preliminary issue to dispose off the case then the matter shall be considered on the basis of that preliminary issue first and if cause of action continues then at the time of final judgment all of the issues are to be decided. In the present case, the Tribunal did not consider the issue of jurisdiction to be a preliminary issue and it was decided at the time of passing the final award but other issues are not decided on merits. The application was filed before the Tribunal in the year 1999 and therefore, after 16 years it would be inappropriate to remand the case to the Tribunal for decision on the remaining issues. Hence, it would be appropriate to consider all the issues in the present appeal.

10. The Tribunal has dismissed the claim application on the basis that such application should have been filed before the Railway Tribunal and application under Section 166 of the Motor Vehicles Act was not maintainable before the Claims Tribunal. The Claims Tribunal has relied upon the judgments of Supreme Court including the judgments passed in the case of "*G.M.N.A Railway Vs. Jitendra Shah*" [2000 (Part II) MPWN Note 6]. However, the learned counsel for the appellants has invited the attention of this Court to the judgment passed by the Full Bench of the Apex Court in the case of "*Union of India Vs. Bhagwati Prasad and others*" (2002 ACJ 721) in which it is held that in the light of the provisions under Section 110 of the Motor Vehicles Act when the Claim Tribunal has initially entertained the claim application then it cannot deny for grant of the application on the ground that accident took place due to sole negligence of the railway staff and therefore, the Tribunal has no jurisdiction. In such a case the M.A.C. Tribunal cannot be deprived of its jurisdiction in which it had initially entertained the claim application and can award the compensation against the Railway also. The Apex Court has given various reasons and decided that the Motor Accident Claims Tribunal

has jurisdiction. In the light of the aforesaid judgment if facts of the present case are considered then the Claims Tribunal has entertained the claim application because a motor vehicle was involved in the accident then claim application could not be dismissed on the ground that the Tribunal did not have any jurisdiction to entertain the application. The judgment passed by the Apex Court in the case of *Bhagwati Prasad* (supra) is given by the Full Bench and therefore, it has overriding effect over the other judgments of the Apex Court passed in the past. Hence, the Tribunal has committed an error in finding that it has no jurisdiction to award the claim application against the railway administration through Union of India.

11. The question relating to negligence is to be decided in the case. Only one witness Shekhar Datt Soni (AW2) was examined as an eye witness. He has stated that when the tractor reached near Birhuli Gate, the gate was found open and therefore, the driver took the tractor and trolley on the railway line to cross it. An engine was coming from the side of Satna and there was no headlight illuminated in that Engine which dashed the tractor and trolley. The respondent no.4 and 5 took a plea in their written statement that the deceased Brijnandan Singh along with his companions forcefully took the keys of the railway gate and opened the gate but no witness was examined to prove such pleading and it was not established that the gate was closed and it was opened forcefully. Under these circumstances, evidence of Shekhar Datt Soni appears to be acceptable that the railway gate has been open and therefore, the respondent no.1 tried to cross the railway line by the tractor and trolley.

12. In the cross examination Shekhar Datt Soni has accepted that if a train arrives near the spot then its vibrations and sound may be felt and heard by the people around the railway line. It was not acceptable that the headlight of the engine of the Goods train was not working. Hence, if the gate was not closed still the driver of the tractor could feel that the train was coming from one side on the basis of its sound and vibrations. Also he could see the headlight of the Goods train which was coming from the side of Satna. Hence, if gate was not closed by the respondent no.4 then it cannot be said that it was the sole negligence of the respondent no.4. Looking to the facts and circumstances of the case, I am of the view that negligence of the respondents no.4 and respondent no.1 should be considered as 75% is to 25% of contributory negligence.

13. Learned counsel for the appellant has placed his reliance upon the

judgment passed by the Division Bench of this Court in the case of "*Madhya Pradesh State Road Transport Corporation, through Divisional Manager Vs. Kumar Singh @ Kamal Singh and another*" [2005 (2) T.A.C. 159 (M.P.)] in which, it is held that bus being a heavier and larger vehicle and it was the responsibility of the driver of the bus to see the motorcyclist, therefore, the responsibility should be apportioned of 75:25 on bus driver and motorcyclist respectively. In the light of the aforesaid judgment, the responsibility of accident is fixed in para 12 of the order.

14. Learned counsel for the appellant has also placed his reliance upon the judgment passed by the Full Bench of this Court in the case of "*Sushila Bhadoriya and others Vs. M.P. State Road Transport Corporation and another*" [2005 (1) M.P.L.J. 372] in which, it is held that the accident caused due to composite negligence of two joint tort-feasors then, the claimant would be free to choose any of the joint tort-feasors and claim the compensation from him. In the present case, the law laid by the Full Bench of this Court cannot be applied because in the present case, the appellant did not choose to prosecute the respondent nos.4 and 5. On the contrary, all two tort-feasors alongwith their Insurance Company are pleaded responsible and therefore, he would be entitled to get the compensation on the basis of apportionment of the liability between two joint tort-feasors as done by the Division bench of this Court in the case of *Kumar Singh* (supra).

15. So far as the computation of compensation is concerned, it is stated by Sushma (AW1) and Siddarth Datt Soni (AW2) that the deceased had 11 acres of land with him and the tractor and trolley on which he travelled was of his own property. Sushma has accepted that the deceased was giving a monthly income of Rs.10,000/- for expenditure but, when the income of the deceased was dependent upon the agricultural land and the land is still available to the legal representatives of the deceased then his income should not be computed on the basis of profits and crops grown on the land. If the legal representatives of the deceased engages one person to look after the land and to do as a job of labour then such income can be obtained. Hence, the appellants have a loss of supervision on the lands which was done by the deceased. Thus, the income of the deceased can be presumed to be more than the income of an unskilled labour.

16. The case was of the year 1999 and at that time the Collector rate for unskilled labour was Rs.50/- per day. Hence, the notional income of the

deceased Brijnandan Singh may be assessed to be Rs.80/- per day because except doing his physical activities he was also supervising his labours and therefore, his monthly income falls within the limit of Rs.2400/- per month. Since his income was spent on his wife, three minor children and himself therefore, his expenditure should be deducted by 25% from his income and therefore, dependency of the claimants comes to be Rs.1800/- per month i.e. Rs.21,600/- per annum. For computation of multiplier age of the deceased is to be considered. Sushma (PW1) has shown that she was 45 years old at the time of accident and her husband was also 45 years old. In the post mortem report Ex.P/3, age of the deceased Brijnandan Singh was mentioned as 48 years but according to the pleadings of the appellants, the respondent no.2 Jaisingh was made a party of the case as owner of the vehicle being son of the deceased Brijnandan Singh. Jai Singh is shown to be 32 years old at the time of filing of the claim application and therefore, there must be a difference of 18 years of age of the deceased Brijnandan Singh and his elder son Jai Singh. Hence, age of the deceased Brijnandan Singh appears to be above 50 years at the time of accident. Hence, according to the guide lines of Hon'ble the Apex Court in *Sarla Verma's case* (2009 ACJ 1298) the multiplier of 13 can be given on the yearly dependency as computed above. Hence the total compensation comes to be Rs.2,80,800/- The appellant no.1 is also entitled to get some compensation in the head of consortium and loss of estate. It would be appropriate to award a sum of Rs.10,000/- on such each counts, funeral expenses may also be computed at the rate of Rs.6000/-. Hence the compensation comes to a sum of Rs.3,06,800/- in all.

17. The respondent no.3 the Insurance Company did not take any plea before the Tribunal about the violation of policy conditions. The only plea taken by the Insurance Company was that the tractor was not insured. When cover note was filed it was admitted by the learned counsel for the Insurance Company and therefore, the Insurance Company is responsible for payment of compensation to the appellants for negligence done by the respondent no.1 who, was authorized driver of the tractor trolley appointed by the deceased/ employer. Hence, there is nothing on record to opine that the respondent no.3/Insurance Company has been absolved from its liability.

18. On the basis of the aforesaid discussion the appeal filed by the appellants is hereby partly allowed. The appellants are entitled to get a compensation of Rs.3,07,000/- (in round figure) in all. 75% of compensation

shall be paid by the respondents no.4 and 5. They are jointly and severally liable for payment of that compensation whereas, 25% of compensation shall be paid by the respondent no.3 being insurer of the vehicle driven by the respondent no.1. The respondents no.3, 4 and 5 are also directed to pay an interest of 7% per annum on the amount of compensation payable by them from the date of award i.e. 8.8.2002. The appellants are also entitled to get the costs of this appeal and the claim application. Advocate's fee be added for the appellants as a sum of Rs.5000/- if certified.

19. Copy of the order be sent to the Tribunal along with its record for information and compliance.

Appeal partly allowed.

I.L.R. [2015] M.P., 3369

APPELLATE CRIMINAL

Before Mr. Justice S.K. Gangele & Mr. Justice S.K. Palo

Cr.A. No. 573/2002 (Gwalior) decided on 30 June, 2014

PHOOL CHAND

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 376 - Rape - In a case of rape the medico-legal examination has great importance - The story of prosecution is not supported by the medical evidence and prosecution evidence suffers from discrepancies - Further prosecutrix admitted the suggestion that she and her mother had gone to Govt. Advocate's Office where her police statement was read out - It gives rise to presumption that there is an element of tutoring - Appeal allowed.

(Paras 8, 12, 19 & 20)

दण्ड संहिता (1860 का 45), धारा 376 - बलात्कार - बलात्कार के प्रकरण में चिकित्सा-विधिक परीक्षण अत्यंत महत्वपूर्ण है - अभियोजन कथानक चिकित्सकीय साक्ष्य से समर्थित नहीं है तथा अभियोजन साक्ष्य विसंगतियों से ग्रसित है - इसके अतिरिक्त अभियोक्त्री ने यह सुझाव स्वीकार किया है कि वह तथा उसकी माता शासकीय अधिवक्ता के कार्यालय गई थीं जहां उसका पुलिस कथन पढ़कर सुनाया गया - इससे यह उपधारणा उत्पन्न होती है कि यहां सिखाने का तत्व विद्यमान है - अपील मंजूर।

Cases referred :

AIR 1997 Supreme Court 135, (2012) 7 SCC 171, (2009) 15 SCC 566, (2007) 12 SCC 57.

Sameer Kumar Shrivastava, for the appellant.

None for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
S.K. PALO, J. :- Appellant Phool Chand stood trial under Section 376 of IPC and has been held guilty vide judgment dated 26.9.2002 in S.T. No. 153/2001 pronounced by the learned First A.S.J, Guna, the appellant has been sentenced to life imprisonment. This appeal has been filed under Section 374 Cr.P.C assailing the conviction and sentence.

2. The undisputed facts of the case are that the prosecutrix is the minor daughter of the accused / appellant. Medical report prepared by Dr. A.S. Ojha which disclose, that there is no disease or deformity which can make the appellant incapable to perform sexual-intercourse, has been admitted by the appellant under Section 294 of Cr.P.C.

3. The prosecution story in brief is that Guddi Bai (PW-2), is the mother of the minor prosecutrix aged about 15 years has been examined as PW-1. Five days earlier to 24th February, 2001 the complainant Guddibai had gone to wash her face and hands. When she returned she saw that her husband (accused) is committing sexual-intercourse with her minor daughter. On seeing this she fainted. After she regained consciousness she asked her husband what he was doing. The appellant Phool Chand replied that he can do whatever he wants to do with his daughter. He used to lock the prosecutrix inside the house and the prosecutrix was also subjected to assault by the accused. She has also alleged in her report that the prosecutrix also stated to her that prior to this incident, her father committed sexual-intercourse with her. The accused used to keep the complainant and the prosecutrix inside the house and they were not allowed to go out. On 24/2/2001 with great difficulty, the complainant came out with her daughter and lodged the report at Police Station Raghogarh, District Guna. She further allege that the accused subjected them to harassment. They feel insecure and possibility of the accused again committing sexual-intercourse in future is very likely.

4. Having received the written complaint, the Police Station, Raghogarh

District Guna lodged a report and after due investigation submitted charge sheet under Section 376 (1) of IPC. The learned ASJ, Guna explained the charge under Section 376 (1) of IPC to the accused appellant. The appellant abjured guilt. In his examination the appellant has stated that the prosecutrix is aged about 19 years, she is not minor. He further stated that the prosecutrix is tutored by her mother "Guddibai". Guddibai is not a woman chaste. She has been having illicit relationship with other persons. She is in the habit of not staying in the house during night which, the husband accused did not like. On his opposing the same, the complainant became annoyed. The prosecutrix is also aware of her unchaste behavior. Because the accused appellant restricted the complainant to lead such a life, she lodged this false report against the accused appellant. The appellant / accused has further stated that he has been falsely implicated and the complainant has taken such steps, so as to put the appellant in jail and the complainant would lead an unrestricted independent life.

5. After affording opportunities, the learned trial Court passed the impugned judgment on 26.9.2002; held the accused guilty under Section 376 (1) of IPC and sentenced him to life imprisonment.

6. We have considered the submissions made before us by both, counsels for the appellant as well as the respondent / State.

7. On perusal of the record it is found that the prosecutrix is aged about 15 years. The prosecutrix was radiologically examined by Dr. Sitaram Singh Raghuvanshi (PW-7) and after examining her X-ray plate Ex. P/9 he opined in his report Ex-P-8, that the age of the prosecutrix is above 16 years, but below 19 years. That being so, a doubt has been created on the prosecution case so as to the age of the prosecutrix.

8. The prosecutrix has stated that at the time of the incident, her mother had gone out and when she came back, she found her father (appellant) doing sexual-intercourse with her. Seeing this, her mother fainted. She has also narrated that her father (appellant) had committed such intercourse earlier too. In her cross-examination she was questioned as to how many times such incidents occurred earlier ? She has stated that her father in a span of last 5 – 6 months committed such intercourse two times, but she did not inform about these incidents to her mother. It would be pertinent to mention here that the prosecutrix has agreed to the suggestions of the defense counsel that she

was taken to the Government Advocate's Office in the morning hours on the day her statement was recorded and she along with her mother were read out their police statements and were instructed to state the same in the Court room. That gives rise to the presumption that there is an element of tutoring. This presumption finds supports from the statement of the prosecutrix made in paras 8 and 9 of her cross-examination. The prosecutrix (PW-1) has unambiguously stated that there has been fight between her mother Guddibai and her father (appellant). Her father (appellant) restricts her mother to meet Puran Lal and Shivilal. This happened during last 2 to 3 years. She has further stated that her mother used to visit these persons during the night and used to come at around 2 AM, which her father protested.

9. Besides, she has also stated that she has reported to the police on the instruction of her mother. Had not her mother instructed to do so she could not have gone to lodge the report. She did not report herself but her mother lodged the report.

10. All these go to show that the prosecutrix has been under the influence of her mother and the possibility of tutoring cannot be ruled out.

11. The Hon'ble Apex Court in the case of *Caetano Piedade Fernandes and another Vs. Union Territory of Goa, Daman & Diu, Panaji Goa* (AIR 1997 Supreme Court 135) has observed in a child case as under:

“We have carefully gone through his (child) evidence, but we are constrained to observe that even after making the utmost allowance in his favour in view of the fact that he is a child witness, we find it difficult to accept his testimony”

12. In a case of rape, the medico-legal examination has great importance, Dr (Smt). Nidhi Jain (PW-6), who examined the prosecutrix on the same day the report was lodged, has prepared the Medico Legal Report (Ex.P/7). She found no injury in the body of the prosecutrix. Her hymen is absent, it was ruptured. She has also found that the prosecutrix is habitual to sexual intercourse. The lady doctor who examined the prosecutrix is unable to state how old the hymen rupture is. She has reasoned out that the prosecutrix's hymen was old torn. Therefore, she has opined that the prosecutrix is habitual to sexual intercourse. This also gives an impression about the conduct of the prosecutrix. Her statement regarding the so called sexual intercourse by the appellant may have been tutored.

13. In this regard reliance can be placed in the case of *Narendra Kumar Vs. State (NCT of Delhi)* (2012) 7 SCC 171, in which the Hon'ble Supreme Court has laid down as under :

“Minor or insignificant inconsistencies, discrepancies or contradictions in her statement inconsequential – But if her statement suffers from serious infirmities, inconsistencies and deliberate improvements on material points, as in the present case, no reliance can be placed thereon. Hence, held, appellant entitled to benefit of doubt, and hence acquitted”

14. The evidence of the prosecutrix in a case of rape has predominant consideration, but story of the prosecution seems to be improbable and belies logic. In this regard, citation in the case of *Tameezuddin Alias Tammu Vs. State (NCT of Delhi)* (2009) 15 SCC 566 can be profitably followed:

“Evidence of prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter – On facts held, some supporting evidence was essential for prosecution's case in view (sic:view) of fallacies in prosecution version”

15. Guddibai (PW-2), who is said to be sole eye witness in this case, is not in good terms with her husband the appellant accused. Her statement needs to be scrutinized with precision. Guddibai (PW-2) has also agreed to the suggestions made by the learned defense counsel that she has been known to Puran and Shivilal since last 5-6 years, who are residents of village Ramnagar. This creates probable and reasonable doubt in the prosecution case. The statement of Guddibai (PW-2) is, therefore, does not inspire confidence, especially when the prosecutrix has stated about her relation with Puran and Shivilal.

16. The Hon'ble Supreme Court in the case of *Radhu Vs. State of Madhya Pradesh* (2007) 12 SCC 57 has cautioned that, “The Courts should; at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of rape either to take revenge or extort money or to get rid of financial liability”.

17. The contention of the learned Public Prosecutor that the accused - appellant being the father of the prosecutrix has sexually assaulted his daughter and there is no reason for the prosecutrix to unnecessarily implicate her father. Therefore, the fact of rape on the prosecutrix has been established beyond reasonable doubt.

18. We are, however, unable to accept this contention because until and unless there is reliable and acceptable evidence to reach to conclusion that it is the accused /appellant who committed rape.

19. In this regard, the story of the prosecution is not supported by the medical evidence and the evidence of Guddibai (PW-2) suffer from discrepancies as she has grudge against the appellant, her statement cannot be fully relied upon. That being so, the sole statement of prosecutrix as there is every possibility of tutoring, in our opinion, would not be accepted without any doubt.

20. Having said so, we, accordingly, set aside the conviction and sentence passed by the learned trial Court and acquite (sic:acquit) the appellant of the charge levelled against him for the offence under Section 376 (1) of IPC. Consequently, appeal is allowed.

Appeal allowed.

I.L.R. [2015] M.P., 3374

ARBITRATION CASE

Before Mr. Justice Sujoy Paul

Arb. Case No. 23/2012 (Gwalior) decided on 20 August, 2014

BRAJESH SHARMA (SHRI)

...Applicant

Vs.

BANCO CONSTRUCTION

...Non-applicant

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 2 and Arbitration and Conciliation Act (26 of 1996), Section 11 - Appointment of arbitrator - Adhiniyam, 1983 could be made applicable only when either party is State Govt. or Public Undertaking or its officials - M.P. Rural Road Development Authority is neither a State nor its undertaking - Arbitrator is appointed. (Paras 19 & 23)

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 2 एवं माध्यस्थम्

और सुलह अधिनियम (1996 का 26), धारा 11 - मध्यस्थ की नियुक्ति - अधिनियम, 1983 को केवल तभी लागू किया जा सकता है जब कोई एक पक्ष या तो राज्य शासन है या सार्वजनिक उपक्रम या उसके अधिकारी - म.प्र. ग्रामीण सड़क विकास प्राधिकरण न तो एक राज्य है न ही उसका कोई उपक्रम - मध्यस्थ नियुक्त किया जाता है।

Cases referred :

1989 (2) SCC 1, (2010) 5 SCC 306, (2011) 3 SCC 507, (2011) 1 SCC 167, (2009) 1 SCC 267, (2012) 2 SCC 93, (2012) 2 SCC 144, (1949) 2 All ER 1107, 1119, AIR 1989 SC 509.

Sankalp Sharma, for the applicant.

Arun Dudawat, for the non-applicant.

ORDER

SUJOY PAUL, J. :- In this application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity, the 'Act'), the applicant has prayed for appointment of sole arbitrator to decide the dispute between the parties.

2. The facts narrated by the applicant are that respondent Banco Construction is engaged in the business of civil construction work and has been allotted different construction work in different parts of State of Madhya Pradesh. On 27.1.2009, the General Manager of M.P. Rural Road Development Authority (RRDA), Project Implementation Unit-1, Khandwa allotted a work for construction/upgradation of rural road under "Pradhan Mantri Gram Sadak Yojna" including maintenance for five years after construction.

3. The respondent used to perform its civil construction work by subcontracting the same to different specialized agencies/contractors. For this purpose, an agreement was entered into between the applicant and respondent on 14.9.2009 (Annexure P/1). As per the agreement, the applicant was required to undertake the aforesaid work on behalf of the respondent. The applicant was also allotted the work of the road (area from Kalmukhi to Matpur) for an approximately length of 6.70 Kms. for an approximate contract amount of Rs. 210.00 Lacs by the respondent.

4. Shri Sankalp Sharma, learned counsel for the applicant relied on Clause

12 and 15 of the agreement dated 14.9.2009 (Annexure P-1). He submits that a dispute arose and, therefore, the applicant preferred representation, notice etc. to the respondent for appointment of sole arbitrator. The party No.1 of agreement (respondent herein) was required to appoint the arbitrator as per clause 12 of Annexure P-1. As per clause 15, Shri Sankalp Sharma submits that the disputes are subject to exclusive jurisdiction of Courts at Gwalior and place of arbitration is also Gwalior. He submits that necessary formalities as per the agreement for appointment of arbitrator have been completed by the applicant and, therefore, an arbitrator be appointed. He further submits that the applicant is not the signatory of general conditions of contract (Annexure R/1) nor he is bound by this. Thus, any clause of that contract entered into between RRDA and Banco Construction cannot have any adverse impact for the purpose of relief of appointment of arbitrator. He further submits that the object and scheme of M.P.Madhyastham Adhikaran Adhiniyam, 1983 (Act No. 29 of 83) (hereinafter called as "Adhiniyam"), makes it clear that the Tribunal has no jurisdiction in the matter of present dispute.

5. Shri Arun Dudawat, learned counsel for the respondent, on the other hand, submits that the present application is not maintainable. As per clause 7.1 of general conditions of contract (Annexure R-1), the subcontracting is permissible only with the prior approval of the principal employer, i.e., MPRRDA. It is permissible only up to value of 25 per cent of the total work and not beyond it. In the present case, the agreement, Annexure P/1, is entered into without prior approval of the employer in writing. It is beyond 25 per cent of the contract price and, therefore, the said agreement, Annexure P-1, is a void document. It is further argued that the applicant in fact has not made any request for appointment of arbitrator and, therefore, there exists no dispute between the parties. The factum of issuance and receiving of notice dated 18.9.2012 (Annexure P/2) and another document of same date (filed with list of documents) by the applicant is disputed by the other side. In addition, by filing additional reply the respondents have stated that as per section 3(aa) of Indian Stamps Act, 1988, the document dated 14.9.2009 (Annexure P/1) is chargeable with duty as per Schedule I-A in Madhya Pradesh. No stamp duty is admittedly paid on aforesaid document and, therefore, same is inadmissible as per section 35 of the Stamps Act. It is further submitted that there is no valid reason for this court to entertain the present application. Lastly, it is submitted that the applicant has not impleaded the firm as per Order 30 Rule 2 CPC and has chosen to file application by name and, therefore, the application must fail. He relied on 1989 (2) SCC 1 (*ITC Ltd. v. George Joseph Fernandes*

and another).

6. No other point is pressed by learned counsel for the parties.

7. On the basis of aforesaid contentions, following issues emerge for decision:-

- (i) Is there a valid arbitration agreement between the parties ?
- (ii) Whether the applicant should be relegated to avail the remedy under the Adhiniyam of 1983 ?
- (iii) Whether the present application must fail because it is not filed in the name of the firm ?
- (iv) Whether in absence of payment of stamp duty on the agreement, Annexure P-1, present application is barred ?
- (v) Whether the applicant has fulfilled the formalities as per Annexure P-1 for seeking direction for appointment of arbitrator ?

8. Before dealing with rival contentions, I deem it proper to quote clauses 12 and 15 of the agreement, Annexure P-1. It read as under:-

"12. That, in case any dispute arising out of or from this agreement or regarding interpretation, validity and or scope of any clause of this agreement or regarding the validity of this agreement shall be referred to the sole arbitrator under arbitration and conciliation act. Party No.1 shall appoint the arbitrator.

15. That, all disputes shall be subject to the exclusive jurisdiction of courts at Gwalior. Place of arbitration shall be exclusively at Gwalior."

Issue No.(i) :

9. It is mainly based on clause 7.1 of General Conditions of Contract. It reads as under:-

"7.1 The contractor may sub-contract part of the construction work with the approval of the employer in writing, upto 25 percent of the contract price but will not assign the contract. Subcontracting shall not alter the contractor's obligation."

10. Shri Sankalp Sharma, Advocate for the applicant, relied on the judgments of Supreme Court, reported in (2010) 5 SCC 306 (*Indowind Energy Ltd. vs. Wescare (I) Ltd. and another*) to submit that when factum of signing of arbitration agreement, Annexure P-1, is not in dispute between the parties, this Court is not obliged to examine anything further. Only thing which needs to be examined is whether there exists an arbitration agreement and whether party seeking appointment of arbitrator is a party to such agreement. Any wider examination in the present summary proceedings is not warranted. He also relied on (2011) 3 SCC 507 (*Indian Oil Corporation Ltd. vs. SPS Engineering Ltd.*) to submit that the only thing needs to be examined whether the party making the application has approached the appropriate High Court and whether the claim is dead (long barred) claim or a live claim ?

11. Before dealing with the rival contentions on this issue, it is apt to remember that the applicant and respondent are signatory to the agreement, Annexure P-1. Another agreement, Annexure R-1, is entered into between the respondent herein and MPRRDA. The present applicant is not party to the agreement, Annexure R-1. No doubt, when an objection is raised about existence of a "valid arbitration agreement", the court is required to deal with this aspect. It is necessary because it goes to the root of the matter and existence of an arbitration agreement is a jurisdictional fact, which will have to be addressed while making an order on a petition under section 11 of the Act. This view is taken by Supreme Court in (2011) 1 SCC 167 (*Alva Aluminium Ltd. v. Gabriel India Ltd.*). The issues which need to be taken care of by the Chief Justice/his designates are summarised by Supreme Court in catena of judgments including (2009) 1 SCC 267 (*National Insurance Co. Ltd. vs. Boghara Polyfab (P) Ltd.*). This is followed by the Apex Court in (2012) 2 SCC 93 (*Reva Electric Car Co. (P) Ltd. vs. Green Mobil*). The Apex Court opined that the first category of issues which needs to be decided by Chief Justice or his designates are as under:-

"(a) Whether the party making the application

has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement."

The second category of issues which the Chief Justice/his designate may chose to decide (or leave them to the decision of the Arbitral Tribunal) are :

"(a) Whether the claim is a dead (long-barred) claim or a live claim.

(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection."

The issues (third category) which the Chief Justice/his designate should leave exclusively to the Arbitral Tribunal are :

"(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of departmental authority and excepted or excluded from arbitration).

(ii) Merits or any claim involved in the arbitration."

A minute reading of para 28 of the judgment of *Reva Electric Car* (supra) shows that when the very existence of arbitration agreement is questioned by any party, the said aspect has to be addressed by the High Court. The similar view is taken in (2012) 2 SCC 144 (*Bharat Rasiklal Ashra vs. Gautam Rasiklal Ashra and another*). In para 17, the Apex Court opined that where sufficient circumstances exist to doubt the genuineness of the agreement or where it is contended that contract was forged/fabricated, the Chief Justice or his designate may examine the said aspect.

12. In the present case, the genuineness and existence of the agreement dated 14.9.2009, Annexure P-1, is not in question. In other words, it is not the case of the respondent that the agreement dated 14.9.2009 is fake or fabricated document. The bone of contention of the respondent is based on

clause 7.1 of General Conditions of Contract (entered into between RRDA and Banco Construction).

13. The contention of Shri Arun Dudawat is that since the agreement, Annexure P-1, is entered into between the applicant and respondent herein without approval of the employer and the contract price is beyond 25%, such agreement is a void document. Heavy reliance was placed in this regard on the judgment of Supreme Court in *ITC Ltd.* (supra).

14. In *ITC Ltd.* (supra), the Apex Court was dealing with Section 34 of the Erstwhile Arbitration Act, 1940. Shri Dudawat relied on this judgment to contend that the contract is void ab initio on the ground of mistake. He mainly relied on para 18 of this judgment.

15. A minute reading of this judgment shows that while examining the scope of section 34 of 1940 Act, the Apex Court opined that in appropriate cases having regard to the nature of dispute raised in the pleadings of the suit, the compass and scope of arbitration clause in the Contract Act, the surrounding facts and circumstances of the case and by taking into account the object and spirit of Arbitration Act, the court may be justified in deciding the validity, existence or legality of the challenged contract containing the arbitration agreement. In the same judgment, the Apex Court opined that as per section 20 of Indian Contract Act, 1872, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Since the present applicant is not signatory to the earlier agreement entered into between the respondent herein and RRDA, the present applicant is an innocent party. He cannot be said to be under a mistake for entering into the agreement without prior approval of the employer or for a price which is beyond 25% as per clause 7.1. The aspect whether a contract would be void at law in such circumstances, is dealt with by Lord Denning in *Solle v. Butcher*, (1949) 2 All ER 1107, 1119. He opined as under:-

"Once a contract has been made, that is to say, once the parties, wherever their inmost states of mind, have to all outward appearances agreed with sufficient certainty in the same terms on the subject matter, then the contract is good unless and until it is set aside for failure of some condition on which the existence of the contract depends, or for fraud, or on some equitable ground. Neither party

can rely upon his own mistake to say that it was a nullity from the beginning, no matter that it was a mistake which to his mind was fundamental, and no matter that the other party knew that he was under a mistake."

(Emphasis Supplied)

In the same judgment, the Apex Court opined that "mistake will not affect assent unless it is the mistake of both the parties". On the basis of "*Solle*" (supra), which is followed in *ITC Ltd.* (supra), it is clear that the respondent cannot rely upon his own mistake to say that the agreement, Annexure P-1, was a nullity from inception because prior approval of the employer is not taken. In no uncertain terms it was made clear by Lord Denning that even if the mistake is very fundamental in nature, the party who has knowingly committed such mistake cannot take its benefit. In other words, the respondent cannot rely upon his own mistake and submit that the agreement, Annexure P-1, is a nullity/void ab initio and, therefore, cannot be acted upon.

16. In nutshell, since the existence and genuineness of Annexure P-1 is not in question and present applicant was not a party to separate agreement, Annexure R-1, I am unable to hold that there was no valid arbitration agreement between the parties.

Apart from this, in *Indowind Energy Ltd.* (supra), the agreement was entered into between *Wescare and Subuthi*. Indowind Energy Ltd. resisted the petition filed under Section 11(6) of the Act by Wescare Ltd. on the ground that it was not a party to the relevant agreement entered into between *Wescare and Subuthi*. The Apex Court after considering various judgments on the point allowed the appeal of Indowind and set aside the order of High Court appointing an arbitrator in regard to the claims of the Wescare against Indowind and dismissed the application under section 11(6) of the Act filed by Wescare insofar as Indowind is concerned. The appointment of arbitrator insofar as Subuthi is concerned, was not disturbed. In the present case, clauses 12 and 15 of the agreement, Annexure P-1, makes it clear that the sole arbitrator needs to be appointed under the Act. The applicant and respondent are signatory to this agreement and, therefore, in my view, it is a valid arbitration agreement, pursuant to which a direction to appoint sole arbitrator can be given.

Thus, issue No. (i) is decided in favour of the applicant.

Issue No.(ii) :

17. Clause 12 of the agreement, Annexure P-1, makes it clear that the parties have decided to refer their dispute to the sole arbitrator under the Act. Apart from this, the preamble of Adhiniyam 1983 makes it clear that it was enacted to arbitrate the disputes to which the State Government or a Public Undertaking is a party. It reads as under:-

"An Act to provide for the establishment of a tribunal to arbitrate in disputes to which the State Government of a Public Undertaking, wholly or substantially owned or controlled by the State Government, is a party, and for matters incidental thereto or connected therewith."

18. Section 2 (i) of the Adhiniyam 1983, which defines "works-contract", reads as under:-

" 2(i) "works-contract" means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works."

(Emphasis Supplied)

19. A conjoint reading of the preamble of the Act with definition of "works-contract" makes it crystal clear that the Adhiniyam could be made applicable only when either party is State Government or Public Undertaking or its official. In the present case, admittedly, neither the applicant nor respondent herein is State Government or its Undertaking. This is trite in law that preamble of a Statute is although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the Statute, the evil sought to be remedied. (See, AIR 1989 SC 509 *The Secretary, Regional Transport*

Authority, Bangalore Vs. D.P.Sharma).

On the basis of aforesaid, the applicant cannot be relegated to avail the remedy under the Adhinyam.

Issue No.(iii) :

20. This issue is based on the contention raised that as per Order 30 Rule 2, CPC, the firm has not filed the present application. I do not see any merit in this contention. The Act intends to provide a speedy method of resolution of dispute between the parties. This method must be free from hyper-technicalities and unnecessary procedural rigmarole. A summary and simplified procedure is sought to be introduced by way of Act of 1996. Section 19 of the Act also shows the intention of the law makers that strict principles of CPC would not be applicable. For this reason, I am unable to persuade myself with the contention of Shri Dudawat that the application must fail because it is not filed on behalf of the firm.

Issue No.(iv) :

21. This objection raised by the respondent is also devoid of merits. Even if the agreement, Annexure P-1, is not properly stamped, clauses 12 and 15 will not vanish in thin air. Section 35 does not preclude this Court to take into account the agreement for the purpose of exercising power under section 11(6) of the Act. This objection being meritless, is rejected.

Issue No.(v) :

22. The applicant has stated that the notice, Annexure P-2, dated 18.9.2012 and another communication of same date demanding appointment of sole arbitrator were sent in single envelope. It is denied on the ground that the notice dated 18.9.2012 requesting appointment of arbitrator is not served upon the respondent. However, the specific averment of the applicant made in rejoinder that both the documents dated 18.9.2012 were sent together in single envelope, is not specifically denied. In the present summary proceedings this Court is not obliged to examine this aspect by applying strict principles of Evidence Act. On the basis of the averments of the parties, I am satisfied that both the documents dated 18.9.2012 are served on the respondent.

23. As analyzed above, it is clear that the ingredients for issuing a direction for appointment of arbitrator are satisfied in the present case. Thus, I deem it proper to appoint a Sole Arbitrator. Accordingly, Hon'ble Shri Justice

R.B.Dixit, former High Court Judge [R/o C-10, Kailash Nagar, New Collectorate Road, Gwalior (MP), Mobile No.09425526855], is hereby appointed as a Sole Arbitrator in the present matter. Parties are directed to approach Hon. Shri Justice R.B.Dixit in this regard. Registry is directed to send a copy of this order to Hon.Shri Justice R.B.Dixit. Needless to mention that the learned arbitrator will be free to decide his fees.

24. Application is allowed. No costs.

Application allowed.

I.L.R. [2015] M.P., 3384

CIVIL REVISION

Before Mr. Justice U.C. Maheshwari

Civil Rev. No. 354/2012 (Jabalpur) decided on 17 December, 2013

MOHAN

Vs.

MATADIN

...Applicant

...Non-applicant

Civil Procedure Code (5 of 1908), Section 115 - Civil Revision - Maintainability - Ex-parte decree of perpetual injunction was passed against applicant - Application u/o 9 Rule 13 for setting aside ex-parte decree was rejected and Misc. Appeal against such order is pending - In the meanwhile executing Court passed an order of sending applicant to Civil Jail for having violated the perpetual injunction - Only remedy available to applicant is to file an application for stay in pending Misc. Appeal - Revision not maintainable. (Para 7)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 - सिविल पुनरीक्षण - पोषणीयता - आवेदक के विरुद्ध स्थायी व्यादेश की एकपक्षीय डिक्री पारित - आदेश 9 नियम 13 के अंतर्गत एकपक्षीय डिक्री अपास्त किये जाने हेतु आवेदन अस्वीकार किया गया एवं उक्त आदेश के विरुद्ध विविध अपील लंबित है - इसी दौरान निष्पादन न्यायालय ने स्थायी व्यादेश के उल्लंघन के लिये आवेदक को सिविल जेल भेजे जाने हेतु आदेश पारित किया - आवेदक के पास केवल यह उपचार उपलब्ध है कि लंबित विविध अपील में रोक हेतु आवेदन प्रस्तुत करे - पुनरीक्षण पोषणीय नहीं।

R.P. Mishra, for the applicant.

Ashok Gupta, for the non-applicant.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J. :- Heard on the question of admission.

2. The applicant/ defendant/ judgment-debtor has filed this Revision under Section 115 of CPC against the order dated 10.7.2012 passed in Misc. Civil Appeal No.27/12 by the Additional District Judge, Amarpatan, District Satna dismissing his appeal as not maintainable, filed against the order dated 16.1.2012 passed by the Civil Judge class-I, Amarpatan in Misc. Civil Case No.22/11, whereby allowing the application of the respondent filed under Order 21 Rule 32 r/w Section 151 of CPC on account of violation of ex-parte decree of perpetual injunction passed in COS No.58-A/04 the applicant has been directed to send Civil Jail for one month.

3. It is noted that earlier to instant revision the aforesaid order of the appellate court dated 10.7.2012 was challenged by the petitioner before this Court under Article 227 of Constitution of India by way of W. P. No.12265/12 but on consideration by affirming the order of the appellate Court holding the Misc. Appeal is not entertainable, such W. P. was dismissed. However, liberty was extended to the petitioner to approach the appropriate forum with appropriate proceeding permissible under the law against the order dated 16.1.2012 passed by Civil Judge, Class-I in Misc. Civil Case No.22/11 and it appears that the applicant has preferred this revision under such liberty. But it is apparent from the cause title of the revision memo that instead to challenge the order dated 16.1.2012 the applicant has again challenge the aforesaid order dated 10.7.2012 passed by the Additional District Judge, Amarpatan in Misc. Appeal No.27/12 while such order has already been upheld in the aforesaid earlier writ petition because the same was passed in appeal holding that the appeal is not entertainable by the district Court. So firstly, on this count only this revision petition deserves to be dismissed. Inspite the aforesaid, I have heard the applicant's counsel at length.

4. Keeping in view the arguments of the applicant's counsel, I have carefully gone through the papers placed on record along with the impugned order of the appellate court.

5. It is apparent fact on record that with respect of the disputed property the respondent herein has filed the COS No.58-A/04, against the applicant and inspite service of notice when he did not appear in the court then same was proceeded ex-parte and ultimately such suit was decreed ex-parte for

declaration and perpetual injunction vide dated 3.4.2006 by the trial Court. It also appears from the record that by such ex-parte judgment the document on which the applicant is claiming the title over the disputed property has been declared to be ab-initio void. Subsequent to such ex-parte decree the applicant herein filed an application under Order 9 Rule 13 of CPC before the trial Court for setting aside the aforesaid ex-parte decree but on consideration vide order dated 25.8.2010 such application was dismissed by the trial court.

6. I am apprised by the applicant's counsel that against such order dated 25.8.2010 the applicant has filed Misc. Appeal filed, the same is still pending before the appellate Court. I am also informed that till today no application for grant of stay against the impugned ex-parte judgment and decree has been filed in such appeal before the appellate Court.

7. It is also apparent from the record that subsequent to passing the aforesaid ex-parte decree when the applicant has started (sic:started) some construction work over the disputed land contrary to such decree of perpetual injunction then on the strength of such decree the respondent has filed the impugned application under Order 21 Rule 32 r/ w Section 151 of CPC with a prayer to send the applicant to Civil Jail to comply the terms of the decree of perpetual injunction and on consideration the executing court by allowing such application vide order dated 16.1.2012 had directed to send the applicant to civil jail for one month to comply the decree of perpetual injunction. Subsequently such order of the executing Court was challenged by the applicant before the ADJ by way of aforesaid MA No.27/12, on consideration such appeal was dismissed as not maintainable. On filing the writ petition, on consideration by affirming such order of the District Court writ petition was also dismissed by extending a liberty to the applicant to approach the appropriate forum with appropriate proceeding permissible under the law against the aforesaid order of Executing Court dated 16.1.2012. It is also apparent from the record that subsequent to aforesaid order of the writ petition the petitioner did not approach to the appellate Court in his pending M. A. filed against dismissal of his application of Order 9 Rule 13 of CPC by the trial Court with an application for grant of stay against ex-parte decree of perpetual injunction and has come again to this court with this revision under Section 115 of CPC.

8. Although the petitioner counsel argued that implidly (sic:impliedly) the instant revision has been filed against the order of Execution Court dated

16.1.2012 also. So, the same is maintainable before this court or in any case in the available circumstances till disposal of Misc. Appeal filed by the petitioner against dismissal of his application of Order 9 Rule 13 of CPC the Executing Court could not have passed the impugned order to send him in civil jail. But I am of the considered view that the law is well settled on the question that the Execution Court or its revisional authority could not go behind the decree and such Court is bound to execute the decree or comply the terms of decree as stated by the trial Court in original decree unless the operation and execution of such decree is stay in appropriate proceeding by the trial court itself or the appellate Court or revisional Court and it is undisputed fact in the matter that such ex-parte decree of perpetual injunction passed in favour of the respondent has not been stayed by the appellate Court in the aforesaid appeal filed by the applicant against dismissal of his application of Order 9 Rule 13 of CPC. So, in such premises the petitioner has only remedy to approach with the stay application to the appellate Court in the aforesaid MA arising out of the proceeding of Order 9 Rule 13 of CPC and subject to order of such Court on the stay application, on arising the occasion he may approach to this Court or on allowing such appeal and setting aside the impugned ex-parte decree the impugned order could be recalled by the executing Court or the same will come to an end automatically.

9. In the aforesaid premises, if in compliance of terms of the impugned ex-parte decree, in the lack of any stay against the same the execution court has passed the order dated 16.1.2012 to send the applicant to civil jail then in view of the principle that execution Court can not go behind the decree has not committed any error in passing the order dated 16.1.2012. Consequently, I am of the considered view that the impugned order of the execution Court dated 16.1.2012 could not be interfered either under Section 115 of CPC or in any case under Article 227 of the Constitution of India. Hence the revision being devoid of any merits deserves to be and is hereby dismissed at the stage of motion hearing.

10. Pursuant to it, the interim order passed earlier staying the operation of the impugned order of the execution court has also come to an end. However, it is observed that the findings or observation made by this court in the present order, or in the order passed in the aforesaid writ petition shall not come in the way of the applicant to approach the appellate Court with the stay application in the aforesaid Misc. Appeal arising out of proceeding of Order

9 Rule 13 of CPC for grant of stay against the ex-parte decree and pursuant to it, the appellate Court is also directed that on filing such application the same shall be considered on its own merits without influencing from any observation or finding given by the appellant court in earlier order passed in Misc. Appeal No.27/12, or by this court in the present order or order passed in aforesaid W. P.

11. The appellate Court shall comply the aforesaid direction only if such application has not been filed by the petitioner and considered the same on merits by such court on earlier occasion and if such application has already been entertained and decided on earlier occasion then in that circumstances the applicant shall be at liberty to challenge such interlocutory order of dismissing the stay application by the appellant (sic:appellate) court before the appropriate forum with appropriate proceedings permissible under the law. There shall be no order as to costs.

C. C. as per rules.

Order accordingly.

I.L.R. [2015] M.P., 3388

CIVIL REVISION

Before Mr. Justice U.C. Maheshwari

Civil Rev. No. 31/2012 (Jabalpur) decided on 17 December, 2013

TULSIRAM

...Applicant

Vs.

RAMJAN KHAN

...Non-applicant.

A. *Civil Procedure Code (5 of 1908), Section 115 - Revision against the order of rejection of an application under Order 7 Rule 11 of the CPC at the initial stage of trial - Held that the application under Order 7 Rule 11 of CPC cannot be decided at the initial stage of trial - It can only be adjudicated after the framing of the issues and if the issues were framed and any of them is not relating to the question then the same could not be adjudicated without recording the evidence. (Para 8)*

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 - विचारण के प्रारंभिक प्रक्रम पर सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन निरस्त किये जाने के आदेश के विरुद्ध पुनरीक्षण - यह अभिनिर्धारित कि सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत आवेदन विचारण के प्रारंभिक प्रक्रम पर निर्णीत नहीं किया जा सकता - इसे

केवल विवाद्यक विरचित किये जाने के पश्चात् न्यायनिर्णीत किया जा सकता है एवं यदि विवाद्यक विरचित कर दिये गये हैं और उनमें से कोई भी प्रश्न से संबंधित नहीं है तब उक्त को बिना साक्ष्य अमिलिखित किये न्यायनिर्णीत नहीं किया जा सकता।

B. Civil Procedure Code (5 of 1908), Section 11 - Principle of Res judicata - Merely filing the copies of pleading of earlier suit is not sufficient for considering the question of res judicata as well as Order 2 Rule 2 of the CPC - For considering the same some evidence must be adduced by the parties otherwise the court cannot compare the pleading - Revision dismissed. (Para 10)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 - पूर्व न्याय का सिद्धांत - केवल पूर्वतर वाद के अभिवचन की प्रति प्रस्तुत करना पूर्व न्याय के प्रश्न के साथ ही सि.प्र.सं. के आदेश 2 नियम 2 पर विचार करने हेतु पर्याप्त नहीं है - उक्त पर विचार करने के लिये पक्षकारों द्वारा कोई साक्ष्य पेश करना आवश्यक है अन्यथा न्यायालय अभिवचन की तुलना नहीं कर सकता - पुनरीक्षण खारिज।

Ashok Banke, for the applicant.

Avinash Zarger, for the non-applicant Nos. 1 to 5.

Sanjay Dwivedi, for the non-applicant Nos. 7 to 9.

(Supplied: Paragraph numbers)

ORDER

U.C. MAHESHWARI, J. :- Heard.

2. The applicant/defendent No.4 Tulsiram has filed this petition under Section 115 of the Code of Civil Procedure being aggrieved by the part of the order dated 10/11/2011 passed by First Civil Judge Class-II Harda in Civil Suit No. 411-A/08 (New No. 90-A/10), whereby his application filed under Order 7 Rule 11 of the CPC for dismissal of the aforesaid suit filed by the respondent Nos. 1 to 5 and 6 since deceased, for declaration and perpetual injunction with some other relief, has been dismissed.

3. Inter alia such application (sic: application) has been filed on behalf of the petitioner on the ground that the aforesaid suit of the respondents in view of the judgment and order of some earlier litigation is not entertainable between the parties being hit by the principle of res judicata and also on the ground that in view of the provision of Order 2 Rule 2 of CPC, the respondents/plaintiff did not have any right to file the impugned suit, because of the grounds raised in the impugned suit would have been raised in the earlier suit filed by the

present applicant against the respondent but the same were not taken. Therefore, the respondents are debarred to file the impugned suit.

4. Applicant's counsel after taking me through the averments of the petition, the papers placed on record along with the impugned order, argued that in view of the provision of Section 11 of the CPC and Order 2 Rule 2 of the CPC, the impugned suit being based on same subject matter for which the earlier suit was contested and decided between the parties (sic:parties) is neither entertainable nor maintainable and the same deserves to be dismissed under the above mentioned provisions.

5. On asking the petitioner's counsel that under which Clause of Order 7 Rule 11 of CPC, the impugned application could have been entertained or allowed by the trial Court, on which after perusing such provision counsel submits that his application is not covered under any Clause of Order 7 Rule 11 of CPC. In response of some other query after perusing the Order 2 Rule 2 of CPC, he fairly conceded that earlier suit was not filed by respondents/ plaintiff herein. So, at this stage such provision is also not applicable.

6. Again on asking the petitioner's counsel that unless the pleadings of the earlier suit i. e. plaint and written statement and their framed issues are proved by adducing the evidence by the parties, mere on the basis of the judgment and order of such earlier suit, how the question of res judicata enumerated under Section 11 of CPC could be considered and adjudicated (sic:adjudicated) at the initial stage of the suit because of question of res judicata is not only a legal question but is also a mixed question of law and fact both which could not be considered without recording the evidence and in such a situation how this revision could be entertained when no error has been committed by the trial Court in passing the impugned order, on which petitioner's counsel has prayed to dispose of this revision with appropriate direction to the trial Court to consider the aforesaid questions raised in the written statement as well as in the impugned application after framing the appropriate issues in that regard in accordance with the scheme of Order 14 Rule 2 of CPC, and prayed to dispose of this revision accordingly.

7. The other side did not have any objection if revision is disposed of with appropriate direction as prayed by the petitioner's counsel.

8. Having heard, keeping in view the arguments, after perusing the papers placed on record along with the impugned order, I am of the considered view that objection raised by the applicant could not be considered and decided by

the Trial Court at the initial stage of the suit on the impugned application filed under Order 7 Rule 11 of CPC because such question could not be considered and adjudicated without framing issues and if the framed issues or any of them is not relating to question of law only then the same could not be adjudicated without recording the evidence.

9. It is settled proposition of law that the question of res judicata could be decided by any Court of law only after proving the pleadings of the earlier suit along with the issues and the judgment and decree of the same and it is apparent fact in the matter that till today the pleadings of the earlier suit are not proved by any of the parties on record. Only copy of the same have been placed on record. Such copies do not give any authority to the Court to consider the question of res-judicata enumerated under Section 11 of CPC. Unless such copies of pleadings of earlier suit are proved on record, the same could not be taken into consideration to dismissed the suit at the initial stage.

10. The provision of Order 2 Rule 2 of CPC could be considered only after proveing (sic:proving) the pleadings of earlier suit by adducing the evidence by the parties otherwise Court cannot compare the pleadings of the present suit with the pleadings of the earlier suit. Mere on the basis of filing the copies of pleadings of earlier suit, the questions of res judicata as well as of Order 2 Rule 2 of the CPC, could not be considered on the basis of the averments stated in the impugned application of Order 7 Rule 11 of the CPC.

11. In the aforesaid premises, the trial Court has not committed any error in passing the impugned order and dismissing the impugned application of the applicant. Consequently this petition deserves to be and is hereby dismissed.

12. However the trial Court is directed that in the light of the pleadings of the parties, appropriate issues be framed on the aforesaid questions and proceed, thereafter in accordance with the scheme of Order 14 Rule 2 of the CPC. Out of the issues, framed any of such issue did not require any evidence and could be decided as preliminary issues then the same may be considered and decided by such Court as preliminary issues and if requires evidence then the same be considered and decided after recording the evidence of the parties.

13. The revision petition is dismissed with aforesaid observation, direction and the liberty.

Certified copy as per rules.

Revision dismissed.

I.L.R. [2015] M.P., 3392

CIVIL REVISION

Before Mr. Justice Rohit Arya

Civil Rev. No. 60/2012 (Gwalior) decided on 30 July, 2014

KEDARNATH NEEKHRA & anr.

...Applicants

Vs.

SUPRABHAT GRIH NIRMAN SAHKARI

SANSTHA MARYADIT, SHIVPURI & anr.

...Non-applicants

A. Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Rejection of plaint - Relevant facts which need to be looked into for deciding an application are the averments made in the plaint. (Para 4)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 - वादपत्र का अस्वीकार किया जाना - किसी आवेदन को निर्णीत करने के लिए जिन सुसंगत तथ्यों को देखा जाना आवश्यक है वे वादपत्र में किये गये प्रकथन हैं।

B. Civil Procedure Code (5 of 1908), Order 7 Rule 11 and Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 82 - Maintainability of suit - Society filed a suit that sale deed executed by defendant no. 1/member of society to defendant no. 2 who is not the member of society without the permission of society be declared as null and void - Act of sale of plot by defendant no. 1 in favour of defendant no. 2 cannot be said to be touching the business of society - Civil suit maintainable. (Para 6)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 और सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 82 - वाद की पोषणीयता - सोसाइटी ने वाद प्रस्तुत किया कि प्रतिवादी क्र. 1/सोसाइटी के सदस्य ने सोसाइटी की अनुमति के बिना प्रतिवादी क्र. 2 जो कि सोसाइटी का सदस्य नहीं है को विक्रय विलेख निष्पादित किया जिसे अकृत और शून्य घोषित किया जाये - प्रतिवादी क्र. 1 द्वारा प्रतिवादी क्र. 2 के पक्ष में प्लॉट के विक्रय का कृत्य सोसाइटी के कार्य से संबंधित नहीं कहा जा सकता - सिविल वाद पोषणीय।

Cases referred :

(2012) 8 SCC 701, 1988 MPLJ 326.

M.S. Shrivastava, for the applicants.

Vivek Jain, for the non-applicant No.1.

(Supplied: Paragraph numbers)

ORDER

ROHIT ARYA, J. :- This revision petition is directed against the order dated 16/4/2012 passed in civil suit No.36A/2011. An application under Order VII Rule 11 of CPC filed by defendants no.1 and 3 has been rejected.

2. Facts necessary for disposal of this petition are to the effect that plaintiff is a cooperative housing society and has filed a suit through its President Rahul BIRTHARE for declaration and permanent injunction seeking declaration to the effect that plot No.12 falling in survey No.163 situated at village Rajpura, District Shivpuri is of plaintiff's ownership and possession. Further, the registered sale deed dated 10/10/1991 executed by plaintiff in favour of defendant no.1 and sale deed dated 22/10/2009 executed by defendant no.1 in favour of defendant no.3 be declared as null and void and lastly defendants be restrained from making encroachment over the suit land and raising construction thereupon. Defendant no.1 is the member of plaintiff-society and while he became the member, defendant no.1 had sworn an affidavit on 2/10/1991 that he shall abide by all the rules/bylaws of the society and same shall be binding upon him. Thereafter, by virtue of defendant no.1 being a member of the society, plaintiff executed a sale deed dated 10/10/1991 in his favour in respect of plot No.12 falling in survey no.163 for a consideration of Rs.7,400/- on such terms and conditions imposed by the plaintiff, which *inter alia* were to the effect that defendant no.1 after the date of execution of sale deed shall construct a house over the plot within two years. Besides, without prior permission of the society defendant no.1 shall have no right to transfer the plot to third person. Further, if no construction of the house is carried out within five years, the plot shall be reverted back to the society. In the instant case neither defendant no.1 constructed the house within two years nor thereafter till the expiry of five years. Therefore, plaintiff after serving notice upon defendant no.1 declared plot No.12 reverted back to the society and stood vested in it. Thereafter, defendant no.1 in order to transfer title of the suit plot by execution of sale deed appointed defendant no.2 as his power of attorney holder, who in turn executed a sale deed in favour of defendant no.3 on 22/10/2009 without delivery of possession. This act of defendant no.1 was without knowledge and permission of the society. On aforesaid facts, instant suit has been filed for the reliefs detailed herein-above.

3. Defendants have chosen not to file written statement, instead defendants no.1 and 3 filed an application under Order VII Rule-11 of CPC

inter alia contending that admittedly the plaintiff-society is a cooperative society and provisions contained under the M.P. Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act') are applicable to it. In view of Section 82 of the said Act, the instant suit is barred as the subject matter of the suit is squarely covered within the fold of dispute as defined under the said Act. As such, dispute can be filed before the constituted forum under Section 64 of the Act. Hence, suit is barred under Order VII Rule 11 (d) of CPC. Plaintiff/respondent no.1 filed reply thereto *inter alia* contending that the subject matter of the civil suit and the nature of relief claimed cannot be said to be covered within the definition of dispute as defined under the Act and; therefore, the dispute of a nature at hand cannot be filed under Section 64 of the Act. Hence, suit is not barred under Section 82 of the Act.

4. The scope of order VII Rule 11 of CPC and the nature of jurisdiction of the trial court thereunder has been well settled by the Hon'ble Supreme Court in number of cases. The Supreme Court in the case of *Bhau Ram Vs. Janak Singh and others*, (2012) 8 SCC 701 has held as under:

"15. The law has been settled by this Court in various decisions that while considering an application under Order 7 Rule 11 CPC, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. The above view has been once again reiterated in the recent decision of this Court in *Church of Chirst Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust*, (2012) 8 SCC 706."

5. The trial court on averments made in the plaint has reached the conclusion that the instant suit is on the premise that defendant no.1 without seeking prior permission of plaintiff-society had executed a sale deed through his power of attorney holder-defendant no.2 in favour of defendant no.3, who is not even a member of the society. Besides, he ceases to be the owner of the suit plot, as the same stood vested in the society, in view of the default committed by defendant no.1 having not raised the construction of house within five years from the date of allotment of plot in the year 1991. Resultantly, defendant no.2-power of attorney holder had no authority to execute the sale deed in favour of defendant no.3. Besides, defendant no.1 having ceased to be the owner of the suit plot, as the same stood vested in the society, declaration has been sought that the sale deed executed in favour of defendant no.1 on

10/10/1991 be declared as null and void and not binding upon the plaintiff. The trial court relied upon the judgment of this Court reported in 1988 MPLJ 326, *Madhyam Vargiya Grih Nirman Sahakari Sanstha Vs. Vasantrao and another* in support of its conclusions holding that the suit is maintainable and is not barred under Section 82 of the Act.

6. Having heard learned counsel for the parties, this Court is of the view that the trial court has not committed any error of law or jurisdictional error while dismissing the application under Order VII Rule 11 of CPC. Admittedly, defendant no.3 is not a member of the plaintiff-society. Society itself has not executed sale deed in favour of defendant no.3. The act of defendant no.1 through defendant no.2 in the matter of execution of sale deed in favour of defendant no.3 on 22/10/2009 in respect of plot No.12 falling in survey no.163 by no stretch of imagination can be said to be touching the business of society to bring it within the fold of Section 64 of the Act, hence, Section 82 of the Act has no application. Further, as per the plaint averments, as defendant no.1 has ceased to be owner of the plot as the same stood vested in the society by efflux of time in terms of the binding conditions of the sale deed, declaration that the sale deed dated 10/10/1991 in favour of defendant no.1 be declared as null and void and permanent injunction to restrain the defendants not to encroach upon the suit plot and raise construction thereupon also cannot be said to be touching the business of the society. As such, suit cannot be said to be barred under Order VII Rule 11 (d) of CPC. Hence, the revision petition sans merits is dismissed.

Revision dismissed.

I.L.R. [2015] M.P., 3395

CIVIL REVISION

Before Mr. Justice K.K. Trivedi

Civil Rev. No. 21/2013 (Jabalpur) decided on 17 June, 2015

MURLIDHAR PINJANI & anr.

...Applicants

Vs.

SATYAKAM TANDON & anr.

...Non-applicants

A. *Specific Relief Act (47 of 1963), Section 28 - Rescission of Contracts, the specific performance of which has been decreed - Decree for specific performance of contract was passed with a direction that Judgment debtor shall execute the sale deed after receiving the remaining consideration amount within one month from the date of*

decree - Decree holder neither deposited the remaining amount nor filed any application for extension of time - Decree holder failed to perform his part of contract - Matter remanded back to Executing Court for decision on application under Section 28 for rescission of contract afresh. (Paras 11 to 19)

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 - उन संविदाओं का विखंडन, जिनका विनिर्दिष्ट पालन डिक्रीत किया गया है - संविदा के विनिर्दिष्ट पालन के लिए डिक्री इस निदेश के साथ पारित की गयी थी कि डिक्री पारित होने के एक माह के भीतर, निर्णीत ऋणी प्रतिफल की शेष राशि को प्राप्त करने के पश्चात्, विक्रय विलेख निष्पादित करेगा - डिक्रीधारी ने न तो शेष राशि जमा की और न ही समय बढ़ाने के लिए कोई आवेदन किया - डिक्रीधारी संविदा के अपने हिस्से का पालन करने में असफल रहा - नए सिरे से, संविदा के विखंडन के लिए धारा 28 के अंतर्गत आवेदन निर्णीत करने हेतु, निष्पादन न्यायालय को मामला प्रतिप्रेषित।

B. Civil Procedure Code (5 of 1908), Section 115 - Civil Revision - Scope of interference - Intention of Legislation is to confer power on Trial Court to modify the decree as is discerned from the language of Section 28 of Specific Relief Act - Such power is not to be exercised by Revisional Court - Even if it is found that the Trial Court has acted beyond the jurisdiction, the Revisional Court is required to remit back the matter to the Trial Court afresh - Any modification in decree can be directed by the Trial Court and Trial Court only. (Paras 29 & 30)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 115 - सिविल पुनरीक्षण - हस्तक्षेप का विस्तार - विचारण न्यायालय को डिक्री को परिवर्तित करने के लिए शक्ति देना विधान का आशय है जैसा कि विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 की भाषा से प्रकट होता है - ऐसी शक्ति का प्रयोग पुनरीक्षण न्यायालय द्वारा नहीं किया जाना चाहिए - भले ही यह पाया जाए कि विचारण न्यायालय ने अपनी अधिकारिता से परे जाकर कार्यवाही की है, पुनरीक्षण न्यायालय से अपेक्षित है कि वह नए सिरे से मामला विचारण न्यायालय को प्रतिप्रेषित करे - डिक्री में किसी भी परिवर्तन को विचारण न्यायालय द्वारा और केवल विचारण न्यायालय द्वारा ही निदेशित किया जा सकता है।

Cases referred :

2010 (3) MPLJ 522, (1999) 4 SCC 702, (1997) 9 SCC 217, 2012 AIR SCW 4543, (2005) 9 SCC 262, (1996) 11 SCC 228, (1998) 9 SCC 108, (2009) 9 SCC 766, (2007) 14 SCC 262.

Jaideep Gupta with Avinash Zargar, for the applicants.

V.S. Shrotri with Siddharth Seth, for the non-applicant no.1.

O R D E R

K.K. TRIVEDI, J. :- This Civil Revision under Section 115 of the Code of Civil Procedure by the judgment-debtors take exception to the order dated 13.12.2012 passed in Misc. Judicial Case No.241/2007 and 6/2008 by the Additional District Judge, Bhopal.

2. Facts giving rise to filing of the present revision in brief are that non-applicant/plaintiff/decreed-holder (herein after referred to as 'decree-holder' for short) filed a suit along with his wife for specific performance of contract of sale of the land in suit against the applicants alleging that an agreement was executed on 18.10.1988 to sell 2.47 acres of land on a consideration of Rs.2,61,820/- and an amount of 10% of the sale consideration being Rs.26,182/- was paid as earnest money. Even after making the demand, the applicants failed to fulfill their part of agreement and, therefore, two suits, one in the name of the wife of decree-holder and one in the name of the decree-holder, were required to be filed seeking grant of decree of specific performance under the Specific Relief Act, 1963 (herein after referred to as 'Act'). The suit was contested by the applicants on numerous grounds. However, the Trial Court ultimately reached to the conclusion that the claim for grant of decree was made out and passed judgment and decree on 3rd August, 1995. The Regular Civil Suit No.45-A/1992 was thus decreed in the following manner :

“(17) In view of the aforesaid decisions, I come to the conclusion that plaintiff has succeeded in establishing his case. Therefore, the decree be passed against the defendant No.1 and 2 and in favour of plaintiff that defendant No.1 and 2 to execute sale deed of suit land, Survey No.428/1/3/1, measuring area 2.47 acres, situated at village Badwai, Tahsil and District Bhopal in favour of the plaintiff after receiving remaining consideration of Rs.2,35,638/- from the plaintiff before the Sub-Registrar within one month of this judgment i.e. from today. The defendants should also pay plaintiff the cost of present suit and Counsel's fee as per schedule. In case of default to execute sale deed by the defendants it should be

executed by the Court in favour of the plaintiff.”

3. Though the decree was passed, it appears that since the direction, as issued, was not fulfilled, no sale-deed could be executed in favour of the decree-holder. An appeal against the said judgment and decree was preferred before this Court being First Appeal No.288/1995. The said appeal was admitted and by order dated 02.11.1995 the Division Bench of this Court stayed the execution of the impugned judgment and decree. There were certain conditions imposed while passing the said interim order relating to payment of process. The appeal remained pending before this Court. While passing further orders on interim prayer on 22.01.1998, a direction was given to the applicants to return the total amount of consideration already received under the agreement to the decree-holder with a specific condition that such return shall not be allowed to be urged as a ground against claim for specific performance. In addition, it was also directed that the applicants shall also furnish surety for three years mesne profits for the land in dispute.

4. The said appeal remained pending before this Court and since judgment and decree granted in the case of the wife of the decree-holder was affirmed by this Court in First Appeal No.287/1995, the appeal filed by the applicants also stand dismissed vide judgment dated 06.02.2007. It appears that an application for execution was thereafter filed on 21.03.2007 by the decree-holder. An application under Section 28 of the Act was filed by the applicants on 26.06.2007, which was registered as M.J.C. No.241/2007. In the execution proceedings, direction was sought to execute the sale-deed on behalf of the applicants conferring title on the decree-holder of the land in suit because of non-compliance of the mandate issued by the decree to the applicants/judgment-debtors.

5. On 24.10.2007 the applicants filed an application under Order 21 Rule 26 read with Section 151 of the Code of Civil Procedure for stay of the execution proceedings in the M.J.C., which application was rejected on 08.01.2008, therefore, a writ petition was filed before this Court being W.P. No.1011/2008 by the applicants and an interim stay was granted on 05.02.2008. In the execution proceedings since the fact was brought to the notice that application was already filed for annulling the decree, which is to be heard by the Trial Court, it appears that the writ petition was dismissed as infructuous. During pendency of these proceedings, an application for extension of time was filed by the decree-holder, which was registered as M.J.C.

No.6/2008. Both the MJCs were heard by the lower Court and since by the impugned common order both the MJCs have been dismissed, this revision is required to be filed.

6. It is the contention of learned senior Counsel for the applicants that in view of the law well settled since the decree-holder has failed to comply with his part of making payment of the sale consideration, the decree had become inexecutable in terms of Section 28 of the Act and, thus, a right was available to the applicants/judgment-debtors to rescind with contract of sale of immovable property. Ample evidence was produced to show that the decree-holder was not vigilant about the fulfillment of the decree as he has not made any attempt to pay the sale consideration to the applicants and to get the sale-deed executed, therefore, even on the date when the decree was granted, the decree-holder was not ready and willing to fulfill his part of contract. This being so, the decree granted in his favour became inexecutable and no specific performance of contract could be ordered even in execution of the decree.

7. It is further contended by the learned senior Counsel for the applicants that since the decree-holder was not in a position to fulfill his part of the contract, he even applied for extension of time for payment of sale consideration. This being so, looking to the malafide of the decree-holder, his failure on the part of fulfilling his obligation and discharge of his liability, the applicants have every right to rescind with the agreement. In fact in terms of the law the decree had become inexecutable. Though such aspects have been considered by the Court below but erroneously making application of law laid-down by the Division Bench of this Court, which specifically is not applicable in the facts and circumstances of the present case, prayer made by the applicants has been erroneously rejected. The fact that application filed by the decree-holder for extension of time is treated to be rejected and the said order is not called in question anywhere, it is enough to show that the decree-holder/ non-applicant has not come with clean hands before the Court and as such the order impugned is not sustainable in law and is liable to be set aside.

8. Describing the decree granted in the present suit for specific performance and distinguishing it from the decree granted in the case, which has been made applicable, more particularly in the case of *Khoobiram vs. Urmila Chouhan and others*, [2010 (3) MPLJ 522], learned senior Counsel for the applicants has submitted that since the decree granted in the present

case was partly a final decree and partly a preliminary decree, unless the part which was required to be fulfilled by the decree-holder was complied with, no execution application of the decree was maintainable. That being so, it is contended that the objection raised in that respect was also not considered and wrongly applying the law laid-down by the Division Bench of this Court in the case of *Khoobiram* (supra), though not applicable in terms of the law laid-down by the Apex Court in several cases, the application made under Section 28 of the Act by the applicants has been rejected, therefore, the order impugned is bad in law and the same is liable to be set aside. It is contended that in fact applicants would be entitled to rescind with the agreement and as such decree would not be executable against them.

9. Per contra, it is contended by learned senior Counsel appearing for the decree-holder that there is no distinction between the decree granted by the Court in the present case and the decree granted in the case of *Khoobiram* (supra). In fact it is the responsibility of the judgment-debtors to receive the sale consideration and to execute the sale-deed of the property agreed to be sold for which the specific performance is ordered by the decree. Despite the best attempt made by the decree-holder since the applicants have not come forward to fulfill their part in terms of the mandate of the decree, ultimately the decree-holder was left with no option but to file the execution application. Though there was no delay whatsoever attributable to the conduct of the decree-holder and for that in fact no application for extension of time was required to be made, yet in abandoned caution the application was made by the decree-holder. It is contended that the suit was filed on 19.10.1988. The decree was granted on 03.08.1995. The stay was granted by this Court in appeal of the applicants. Ultimately the appeal was dismissed on 06.02.2007. The decree was prepared by the High Court on 19.03.2007 and application for execution was filed on 21.03.2007. This being so, since there was no delay on the part of the decree-holder in seeking the execution of the decree, it was rightly treated by the Court below that the application filed by the applicants under Section 28 of the Act was not maintainable. Whether the extension of time was necessary or not was irrelevant in view of the aforesaid facts and circumstances and as such the Trial Court did not commit any error of law in dismissing the application of the applicants filed under Section 28 of the Act. Even if the application for extension of time filed by the decree-holder was also dismissed and the said order is not called in question, that would not *ipso facto* make the applicants entitled to claim rescission of the

agreement, specially when the decree was already granted for specific performance of the said agreement. In view of the aforesaid, it is contended that the revision petition sans merit and deserves to be dismissed summarily. Full reliance is placed in the case of *Khoobiram* (supra) and dismissal of the revision with costs is prayed for.

10. The revision was heard finally on 31st March, 2015. However, while preparing the order, submissions made by learned senior Counsel for the applicants were noted down that in fact learned senior Counsel was insisting for final disposal of the revision, virtually granting the relief which was claimed by the applicants before the Trial Court. It was noted down that the order of the Trial Court was based on the decision rendered in the case of *Khoobiram* (supra) and no other evidence was looked into. As was submitted by learned Counsel for the parties, the record of the Trial Court was requisitioned and the matter was heard finally again on 8th May, 2015. The aspect whether this Court would require to grant the relief, as was claimed by the applicants before the Trial Court, is also to be considered. The submissions were made by learned senior Counsel for the applicants that this Court while exercising the power under Section 115 of the Code of Civil Procedure would still be competent to grant such a relief to the applicants in case it is found that sufficient evidence was available on record of the Trial Court warranting grant of such relief. Such submissions are to be dealt with in appropriate manner herein after.

11. Heard learned Counsel for the parties at length and perused the record.

12. To appreciate the rival submissions made by learned Counsel for the parties and to test the applicability of the provisions, it would be necessary to examine the applicability of Section 28 of the Act. This has to be done keeping in mind the fact that the reliefs under the Act are equitable reliefs and the principles of equity are to be applied squarely even after the grant of decree under the Act to either of the parties in equal proportion and with equal force of law. The specific performance of contract is a relief specifically prescribed under Chapter-II of the Act. Section 9 of the Act prescribes the defence in respect of suits for relief based on contract. Section 10 of the Act deals with the cases in which specific performance of contract is enforceable. The circumstances, primarily prescribe under this provision, are when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done or when the act agreed to be done is such that

compensation in money for its non-performance would not afford adequate relief. It is though provided that unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money.

13. Keeping in view the aforesaid provisions if the provisions of Section 28 of the Act are examined, specific circumstances are shown where a judgment-debtor is still entitled to rescind with the contract even when the decree for specific performance of contract of sale is granted by the Court. For better appreciation, the provisions of Section 28 of the Act is quoted herein below :

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under subsection (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in

connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

14. Now the law laid-down by the Apex Court with respect to the applicability of the said provisions of Section 28 of the Act and the circumstances in which the judgment-debtor may be allowed to rescind with the contract is to be examined. In the case of *V.S. Palanichamy Chettiar Firm vs. C. Alagappan and another*, (1999) 4 SCC 702, while dealing with the power of the Executing Court in the matter of extension of time, the Apex Court has looked into the law laid-down in that respect in the case of *Sardar Mohar Singh vs. Mangilal*, (1997) 9 SCC 217, and has further held in consonance to the law earlier laid-down that even specific performance is an equitable relief and he who seeks equity can be put in terms to ensure that equity is done to the opposite party even while granting the relief. Taking into consideration all these aspects, the Apex Court in paragraphs 16 and 17 of the report has held thus :

"16. In view of the decision of this Court in Ramankutty Guptans case when the trial court and the executing court are same, executing court can entertain the application for extension of time though the application is to be treated as one filed in

the main suit. On the same analogy, the vendor judgment-debtor can also seek rescission of the contract of sale or take up this plea in defence to bar the execution of decree. One of the grounds on which the trial court dismissed the execution application was that the decree holder did not pay the balance of consideration as per the sale agreement and also did not pay within the time stipulated by the court in the decree. High Court could have certainly gone into this question when applications for extension of time was filed before it. However, on the objection by the judgment-debtor, it chose to send back the matter to the executing court for decision on these applications, which was perhaps, in the circumstances, was not correct procedure to adopt. But then, at the same time, the High Court put shackles on the discretion of the executing court by observing that vendor might have felt that after the appeal filed by the vendor judgment-holder against the decree for specific performance was disposed of they can even then deposit the amount or at the time of seeking the execution of the sale deed.

17. The agreement of sale was entered into as far back on February 16, 1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the court and why no application was made under Section 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the

contract of sale. That being the position of law for filing the suit for specific performance, can the court as a matter of course allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court? It is not the case of the respondent-decree holder that on account of any fault on the part of the vendor-judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the decree-holder-respondents as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the decree holder-respondents and no extension of time be granted to them to comply with the decree.

15. On yet another occasion while considering these aspects, taking into account the long and continuous delay in performance of the part by the decree-holder, the Apex Court in the case of *Rattan Lal (since deceased) through his Legal Representatives vs. S.N. Bhalla & anr.*, 2012 AIR SCW 4543, has held that in such circumstances the judgment-debtor can be allowed to rescind with the contract. The finding in that respect in paragraph 29 of the report reads thus :

“29. This, however, brings us face to face with a rather difficult situation having regard to the fact that the Agreement to Sell was executed 34 years ago on 8th September, 1978, in respect of the suit property. We cannot shut our eyes to the fact that during this period the price of real estate has escalated sharply. In addition to the above, the Appellant has not suffered any material loss, since only the earnest money of Rs.50,000/- had been paid by him to the Respondents and the balance consideration was yet to be paid when the agreement came to

be terminated. Even the said sum of Rs.50,000/- was returned to the Appellant immediately upon termination of the Agreement and the said amount was duly accepted by the Appellant, though by recording his objections subsequently. The Appellant, therefore, has not suffered any monetary loss, and, on the other hand, the value of the property must have skyrocketed during the period between the execution of the Agreement till date. In fact, that is why there is no prayer in the alternative for return of any sums advanced, which is one of the usual prayers in suits for specific performance.”

16. While relying on these decisions, it is the case of the applicants that since part of the contract as decreed by the Court was to pay the full sale consideration within a month to the applicants by the decree-holder and then to ask for execution of the sale-deed and since this part was not complied with, a ground for rescission of the contract had made out in favour of the applicants. The said submissions are considered in view of the law aforesaid. No doubt in the decree a specific command was issued to the decree-holder on first part to pay the full sale consideration to the judgment-debtors. In the agreement, of which the specific performance was ordered by the aforesaid decree, it was agreed in between the parties that the applicants will apply for grant of permission before the competent authority of Urban Land Ceiling for grant of sanction to execute the sale-deed and on grant of such permission, the names of transferee would be intimated to the transferor. Even after grant of such permission if the execution of the registry is not got done by the decree-holder, the agreement itself will come to an end. It was not the condition mentioned in the decree that any such sanction was to be obtained by the judgment-debtors and then only the payment of sale consideration was to be made by the decree-holder. Therefore, it was necessary on the part of the decree-holder to demonstrate that he was willing to perform his part of the command of decree by offering the amount of sale consideration to the applicants within the given time but the later part of the command of the decree was not complied with by the applicants. It is submitted by learned senior Counsel for the applicants that though the evidence to this effect was produced by the applicants but the same was neither examined nor appreciated by the Trial Court and relying on a decision which is not applicable in the facts and circumstances, the application made by the applicants was rejected. Such an order, according to the applicants, is not sustainable.

17. While replying to such submissions, learned senior Counsel for the respondent No.1 has not only placed reliance in the case of *Kuoobiram* (supra) but has also placed his reliance in the case of *Kumar Dhirendra Mullick and others vs. Tivoli Park Apartments (P) Ltd.*, (2005) 9 SCC 262 and has contended that since the circumstances were not such, merely because there was hike in the price of the immoveable property, the applicants would not be entitled to grant of permission to rescind with the agreement, as has been held by the Apex Court in para 18 of the report. Further placing reliance in the case of *Yeshoda and another vs. K. Nagarajan*, (1996) 11 SCC 228, it is contended that even when the amount is not deposited, the Court has power to extend the period and enlarge the time for such deposit. Further placing reliance in the case of *MD. Alimuddin vs. Waizuddin and another*, (1998) 9 SCC 108, it is contended that deposit itself is nothing but an order of extension of time and, therefore, on these counts the applicants would not be entitled to grant of opportunity to rescind with the contract. Strongly the law laid-down by the Division Bench of this Court in the case of *Khoobiram* (supra) has been relied and it is contended that taking into account the nature of the decree as compared to the decree granted in the case of *Khoobiram* (supra), the same relief would be available to the respondent/ decree-holder and the applicants would be liable to execute the sale-deed in favour of the decree-holder. They would not be entitled to rescind with the contract and for that reason rightly their application has been rejected.

18. On due consideration, this Court is of the opinion that Trial Court has completely failed to exercise jurisdiction vested in it. Had it been a case that the decree-holder has deposited the sale consideration in the Court beyond the period of one month, the application of the decree-holder could have been considered. The analysis of the statement made by the decree-holder in the Court proceedings on oath indicates that he had no vision or even a thought to deposit the said amount of sale consideration in the Trial Court. His eagerness to get the decree executed expeditiously was not shown on the date when the decree was granted or even thereafter as he had not taken any step to offer the amount of balance sale consideration to the applicants. The two folds of the command of decree was that the decree-holder was required to pay the amount of balance sale consideration to the applicants in a way where atleast some evidence of such an attempt could have been created or obtained. If he was of the view that amount of sale consideration was to be paid before the Sub-Registrar of Documents, atleast he could have issued a

registered letter to the applicants indicating the date and time on which he was intending to remain present before the Sub-Registrar with the amount of balance sale consideration and, ask them to remain present there on that time so as to accept or receive the amount from the decree-holder. He did nothing in that respect. Further he had not approached the Court on expiry of period of one month from the date of decree after obtaining certified copy of judgment and decree, for extension of time, even when he came to know about the fact that amount was to be paid within one month from the date of decree. He waited till an interim stay was obtained by the applicants in their appeal from this Court. In fact it appears that the decree-holder was never interested in getting the sale-deed executed, or for that he had no funds to pay the balance sale consideration in terms of the decree. Keeping in view the aforesaid circumstances, it has to be considered whether the revisional power to be exercised by this Court includes the power of an Appellate Court and whether if the evidence is not properly appreciated by the Trial Court, this Court would be competent to assess and evaluate the evidence and to pass appropriate orders.

19. The Apex Court in some what similar circumstances, in the case of *Bhupinder Kumar Vs. Angrej Singh* (2009) 9 SCC 766, while considering the law laid down in the case of *Kumar Dharendra Mullick* (supra) has held that a decree of specific performance is a preliminary decree and Court granting decree does not lose jurisdiction till a final decree is passed nor it becomes *functus officio*. In case the command of decree is not complied with or sufficient cause is shown for not complying with such terms of decree, even when application for extension of time is made by the decree holder, the Court has jurisdiction to refuse the extension of time and further grant relief of rescission of contract. The relevant parts of judgment are extracted below, for ready reference :-

“20. In *Kumar Dharendra Mullick* (supra), this Court, after analysing earlier decisions, has concluded that : (SCC p.264a-c)

“When the Court passes the decree for specific performance, the contract between the parties is not extinguished. The court does not lose its jurisdiction after the grant of the decree for specific performance nor does it become *functus officio*. The decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the

grant of such decree. Hence, the court retains control over the entire matter even after the decree. Section 28 gives power to grant order of rescission of the agreement which itself indicates that till the sale deed is executed, the trial Court retains its power and jurisdiction to deal with the decree of specific performance. Therefore, the court has the power to enlarge the time in favour of the decree-holder to pay the amount or to perform the conditions mentioned in the decree for specific performance."

21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes *functus officio*. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/ decree. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties.

23. If we apply the above principles to the facts of the present case, the order of the executing court and the High Court cannot be faulted with. The suit for specific performance is in the nature of a discretionary remedy and on equity, the appellant was not entitled to get the decree executed since he failed to place relevant materials about his inability to tender or deposit the decreed amount."

20. Now it has become necessary to examine whether the law laid-down

by the Division Bench of this Court in the case of *Khoobiram* (supra) would be squarely applicable in the present case or not. It is trite that the law laid down by the Courts are made applicable keeping in mind the facts and circumstances in each and every case. Though it is vehemently contended by learned Counsel appearing for respondent-decree holder that the decree granted in the case of present decree-holder and in the case of *Khoobiram* (supra) is identical and virtually the same but a distinction has been tried to be made by learned senior Counsel for the applicants. It is suggested by learned Counsel for the applicants that the decree contains a command to the decree-holder as well to pay the amount of balance sale consideration to the applicants/judgment-debtors and only after the said payment and the receipt of the same, the sale-deed was to be executed by the applicants. It is the contention of learned senior Counsel for the applicants that there was no obligation on the part of the applicants to ask for the payment of balance sale consideration.

21. Such submissions appear to be justified in view of the fact that the decree passed in the present suit was to the effect that the defendants, applicants herein, after receipt of the amount of balance sale consideration from the plaintiff before the Sub-Registrar within one month from the date of judgment would execute the sale-deed. Since the time though was prescribed, the date for such payment was not fixed, it was in fact necessary on the part of the respondent/decreed-holder to intimate a date on which he was to remain present before the Sub-Registrar with the amount of balance sale consideration to pay the same to the applicants/defendants. As has been mentioned herein above, not a single statement was made in that respect nor any notice was ever issued to the applicants by the decreeholder intimating such a date. It was not the case of the decree-holder that on a notified date he continuously remained present before the Sub-Registrar for making payment of the balance sale consideration to the applicants but since the applicants failed to appear deliberately or otherwise to receive the said amount, that part of the decree could not be complied with. On the other hand, his plea was that he was not aware of such condition mentioned in the decree till he received the certified copy of the said decree and, therefore, could not comply with the said condition. If he received the certified copy at a later date, after the expiry of the period prescribed by the Trial Court in decree for such a purpose, it was the duty on the part of the respondent/decreed-holder to make an application for extension of that time on such plea but again nothing has been done in that respect by the decree-holder. More discussion regarding such conduct of the decree-

holder have been done herein above, repetition of which is not necessary.

22. Yet another aspect is that the decree in the case of *Khoobiram* (supra) was granted with specific direction to the judgment-debtor to receive the amount of sale consideration and to execute the sale-deed. The facts and circumstances in the case of *Khoobiram* (supra) were glaringly distinguishable in view of the fact that the agreement between the plaintiff and the defendant in the said case was entered into on 28.11.1990 for sale of the land on a consideration of Rs.55,250/- out of which an amount of Rs.37,000/- was paid as advance. Less than half of the sale consideration remained to be paid on the date of execution of the sale-deed. Not only this, during the pendency of the suit, the suit land was sold to the other defendants in the said suit on 25.06.1996 and this fact was also noted down by the Court. After the grant of decree when the direction was given to handover vacant possession, and the execution proceedings were pending, it appears that the decree-holder No.2 was murdered by the judgment-debtor No.3 and his brother. All these facts were taken note of and the Division Bench of this Court reached to the conclusion that in such a case, power under Article 227 of the Constitution of India was not required to be exercised and dismissed the writ petition filed by the judgment-debtors seeking rescission of contract.

23. These are not the facts and circumstances available in the present case. On the other hand, if properly scrutinized, it would be clear that the decree-holder/respondent was not very much keen in getting the sale-deed executed as he had not taken any step immediately for payment of the balance sale-consideration, which was 90% of the sale-consideration as only 10% advance was paid by him at the time of execution of the agreement. Keeping in mind these distinguishable features, it can be safely said that though the law may be correctly appreciated by the Division Bench of this Court in the case of *Khoobiram* (supra) but looking to the facts and circumstances available in the present case, the said decision would not be applicable in the case of present applicants, who have not only challenged the action of grant of decree within time but have honoured all the orders of the Court while stay was granted to them.

24. Now coming to the equitable reliefs if tested in the anvil of the law laid-down by the Apex Court in the cases referred to herein above, in fact the decree-holder was not put to greater financial loss inasmuch as though he paid the amount of earnest money on 18.10.1988 but got it back under the

orders of this Court on 22.01.1998. Though the Division Bench of this Court has categorically said that it would not amount to waiver of the right of specific performance by the decree-holder but still the fact remains that right from 22.01.1998, the decree-holder/respondent was not suffering any monetary loss whatsoever. In comparison to this, the applicants though could have utilized the land to the best of their requirement, could have fetched a better price looking to the hike in the prices of the land during such period, could not sale out the land because of the pendency of the litigation. At the best, while considering the rescission of the contract or agreement even after grant of decree, the Court could have passed an order compensating the respondent/decree-holder in terms of money for the amount of earnest money, which was retained by the applicants from 18.10.1988 to 22.01.1998. However, making application of the case of *Khoobiram* (supra) only, the claim of rescission of contract, as set out by the applicants, was not required to be rejected outrightly.

25. On a deeper probe in the findings recorded by the Trial Court, it appears that while framing the issues on the application so made by the applicants as also the decree-holder/ respondent under Section 28 of the Act, the Trial Court has reached to the conclusion that there was no proof of the fact that the decree-holder has failed to comply with the command of the decree dated 03.08.1995 only because it was said that the Trial Court while trying the suit has reached to the conclusion that the plaintiff/ decree-holder was ever since willing to comply with his part of agreement dated 18.10.1988. A distinction is to be made in ascertaining the willingness to comply with the agreement and the willingness of the grant of decree as Section 28 of the Act prescribes rescission of contract on non-compliance of the condition of the decree. The findings in Issue No.1(A) and 1(B) though have been recorded negative but it appears that proper appreciation of evidence was not done by the Trial Court. Again the allegation of waiver of getting the specific performance executed on receipt of the amount of earnest money by the decree-holder was not to be pressed home because of the specific conditional order passed by the Division Bench of this Court in appeal of the applicants. To that extent, the findings of the Trial Court are correct. However, the findings on Issue No.3(A) and 3(B) are again contrary to the ultimate result of the application for extension of time filed by the decree-holder. If such an application was maintainable because of the exclusion of the time spent in litigation before this Court, where in appeal of the applicants interim stay of the execution of the decree was ordered, though on condition, and if there

were sufficient reasons to make such an application for extension of time, why such a prayer of the decree-holder was rejected, has not been mentioned in the order impugned. Therefore, on these counts the order impugned cannot be sustained.

26: The findings recorded by the Trial Court are based only on the decision rendered by the Division Bench of this Court in *Khoobiram* (supra) which has been found to be distinguishable. The other evidence adduced by the parties were not looked into, appreciated or considered by the Trial Court. It was contended by learned Counsel for the parties that since entire evidence was available on record of the Trial Court, the matter should have been decided even on merits but since this has not been done by the Trial Court, a jurisdictional error is committed by the Court below. However, as has been recorded herein above, it is contended by learned Counsel for the applicants that remitting back the matter to the Trial Court is not necessary as this Court has the power to appreciate the evidence and decide the issue by itself instead of sending back the matter to the Trial Court. It is contended by learned senior Counsel for the applicants that if the entire evidence, as adduced by the parties, is seen, it would be clear that a case for rescission of contract even after the grant of decree, was made out by the applicants and, therefore, the application was not to be rejected in the manner it has been rejected by the Trial Court.

27: Per contra it is contended by learned Counsel for the respondent that even when the evidence was adduced to explain that there was no delay in approaching the Court for execution of the decree duly affirmed by the Division Bench of this Court, yet the application filed by the decree -holder/respondent for extension of time to comply with the part of the decree was rejected by the Trial Court. According to learned Counsel for the respondent, this also vitiate the entire order and the matter is required to be considered on these aspects as well. However, it is not disputed by learned Counsel appearing for the respondent that the order passed on the application of the decree holder/respondent for extension of time was not called in question before this Court even by way of filing a counter revision against the impugned order.

28. After a due consideration of the submissions of learned Counsel for the parties and after going through the order impugned, it is clear that the Trial Court committed a grave error of jurisdiction as the trial Court was supposed to decide both the applications, one filed by the applicants under Section 28 of the Act and

the other one filed by the decree-holder/respondent for extension of time, as if the suit was required to be decided. In fact the provision under Section 28 of the Act enables the Trial Court to try the issue afresh instead of driving the litigants to the fresh civil proceedings by way of filing fresh suit. In view of this, if the order passed by the Trial Court is examined, it would be clear that the Trial Court has not decided the application of the applicants in the manner it should have been, after appreciating the entire evidence available on record. True it is that this Court has power to examine the orders passed by the Trial Court in exercise of its revisional power under Section 115 of the Code of Civil Procedure. However, such a power is limited to certain extent. A revisional Court has to interfere in the order of the subordinate Court if it appears that the subordinate Court has exercised jurisdiction not vested in it by law or has failed to exercise the jurisdiction so vested or has acted in exercise of jurisdiction illegally or with material irregularity. The appellate powers of the Courts are different as are prescribed under Section 107 of the Code of Civil Procedure. While exercising the appellate power, the Court can determine a case finally, remand a case, frame issues and refer them for trial or take additional evidence or direct taking of such evidence by the subordinate Court. Akin to such appellate power, specific provisions are made under Order 41 Rule 24 of the Code of Civil Procedure, which prescribe that if the evidence available on record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may after re-settling the issues if necessary finally determine the suit notwithstanding with the judgment of the Court from whose decree the appeal is preferred, has proceeded wholly upon some grounds other than that on which the appellate Court proceeds. Notably this power is not to be exercised by the Revisional Court.

29. Yet another aspect is that rescission of a contract even after grant of decree, in terms of provisions of Section 28 of the Act, invariably amounts to modification of decree granted by the Trial Court. It is the settled law that while exercising the power of revision, the Courts are not required to act beyond the scope of decree granted by the Trial Court. The very intention of the legislature is also to confer power on the Trial Court to modify the decree as is discerned from the language of Section 28 of the Act. Such power is not to be exercised by the Revisional Courts. Even when it is found that the Trial Court has acted beyond the jurisdiction, the Revisional Court is required to remit back the matter to the Trial court for passing the order afresh. The provisions of Section 28 of the Act are akin to the provisions of Section 47 of the Code of Civil Procedure. Any modification in the decree on an objection

under Section 47 of the Code of Civil Procedure can be directed only and only by the Trial Court and not otherwise. This particular principle has been laid-down by the Apex Court in the case of *Darshan Singh vs. State of Punjab*, (2007) 14 SCC 262. While dealing with such a situation, the Apex Court has deprecated the practice of modifying the decree by the Revisional Court. In view of this, if at all it is held by this Court that the Trial Court has committed jurisdictional error in deciding the application of the applicants, it has no option but to remit back the matter to the Trial Court to re-appreciate the evidence and to decide the application of the applicants in appropriate manner. Of course as has been observed, this Court is competent to direct the Trial Court to decide such an application expeditiously, keeping in mind the principle of equitable relief enshrined under the Act.

30. For the aforesaid reason, the revision is partly allowed. The order impugned is set aside and the matter is remitted to the Trial Court to appreciate the evidence available on record in appropriate manner and to decide the application of the applicants afresh. The Trial Court is further directed to consider the aspect of granting compensation to the decree-holder/respondent in case the Trial Court reaches to the conclusion that the application for rescinding with the contract filed by the applicants is required to be allowed, as the amount of earnest money paid by the decree-holder/ respondent to the applicants was kept in their possession right from 18.10.1988 to 22.01.1998 and same was returned to the decree-holder only after order passed by the Division Bench of this Court in the First Appeal of the applicants. The Trial Court would ascertain appropriate rate of interest on the said amount for the period it was in possession of the applicants. Nevertheless since the cost of the litigation was also allowed even by the first Appellate Court, the Trial Court would also be required to pass appropriate orders for payment of cost to the decree-holder/ respondent in case ultimately the Trial Court reaches to the conclusion that contract has to be rescinded with because of non-compliance of mandate of the decree by the decree-holder. It be done within a period of four months from the date of receipt of copy of this order passed today. Registry is directed to send back the record of Trial Court immediately with a copy of this order.

31. The revision is allowed to the extent indicated herein above. There shall be no order as to costs.

Revision allowed.

I.L.R. [2015] M.P., 3416

CRIMINAL REVISION

Before Mr. Justice B.D. Rath

Cr. Rev. No. 516/2014 (Gwalior) decided on 4 August, 2014

RAMCHANDRA SINGH & anr.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 216 - Power of Court to add or alter the charges - There is no evidence at all for framing of charge u/s 302 or 302/34 - Trial Court has framed the charges mechanically under the direction of Supreme Court in Rajbeer's case - Trial Court is directed to continue the trial on the basis of charge u/s 498-A and 304-B IPC - Revision allowed. (Para 8)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 216 - आरोपों को जोड़ने या परिवर्तित करने की न्यायालय की शक्ति - धारा 302 या 302/34 के अंतर्गत आरोप विरचित करने के लिये कोई साक्ष्य नहीं है - विचारण न्यायालय ने राजबीर के प्रकरण में उच्चतम न्यायालय के निदेश अंतर्गत यांत्रिक रूप से आरोपों को विरचित किया - विचारण न्यायालय को भा.दं.सं. की धारा 498-ए एवं 304-बी के अंतर्गत आरोपों के आधार पर विचारण जारी रखने हेतु निदेशित किया गया - पुनरीक्षण मंजूर।

Cases referred :

AIR 2011 SC 568, (2013) 7 SCC 256.

U.K. Bohre, for the applicants.

Pramod Pachouri, P.P. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

B.D. RATHI, J. :- Heard.

2. This revision has been preferred under Section 397/401 of the Code of Criminal Procedure being aggrieved by the order dated 16.04.2014 passed by the Sessions Judge, Bhind, in Sessions Trial No.37/2007 whereby additional/alternate charge under Section 302 or 302/34 has been framed against the petitioners. Relief claimed in this revision is to set aside the additional/alternate charge framed on 16.04.2014 as mentioned above.

3. As per prosecution story, marriage of Aneeta alias Annu was solemnized in the month of April, 2002, with petitioner No.1 within seven years from the date of incident. On the fateful night of 12.06.2006, she swallowed some poisonous substance and thereby committed suicide because she was subjected to cruelty and as she was beaten by the petitioners for non-fulfillment of demand of dowry. Marg No.41/2006 by police Dehat District Bhind was registered and then ultimately after investigation crime was registered. After completion of the investigation charge sheet was filed on 20.12.2006. Case was committed and thereafter charges were framed against the petitioners under Sections 498A and 304B of IPC

4. It is submitted by Shri Bohre, learned counsel appearing on behalf of the petitioners, that prior to passing of the impugned order charges under Sections 498A and 304B of IPC were framed against the petitioner and during trial evidence of Dr. Rakesh Upadhyaya (PW-1), Dr. JPS Kushwah (PW-2), Munnilal (PW-3), Rajaram Singh (PW-4), Jamuna Devi (PW-5), D.J. Rai, the then SHO, Bhind (PW-6), Harendra (PW-7), Head Constable Gambheer Singh (PW-8), M. Tirki (PW-11), Kavildas (PW-12), Jasrath (PW-13) were recorded. Thereafter, all of a sudden, on 16.04.2014 additional charge under Section 302 or 302/34 was framed against each of the accused/petitioners in view of the directions issued by Hon'ble the Supreme Court.

5. In the case in hand, learned trial court, in view of the directions issued by Hon'ble the Supreme Court in the case of *Rajbir @ Raju & Anr. V. State of Haryana* reported in AIR 2011 SC 568 and considering itself to be bound by the same added the charge under Section 302 or 302/34 of IPC to one already framed against the petitioners. While doing so, learned trial court simply placed reliance upon Section 216 of Cr.P.C. which empowers the court add or alter the charge at any stage.

6. The Hon'ble Supreme Court in the case of *Jasvinder Saini & Ors Vs. State (Govt. of NCT of Delhi)* reported in (2013) 7 SCC 256 has observed as under:

“The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder

punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 without adverting to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir's case* (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in *Rajbir's case* (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court."

7. On perusal of evidence of Rajaram Singh (PW-4) who is the father and Jamuna Devi (PW-5) who is the mother of deceased, it is clear that only allegations were made against the petitioner that Aneeta (since deceased) was subjected to cruelty and many a times she was beaten by the petitioners on account non-fulfillment of demand of dowry.

8. After taking into consideration the entire evidence of 13 witnesses, *prima facie*, there is no evidence at all for framing the charge under Section 302 or 302/34 of IPC against the petitioners. Thus, it is clear that the learned trial court has framed the charge under Section 302 or 302/34 of IPC mechanically only because that there are directions issued by the Hon'ble Supreme Court in the case of *Rajbeer* (supra). Hence, revision stands allowed. Impugned order dated 16.04.2014 and also the additional charge framed under Section 302 or 302/34 against the petitioners is hereby set aside and the petitioners are discharged from the offence only under Section 302 or 302/34 of IPC. Learned Trial Court is directed to continue the trial and after taking into consideration the evidence, the case be decided in accordance with law on the basis of charges framed against the petitioners under Sections 498A and 304B of IPC.

Revision allowed.

I.L.R. [2015] M.P., 3419

CRIMINAL REVISION

Before Mr. Justice B.D. Rath

Cr. Rev. No. 295/2009 (Gwalior) decided on 6 August, 2014

TEEPA @ SURENDRA

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Essential Commodities Act (10 of 1955), Section 3 - In order to prosecute a person for violation of terms and conditions of the scheme it is necessary for the prosecution to prove that the scheme is in the nature of control order - Any scheme framed under executive power cannot fall within the purview of Control Order - Person cannot be prosecuted and held guilty. (Para 7)

आवश्यक वस्तु अधिनियम (1955 का 10), धारा 3 - योजना के नियम एवं शर्तों के उल्लंघन के लिए किसी व्यक्ति को अभियोजित करने हेतु अभियोजन के लिये यह साबित करना आवश्यक है कि योजना नियंत्रण आदेश के स्वरूप की है - कार्यपालिक शक्ति के अंतर्गत विरचित किसी योजना को नियंत्रण आदेश की परिधि में नहीं लाया जा सकता - व्यक्ति को अभियोजित कर दोषी नहीं ठहराया जा सकता।

Cases referred :

2008 (1) EFR 198, 2005 (4) MPLJ 117.

Sanjay Bahirani, for the applicant.*Rajiv Upadhyay*, P.L. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

B.D. RATHI, J. :- This Criminal Revision under Section 397 of the Code of Criminal Procedure, 1973 is directed against the impugned judgment dated 13-04-2009 passed by learned Additional Sessions Judge, Shivpuri in Criminal Appeal No.04/2009 affirming the judgment of conviction and sentence dated 08-12-2008 passed by learned Judicial Magistrate First Class, Shivpuri in Criminal Case No.1020/2008 whereby the petitioner has been convicted under Section 3/7 of Essential Commodities Act and sentenced to undergo 1 year's RI with fine of Rs.2,000/- with default stipulation.

2. Brief facts in narrow compass are that on 14-09-2005 at about 7:40 pm, Station House Officer Police Station Dehat Shivpuri received an information that in the house of Ramesh Sharma there is illegal collection and sale of blue kerosene. On receiving this information, Station House Officer Police Station Dehat Shivpuri along with other police officials conducted a raid and since at the suspected shop lock was there, therefore, after preparing a Panchnama lock of the shop was broken in which eight drums containing blue kerosene have been found present. The aforesaid shop was stated to be of petitioner. At the time of conducting of raid, petitioner was not present on the spot. Thereafter, crime No.262/2005 was registered at Police Station Dehat Shivpuri for the offence punishable under Section 3/7 of Essential Commodities Act. After investigation, charge-sheet was filed. On trial, learned Judicial Magistrate First Class, Shivpuri passed the order of conviction and sentence, which was further confirmed by the appellate Court.

3. Learned counsel for the petitioner submitted that in the entire case, it was not proved by the prosecution that which control order was violated by the petitioner, therefore, the action of prosecution was contrary to law deserves to be quashed.

4. In order to appreciate the submission of the learned counsel for the parties, it would be appropriate to refer the provisions of Essential Commodities Act, which provides as under

"7. Penalties (1) if any person contravenes any order made under Section 3-

(a) he shall be punishable

(i) in the case of any order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine;

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three

months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other Conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government."

5. Thus, bare perusal of the Section 7(1) of the Essential Commodities Act, makes it crystal clear that when there is a violation of any "order" regarding any essential commodity, then the provisions of Essential Commodities Act, 1955 may apply.

6. This Court in the matter of *Hema Bhadoriya Vs. State of M.P.* reported in 2008 (1) EFR 198, has held that the criminal proceedings pending against the petitioner regarding inspection of petrol pump without mentioning violation of any order under Section 3 of Essential Commodities Act, accused cannot be prosecuted for the offence punishable under Section 3/7 of the Essential Commodities Act.

7. In the case of *Shiv Kumar Vs. State of M.P.* 2005 (4) MPLJ 117 it was held by this Court that first condition for prosecuting a person under section 7 is that there should be a contravention of the control order issued by the State Government under section 3 of the Essential Commodities Act. Any scheme framed under the executive powers by the State Government may not come within the purview of the control order and for that it would not be necessary that it should satisfy the provisions laid down under Section 3 of the Act. Therefore, in order to prosecute a person for violation of the terms and conditions of the scheme it is necessary for the prosecution to prove that the scheme is in the nature of control order and further to prove that the same has been issued under section 3 of the Essential Commodities Act and in the absence of such an evidence, any scheme framed under executive power cannot be fall within the purview of the Control Order and the person cannot be prosecuted and held guilty.

8. On perusal of entire record, it is clear that the prosecution has failed to prove that which control order was violated by the petitioner, therefore, conviction of petitioner is liable to be set aside, accordingly petition is allowed.

Impugned judgment of conviction and sentence passed by learned Courts below are hereby set aside. Petitioner is discharged of the offence under Section 3/7 of Essential Commodities Act. Fine amount, if deposited, by the petitioner be refunded to him. Seized kerosene be forfeited in favour of State.

Copy of this order be sent to the trial Court.

Petition allowed.

I.L.R. [2015] M.P., 3422

CRIMINAL REVISION

Before Mr. Justice B.D. Rath

Cr. Rev. No. 708/2007 (Gwalior) decided on 7 August, 2014

KRISHNAPAL SINGH

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 85 - Release of property of proclaimed person - When the petitioner has assigned sufficient reason for his absence, application under Section 85 should have been allowed by the Court below. (Para 9)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 85 - उद्घोषित व्यक्ति की संपत्ति मुक्त करना - जब याची ने अपनी अनुपस्थिति के लिये समुचित कारण दिया है, निचले न्यायालय द्वारा धारा 85 के अंतर्गत आवेदन मंजूर किया जाना चाहिए था।

Sanjeev Jain, for the applicant.

Pramod Pachori, P.P. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

B.D. RATH, J. :- This Criminal Revision has been preferred under Section 397/401 of the Code of Criminal Procedure being aggrieved by the order dated 12.07.2007 passed by the Special Judge [Dacoity], Gwalior (M.P.) in M.J.C. No.192/2004 (Criminal) whereby the application filed by the petitioner under Section 85 of Cr.P.C. was dismissed.

2. The brief facts, giving rise to the present revision, are that in Sessions Trial No.145/85 on 31.07.2004, application filed by the prosecution under Section 82 of Cr.P.C. was allowed and the proclamation was published against

the petitioner. The date for appearance was fixed as 31.08.2004. On that day, there was a public holiday, therefore, the case was taken up for hearing on 01.09.2004 but on that day petitioner had not appeared before the court. One application was filed on behalf of the petitioner before the court that he was hospitalized in Teerathram Hospital, Delhi since he was suffering from cardiac pain, so he may be arrested formally. Said application was dismissed and the proceedings under Section 83 of Cr.P.C. for attachment of the property of the petitioner were initiated and the property was attached. For releasing the property, application under Section 85 of Cr.P.C. was filed on 02.09.2004 personally by petitioner Krishnapal Singh after appearing before the trial court. That application was registered as MJC (Criminal) No.192/2004 in view of the order dated 29.11.2004 passed in Session Trial No.145/85. Thereafter, enquiry was made and the case was fixed for evidence and after recording the evidence and affording opportunity to both the parties, application was finally decided on 12.07.2007 and the application was dismissed. Being aggrieved by the same, present revision has been preferred by the petitioner.

3. It is submitted by the learned counsel for the petitioner that for appearance date was fixed as 31.08.2004. On that day, there was a public holiday. The case was fixed for the next day i.e. on 01.09.2004. On that day, petitioner was hospitalized. He was discharged on 01.09.2004 at about 8 pm. Thereafter, he came to the Court on the next day and surrendered himself before the trial court and also filed an application under Section 85 of Cr.P.C. The delay of one day was explained by the petitioner that he was hospitalized and the same was considered in the impugned order by the court below. Therefore, in view of the provisions contained under Section 85(1) of Cr.P.C. impugned order could not be passed. It is also submitted by him that even after attachment of the property, if within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub section (2), appears voluntarily or is apprehended and brought before the Court and satisfies the court that he did not abscond or conceal himself attached property shall be delivered to him.

4. *Per contra*, learned Public Prosecutor argued in support of the impugned judgment and prayed for dismissal of the present revision.

5. Having regard to the arguments advanced by the learned counsel, record has been perused. Admittedly, in proclamation proceedings, last date for appearance was fixed as 31.08.2004. Since on that day there was a holiday,

the case was taken up for hearing on 01.09.2004. On the next day i.e. on 02.09.2004, petitioner appeared personally before the court and an application under Section 85 of Cr.P.C. was filed by him. Reason in the said application was assigned by him that he was hospitalized and on 01.09.2004 at 08:00 pm when he was discharged from the hospital, he directly came to the court. In the last line of paragraph 14 of the impugned order, it was observed by the learned trial court that on perusal of the document Ex.P-1, it is clear that petitioner was admitted in Teerathram Hospital, Delhi on 30.08.2004 and he was discharged on 01.09.2004 at 08:00 pm.

6. Perusal of provisions contained under Section 85(1) of Cr.P.C. will be helpful and according to which if the proclaimed person appears within the time specified under the proclamation, the Court shall make an order of releasing the property from the attachment.

7. In this case also, the last date for appearance was fixed as 31.08.2004. Being holiday on 31.08.2004, that date will be treated as 01.09.2004. Though petitioner did not appear on that day but just on the next day i.e. on 02.09.2004 he himself appeared before the court and assigned sufficient reasons for his non-appearance on the date fixed in proclamation.

8. It is pertinent to mention that in the case in hand, petitioner had surrendered himself before the court within the specified period fixed in proclamation. It is pertinent to mention here that in case where the absconder does not appear before the court and his property is attached and at the disposal of the State Government under sub-section 2, and within two years from the date of attachment of property if he appears and satisfies the court by the reasons for his absence even then his property can be released in his favour as provided under sub-clause (3) of Section 85 of Cr.P.C.

9. In view of the foregoing, in the present facts and circumstances, when the petitioner has assigned sufficient reasons for his absence for a day's delay, application preferred under Section 85 of Cr.P.C. should have been allowed by the court below.

10. In the aforesaid premises, in the interest of justice, revision stands allowed. Impugned order is set aside. Application preferred under Section 85 of Cr.P.C. is allowed. Attached property is hereby released in favour of the petitioner and order be also delivered to the petitioner.

Revision allowed.

I.L.R. [2015] M.P., 3425

CRIMINAL REVISION

Before Mr. Justice Alok Verma

Cr. Rev. No. 1109/2013 (Indore) decided on 12 December, 2014

FAYYAJ AHMAD

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Penal Code (45 of 1860), Sections 420, 467, 468 & 471 and Criminal Procedure Code, 1973 (2 of 1974), Section 397 - Revision - Matters related to forgery of sale deed and order of mutation which cannot be decided without proper evidence - FIR shows commission of cognizable offences - No interference is called for in the order of framing of charge - Revision dismissed. (Para 5)

दण्ड संहिता (1860 का 45), धारा 420, 467, 468 व 471 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 - पुनरीक्षण - विक्रय पत्र की कूट रचना एवं नामांतरण आदेश संबंधी मामले जो कि बिना उचित साक्ष्य के निर्णीत नहीं किये जा सकते - प्रथम सूचना प्रतिवेदन संज्ञेय अपराध किया जाना दर्शाता है - आरोप विरचित किये जाने के आदेश में किसी हस्तक्षेप की आवश्यकता नहीं - पुनरीक्षण खारिज।

Mangesh Bhachawat, for the applicant.

Deepak Rawal, G.A. for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This criminal revision under section 397 Cr.P.C. is directed against the order passed by the learned Ist Additional Sessions Judge, Mandsaur dated 03.09.2013 in Session Trial No.164/2013.

2. The brief facts according to the applicant are that he is the Bhumiswami, is in possession of agricultural land bearing survey No.727 area 0.52 hectare situated at village Jaggakhedi Tehsil and District Mandsaur. The applicant had to stand as surety in a criminal case in City Session Court, Mumbai for one Rajkumar Kakanani and, therefore, somewhere in the year 2007, he applied for issuance of solvency certificate on his aforementioned land before the Tehsildar Mandsaur. After due enquiry, the solvency was issued in his name which was submitted before the City Session Court, Mumbai. In due course, the Court informed the Tehsildar, Mandsaur that since the applicant stood surety in the case pending before him, the land should not be allowed to be

transferred or alienated till disposal of the case. On receiving such intimation from the Court, the Tehsildar proceeded to make an enquiry in respect of the land and sent a report to the City Session Court, Mumbai, which in its turn issued a letter to the present applicant and asked him to remain present before the Court. When the applicant appeared before the Court, he came to know that the land was mutated in name of one Nasir Khan who is co-accused in the present case. According to the present applicant, he never knew who is Nasir Khan. On further enquiry, it was discovered by the applicant that by a forged sale-deed one Ayyub Khan S/o Abdul Rahim got the land transferred in his name by a registered sale deed. However, no mutation took place on the basis of this sale deed. Subsequently, after solvency certificate was issued by forging a certified copy of the order, the said Nasir Khan got the land mutated in his name. Thereafter, the matter was reported to the Police and a Crime No.442/2007 under sections 420, 467, 468, 471, 472 and 34 of IPC was registered against the present applicant along with other co-accused Nasir Khan S/o Ashraf Khan. After investigation, charge-sheet was filed and matter was committed to the Court of Session and made over to Ist Additional Sessions Judge, Mandsaur. By the impugned order, the learned Additional Sessions Judge framed charges under sections 420, 467, 468 and 471 of IPC and the present applicant and co-accused Nasir Khan remained absconding before the learned Additional Sessions Judge.

3. The case of the present applicant before the learned Additional Sessions Judge was that whatever act as alleged was done by absconding accused Nasir Khan. He has not done any act of cheating or forgery. He never sold the land in favour of Md. Ayyub Khan S/o Abdul Rahim and the co-accused Nasir Khan is not known to him.

4. I have gone through the copies of the charge-sheet filed by the applicant. The order dated 13.08.2007 passed by Tehsildar, Mandsaur may be referred to with some benefit. In this order, it was mentioned that on perusing the report of Patwari, it came out that the land was mutated in the name of co-accused Nasir Khan, on the basis of order passed on 05.02.2000. It also came out that said Nasir Khan filed an application before the Assistant Settlement Officer and filed a certified copy of order dated 05.02.2000. However, it was found that the certified copy of the order dated 05.02.2000 was forged and in the original order it was ordered that the land should be mutated in the name of Md. Ayyub Khan S/o Abdul Rahim in whose favour there was a sale deed purported to have been executed by the present applicant

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Fayyaj Ahmad S/o Mushtaq Ahmad. However, after going through the record and all the reports received by him, the learned Tehsildar ordered to maintain status-quo ante and ordered that the land be mutated in the name of original Bhoomiswami, the present applicant Fayyaj Ahmad, be entered into records.

5. Now, the question is whether the present applicant sold the land in question to one Md. Ayyub. In this regard, the learned counsel for the applicant argues that the present applicant signs in Urdu language, however, on the said sale deed his sign is in Hindi language. However, in the charge-sheet, the thumb impression of the present applicant was sent for examination to handwriting expert and examiner of questioned documents and according to his report, the thumb impression on the sale deed was that of the present applicant. Accordingly, if the land was sold by the present applicant to Md. Ayyub as back as in the year 1981 and then subsequently, he applied a solvency certificate in the year 1927, then it is a matter of evidence whether the said sale deed is forged one or a genuine one. In such a situation, at this stage, it cannot be presumed that allegations against the present applicant have no basis and they are false. The FIR on the face of it shows commission of a cognizable offence and as such no interference is called for in the impugned order passed by the learned Additional Sessions Judge. In this view of the matter, I find that this revision is devoid on merit and liable to be dismissed and accordingly, the revision is dismissed.

Revision dismissed.

I.L.R. [2015] M.P., 3427

CRIMINAL REVISION

Before Mr. Justice Alok Verma

Cr. Rev. No. 1177/2013 (Indore) decided on 16 December, 2014

INAYAT

...Applicant

Vs.

ADARSH VYAPARI SAKH

SAHKARITA MYD.

...Non-applicant

(Alongwith CRR No. 1183/2013, CRR No. 1180/2013, CRR No. 1181/2013, CRR No. 1307/2013)

Criminal Procedure Code, 1973 (2 of 1974), Section 427 - Subsequent sentence to run concurrently with previous - Applicant convicted under Section 138 Negotiable Instruments Act, 1881 in five

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different cases - Criminal liability arises from different transactions - Applicant not entitled for benefit - Revision dismissed. (Para 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 427 - पश्चात्तर्ती दंडादेश पूर्व के साथ-साथ ही चलेगा - अपीलार्थी परक्राम्य लिखत अधिनियम, 1881 की धारा 138 के अंतर्गत पांच भिन्न प्रकरणों में दोषसिद्ध - आपराधिक दायित्व भिन्न संव्यवहारों से उत्पन्न हुआ है - अपीलार्थी लाभ के लिये हकदार नहीं - पुनरीक्षण खारिज।

Cases referred :

2009 (2) MPWN 251 SC, AIR 1988 SC 2143, 2007 Cri.L.J. 634 (Guj).

N.A. Sheikh, for the applicant.

K.C. Yadav, Anil Malviya and Shradha Dixit, for the non-applicants.

ORDER

ALOK VERMA, J. :- This common order shall govern the disposal of **CRR nos. 1177/2013, 1183/2013, 1180/2013, 1181/2013 and 1307/2013.** These criminal revisions are directed against the order passed by the learned Special Judge, Badwani in Criminal Appeal nos. 03/2012, 21/2013, 47/2012, 132/2012 and 69/2013 respectively, by which, learned Special Judge dismissed the appeals filed by the present applicant against the order of conviction passed against him by learned JMFC, Badwani in Criminal Case nos. 969/2010, 40/2011, 33/2011, 23/2011 and 306/2011 respectively.

2. The relevant facts for disposal of these criminal revisions are that the present applicant was convicted by learned JMFC, Badwani under section 138 of Negotiable Instruments Act and sentenced him for one years R.I with fine in Criminal Case nos. 969/2010, 33/2011 and 23/2011 and two years R.I with fine in Criminal Case nos. 40/2011 and 306/2011.

3. At the outset, learned counsel for the applicant stated that he does not want to challenge conviction and sentence including the fine amount imposed on him. However, his short prayer involved in this revisions is that the jail sentence awarded to him in five cases should be ordered to run concurrently under section 427 of Cr.P.C., so that after completing the term, he would come out and try to pay the amount of fine. It was further stated by him that the jail sentence was suspended by the Court, however, as he was not in financial position to deposit the required amount in all the five cases, he remained under custody and he is undergoing the sentence. To decide this

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question, section 427 of Cr.P.C may be quoted below :

Section 427(1) in The Code Of Criminal Procedure, 1973

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

4. Learned counsel for the applicant placed reliance on the judgment of Hon'ble Apex Court delivered in the case of *State Vs. Madanlal* reported in 2009(2) MPWN 251 SC.

5. To decide, whether the present applicant is entitled for the benefit of provisions under section 437 of Cr.P.C., the judgment of Hon'ble Apex Court delivered in the case of *Mohd. Akhtar Hussain Vs. Asst. Collector of Customs* reported in AIR 1988 SC 2143 may be referred., in which principle of single transaction was propounded by Hon'ble Apex Court for concurrent sentence. When all the cases arise out of single transaction, benefit of section 427 of Cr.P.C may be extended. However, when person suffers jail sentence in various cases, which arise from different transactions, such benefit cannot be extended. In the case of *Sumlo alias Sumla Himla Bhuriya Vs. State of Gujarat and another* reported in 2007 Cri.L.J. 634 (Guj), it was held that when a person is convicted in three different cases at three different places,

such benefit cannot be extended. Also when, the conviction of accused is based on two different cases on two entirely different facts and transactions, benefit of section 427 of Cr.P.C cannot be extended.

6. Applying this single transaction rule on the present cases, it is apparent that the present applicant obtained loans from different persons / Societies. Criminal liability arises from different transactions. Five different cases were filed against him, in which, the respondents are five different persons / Societies. In such situations, the present applicant is not entitled for the benefit of section 427 of Cr.P.C. I find that the present criminal revisions being devoid of merit are liable to be dismissed. Accordingly, the present criminal revisions are dismissed.

C c as per rules.

Revision dismissed.

I.L.R. [2015] M.P., 3430

CRIMINAL REVISION

Before Mr. Justice C.V. Sirpurkar

Cr. Rev. No. 1483/2006 (Jabalpur) decided on 9 October, 2015

BHAIYALAL

...Applicant

Vs.

SUBHADRA BAI (SMT.) & anr

...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Marriage expenses - Marital obligations on the part of husband to incur expenses upon marriage of his daughter cannot be translated into a legally enforceable liability taking recourse to Section 125 of Cr.P.C. - Plain reading of provision cannot be stretched to include within its ambit, a lump-sum granted towards estimated expenditure on marriage of his daughter - Order of Court below set aside.
(Para 11)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 - विवाह के खर्चे - पति की ओर से अपनी पुत्री के विवाह उपरांत, खर्चे उठाने के वैवाहिक दायित्व को दं.प्र.सं. की धारा 125 का अवलंब लेकर, कानूनी रूप से लागू दायित्व के रूप में परिवर्तित नहीं किया जा सकता - उपबंध के साधारण पठन को, अपनी पुत्री के विवाह के अनुमानित खर्चों के लिये प्रदत्त एकमुश्त राशि को उसकी परिधि में शामिल करने के लिये विस्तारित नहीं किया जा सकता - निचले न्यायालय का आदेश अपास्त।

Cases referred :

1998 (3) Crimes 391, AIR 1978 SC 1807, AIR 1975 SC 83.

Istiyaq Hussain, for the applicant.

Hemant Namdeo, for the non-applicants.

ORDER

C.V. SIRPURKAR, J. :- This criminal revision preferred on behalf of the applicant Husband Bhaiyalal is directed against order dated 02.08.2006 passed by the Court of Shri B.L. Prajapati, JMFC, Harda, in M.J.C. (criminal) No.30/2003, whereby the revision petitioner-Husband Bhaiyalal was directed to pay a sum of Rs.50,000/- by way of expense of marriage of his major illegitimate daughter respondent No.2 Anita.

2. The facts necessary for disposal of this criminal revision may briefly be stated thus: Revision petitioner Bhaiyalal had performed Natra marriage with respondent Subhadra Bai. Respondent No.2 Anita was born from aforesaid union. By order dated 29.06.1991 passed by the Court of JMFC in M.J.C. (criminal) No. 204/1984, revision petitioner Bhaiyalal was directed to pay Rs.100/- per month as monthly maintenance allowance under Section 125 of the Cr.P.C., to respondent Anita. He paid aforesaid sum till 21.12.2001, whereon, the payment was directed to be stopped by order dated 21.12.2001 passed in Recovery Case No. 184/1998 by Chief Judicial Magistrate, Harda, in view of the fact that Anita had attained majority.

3. On attaining the age of marriage, an application under Section 125 of the Cr.P.C. was filed on her behalf by her mother Subhadra Bai stating that she has no means to marry her off. The estimated expenditure of marriage would be about Rs.1,00,000/-. Since, the revision petitioner Husband Bhaiyalal, being a teacher, has sufficient means, revision petitioner be directed to pay a sum of Rs. 1,00,000/- for marriage ceremony of Anita.

4. The application was opposed *inter alia* on the grounds that under Section 125 of the Cr.P.C., only a monthly amount of maintenance is payable. Under aforesaid provision, revision petitioner Husband cannot be made to pay a lump sum towards estimated expenditure of marriage of his major illegitimate daughter.

5. Learned trial Court, placing reliance upon the judgment rendered by

Rajasthan High Court in the case of *Harish Chand Vs. Baikunthi Devi and another*, 1998 (3) Crimes 391 held that the responsibility for discharging marital obligation was upon the Husband. Therefore, revision petitioner was directed to pay Rs. 50,000/- to the respondents for aforesaid purpose.

6. The impugned order has been challenged before this Court on the sole ground that the learned trial Court had exceeded the legislative mandate of section 125 of Cr.P.C., in awarding Rs. 50,000/- to the respondent Anita towards expenses of marriage.

7. In aforesaid circumstances, the question that arises for consideration before this Revisional Court is whether a lump sum by way of expenses of marriage to daughter can be granted under Section 125 of the Cr.P.C ?

8. To begin with, it may be noted that it is settled position of law that Section 125 is a measure of social justice falling within the constitutional sweep of Articles 15 (3) and 39, enacted to protect the weaker sections like women and children. (*Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others*, AIR 1978 SC 1807). The object of the provision is to compel a man to perform the moral obligations, which he owes to society in respect of his wife, children and parents so that they are not beggared and destituted on the scrapheap of society and thereby driven to a life of vagrancy, immorality or crime for their subsistence. The jurisdiction of the Magistrate is preventive and not remedial and certainly not punitive. The scope is limited and orders passed by the Court, as Section 127 (2) expressly provides, are subject to any final adjudication by civil Court regarding status and civil rights (*Bhagwan Dutt Vs. Kamla Devi & Anr.*, AIR 1975 SC 83, it may further be noted that Section 125 only empowers the Magistrate of first class to "orders such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the sum to such person as the Magistrate may from time to time direct:..... "

9. In view of the phraseology used in Section 125, in the opinion of this Court, the Magistrate has no jurisdiction to travel any further and grant lump sum amount under the head of expenses of marriage of major daughter. In fact the major daughter, unless by reason of any physical or mental abnormality or injury is unable to maintain herself, is not even entitled to monthly maintenance.

10. In this regard, learned counsel for the respondent has invited attention of the Court to the judgment rendered by Rajasthan High Court in the case of

Harish Chand (supra). In paragraph No. 9 of the aforesaid judgment, it has been held as follows:

"Moreover, the responsibility for discharging marital obligations apart from the legal duties is always on the Husband/petitioner in such circumstances. It is accordingly directed that the Husband-petitioner shall deposit a sum of Rs. 1,00,000/- by way of two FDR's in the sum of Rs. 50,000/- each to be deposited in any Nationalized Bank of District-Bharatpur for performance of rituals and ceremonies connected with wedding of respondent No. 2 Miss Mohand Devi and that money shall be inclusively utilized by the respondent No.1 for her marriage purpose alone."

11. With due respect, this Court is unable to persuade itself to subscribe to the view taken by the learned single Judge of Rajasthan High Court because the only reason advanced for taking such view is that "the responsibility for discharging marital obligations apart from the legal duties is always on the Husband/petitioner". The question to be considered in this regard is whether the marital obligations on the part of the Husband to incur expenses upon the marriage of his daughter and can be translated into a legally enforceable liability, taking the recourse to Section 125 of the Cr.P.C.. The Court cannot legislate in the garb of interpretation. In the opinion of this Court, the plain wording of the provision cannot be stretched to include within its ambit, a lump-sum granted towards estimated expenditure on marriage of the daughter; therefore, the answer to the question would have been in the negative, in view of the clear object ambit and nature of provision as contained in Section 125 of the Cr.P.C.

12. In aforesaid view of the matter, in the opinion of this Court, learned Magistrate exceeded the legislative mandate of Section 125 by stretching the provision so as to cover even the estimated expenditure upon the marriage of daughter of revision petitioner and in directing him to pay the same in lump sum. Thus, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

13. Consequently, this revision petition is allowed and the impugned order is set aside.

C.C. as per rules.

Petition allowed.

I.L.R. [2015] M.P., 3434

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Alok Verma

M.Cr.C. No. 8285/2009 (Indore) decided on 11 December, 2014

SANJAY KUMAR

...Applicant

Vs.

STATE OF M.P. & ors.

...Non-applicants

Penal Code (45 of 1860), Sections 419, 420, 467, 468 & 471 - Cheating - Application for quashment of FIR registered on the basis of forged sale deed - Society allotted a plot in favour of "A" who in his turn sold the same to "B" without obtaining permission of society - Society cancelled the allotment made in favour of "A" and allotted the same to applicant - Respondent no. 5 society admits execution of documents in favour of applicant - It cannot be assumed that the sale deed is forged, unless proved before civil court - Matter purely of civil nature - FIR related to applicant quashed. (Paras 3 & 10)

दण्ड संहिता (1860 का 45), धाराएं 419, 420, 467, 468 व 471 - छल - कूट रचित विक्रय-पत्र के आधार पर पंजीबद्ध किये गये प्रथम सूचना प्रतिवेदन को अभिखंडित किये जाने के लिये आवेदन - सोसायटी ने "अ" के पक्ष में एक भूखंड का आबंटन किया जिसने उक्त को सोसाइटी की अनुमति प्राप्त किये बिना "ब" को विक्रय कर दिया - सोसाइटी ने "अ" के पक्ष में किया आबंटन रद्द किया एवं उक्त को आवेदक को आबंटित किया - प्रत्यर्थी क्रमांक 5 सोसाइटी ने दस्तावेजों का निष्पादन आवेदक के पक्ष में किया जाना स्वीकार किया. - यह धारणा नहीं की जा सकती कि विक्रय-पत्र कूटरचित है - जब तक कि सिविल न्यायालय के समक्ष साबित न किया जाये - मामला विशुद्ध रूप से सिविल प्रकृति का है - आवेदक से संबंधित प्रथम सूचना प्रतिवेदन अभिखंडित।

S.C. Bagadiya with D.K. Chhabra, for the applicant.

S.K. Vyas with Harshvardhan Pathak, for the non-applicant No.4.

P.K. Shukla, for the non-applicant No. 5.

R.S. Chouhan, G.A. for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This application is filed under section 482 of Cr.P.C. for quashment of the FIR dated 06.09.2009 registered by Police Station - Rawji Bazar, Indore in Crime No.350/2009.

2. The relevant facts for disposal of this case are that the present applicant was allotted a plot bearing No.93 in Anop Nagar, Indore by respondent No.5 – Anop Nagar Grih Nirman Sahakari Sanstha. This plot, it is stated that, was earlier sold by the society to one Prakashchandra on 25.10.1980. Said Prakashchandra sold this plot to one Kulwant Singh through his attorney named as BS Choray. Subsequently, in respect of this plot attorney was given to respondent No.4. It is stated that after the plot was allotted to said Prakashchandra, he obtained building permission from Municipal Corporation, Indore and remained in possession of the disputed plot. Subsequently, as Prakashchandra transferred the plot without payment of full amount to 3rd party and without prior permission of the society, his allotment and sale deed executed in his favour by the society was cancelled after giving him a notice and the plot was allotted to the present applicant. The present applicant also obtained building permission from Municipal Corporation, Indore.

3. The present FIR was lodged by the respondent No.4 before Police Station – Rawji Bazar stating therein that respondent No.4 is attorney of Kulwant Singh Son of Antar Singh, who purchased the plot from the original allottee Prakashchandra. Kulwant Singh purchased the plot through sale deed dated 31.08.1987. The plot is in possession of Kulwant Singh and he raised certain constructions on the plot. On 02.09.2009, the present applicant alongwith the other persons removed iron angles placed by him. When the present applicant was called by Police Station – M.I.G., he submitted forged sale deed and other documents and he claimed that he was the owner of the plot. According to the forged sale deed, plot was purchased by him through one Lalsingh Malviya, who was Secretary of Anop Nagar Grih Nirman Sahakari Sanstha, respondent No.5. According to the averments made in the FIR, the said plot was already sold to Prakashchandra in the year 1980 and, therefore, society had no right to transfer the plot to the present applicant. The present applicant was also not a member of the society and Lalsingh Malviya was not Secretary of the society at the relevant time and, therefore, they are claiming ownership on the basis of forged documents.

4. On such complaint being filed, the crime as aforesaid was registered by Police Station – Rawji Bazar for quashment of which, this application is filed on the ground that the present applicant was allotted the plot by the society. Lalsingh Malviya was the Secretary of the society. All the documents are properly executed and, therefore, the ingredients of crime which was registered under sections 419, 420, 467, 468 and 471 of IPC are not present in the

avermments of the FIR itself and, therefore, the FIR should be quashed.

5. The society, respondent No.5, in its reply, stated that the FIR has been lodged by respondent No.4 on false and frivolous grounds. On 28.07.1997, Lalsingh Malviya was acting as Secretary of society. The sale deed was executed in favour of the applicant by registered sale deed on which, signature of the present applicant was not appended because as per rules prevailing in those days, presence of the allottee before the Registrar was not necessary. It is further stated that the attesting witness Vinod Verma signed the document and after 12 years his statement to the police that he did not signed the document is, unfortunate. It is further stated by the society that the original allottee Prakashchandra violated the condition of the allotment and, therefore, his allotment was properly cancelled/annulled and thereafter, the plot was allotted to the present applicant.

6. Respondent No.4, it (sic:in) its reply states that the society was not competent to allot the plot in favour of the present applicant. On his complaint, the Joint Commissioner, Cooperative Society, Indore and Dy. Commissioner, Cooperative Society, Indore made an inquiry and found that the sale deed of the applicant was forged. The report of the said authorities is appended with his reply as Annexure-R(4)/13 and 14. Similarly, according to him, Superintendent of Police also inquired into the matter and it was found that the applicant with connivance of the society's office bearers tried to grab the plot. According to him, Kulwant Singh was the only lawful owner of the plot. He is in possession of the plot. He is the member of Anop Nagar Rahawasi Sangh and also paid Rs.20,000/- for construction of the roads. It is also stated that the applicant was minor in the year 1997 when the said sale deed was executed in his favour and on such grounds, he stated that the present applicant is responsible for offence under sections 419, 420, 467, 468 and 471 of IPC.

7. I have gone through the documents filed by both the parties.

8. It is true that, on the copy filed by the respondent No.5 of the sale deed in favour of the present applicant, there is no signature of the present applicant however, so far as the copy of the sale deed in favour of the original allottee Prakashchand is concerned, which is annexed as Annuxure-D-5/1, signature of the allottee Prakashchand are there and also in the last line of the sale deed, it is specifically mentioned that the deed was signed by the seller and the purchaser. Similar averments are present on the sale deed in favour of

the present applicant. As such, it cannot be accepted that the present applicant did not signed the sale deed and no such rule is shown to this Court that in the year 1997, presence of the purchaser was not required.

9. However, going through the whole matter, I find that all the ingredients of forgery and cheating are missing. The matter was inquired into by the Dy. Commissioner Cooperative Society, District – Indore. His report is filed by the respondent No.4 as Annexure – R(4)/14. The observations made by the officer in its report are quoted below:-

“जांच अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन अनुसार संस्था द्वारा भूखण्ड क्रमांक 93 का आवंटन व रजिस्ट्री वर्ष 1980 में संस्था सदस्य श्री प्रकाश चन्द्र सराफ को की गई थी । जिसे श्री सराफ द्वारा श्री कुलबन्द सिंह अंतर सिंह को दिनांक 31.08.1987 को विक्रय किया गया है । संस्था अध्यक्ष द्वारा रजिस्ट्री की कार्यवाही को नियमों का उल्लंघन करने पर श्री प्रकाश चन्द्र सराफ को किया गया आवंटन स्वतः निरस्त माना गया है । किन्तु भूखण्ड वापस लेने की एक निश्चित प्रक्रिया है, जिसका पालन संस्था द्वारा नहीं किया गया है और न ही पूर्व में की गई रजिस्ट्री को माननीय न्यायालय से शुन्य घोषित कराया गया है । जांच अधिकारी ने संस्था द्वारा भूखण्ड क्रमांक 93 अनूपनगर की रजिस्ट्री श्री संजय कुमार सितलानी के पक्ष क्रमांक-1 आ 2597 दिनांक 28.07.1997 को की गई रजिस्ट्री को शुन्य घोषित किये जाने की कार्यवाही प्रस्तावित की गई है ।

उपरोक्त परिवेक्ष्य में आपको सुझाव दिया जाता है कि रजिस्ट्री शुन्य घोषित करने का अधिकार इस विभाग को नहीं होने से आप माननीय सिविल न्यायालय में वाद दायर कर वैधानिक उपचार प्राप्त करने एवं दोषी व्यक्तियों के विरुद्ध सम्बन्धित पुलिस थाने में एफ0आई0आर0 दर्ज कर आवश्यक कार्यवाही कर सकते हैं ।”

10. In my opinion, the correct legal situation is stated in the report. This is purely a matter of civil nature. No intention to deceive forgery can be assigned to the present applicant in the factual background of the case. The society in its reply, supports the contention of the present applicant that the plot was allotted to him after completing due formalities. It is nowhere asserted by the society that the present applicant did something illegal to grab the plot. All the signatures were admitted by the persons excepting the attesting witness, however, when the society admits execution of the documents in favour of the present applicant, at this stage, it cannot be assumed that the sale deed is forged. Unless, before a civil court it is proved that the registered sale deed in

favour of present applicant is forged, no action in a criminal court can be initiated. In such situation, in my opinion, the matter is purely of civil nature. Registration of the present crime against the present applicant is an abuse of process of law. The FIR, so far as it relates to the present applicant, is liable to be quashed. Accordingly, the FIR in Crime No.350/2009 registered by Police Station – Rawji Bazar, Indore under sections 419, 420, 467, 468 and 471 of IPC in respect of the present applicant – Sanjay Sitlani Son of Narayandas Sitlani is quashed. He is discharged from the charges under the aforementioned sections and all other investigation and proceedings arising out of the aforesaid FIR in respect of the present applicant are also quashed.

11. With the aforesaid observations, the present application is disposed of.

C.c. as per rules.

Application disposed of.

I.L.R. [2015] M.P., 3438

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Alok Verma

M.Cr.C. No. 6700/2014 (Indore) decided on 16 December, 2014

DINESH AGARWAL (DR.)

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 3, 18, 23 & 25 - Quashment of proceedings - Report of Tehsildar - Alleged violations and irregularities in the report can be considered by the Magistrate while hearing the complaint filed by the appropriate authority/Collector - Whether Tehsildar while conducting the inspection has authority or not can also be considered by the Magistrate - Whether such complaint is true or baseless can be determined by the Magistrate after the trial - At this stage it cannot be inferred that there is an abuse of law - As such the application is devoid of merit and liable to be dismissed and dismissed accordingly. (Para 6)

गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 3, 18, 23 व 25 – कार्यवाहियों को अभिखंडित किया

जाना - तहसीलदार का प्रतिवेदन - समुचित प्राधिकारी/कलेक्टर द्वारा प्रस्तुत की गयी शिकायत की सुनवाई के दौरान प्रतिवेदन में अभिकथित अतिलंघन एवं अनियमितता पर मजिस्ट्रेट विचार कर सकता है - क्या निरीक्षण करते समय तहसीलदार को प्राधिकार है या नहीं इस पर भी मजिस्ट्रेट द्वारा विचार किया जा सकता है - क्या ऐसी शिकायत सत्य है या आधारहीन है, इसका निर्धारण मजिस्ट्रेट द्वारा विचारण के पश्चात् किया जा सकता है - इस प्रक्रम पर यह निष्कर्ष नहीं निकाला जा सकता है कि विधि का दुरुपयोग किया गया है - इस प्रकार आवेदन गुणदोष रहित है एवं खारिज किये जाने योग्य है और तदनुसार खारिज किया जाता है।

Sadhna Pathak, for the applicant.

Deepak Rawal, G.A. for the non-applicant /State.

ORDER

ALOK VERMA, J. :- This application under section 482 of Cr.P.C. is filed for quashment of proceedings in Criminal Case No.211/2014 pending before the learned Chief Judicial Magistrate, Barwani under sections 18, 23 and 25 of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (hereinafter referred to as P.C. & P.N.D.T. Act).

2. According to averments made in the application, the applicant Dr. Dinesh Agarwal is a qualified medical practitioner. He has obtained diploma in Gynecology and Obstetrics. He is working in the Sonography Center in Karuna Hospital, Sendhwa. The applicant purchased a second hand ultra sound machine from S.S. Enterprises to be used in the Sonography Center in Karuna Hospital, Sendhwa. A copy of invoice is filed as (Annexure P/8) and declaration from the seller S.S. Enterprises is (Annexure P/9). After purchasing the machine, the applicant applied for Registration of the machine in the prescribed form to the Collector, District Barwani. Copy of the application form is filed as (Annexure P/10).

3. On 13.01.2012, a surprise inspection was conducted by Tehsildar Sendhwa. The machine was seized and sealed by the Tehsildar. Copy of the inspection report and information to Chief Medical Officer, Sendhwa are (Annexure P/11 & P/12). The report of the Tehsildar submitted to Collector, Sendhwa is (Annexure P/14).

4. After inspection, he approached Chief Medical Officer who after considering the report of Tehsildar and the application of the present applicant for registration of the machine, issued direction to Tehsildar to release the machine by opening the seal, he had put during the inspection. A letter from

Chief Medical Officer is (Annexure P/15). No action was taken by the Tehsildar and the Collector, the present applicant filed Writ Petition No.9055/2013 for releasing the sonography machine of the applicant. In this writ, direction was issued to the Tehsildar to consider the application and thereafter, when Tehsildar and the Collector failed to take any action, a contempt was filed and in the contempt petition also a direction was issued. However, subsequent to this, a complaint was filed on the basis of report received from Tehsildar before the Court of Chief Judicial Magistrate, Barwani and quashment of which this application is filed.

5. This petition is filed on the ground that purchasing of sonography machine is not prohibited by P.C. & P.N.D.T. Act, however, section 3 puts a bar on the seller of the machine that such machine can be sold only to such Centers which are registered under the Act. The provisions of rule 12 were not complied with by the Collector and appropriate authority. Tehsildar was conducting inspection had no authority to do so and no letter of authority is filed with complaint. Clinic was not functioning at that moment and, therefore, operation of P.C. & P.N.D.T. Act and the Rules therein do not come in operation. There is no statement of persons on whom sonography was performed and who were present for that purpose in the Clinic. The applicant prays that although provisions of the Act and Rules are not complied with, the proceedings before the Chief Judicial Magistrate pending in aforementioned criminal case should be quashed.

6. I have gone through the report submitted by the Tehsildar, Barwani and such alleged violations and irregularities in the report can be considered by the Magistrate while hearing the complaint filed by the appropriate authority/Collector. Whether Tehsildar while conducting the inspection had authority or not can also be considered by the Magistrate. The Collector being designated as appropriate authority under the Act had power to file such complaint whether such complaint is true or baseless can be determined by the Magistrate after the trial. At this stage, it cannot be inferred that there is an abuse of law which wants interference by this Court using the extraordinary power conferred on it under section 482 Cr.P.C. There is an order under Article 226 of Constitution of India and same can be got enforced by the applicant under the appropriate provisions of law. As such, the application is devoid on merit and liable to be dismissed and dismissed accordingly.

Application dismissed.